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ALM

PRACTICE TIP

Preparing for the Malware Epidemic: Working in the 21st Century

By Tom Gelbmann

Malware (Wikipedia): Malware is software designed to infiltrate or damage a computer system, without the owner's consent.

Nothing can be more disruptive, costly and frustrating than being a victim of malware. Being the victim of an attack can be particularly devastating in terms of lost productivity for attorneys and staff, missed filing deadlines, reduction in billable time and loss of client confidence.

Today's lawyers are highly mobile and persistently connected to the firm's' network — and in turn to clients, courts and colleagues. The Internet has been the primary enabler of this high degree of connectivity, but at the same time is also the enabler for a continuous barrage of malware attacks aimed at networks, servers, laptops and desktops.

New viruses appear daily; some of the more nasty viruses make headlines all too often as they can cause major disruption such as shutting down e-mail networks, servers and desktops. Viruses, however, have recently taken a back seat to a more popular form

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Are They Getting It?

Connecting the Dots With Visual Communication

By Kim Levine

Effective communication is largely dependent on our ability to connect with our audience and persuade them to think, feel or act in a desired way. Yet the process of getting information from one mind to another is no simple feat. No matter how well we think we're communicating, very often people ignore, misunderstand and misinterpret messages.

When a jury hears an argument, how do you know if they're getting it? They may start out conscientious and alert with good intentions about performing their civic duty, but that enthusiasm may dissipate throughout the trial and adversely affect the decision-making process. Like it or not, attention spans wane, boredom creeps in and life gets in the way all the while you're trying to win your case.

Your battles don't stop there. The range of beliefs (cultural, political, moral, religious, etc.), education levels and thinking styles of a jury requires that they be guided through the evidence in a way that ensures they'll "get the picture." But the facts, as legal teams present them — and as jurors perceive them — can be worlds apart.

As a visual communication consultant, I consider myself a visual person in the most general sense. For example, when giving directions, my first instinct is to draw a map to help describe the turns. I find clarity and definition in diagrams and believe the picture I draw is more useful and dependable than disjointed verbal descriptions and hand gestures; it gives me more confidence in my instruction and in the ability of the user to get where he or she wants to go.

The above strategy is a popular one. You may subscribe to it yourself. That's because the most basic communication of our thoughts is accomplished largely through *visualization.* In fact, it's estimated that 65% to 70% of the social meaning within a conversation is carried by visual channels (*Effective Family Communication, Gary L. Hansen, University of Kentucky, 1997).* Here's another example: In order to talk about a cat, we usually form a mental picture of a cat. Then, incorporating the language we've learned,

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Communication

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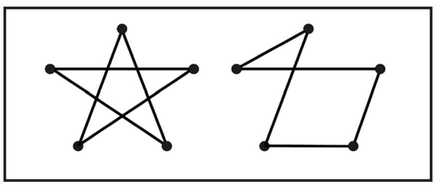
we pronounce the word "cat" with minimal effort. The listener's brain accepts the sound and converts the word into his own mental picture of a cat. Message understood, right?

Not necessarily. Since words are arbitrary symbols, they have no inherent meaning. As they pass from context to context, their meaning can change (*The Philosophy of Rhetoric, I.A. Richards, Oxford University, London, 1936).*

The fact is, a jury will visualize the evidence whether or not visual communication is employed. And unless they're given a clear context of meaning, they'll substitute their own. What picture will they see when they "connect the dots?"



The good news is, litigators and their IT team members can effectively engage and educate the jury by incorporating visual communication into trial presentations. Communication consultants put theories of cognitive and perceptual psychology to good use in the courtroom, creating visual strategies that help decisions makers "get it." Here are a few of those strategies.

FOCUS ON FUNCTION

Just about any fact can be visually defined. A general rule of thumb when deciding on a visual strategy is to distinguish between the use of visuals as filler or decoration versus strategic emphasis or comprehension. It's easy to overdo it, and if we emphasize everything, we emphasize nothing. So integrate visual communication around key case themes and the most critical facts that the jury must understand and remember come deliberations.

CUE IT UP

Pictures or visual metaphors can foster immediate understanding of information and create more efficient retrieval from memory. When communicating case themes to a jury, repeated visual elements on a series of PowerPoint slides, for instance, can establish a thread and guide the viewer like a series of traffic lights: Green means go, so when I see green, I can go. How does this translate in litigation?

In contract disputes, an icon of a handshake cues the jury to refer to a specific document in terms of a professional agreement. A similar technique is to turn a complex or novel term or idea into a picture the jury can relate to. In a pharmaceutical case, we introduced statistics about a group of medications known as "NSAIDs" (non-steroidal anti-inflammatory drugs) with pictures of those drugs in their over-the-counter forms (Motrin, Aleve, Aspirin, etc.). Critical elements of any argument can have more impact when accompanied by a recurring visual cue that focuses the audience's attention and observation.

Color itself can be a useful visual cue as well. Color-coded design elements that make up PowerPoint slides, such as title bars, backgrounds, icons and text, can organize information, speed learning, create favorable or unfavorable reactions, link ideas, provide emphasis or foster what I like to call "at-a-glance value."

REPEAT AFTER ME

Throughout the course of a trial, the jurors are instructed to hear all of the evidence before making a decision. But that's not how the human mind operates. We begin organizing material into meaningful patterns as soon as we receive it. We're constantly organizing and reorganizing over time. While watching a movie, for example, we're continuously reacting to the action or the dialogue. We don't wait until the closing credits to laugh at the jokes. Throughout the film, and after, we re-evaluate our feelings and reactions to it. As time passes, we forget the jokes and we struggle to remember the plot. This reconstruction of memory can distort

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Finding Work Product That Really Matters

Work Product Retrieval Bolsters KM Efforts

By Angie Turner

Say Knowledge Management in non-KM circles — especially in law firms — and you're likely to get a blank stare. This is often because the mission of knowledge management has not been communicated to stakeholders, or the term has been used so broadly that it no longer means anything. This is a challenge I've been working hard to overcome in my position as Director of Knowledge Management at Polsinelli Shalton Welte Suelthaus (248-attorneys with nine offices).

One way to overcome the "what is KM?" challenge (and to gain great credibility for someone in my position) is to be able to respond to a well-defined need with an equally well-focused solution. Such opportunities do not come along every day, but good fortune smiled recently when a group of attorneys came to me with a problem: They wanted an easy way to create an electronic brief bank for litigation documents and an electronic repository for corporate research. They wanted attorneys to be able to do one search across all firm documents and have on-point results returned quickly. The search needed to be flexible, easy for the attorneys to use, and reliable. The rationale for having such a tool at their command was quite simple — the more time attorneys spend looking for information, the less time they have to do what the client needs. Creating efficiencies to conduct research faster and more effectively would address an obvious need.

Document Management Systems: Not The Right Tool for the Job

On face value, it would seem that a firm such as Polsinelli Shalton Welte Suelthaus (PSWS) would have the perfect tool in place for attorneys to locate needed work product — that is, the Document Management System (DMS). When firms began adopting DMS programs it was hoped (somewhat unrealistically) that they would be a panacea for many, if not all, firm knowledge-management initiatives. Results have fallen a bit short of expectations. In the context of work product retrieval, the shortcoming was simple: Our attorneys found the DMS too difficult to use. Don't get me wrong, the DMS is a very good tool for version control, and allows documents to be stored and retrieved easily if the user knows a document number or other specific information from the document profile. After all, that is the way the DMS is designed to work. However, if an attorney doesn't know the document number and just wants to search to see if anyone has ever created a particular type of document or has researched a particular legal issue, the DMS falls short because its search mechanism is not designed for such project-specific searches.

With the advent of Google and the omnipresent phenomenon of people "Googling" what they want to find, our attorneys wanted something just as simple to use when they were doing research or preparing a document with which they might not be familiar. PSWS has nine offices in eight cities, making it is impossible for any one attorney to know or be familiar with everything that attorneys in other offices have done. So, since the DMS is not a practical tool for such searching, we began searching for an application that is.

The specificity of our mandate made the search for solutions fairly simple. A few of the KM software programs we reviewed simply tried to do too many other things that distracted from the problem we were trying to solve. A few other solutions the firm considered were tied closely to proprietary research tools. Our attorneys use a variety of research tools and we feared that tying our work product retrieval efforts too closely to one research product would potentially polarize our users. We also did some research on implementations of some of the more established solutions and heard tales of long and difficult implementations. We didn't have time for a long implementation schedule, and it would cast mud in the collective eye of our KM initiatives if this project did not have a smooth and successful deployment.

RealPractice: Focused Work Product Retrieval Attorneys Will Actually Use

After several reviews of potential work product retrieval solutions, we came upon an application called RealPractice (from Practice Technologies, Inc.; www.practicetechnologies.com). The RealPractice approach to work product retrieval is a radical departure from the DMS model. Where DMS systems rely upon profiles created by users to facilitate searching — something that is generally done as quickly as possible — the RealPractice system removes any onus from the user to profile documents, and instead uses artificial intelligence to automatically create meaningful abstracts of every document in the system.

The idea here is that if the system has substantive "knowledge" about what documents contain, users will have an easier time hunting down what they need. Abstracts include information such as the substantive areas of law that is in the document, governing law, type of document, and courts (if a litigation document). After the documents have been automatically profiled, RealPractice categorizes the documents by the criteria listed above. This allows the user to search for work product based on the type of document or expertise they need. The category searching can be combined with key word searching.

The way RealPractice works might be better illustrated through the following example. Say an attorney was interested in locating a patent license agreement that discusses royalties. The user would enter the following

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Angie Turner is the Director of Knowledge Management at Polsinelli Shalton Welte Suelthaus PC.

Work Product

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search using pull-down menus and a text search box:

- Document Type: Licensing
- Document Subtype: Patent Licensing Agreement
- Full Text: Royalty

After submitting this search, the attorney would see a results screen that displays concise synopses of documents that meet given criteria. The synopses include the actual title of the document, the parties involved in the transaction, the attorneys who drafted it, the date it was created and the jurisdiction it was created for. This allows users to assess what they have located without opening and reading documents — documents that in some systems might only be identified by obscure file names.

From an end-user perspective, there are many appealing aspects of RealPractice. First, the design of the program makes sense to our attorneys. The interface is incredibly simple to use, and mimics the "Google-like" searching that many users desire. Also, litigation-oriented documents and transaction-oriented documents are stored in separate "banks" so attorneys know exactly where to go to conduct their research. This provides a level of comfort, as attorneys know they won't be wasting their time searching documents that do not apply to their area of law. Using the actual title of the document to identify the documents rather than the document name given in the DMS adds a tremendous value to the search options and the results.

The sense that the developers at Practice Technologies "get it" when it comes to how attorneys want to retrieve work product was evident from the first demonstration of the product. Response was very positive, with minimal explanation, and our managing partner could immediately see the value of the program. The firm ended up approving the licensing of RealPractice on an expedited timetable.

Rolling Out RealPractice

Finding what seems to be the "killer app" is one thing. Getting people to use it is another. All too many times firms have purchased great software, only to find it becomes shelfware because not enough time and/or planning was allowed to make sure it was implemented and worked properly.

When it came time to roll out RealPractice in September 2005, we had a strategy in place. I wanted our attorneys to think of it as a fun program that solves the research and work-product retrieval problem for them in a very straightforward way. The professional services team from Practice Technologies were accommodating with our schedule, and did a wonderful job behind the scenes to make sure we stayed on schedule in terms of getting existing firm documents processed into the RealPractice system, and setting up parameters for the automatic profiling of future documents. To highlight the significance of the roll out — and to build enthusiasm among our attorneys — we traveled to each office to conduct demonstrations for any attorneys interested in attending. Many firm shareholders encouraged associates to attend the demonstration sessions, and now expect them to search RealPractice first before they use other computer-assisted legal research.

> ***Finding what seems to be the "killer app" is one thing. Getting people to use it is another.***

At the 6-month mark since the official rollout of RealPractice at PSWS, I have not had the opportunity to collect hard metrics on system usage and efficacy. However, there is anecdotal evidence that suggests that our attorneys are making use of the work-product retrieval system. One such piece of evidence is that I still get calls and questions about the program periodically from users. Another concerns a few conversations I've overheard in practice group meetings where associates are asking each other about a particular topic, and one of the associates will ask if they've checked RealPractice.

Is Work Product Retrieval Right for Your Firm?

The work product retrieval model posed above is certainly not right for every firm. My instinct is that a system such as RealPractice would be overkill for smaller firms that have a more finite collection of documents and, presumably, more interpersonal connection thanks to closer physical proximity. For larger firms with a broader array of practice specialties and geographic locations, however, work product retrieval can make very good sense. If you think your firm might be ready for a work product retrieval system, ask yourself the following questions:

1. Does your firm maintain a litigation brief bank and a collection of transactional research memos accessible across the firm; and if so, how are these collections kept current?
2. Do attorneys have any complaints about finding the documents?
3. If the "banks" could be online with a search screen that is legal-specific but just as easy to use as Google, would attorneys find such a system of value?
4. Do attorneys send out e-mails looking for someone who has done a certain type of document or conducted research on a particular issue?
5. Do you think attorneys spend about 2 hours a week reading and possibly responding to "has anyone ever done …" types of e-mail?

If you answered yes to at least three of the questions above, you might consider adding work product retrieval to your arsenal of knowledge management tools. If you answered yes to question number 5, you're on the way to making a strong ROI case for such an application … and that can be a rarity in the amorphous world of knowledge management!

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CASE STUDY

Building a Collaborative Network

By Chris Gentile

Health Care Indemnity (HCI) manages the claims and lawsuits associated with Hospital Corporation of America (HCA), employing over 80 law firms nationwide and processing over 5000 claims annually. While HCI had assembled a talented defense team, there was no day-to-day collaboration among the attorneys. The effects of a rallying annual meeting would last a few weeks, and then each attorney would return to his or her individual practice, focusing on the task directly in front of him/her. If our attorneys in New Mexico were faced with cross-examining an expert, they might spend 40 hours researching and preparing, unaware that our firm in Virginia may have already done the same exact work with the exact same expert. The results: unknowing reinvention of the wheel on recurring issues and witness development, and inconsistent case management.

To increase their effectiveness, efficiency and collective strength, and eliminate duplicative legal costs we needed to leverage the resources and intellectual capital of this national team of attorneys. Our solution was ultimately a two-pronged approach: First to provide counsel with technology to enable collaboration and sharing of resources in real time; and second, to gather the data to analyze the effectiveness and efficiencies of counsel and identify, encourage, and enforce best practice collaboration.

In order to ensure participation in this new endeavor, the solution needed to be easy to use, and needed to provide a common and easily accessible platform that would not require each law firm to overhaul its own network or purchase and install expensive software.

Chris Gentile is director of claims for Health Care Indemnity, Inc, a wholly owned liability insurance company of HCA Inc. He has been with HCI/HCA since 1990.

VENDOR SELECTION AND IMPLEMENTATION

After careful consideration, we selected TrialNet to build and maintain our defense network. TrialNet provided a secure Web-based solution that enabled our dispersed law firms to access the system easily and without incurring the cost of infrastructure changes. Because it is Web-based, the system was available 24/7, thus serving our East and West Coast law firms equally. The vendor managed implementations for all law firms, including user set-up and training. The vendor's flexibility in meeting the company's needs and its established reputation in the collaboration arena also led to the decision to go with TrialNet.

Within 3 months of our decision, the site was live and over 60 of our 80 law firms were on board. TrialNet provided initial law firm training at HCI's annual defense counsel meeting and followed up with on-line training for each law-firm user. A separate on-site training session was held for HCI users. Once the network was live, TrialNet provided ongoing customer support through a live help desk and e-mail.

Through this network, our law firms can access and contribute to shared resources, such as witness and document databases, best practices brief banks, and venue, judge, mediator and arbitrator resources. We achieved immediate team-wide communication through encrypted e-mail, threaded discussion rooms and forums, bulletin boards and counsel directories. Instead of distributing HCA/HCI resource material such as corporate policies individually through mail or e-mail, we posted the information to the secure site where it was easily and immediately available for download by each firm.

LAW FIRM AND CLIENT USER REACTIONS

Despite its ease of use and accessibility, the collaboration network still depended on a human element — the willingness of its participants to incorporate the technology into their day-to-day activities, using it constructively to foster specific, articulated goals. When we first launched our network 8 years ago, the initial reaction by both law firm and HCI users was mixed. Some users took to it immediately, becoming HCI conference room junkies — posting messages and replies on a daily basis. Others delegated those absolutely necessary logons to support personnel.

To encourage member participation, we used the system exclusively to publish certain communications and resources, forcing its members to access the network if they wanted to stay abreast of current events and information. We stressed the priority of network use in our meetings with outside counsel and through our own use of the system. For ease of notification and access, TrialNet pushed key information links out to our users through e-mail and case management reports. And we provided user statistic reports to help pinpoint those occasional users who needed additional "encouragement" to try out the system. As Internet use became more prevalent among our team members, and as the word spread about litigation successes achieved through network participation, more users logged on.

E-BILLING FOLLOW UP

With the collaboration network in place, we needed a way to monitor and enforce our goals of collaboration and efficient matter management. We had published practice management guidelines that identified acceptable and unacceptable tasks, as well as resource sharing and collaboration goals. Electronic billing could provide the means of more consistently monitoring and enforcing outside counsel's compliance with these guidelines. Further, it would give us the ability to mine billing data to determine the efficiencies and effectiveness of its counsel. And as an added benefit, e-billing could significantly improve the internal efficiency of our legal bill review and approval process. So in 2001, a few years after the launch of a collaboration network, we implemented an electronic billing software solution.

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Case Study

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Residing on our internal servers, the e-billing software flagged guideline violations for claims manager review and significantly streamlined our invoice workflow and approval process, enabling us to shorten our bill review cycle by over 40%. The software also allowed us to gather invoice data to identify exactly where our legal budget was being spent. Through reports generated from the billing system vendor, we could compare firm and matter spending patterns to identify those firms providing the most effective and efficient case management.

The downside to the software was that it did not allow the submitting law firms to view the invoice status online throughout the review process. It did not provide collaborative tools for invoice dispute resolution, nor did it provide an effective means for timekeeper and rate approval or synchronized pre-auditing of invoices using HCI's billing guidelines. So when TrialNet provided a Web-based solution 2 years later, we made the decision to migrate to TrialNet's Web-based e-billing service as well.

A Truly Integrated Network

The decision to go with TrialNet was thoroughly reviewed, but was an obvious and easy choice. Throughout our 8-year relationship, TrialNet had provided stellar support to our users. Its development team was flexible and had been quick to respond to our requests. TrialNet's Web-based electronic billing system is robust and feature rich, providing our users with more functionality than that provided by the other e-billing vendors we reviewed.

TrialNet's library of available financial custom reports and as well as an ad-hoc reporting tool significantly enhances our ability to analyze billing data, and its flexibility in providing report downloads and automatic delivery of preformatted reports streamlines our bill management even further. Once we made the decision, our conversion to Web-based e-billing was smooth and on target. The vendor met every milestone, from migration of legacy e-billing data to integration with our existing internal matter management system and report building.

Responses to Web-based e-billing have been enthusiastic. Firms have more direct access and are better informed about the bill review process ... and their billing cycle is shortened significantly.

Within 4 months of contract finalization, our Web-based e-billing system was live, supporting all of our law firm members as well as our internal staff. Once again, training and law firm set up was handled by the vendor, making our transition an easy one; especially since the majority of our law firms were already established TrialNet users familiar with the system and its functionality.

The benefits of the integrated network are significant. The choice of TrialNet for e-billing has reinforced our commitment to the collaborative network with HCI law firms. The system's Web-based platform fosters further partnering with our firms by providing them direct access to the invoice process and streamlined interaction with their case managers. For example, firms can pre-audit their uploaded invoices to determine whether they have any guideline violations and correct these violations online *before* submission to HCI, thus streamlining the review process even further. Firms can view the status of their pending invoices online, throughout the invoice approval process. They can submit requests for rate changes and timekeeper approvals directly through the system and will receive swift feedback from our staff. Case managers who have questions about a line item entry can e-mail the firm's timekeeper directly from the invoice review screen to resolve the issue swiftly without holding up the review and payment process. Our firms' responses to Web-based e-billing have been enthusiastic. They have more direct access and are better informed about the bill review process, they are more fully aware of our expectations, and their billing cycle is shortened significantly.

The beauty of this truly integrated system is that as a network member, I can access both the law firm's bills and its resulting work product from the same secure site. When an invoice summary indicates that one of HCI's firms has spent 35 hours preparing a definitive motion to dismiss, in a click or two, I can see the final product and be assured that this motion can be accessed and used by other HCI firms on our network. When a query shows that Virginia counsel has spent 40 hours to investigate and depose a national expert, I can immediately check that witness' online file to review the results and determine the value of that effort. And when the same expert shows up the next time in New Mexico, the research will be immediately available online for New Mexico counsel, not stored in several dusty boxes in a Virginia file room.

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Malware

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of malware — spyware. Spyware has become the most pervasive form of malware. Spyware can launch programs that can in turn direct search engine results to paid ads, use your computer as a proxy to send out spam messages, or copy keystrokes to capture confidential information such as passwords and personal identification data. Most IT professionals, but maybe not enough attorneys, know that a simple click on an object in a popup ad or in an e-mail is all that is necessary to launch a program without the user's knowledge.

The bad news is that this barrage is showing no signs of fading. In fact, all signs are that malware production will continue to be a growing industry. The good news is a rigorous program of protection tools coupled with effective policies can significantly lower risk of a successful attack and, if best efforts fail, minimize the time and cost of recovery.

Protection

At a minimum, direct action must

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be taken to protect the firm's network and individual computers — desktops, laptops and even home computers — against threats. Best Practices include multiple tiers of protection:

- **Virus scanning software** such as McAfee, Symantec, and Trend Micro scan all incoming traffic at network gateways, on Exchange (e-mail) servers. Some products can be configured to receive hourly updates to ensure the most recent malware can be detected and defeated.
- **Spyware scanning software** such as Spybot can be configured to detect and defeat any attempts to install programs.
- **Adware scanning software** such as Ad Aware can be used to detect and eliminate browser cookies used for data-mining, aggressive advertising (pop-ups and the like) and tracking user activities.

Policies

The risk of experiencing a malware attack can be dramatically reduced by instituting an essential set of policies associated with computer usage. The most effective policy is to *restrict local administrator rights for end users* to install and run programs on laptops and desktops. While this approach can be highly effective, it can also be a highly controversial prevention measure. Restricting the rights or permissions given to an individual user follows the Principle of Least Privilege, which has been espoused by the Department of Defense, and has been recognized as an effective strategy for minimizing risk of malware attacks *(Microsoft TechNet: Applying the Principle of Least Privilege to User Accounts on Windows XP,* Jan. 18, 2006). Simply put, by limiting administrator rights for end users, malware that gains access through a user account will not be able to install or run malicious or unauthorized programs.

This approach can be controversial with attorneys who wish to install software on their own. Any concern on this issue can be readily addressed by remote support capabilities where a network administrator can remotely access any computer and, with proper administrator rights, complete the required task.

Since the installation of personal software for non-firm-related activity should not be allowed, and the addition of new applications to the standard configuration can be readily completed over the network by the network administrator, the need for an end user to install software is rare. The only reason for relaxing restrictions on local administrator rights would be in circumstances where an attorney may need to add a local printer, or perhaps change the system time. These specific rights can be granted to the individual user on an as needed basis.

While this approach may seem to some to be overreaching and unnecessary, it will not only significantly reduce the risk of malware attacks, it will also work to control IT costs by reducing the cost of disruptions due to the introduction of untested software and unauthorized changes to the operating system. This policy will also be an effective deterrent to the use of unlicensed software.

Administrative rights should be at the center of a comprehensive set of policies directed at defense against malware. Additional policies that complete this set are:

- **Avoid local storage of files and data.** Storage on local computers should be limited to the operating system and the applications. Files and data should be stored on the network. This is not only a good idea for shortening recovery time, but also streamlines data backup procedures and ensures the firm's data and files are properly protected.
- **Install anti-virus and anti-spyware software on all computers**. Scan at all points of entry — Internet, e-mail, removable media, etc.
- **Control data downloads.** Assign to network administrators who can download external data to a protected area, scan the data to ensure it does not contain any malware, and deliver the data to the end user.
- **Just say "No!"** Holiday cards with animated greetings, "cute" pictures, etc. may be interesting and social, but they can be the source of major problems.
- **Discourage surfing to questionable sites.** These sites are prime sources of spyware, adware and spam.

Conclusion

Malware is showing no sign of stopping. These programs will continue to grow in numbers and in sophistication. Law firms who choose to ignore this threat by avoiding or deferring action to protect the firm's IT resources will face serious consequences. The time is now for effective protection tools coupled with rigorous and enforced policies.

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Cure and Recovery

In the event prevention steps failed and the network or computer is infected by malware, take immediate and decisive steps for cure and recovery. Keep in mind that there is no single cure.

Call in the professionals. Effective recovery requires detailed knowledge of the system configuration and skills with the various remedial tools. Generally, a technician will follow these steps:

- Disconnect the computer from the network;
- Backup data;
- Run malware cleanup tools (with the latest updates); and
- If the problem is not resolved, a new image will be applied to the computer. This process will completely wipe out the entire contents of the hard drive and restore a standard configuration of the operating system and applications.

Time limit on recovery efforts. If it takes a technician more than 45-60 minutes to repair the computer, the best approach is to replace or re-image the computer. Considering the cost of technician time and the relatively low cost to re-image or replace a computer, it does not make much sense to invest any more than 1 hour in attempts at recovery.

Communication

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the truth. Repetition and reinforcement is necessary to control this effect.

Trial teams have long known how to drive a point home with verbal arguments that repeat a key theme or a major weakness in the other side's case. Visual repetition can significantly augment memory recall — people remember 20% of what they hear, but more than 50% of what they hear *and* see (*Visual Communications: The Impact of Visuals, Glen Ramsborg, Ph.D., 2004)*. Example: To reinforce critical language in complex oil and gas agreements, the words "absolute and unconditional" appeared on screen every time the agreements were mentioned. A simple, dynamic way to make a critical point the jury would recall during deliberations.

WORKING FRAMEWORKS

Social psychologists believe people adopt a frame-of-reference or point of view as a way of making sense of new information. Frameworks are based upon previous experiences, beliefs, attitudes, or conceptual schemes that are presented. They act as a filter for accepting or rejecting new messages.

Picture yourself sitting in a doctor's office waiting room for an hour or so. Patients advertise their points of view as they filter through the reading material. The expectant mother selects *Mother & Child*, the 7-year-old picks *Highlights* while you grab the *Legal Tech Newsletter*.

Things that are interesting to us draw our attention. We ignore everything else. In other words, we decide something is important or irrelevant based on whether it fits into our conceptual frameworks.

An effective strategy for presenting case information to is to use an "issue framework" visual. Think of an issue framework as a series of *mental coat hooks* that are introduced during openings to communicate key case issues or themes. When subsequent supporting evidence is delivered with reference to the framework, jurors will hang the evidence on the appropriate hook, which helps them organize the facts within the framework that's been set and not according to their own preexisting points of view.

This technique was applied in a product liability dispute involving 50 years of alleged fraud. The Defense used an issue framework in the opening statement to highlight a critical period of time when the Plaintiff couldn't point to any evidence. A timeline board was created with narrow columns on the left and right and a large gap in the middle labeled "Plaintiff's Evidentiary Gap." The Defense's key case themes throughout the trial were delivered in the context of this visual gap, with PowerPoint slides that echoed the opening board.

An issue framework can also take the form of two or three bullet points written on a flip chart that remain in view for your entire case.

SIMPLE AND INTERESTING

Perceptual and cognitive theories aside, boredom and confusion are likely the biggest barriers between lawyers and jurors. The longer you prepare for a case, the harder it is to see what's complex, confusing, or just plain dry. Here are two mantras to keep in mind:

1. Find simple ways to show things that aren't simple.
2. Find interesting ways to show things that aren't interesting.

Collaboration with a visual communication consultant can produce objective, enlightening feedback on the clarity and impact of your message, or lack thereof, and help bring the story to life. Whether it's PowerPoint slides or flip charts, the thoughtful, practical use of visuals creates opportunities to move around and interact with the evidence, which no doubt, can bring the storyteller to life.

As the information age evolves and our understanding of neurological systems progresses, evidence may develop which suggests new and greater ways to communicate. In the meantime, despite the individual characteristics of decision-making audiences, there are opportunities to make meaningful connections. By uncovering people's needs and abilities, by learning what makes them react — or fail to react — to a message, and by applying this knowledge, litigators can be better communicators.

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