Hazardous Transmissions: Protecting Yourself in the Digital Age

Presented to SVIPLA
by Michelle Greer Galloway
January 26, 2017

Your Presenter

• Michelle Greer Galloway is Of Counsel in the IP Litigation Practice Group of Cooley LLP
• Contact Michelle at mgalloway@cooley.com, 650-843-5161 or (mobile) 650-906-4366.

Overview

• How we communicate: Technology
  • Security 101
  • Email
  • Smartphones
  • Redacting and metadata
  • Social Media
  • Other Challenges
Model Rule 1.1 Competence

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

- Comment amended:
  "Maintaining Competence: ‘To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology . . .’" (emphasis added).

Technological Competence?

- Florida requiring 3 hours of courses in approved technology program

In the News

- Amazon Echo
Security Basics

- Are you carrying your social security card?
- Are your banking passwords in your wallet?
- Do you have your address written on your house key?
  - Are you doing the equivalent with client data?

Security Fatigue
**Paper Documents**

  - Binder left on outdoor recycling bin and marked “Confidential”
- “Georgia Lawyers’ Old Case Files End Up in Recycling Bin at Newspaper Offices” (ABA Journal Oct. 17, 2011)
  - College intern’s alternative to “shred”

**Discarding Equipment**

- **Headline: NYT Learns of Goldman Trader’s Legal Defense from Discarded Laptop**
  - ABA Journal (June 1, 2011) by Debra Cassens Weiss
  - “The New York Times has learned about the legal defenses for a Goldman Sachs trader from a discarded laptop discovered in a garbage area of a New York apartment building. An artist and filmmaker gave legal materials from the laptop to the newspaper, saying a friend had discovered the computer in the garbage and given it to her in 2006, the New York Times reports.”
- **Copiers**
  - Several states considering laws requiring erasure of copy machine memory.

**Security – External Threats**

- **External**
  - Hackers
  - Malware
  - State sponsored attacks
  - Black market (phishing)
  - Competitors
What Happened?

Hacked AP feed stating that White House had been attacked

Voicemail – Hacking Risks

• Chiquita cases
• News (Murdoch) cases

Use Real Passwords!

• 123456 (and variations)
• 1111 (or variation)
• password or password1
• iloveyou or iloveu
• abc123
• qwerty
• superman
• princess
• letmein
• trustno1
• default
• password
• welcome
• New in 2015
  • Star Wars
  • solo
  • starwars
Passwords – Other “Hacks”

- Problem is humans are not good at creating random
  - Example, if require uppercase it is first letter 90% of the time; if a digit, most users put two at the end, four at the end, or one at beginning and three at end. See Why you should steer users towards less predictable passwords (April 29, 2015 at https://www.helpnetsecurity.com/2015/04/29/why-you-should-steer-users-towards-less-predictable-passwords/)
  - Phrases – also tend to repeat

Password Managers

HACK BRIEF: PASSWORD MANAGER LASTPASS GOT BREACHED HARD


Security Question – “Hacks”

It makes sense, then, that the Coldplay booking seems to have accessed the accounts of people such as Jennifer Lawrence and Kirsten Dunst that way, deploying — in the words of Apple’s statement on the subject — “a very targeted attack on our users, passwords and security questions.” Security questions are a gaping, well-documented vulnerability. “The biggest hole in online identity verification,” And yet we all use them. Worse, we use questions like “in which city did your parents meet?” or “what’s your mother’s maiden name?” — minor bumps that can be Googled and gotten out of the way.

Using Networks Without Security

- Public computers
- Public Wi-Fi

Public Wi-Fi

- See Cal. Ethics. Op. 2010-179 (duties when using public Wi-Fi and other technologies susceptible to unauthorized access by third parties)
- Tips
  - Valid network
  - Device encryption
  - Certificate errors?
  - Don’t install updates over unsecured connections

Dangers of Fake Wi-Fi

Ride The Lightning

July 25, 2016

Over 2000 Republican Convention Attendees Connect to Fake Wi-Fi Networks

Trust me, this is a political post. I saw the Democrats will be equal guilty of neglecting mobile security this week.

On July 15th, Choice Software revealed the results of a Wi-Fi hack experiment conducted at various locations around the Republican National Convention site in Cleveland to demonstrate how easy it can be to connect to public Wi-Fi. The experiment, performed by Choice’s security researchers, revealed that nearly all public Wi-Fi networks that have been exposed to their behavior when connecting to public Wi-Fi. Attendees took the possibility of being spoofed as and hacked by cybercriminals who then stole their credit cards, bank details, and even used their secret Pokemon Go.

See also https://www.pact-one.com/2016/08/09/be-wary-of-open-public-wifi/ (Democratic National Convention)
Accessing Wi-Fi – Hiding Computer at Law Firm

Fraudster Who Hid Computer At Pillsbury Gets Lifetime Ban

Law360, Washington (May 18, 2016, 9:40 PM ET) -- A convicted hedge fund manager who once hid a computer in a ceiling at Pillsbury Winthrop Shaw Pittman LLP was barred from the securities industry for life by a U.S. Securities and Exchange Commission judge on Tuesday.

You DO NOT Have to Open Every Email!

- SPAM, phishing and other foul odors
  - Slow down. Read the email and then read it again. Are you expecting this email?
  - Look at the sender. Would a valid company or department email come from that person?
  - If it’s sent to a seemingly random group of company names, it is spam.
  - If the grammar is poor, it is spam.
  - If the email has embedded links that point to somewhere other than a legitimate site, it is spam.

Email Phishing

Ride The Lightning

Google, 2016
A Notice From Google That Your Email Account May Have Been Compromised. Now What?

The email saying that your Gmail account may have been compromised (consistently contains a link or button) can trick you into revealing your login credentials. According to an the Security blog, this is exactly how the breach of the Senate's Gmail accounts took place.
Phishing – Invoking the “ABA”

Ride The Lightning

May 8, 2016
New Law Firm Phishing E-mail Cites Referral from an ABA Law Firm

Thanks to Chantal for forwarding along! A phishing e-mail recently intercepted by her firm purportedly bears a resemblance seeking help in collecting funds from another company. The author of the e-mail claims to have been referred by another law firm belonging to the ABA. There is a link to a website – even looks like a legitimate website.

Lawyers Targeted

Don’t click! Lawyers get fake emails about a complaint; hyperlink installs malicious software

POSTED DEC 08, 2016 02:59 AM CST
BY DEBRA CASSENS WEISS (http://www.abajournal.com/author/debra-cassens-weiss)

Phishing – PDF attachments

Companies Sending Malware Inadvertently – USBs

28 Dental Assn Mails Malware to Members

The American Dental Association office sent out a letter to members that included USB keys
containing malware to thousands of dental offices nationwide.

USB Phishing

• In CompTIA 2015 study, 17% of respondents finding a USB drive plugged it in
  • Then opened text files, clicked on web links or sent emails to listed email addresses
• In Sophos 2011 study, they purchased 50 USB keys bought from a transit authority Lost Property auction and found 66% were infected
• See Hey, There’s a Flash Drive Just Lying on a Bench – Am I Luck! Maybe Not, Ride The Lightning (Nov. 12, 2015)

Ransomware

• Malware – user clicks on infected email attachment; malware then encrypts files stored locally and on mapped network drives

- Keep Calm and Pay Up or Else...
Ransomware Payments

February 17, 2016

Hollywood Hospital Suffers Cyberattack: $3.4 million Ransom Demanded

Hollywood hospital pays $17,000 in bitcoin to hackers; FBI investigating

Los Angeles Valley College pays $28,000 in bitcoin ransom to hackers

Ransomware – Profitable!!!

$209 million in the first three months of 2016

The majority of companies, 68.7 percent (1,375), in the Forbes Global 2000 are less profitable than the ransomware industry

Ransomware – New Formats

Data Breaches

IRS – Failure To Encrypt/Protect

IRS Emails Didn’t Encrypt Taxpayers’ Data, Report Says

Lakewood (November 17, 2016, 6:39 PM EST) – The Internal Revenue Service may have compromised millions of taxpayers’ sensitive information because employees occasionally sent tax returns in unencrypted email to accounts both inside and outside of the agency, according to a Treasury Inspector General for Tax Administration report made public Thursday.
Panama Papers – 2016


US Law Firms Breached

Hackers Breach Law Firms, Including Cravath and Weil Gotshal

Chinese Hacking US Law Firms

Chinese Nationals Charged With Hacking Firms to Steal M&A Info

Mark Hamblett, The Am Law Daily

December 27, 2016

Three Chinese nationals face federal charges for allegedly hacking into two major U.S. law firms in a scheme to trade on information about imminent mergers and acquisitions.
Content – What You Say and Write

Cooley

VW Plea Agreement – Attorney Comments Re Imminent Legal Hold Notice

On or about August 31, 2013, a meeting was held to prepare for the September 2 presentation to CARR and IDA where VW’s use of the defeat device in the United States was to be formally revealed. During the meeting, which had several participants, Attorney A discussed the forthcoming hold and again told the engineers that the hold was important and recommended that they check what documents they had. This comment led multiple individuals, including supervisors in the VW Road Development department in VW AG, to delete documents related to U.S. emissions issues.

Social Media Posts

Cart Schilling, ESPN Analyst, Is Fired Over Offensive Social Media Post

http://www.nymag.com/2016/04/21/sports/baseball/cart-schilling-espn.html?_r=0
And More Social Media Posts – An Open Letter

An Open Letter To My CEO

Dear Andy,

When I was a kid, back in the 90’s when Spice Girls and owning a pager were #goal, I dreamed of having a car and a credit card and my own apartment. I told my 8-year-old self, This is what it means to be an adult.

Now, seventeen years later, I have those things. But by did I not anticipate a decade and a half ago that a car and a credit card and an apartment would all be symbols of stress, not success.

section of Yelp Eat24 before I’d be qualified to transfer to media. Then, after I had moved and got firmly stuck in this apartment with this debt, I was told I’d have to work in support for an entire year before I would be able to move to a different department. A whole year answering calls and talking to customers just for the hope that someday I’ll be able to make money and tell tiny jokes about food. If you follow me on Twitter, which you don’t, you’d know that

rejected that Yelp could save about $24,000 in two months if the company stopped making flavored coconut waters since no one drinks them (because they now like the latter instead of accepting a job that can’t pay a

Anyway, those are my thoughts. I know they’re not worth your time — did you know that the average American earns enough money that the time they
Screen Shot Reveals Too Much

Disciplined for Sending Threatening Social Media Message

• Indiana attorney 30 day suspension for sending threatening and obscene private social media message to a client’s ex husband.
  • Violated Rule 4.4(a) and 8.4(d)
  • In re Hanson (Indiana 2016)

Anonymous Posts About Lawyer

‘Working Here Is Psychological Torture’: Law Firm Sues Over Anonymous Comments
Mutterings

Rebuked after muttered remarks at federal sentencing, defense lawyer says cursing is commonplace
POSTED MAY 11, 2016 10:28 AM EDT
BY MARTHA NEEL, DIRECTOR OF LAWYERS'とり

Judge referred matter to Ohio disciplinary authorities

Complaining

Stressed-Out Cravath Atty Divulged IBM Deal, Jury Hears

By Mark Kennedy

Law&Order, New York (February 18, 2016, 3:13 PM ET) — Juries in a U.S. Securities and Exchange Commission insider-trading sweep stemming from a $1.2 billion IBM Corp. acquisition heard unrecorded testimony on Thursday by a former Cravath Seville & Moore LLP associate who said he disclosed the deal to a friend while griping about his heavy workload.
Misperceptions About Email

- Casual conversation from which author can retreat
- Feels private – only the recipient will ever read it
- Will be taken in context
- Goes away

The Risks of Email for Everybody

- Misaddressed
- Auto addressing
- Reply to all
- Reply or forward?
- Attachments

Misaddressed by Partner

- "Skadden Partner Accidentally Emails Confidential Evaluation to Entire Department" (Above the Law, Nov. 2010)
**Careful with CC and BCC**

- "In a Dilbert-esque faux pax, a Taliban spokesperson sent out a routine email last week with one notable difference. He publicly CC'd the names of everyone on his mailing list."

  - See Uri Friedman, “Taliban accidentally CCs everybody on its mailing list.” (Nov. 16, 2012) available at http://blog.foreignpolicy.com/posts/2012/11/16/taliban_accidentally_ccs_everybody_on_its_mailing_list

**ABA Opinions re Email**

- Lawyer "must warn the client about the risk of sending or receiving electronic communications . . . to which a third party may gain access . . . [T]he lawyer must take reasonable care to protect the confidentiality of the communications. . . .”  
  ABA Op. 11-459 (August 4, 2011)

  - Focus is on workplace scenario but includes other settings
The Risks of Email – Auto Addressing

  - “Lilly Considers $1 Billion Fine To Settle Case”
    - Outside lawyer for Eli Lilly had two people named “Berenson” in email address book. Instead of sending email to co-counsel Berenson, she sent email to NYT reporter “Berenson”
    - But . . . NYT’s Berenson said he got status of settlement talks from another source

Reply to All

- Department of State
- Associate’s “reservations” regarding firm clients

Reply to All – Law Clerks

- Law clerk group in SDNY 2016:

  [Email thread with redacted content]

  [Email thread with redacted content]

  [Email thread with redacted content]
Law Students

3L At Top Law School Writes ‘Derogatory’ Anti-Gay Email, Hits ‘Reply All’

Professors and Senior Lawyers

Lawyer: Don’t Make Domestic Violence Jokes in Your Emails

Hazardous Attachments

- Baylor
  - Sent email to recent admittees with spreadsheet listing grades, LSAT, race, and other info.
  - Second email: “Due to the sensitive nature of the information that was contained in the attachment, we ask you to treat the document as confidential, just as you would as a lawyer, and delete the information.”

Institutions of “Higher Learning”

- Educational institutions
  - Wesley College in Delaware sent an email to 2400 students discussing the 18 students at risk of flunking out.
  - UC San Diego sent 28,000 applicants an email that they had been rejected. Weeks later, they were sent a second email that (incorrectly) stated applicants were admitted (See LA Times, March 31, 2009). And, it happened at Vanderbilt, Middlesex, George Washington U...

Law Firm Reveals Settlement

- “Quinn Spills Value of Facebook Deal,” Z. Elinson, law.com (Feb. 10, 2009)
  - ConnectU v. Facebook case including efforts to clear courtroom of reports and steps to keep settlement confidential
  - ConnectU fired Quinn Emanuel and the two entered arbitration re fee and malpractice claims
  - Quinn website
  - “WON $65 million settlement against Facebook”
Email Tracking Ethics

- Alaska Ethics Op. 2016-1
  - “May a Lawyer Surrupitiously Track Emails and Other Documents Sent to Opposing Counsel?
- Issue Presented: Is it ethically permissible for a lawyer to use a “web bug” or other tracking device to track the location and use of emails and documents sent to opposing counsel?
- Conclusion: No. The use of a tracking device that provides information about the use of documents – aside from their receipt and having been “read” by opposing counsel – is a violation of Rule 8.4 and also potentially impermissibly infringes on the lawyer’s ability to preserve a client’s confidences as required by Rule 1.6.”
- Question: What about other decisions that require lawyer (recipient) technological competence?

Texting

Cooley

Recent Headlines

49. In a subsequent instant message exchange, Counsel and Witness discussed the potential consequences of their trading on material, nonpublic information.

Witness: we should get [REDACTED] be biy a *** tax!
Counsel: I’ve don’t tell anyone else
Witness: [REDACTED] to [REDACTED] dates
Counsel: we gotta keep this to the family
Witness: duh, no way.
I don’t want to go to jail
Counsel: *** tax
Witness: motherfucker spent 5 months in the slammer
Counsel: don’t [REDACTED] know?
Witness: and they trial to *** the terrorism charge
Mixing Business and Personal

Fired Employees Claim Work iPad Stored Personal Texts

- Employer issued a Company iPad and alleges he was required to open an iTunes account using a personal credit card
- Five employees exchanged text messages on smartphones disparaging a fellow employee Davis
- One employee had personal phone linked to Company iPad
- Company issued new iPad to employee then issued iPad to Davis who found the text messages

Self-Destructing Text Messages

San Francisco Legislators Dodging Public Records Requests With Self-Destructing Text Messages


Phones and “Smartphones” and Their Not So Smart Users

Cooley
• Censure for taking a photograph of a letter on prosecution table discussing trial strategy. See R. Gavin, Judges panel slaps Kindlon, Times Union (Sept. 27, 2012).

Big Partner Tweets and Court Order

“We’re the partner over at Barnes & Thornburg that got in trouble for flouting the court’s rules about use of his cell phone and camera during the trial of spoofer Michael Coscia. You see, the trial judge had a pretty clear rule against text-based technology and the use of cameras, yet Schmeltz was tweeting out pictures of the government’s evidence mid-trial.”

Biglaw Partner Very, Very Sorry For Inappropriate Tweets

(by J.A. Hanna-Cahill)

J.C. Comments, Mar. 25, 2012 at 12:11 AM
Selfies with Clients

Photos

- Martha Neil, “Lawyer Puts Photo of Client’s Leopard-Print Undies on Facebook; Murder Mistrial, Loss of Job Result,” ABA Journal (Sept. 13, 2012) (photo of clients undies taken while corrections officer inspected bag of clothing from defendant’s family; defense counsel posted on Facebook).

Employee Posts

- Blogs
- Facebook
- Videos
  - Vine (Twitter App)
  - Instagram
  - Recent fast food restaurant videos
Mobile Device Security

• When a business-connected mobile device is lost, there is more than an 80% chance an attempt will be made to breach corporate data and/or networks.
  - A total of 83% of the devices showed attempts to access corporate-related apps or data.
  - Attempts to access a corporate email client occurred on 45% of the devices, which could potentially represent an attempt to contact the owner of the device, but still expose sensitive information.
  - A file titled “HR Salaries” was accessed on 53% of the phones and another titled “HR Cases” was accessed on 40% of the devices.
  - Attempted access to a “Remote Admin” app was recorded on 49% of the devices.

Source: The Symantec Smartphone Honey Stick Project, by Scott Wright

---

Twitter Assault

Twitter Must Work With Newsweek Writer To ID Attacker

by Alex Weprin

Lauren, Dallas (December 19, 2016, 5:07 PM CST) — Twitter Inc. must cooperate with a senior writer for Newsweek who is trying to uncover the identity of the individual whose tweet at 1:43 a.m. led to an arrest at a hospital. A Texas judge said Sunday that the writer pursues civil and criminal charges against the person.

“You deserve a seizure for your posts”

---

Metadata; Redactions

Cooley
Metadata

- Documents you transmit
  - Cloning documents
  - Confidentiality
  - Revealing sensitive client information
- Documents you receive?
  - Can you look
  - Must you notify?

Social Media Risks & Rewards

Cooley

What Does That Mean?

- It’s Public
- It’s Permanent
It’s Public

Don’t Write This Letter to the Patent Office
by Dennis Crouch

We all procrastinate. After an examination rejected his direct application for a patent covering equal-qualified patent attorney, Andrew Schroeder, could no longer wait. In a letter dated March 25, 2012, Andrew Schroeder, Jr., an attorney, wrote something very similar to:

PATENTLYNO, RESPONSE TO DENNIS CROUCH, ANDREW SCHROEDER

May 2, 2012 (975 words) | 3

Blog Postings Lead to Resignation

- The U.S. Attorney in New Orleans, Jim Letten, resigned in December 2012 following admissions by two deputies that they had posted anonymous online comments about pending litigation.
False Facebook Friend

On Line Reviews

17. On or about February 5, 2011, Respondent posted a client review of Respondent's services on the legal blog website AVVO, in which he discussed his dissatisfaction with Respondent’s services. In said posting that “We only want your money, claim “it’s on your able” is a huge lie. Paid her to help me secure employment, she tell my money having ill and a certain tax in Illinois will cut let me collect unemployment. [N]ow is billing me for an additional $1500 for her time.”

Attorney Response Tsamis

“This is simply false. The person did not reveal all the facts of his situation up front in our first and second meeting. [sic] When I received his personal file, I discussed the contents of it with him and informed him that he would likely lose unless the employer chose not to contest the unemployment (employees sometimes do is [sic]). Despite knowing that he would likely lose, he chose to go forward with a hearing to try to obtain benefits. I dislike it very much when my clients lose but I cannot invest positive facts for clients when they are not there. I feel badly for him but his own actions in beating up a female co-worker are what caused the consequences he is now so upset about.”
Tsamis Outcome

- *In re Tsamis* (Illinois reprimanded)
  - Rule 1.6 confidentiality
  - Rule 4.4
  - Question: was the issue revealing too much in order to respond to review

Newest Case re Negative On Line Review

- Suit against Google to remove on line review “It was horrible.”

In this connection, I have just now discovered that a person that conducts a “Google” search for “Donald Tobias” or “Donald J Tobias” will see a “review” from an individual, who is a complete and utter stranger to me, named “Mia Azee.” The “review,” which will appear when “Donald Tobias” or “Donald J Tobias” is Googled, consists of three words: “It was horrible.” Please be advised that I do not know anyone named Mia Azee and can state, with absolute certainty, and would happily so do under oath, that I have never met or spoken to or known, let alone performed any professional services for, such a person and/or for anyone with a first, last or middle name “Mia” or “Azee.” I do however see, from the internet research that I have


Other Challenges

Cooley
$6B Settlement Blown Up Re Credit Cards

That was exciting enough. Then an internal investigation by Wilkie revealed a further shackle: Koeck had shared thousands of emails containing confidential legal information from plaintiff attorney Gary Finstin.

The Friedman Rowe correspondence was enough. Citigroup, which received a $70 million settlement between plaintiffs and American Express, now has the back-channel chatter. Shareholders are now up to $6.7 billion settlement between an overlapping group of entities and Mastercard and Visa.


In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation, Case No. 12-4671 (2nd Cir. June 30, 2016) (vacating settlement)

Attorney Whistleblowers

- GM in-house attorney took documents with her from and included confidential information in complaints about an alleged GE tax scheme to U.S. and Brazilian law enforcement officials (justified); one month suspension for disclosure to press. In the Matter of M. Adriana Koeck and Lynne Bernabei, Board Docket No. 14-BD-06 (D.C. Court of Appeals Board of Professional Responsibility Ad Hoc Hearing Committee)

- Evernote
- 50 million users compromised. See Doug Gross, 50 Million Compromised in Evernote Hack, CNN (Mar. 4, 2013)

- Dropbox
- Accounts unlocked for 4 hours (www.wired.com June 20, 2011)

- Google Docs
- Documents auto-shared due to bug
Terms and Conditions – Just for Fun

- GameStation Terms and Conditions 4/1/2010
  "By placing an order via this Web site on the first day of the fourth month of the year 2010 Anno Domini, you agree to grant Us a non-transferable option to claim, for now and for evermore, your immortal soul. Should We wish to exercise this option, you agree to surrender your immortal soul, and any claim you may have on it, within 5 (five) working days of receiving written notification from gamestation.co.uk or one of its duly authorised minions."
  "If you a) do not believe you have an immortal soul, b) have already given it to another party, or c) do not wish to grant Us such a license, please click the link below to nullify this sub-clause and proceed with your transaction."

Conclusion

These materials are intended as an introduction to the subject matter covered in the presentation. The presentation and the materials contained herein do not attempt to provide legal advice for any particular situation. Each particular situation must be analyzed individually in light of all of the surrounding facts and circumstances. Because of the complexity of the legal issues that will always arise in connection with the subject matter hereof, it is critical that counsel be involved. These materials are provided for educational and discussion purposes only and are not to be copied, used or distributed outside of this seminar without the express written consent of Cooley LLP. Copyright Cooley LLP and Michelle Greer Galloway 2017.