

IADC Publishes Defense Counsel Journal on Privacy and Data Protection Law



Privacy impacts the daily lives of people like never before, including how their information is treated and protected by the companies in which they place trust for business. In recognition of the growing importance of privacy and data protection law and compliance, the International Association of Defense Counsel ([IADC](#)) has dedicated the summer 2017 edition of its Defense Counsel Journal (DCJ) to the exploration of privacy issues.

The summer issue is the first half of the IADC's "Privacy Project V" publication. The second half will be published as the fall 2017 issue of the DCJ. The current issue is available for free and without a subscription via the [IADC's website](#).

In the current issue, IADC members write about a variety of privacy topics from a global perspective. Frequently and favorably cited by courts and other legal scholarship, the DCJ is a quarterly forum for topical and scholarly writings on the law, including its development and reform, as well as on the practice of law in general. The IADC is a 2,500-member, invitation-only, worldwide organization that serves its members and their clients, as well as the civil justice system and the legal profession.

"We are reminded in our daily lives of the importance of privacy – particularly in matters or with business impacted by social media, e-discovery, text messaging and instant messaging," said Eve B. Masinter, co-chair of the IADC's Privacy Project V Editorial Board and a partner with

Breazeale, Sachse & Wilson, L.L.P., in New Orleans. “Privacy must be protected worldwide by our constitutions and laws.”

According to the Pew Research Center, 91 percent of adults agree or strongly agree that consumers have lost control of how personal information is collected and used by companies, and technology experts believe most individuals will not have the energy or resources to protect themselves from “dataveillance” in the coming years.

S. Gordon McKee, also co-chair of the IADC’s Privacy Project V Editorial Board and a partner with Blake, Cassels & Graydon, LLP, in Toronto, added, “It is critical that attorneys, who are increasingly giving advice on the balance between privacy and other rights and interests, remain engaged and informed on the latest developments and insights that impact this developing area of the law.”

The IADC’s Privacy Project is dedicated to the memory of Joan Fullam Irick, the IADC’s first female president, who made the issue of corporate and personal privacy a key theme for her administration.

The first half of the “Privacy Project V” issue of the DCJ includes the following articles:

- “The Era of the Internet of Things: Can Product Liability Laws Keep Up?” – Explores the need to reexamine traditional product liability theories amid the proliferation of wireless connected devices.
- “Follow the Audit Trail: The Impact of Metadata in Litigation” – Discusses the importance of practitioners making a conscious effort early in every case to determine whether discoverable electronic data and, particularly, metadata exist, assess whether it is relevant to the pertinent issues, and ensure its preservation.
- “Standing in the Midst of a Data Breach Class Action” –

Focuses on class-action litigation following a cyber attack, and what is often corporate counsel's first best chance to dispose of these cases by challenging plaintiffs' standing.

– “Connected Cars and Automated Driving: Privacy Challenges on Wheels” – Explores privacy and data protection in the realm of connected cars.

– “The French Blocking Statute and Cross-Border Discovery” – Reviews the so-called “French blocking statute” and attempts to reform it, and how it – along with data protection and privacy laws – constitutes another hurdle for the transfer of certain information from the French jurisdiction to the United States.

– “Did You Really Send It? Email Evidence in Litigation and Arbitration in Argentina” – Analyzes the state of electronic evidence in Argentina and the need for additional measures.

– “Zones of Privacy: How Private?” – Discusses the constitutional and legal implications engendered by the collision between the right to individual privacy and the exercise of the state's police power pursuant to the demands of public interest and state security under Philippine law.

– “Busting the Black Box: Big Data Employment and Privacy” – Provides examples of the impact that big data can have in the workplace and the related compliance concerns.

– “EU Data Protection and the Conflict of Laws: The Usual “Bag of Tricks” or a Fight Against the Evasion of the Law?” – Examines to what extent the principles developed by the case law of the Court of Justice of the European Union still apply under the General Data Protection Regulation and, if so, to what extent they can still be used as a source of inspiration in resolving data protection questions.

– “Shots Fired – A Rational Assessment of Mass Shootings, The Alleged Participation of the Mentally Ill, and an Impaired

Right of Privacy” – Advocates for removal of the barriers preventing data collection and analysis, particularly with states abandoning conceal-carry permit requirements and as terrorists migrate to using cars and alternative means to carry out their plans.

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[In-House Compensation Report: Top 30 Money-Earners](#)



Corporate legal departments can and do pay top-dollar figures to lure lawyers away from partnerships that pay millions of dollars, reports [Bloomberg Law](#).

Apple Inc.’s general counsel/senior vice president Bruce Sewell leads the list of top-paid corporate legal officers with total compensation of \$22.8 million, according to Bloomberg’s research on the 500 largest U.S. companies, ranked by revenue.

“Often enough, the lawyers who choose to accept top positions in-house must forgo high salaries and take other forms of compensation – onetime bonuses, rich stock or option grants, generous pension plans, and other perks such as access to a company car or money for expensive real estate, according to a

Big Law Business review of proxy statements,” writes [Gabe Friedman](#).

[Read the Bloomberg article.](#)

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[Abbie Shindler Joins Buchalter in Scottsdale Office](#)

[Buchalter](#) announced that Abbie Shindler has become a member of the firm’s Corporate and Tax & Estate Planning Practices in Arizona.

Shindler focuses her practice on estate planning, probate, trusts, corporations and business organizations, and business law. Her experience includes the preparation of estate plans, administration of trusts/estates, obtaining appointments of guardians/conservators for adults and minors, formation of corporate entities, assisting with corporate transactions, and the preparation of pre-nuptial and post-nuptial agreements.

“Abbie is a welcome and strong addition to our growing Scottsdale office,” said Adam Bass, President and Chief Executive Officer of Buchalter. “As a well-known and experienced tax and estate attorney, her practice is an excellent fit for us.”

Outside of her practice, Shindler is a member of the Society of Financial Service Professionals, serves on the Professional Advisory Board of Arizona Community Foundation, and is a committee member of the Phoenix Children's Hospital.

"I have known many of the Buchalter attorneys in Scottsdale for years," said Shindler. "I am eager to continue representing my clients at Buchalter, and offer them the full-service business solutions the firm is known for providing."

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[Succession Planning: It's Not Just for Emergencies](#)

There are specific actions an organization can take to ensure it has the leadership it needs in case of a crisis, as well as for their future sustainability, according to TrainHR.

The company will present a [webinar](#) on the topic on Thursday, Sept. 7, 2017, at 1 p.m. EDT.

"Best-practice organizations use succession planning to not only prepare for potential leadership challenges but they also rely on such plans to develop and maintain the strong leadership that's required to grow and keep pace with changes in their business, industry, and overall marketplace," TrainHR says on its website.

[Read more about the webinar.](#)

[Case Study – An Inside Look at PayPal’s ELM Implementation](#)

During the 2017 CLOC Annual Legal Operations Institute in Las Vegas, Onit and PayPal presented a session titled, “Next Generation Enterprise Legal Management (ELM): People. Process. Automation.” The speakers were Lauren Giammona, Director of Operations, Business Affairs & Legal at PayPal, and Eric M. Elfman, founder and CEO of Onit.

Lauren outlined her implementation experience and shared her 7 key tips for selecting an enterprise legal management (ELM) vendor. *Legaltech News* wrote a [detailed article](#) summarizing the CLOC session. PayPal and Onit discussed how legal departments can provide “continuous” value to the company, drive operational improvements and allow employees to work in the systems they prefer. The session highlighted:

- The importance of process, workflow and collaboration
- How a business automation tool solves needs beyond e-billing and matter management
- Key benchmarks and metrics that drive innovation and transformation in legal operations

[Download the case study.](#)

Assess Your Risk Appetite: Complimentary Report



The National Association of Corporate Directors Advisory Council on Risk Oversight met in February 2017 to discuss the board's role in the development and oversight of risk appetite. NACD offers a [complimentary copy](#) of the report.

The discussion – cohosted by NACD, PwC, and Sidley Austin LLP – highlighted a number of takeaways for directors:

- Align the risk appetite statement with company strategy.
- Use the risk appetite statement to inform critical processes and decisions.
- Continually reevaluate the risk appetite statement.

The *NACD Advisory Council on Risk Oversight: Board-Management Dialogue on Risk Appetite* resource can help boards to take the following steps:

- Determine which metrics to use in the risk appetite statement.
- Establish performance targets in incentive plans that promote high performance and limit unhealthy risk-taking.
- Shape company culture by defining tolerance levels for risk.

- Improve communication across the company and boost reporting to the board.

[Download complimentary copy of the report.](#)

[Dealing With Violations In Export and Import Transactions](#)



[Thomas B. McVey](#) of Williams Mullen has posted [an article](#) discussing a number of issues that a general counsel or CEO might present to the company in responding to a variety of hypothetical situations under the Export Administration Regulations, International Traffic In Arms Regulations, U.S. sanctions laws and U.S. import laws.

“The details of your response, of course, will vary depending upon the company and violations involved. A lot will have to happen quickly so it is important for you to be prepared in advance for this situation,” McVey advises.

The first step in responding to a possible export or import violations is to stop the potentially wrongful actions, he writes.

His article explains how to approach this task, along with the

importance of collecting relevant information, analyzing possible violations, whether to consider a voluntary self-disclosure, responding to requests for information, other issues in enforcement actions, and personal liability.

[Read the article.](#)

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[Managing Legal Risks and Cultural Issues in Cross-Border and Whistleblower Investigations](#)



AltaClaro will present a complimentary [webinar](#) focusing on managing legal and cultural risks in cross-border investigations. The event will be Wednesday, July 26, 2017, beginning at noon Eastern time.

Expert panelists Jon Abernethy (Partner, Cohen & Gresser LLP) and Andrew Curtin (Global Head of Investigations, AIG) will join AltaClaro Founder & CEO and former Deputy General Counsel of Mitsubishi UFJ Financial Group, Abdi Shayesteh, will be presenters.

In this interactive, live webcast, Abdi will moderate

Abernethy's and Curtin's discussion of the following topics:

(1) Handling multi-jurisdictional approaches to privileged communications in the aftermath of the recent U.K. decisions in Eurasian Natural Resources Corporation Ltd. and The RBS Rights Issue Litigation

(2) Identifying potential cultural challenges and local laws that may impede an effective investigation and prevent a one-size-fits-all approach to designing internal processes and procedures within multinational organizations

(3) Implementing best practices when preparing for and coordinating effective internal investigations across international lines

[Register for the webinar.](#)

[Complete the 2017 Law Department Benchmarking Survey](#)



Consilio is conducting an [online survey](#) is designed to provide law department leaders insight into comprehensive benchmarking data, legal operations and discovery best practices, and trend reporting.

Survey results provide a foundational resource for assessing law department performance, and justifying spend and staffing levels or initiative investments through peer comparison.

“Corporate law department performance is widely discussed yet infrequently measured with accuracy across industries. Legal spending, department organization, staff workload, outside counsel and vendor management, leadership priorities, client service delivery and technology are several of the areas of performance that we aim to measure, benchmark and use to identify best practices in our 2017 Law Department Benchmarking Survey,” Consilio says on its website.

Participants who complete the survey by July 15, 2017, will receive a \$25 coffee gift card.

Participants will receive the survey results report including benchmarking data at the industry and revenue segment level, Consilio reports.

[Complete the survey.](#)

[3M Lawyer on Cutting More Than 250 Law Firms](#)

General counsel support is crucial for corporate legal departments that are trying to decrease the number of law firms they work with, 3M Co.’s managing counsel said, writes [Yin Wilczek](#) for [Bloomberg BNA](#).

Joseph Otterstetter, who leads his company's ongoing convergence efforts, told Wilczek that the most important step is making sure the in-house team is "aligned, starting with the general counsel. There will be resistance, I promise, and so if the general counsel isn't supportive, it's best not to even start, frankly."

3M launched its effort convergence in 2013, when it cut the about 300 of its U.S. outside firms to about 35 to 36 firms, said Otterstetter, who also is associate general counsel of 3M. And more recently the company re-assessed the major portfolios into which it divides its legal work, he said.

[Read the Bloomberg article.](#)

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[In-House Attorneys See 4.3 Percent Pay Hike](#)



Above the Law [reports](#) on a BarkerGilmore in-house counsel compensation report that shows in-house lawyers received average pay increases of 4.3 percent last year.

"That sounds perfectly middling, until you realize every rung of the prevailing Biglaw associate scale bests that – some years by a lot," writes [Joe Patrice](#).

The tech industry led the way with higher salaries, bumping up 4.9 percent, while financial and manufacturing industries tied for the small hikes, just 3.7 percent. But the BarkerGilmore survey found that more respondents felt they were undercompensated compared to their peers.

[Read the Above the Law article.](#)

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[How to Make the Case for a Smaller Law Firm to Your Board](#)

By [Norm Finkel](#)

[Schoenberg, Finkel, Newman and Rosenberg, LLC](#)

The list of reasons why small law firms offer big advantages is well known—this is especially true for businesses that are mid-sized or emerging. But here’s a quick review. With a smaller law firm, seasoned attorneys are the norm, rather than the associates who typically handle day-to-day business for the big law firms. A smaller firm is a bit like the classic Avis commercial; they work harder. The attention given to the client is second to none. So, relationships between law firm and general inside counsel tend to be closer. Then, of course, there is the matter of fees; they tend to be a lot more

reasonable.

With all these advantages, why would a client opt for big law?

Let's say a small law firm has established its credibility with a long track record of great work. The relationship between inside counsel and the partners is solid. But one day, the client says, "Sorry, we have to go with the big guys on this one." What does that mean? Is it a rejection of all the hard work and success? Does it erase all the great progress you've shared over the past few years? Not really. There are a number of reasons why a client might go big. For instance, there is the matter of self-protection when a major audit is in order. If something goes wrong, no one can say it was due to the fact that a small law firm was chosen for this arduous task. Or, perhaps a case may be the subject of intense national scrutiny. For public relations alone, the choice of a larger law firm to handle it may be most prudent, especially when internal counsel has a board of directors that must support the rationale. When such contingent factors come into play, it is no reflection on the smaller firm or general counsel and, for the most part, no threat to the established relationship. In fact, small firms have a vital role to play in cases such as a large merger or an audit, because they can bring the big law firm up to speed on day-to-day information that the larger won't have access to.

When it's best to bet on David rather than Goliath.

There are cases where trust in the relationship outweighs all other factors. Here is an example. I represented a former chairman of a bank. The bank sued my client for losses it suffered on SBA loans after the 2008 meltdown. The bank had a board and an SBA loan committee—both of which approved the loans. The bank, rather than looking at its own culpability, sued the former chairman and president. Two of Chicago's large law firms were recruited to represent the bank and its board members and loan committee members. Our attorneys walked into the courtroom every day and faced an army of lawyers from

multiple firms; even the judge commented on the cost of all those lawyers.

My firm litigated the case in state court and won, but we were denied legal fees. The bank appealed its loss, while we appealed the denial of fees. My client ran out of money long before the case went to trial, but we did not quit. He died tragically at the age of 65, shortly after the trial court's judgment but before the appellate court rendered its decision. We were owed seven figures by that time.

The appellate court affirmed the exoneration of my client and reversed the decision denying our legal fees and sent the case back to the trial court for a determination of our entitlement to, and amount of, legal fees. After the court determined we were entitled to fees, the bank agreed to settle the matter. This occurred shortly before the court determined the amount of legal fees to be awarded. The family and widow were gratified by the outcome. Although we went up against two large law firms who had a client with immense resources, after a 5½-year ordeal, we won.

The future is starting to favor the Davids, but don't write off the Goliaths just yet.

Trends are emerging that seem to favor the mid to smaller law firms. The 2009 "Bloody Thursday" that kicked off major layoffs at some of the biggest law firms brought with it a demand for lower fees. Of course, this opened a white space opportunity for smaller, entrepreneurial firms who could deliver more for less. Not only that, but because of technology some of the advantages that once favored bigger firms have evaporated. The giants once owned the biggest libraries and best information. But now, thanks to the digital revolution, small and big alike have access to the same data. Keep in mind, smaller firms tend to be more invested in their clients. The partners are responsible for the success or failure of their business; this goes further than just filling out a time sheet for hours. A concern with cost efficiency is

part of their DNA. But as for the Goliaths, as Basha Rubin put it in an article for Forbes, "I'm not arguing that all big law firms will disappear entirely. Why should they? Many provide unparalleled service; they will continue to make sense for the biggest deals. The next time I merge my multibillion dollar corporation with another multinational multibillion dollar corporation, I certainly intend to hire one." <<https://www.forbes.com/sites/basharubin/2014/07/07/big-law-big-problems-2/#210f8e75db42>>The general counsel of a Fortune 500, national health club chain that I've represented for over 35 years has repeatedly told me how much he appreciates my attention to his business and that the results he has experienced from using a smaller firm are "second to none."

What are the takeaways for inside counsel?

I started my career in a firm of 15 to 20 lawyers. Six months into the job, I tried my first case and won. I would never have gotten that experience at a large law firm. Recently I hired an attorney from such a firm who was working 100 hours a week and couldn't get any traction on his career. For what it's worth, my advice to internal counsel is this:

- Keep the outstanding small firm that has worked so hard to win your business
- Remind them when an audit comes up or a case with national media buzz, that leaning on the big firm is simply a matter of self protection – not a dismissal but a fact of life in business
- Promote the great work of your smaller partner law firms to your board so that they can see the value
- Remember that business, technology and culture are in a state of evolution and the best partners are the ones who keep pace

Norm Finkel, senior partner and head of the the litigation practice at Chicago based Schoenberg, Finkel, Newman and Rosenberg, LLC.

Uber CEO Pays a Price for Breaking the Rules



Image by [Adam Tinworth](#)

The hard-charging, take-no-prisoners corporate culture exhibited by Uber and his brash CEO is now seen as the company's biggest liability, reports [The Los Angeles Times](#).

Co-founder and Chief Executive Travis Kalanick announced Tuesday that would take an indefinite leave of absence.

Reporter Tracey Lien writes that Kalanick took responsibility "for where we've gotten and how we've gotten here."

He wrote the statement in a memo to employees, "acknowledging a humiliating year in which the company was accused of mishandling the medical records of a passenger who was raped by an Uber driver in India, using trade secrets allegedly stolen from a Google-owned self-driving car firm and covering up claims of sexual harassment," according to Lien.

[Read the LA Times article.](#)

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[The Artificial Intelligence Revolution and Its Impact on In-House Lawyers](#)

Within the next few years, we will find ourselves on the cusp of a revolution in the practice of law led by the adoption of artificial intelligence – in particular, by in-house lawyers, according to a post at [Above the Law](#).

“Much like email changed the way we do business every day, AI will become ubiquitous – an indispensable assistant to practically every lawyer,” writes Sterling Miller for Thomson Reuters. “Those who do not adopt and embrace the change will get left behind. Those who do will ultimately find themselves freed up to do the two things there always seems to be too little time for: thinking and advising.”

He predicts that, as CEOs and CFOs get familiar with AI, they will expect the general counsel and legal department to keep up. “In-house lawyers who embrace AI will become more valuable to the next generation of CEOs and CFOs,” Miller writes.

[Read the Above the Law article.](#)

CR are generally easy to identify, mitigate, and plan around. While being prepared for the worst-case scenario may take time and effort, it will be far less painful than the alternative: negative headlines and conversations on social media.”

[Download the article.](#)

[MetLife General Counsel to Step Down After Beating U.S. in Court](#)

[Bloomberg reports](#) that MetLife Inc. General Counsel Ricardo Anzaldua is stepping down after he helped win a court battle that reversed the government’s designation of the insurer as too big to fail.

Anzaldua will be on the job until the end of June, and he’ll continue to advise Chief Executive Officer Steve Kandarian through the end of the year, the CEO said Thursday in a memo to staff.

“Under Anzaldua, MetLife was the only company to go to court to fight the designation by a government panel as a non-bank systemically important financial institution,” reports [Katherine Chiglinsky](#). “General Electric Co. sold assets to shed its finance unit’s SIFI status. And American International Group Inc. said that the label, which can bring increased

regulation and tighter capital rules, wasn't a big deal."

[Read the Bloomberg article.](#)

[The Whistleblower Behind Caterpillar's Massive Tax Headache Could Make \\$600 Million](#)

[BloombergBusinessweek](#) reports on the story behind the accountant who might end up the best-paid whistleblower of all time, with a potential paycheck of \$600 million, while Caterpillar, the 92-year-old pride of American industry, will experience something unfamiliar: public humiliation.

"In a 2011 deposition, a Caterpillar attorney asked [accountant Daniel] Schlicksup if his actions threatened to hurt shareholders. write [Bryan Gruley](#), [David Voreacos](#) and [Joe Deaux](#).

"It is absolutely in the shareholders' best interests to have the most accurate financial statements they can have," Schlicksup replied. "I don't think that the shareholders of Enron would think it would have been such a bad deal if somebody would have caught that before it bankrupted the company and they lost everything they had."

[Read the BloombergBusinessweek article.](#)

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[Corporate Partner Richard Kaye Joins Barnes & Thornburg's Atlanta Office](#)

[Barnes & Thornburg LLP](#) has added [Richard Kaye](#) to its Atlanta office as a partner in the Corporate Department, where he works on domestic and international transactions.

In a news release, the firm said Kaye focuses on commercial and corporate law and represents multinational corporations, governmental entities, and emerging growth companies. He advises clients on domestic and cross-border M&A transactions, real estate, franchising construction, foreign investment, joint venture and partnering agreements, commercial contracts, and commercial and trade transactions, among other complex matters.

“Rich has a strong transactional practice in the U.S. and we can parlay his international experience when working with European and Asian clients with respect to their operations here,” said Stuart Johnson, managing partner of the firm’s Atlanta office. “He will nicely complement our corporate and M&A capabilities in this market and across the country.”

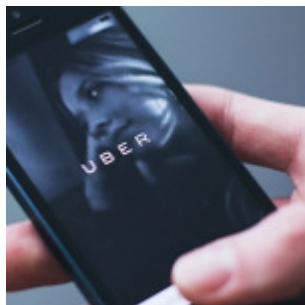
Prior to joining Barnes & Thornburg, Kaye was a member at Sherman & Howard LLC. His arrival comes on the heels of Robert Lockwood, a partner in the Intellectual Property Department, who joined the Atlanta office earlier in the year.

Beyond his law practice, Kaye is a member of the Advisory Board of Metro Atlanta Chamber and a member of the Georgia Economic Developers Association. He is former chair of the American Bar Association's International Commercial Transactions, Franchising and Distribution Committee.

Kaye earned his J.D. from Emory University School of Law and his B.A. from the State University of New York at Stony Brook and also studied at the University of Paris IV, Sorbonne. He is admitted to practice in the state of Georgia and before the Georgia Supreme Court, the Court of Appeals of Georgia, the U.S. District Court for the Northern and Middle Districts of Georgia and the U.S. Court of Appeals for the Eleventh Circuit.

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Uber Looking for New General Counsel Amid Increasingly Dicey Legal Issues



Uber has picked an interesting time to shuffle the top ranks of its legal team. points out [Johana Bhuiyan](#) at [recode.net](#).

A company email indicates that CEO Travis Kalanick said he plans to search for an external hire to fill the role. The general counsel search started after Uber moved its longtime general counsel, Salle Yoo, to chief legal officer.

Uber is facing a federal Department of Justice probe as well as a major lawsuit from Alphabet.

“Given Uber’s myriad of thorny legal issues, along with an ongoing investigation into allegations of pervasive sexism and sexual harassment, that search should be an interesting one for the company to conduct,” writes Bhuyan.

[Read the recode.net article.](#)

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[**Managing Partners Say Their Lawyers Are Underperforming**](#)

and Slow to Change

Bloomberg Law [reports](#) on a survey of nearly 400 managing partners and chairs, finding that the leaders of Big Law firms in the U.S. don't seem to be very happy with recent changes – or lack thereof – in their firms.

“In response to survey questions posed by legal management consulting firm Altman Weil, 88 percent of respondents said they have chronically underperforming lawyers, 61 percent said overcapacity is diluting their profitability, and 65 percent said their partners resist most efforts to change how to they do business,” writes [Stephanie Russell-Kraft](#). “This comes at a time when most (72 percent) law firm leaders said the pace of change in the legal industry will only continue to increase in the coming years.”

One of the findings is that business is moving in-house, and managing partners recognize that: 67.9 percent of respondents said they are already losing business to in-house legal departments.

[Read the Bloomberg article.](#)

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