

Getting Ahead of Cybersecurity Issues

Lewis Roca Rothgerber Christie forms strategic alliance in cybersecurity space

BY TONY FLESOR
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Lewis Roca Rothgerber Christie is teaming up with a Colorado Springs-based cybersecurity consultant in a strategic alliance that should bolster both organizations' capabilities for serving their clients.

The alliance between Lewis Roca and eosedge Legal is an indication of how they are both responding to changes in the ways companies think about cybersecurity.

The alliance was announced Sept. 12, but its roots go back about two years ago when the firm started a program asking its lawyers to look at their practice areas and find opportunities to innovate. Firm managing partner Ken Van Winkle said Hillary Wells, head of the firm's cybersecurity practice, began looking at data security and breaches

and came up with the idea of partnering with eosedge Legal's Doug DePeppe, a cyber law attorney and former advisor to the White House 60-day Cyberspace Policy Review and the then-National Cybersecurity Division within the Department of Homeland Security. Van Winkle said the idea was to couple the business side of cybersecurity and data protection with the legal side.

"Data protection rules and regulations are changing, and clients need to keep up," Wells said. "In the past, data protection regulations focused primarily on financial institutions and the medical industry. Now, businesses in all industries, regardless of size, are facing legal requirements and potential liability for failing to employ appropriate data protection practices." For instance, Colorado recently enacted new cybersecurity regulations that apply to businesses in all industries and its requirements for

incident response are considered the strictest in the country.

For Lewis Roca, the alliance marks a change in approach to how the firm serves its clients. Van Winkle said it's part of a strategy to serve as advisors to clients and work with them in a proactive capacity to get ahead of problems before they arise. "It's a change in direction," he said. "What we do is take the time to listen to our clients and evaluate what their needs are and respond to the market's needs versus putting out a legal service and waiting for the need."

Typically, the legal market addresses cybersecurity and data breaches by responding after breaches occur. "As a result, they're not prepared to address the long-term fallout," Van Winkle said. By partnering with eosedge, the firm will be better able to assess risks and develop a plan for what to do when

a breach occurs with both the legal and business aspects in mind.

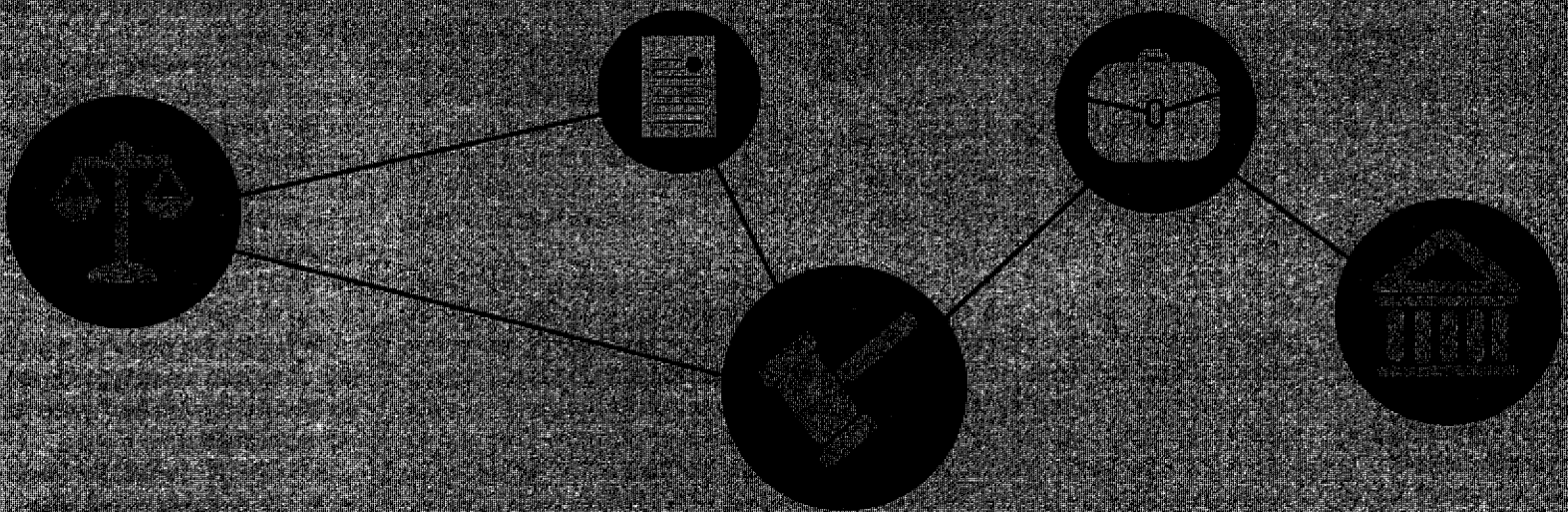
And by partnering with Lewis Roca, eosedge will gain a larger platform as well as increasing its own ability to keep clients' information secure, DePeppe said. "The perfect cyberfirm is a cyber law firm," he said. By having the attorney-client privilege and privacy of a law firm, a cyberfirm can close gaps in security without creating new problems. After a breach, forensic firms step in to do incident response and go through a company's protocol, but once a third-party is involved, they are creating evidence. "If they reveal a data breach, that data is being generated without counsel involved, and the horse is already out of the barn."

DePeppe said that Lewis Roca's connections to government will also be

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them when they graduate," Smith said. "These scholarships help seed the ground for public interest lawyers as effectively as we possibly can."

He said funding students interested in public interest law is particularly important to the school because of the "public interest drift" that happens when students enter law school with a passion or interest in public service, access to justice, advocacy and civil rights issues, but those who enter the profession find fewer work opportunities in those areas.

"It's complicated," Smith said. "It relates to law school debt and opportunities that present themselves upon graduation, but as dean, it's important to call out the nobility and importance of public service work."

Smith said the scholarships help the school promote those areas and also celebrate the work Krash did on the Gideon case. Having Krash's name on the scholarship helps create a connection for those students to that legal legacy.

"Sometimes when we engage in difficult public interest work, such as prisoner rights work ... it's possible to feel isolated," Smith said. "These are difficult cases with a challenging emotional toll. To show students that the legacy of that work goes back far in

time in the company of people fighting those fights is a way of reminding us the important work continues, but we're in a community that goes back generations in American legal history."

To thank Krash for the gift, the law school presented him with a first edition copy of a speech given by Clarence Darrow in the 1920s. "The work goes back 100 years in this country, and the students we support now can carry it into the future."

The Civil Rights Clinic donation also illustrates the school's commitment to public interest work, Smith said. Arnold & Porter chose DU for the gift in part because of its past work with the clinic. Members of Arnold & Porter's Denver office worked with the clinic on multi-year litigation involving the Supermax prison in Florence. That case ultimately settled, and the firm received a fee award for the work. Through that work, Arnold & Porter viewed the clinic as an appropriate area to direct that fee award, Smith said.

"This puts the national stamp of a highly respected global law firm and, in this case, one of their most esteemed members on the enterprise in which we're engaged," Smith said. "The trust of a really highly respected law firm is an important sign that our students' work and faculty's work truly matters." •

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helpful, since cyberattacks more frequently have ties to nation-state actors at some level.

"These are networks that are attacking," DePeppe said. "Having ties to layers of government relations is important in the cyber sphere, and we definitely have that."

"Government itself, in cyber issues," he continued, "is moving toward public-private partnerships in trying to side-walks collaborate with industry at multiple levels. The approach we're taking in our alliance is to connect with both government partners and organizations that are engaged in public-private partnerships."

Van Winkle said the firm hopes to expand its cybersecurity practice and address a broader section of the market. And the strategy applied to the cybersecurity and data privacy practice is a model the firm plans to replicate with other practice areas as well. He said the firm has implemented a new service model in which it gets to know a client's market and then after about six months of study, will come back with new service models for that particular area. "Many firms have great lawyers, excellent legal knowledge and experience," he said, "but are they providing service in response to market needs in way clients expect?" •

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CRYPTO TOKENS CONTINUED FROM PAGE 9...

with this technical cryptocurrency issue, a federal district court judge in the Eastern District of New York ruled that criminal charges pertaining to an allegedly fraudulent initial coin offering was indeed subject to securities law. Lundberg explained that Judge Raymond Dearie's ruling amounted to an estimation that a jury could indeed find that a cryptocurrency was a security.

Lundberg said there will likely be more activity in the courts on this question. "The next frontier here is now the courts will start stepping in," he said. "And then also we'll probably see an increase in civil litigation where individual buyers are suing these crypto operators. You will have courts starting to interpret the Howey test in the crypto space — and they may or may not come out the same way as the SEC."

But, Lundberg added, so far as he knows, a good case with a good set of facts to decide this issue has yet to make its way into a courtroom. "You need a good case that has some good features," he said.

He added, "The good news is for anyone in the market they're not opining on whether it's a good or bad investment, they're just enforcing the issuers' requirement to disclose." •

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