### Top Lawyers: Dr. Tracy A. Pearson On The 5 Things You Need To Become A Top Lawyer In Your Specific Field of Law

An Interview With Chere Estrin





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you have a duty of loyalty to a client and there is inherently a person who you and your client are aligned against. As an investigator, you have an obligation to be balanced, thorough and to decide. Employees will divulge very personal information to you. If you have honed investigation skills, you will develop a rapport with these people. However, at the close of an investigation you will decide whether the allegations are substantiated or unsubstantiated. One of these employees will be upset/disappointed/angry. It can be uncomfortable to inform a reporter that their allegations were unsubstantiated, especially when it involves allegations of sexual harassment or sexual assault. This is a job where you can't make everyone happy. You can, however, provide the experience that will help them feel heard.

he legal field is known to be extremely competitive. Lawyers are often smart, ambitious, and highly educated. That being said, what does it take to stand out and become a "Top Lawyer" in your specific field of law? In this interview series called "5 Things

You Need To Become A Top Lawyer In Your Specific Field of Law", we are talking to top lawyers who share what it takes to excel and stand out in your industry.

As a part of this interview series, I had the pleasure of interviewing Dr. Tracy A. Pearson, J.D.

Dr. Pearson holds Juris Doctor (J.D.) from Syracuse University College of Law and a Doctorate of Education (Ed.D.) in organizational change and leadership from the University of Southern California. Dr. Pearson focuses her work on investigations, and she conducted the first gap analysis study to examine implicit bias in workplace investigations. She is also a professional coach and commentator.

Thank you so much for joining us in this interview series. Before we dig in, our readers would love to get to know you a bit more. What is the "backstory" that brought you to this particular career path in Law? Did you want to be an attorney "when you grew up"?

I was not one of those kids who dreamed of being attorney or was expected to be an attorney. I am a first-generation college graduate from a low-income background. However, personality-wise, it didn't surprise people "who knew me when" when they learned I had become an attorney. I suppose you could say I was "leadership-y" and had an "old soul." I wasn't afraid to speak my mind. I remember being teased on the bus in first grade and going to the main office of my elementary school and demanding to speak to the principal. He wasn't available, but they gave me an audience with the vice principal. I told her, "You will make it stop." I suppose you could say that was my first *ex parte* hearing.

Throughout my early adult years, I gravitated toward helping with important causes, whether it was the faculty at my college who were without a contract for over a year, or an individual person with a concern, I was often in a position to take on power and privilege to solve problems because I wasn't afraid to do so.

When I entered my first graduate program, in English and Critical Theory, the entire intellectual experience was a struggle because I didn't understand its value. A professor

asked me to read a book where the lesson from the story is that once you have knowledge it is impossible to go back to being blissfully ignorant and that knowledge can be a burden. The professor then asked me to read an article he wrote about education as colonization. Now, everything I knew about colonization was bad, so I asked the professor, "What do we do about it?" To paraphrase, he told me he puts the ideas out there and it is up to someone else to do something with them. That didn't sit well with me; it seemed almost irresponsible. As a result of that conversation, he suggested I think about law school [laughing]. After my first day of class in law school, I knew I was where I was supposed to be at that time in my life. It was a moment where the heavens opened up, light shined down, and music played. I was learning something practical, where I could help others, and that fed the fire of curiosity and problem solving; it also engaged my critical thinking and writing skills.

#### Can you tell us a bit about the nature of your practice and what you focus on?

The work I focus on now is investigations. In the past, as a law firm owner, along with a trial, appellate, and mediation practice, where I practiced in over 10 areas of practice, I also conducted investigations of all kinds — investigations involving family law, probate law, and employment law. Now, I conduct workplace investigations, but for one organization, as an internal investigator. There are many opportunities for this work and many attorneys provide these services, but it is one of the areas of practice that they don't teach in law school and that gap in instruction is doing the profession and employers a disservice. Being an investigator requires different skills.

The way I think about my role is that my job is to hold the organization accountable in keeping its promise to provide a healthy and safe work environment for all employees. I decide whether to investigate an allegation, how to investigate the allegation (who to speak with, what evidence I might need to identify and, if identified, gather), I interpret the testimonial and documentary evidence I collect to make findings of fact. I apply those findings of fact to policies to determine whether the allegations are or are not substantiated.

You are a successful attorney. Which three character traits do you think were most instrumental to your success? What unique qualities do you have that others may not? Can you please share a story or example for each?

Three character traits instrumental to my success are curiosity, courageousness, and independence.

At some point in human existence the idea of asking a question was aligned with weakness, as if we are all supposed to know everything. Women learn to apologize before they ask a question, as in, "I am sorry, but may I ask a question..." or "This is probably my fault, but...". What law school taught me is how little I do know. The only way you learn to practice law or do anything well is to ask questions because there is so much that books cannot teach you. When I started practicing law, I learned quickly that the clerks in the courthouses were the people really in charge of the legal system and they possess a wealth of knowledge if you take the opportunity to ask questions. They can also make your life miserable if you don't respect them, so I have heard. I would often start out with what I now call a crutch that went something like this, "I am new to legal practice, and I am wondering if you can help me understand...". Right around 2009, six years into practicing law, a Clerk of Court, the clerk in charge of the county superior court, interrupted me and said, "Tracy, you are no longer new, stop saying that." It took about six years for the court staff to catch on, so it was a good run [Laughing]. After being told I no longer had the benefit of claiming I was a new lawyer, I simply asked questions without feeling a need to have an excuse to do so.

Being courageous has been essential to protecting my integrity. I was faced with a situation where I had a choice to report information through the normal chain of command or report information to a different person. Reporting through chain of command would have created a conflict of interest, but it would have pleased the person in power. Reporting to the different person eliminated the conflict of interest, and that is the choice I made, but it angered the person in power, which had a negative impact on me. There was more at stake than pleasing a person with power and privilege and I considered the risk to the various people involved, the risk to the organization, and chose to do the correct thing. Being courageous is never easy, and these types of situations will be tests of your values.

Independence is important for two reasons. I have watched groups of people go along with bad ideas. Social desirability, wanting to be liked, plays a huge part in those situations. I was never part of the "popular" crowd and I have always had a small social circle. That may be part of why it is not difficult for me to lean away from wanting to be

liked in a situation where there is incredible pressure to go along to get along. As an investigator, when a particular resolution to a misconduct complaint may impact the organization in a public way, pressure, will be placed on you. If you find during your career that it isn't, find me and I will pay you a dollar, I'm just kidding; but I will congratulate you because that means you worked for ethical, learning organizations. But, for everyone else, you have to resist this pressure, or you are part of the problem.

Independence is also important for clients. Clients come to attorneys asking for their advice on personal matters and they are relying on the attorney to help steer them through to a result that is as close to ideal as possible. You will develop friendships with many of the lawyers you will litigate against, and your ability to separate those relationships from the duty to your client is essential to being an ethical and trusted lawyer.

The quality that I have that other people don't have would be what my partner calls "ESP(N)". I have an uncanny ability to be presented with a set of facts and circumstances and to predict outcomes accurately. A lawyer I know has said about me, "When she is right 16 out of 16 times you have to listen to her."



Do you think you have had luck in your success? Can you explain what you mean?

I can't think of a time where luck played a part in my achievements. By luck I mean being in the right place, the right time, and effortlessly landing where I needed to be. In reflecting on my professional life, it has felt like climbing mountain after mountain. While I wish I was afforded a more effortless journey, I am proud of what I have achieved because of how hard it was to achieve it.

# Do you think where you went to school has any bearing on your success? How important is it for a lawyer to go to a top-tier school?

No. Rankings change. When I entered law school, my school had just fallen into the so-called third tier because of its New York State Bar passage rate. Students, particularly third-year students, were livid. The school made some changes in administration and in resources provided. Syracuse University College of Law's ranking has bounced around considerably up into the 80s and down again. The ranking is determined by a lot of factors that are decided by someone else, but they don't speak to being a quality lawyer. The number of volumes in my school's law library doesn't make me a better lawyer. I can't tell you the exact ranking of my law school, but I can say that the current President of the United States is a graduate from Syracuse University College of Law, not Yale, not Harvard. And, as a former Senator serving Delaware for 36 years, and Vice President for 8 more years, I don't think his law school's ranking was a thought on his or anyone else's mind. He is certainly successful.

When it comes to practicing law, ranking is irrelevant, so again, "No." If you want to practice "Big Law" the answer is "Yes." That's because ranking is a factor that Big Law chooses to use to winnow applicants. It is unfortunate. It is indicative of implicit bias and privilege. Ranking does not mean that these law students are better lawyers or have the potential to be better lawyers. I have met lawyers who attended top-tier schools and had high GPAs, but they couldn't practice law. As an example, in one case, the lawyer couldn't ask a non-leading question on direct examination, enter an exhibit, or impeach a witness, and it was the most painful trial, and I mean nails on chalkboard pain, I have ever witnessed. If the lawyer's client wasn't suing my client, I would have felt bad for the lawyer. As it was, I was annoyed, and it was malpractice for the lawyer to have been sent to handle the case. It made the job harder on my side. So, coming from a top tier school and being able to win the law school exam game meant nothing when that lawyer entered the courtroom.

Joining a large firm has benefits — monetary ones. But when you work for a large law firm you will not be personally responsible for your own cases immediately. In larger law firms, the reliance on paralegals is incredible. They do a lot of the work. In contrast, I worked for a small firm and the day I was sworn in, I tried cases immediately. I was in the courtroom, and I am not kidding, daily. I was responsible for managing my own

client portfolio, negotiating resolutions, devising my legal strategy, marshalling evidence, preparing for the opposition, deposing witnesses, drafting pleadings, arguing motions, questioning witnesses, learning what to file when, and what I could get away with and what I couldn't. It was simply the best training I could have hoped for because law school teaches you how to think, the Bar Review course teaches you how to take a test, and practicing law is an art.

There is also something to be said for the underdog. If you go to a lower-tiered school, it may have nothing to do with your ability and everything to do with your wallet. You may not have the financial resources to pay for a higher-ranked school. But a person who really wants to achieve something, who is intrinsically motivated because no one ever thought they would amount to anything, and extrinsically motivated by the drive to survive, is more powerful and more of an asset than someone who landed a seat in a top-tier law school and came from privilege.

Based on the lessons you have learned from your experience, if you could go back in time and speak to your twenty-year-old self, what would you say? Would you do anything differently?

Assuming giving her the winning Powerball numbers is out of the question, I would tell her, "You are going to be ok. A lot of challenges lie ahead, but you will be ok. Stay true to who you are, your values, and draw boundaries as needed. When someone tells you, as they will, that you are the problem, you don't know how to do x, or you are x, ignore them. Think of the source and their motivation. And, don't be afraid to fight."

Would I do anything differently, well, I wouldn't cut class on a particular day back in college that resulted in me totaling my car in a car accident [laughing]. But in all seriousness, everything I have done and gone through has made me who I am today, and I like who I am. So, if doing something differently meant I would be a different person, then, no.

# This is not easy work. What is your primary motivation and drive behind the work that you do?

Any work related to the law is not easy. Except for adoptions, which I did do in my past practice, the reason why someone needs your help is because they have a problem. They

are more likely than not going through the worst time of their life and they are experiencing many different emotions, but the primary ones are fear and/or anger. Sometimes that fear and/or anger can be directed at you. You need to keep that reality in perspective. In my current role, nothing has changed. People are afraid and, unlike when I was in private practice, I also contend with the added element that people do not trust me because I am an investigator.

I am in this role to ensure employees are heard, whether they are reporting or responding to the allegation. When an employee works for a large organization, it can seem like layer upon layer of people who have no authority to help. As an investigator who is independent, the buck stops with me. I have the authority to help someone stop conduct or the authority to determine an employee wasn't responsible for a policy violation. I make a difference in the lives of individual people. I have looked into the eyes of reporters and respondents and seen a human need to be heard and helped — and I am grateful to be able to make a difference, where as a practicing trial lawyer, I depended on someone else, a judge or a jury, to make the difference.

## What are some of the most interesting or exciting projects you are working on now?

I am really excited about the work I am doing on implicit bias in investigations. It will have an important impact in several areas, I hope. Plaintiff lawyers have long argued that workplace investigations were biased, but there was no data to back that up. The data from my study, using valid and reliable scientific methods, suggested these investigations are biased. What was learned from the study can improve investigations if the recommendations that I proposed are implemented, including a new model for training investigators and a toolkit for examining gaps in organizational infrastructure with a focus on centering equity to improve investigation outcomes. I am expanding the work to include all types of investigators.

## Where do you go from here? Where do you aim to be in the next chapter of your career?

I taught in higher education for over a decade and what I enjoyed most about private practice was "the cold read," or being presented with a situation and having to discuss possible options and outcomes. I'd like to combine the skills of teaching and the cold

read to join the ranks of professionals that news networks reach out to when they need to understand an issue better. I think my background provides a unique interdisciplinary perspective. I hope to expand my consulting work to include helping the legal profession understand implicit bias and how it may intersect with the issues they are litigating. I'd like to help organizations improve their infrastructure so that their investigation efforts are seen by their employees as legitimate. I also hope to use my professional coaching skills to help professionals, including lawyers, achieve their goals and become better leaders. I am never happier than when I can help someone understand an issue or themselves better. Somewhere in there I'd like to do some sailing along the California coast, too.

# Without sharing anything confidential, can you please share your most successful "war story"? Can you share the funniest?

The most successful case is the one that made me the least amount of money but gives me the greatest sense of achievement. A child was kidnapped and subjected to abuse by one of his parents. Using my state courts and working with lawyers in another state where the child was taken and with whom I had no prior relationship but found through a series of calls, we collaborated on pleadings to be filed in the other state. The child was ultimately rescued and reunited with the parent, my client. I wish I could provide more details, but it may compromise confidentiality. I will say the experience involved a judge holding the court open past when it was supposed to close prior to a holiday because my client drove all night, got lost and was delayed; law enforcement breaking down the door; the child being rescued after a high speed race to the last known location; and the child being reunited with a parent the child hadn't seen in some time and who the child shouldn't have had a memory of, but did. It has all the characteristics of a Hollywood film and it really happened. I am very proud of that work.

The funniest "war story?" Aside from the day that I could find no room in the courtroom to stand except for the jury box (it was during motion practice) and I forgot to step up into the jury box, fell on my face with a loud thud, and jumped-up bellowing, "I'm ok!"? Aside from that experience, it was when a police prosecutor didn't want to go through with a plea for a DWI #4 for a client because they arrived at court — driven by someone else — intoxicated; the police prosecutor had a soft spot for the client and the circumstances. I found myself, in a cell, meeting with another client, and the officer was

furiously banging on the door so he could apprise me of the situation, which included my client observably swaying back and forth. We agreed to continue the plea hearing and the client was taken home, again, by someone else who was not intoxicated. When the judge called the case, it was straight out of a Laurel and Hardy scene with me pointing to the officer to explain, and both of us tap-dancing to avoid judicial wrath. The judge agreed to continue the case and, brazenly, I attempted to negotiate more time than the judge wanted to allow. We split the difference. During that same court session, another client of mine was also pleading to a DWI and he, get this, took a taxicab to the courthouse because his license was suspended — and he kept the cab waiting. The cab waited hours with the meter running because my client didn't tell me. I negotiated with colleagues to be heard next, explaining to the judge the circumstances. He was already annoyed with me from my prior case. When we concluded, as I always did, I asked if I may be excused, and the judge was only too happy to send me on my way. "Please go," he said, with a wave of his hand. When you practice law, there a lot of funny moments if you don't take yourself too seriously.

Ok, fantastic. Let's now shift to discussing some advice for aspiring lawyers. Do you work remotely? Onsite? Or Hybrid? What do you think will be the future of how law offices operate? What do you prefer? Can you please explain what you mean?

The pandemic will transform all work, not only legal work, and it may help introduce some equity to the industry. For decades employers rejected work-from-home as an option for disabled employees. However, when everyone was at risk, the business world, including law firms and courts, were forced to innovate and quickly. For over a year employees demonstrated that they could work from home. Working from home won't go away. As a result, the ability of disabled people to work from home will open more opportunities and it will add some diversity to the industry.

The ability to serve clients without meeting in person will hopefully provide options to people who have anxiety. If a client can meet with a lawyer in a comfortable setting over a computer, they may be more likely to seek help. I think that attorneys can underestimate the stress clients experience. Attorneys can be intimidating and to meet with a lawyer, the average person must find the lawyer, call and do an intake, schedule the appointment, drive or transport themselves to the office and so on. It can feel like a

burden when the person is already in a level of crisis. That's why when I operated my practice, I created a method for doing online scheduling — which was unheard of at the time — so that when the problem occurred at 2 am, a potential client could schedule an appointment and not have to wait until the practice was open, and this empowered people in crisis.

Using remote methods can also increase efficiency for the courts. There is a lot of wasted time on moving people in and out of courtrooms and into place for hearings. If you can reduce that time, the courts can accomplish more in a day. Some things, like trials, would never go virtual. But motion practice can.

I prefer the virtual environment for all the reasons I have stated. I am more effective and productive working in a comfortable environment I am in control of; no one is walking into my home office randomly. I know a lot of folks have reported "Zoom fatigue," but these same folks were staring at their phones for hours a day by choice, so I think that change and other factors incident to the pandemic, like fear, have an impact on perception.

# How has the legal world changed since COVID? How do you think it might change in the near future? Can you explain what you mean?

We need to address the lack of universal licensing. Attorneys may only practice law in a state in which they are licensed. For example, in California, to be a workplace investigator you must either be a licensed attorney or be a licensed private investigator, unless you work for an organization and that organization is the only one you provide services to as an investigator. If you are in another area of the country and working for a client in California, if you are not properly licensed, you are in violation of the law. This is abominably tricky for attorneys. If I am licensed in Massachusetts but I am living with my family in California because of the pandemic, am I violating the law if I conduct my practice virtually from California? What about conducting work for an organization that has a corporate office in California, but has multiple locations across the country, and the conduct alleged occurred in a location in another state, and I am in a third state? The fact patterns can be outrageous, but real. It is a complicated issue because states want to control the licensing of those who practice law in their jurisdiction. In California there is a good reason to do so because its laws, especially as to employment, is different from the other states.

The legal profession is one of reformists, not revolutionaries. So, change is slow. As an example, the federal government went to an electronic filing system in 2001, but my home state, New Hampshire, didn't start the process of converting to a state electronic filing system until 2014, 13 years later. But, when forced to change quickly, government and industry have demonstrated that it can be done; hopefully the urgency resulting from the pandemic won't dissipate.

Finally, law firms will need to rethink their business models and hiring practices. With the ability to work from home full-time out of necessity and the time given to contemplate priorities, we have seen what has been termed the "Great Resignation" unfold. Employees are leaving their jobs. They are leaving work arrangements that are in conflict with the lives they want to lead, and a virtual environment is opening up opportunities that did not exist before. Therefore, the legal industry will need to shift more resources in attracting talent and be mindful of the need to recruit and retain employees in a manner consistent with goals of diversity, equity, inclusion, and belonging.

We often hear about the importance of networking and getting referrals. Is this still true today? Has the nature of networking changed or has its importance changed? Can you explain what you mean?

Networking and referrals have always been important. Retired lawyers were networking before networking was a thing. They went to the community little league games, the new community center opening, the potluck after church, and they met people so they could build rapport and trust for a time in the future when their services might be needed. They developed relationships with their opposing counsel and competitors so that referrals were sent their way. It was important to have those relationships, and no one could be an enemy of another without losing an opportunity. Networking is as important as ever. We do it differently now.

Based on your experience, how can attorneys effectively leverage social media to build their practice?

The relationship between social media and attorneys is tricky. Lawyers have advertising rules they must follow in their respective jurisdictions, so they should always defer to

those rules. But, generally, to effectively leverage social media, attorneys need to be consistent and have great content that is supported by sources.

Pummeling the interweb with display ads is not the same thing as social media. You must commit to regularly posting, master the hashtag, and cultivate a following. You need to identify your target clientele. Who are they? What do they like? What do they want to know? How do they want it presented to them? Then you need to create content that speaks to them so that when the time comes for them to contact a lawyer, they will remember your name and reach out to you for help. The older, retired lawyers didn't have to contend with algorithms, but they drank a lot of bad coffee and went to a lot of boring events — so there are tradeoffs.

Excellent. Here is the main question of our interview. What are your "5 Things You Need To Become A Top Lawyer In Your Specific Field of Law?" Please share a story or an example for each.

First, be curious. Being an investigator is about learning information and you have to be unyielding in your efforts. I've had conversations with investigators who worry about situations where there is insufficient evidence to tip the balance of the preponderance of the evidence scale one way or another. My response to that is you haven't looked hard enough. Keep looking. Maintain curiosity.

Second, be self-aware and learn what your biases are. Every person has implicit bias. It is a survival skill necessary to avoid being killed by lions and tigers. Take training on implicit bias. Invite people to point out when you might be exhibiting bias. Question why you think what you think and reflect often so that you can mitigate for these biases as you make determinations. As an example, if you don't like investigating certain types of allegations, don't do it. Unconsciously you will introduce those thoughts and feelings into the investigation process.

Third, learn to listen. In law school, we practice how to respond. Listening requires you to suspend judgment and your instinct to respond, which requires transferring a certain amount of brain activity from listening and understanding to developing your own position or thoughts. We've all had the experience where during a conversation, the other person's response was to talk about what they went through or to have them ask a question that left you wondering if they were in the same conversation. You cannot

listen well if you are thinking of what you are going to do or say next. You will miss details. More importantly, the shift to responding is a place where bias can infiltrate your thinking and adversely impact the investigation.

Fourth, hone your independence and courage. If you are an attorney investigator, you are subject to the same professional conduct rules as when you are in the courtroom. If you call or consider the organization your "client," you are not independent or neutral because the rules of professional conduct require a duty of loyalty to the "client." With that understanding, be very careful about the relationship you cultivate with the organization, if you are external investigator. A common complaint about investigations is that employers hire investigators to give them the determinations that benefit the employer. To protect against those claims, set clear expectations, what you will and won't do. If you work internally, do not be afraid to set boundaries and make management aware of when you are feeling pressured to do something inappropriate or questionable. Hone your ability to be courageous in difficult moments. You are going to be faced with difficult decisions. Remember, you will live with your integrity and reputation for a lifetime. Your employment is temporary.

Fifth, be comfortable with discomfort. As an attorney, you have a duty of loyalty to a client and there is inherently a person who you and your client are aligned against. As an investigator, you have an obligation to be balanced, thorough and to decide. Employees will divulge very personal information to you. If you have honed investigation skills, you will develop a rapport with these people. However, at the close of an investigation you will decide whether the allegations are substantiated or unsubstantiated. One of these employees will be upset/disappointed/angry. It can be uncomfortable to inform a reporter that their allegations were unsubstantiated, especially when it involves allegations of sexual harassment or sexual assault. This is a job where you can't make everyone happy. You can, however, provide the experience that will help them feel heard.

We are very blessed that some of the biggest names in Business, VC funding, Sports, and Entertainment read this column. Is there a person in the world, or in the US with whom you would love to have a private breakfast or lunch, and why? He or she might see this. :-)

I have to pick only one? This isn't like the genie in the bottle where I can wish for infinite wishes, so I don't have to be limited to one? If I had to pick only one, it would be Rachel Maddow. She is a broadcast giant today, but the road she took to arrive where she is was anything but expected. I feel a sense of kinship with her. She chased her interests. She did what she needed to do to survive working in jobs that would pay her rent. She has clear boundaries of what she will and won't do. She is, by all accounts, dedicated, and a series of opportunities and decisions that were anything but linear in progression landed her in a role where she proved herself. For many, she is a fixture in their living room every night and an illness that keeps her out of work creates a perceivable ripple in the Twitter-verse with people concerned about her well-being. If I could achieve 1% of what she has achieved, I'd consider myself to be successful. So, to be able to pick her brain over French toast would be a privilege. She is witty, smart, and I know that my Mimosa or Bloody Mary is going to be the best darn drink I have ever had, especially if she made it.

This was very inspiring. Thank you so much for the time you spent with this. We wish you continued success and good health!

A bout the interviewer: Chere Estrin is the CEO of Estrin Legal Staffing, a top national and international staffing organization and MediSums, medical records summarizing. She is the Co-Founding Member and Vice-President of the Organization Legal Professionals providing online legal technology training. Chere has written 10 books on legal careers, hundreds of articles and has been written up in publications such as the Los Angeles Times, Chicago Trib, Newsweek, Entrepreneur, Above the Law and others. Chere is a recipient of the Los Angeles/Century City Women of Achievement Award, a finalist for the Inc. Magazine Entrepreneur of the Year award and a Los Angeles Paralegal Association Lifetime Achievement Award Recipient She is a former administrator at an AmLaw 100 firm and Sr. Vice President in a \$5 billion company. Reach out at: chere@estrinlegalstaffing.com.

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