

## BAR BULLETIN

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February 2012



### **REMARKS FROM THE PRESIDENT'S DESK**

*By: Laurel A. Hoehn*

It is not February and I hope those with last names beginning with H-M were able to obtain all the necessary hours and have reported their MCLE compliance to the State Bar. Next year, those with last names beginning A-G are due to report their compliance. I would definitely recommend getting an early start on compiling your hours. We will be hosting various MCLE luncheons throughout the year. These luncheons are a convenient way to obtain continuing education credits, have a nice meal and socialize with other local attorneys. If there are specific topics or areas of the law you would like covered, let us know by sending an email or calling the Bar office.

With Valentine's Day approaching, the theme of love surrounds us with stores selling cards, candy and roses, leading me to think about why I love being a lawyer. Although I often joke with people considering law school by telling them to go to medical school instead, the truth is that there is no other profession I can think of with so much opportunity. Be it litigation or transactional, big firm or a sole practitioner, each of us can find a niche within the practice of law to suit our desires.

There is the local lawyer who closes his office at noon on Fridays so he can get a head start on the weekend, the associate who works on the weekends in order to make bonus hours, the civil lawyer who maintains a reduced case load so she has time to drive her kids carpool. These are just some of the examples of the ways in which we can tailor our path as we need to.

For me, there is also the satisfaction achieved from a job well done and our ability to assist our clients. We can easily become jaded about our work, but to the people and entities we represent, it is often all encompassing and overwhelming. The bankruptcy attorney who helps her married clients discharge their overwhelming debt, alleviating their stress and constant fights about money. The municipal attorney who successfully strikes a punitive damage request against a public employee who has not been able to sleep, worrying about the allegations hanging over his head. This may be just another day at the office for us, but to our clients, at times, we are superheroes. This is why I love what we do as lawyers.

I hope everyone has a great Valentine's Day and thinks a moment about why they love this profession as much as I do.

### **From The Desk of the President of the Josph B. Campbell Inn of Court**

*By: Hon. Barbara A. Buchholz*

What does the rooftop of 24-Hour Fitness, the fire dept., the girl's varsity squad, marshmallows, graham crackers, Hershey bars, 3 adolescent male youths and a blow torch all have in common? Well, if it's not obvious to you (and I hope it is not), it is the makings of a true life fact pattern and the perfect segue to our first Inn of court meeting for the 2012 year about minors and the law.

The topic: "But I'm Just a Kid." The fact pattern offered by Mr. Osborn, our program chair, was this: 3 young males wanted to watch the varsity girls' team play and decided the best vantage point was atop the 24-Hour Fitness building, and while putting together a snack of s'mores, inadvertently set the rooftop on fire with the blow torch. Other than a stern lecture from both the police and fire personnel, the boys suffered no serious life altering effects from their ill-fated adventure.

However, issues abound as to the ramifications to the juveniles if they had indeed caused serious damage or injury to the building or its occupants. I hate to think about how that scenario would have played out in today's world, but suffice to say, I think the consequences today could be far more significant (and costly) from any resulting damage. Now like then, the law continues to have an impact today not only for adults, but for children as well.

The Campbell Inn members had the opportunity at the first meeting of the 2012 year, to discuss this very topic. Our January program entitled "But I'm Just a Kid," explored how the law treats minors and their parents when something bad happens.

The presentation team, headed by Judge Teresa Bennett, and presented by program team members, Commissioner Diane Anderson, Donna Connally, Joan Nelms, Julie Ettari, and Rachael Alcorn, focused on the juvenile system. The various topics included when a minor finds himself in trouble with the law (delinquency matters), his legal representation and issues of attorney-client privilege, the legal and financial responsibilities to the respective parents, over lapping probate and family law issues when a guardianship is sought for the minor, and the impact of child support issues and how the law treats minors and their parents related to costs incurred as part of the legal foster care system.

Judge Bennett offered the Inn participants a discussion of the right to counsel to either parents and/or minors in the legal system. She explained that your right to counsel depends on what "door" of the courthouse you enter. If it is the dependency or delinquency door, then rights to an attorney are afforded generally to both parent and child. If on the other hand, you are in family law court or probate, there are no rights to an appointed counsel for either the parent or the child. This can pose a dilemma to the court, particularly in light of recent legislation which allows a child 14 or older to have a say in visits and custody issues in the family law court. How does a child examine or cross-examine a witness, without an attorney, as to these very important issues which become a

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## From The Desk of the President of the Joseph B. Campbell Inn of Court

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factor in a protracted trial?

Ms. Connally spoke regarding the issues and dilemmas that might arise when the child finds himself/herself criminally charged and where the attorney's loyalty lies. Ms. Connally emphasized that the duty of loyalty always is with the client; in this instance it is the minor who is charged, even though the parent may be paying the bill for the representation. She discussed the protocol of how to discuss the matter with parents and the charged minor, but made it clear that if the minor wanted to speak privately to the attorney about the case that request should be honored by the attorney. Also addressed were issues related to when the parents wanted to review the minor's file and when the interest of the minor was at odds with the parents.

Ms. Ettari's overall presentation was focused on the delinquency court and its purpose. She addressed the purpose of the delinquency system, that being one of services to and rehabilitation of the minor and not necessarily punishment. Ms. Ettari explained that as an attorney for the minor in the delinquency court, you spend a lot of time talking with both the parents and the minors, not only about the circumstances that led them to the court (the alleged crime), but on many aspects of the juvenile's life, including schooling, home life, friends, medical issues that are impacting the events, social issues, family dynamics, etc. Ms. Ettari outlined the distinctions involved in the delinquency court, how "judgment" may be entered or deferred and the need for placement if the parents could not facilitate rehabilitation of the minor.

Ms. Alcorn, one of our 3rd year law student members, focused on the legal aspects of notice and advisals to both minor and parents of the constitutional rights involved when the minor is taken into custody. She discussed the right to an attorney for the parents and/or the minors when detentions is imminent, and conversely, what happens when the minors are released to the parents pending a hearing. Ms. Alcorn spoke to the factors that may very well be involved in determining whether the minor could be released, such as the danger posed to himself or others, prior criminal history, prior issues of abuse or neglect in the home and, of course, the related costs if placement is necessary.

Ms. Nelms gave us her expertise in the area of probate and legal guardianships. Interestingly, in probate, the minor has no "voice" in the probate court unless a party (usually the petitioner) has paid for the representation of the minor. She explained how some legal guardianships are sought in probate court and some in family law court and further described how jurisdiction and venue are determined in legal guardianship does not have to last forever, rather, it can be temporary (based on some purpose such as a medical reason) or can last just months, or years or until the minor is 18 years old at which time it expires by operation of law.

Commissioner Anderson dealt with child support issues, how they are calculated and under what circumstances a parent (one or both) would be responsible to

reimburse the court for Foster Care funds expanded by the court related to dependency cases. She provided the statutory law which controls and explained how it is determined based on certain factors, whether the parent would be obligated at all to reimburse for the cost of foster care related to the child(ren). Also addressed by Commissioner Anderson is how enforcement would take place (methods) if reimbursement was ordered by the court.

The take-away from the presentation: Things do happen to kids all the time - both good and bad. When they are bad, there are generally consequences and ramifications to not just the minor(s), but the parents as well.

If you did not get to the January meeting, you missed another great program. You can always attend our next program which is at the Arrowhead Country Club and is set for **February 8, 2012**. The topic will be "**Juror Bias: Uncovering it, Using It - How Far Can You Go?**"

Looking forward to the 2012 year, the Campbell Inn has some exciting plans on the horizon for the spring: The Joseph B. Campbell Inn of Court, in cooperation with the Deegan and Slaughter Inns, will be hosting a dinner on **April 3, 2012**, with the featured speaker being **Justice Goodwin Lui**, our newest California Supreme Court appointee. Consider this the "Save the Date" notice to you. We are working on the arrangements now and more details will follow in the upcoming months. (Look for the announcement and RSVP information in this publication.)

All membership questions should be directed to our membership chairman, Donna Connally. She can be reached at: (909) 758-5136 or you can email her at: [donna@noquitedefense.com](mailto:donna@noquitedefense.com)

Until next time, Happy Valentines Day! Hon. Barbara A. Buchholz

## February Almanac

*By: Tony Sears*

All times Pacific Standard Time (PST), which is minus eight (8) hours from UTC (Universal Time Coordinated). The February Full Moon is call the "Full Cold Moon." Watch the Full Cold Moon rise on February 7, 2012, at 5:40 p.m. February New Moon is on February 21, 2012, at 2:35 p.m. local time. If conditions are perfect, you may be able to spot the thinnest sliver of the New Moon before it sets some eight minutes after Sunset at 5:48 p.m.

**Gung Hay Fat Choy!** The year of the Black Water Dragon started with the sighting of the young Moon at dusk on January 23, 2012. From my limited research, it seems that the latest date on the modern calendar would be February 17. I will have it sorted out by the time the year of the Snake slithers in on February 10, 2013.

According to the ancient Chinese story, the Jade emperor summoned all the animals to a feast across a biggest, meanest river in all the land. The first twelve to arrive would be honored with a place in the zodiac. So, off they go! The Cat and the Rat hop on board the Ox, who can easily cross the river. Half way across, the Rat pushes the Cat into the water. Just as the Ox is ready to step out of the water, the Rat pushes the Cat into the water. Just as the Ox is ready to step out of the water, the Rat hops off and claims first place. The Ox is second. The Tiger, somewhat trashed by the river, comes in third. With a little help (CPR) from the Dragon, the Rabbit finished fourth. The Mighty Flying Dragon, who should have simply flown over the river to a first place finish, was delayed because he stopped to help the people by making rain. The Dragon also helped the nearly drowned Rabbit. The Jade Emperor was impressed and moved by the Dragon's acts, so the Dragon was

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## February Almanac

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installed as the fifth sign in the Chinese Zodiac.

These are the typical associated character traits of the Dragon: Generous, good friend, kind, sensitive, amiable, elegant, reserved, artistic, thorough, tender, self-assured, astute, compassionate, lucky, and flexible. Negative Dragon traits include fire breathing, arrogance, tactlessness, dogmatic, and brash.

Famous Dragons include Puff, Abraham Lincoln, Charles Darwin, Bing Crosby, Count Basie, Shirley Temple, Martin Sheen, John Lennon, Neil Diamond, Nicolas Cage, Courtney Cox, Courtney Love, and some kid on the Disney Channel. So, for those of you born in 1928, 1940, 1952, 1964, 1976, 1988, or 2000 enjoy the "Year of the Dragon." Just in case you were wondering, birthrates tend to rise during the year of the Dragon.

Interesting. In the east, the mythical Dragon is viewed as a sign of luck, good fortune, and gregariousness. In the west, the same Dragon is viewed as a fire breathing monster, to be slain by St. George.

**Garden Notes:** Going fallow this month. You can always be planning for your 2012 garden by looking at seed catalogs and preparing your planting areas.

**Recipe of the Month:** Everybody loves cake! Break out your bundt pan. This is my *Meyer Lemon Cake*. A perfect cake to brighten up a gray winter day. This works best in a bundt pan; I suppose you could make cupcakes with this recipe, but I am not sure about the baking time for cupcakes. If you do not yet have "Microplane" grater(s), this is your reason to obtain them. There are a few sizes. I have one for zesting and one for cheese grating. Meyer lemons are the chef's lemon, as they have lemony goodness without too much acidity. If you cannot get Meyer lemons, then you can use oranges and substitute rum (or Cointreau) instead of bourbon. Regular lemons do not work with this recipe. Too sour.

### *Meyer Lemon Cake*

Preheat your oven to 350° f. Oil and lightly flour your Bundt pan. Pam baking spray with flour works quite well.

#### Ingredients:

- 1 yellow cake mix (18.25 oz)
- 1 package (3.4 oz) of vanilla instant pudding mix. Do not use "sugar free", as it won't work.
- 1 stick butter, melted
- 1/4 cup of bourbon
- 4 large Eggs
- 2 Tbsp. of Meyer Lemon Zest. Zest the lemons first, then juice.
- 1 cup of Meyer Lemon juice

Thoroughly mix all ingredients in a bowl. Beat for 1 minute. Stop, scrape down the sides of the bowl. Increase speed to medium and mix for 2 minutes. The batter will be quite thick. Spoon into your greased/floured or Pam sprayed Bundt pan. Give the pan a light tap to get rid of any air bubbles. Bake for 40-45 minutes, until the cake starts to pull away from sides of pan. Remove from oven and place on cooling rack. Let completely cool or the cake may stick in the pan. When cooled, carefully use a butter knife and go around the edges to make

sure it is not sticking to the pan. Place the cake on your cake dish or other serving plate. Then proceed to make the glaze.

#### Glaze and Finish.

- 1/2 stick of butter
- 1/2 cup of sugar
- 1/4 cup of bourbon
- 1/4 cup of Meyer lemon juice.

Place all ingredients in sauce pan over medium heat, stirring constantly and cook for about 10 minutes. The idea is to reduce and thicken. Poke holes in your cake using a wooden skewer. Slowly pour the hot glaze over the cake, down the sides, and the middle. Finish with the 2 Tbsp. Of Meyer lemon zest sprinkled on the cake. Allow to completely cool before slicing. This is one awesome cake.

Buon Appetito! Tony Sears

## Managing Legacy Data- The Skeletons in the ESI Closet

By Sharon D. Nelson, Eq., and John W. Simek

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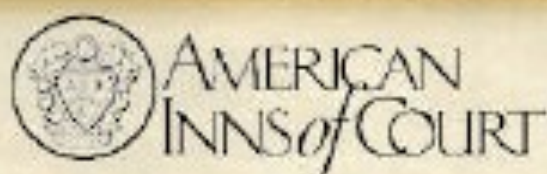
Lawyers and their clients are looking for expert advice on how to manage legacy data. Law firm leaders and managers have a responsibility to their firms, and to their clients, to be informed about how to properly store and steward electronic data. Traditionally, many law firms and their clients have simply "kept everything." After all, storage is cheap - and many businesses have not wanted to spend adequate time and other resources to figure out what to do with all of the old data.

The concerns and responsibilities surrounding historic files and e-mails have expanded beyond e-discovery advice into proactive information governance policies and procedures. Law firms and business organizations alike tend to keep data storage devices such as backup apes, old CDs, thumb drives, cell phones, and other media etc. well beyond what their compliance requirements or business needs dictate. These so-called "skeletons in the closet" pose a major problem when the organization gets sued or subpoenaed because all that dusty, forgotten data is suddenly potentially discoverable. If a company has thousands of millions of backup tapes, the problem is greatly magnified. By being advised about, and recommending proactive management of legacy data, law firms will be saving themselves and their clients distress and major expense down the road.

It's an easy equation - the less data you have to search through, the more money and time you will save when preserving, reviewing and producing data in e-discovery. Law firm leaders have a responsibility to counsel their clients, about the dangers of legacy data and how to minimize them. We suspect that many lawyers and law firms are simply intimidated, feeling themselves unequal to the task because their level of technical knowledge is not very high.

Working in tandem with IT and consultants, lawyers and law firms can initiate responsible handling of legacy data. Even with respect to smaller law firms, and smaller clients, action steps can be taken to proactively address legacy data concerns. Approaches for this include backup tape remediation, secure data destruction (shredding and melting of data media) and archiving. You also may have to deal with legacy data formats where software needs to be retained just to read the data, but that's a whole different article. This article will share some of the useful tips, resources and

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*The Honorable Joseph B. Campbell American Inn of Court*

in cooperation with the Hon. Leo A. Deegan and the Hon. Merrin E. Slaughter American Inns of Court

Cordially invites you to join us at the

## *Joint Inns of Court Dinner*

Presenting

## *California Supreme Court Justice The Honorable Goodwin Liu,*

Featured Speaker

On

*April 3, 2012*

Cocktails at 5:30 with a No Host Bar

Dinner served promptly at 6:00 p.m.

at

*Hilton Hotel*

285 E. Hospitality Lane

San Bernardino, CA 92408

Please mail RSVP and payment with the bottom portion by **March 20, 2012** to Lisa DeLorme, at: P.O. Box 1093, Redlands, CA 92373. (Checks payable to: JBC Inn of Court)

(Please Print Legibly)

Name(s) of attendee: \_\_\_\_\_

Current Inn Member \$10.00

New Inn Member \$25.00

Sponsorship Table (10 seats) \$50.00

Amount Enclosed: \$ \_\_\_\_\_ (Circle one: JBC DEEGAN SLAGHTER)

Any questions please contact Lisa directly at: 626.302.6859 or email her at: [lisa.delorme@icac.com](mailto:lisa.delorme@icac.com)

## Managing Legacy Data- The Skeletons in the ESI Closet

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strategies available for dealing with legacy data; ones which will help lawyers and law firms of all sizes get their own houses in order as well as aid them in appropriately advising their clients on information governance best practices.

So how do you get your client (or your partners and colleagues) interested in this very important issue? Start by asking them how much they enjoy risk. The answer is usually “not much.” This opens the path to a conversation about how much legacy data actually exists in the organization, and how risk can be mitigated by proper management of it, and the potential consequences of a failure to do so. Having this discourse is probably the single most important step; identification of a serious problem and obtaining buy-in to resolve it.

Legacy data can be paper - files photos, etc. stored locally or at a warehouse (and what is THAT costing?). It can also be old data backup tapes, data on decommissioned servers, piles of hard drives, CDs, flash drives, old cell phones, PDAs, data stored on active systems, all of which may be unused and sitting for years. It also may be data in the possession of third parties (in any of these formats).

Often, the organization does not have a records management/document retention policy (tsk, tsk). If one exists, it is frequently mildewed with age and generally ignored or forgotten. As law firms and their clients upgrade the technology they implement, they often give no thought to the archived data that remains from the previous technology regime. Then, when firms or companies merge or restructure, all of the existing data is thrown together without considering whether to “take out the trash.”

When the risks and potential consequences are explained and understood, you can often get folks to focus. Beyond the possible exorbitant costs incurred by e-discovery when legacy data is rife, there are also unneeded storage costs, the danger that orphaned and unguarded data may be leaked, and the possibility that unorganized and unmanaged data will somehow fall afoul of the very complicated regulations that govern data preservation in the compliance arena.

Is there a cost to suddenly wake up and smell the roses? Sure. If a law firm or one of its clients has mountains of legacy data that has gone unmanaged for years, it will take time and money to sort things out. You’ll have to do an ROI analysis along with the risk analysis to persuade all the stakeholder to sign off on an effort to govern the previously ungoverned data or dispose of it altogether.

Once you’ve gotten a green light, the real work begins as you identify all the reasons that certain data must be kept while the rest can be trashed. That’s a single sentence summarizing a huge effort. You’ve now got policies to write or to update and enforcement mechanisms to put in place. Does the entity have a litigation hold plan? Does it have a team to implement it? For law firms, does the plan comply with every rule or procedure required by any state bar with jurisdiction over the firm?

This whole miserable, time-consuming process is often identified as “legacy data remediation.” For larger organizations, it involves complicated matrixes and sampling techniques beyond the scope of this article. For smaller law firms it might include very time consuming processes and procedures that significant firm leaders will need to be involved in overseeing for months or years. However, there is help available—such as companies and law firms that advise clients on tape remediation/restoration processes and strategies, including the following to name a few:

- LeClair Ryan ([www.leclairryan.com](http://www.leclairryan.com))
- Redgrave LLP (<http://www.redgravellp.com/>)
- Kahn Consulting (<http://www.kahnconsultinginc.com/rim-services-hold-everything-legal-hold-backup-tape-remediation.php>)
- Index Engines (<http://www.indexengines.com>)
- Litigation Logistics ([www.litlogix.com](http://www.litlogix.com))
- Contoural ([www.contoural.com](http://www.contoural.com))

In addition, you can find policy/e-discovery help from the following resources:

- ARMA (<http://www.arma.org/>)
- American Bar Association (<http://www.americanbar.org/>)
- The Sedona Conference (<http://www.thosedonaconference.org/>)

Back Thru the Future (<http://backthruthefuture.com/>) is one of our favorite companies for the secure destruction of data - once you know what you want to get rid of!

We know the folks at Index Engines, which is a company that has an appliance and process for large-scale tape remediation; a patented technology. To quote from their website, “Index Engines technology scans tapes and then searches and extracts specific files and email without the original backup software. This allows you to only deal with relevant files (less than 1% of the tape content) and not the bulk of useless content. Index Engines intelligent tape discovery solution has made tape remediation an achievable project.”

Jim McGann, the vice President of Marketing for Index Engines has written several papers on these topics. The title of one is “Make a Molehill Out of a Mountain” which is precisely the advice we have offered our readers earlier in this article.

He opens that white paper with an imaginary (but very close to the mark) conversation with a data storage manager:

Q. “How many backup tapes do you have?”

A. “I have no idea - probably thousands.”

Q. “Do you have need to keep them?”

A. “No.”

Q. “Why don’t you recycle them?”

A. “Legal won’t let us.”

That is frighteningly like many conversations we have heard where the last line is always “Legal won’t let us.” In smaller law firms “Legal” might be dinosaur or pack rat partners who are either unwilling to modernize by letting go of the past, hesitant to allow anyone to help either them or the firm get organized, or simply too frightened of the unknown to dispose of anything. There’s no question that “Legal” is the major roadblock here. As Jim points out, typically the amount of data that needs to be retained for current or future litigation purposes is less than 1%.

What about the rest? Well, automated tape processing can help a lot. Jim gives this example, “Assume a situation with 10,000 tapes in offsite storage. The first step would be to catalog the tapes to profile the content. Using a tape library, tape headers can be scanned in minutes, only requiring manpower to load the tapes. Once the scan is complete, analyze the catalog and eliminate incremental backups, as well as backups of non-user data servers and blank tapes. This typically reduces the volume by 80%, turning a 10,000 tape job into a 2,000 tape job.”

You see the point - if you use efficient systems to achieve legacy data remediation, you do have to spend significant funds, but

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Savings and risk mitigation are the huge benefits at the end of the process.

So what should your response be when you hear “Legal won’t let us?” We think maybe it ought to be “We’ll see about that.”

*The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology, information security and computer forensics firm based in Fairfax, VA. 703-359-0700 (phone) www.senseient.com.*

## Magistrate Judge Suzanne H. Segal Appointed Chief Magistrate Judge For Central District of California

The United States District Court for the Central District of California announces the appointment of Magistrate Judge Suzanne H. Segal as Chief Magistrate Judge, which became effective January 1, 2012. She succeeds Magistrate Judge Stephen J. Hillman, who served as Chief Magistrate Judge from November 2007 to December 2011. The Chief Magistrate Judge serves a four-year term and provides leadership to the Central District of California’s Magistrate Judges.

Judge Segal was appointed as a Magistrate Judge for the Central District of California on July 31, 2002, and was reappointed in 2010. Prior to her appointment, she served as an Assistant United States Attorney in the Civil Division, and later as Chief of Civil Appeals, of the United States Attorney’s Office for the Central District of California. Prior to serving at the United States Attorney’s Office for the Central District of California. Prior to serving at the United States Attorney’s Office, she practiced civil litigation in Los Angeles, first with Adams, Doque & Hazeltine and later with Dewey Ballantine LLP. Judge Segal received her bachelor of arts degree from Claremont McKenna College and her law degree from Cornell Law School.

The Central District of California has 24 authorized full-time and one part-time Magistrate Judge positions. The duties of Magistrate Judges include presiding over civil cases by consent of the parties and preliminary proceedings in criminal cases; the trial and disposition of misdemeanor cases; conducting discovery hearings, settlement conferences and various other pretrial hearings, settlement conferences and various other pretrial hearings in civil cases; and other matters as may be assigned. Magistrate Judges are appointed for a term of eight years, and can be reappointed to additional terms.

The Magistrate Judge position requires a minimum of five years as a member in good standing of the bar of the highest court of a state, and at least five years of active practice of law. The rigorous selection process, which is governed by statute and by regulations adopted by the Judicial Conference of the United States, includes detailed background reviews and interviews before a Merit Selection Panel consisting of attorneys and non-attorney public representatives. The panel candidates to the District Court, where interviews are conducted by the District Court’s Magistrate Judges Committee. The top candidates are then referred to the full Court for review, selection, and appointment.

The Central District of California is comprised of the counties of Los Angeles, Orange, Riverside, San Bernardino, Ventura, Santa Barbara, and San Luis Obispo, and serves approximately 18.5 million people - roughly half the population of the state of California. In 2011, more than 16,000 cases were filed in the District Court

**Terry Nafisi**  
District Court Executive

## How the Cloud Can Help You Run Your Business Better

*Microsoft Staff  
February 2012*

Today, increasing numbers of small and medium-sized business (SMBs) are turning to the cloud for their technology needs. If you haven’t already heard of “the cloud,” cloud computing enables SMBs to access software and services via the Internet, rather than through local hard drives and servers. This method of computing has made it easier and more affordable for SMBs to use enterprise-grade technology solutions provided by third-party providers rather than invest in expensive technology, more personnel and system upgrades. These major cost savings explain why so many businesses have exchanged expensive storage systems and servers for the convenience and power of the cloud.

Wondering what the cloud can do for your business? Here are some key benefits of cloud computing:

1. **Mobility** - Because employees can access cloud-based programs and software from anywhere they have an Internet connection and from nearly any device, cloud computing enables SMBs to mobilize workers and provide them with all the tools they need to do their jobs, whether they’re in or out of the office. Moreover, cloud computing allows for greater collaboration between remote and on-site employees, making audio, video and Web conferences, as well as document sharing and instant messaging programs, easily accessible.
2. **Increased security and reliability** - When you use a cloud-computing solution, your business data resides in a secure, off-site location and will be backed up frequently or automatically and sometimes even geo-redundantly (in multiple locations). These data-backup features provide greater peace of mind as well as business continuity should disaster or unexpected disruptions to your business occur. Furthermore, you’ll likely experience greater reliability when using a cloud service, especially if your business has limited IT resources, since cloud service providers have experienced IT staff and better access to the latest technologies.
3. **Lower costs** - If you’re looking to cut costs (and what business decision-maker isn’t?), cloud-based services can provide many avenues to savings. Areas in which you’ll likely save by using cloud-based services include server maintenance, power and cooling, IT personnel, software licensing and upgrade expenses.
4. **Scalability** - Cloud-based services operate on a subscription-based payment model, a feature that allows for greater flexibility when it comes to your technology usage. You pay only for what you need, when you need it. For example, if your employee base fluctuates throughout the year or your storage demands vary at times, you can scale your services up or down depending on your business’s needs.

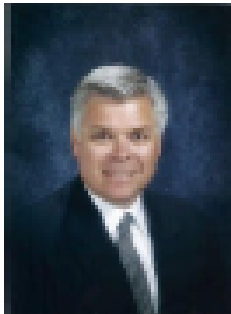
If reading through these benefits sparks your interest in determining how your business could be leveraging the cloud, keep a few things in mind. First, not all cloud services providers are alike,

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# Western San Bernardino County Bar Association And IVAMS

*PRESENT an MCLE LUNCHEON on*

## “DEAL OR NO DEAL



Keynote Speaker:  
Ron White, Esq.

The Impact of Game Theory on Claims, Negotiations and Dispute Resolution helps lawyers improve their abilities to predict the outcome of their cases and resolve them efficiently. Topics will include the effective legal analysis of claims, the economic analysis of claims through game theory and decision trees, and the recognition of behavioral barriers to the efficient resolution of claims. This will be an interactive presentation involving audience participation, movie/TV clips, and power point slides.

### PLEASE SELECT YOUR LUNCH CHOICE

- Jack's Classic Burger
- Chicken Breast Sandwich
- Cobb Salad

*Above sandwiches served with choice of coleslaw, French fries or Omaha Chips. Salad served with garlic bread.  
All lunches served with choice of non-alcoholic beverage.*

—► 1 hour MCLE credit ◀—

**Thursday — February 16, 2012**

**12:00 Noon to 1:30 p.m.**

at

**Omaha Jack's**

11837 Foothill Blvd., Rancho Cucamonga, CA

(909) 477-4377

**COST: \$25.00/Member — \$30.00/Non-Member**

**\*\*\*\*\*RSVP REQUIRED! CALL (909) 483-0548\*\*\*\*\***

**NAME:** \_\_\_\_\_ **Phone No.:** \_\_\_\_\_

—NOTE: A \$25.00 fee will be charged for failure to show or cancel reservation within 24 hours.—

*The WSBBCBA certifies that this activity has been approved for 1 hour of MCLE credit by the State Bar of California.*

**WESTERN SAN BERNARDINO COUNTY BAR ASSOCIATION**

10630 Town Center Drive • Suite 119 • Rancho Cucamonga, CA 91730 • (909) 483-0548 — Fax: (909) 483-0553

Website: [www.wsbcbca.org](http://www.wsbcbca.org)

## How the Cloud Can Help You Run Your Business Better

*Continued from page 6*

so do your homework to ensure you select one with a strong track record when it comes to security and reliability. Learn what your provider's disaster recovery capabilities are and what its service level agreements include, as well as how the provider will protect your data from the latest security threats. Also, make sure your move to the cloud produces short - and long-term savings; you may find that it makes financial sense to move some programs to the cloud but also to leave some on the premises.

*For more information on how SMBs can capitalize on the cloud, download "Running Your Business in the Cloud [2] [pdf]," a free guide to cloud computing.*

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## Smartphones for Lawyers: Selecting, Managing and Securing Them

By Sharon D. Nelson, Eq., and John W. Simek  
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Unless you've been trying to emulate a hobbit and have been living under a rock these last few months, we're fairly certain that you have heard about the consumerization of smartphones across the country. Perhaps you've heard the term, but don't really know what it means. Essentially, it is the insistence by employees that they be allowed to bring their own (consumer) smartphones into the workplace environment and access the corporate data (e.g. e-mail, client files, billing system, etc.). The Bring Your Own Device (BYOD) or Bring Your Own Technology (BYOT) movement is putting severe pressure on all forms of business, including law firms. Before we get to the issue of dealing with the BYOD and BYOT movement, let's speak to the selection of smartphones.

The first decision point is whether you will allow employees to use their own devices or if you are going to distribute firm owned devices. Frankly, we are not fans of BYOD or BYOT and prefer that the firm provide the mobile devices directly to the employees. It makes it much easier to set the policies and controls when the firm owns the asset. There is little argument about what the firm wants to do with devices that they purchased, but you may be in for heated battles if you try to control an employee-owned device.

If you allow BYOD or BYOT, then your decision process is done as far as equipment goes. The employee has already made up their mind what device to purchase. If the firm will select the mobile device (smartphone, tablet, netbook, etc.) then the first place to start is with a wireless carrier. Define where you intend to use the devices and pick the carrier that has the most reliable service for those areas. Once you've picked the carrier, you can then move to the devices that they have available. Perhaps once you've picked the carrier, you can then move to the devices that they have available. Perhaps you're absolutely sold on touch screen technology. The carrier will have certain models that they support, thereby narrowing the field. You may be looking for a specific feature, such as memory support, thereby narrowing the field. You may be looking for a specific feature, such as memory (storage) expansion. That rules out the iPhone since it's a fixed memory device. No matter what you decide, choosing the carrier first will necessarily restrict

the devices that are available for your selection.

When it comes to smartphones, security is a very important element, especially for attorneys since they have an obligation to protect their client's information. This is where things get a little muddy. Some say that the BlackBerry is the most secure smartphone because of the internet encryption on the phone and in the communication. Partially true, but you can also encrypt an Android phone. In fact the DoD has recently approved a specific version of the Android OS for use with non-classified information. This is hardly surprising with the explosion of smartphones running the Android OS. Also, don't forget to encrypt the contents of the expansion card if available. You may need some third-party software to get certain functions so don't just look at the base phone.

Besides the features, there are some basic security measures that you should take with any smartphone no matter what OS you use.

- Encrypt the data on the phone and expansion card
- Maintain physical control of the phone - in other words, don't lose it!
- Follow any security recommendations from the carrier and phone manufacturer
- Program a lock code (e.g. PIN, passphrase or password)
- Set the phone to automatically lock after a period of inactivity
- Limit the amount of confidential data stored on the phone
- Turn off any interfaces that are not used (e.g. Bluetooth, WiFi)
- Have some method to backup your data
- Only use secure (e.g. https) connection for web browsing
- Configure the ability to remotely wipe the phone if it is lost (may require third-party application)
- Install security applications from trusted sources (iTunes is not immune to malware apps and be particularly cautious in the Android store)
- Avoid using unknown WiFi clouds

Securing the data on your smartphone should be your primary consideration. Yes, the iPhone is encrypted, but it is a fairly weak encryption scheme. The latest version of the Android OS (Ice Cream Sandwich) now includes encryption. The data on a BlackBerry is encrypted by default. It really doesn't matter which OS you use since some encryption is better than none. For gosh sakes, don't use a phone that is not encrypted and doesn't have any third-party application to make it secure. In addition to the encryption, install a security application to the phone. This will help protect against such things as malware and those bad URLs. Companies such as Symantec, Trend Micro, Sophos, etc. have mobile security products for different operating systems. Some manufacturers claim to have security products for the iPhone. They perform such functions as malware scans (after you've already downloaded the malware), device location, remote wipe, identifying unsecure WiFi, data backup, etc. Unfortunately, there really aren't any adequate security products for the iPhone. Apple doesn't allow any third-party application access to the lower levels of the OS, where effective security applications may reside.

So let's get back to the BYOT and BYOD concept. How do you manage the devices that you don't own whose owners want to access data on your network? For that matter, how do you manage devices that you do own? The simple solution is to use a Mobile Device Manager (MDM). If you have ever worked with a BlackBerry Enterprise Server (BES), then you've dealt with a MDM. The MDM sits between your infrastructure and the mobile device. It controls the mobile device (including things like the iPad) and provides additional security features. The MDM function can be installed within your network or can be provided as a hosted solution. The hosted option may be a good choice for a lot of smaller firms since they won't have to potentially invest in hardware or licensing

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## Smartphones for Lawyers: Selecting, Managing and Securing Them

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costs. Be sure to check with your cellular carrier to see if they offer hosted MDM solutions, which may be bundled with your cellular service.

The MDM provides a lot of control for your mobile devices. A base level function is to identify what devices are connected to your network. You can't control it if you don't know it exists. Since the MDM operates as a "gateway" to the data, you have vision into each device trying to access the information. The MDM also enforces policies to the device. This could be such things as the requirement to have a password, PIN, etc. and the complexity (e.g. 12 or more characters) of the lock code. The policy can also enforce encryption of the device and any inserted expansion cards. You can also disable certain features of the device via the MDM. As an example, perhaps you don't want any Bluetooth devices to be used.

Bluetooth can be disabled for all phones or perhaps just one. You have the ability to locate and remotely wipe the device. Some MDMs will create a "sandbox" area on the smartphone and the remote wipe will only impact that area. This feature may be useful if you are allowing BYOD. Wiping the "sandbox" would leave the entire user's personal information intact while clearing out the firm data. Another feature is to allow only the installation of approved applications and prevent all others. Be prepared to get some push back if you implement application control, especially if it's the employee's smartphone.

Two of the highly regarded MDM solutions are provided by Good Technology ([www.good.com](http://www.good.com)) and Mobil Iron ([www.mobileiron.com](http://www.mobileiron.com)). They can manage smartphones running a variety of operating systems at the same time. This means you could have iPhone, Android, Windows Mobile and Symbian smartphones throughout your firm and still maintain control. Obviously, it would be better to standardize on one phone OS, but with many MDMs you have options.

Research in Motion's MDM (RIM) ([www.rim.com](http://www.rim.com)) has been long considered to be the gold standard in mobile device management and security. However, its market share has been rapidly declining and some analysts have questioned its long term survival. In May of 2011, RIM purchased ubitex technology to support management of iPhones and Android phones through BlackBerry Enterprise Server. The product is named BlackBerry Mobile Fusion and the scheduled release is March 2012. It will support BlackBerry, Android and iOS devices; however, it will only support the native abilities of the device for Android and iOS devices. We'll have to see if their new MDM will help keep RIM afloat, but we have our doubts.

No matter which platform or smartphone you decide to support. A key consideration is to maintain the security of the information that is stored on those nifty little devices. Remember, besides playing games, smartphones do hold confidential client information.

The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology, information security and computer forensics firm based in Fairfax, VA. 703-357-0700 (phone)  
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