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ROAD WARRIOR

CONNECTING SAFELY ON THE ROAD

By Jeffrey Allen

Because this issue is chock full of a lot of great information (including a very useful Tech Gift Guide that I highly recommend to you), I have less than the normal amount of space for this column. I will, therefore, handle a very important topic to the Road Warrior using fewer words.

Those who have followed this column or heard me speak know that I have serious concerns about using public WiFi and recommend that you carry your own cellular hot spot. Nothing in this column changes that recommendation. You will find it very easy to use your own hot spot. The process (not overly simplified):

(1) Buy the hot spot; (2) buy the access; (3) set up the hot spot (depending on how you acquired the device and the access, that could simply mean turning it on—tech support for most providers will hold your hand through any other setup requirements); (4) connect to the hot spot’s WiFi network; and (5) leave the hot spot on and carry it with you to provide Internet access wherever the hot spot gets a signal. (If you carry a power bank to charge your phone or other devices, it can also recharge the hot spot.)

Free public WiFi has grown readily available throughout the world. More people find it increasingly hard to resist the lure of free WiFi, even if it runs more slowly than one might like. I will admit that it has occasionally even tempted me, particularly if I cannot get a good signal for my cellular hot spot. If you use public WiFi, you should create or acquire access to a VPN (Virtual Private Network) to insulate you against exposure to the bad guys who want to get into your devices to steal your information or cause damage. A VPN lets users send and receive data securely across a public network or a shared network; it encrypts the data to prepare it for its journey and decrypts it when it arrives.

Setting up your own VPN requires no great deal of effort, but it probably requires more than most of you will want to do. (If you want to do it, Google “How do I set up a VPN?” You will find several sets of instructions respecting different hardware and operating systems. Pick the one that matches your situation.)

If you do not want to go to the trouble of building your own VPN, you can acquire access to VPNs offered as a service, usually on a subscription basis. Discover as much as you can about a service before you subscribe to it. A recent article on CNET (tinyurl.com/ybvajw2z) identifies what its author considers the best VPN options and explains why. I have found CNET’s fairly reliable source of information over the years. The VPN systems identified in the article are:

- NordVPN ($3.99/mo.; $95.75/2 yrs.)
- StrongVPN ($10/mo.; $69.99/yr.)
- IPVanish VPN ($7.50/mo.; $58.49/yr.)
- PureVPN ($10.95/mo.; $69/3 yrs.)
- ExpressVPN ($12.95/mo.; $99.95/15 mos.)

Another fairly useful source of information, PC Magazine, created a guide to setting up and working with a VPN: tinyurl.com/yad3e2b6. I recommend that article to you. The article identifies its top four subscription VPN choices, picking three of those also in CNET’s list: NordVPN, Private Internet Access, and IPVanish VPN. PC Magazine’s fourth choice is TunnelBear VPN ($9.99/mo.; $59.99/yr; $99.99/2 yrs.).

VPNs often have another feature you may find useful occasionally: They can route your information to make it appear to come from a different location. You may find this handy if you want people to think you are somewhere else (for whatever reason). For example, you can make it look like your traffic comes from the United States while you vacation in Europe. Not every VPN does this, but many provide this facility.

When you look for a VPN, I strongly recommend you find one that works with all your devices. It makes it easier (and less expensive) to protect yourself and your data if you have but one provider.

Nothing is ever perfect. Sometimes a VPN will slow your traffic or interfere with your ability to connect to a public network. Nevertheless, remember that having a VPN available does no good if you do not use it. Make it a point to use it whenever you go online, especially when you use a public network.
**GPSolo Periodicals Survey**

Go to ambar.org/gpsolosurvey to take our brief online survey. Tell us about the types of articles you would like to see (or see more of) in GPSolo magazine and the GPSolo eReport, and which format you prefer: Print? Online? Download? All of the above? Help us create the periodicals that best serve you, our readers.

**Midyear Meeting Programs, Friday, January 25, 2019**

GPSolo has some exciting events scheduled during the ABA 2019 Midyear Meeting at Caesars Palace, Las Vegas, Nevada. There is no registration fee to attend the Midyear Meeting; however, a registration fee may be required to attend certain events. Additionally, you must register through the ABA to secure a hotel room at the ABA rate. Register now at ambar.org/midyear.

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- **Mastering Voir Dire and Jury Selection: Gain an Edge in Questioning and Selecting Your Jury**
  9:00 AM – 10:00 AM
  Jeffrey T. Frederick, Ph.D.

- **Images with Impact: Design and Use of Winning Trial Visuals**
  10:15 AM – 11:15 AM
  Kerri L. Ruttenberg

- **Advising the Small Business: Forms and Advice for the Legal Practitioner, Third Edition**
  1:45 PM – 2:45 PM
  Jean L. Batman

**The Business Guide to Law: Creating and Operating a Successful Law Firm**

3:00 PM – 4:00 PM
Kerry M. Lavelle

**Leveraging the ABA Author Experience and Luncheon**

9:00 AM – 4:00 PM
Presented with ABA Publishing, this fun and interactive non-CLE program is designed for ABA published and prospective authors who want to distinguish their books through marketing. These resources will help you succeed in your career as an author. You will learn:

- Guidelines to leverage your author experience to enhance your practice.
- How to effectively promote yourself as an author.
- Marketing services offered by the ABA for its authors.
- Tips to identify other marketing resources to implement.

**Luncheon Keynote Speaker: Kristi Staab, MBA, Chief Rock Star, Executive Coach**

Kristi Staab is an international speaker, author, trainer, and consultant who has been coaching and developing individuals, teams, and organizations to excellence in the areas of leadership, sales, and success for nearly 25 years, helping them be more, do more, and achieve more.

**Keith E. Nelson Memorial Military Law Luncheon**

12:00 PM – 1:30 PM
This bi-annual event honoring the life and legacy of Major General Keith E. Nelson (USAF, Retired), the ninth judge advocate general, has become a forum for presentations by distinguished speakers on military law subjects. All military and civilian attorneys are invited, and it is not necessary to be an ABA member to participate.

**Keynote Speaker: Brigadier General Malinda E. Dunn, USA (Ret.), Executive Director, American Inns of Court Foundation, Alexandria, Virginia**

**Women’s Initiative Network (WIN) Present and Powerful Speaker Series Wine and Cheese Reception: FREE**

4:00 PM – 5:30 PM
Presented with the ABA Law Practice Division

**Keynote Speaker: Marianne Williamson**

Marianne Williamson is an internationally acclaimed lecturer, activist, and bestselling author. Seven of her 12 published books have been New York Times bestsellers, including *A Return to Love*, considered a must-read for all spiritual seekers. Her newest book, *A Politics of Love: Handbook for a New American Revolution*, will be published in 2019. Marianne has been a popular guest on television programs such as *The Oprah Winfrey Show*, *Larry King Live*, *Good Morning America*, and *Real Time with Bill Maher*. In 1989 she founded Project Angel Food, a meals-on-wheels program that serves homebound people with AIDS in the Los Angeles area. To date, Project Angel Food has served more than 11 million meals. Marianne also co-founded the Peace Alliance.

Get a sneak preview of this session! Marianne recorded a podcast as a preview of her session. Go to ambar.org/gpsolo to listen to it.

**Getting a Head Start on Your New Year**

Marianne Williamson is an internationally acclaimed author and Publisher’s Bestseller award-winner. In *A Return to Love,* she provides a practical and powerful new approach to love, through the process of spiritual transformation. In this inspiring and powerful presentation, she will share insights and tools you can use to enhance your relationships, become more effective in your personal and professional lives, and bring your highest aspirations to life.

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THE MORE THINGS CHANGE, THE MORE THEY STAY THE SAME

By Melanie Bragg

This issue of the award-winning GPSolo magazine is all about “The Law and the Internet.” We all know that the Internet drastically changed the way we practice law, and since the advent of e-mail all the processes of communication have undergone radical transformation. We went from the old days of typing a letter on carbon paper, putting it into the mail, and getting a response, to finally having mag cards to store things, to the advent of the fax machine in the 1980s, to the Blackberry pager that e-mailed. Soon there was e-discovery and e-filing, and each day things continue to change. In this issue you will learn about all the aspects of the law relating to the Internet that are undergoing transformation. You will learn about our ethical duty to review, study, and implement the new rules about the new privacy protections, and about ways to protect our clients’ data. The content of this issue is a treasure trove of information.

As I returned from our joint meeting with the American Bar Association Young Lawyers Division (YLD) this past weekend, I was happy to get my first GPSolo meeting as Chair under my belt. Because the Division’s 2018–2019 Bar Year theme, Tradition Meets Innovation, was also the theme of the joint meeting, we included content that fit within the parameters of innovation and tradition. For me, the meeting was very important from a personal standpoint. I started my work in the American Bar Association at the YLD. I went to my first YLD meeting in 1986 in Montreal as a representative from the Houston Young Lawyers Association and was blown away by the high level of activity. I was very excited to be a part of something bigger than myself.

I promised in one of my first columns to tell you a little bit about how I came to be Chair of this Division. I think many of us who become involved in bar work and become “bar association junkies” are social people who like to do good things for others. Public service just comes naturally to most of us who do this work for a sustained period of time. When I started law school, I landed the position of Law Student Division representative for the State Bar of Texas. I decided to do a program at the State Bar of Texas annual meeting and called it something like “Placement Opportunities for Law Students,” and I invited the President of the State Bar of Texas, Terry Scarborough. My higher-ups were incredulous. But guess what? He came! The rest was history. That law school program became the genesis of what was for many years the biggest placement program for law students, the Texas Job Fair.

When I transferred to the University of Houston Law Center from South Texas College of Law in 1980, I was asked to be the Law Student Director on the Texas Young Lawyers Association (TYLA) Board of Directors. I was one of the only women in the group, and that experience led to my involvement...
in the Houston Young Lawyers Association (HYLA), where I became the first woman President in 1990–1991. At the same time, I was active on the Juvenile Justice Committee of the YLD and doing national programs for children. On the TYLA board I did a national teen drunk-driving video that was distributed to other states. During the 1980s I was very active in bar association work on the local (HYLA), state (TYLA), and national (ABA/YLD) levels. It was a joyful and busy time of my life, and I was able to lead many initiatives that are near and dear to my heart.

When I “aged out” of the YLD, I got on the YLD Fellows Board, where I created the Fellows newsletter, the Fellows Fodder. It was a wonderful experience, and I am still on that board today. Because some of my friends from the YLD—including William T. Hogan III and Dwight L. Smith—were involved in GPSolo, I landed a one-year term on the GPSolo Long Range Planning Committee the year Bill Hogan was Chair. I attended the Book Publications Board meeting and found my home in the Division (it was a Section then). For the next several years I worked on books and found my place on Council, then chaired the Book Publications Board and began the climb on the ladder to Chair of the Division.

My years as a young lawyer were very special to me, and it was there that I learned many of my leadership skills I use today—organization, public speaking, and networking, to name a few. The old photo in this article is from the January/February 1988 Houston Lawyer magazine; it was taken at an ABA event I attended during my work on the HYLA Courthouse Visitation Committee. My years leading up to becoming your Chair have also been very fulfilling, and I think they have enhanced my skills as a lawyer, businesswoman, and published author.

For these reasons, having a joint meeting with the YLD and partnering with Tommy D. Preston Jr., the YLD Chair, has been a big highlight of my year as GPSolo Chair so far. We got to do so many new and innovative things, such as having Jack Canfield, the co-creator of Chicken Soup for the Soul series and author of The Success Principles, with us for our Difference Makers Awards Luncheon and also for a program on “Effortless Marketing: Putting Your Unique Qualities to Work.” We had an informational and heartwarming event at the Mother Emanuel AME Church about the shooting of nine people there in 2015. And our Innovative Trial CLE sessions led by Budget Director Alan O. Olson and Matthew A. Moeller were a big hit. And special thanks go to event sponsor Thomson Reuters for all their successful programs.

It was a complete “full circle” of my career, made even more special because the person who appointed me as Director for her year as Chair of the YLD is Judy Perry Martinez, President-Elect of the ABA. The fact that Judy was at the meeting and a part of the panel “Introduction to Legal Innovation” with the founder of Avvo, Mark Britton, as the opening plenary session made the whole experience even more precious to me. A further surprise was seeing Bill and Sue Hogan with their daughter, Kelly, who had just graduated from law school. Bill said he wanted to come to one of my meetings. My first appointment was under William C. Hubbard as Vice Chair of Juvenile Justice when Bill Hogan was Chair. William Hubbard was on the Mother Emanuel panel. And having Wilson A. Schooley, an old YLD friend and active member of GPSolo and current Chair of the ABA Civil Rights and Social Justice Section, at the meeting just rounded it all out. Here we are 30 years later and still friends, still doing things for the law.

When I saw that old photo, then thought of all the new memories we made this past week with the YLD, I realized that even with all of the changes, new developments, and advances in technology and process in our profession, things really are still the same. We still like to get together and talk about law. We still like to do charity projects for the public we serve. And we still help each other, support each other, and enjoy the great advantages we have serving as lawyers in the ABA. And I am still that young lawyer at heart who loves to share my knowledge and ideas with lawyers and the public, who loves to learn and grow, and even though I am much older now, the newness of the law and the practice are still as exciting to me as they have ever been.

The more things change, the more they stay the same.

Enjoy this issue of GPSolo magazine and be sure to join us for our exciting upcoming meetings. At the 2019 ABA Midyear Meeting, January 24 to 27 in Las Vegas, Nevada, our program “Innovate Your Practice for Success” will feature a full day of free CLE by our amazing published authors. At the 2019 Litigation & GPSolo CLE Conference, May 1 to 4 in New York City, we are teaming up with the ABA Section of Litigation for a big joint meeting with invaluable programming. I hope to see you there!
SECURING CLIENT DATA AND YOUR LAW FIRM’S REPUTATION

By Paul Domnick
It’s fundamental to the practice of law: Clients must be able to trust their lawyers. If your clients don’t trust you, they’ll withhold critical information, evade your questions, and keep their goals and concerns so close to the vest that your advice and counsel will be misplaced and ineffective—and that’s if they contact you in the first place.

Part of this trust is a reliance on your record-keeping practices. Your clients depend on you to keep good records and safeguard their confidential information—information that they may not even have themselves. If you don’t protect your clients’ sensitive information against hackers and unauthorized access, the consequences in today’s wired world can be career ending. Leaked client information damages the client, of course, but it also tarnishes the reputation of the attorney or law firm that allowed such a breach. Those effects can spread rapidly, infecting your relationship with other clients. Ultimately, the lack of trust leads to client dissatisfaction, defection, and poor reviews, diminishing new client referrals.

To make matters worse, lawyers and law firms are attractive targets for hackers, be they individual, affiliated with an organized criminal enterprise, or part of a malicious state-funded organization. Large law firms in particular are known to have huge concentrations of confidential, potentially valuable information. Even small law firms and sole practitioners are seen as worthwhile targets by a different group of criminals; there’s a (fairly accurate) perception that they will pay a ransom to protect their reputation.

Ransomware is a risk that doesn’t get a lot of discussion in the legal profession. Unfortunately, the tools for creating ransomware attacks are easily available and require only moderate technical ability to launch against thousands of targets. What can you do if you’re hit with a ransomware attack—and how can you minimize the chances that these security risks will damage your reputation?

RANSOMWARE BASICS

The concept behind ransomware is fairly simple. Malicious software is downloaded to your computer(s). Your files are encrypted and held for ransom until a fee is paid, often via a cryptocurrency such as bitcoin. The two most common forms of ransomware delivery are through email and websites, though there have been some notable exceptions. For example, the WannaCry ransomware attack exploited a flaw in the protocol used to access network drives.

In the past year, Petya and WannaCry have gotten a lot of press, but these are only two of many forms of ransomware. In fact, ransomware has become the most common type of malicious external attack. This is partly because criminals can now buy kits that let them quickly create new ransomware.

Unsurprisingly, prevention is better than a cure—and with good data practices, a ransomware attack will be more of an inconvenient headache than a crisis. But even with sound policies, good storage of client information, and a team that’s educated about the risks around malware and phishing, mistakes can happen.

If you get hacked and one (or more) of your computers comes under the control of ransomware, there are a few things you can do.

RESPONDING TO A RANSOMWARE ATTACK

Limit the spread. Take the infected machine(s) off your network or WiFi and disconnect it from any other machines or printers. Use a smartphone to take a picture of the ransom screen and then power off the machine while you get ready to recover what data you can. Many forms of ransomware try to spread themselves to other computers on your network. Once the machine is isolated, you can try to recover data, but first protect the rest of your system.

Remove the ransomware. If you’re not planning to pay the ransom, use whichever antivirus or anti-malware software you have available to clean the ransomware from the infected machine. Note that removing the ransomware will not recover or decrypt your files. If you can’t remove the ransomware, or if you’ve tried but you aren’t sure it is entirely gone, now may be the time to treat yourself to a new computer and think about responsible destruction of the old one.

Restore your files. Now you reach the most critical point in any ransomware attack. If you’ve been creating frequent, reliable backups of your data, this incident is going to become an amusing dinnertime anecdote. Restore your backed-up files onto the cleaned or new computer and get back to work. Yes, you will have lost all the files you created between the time of the last backup and the ransomware attack, but, hopefully, that’s not more than a day’s work. That’s a small price to pay for putting this behind you. Before you move on entirely, review how the ransomware managed to get onto your computer(s) and decide whether you need to improve your defenses. I offer some prevention tips below.

BUT MY DATA ISN’T BACKED UP!

If you don’t have good backups, you have some serious work to do and an uncertain outcome at best. You’re about to step into some slightly uncomfortable territory to see whether you can recover your files. You’ll be visiting websites that you’re not familiar with, reading about ransomware, and downloading unfamiliar tools that might help you to deal with your attack. If you don’t have an IT team, or if your staff hasn’t successfully dealt with ransomware before, now might be a good time to bring in an experienced IT expert you can trust.

First, some good news: Ransomware creators are often lazy (they’re criminals out to make a quick buck, after all). They may have used encryption software to create a new encrypted file and then deleted the original file. In these cases, there’s a chance that software designed to recover deleted files will be able to not just restore but also decrypt at least a portion of your lost files. You probably won’t get them all back because some of them will have been overwritten by newer files, including the files encrypted by the ransomware. If you don’t already have a favorite program for recovering files, you may need to download software. This means you’ll need to undertake the messy task of figuring out for yourself what files are missing.
How else can you decrypt your files? Bear in mind that if you pay the ransom, the ransomware should be able to restore your files. This means that most ransomware has the built-in ability to decrypt the files it encrypts. On the other hand, some forms of ransomware lack a decryption function. Those perpetrators decided that they didn’t require that feature—they’re just planning to take your money and not restore your files.

Before you pay the ransom, see whether there are tools available to decrypt whatever type of ransomware you’re dealing with. The No More Ransom Project (nomoreransom.org) is a good source of information for this, but there are no guarantees. Their very candid disclaimers explain:

- **Bad news:** Unfortunately, in many cases, once the ransomware has been released into your device, there is little you can do unless you have a backup or security software in place.
- **Good news:** Nevertheless, it is sometimes possible to help infected users to regain access to their encrypted files or locked systems without having to pay. We have created a repository of keys and applications that can decrypt data locked by different types of ransomware.

The last time I looked, the No More Ransom Project had many decryptors listed on its website, but it didn’t suggest any solutions for WannaCry or Petya attacks.

At this point, you might be realizing that your files are gone and the only way to recover them—or to at least try—is to pay the ransom. That is your choice, but one reason that ransomware has become so common is that it makes money for criminals. Regardless of whether you pay, I would always recommend that you file a police report. You have been the victim of a crime.

Following simple cyber-security advice can help you to avoid becoming a victim of ransomware.

You’re probably wishing you’d been better prepared! Fortunately, you can do several things to minimize your risks.

**BEST PRACTICES TO REDUCE YOUR RISK OF A RANSOMWARE PROBLEM**

Take these three straightforward steps right now to minimize the impact of ransomware on your practice.

1. **Back up your data.** As I’ve already noted, ransomware can be a minor hassle or a major setback. The key difference is the quality and frequency of your backups. Make sure you have comprehensive, frequent backups of all your machines. Anything that looks like a file or folder on any computer or networked device is a potential ransomware target. Network storage or backup disks attached to your computer likely won’t help. You’ll get more peace of mind from cloud backup services or centralized backup servers that need human intervention to recover files. For that matter, backup tapes in a shoebox will work, too—as long as you’re diligent about making those backups. Remember that you’re likely to lose everything since your last backup if you are hit with ransomware, so back up your data as often as you can.

2. **Educate your team.** The easiest way to prevent attacks is to educate everyone in your organization about phishing and other common ways that malware and ransomware can infiltrate your systems.

3. **Keep your software up-to-date.** Frequently scheduled scans and automatic updates of all your software, including security software, will ward off many ransomware attacks (not to mention viruses and other threats).

**AN OUNCE OF PREVENTION: SAFELY STORING CLIENT DATA**

Of course, ransomware isn’t the only threat. How else can you ensure that your clients’ data is protected while it’s in your custody?

Any best practice relating to storage of client data will recommend that you understand your files and data and have a documented policy, supported by reliable practices, governing where data is stored. The two golden rules about this kind of data-storage policy are:

1. **Say what you do and then do what you say,** and
2. **Ask yourself whether what you are proposing is reasonable given the type of practice you have and the expectations of your clients.**

Odds are that whatever you do now as a responsible legal professional already meets the needs of your clients. Still, validating your practices and documenting your policy serves as a good health check. While you’re at it, here are a few additional thoughts to consider.

Matter- or case-centric filing is a good way to segregate data and prevent inadvertent leakage across client boundaries. A decade ago, the obvious way to deliver this separation would be to have a single central document management system. If you already have that, it is probably a great asset to leverage.
However, many law firms and practitioners, due to both client and attorney pressures, now work remotely on mobile devices. This means sharing files through Dropbox, Box, Google Drive, OneDrive, or a similar service, which is putting pressure on the central repository model. If you adopt a cloud storage approach, you need to consider how you protect client data in this more complex environment.

The specific route you choose will depend on both your clients and the areas of law in which you practice. I’ve seen and experienced solutions across the spectrum, from those that completely forbid remote working and file sharing, often due to client requirements, to systems that embrace multiple repositories and educate people on how to provide reasonable protections.

**KEEPING PEOPLE AND TECHNOLOGY IN SYNC**

When talking about data security, it’s become common to say that the weakest link is people. This is still true, but what it means continues to change. Only a few years ago, it meant that people were still unaware of the risks. Now, with the major attacks and breaches that have occurred, we’ve reached a point where most people are aware of what can go wrong, but they’re less aware of their role in preventing problems.

In a practical sense, this means that people can probably be counted on to think about security risks in what they are doing, with two caveats. First, they must have sufficient time to do so, and second, the IT systems in use shouldn’t get in the way of what they’re trying to achieve. Both points are critical. If you have trustworthy staff and you make it easy for them to do the right thing, they will! In addition, when people have the right tools to produce their best work, they will have more time to ensure that it’s protected and more of a stake in making sure that they do.

Of course, you need an up-to-date, well-run security infrastructure, and you need to set up the touchpoints between those systems and your trusted professionals to foster understanding and adoption. Security systems are too often configured as barriers that prevent desirable activity, with some valuable business uses characterized as “edge cases.” Exception processes are put in place to deal with those edge cases, but often it’s easier to execute a work-around than it is to ask for an exception. This sets a pattern for how your staff sees the security constraints. Don’t give them the easy excuse that something had to be done to meet the client’s needs or deadline; set up your systems to be useful tools, not impediments.

Speaking of people, you need to consider who has access to stored information. Do you go with a “lockdown” or “need-to-know” presumption where you grant access only as needed? Conversely, are you open to an optimistic view of how data is valuable in your firm? You may decide that your lawyers and their support staff need wide access to almost everything to be maximally productive. In this case, you would only reduce access to files where that reduced access is mandatory.

The same questions arise when sharing documents outside the firm. Do you need tools to protect the documents being sent or received, or is it okay simply to attach files to an e-mail? How do you educate your people to make smart choices, and how do you give them technology that makes it easy for them to do the right thing? These choices have to be yours and have to support the way you want to serve your clients.

Blockchain technologies could be a way of improving security around sharing information, but, despite the hype, there is still a long way to go before attorney-friendly document-centric use cases are commonplace. Right now, it’s hard for non-technical users to truly assess the risks associated with different blockchain implementations. In theory they’re secure, but any specific implementation may be flawed. Also, truly distributed blockchain services have a high overhead in securing and encrypting large amounts of data, such as large and frequently modified documents. It’s likely that initial uses of this technology will focus on the end of a document life cycle, such as sharing and signing final versions.

**A FINAL NOTE**

Needless to say, technology changes rapidly, and as it does, we’re increasingly blurring the lines between work and personal life. Nothing emphasizes this more than the rise of smartphones and mobile devices in general. Clients and attorneys expect to be able to use these amazing tools to help them manage their busy schedules and tight deadlines—but none of the freedom implied by their use should diminish clients’ expectations that their information is safe in the hands of their attorneys.

Before closing, it seems appropriate to point out that the ABA has thought about these topics and settled on some generic rules. The comments to Rule 1.1 of the ABA Model Rule of Professional Conduct were modified in 2012 to confirm that an attorney’s duty of competence requires keeping “abreast of changes in the law and its practice,” including knowing “the benefits and risks associated with relevant technology.” Rule 1.6(c) imposes on attorneys the obligation to take reasonable steps to prevent unauthorized disclosure or access to client information. These rules underscore the importance of security measures that diligent attorneys and law firms have already undertaken.

Your practice may be a target, but if you follow these best practices to avoid risks and minimize damage, you can preserve the trust that your clients have placed in you.

Paul Domnick is president of Litera Microsystems (litera.com). He brings a special knowledge about the utility of Litera Microsystems risk management solutions in both legal and financial services. Paul was CIO of Freshfields Bruckhaus Deringer from 2009 until 2013. There, he was responsible for a global team of more than 300, covering all areas in IT and IS. He was previously group CTO and deputy head of IT for Zurich Financial Services, responsible for technology strategy and standards. From 2014 through 2017, he was president of Litéra Corp before being named president of Litera Microsystems.

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PRACTICING LAW IN THE 21ST CENTURY

The Ethical Requirement of Technology Competence

By Nicole Black
ver the past decade, technology has changed at a rapid clip, affecting every aspect of our day-to-day lives, from how we communicate and interact with others, to how we shop, cook, travel, and conduct business. And yet, many lawyers continue to practice law just as they did 25 years ago, refusing to change their attitudes about technology to comport with modern-day expectations.

This isn’t necessarily surprising, as ours is a precedent-based profession, and predicting the future based on what’s happened in the past has historically proven to be a very successful way of doing business. Unfortunately, this methodology is proving to be acutely ineffective in the 21st century.

This issue was recently addressed by Richard Susskind—one of the most forward-thinking authors and leaders in the legal technology space—in the second edition of his groundbreaking book Tomorrow’s Lawyers: An Introduction to Your Future (Oxford University Press, 2017). There, he suggests that adopting technology will be one of the primary drivers of success for law firms seeking to gain a competitive edge:

One key challenge for the legal profession . . . is to adopt new systems earlier; to identify and grasp the opportunities afforded by emerging technologies. We need, as lawyers, to be open-minded because we are living in an era of unprecedented technological changes in what our machines can actually do. They are becoming increasingly capable.

This is a warning that lawyers should take to heart: The failure to keep up with emerging technologies and their application to the practice of law will have long-lasting effects, even more so now that lawyers in many jurisdictions are required to maintain technology competence. In other words, not only is it good business to stay on top of changes in technology—you may very well have an ethical obligation to do so.

THE DUTY TO MAINTAIN ETHICAL COMPETENCE

The American Bar Association recognized the importance of technology competence for lawyers in 2012 when it amended the comments to Model Rule of Professional Conduct 1.1. This amendment imposes an ethical duty on lawyers to stay abreast of changes in technology. The amended Comment 8 reads as follows:

Maintaining Competence. To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject. (tinyurl.com/y8yxcjg; emphasis added)

Since that time, bar associations across the United States have added commentary to their ethical rules indicating that lawyers have an obligation to stay on top of changes in technology, with 32 states now requiring it (see sidebar on page 15 for a full list). California, while not formally adopting the duty to maintain technology competence, has confirmed in recent ethics opinions that lawyers have this duty.

In 2016 Florida adopted new language into its bar rules that requires lawyers to stay abreast of legal technology advancements while also mandating that lawyers complete three credits of continuing legal education (CLE) focused on legal technology per biennial cycle. In an opinion issued on September 29, 2016, the Supreme Court of Florida changed the number of biennial CLE credits required from 30 to 33 and mandated that three of those credits be “in an approved technology program” (tinyurl.com/y8c8w8fks).

North Carolina followed suit in April 2018, when the North Carolina State Bar Council voted to adopt proposed amendments that provided a definition of “technology training” and mandated “that one of the 12 hours of approved CLE required annually must be devoted to technology training” (tinyurl.com/ypd9m3euw).

These technology CLE requirements represent an important departure from business as usual in the legal profession. Technology is clearly affecting the practice of law, and state bars across the country are taking notice. Florida and North Carolina may be the first to enact these new CLE requirements, but they certainly won’t be the last.

WHAT DOES ETHICAL COMPLIANCE ENTAIL?

It’s one thing to require lawyers to be up-to-date on legal technology, but what does this actually entail? What do lawyers need to learn to fulfill their legal technology competence obligation?

Some guidance can be found in the North Carolina State Bar Council’s proposed amendment mandating that lawyers take technology CLEs. Within the text of the amendment, the Council provides a helpful explanation of the types of technology training that will satisfy the legal technology CLE requirement. According to the Council:

[t]he primary objective of the program must be to increase the participant’s professional competence and proficiency as a lawyer. Such programs include, but are not limited to, education on the following: a) an IT tool, process, or methodology designed to perform tasks that are specific or uniquely suited to the practice of law; b) using a generic IT tool process or methodology to increase the efficiency of performing tasks necessary to the practice of law; c) the investigation, collection, and introduction of social media evidence; d) e-discovery; e) electronic filing of legal documents; f) digital forensics for legal investigation or litigation; and g) practice management software.

The Council also clarified the types of CLE that qualify for technology credit—and which ones will not:

A program on the selection of an IT information technology (IT) product, device, platform, application,
web-based technology, or other technology tool, process, or methodology, or the use of an IT tool, process, or methodology to enhance a lawyer’s proficiency as a lawyer or to improve law office management may be accredited ... A program that provides general instruction on an IT tool, process, or methodology but does not include instruction on the practical application of the IT tool, process, or methodology to the practice of law shall not be accredited. The following are illustrative, non-exclusive examples of subject matter that will NOT receive CLE credit: generic education on how to use a tablet computer, laptop computer, or smart phone; training courses on Microsoft Office, Excel, Access, Word, Adobe, etc., programs; and instruction in the use of a particular desktop or mobile operating system.

In essence, lawyers need to understand which technologies will impact their law practice. Then they need to ensure that they have taken steps to maintain a core level of competence in regard to those specific technologies. With that in mind, let’s take a look at the ways that different types of technology are affecting the practice of law in 2018.

**THE UNAVOIDABLE IMPACT OF TECHNOLOGY**

The writing is on the wall: Technology is impacting the practice of law and changing the way that legal services are delivered. It only makes sense that lawyers should take steps to understand technology and how it can be used to improve their practices and help them to be more receptive, responsive counselors to their clients.

The requirement that lawyers maintain technology competence is necessary given the far-reaching impact of technology on the practice of law. From digital evidence and e-discovery to bitcoin and secure electronic communication, the effects of technology on the legal profession are inescapable. You need look no further than the daily news to encounter cases where technology impacts the practice of law. For example, data from mobile and wearable devices are increasingly being used in both civil and criminal cases. In 2015 Fitbit data was used as evidence in court to support a personal injury claim and to disprove rape allegations. And earlier this year, data from the iPhone Health app was used during a murder prosecution in Germany, where investigators accessed data from the Health app on the defendant’s phone, and it was used to support the prosecution’s timeline for the murder.

**Lawyers have a duty to understand which technologies will impact their law practice.**

For litigators, understanding how social media platforms work is of particular importance because lawyers are now routinely mining social media for evidence and researching jurors online. Service of process via social media platforms has been permitted by some courts, and actions taken by individuals on social media have formed the basis for criminal prosecutions.

Litigators also have no choice but to familiarize themselves with the mechanics of a paperless law office and e-filing now that courts around the country are beginning to mandate the digital filing of court documents. Because digitized documents are a condition precedent to e-filing, lawyers who litigate have no other option than to educate themselves about the mechanics of setting up a paperless law office. In addition, they also have an obligation to familiarize themselves with the procedures needed to e-file documents with the courts in which they litigate.

Similarly, for many lawyers, technology competence will likely entail gaining proficiency in the use of technology—including cloud computing software and artificial intelligence tools—to help them deliver legal services more efficiently and facilitate secure client communication. Understanding the ins and outs of secure client communication is increasingly important in light of the issuance of ABA Formal Opinion 477 in May 2017, which encourages lawyers to avoid insecure e-mail when sending certain types of confidential client information and suggests that lawyers should consider using encrypted methods of communication, including secure, web-based client portals (tinyurl.com/y7otyd4d).

And last but not least, cryptocurrencies are another emerging area that lawyers need to learn about. Astute lawyers will make efforts to learn more about bitcoin and blockchain because they have the potential to affect law practices. Some attorneys may want to consider accepting bitcoin as a form of payment, while others may handle practice areas, such as securities law or financial litigation, that will be increasingly impacted by bitcoin.

So, no matter your areas of practice or the size of your firm, the effects of technology are unavoidable. Ignoring technology is no longer an option, so your only choice is to learn about it. That way you’ll meet your ethical obligations and provide the best possible representation to your clients. But how do you go about learning about the latest technology developments? A great place to start is by taking advantage of some of the free or low-cost resources below.

**STAY UP-TO-DATE WITH THESE LEGAL TECHNOLOGY RESOURCES**

Now that we’ve agreed that turning a blind eye to technology is a mistake, let’s dive into resources, both online and off, that will help you stay up-to-date on the latest technology trends.

**Books.** Legal technology books are always a great place to start because they provide a thorough review of the topics covered. First, consider reading *The 2018 Solo and Small Firm Legal Technology Guide* (ABA, 2018) by attorney Sharon D. Nelson, certified information systems security professional John W. Simek, and digital forensics examiner Michael C. Maschke. This book covers a vast range of hardware and software, provides a wealth of information and tips
on choosing the right tools for your firm, and offers the authors’ perspective on the impact of emerging technologies on the practice of law.

Another helpful book is *The Lawyer’s Guide to Collaboration Tools and Technologies: Smart Ways to Work Together, Second Edition* (ABA, 2018), written by Dennis Kennedy and Tom Mighell. In it you’ll learn how to use today’s legal technology to collaborate on and manage cases with clients, co-counsel, and more.

Finally, there’s *Legal Ethics and Social Media: A Practitioner’s Handbook* (ABA, 2017), co-authored by Jan L. Jacobowitz and John G. Browning. This book covers the ins and outs of the most popular social media platforms and addresses the ethical implications of using social media to advertise your firm, mine for evidence, and research jurors, among other things.

**Blogs.** Blogs are also a valuable resource for lawyers interested in learning about legal technology. What follows are some of the better-known legal technology blogs that will provide you with the latest legal technology news and updates.

A great place to start is by following the legal technology columns at *Above the Law* (abovethelaw.com/technology), which are written by a number of legal technology bloggers (including me) and focus on many different legal technology issues offered from a variety of perspectives. Robert Ambroggi’s *LawSites* blog (lawsitesblog.com) is also a must read. Bob has been blogging about legal technology since 2002, and his blog covers the latest legal technology industry news, along with a wealth of information and advice for lawyers interested in using legal technology in their law firms.

Other popular legal technology blogs include:

- **Future Lawyer** (futurelawyer.typepad.com): written by the always-knowledgable Florida litigator Rick Georges and focused on a variety of technology topics;
- **Friday File** (roseninstitute.com/articles): attorney Lee Rosen shares lots of technology and law practice management advice;
- **Law Practice Tips** (jimcalloway.typepad.com): Jim Calloway, an attorney and the director of the Oklahoma Bar Association’s Management Assistance Program, provides insight and tips on using technology to run an efficient law firm;
- **iPhone J.D.** (iphonejd.com): attorney Jeff Richardson focuses on all things Apple-related, including iPhones, iPads, and iOS apps; and
- **Ride the Lightning**: lawyer Sharon D. Nelson provides her take on the effect of legal technology on the practice of law (ridethelightning.senseient.com).

**CLE.** Another way to stay abreast of technological change is to take advantage of the legal technology CLEs offered by your local or state bar associations. There are also a number of other free online resources that will assist you in learning about the latest legal technology developments. The ABA, along with many legal technology software providers, such as law practice management companies, offer free educational webinars, some of which may qualify for CLE credit (americanbar.org/cle.html). Many of these same organizations also offer free e-books and guides focused on legal technology topics that are available for download. In most cases, the webinars and e-books provide substantive, useful information with minimal advertising, so they’re definitely a resource worth keeping in mind.

**Conferences.** And last, but not least, don’t forget about the legal technology conferences. ABA TECHSHOW (techshow.com) is one of the most popular conferences for solo and small firm lawyers seeking to learn about the latest legal technology tools and how to use them in their practices. Solo and small firm conferences sponsored by the ABA or your local and state bars are also a great resource. These conferences often have technology tracks that can be a great source for legal technology updates.

**WHAT ARE YOU WAITING FOR?**

So now that you better understand your ethical obligation to learn about legal technology and know where to look for the latest information on legal technology developments, what are you waiting for? Sign up for a legal technology conference or CLE, subscribe to a few blogs, and buy a few books. Before you know it, you’ll be well on your way to being fully competent and armed with the information you need to make the right legal technology choices for your law firm and your clients.

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**STATES REQUIRING TECHNOLOGY COMPETENCE**

The following states have revised their ethical rules to require technology competence:

- Arizona
- Arkansas
- Colorado
- Connecticut
- Delaware
- Florida
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Massachusetts
- Minnesota
- Missouri
- Nebraska
- New Hampshire
- New Mexico
- New York
- North Carolina
- North Dakota
- Ohio
- Oklahoma
- Pennsylvania
- Tennessee
- Utah
- Vermont
- Virginia
- Washington
- West Virginia
- Wisconsin
- Wyoming

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Social Media and Online Marketing for Lawyers
(aka VIDEO DOMINATION)

BY DUSTIN SANCHEZ
Lawyers frequently get scammed by online marketing companies. Potential clients call me, reporting that they’ve been paying some well-known marketing company for six months with zero return on their investment—not a single phone call generated by their online presence.

This happens because very few “online marketing experts” have ever made a single dime on the Internet, other than convincing unsophisticated buyers to pay them to do their online marketing. They are not actually “marketing experts,” they are simply “sales experts.”

In terms of online marketing, lawyers are extremely unsophisticated buyers, often desperate to generate business in any way. This makes attorneys, particularly solos and small firm owners, extremely susceptible to online marketing scams.

You can avoid this by learning a little bit about lawyer marketing and personally participating in it. Generate a few new clients through your own online marketing efforts, and you will be able to identify the scammers who call and e-mail you. You will become sophisticated and unsophisticated by taking control of your own marketing efforts.

Below are five steps (and one bonus step) that will help you use the Internet to generate paying clients for your law practice.

**STEP 1: MAKE VIDEO CONTENT**

If you don’t have content, then you don’t exist online. And because the Internet is the dominant media of our day, if you don’t exist online, you don’t exist at all.

At the beginning, ignore search engine optimization (SEO), Google pay-per-click, Facebook ads, link building, guest blogging, tweeting, paid Yelp ads, paid Avvo ads, any paid lawyer profile, Instagram influencer marketing, radio ads, television commercials, billboard ads, and any of the millions of possible ways to burn money on marketing.

Don’t do anything until you have 25 videos sitting in your free YouTube account. Why 25 videos? Because if I said 100, you probably would have stopped reading.

Why is video the best online content?

Video has several advantages over written content:

- It is easy to make. Just turn on a camera and talk.
- It is easy to re-purpose into written content or a podcast.
- It can also be uploaded to Facebook, LinkedIn, Twitter, and Instagram.

Video builds trust faster than other content. People see your face, hear your voice, and learn your personality. They feel as if they know you, then they hire you to be their attorney.

Your competitors are afraid to get in front of a camera. You are likely to be the only lawyer in your city taking video marketing seriously. You can compete with hundreds of lawyer SEO experts like me for ten spots on the first page of the Google search results, or you can be the only lawyer in your city with 25 videos sitting in your YouTube account.

Publish one video ASAP. First, just make a video that stinks, upload it to your personal Facebook profile, and realize it’s not the end of the world. Your first 20 to 100 videos will be terrible. Get over it.

What should you talk about? You just want to be a lawyer who entertains people. That’s what Bryan Wilson, “the Texas Law Hawk,” did. His YouTube video went viral, he got into a Taco Bell Super Bowl commercial, and now his phone just rings.

Most attorneys are not going to be able to do that their first time out, but know the winning formula: Entertain, Educate, Engage. You will have to find your voice and become comfortable on camera (it’s easy once you get a few videos under your belt). Until you find your own voice, here are some folks you can emulate.

- Aiden Durham: view her YouTube videos at youtube.com/user/aidenkramerlaw
- Gerry Oginski: view his YouTube videos at youtube.com/user/lawmed1
- Angela Langlotz: view her Facebook videos at facebook.com/pg/trademarkdoctor/videos
- Kenneth Stephens: view his LinkedIn videos at bit.ly/k-slinked

What do they all have in common?
If you’re going to be everywhere and always in front of your potential clients, then you’re going to need a ton of content.

1. They entertain and educate.
2. They just talk about the law.
3. They publish often.
   You can do the same.

Here are a few sample topics to get you started. I made these for a divorce attorney, but you can adjust them for any legal niche.

1. How Much Does a Divorce Lawyer Cost in [City]?
2. How Do I Get a Child Support Modification Order in [City]?
3. Do I Need a Prenuptial Agreement in [City, State]?
4. What Is the Divorce Waiting Period in [State]?
5. Do I Have to Pay Alimony If I Get Divorced in [State]?
6. [City] Divorce Lawyer for Men
7. [City] Divorce Lawyer for Women
8. Flat-Fee Divorce in [City]
9. Why I Became a Divorce Lawyer
10. Just get in front of the camera and talk about the law. It’s easy.

The essential video equipment. The equipment below will get you started, and it won’t cost a fortune.

- Camera: I use my iPhone or a Logitech C270 Widescreen HD Webcam ($21.99).
- iPhone tripod: On Amazon (search for “iPhone tripod”) they run about $13.
- Adequate lighting: Try the LimoStudio 700W Photography Softbox Light Lighting Kit ($64.99 on Amazon).

You don’t need a fancy backdrop; I shoot videos in my car, in my kitchen, in my office, at the gym, and just about anywhere the mood strikes. But if you just want to buy a backdrop, then search for “collapsible background with stand” on Amazon.

And you don’t really need a microphone; I just use the one in my iPhone or webcam, and it works fine. If you want to get fancy, don’t do it until you have at least ten videos posted somewhere.

In the beginning, quantity, not quality, is the goal (frequency over perfection).

STEP 2: PUT YOUR VIDEOS IN FRONT OF YOUR POTENTIAL CLIENTS

In the beginning, your problem is obscurity. Nobody in your city knows who you are or what you do. You need to establish a beachhead. And that starts with your friends and family.

In Step 1 you made a video using your cell phone. In Step 2 you will upload that video to your YouTube channel, your personal Facebook feed, your Facebook business page, your LinkedIn feed, your Twitter feed (maximum 2 minutes, 20 seconds), and your Instagram account (maximum 60 seconds).

I don’t have the space in this article to explain how to do all of this, but you can find anything via Google search or a quick search on YouTube.

Here’s an example of the process:

First, I created a YouTube video at bit.ly/lawschoolcaper. Second, I uploaded the same video file (mp4 file) directly to Facebook as a native video post at bit.ly/lawschoolcaperfb. Third, I uploaded the video to LinkedIn at bit.ly/lawschoolcaperLi. I also uploaded it to Twitter, and I turned it into a 60-second Instagram video at bit.ly/lawschoolcaperig.

As I said before, you are trying to establish a beachhead here. Initially, only your friends, family, and those you are connected to on social media will see your videos. In many cases, that will be enough to start generating buzz, word of mouth, and sales.

This close-knit audience comes with the advantage that relatively few people will actually see your first 25 videos, which aren’t going to be that great because you are still learning at this point. And that’s okay.

STEP 3: LEVERAGE YOUR CONTENT TO NETWORK WITH OTHER ATTORNEYS

There is a platform called “Be Live” at belive.tv. It allows you to conduct talk-show style interviews on Facebook Live. This format not only allows you to build up your stock of videos, but it also lets you partner with other lawyers. For one such video broadcast, I reached out to Angela Langlotz, a trademark attorney in Dallas. It was great for both of us because we got to share each other’s audience of friends, family, and social media connections. She also got introduced to all my online marketing business owner friends, and all her attorney friends got to see me associated with her. Win-win for everyone.

I added even more value for her by promising 1,000 views on YouTube, which I purchased for $0.07 per view on YouTube.

As part of this process, I downloaded the original mp4 file from Facebook and uploaded it to my YouTube channel. Now if you Google search “Facebook Live for Lawyers,” that YouTube video (youtube.com/watch?v=R1voM-qQfug) is on the first page of the search results.

You probably don’t need to promise any number of views to get another attorney on your show, but when you start moving up the chain, interviewing legitimate legal celebrities in your area, you may have to sweeten the deal a bit. (Check the rules in your jurisdiction regarding such offers.)

This strategy will grow your business. For example, maybe you practice bankruptcy law, and your friend from law school practices family law in the same city?
city. You invite him to be on your video broadcast, where you discuss, “How to Protect Your Assets During a Divorce.”

You shoot the video, upload it to all your social media profiles, then send him the link, and he happily shares it on all of his social media profiles. Both of you just doubled your audiences.

Then you e-mail that video to the next person that you want to interview and ask her to be on your show, too. Repeat this process until every lawyer and business owner in town is fighting for the chance to be on your show.

**STEP 4: REPURPOSE YOUR VIDEOS INTO WRITTEN ARTICLES**

Many attorneys have trouble converting incoming phone calls into paying clients. The temptation is to claim that the leads are bad, when the fact is that most attorneys, and the people hired by attorneys to answer their incoming phone calls, have zero sales training.

Therefore, I created a YouTube video to help the clients of my marketing agency close more incoming phone calls.

The problem is, that video is only one piece of content. And if I’m going to be everywhere, and always in front of my potential clients, then I’m going to need a ton of content.

So, I turned that video into a blog article on my own website. The links to the video and articles are below so that you can reverse engineer the method. But, basically, I just embedded the video on my blog and summarized what was said in the video as a short article below the video embed. Consequently, if you Google “law firm phone script,” my blog article and YouTube video are both on the first page of the search results.

Additionally, I turned this YouTube video into an article on LinkedIn Pulse, which is LinkedIn’s native blogging platform. I used the same method of just embedding the video in my LinkedIn Pulse article and then briefly summarizing what was said in the video as a short article below the video.

Just be careful not to copy word for word the same summary that you used in your website blog because your website may incur a duplicate content penalty inside Google’s search algorithm. Change it up a bit. See my examples below.

Now, I have turned one piece of content into three. I’ll show you why that is important in Step 5. Here are the links to the YouTube video, Blog article, and LinkedIn Pulse article.

2. Blog article: dustinsancheztv.com/phone-script
3. LinkedIn Pulse article: bit.ly/2wXn9wT

Many times, I will take it a step further and upload the mp4 video file directly to my personal Facebook profile, my Facebook business page, my Instagram, and my LinkedIn profile. Each of these platforms now allow you to upload video files directly to their platform, as opposed to just sharing YouTube videos there. But don’t worry about trying to upload your video files all over the Internet. In the beginning focus on one to four platforms.

**STEP 5: BE EVERYWHERE WITH AUTOMATIC SYNDICATION**

Hootsuite.com is a social media syndication platform. You can connect it to your Facebook Business Page, LinkedIn, Twitter, Google Plus, Instagram, Pinterest, and a few other Web2.0 platforms.

And if you want to share an article or video to all your social media platforms, you can just drop the link into Hootsuite one time and it will automatically syndicate to all your social media.

In my case, I have some 50-plus videos sitting in my YouTube channel. Each of those videos has been re-purposed into three or four other pieces of content. Each of those articles or videos has a URL (a link) associated with it.

Each one of those 150-plus links is sitting inside a text file, and once a month I load all of them into Hootsuite using Hootsuite’s auto-schedule function.

I have the auto-schedule function set to post two times a day, Monday through Friday, to all my social media. Within those parameters, Hootsuite then chooses the best time of the day to post an article or video to each of my social media platforms.

The result is that I’m always in front of my potential clients. I’m on LinkedIn. I’m on Twitter. I’m on Facebook. I’m on Instagram. I’m on Google Plus. I’m everywhere. All the time.

And my phone rings. When people call me, there is no sales process. They already know, like, and trust me because they’ve already spent two to four hours watching me on video. You can do the same.

**BONUS STEP: LAWYER PROFILE AND WEB 2.0 DOMINATION**

I know all this sounds confusing. I don’t want you to get hung up on all the details. You can take this entire article and boil it down into one sentence: **Make 100 YouTube videos as fast as you can.**

You could ignore everything else, and you’d probably never have to hire a marketing company like mine.

The meat and potatoes of your marketing plan should just be to publish 25 to 100 videos as soon as possible. That will really move the needle for you. I don’t like to talk about lawyer profiles such as Avvo, Justia, and FindLaw very much because, other than having them so that your website can get a backlink from them, I don’t think they offer much value.

But certain profiles such as Avvo and Justia allow you to upload your video content, which helps your profile stand out. When you have a chance to upload your videos to your lawyer and web 2.0 profiles, you should take advantage of it.

But, as I said earlier, just make the darn videos, quickly and often. Good luck!

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Seven Technology Hacks to Improve Your Legal Research

By Noah M. Rich
Advances in technology continually transform the legal profession. Even the ethical rules of conduct reflect this transformation; in 2012, the ABA added a comment to Model Rule of Professional Conduct 1.1 directing lawyers to keep abreast of “the benefits and risks associated with relevant technology.” However, according to the ABA’s 2017 Legal Technology Survey Report, only 60 percent of solo and small firm attorneys are aware of this duty, and further data suggest that even attorneys who are aware nevertheless remain unfamiliar with many of the tools available to them and the benefits they offer.

These tools are perhaps most important in the area of legal research, where the effective or ineffective use of technology can make or break your case. Smart research methods can make an attorney more nimble, more prepared, and more effective than her opponent—even accounting for the mismatch in resources that solo and small firm practitioners often face. This article explores ways for practitioners of all skill levels to save money, improve their efficiency, and obtain better results when doing legal research. No matter how long you’ve been practicing or how tech-savvy you are, chances are there’s still something new to learn.

1. MAKE A PLAN

Exactly what are you looking for? Are you looking for materials only in one jurisdiction, in several, throughout the country, or internationally? Is there any background information you need before you can go any further? Which databases and search terms are going to produce the most relevant results? Do you have a budget you need to stick to?

These are the sorts of questions you should ask yourself before starting any research project. Search engines and databases will return relevant results only to the extent that you begin with a well-crafted inquiry. You can avoid a considerable amount of frustration by mapping out your search beforehand rather than beginning with only a partially formed idea of what you’re trying to find out and where to look for it.

2. WHEN IN DOUBT, START BROAD, THEN NARROW YOUR SEARCH

Remember Socrates’ famous phrase: “I know that I know nothing.” When researching an unfamiliar area of law, you don’t know what questions to ask, and without the right questions, you probably won’t find the right answers. In such a situation, begin with broad search terms and seek out secondary sources first: journal articles, commentary, practical guides, even blog posts. Although these sources may not provide a definitive answer to your inquiry, they will likely provide some explanation or insight that will better define the contours of the area you’re researching. Once you understand the broad outline, you can use your newfound knowledge to conduct informed, directed searches to investigate particular points of subtlety and nuance.

3. USE FREE TOOLS TO BUILD THE FOUNDATION OF YOUR RESEARCH PROJECT

If your first instinct in conducting legal research is to use Westlaw (westlaw.com) or Lexis (lexis.com), you’re doing yourself and your client a disservice. The Internet is rife with free tools that at least can help you get started and sometimes can provide all the information you need far more quickly and efficiently than a fee-based service can.

Unless you know exactly which case or statute you’re looking for, it’s probably a good idea to start with Google. There’s a reason “Google” has become shorthand for “search”: It offers the best combination of user friendliness, scope of sources, and relevant results. In short, it’s the best search tool around, and it’s very useful in getting a legal research project off the ground. If you haven’t already done so, familiarize yourself with Google’s Boolean operators, which allow you to refine your searches and achieve better results. (Entire articles can be—and have been—written about how to maximize one’s productivity using Google searches; take five minutes to seek these out now, and you might save hours of time later.)
Within the Google ecosystem, Google Scholar (scholar.google.com) allows users to access state cases published since 1950, federal cases published since 1923, and U.S. Supreme Court cases published since 1791. Google Scholar is also an excellent source for law journal articles and other secondary sources, which are often available free of charge. For intellectual property attorneys, Google Patent (patents.google.com) is an indispensable alternative to the U.S. Patent and Trademark Office's unwieldy search function. In addition, if you’re entirely unfamiliar with an area of law, run an ordinary Google search using a few key terms, and you will nearly always find relevant articles and commentary that will help you get your bearings.

Those researching legislative or executive materials likewise should avail themselves of the free options available to them. Congress.gov is one of the most popular sites for research on federal legislative materials, including public laws, pending legislation, resolutions, hearings, and reports. Cornell’s Legal Information Institute (LII; law.cornell.edu) and Justia (law.justia.com) offer free access to the text of the U.S. Code and the Code of Federal Regulations, as well as additional sources of federal and state law. The U.S. Code is also available at the website of the Office of the Law Revision Counsel (uscode.house.gov/browse.xhtml). The Government Publishing Office’s FDsys (gpo.gov/fdsys/search/advanced/advsearchpage.action) is an excellent resource for legislative and executive materials. FDsys, Justia, and LII, as well as the Public Library of Law (plol.org/Pages/Search.aspx) and FindLaw for Legal Professionals (lp.findlaw.com), also permit limited searches of case law. When researching state law, be sure to check the website of the relevant state, which often contains a link to the state code and regulations.

As an alternative to PACER, try RECAP, a free archive offered by CourtListener (courtlistener.com) comprising millions of federal court dockets and documents. CourtListener also offers a free opinion search that provides access to millions of cases across nearly every jurisdiction. Both of these archives continue to grow as volunteers add additional items.

If the object of your search is simple, or if you’re lucky, you may not need to spend a dime to find the results you were looking for. Ordinarily, however, these tools will best be used as starting points, not substitutes for cost-based services. For example, Google Scholar might not have the most updated case law—and it certainly lacks Lexis’s and Westlaw’s abilities to check for positive or negative treatment and to find related cases. Treat these free resources as complements to your ordinary research methods: ways to save time and narrow your focus, but without the nuance or definitiveness that a fee-based service can offer.

### 4. GO STRAIGHT TO THE SOURCE

Have you ever found the perfect law journal article—the one that seems to address the exact issue you’re researching—only to discover that it’s available only for purchase? You’re left with two options: pay a (usually exorbitant) fee to access the article, or continue your research elsewhere, hoping that you can do without the author’s insight and analysis. But there’s another, simpler option that works more often than you might think: just ask the author for a copy. A journal typically obtains an exclusive license to publish an author’s work, but the author retains ownership of the work. If the author’s contact information is included in the article or available online, send him or her an e-mail. Most authors are delighted to hear that someone is interested in their work, and they will likely be willing to provide you a copy of the article themselves.

Lawyers should also familiarize themselves with the Social Science Research Network (SSRN; ssrn.com), which promotes itself as offering “tomorrow’s research today.” SSRN is an open-access repository of scholarly works in progress, as well as articles that have already been published. SSRN contains more than a million scholarly papers in the fields of social science, natural science, and humanities. Its Legal Scholarship Network alone contains more than 250,000 entries, most of which are conveniently grouped by subject matter into “eJournals.” Best of all, every paper on SSRN is available at no or low cost.

Many law schools have a “scholarly commons” where they make available, free of charge, journal articles and other scholarly work by their faculty. Furthermore, many law journals will make their latest issue or two—and if you’re lucky, even more—available for download on their website. And if you can’t get in touch with the author, try contacting the editor-in-chief of the journal to see if he or she can send you a copy of an individual article.

### 5. USE THE RESOURCES YOU’RE ALREADY PAYING FOR (BUT DIDN’T KNOW ABOUT)

If you’re reading this article, you’re likely a member of the ABA. That membership goes a long way. In the area of legal research, the ABA Legal Technology Resource Center (www.lawtechnology.org) features extensive information regarding developments in legal technology, guidance on which legal technology providers to choose, and more. Perhaps the most useful resource offered here is a free search engine that permits users to search the full text of more than 300 law journals, in addition to document repositories and other publications.

Do you visit your state bar website just to pay your annual dues and report CLE compliance? Take another look. Every state bar except California, and many local bar associations, offer free legal research services. The two most popular services are Fastcase (fastcase.com) and Casemaker (casemakerlegal.com). The interfaces of these services are dated compared to competitors such as Westlaw and Lexis Advance, but they offer considerably more functionality than free resources.
do, including the ability to view related authority and positive or negative treatment by other cases.

Don’t forget about your alma mater. Law school alumni typically retain usage and borrowing privileges from their schools’ libraries, and many libraries also offer their alumni free or low-cost access to repositories such as HeinOnline (home.heinonline.org), Project MUSE (muse.jhu.edu), ProQuest (proquest.com), and JSTOR (jstor.org). If you’re a member of your school’s alumni association, you may have access to even more resources.

6. WHEN YOU DO HAVE TO PAY, USE YOUR TOOLS WISELY

Once you’ve exhausted the free options available to you, you’ll likely still need to use a fee-based service to find related materials and to confirm that the materials you’ve already found are still good law. Hopefully, after conducting your free research, you’ll be able to narrow the scope of your fee-based search, saving you and your client time and money. If you’re having trouble finding relevant search results, call a reference attorney to help you identify the most effective search terms and parameters for your project—every major legal research provider offers this service at no additional charge.

There are more tips and instructions on how to use fee-based legal research services than I could possibly include here, but one piece of advice is crucial: Be humble. Even if you’ve been using Westlaw or Lexis for decades, you’re likely not getting the most out of them. (I learn about some new functionality at least every few months.) Take a few moments to browse through their online training courses and consider inviting a representative to conduct in-person training at your office. Seek out articles and blog posts that provide detailed tutorials. Ask your colleagues what tricks they’ve learned. You’ll be surprised at what you didn’t know you could do.

7. UNLOCK THE POTENTIAL OF YOUR MOBILE DEVICES

According to the ABA’s 2017 Legal Technology Survey Report, nearly 85 percent of attorneys work remotely at least 10 percent of the time, and nearly one-third of attorneys telecommute at least once per week. Nearly all attorneys (96 percent) use a smartphone to do legal work at least occasionally, and half of all attorneys use a tablet for legal work. However, these practitioners are not making the most of available technology: More than half of attorneys haven’t downloaded any non-default apps for work, which means they are limited to e-mailing, making calls, taking notes, and using the Internet.

There are a few simple ways for lawyers to better harness the power of their smartphones and tablets. At the very least, all lawyers should download the app for the legal research service of their choice. Westlaw, Lexis Advance, Bloomberg Law (bloomberglaw.com), and Fastcase offer mobile apps for the iPhone and iPad; all but Lexis Advance are also available for Android devices. These apps provide streamlined versions of their desktop counterparts, allowing for research on the fly. Although they can be somewhat cumbersome to use, the ability to conduct research during your commute, during a recess in court, or whenever else you have a spare moment can be invaluable.

Need to save a case or document? Take your pick of storage options: Dropbox, Box, OneDrive, Drive, and Amazon Drive are all available for both Android and Apple devices. And to log your hours, most of the entries listed on the chart of billing software compiled by the ABA Legal Technology Resource Center have mobile apps, or at least have websites focusing on narrower areas of the law, as well as apps of general interest for attorneys and law students.

The landscape of legal research technology is vast and dynamic, and keeping up with its latest developments can be challenging even for the most seasoned practitioner. However, the time you invest in cultivating better research habits and mastering new resources can pay off many times over in increased efficiency and efficacy. There’s always something new to learn to make your legal research projects easier and more productive.

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I’LL LEARN ABOUT E-DISCOVERY WHEN I’M GOOD AND READY (WHICH MAY BE NEVER)

BY BRETT BURNEY AND CHELSEY LAMBERT
How long would it take you to learn how to perform a heart transplant? E-discovery expert Craig Ball relates a story of how a renowned heart surgeon stated he could teach anyone to perform a heart transplant in a couple of hours—“it’s just plumbing.” But, he continued, “it would take me years to teach you what to do if something goes wrong.”

Any lawyer can teach themselves e-discovery law. But why do lawyers so strongly resist understanding the fundamentals of information technology? Ball declares that any motivated lawyer can learn the basics of the technical side of e-discovery in a couple of days—“not enough to transplant hearts,” Ball says, “but enough to understand the plumbing.”

It’s a Digital World and We Just Live In It
In today’s world, almost all the information we come in contact with begins its life in a digital medium. A low estimate puts 98 percent to 99 percent of today’s information in digital form. If you’re holding a document in your hand, it’s because someone hit the print button.

Save for a completely handwritten note, or some archaic scroll of information such as microfiche or an original bill of lading created on a manual typewriter from 1952, every single piece of information that you come in contact with today had its genetic birth in 1s and 0s. The printed paper you hold in your hand is not the “original document”—it is a lesser, degraded, less-useable, superficial reproduction of the original electronic file that exists on your computer.

Ignorance of Technology is No Longer an Excuse (Nor Is it Funny)
But why should you care? Paper has worked just fine for lawyers for centuries—surely, we can continue just fine for the next hundred years. Except for the fact that you now have an explicit duty to be aware of the technology involved.

In 2012, the ABA amended the Model Rules of Professional Conduct to explicitly declare that a lawyer’s duty of competence (Rule 1.1) includes both a substantive component as well as an awareness of the “benefits and risks” associated with the technology you use every day (Comment 8 to Rule 1.1). No legal professional is immune because technology is woven into every stitch of how you deliver legal services, from legal research, to communicating via e-mail and mobile devices, to securing documents that you store on your computer—you now have a duty to be fully cognizant of all the “benefits and risks” involved with the fabric of these technologies.

Now, before you experience heart palpitations, this duty does not require you to become an information technology expert. Heart surgeons don’t need to be experts on how polypropylene thread is made, but they better be aware of the appropriate thickness to use when sewing up an open chest, how many stitches will seal up a beating heart, and how long that thread will last inside the patient.

Reflecting the ABA Model Rules, 32 states so far have adopted the exact same language. This isn’t meant to instill fear into your legally trained (and technology-deficient) heart. But it is meant to be a wake-up call for you to stop throwing around phrases like “I’m not really tech-savvy,” “I’m not that computer literate.” These phrases are no longer acceptable. Frankly, they act as a flag pointing to, at worst, your specific decision to remain ignorant and incompetent, or, at best, your open belligerence about seeking ways to better understand the way the world works today.

The legal precedents and traditions of our revered profession remain established, but there are significant modifications to the workflows and logistics of practicing law. E-discovery is one small
There will be more and more information to be identified and gathered from mobile devices.

Preparation for trial. “Nothing in that fundamental definition has changed. But the approach and methods involved today absolutely require a new mind-set and attainable knowledge—not because the practice of discovery is different, but because the “information” involved is now all digital.

Lawyers don’t like to follow rules

Until 2006, Rule 34 of the Federal Rules of Civil Procedure boasted the title “producing documents and tangible things.” The subsection of that Rule lists acceptable “tangible” items such as “writings, drawings, graphs, charts, photographs, etc.” In 1971, the phrase “data compilations” was added to that list in an effort to better apply the rules to the way that data was being “compiled” in that ancient epoch on punch cards, ticker tape, and other methods.

From the inception of the Federal Rules, every piece of producible information fell under one of these enumerated items... even when we started using personal computers that stored 1s and 0s on hard drives instead of punch cards. The only thing that was “tangible” at that point wasn’t the information but the medium on which the information was stored (e.g., computer hard drive, USB thumb drive, or even temporary RAM, etc.).

Lawyers, being the observant creatures that they are, attempted to argue that specific pieces of information such as e-mails, or Microsoft Excel spreadsheets, or Microsoft PowerPoint presentations didn’t fit the definition of a tangible “document.” There was some validity to that argument—there are no discovery of paper documents.” It’s almost embarrassing that phrase had to be written, but it was apparently necessary.

When did e-discovery become e-trendy?

The phrase “electronically stored information” (ESI) was well-considered when adopted, as it has pluckily withstood the test of time over the last ten-plus years. In 2006, the Advisory Committee could not have imagined the forms of ESI that have emerged, such as WhatsApp, Facebook Messenger, Instagram, and so much more. The phrase “electronically stored information” has expanded gracefully to cover these new forms of electronic information, and we can have confidence that it will apply just as appropriately to file formats we haven’t even encountered yet.

There are many current trends in e-discovery, and you don’t need a long magazine article to tell you things will continue to change and evolve. What may be relevant in the next few paragraphs may be completely irrelevant in the next two years while the digital landscape continues to transform at fiber-optic speed.

Nonetheless, here are a few trends you should already be aware of and have probably already encountered in your practice.

Mobile devices. The challenges and considerations with mobile devices are critical—the more powerful that smartphones, tablets, and handheld devices become, the more people will use them as their primary computer. Last year, when Walt Mossberg, the former technology columnist for the Wall Street Journal, wrote about the ten-year anniversary of the iPhone, he stated that it has “conquered the world... and has, in fact become the new personal computer” (tinyurl.com/mz9xobb). For our purposes in litigation and discovery, this means there will be more and more potentially relevant information that may need to be identified and gathered from mobile devices.

Social media. The continued onslaught of social media services—both old and new and coming in the future—means there is a host of new sources of
potentially relevant information that must be collected and preserved. Some argue that social media should fall outside the realm of production, but under the broad definition of “electronically stored information,” everything posted on social media channels is absolutely covered and must be produced if it is relevant and not privileged/confidential.

**Predictive coding.** If you’ve spent any time in the world of litigation and e-discovery, you’ve heard the phrase “predictive coding” or “technology assisted review” (TAR). While we are personally delighted to nerd-out on the current and future intricacies of predictive coding and text analytics, it doesn’t seem to be a rampant and paramount concern in the vast majority of litigation matters for smaller law practices. This doesn’t mean you should dismiss it, as your opposing party may want to use the technology before they produce ESI to you, which means you need to have a comfort level with the terms and processes involved.

**I DIDN’T GO TO LAW SCHOOL TO LEARN ABOUT COMPUTERS**
This brief history lesson may have been interesting to some, but we imagine most of you are merely interested in how all this e-craziness affects your practice on a day-to-day basis.

The simple answer is that you must embrace change, cope with the current world, and have a comfortable understanding of the basics in how electronic information is stored and maintained.

The duty of technology competence doesn’t require you to seek out a community college and obtain a degree in computer science, or learn how to be a network administrator, or study to program in JavaScript. But when it comes to e-discovery, the duty does require you to have a foundational list of questions you must cover with your client regarding their troves of electronically stored information. You must have a general understanding of data formats and electronic storage media so you can speak intelligently and confidently with the opposing party about these items. You have to understand the plumbing.

There’s certainly no shortage of CLE, online courses, blogs, and other opportunities for you to become familiar with this information, but here are at least some basic fundamentals to start you off on the right path.

**QUESTIONS TO ASK ABOUT E-MAIL AND OTHER ESI**
E-mail continues to be the primary (and juiciest) source of potentially relevant information for litigation matters, so it makes sense that we start here. Incidentally, e-mail is not just a primary source for communication ESI, but because we all use e-mail as a transportation channel for files and documents, e-mail is also the primary source for potentially relevant loose documents, images, sound recordings, and a plethora of other files.

Here are some of the basic questions you should cover with your client and generally be comfortable discussing:

- **How do your clients access their e-mail?** Do they have a server in their office, or is their e-mail hosted in the cloud? Do they use Microsoft Outlook software on their computer, or do they use a web browser?
- **How do your clients use Gmail?** Is it the free Gmail or a business account?
- **How do your clients use Microsoft Office 365?** Is their e-mail hosted with Office 365?

After e-mail, the next source of ESI that we focus on is typically network shared drives—we want to know how files are organized on those servers and who has access to those files.

Next, we move on to personal computers—do your clients store files on the computer hard drives or in the cloud (e.g., Dropbox)? Where are the files located on the computer, and how are they named and organized?

From that point, there are a variety of locations where potentially relevant ESI could be stored (e.g., mobile devices, social media, etc.), but focusing on e-mail and loose files will cover most of the pertinent information.

The answers to all these questions will better inform and prepare you as you guide your client forward in the matter. You will know better how to logistically proceed on discovery motions, how to estimate costs involved in the discovery phase more accurately, and how to suitably raise these discussions with opposing counsel.

**HOW DO I BATES STAMPS AN E-MAIL MESSAGE?**
The “early days” of e-discovery tried to mimic paper-based workflows as much as possible. In the 1990s, lawyers would still predominantly receive paper from their clients to review, but when the volume got too big, they would scan each piece of paper and “code” the scanned image with pieces of information about that document, such as the author, recipient,
You could easily hit reply or forward whose name appears at the top? Not to mention the criminal code would likely be happy if you printed one of those client messages. In other words, when a lawyer or paralegal opens an evidentiary PST file they’ve received from a client in their own Microsoft Outlook software, they have essentially co-mingled that electronic evidence with their personal and professional work product. Every lawyer knows (every civilian knows) that you never pick up a bloody knife from a crime scene because you don’t want your fingerprints to incriminate you in the crime. When you log onto your Outlook software, you have essentially put your fingerprints on that evidence. If you print one of those client e-mails from your Outlook software, whose name appears at the top? Not to mention that the e-mail is “active” so you could easily hit reply or forward on those messages.

Microsoft Outlook is not a document review platform. It’s not designed to perform the kind of advanced searches we need in e-discovery. Microsoft Outlook doesn’t let you redact or stamp files. And when you find a relevant message, what do you do? Move it to another folder instead of tagging it as relevant? (If you said “print it out,” please send us a quarter—we’re saving for the kids’ college.)

**BE STILL MY BEATING HEART:**

**DOCUMENT REVIEW TOOLS**

When you need to review e-mail from a client, you must use the right tool for the job. A heart surgeon could use duct tape to close up a patient instead of polypropylene thread, but that wouldn’t be the right tool—it’s deficient, and you can make an easy case for malpractice.

Fortunately, there are several cloud-based platforms available today that will allow you to upload a PST file, get all the metadata processed, and provide you with a functional database where you can search, filter, and sort the messages. Plus, all the files are fully protected, so there’s no danger that you’ll reply to a message, and you can easily create production sets that conform to the requirements imposed on you by opposing counsel.

We mention cloud-based platforms because you can start using them almost immediately, and you’re not burdened with server or software maintenance. There are a few desktop-based tools available on the market today, but you’ll have to seek out a consultant to help you get everything set up properly.

Listing all the tools would take another two pages, but fortunately we’ve created a free download called the eDiscovery Buyers Guide that reviews most all the tools you’ll ever need to know about. Now available as two separate volumes, you can visit ediscoverybuyersguide.com to download the eDiscovery Buyers Guide for free and read the reviews along with the helpful contributing articles (including articles from folks such as Craig Ball).

This article empowers you to be more competent when dealing with e-discovery questions. You no longer need to feign ignorance about technology—you are now a more effective counsel for your clients because you can ask the appropriate questions about their information systems, you can more confidently discuss ESI with opposing counsel, and you have the right tools to get the job done. Now you understand the plumbing.

**You no longer need to feign ignorance about technology.**

**Brett Burney** (burney@burneyconsultants.com) is principal of Burney Consultants LLC, where he focuses on bridging the chasm between the legal and technology frontiers of electronic discovery. Brett works with large law firms and corporate legal departments to help them overcome their e-discovery challenges. He served as the chair of the 2015 ABA TECHSHOW Planning Board and co-authored Macs in Law: The Definitive Guide for the Mac-Curious, Windows-Using Attorney (ABA, 2018). Brett is also the co-author of the eDiscovery Buyers Guide, available at ediscoverybuyersguide.com.

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NEW! THE EARLY-CAREER GUIDE FOR ATTORNEYS: STARTING AND BUILDING A SUCCESSFUL CAREER IN LAW

BY KERRY M. LAVELLE

The Early-Career Guide for Attorneys: Starting and Building a Successful Career in Law is an objective guide for the third-year law student and the new associate to help achieve success. By knowing in advance the challenges that you will face heading into your first year of practice, you can ease the transition from law school to the practice of law.

Whether you will work in a small rural community, a medium-sized firm, or a big-city/big-law firm, the principles and disciplines contained in this book will help you avoid the mistakes that partners see being made by new associates in a variety of law firm environments.

The Early-Career Guide for Attorneys is a compilation of reminders that decision makers in law offices need to give to new associates every day. These are the behaviors, habits, best practices, cultural rules, and values of the office that the decision makers know are needed to make law offices successful.

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Clearing the Hurdles of Admissibility for Social Media Evidence

By Amy M. Stewart and Raha Assadi
When analyzing the admissibility of electronically stored information (ESI) such as social media data, practitioners should remember that ESI should be treated like any other evidence. With all evidence, the proponent must clear the evidentiary hurdles: show that the ESI is relevant under Federal Rule of Evidence 401 and similar state evidence rules; establish its authenticity under Federal Rule of Evidence 902; address hearsay issues; resolve issues of unfair prejudice and probative value; and demonstrate that the ESI complies with the best evidence rule.

This article will focus on how practitioners can clear the admissibility hurdles for social media data, including the newly amended Federal Rules of Evidence 902(13) and (14) that deal with self-authenticating social media data through digital identification.

THE RULES OF THE E-EVIDENCE AUTHENTICATION GAME

Rule 901(a) of the Federal Rules of Evidence outlines the traditional methodology that required a live witness to authenticate proffered ESI evidence. The Rule states, “The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” The application of the Rule was clarified in United States v. O’Keefe, 537 F. Supp. 2d 14, 20 (D.D.C. 2008): “[A] piece of paper or electronically stored information, without any indication of its creator, source, or custodian may not be authenticated under Federal Rule of Evidence 901.”

Sections (b)1–10 of Rule 901 set forth several illustrations of legitimate methods of authentication. These are: testimony of a witness with knowledge; non-expert opinion on handwriting; comparison by trier of fact or expert witness; distinctive characteristics of the data or thing to be authenticated; voice identification; telephone conversations; public records or reports; ancient documents or data compilation; evidence
describing a process or system; and any other method of authentication or identification provided by statute or rules promulgated by the Supreme Court.

However, newly amended Federal Rules of Evidence 902(13) and (14), which are now in effect, provides that electronic data that can be digitally identified is self-authenticating:

**Rule 902. Evidence That Is Self-Authenticating.**

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

... 

(13) Certified Records Generated by an Electronic Process or System. A record generated by an electronic process or system that produces an accurate result, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12). The proponent must also meet the notice requirements of 902(11).

(14) Certified Data Copied from an Electronic Device, Storage Medium, or File. Data copied from an electronic device, storage medium, or file, if authenticated by a process of digital identification, as shown by a certification of a qualified person that complies with the certification requirements of Rule 902(11) or (12).

The Committee Notes to Federal Rule of Evidence 902(13) offer a methodology to determine the authenticity of the ESI proffered into evidence; the methodology is based on “the hash value,” a number that is often represented as a sequence of characters and is produced by an algorithm based upon the digital contents of a drive, medium or file. If the hash values for the original and copy are different, then the copy is not identical to the original. If the hash values for the original and copy are the same, it is highly improbable that the original and copy are not identical. Thus, identical hash values for the original and copy reliably attest to the fact that they are exact duplicates.

Additionally, the trial testimony of a forensic or technical expert is no longer necessary where best practices are followed to gather the information. Instead, a “qualified person” can certify through a written declaration and attest that he or she both verified the website’s metadata and confirmed that the proffered evidence is identical to the original. Generally, a “qualified person” would be someone who works in computer forensics, e-discovery, or information technology. The sidebar on page 33 presents the text of a model certification under Rule 902(14).

Accordingly, to authenticate social media data, it must be accompanied by identifying metadata (such as hash value, date posted, account, user, etc.) and other means that can be verified by a “qualified person.” No longer will website screenshots or printouts, which could be altered or Photoshopped, be admissible as evidence.

**Establishing authenticity is only the first hurdle to admissibility.**

**BEST PRACTICES TO CAPTURE THE DATA NECESSARY TO AUTHENTICATE SOCIAL MEDIA POSTS**

The following are best practices to capture the data needed to authenticate social media posts, tweets, and blogs:

- Depending on the website, you may need to hire a web collection expert. It is important to capture the entire web page, website, or social media profile to provide a full context of the page. This may be harder for attorneys to handle when the website has a scrolling mechanism and it is challenging to capture all the data.

- Be sure to specifically copy and document the website’s name and its HTML address before it is deleted or becomes obsolete as time passes.

- If the website contains other media, for example, videos, pop-up windows, or hyperlinks, make sure to capture all those items. When authenticating the data, it is imperative that the evidence put before the court is the mirror image of the website.

- When collecting blog entries, the attorney should capture the entire blog feed so that dates, times, and authors are included. Additionally, make sure to capture the blog’s metadata as most programs will allow the author to revise blog content and even the date of posting. Again, this may be a task for a qualified IT specialist.

In conclusion, while Rule 902 eliminates the need to have a testifying expert authenticate ESI, it may be prudent for litigators to retain a qualified e-discovery collection expert to gather the requisite metadata to establish the ESI’s authenticity.

**THE HEARSAY HURDLE**

Establishing the authenticity of the proffered evidence is only the first hurdle to admissibility. As Rule 902 explains, “[a] certification under this Rule can establish only that the proffered item has satisfied the admissibility requirements for authenticity. The opponent remains free to object to admissibility of the proffered item on other grounds—including hearsay, relevance, or in criminal cases the right to confrontation.” State and federal rules of evidence forbid statements offered into evidence to prove the truth of the
matter asserted with certain exceptions. Under Federal Rule of Evidence 801, “non-hearsay” exceptions that are useful to authenticate e-evidence are: (1) a statement offered for any relevant purpose other than for the truth of the matter asserted; (2) a declarant’s prior consistent statements in rebuttal to a charge “against the declaration of recent fabrication or improper influence or motive”; and (3) a party-opponent’s admissions.

Normally, a party’s statements made on its own website are admissible pursuant to Federal Rule of Evidence 801(d)(2). However, there is a hearsay hurdle when dealing with the admissibility of statements a witness posts to a social media site that he or she does not own. Unless there is evidence, normally via testimony, that those statements were authored or adopted by the declarant, then they will remain inadmissible.

Additionally, litigators should use the hearsay exceptions to their benefit to argue that a witness’s Facebook check-in at a local restaurant is not hearsay but instead is a “present sense impression.” Additionally, practitioners should argue that tweets or other social media posts are admissible under the “state of mind” hearsay exception. See University of Kansas v. Sinks, 565 F. Supp. 2d 1216 (D. Kan. 2008) (holding that anonymous weblog entries regarding the character of allegedly infringing t-shirts were admissible in a trademark infringement action to show the declarant’s confusion about whether he or she could purchase the shirt and about who produced the shirt, rather than the existence of the shirts, and thus were not inadmissible hearsay).

CONCLUSION
The Amendments to Federal Rules of Evidence 902(13) and (14) provide a stable and predictable pathway to the authentication of social media posts. However, similar to other proffered evidence, authentication is only the first hurdle to admissibility. Litigators must still overcome objections on other admissibility grounds, such as relevance and hearsay.

MODEL CERTIFICATION UNDER FEDERAL RULE OF EVIDENCE 902(14)

I, _____________, hereby declare and certify:
1. I am over 18 years of age. I am currently employed by [employer] as a [job title]. [Add description related to qualification to authenticate the data, e.g., specializes in the discovery, collection, investigation, and production of electronic information.] I have participated in more than [number] collections and preservation efforts from [source of data], and I was the lead on approximately [number] of those collections. These investigations involved finding relevant electronic information from [data sources]. I was responsible for performing in-depth analyses and providing documentation and related materials for [employer/law firms/litigation support consulting firms].
2. I have utilized [describe discovery software used and experience dealing with hash value digital markings].
3. I was retained by [name of client or law firm or consulting company] to provide examination, preservation, and analysis of [documents, data, social media evidence, web page] in the present case. Pursuant to this request, I collected numerous [documents, data, social media evidence, web page] using [software].
4. When collecting the [documents, data, social media evidence, web page], the metadata for that information was preserved. After I collected the information, it was sent via [media] to [law firm, vendor; describe chain of custody].
5. When the items described above were acquired by me, [describe how you analyzed the hash value with the discovery software and provide conclusions].
6. The identical hash values reliably attest to the fact that the evidence has not changed.
7. The process described above was used for all the [trial exhibits] listed in the attached Exhibit.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this _____ day of _____ in _____.

[Name]

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THE RISE AND FALL OF NET NEUTRALITY

BY JOSH BURDAY
Net neutrality is the principle that Internet service providers (ISPs) must treat all information transmitted over the Internet equally. It prevents ISPs from discriminating based on the user, the content, or anything else such as the origin or destination of the content. When net neutrality is enforced, ISPs are not allowed to slow down the connection to or charge extra money for visiting certain websites. They also may not block certain websites or content entirely. This principle has also been described as the “end-to-end” principle. In other words, it is the users at each end of the network in question that decide what the network is used for, not the network operator. Typically, net neutrality also means that ISPs can only charge users once for Internet access.

**THE RISE OF NET NEUTRALITY**

Columbia Law Professor Tim Wu coined the phrase “network neutrality” in 2003 as an extension of the legal concept of a common carrier. Internet access under net neutrality is similar to how most Americans think of their access to telephone service. We take it for granted that when we purchase telephone service from a phone company, the company is merely serving as our conduit to making phone calls. The thought never crosses our mind that the phone company could decide who we may call or what we are allowed to discuss when we do so. A common carrier holds itself out to provide services to the general public. It may not turn consumers away or otherwise discriminate.

The way it has worked throughout the modern era of the Internet in America is that you pay your cable company or telephone company a set fee per month in exchange for Internet access. A few things might affect the price you pay. The most common differentiator for price is speed. If you want faster Internet service or business-grade Internet service, you pay more. That is about the extent of the decisions the average Internet purchaser makes—how much speed for how much money. It is possible this will change after the recent repeal of net neutrality by the Federal Communications Commission (FCC).

Shortly after Tim Wu’s coining of the now-famous term, Republican FCC Chair Michael Powell gave a speech in 2004 called “Four Internet Freedoms.” In response to a rise in restrictions on Internet usage, Powell stated that Internet users should have:

1. freedom to access content
2. freedom to use applications
3. freedom to attach personal devices
4. freedom to obtain service plan information

Nor were Powell’s words idle talk. Not long after this speech, a small phone company and Internet provider, Madison River, began blocking Vonage, a voice-over-Internet protocol (VoIP). The FCC initiated an investigation, and in 2005 Madison River paid a small fine and agreed to cease blocking Vonage. Thus, the FCC demonstrated that the principles of Internet freedom had some force behind them, and the idea of net neutrality took on a more concrete form.

A couple years later, in 2007, Comcast, the nation’s largest cable company, was found to be blocking or severely throttling access to BitTorrent, a popular website. The FCC upheld a complaint against Comcast that it illegally throttled the bandwidth of Internet users, and it ordered Comcast to stop all such blocking. This is how net neutrality and its enforcement began in its relative infancy.

In the years following, the FCC took a steady course of action strengthening the principles of net neutrality. This included legal battles and codifying rules that survived subsequent legal challenge.

**LIFE AFTER NET NEUTRALITY**

The FCC’s position on net neutrality has changed since Powell’s “Four Internet Freedoms” speech in 2004. The most visible change occurred in 2017 when President Donald Trump elevated Ajit Pai to FCC chairman (Pai was initially appointed by President Barack Obama). Shortly after becoming chairman, Pai announced plans to do away with the regulations codifying the principle of net neutrality. By June 2018 those rules were successfully repealed.

More than 80 percent of American voters favor the principle of net neutrality, yet
now it is gone. What were the reasons for the repeal of net neutrality, and what are the possible impacts?

ISPs and those who wanted to repeal net neutrality argue that the regulations keeping it in place would serve to benefit lobbyists as a result of regulatory capture. They claim that consumers will end up paying more to foot the bill for the big companies’ lobbyists. In other words, net neutrality is anti-consumer and anti-competitive because regulation prevents the free market from operating to the general public’s benefit. The ISPs and companies that want to repeal net neutrality also argue that net neutrality stifles investment into broadband infrastructure. The companies may lack incentive to lay down the necessary pipes and expand the infrastructure if they will not have the opportunity to recover their investment. But some also describe net neutrality as a solution to a non-existent problem.

Perhaps we do not need to wonder how the repeal of net neutrality will impact our country. We already know that it arose in the first place because ISPs discriminated based on content and other factors. Plus, we can look to other countries in the world without net neutrality regulations for examples. If access to the Internet under the principles of net neutrality is like access to making phone calls, then access to the Internet after the repeal of net neutrality is not so different from access to television through your local cable company.

ISPs will be free to offer various “packages” instead of unfettered access to the Internet. You do not pay for unlimited access to all television networks that exist. Instead, you pay for various packages, such as basic cable, sports packages, and entertainment packages. In the future we can expect to see ISPs offering a laundry list of various packages such as a social media package (Facebook, Twitter, Instagram), a news package (New York Times, Wall Street Journal, CNN), and a sports package (ESPN, Sports Illustrated). Of course, there would likely be far more than three different packages. The ISPs are incentivized to come up with dozens of packages to get consumers to pay more. If some sort of “unlimited” package (a package offering the same unfettered Internet access you currently enjoy) is even an option, you will likely pay significantly more for that than you do now. In other words, the ISPs will be free to raise the prices to the highest levels the market can bear.

Portugal provides an example. While Portugal is still bound by some of the European Union’s net neutrality rules, there are enough holes that Internet providers are already able to offer data package deals. Meo, a wireless carrier in Portugal, offers broadband service tiers that cap users’ Internet data usage. Consumers can pay for additional data packages based on the different apps and services they use. These packages include paying an extra fee each month for each of the following: messaging, social, video, music, and e-mail and cloud. In other words, if consumers in Portugal want unlimited access to all the popular apps and websites from Netflix to Facebook, they would have to pay for the basic package as well as five additional packages.

Internet access in Portugal and the European Union’s net neutrality rules provide other examples of life without net neutrality as well. When Netflix entered the European market in 2012, some Internet providers forced it to pay “tolls” or extra fees to deliver content to customers. In other words, ISPs are able to double-charge in the absence of net neutrality regulation.

The example of Meo and its packages in Portugal also demonstrate other concerns of supporters of net neutrality. Only large, established companies such as Netflix, Hulu, and Google are part of Meo’s packages at all. Would services such as Westlaw and LexisNexis even be big enough to be part of such packages? Would their speed get cut to the point of being unusable? Practices like this stifle competition and innovation. One practice, sometimes called “zero rating,” in which a network does not charge for accessing certain apps or websites, effectively promotes certain businesses and gives them a substantial advantage. A couple of the most common culprits are Facebook and Google, although various zero-rating practices have popped up across the European Union. Among his other activities, Chairman Pai has been instrumental in dismantling zero-rating protections.

Repealing net neutrality may result in increased prices in ways not directly visible to the average consumer. Just as ISPs will be able to charge consumers more, they will also be able to charge content providers more. ISPs have the power to throttle websites and slow down their speeds. For example, they can force services such as Netflix and Hulu to pay them or face throttled speeds, leading to poor quality or even unusable streaming services. Ultimately, the extra fees different businesses are forced to pay may get passed along to the consumer by way of higher prices and subscription fees. In other words, Netflix may have to raise what it charges consumers by 50 percent or 100 percent, but the average person would not know why.

One of the most common phrases thrown around when discussing net neutrality is “fast lanes.” Imagine that the Internet as you know it is a highway, and right now everyone is able to travel at 60 miles per hour—maybe 65 if you pay for a faster connection. After repeal, ISPs may be free to slow everyone’s Internet connection down to 30 miles per hour by default and only make access to the specific content they want available at 60 miles per hour. Under this system, access to content
at the previously normal 60 miles per hour is referred to as an Internet “fast lane.”

**THE IMPLICATIONS OF NET NEUTRALITY’S DEMISE**

The implications of this for both lawyers and the public at large are startling. Large, established businesses could likely survive having to pay additional fees for their content to be provided in fast lanes, but some competitors may be driven out of business. Robert Beens, the chief executive of StartPage, a popular encrypted search engine (favored by those who do not want their search data recorded and surveilled), said the company may not survive the fees required to pay for fast-lane access. While StartPage is a successful business with 2 billion searches annually, it simply does not have the wealth that Google, Bing, and Yahoo do.

The fact that even established businesses fear they may not survive the repeal of net neutrality also highlights another problem. The practice of charging more for access to Internet fast lanes could stifle innovation and new businesses entering the market. Ryan Singel, a former reporter/editor at Wired, started up his own business, Contextly, which aims to keep readers on websites by showing them related material. Singel stated that his business could not have started up at all had he been forced to pay for fast-lane access after repeal of net neutrality. He simply could not have swallowed the increased cost. Perhaps more compelling still is the story of Jamie Wilkinson, the founder of VHX, an online video distribution company. He encountered problems as investors were less willing to provide funds to a start-up knowing that the cost of doing business will be so much higher. Investors are chilled by stories such as that of Netflix being forced to pay extra fees to ISPs to avoid having its content throttled.

It is also not implausible that ISPs would start banning access to certain companies’ websites. Such viewpoint discrimination would not necessarily even come from any ill-intent on the ISPs’ part (though perhaps it could). Market forces may leave them no choice. For example, if the public becomes angered by Breitbart News Network and boycotts it accordingly, then advertisers could pull all ads and the corresponding revenue from any ISP providing access to Breitbart. Conversely, it is not difficult to imagine that ISPs in predominately conservative areas could be forced to stop providing access to CNN if the public considers it “fake news.” Some have accused Sinclair Broadcasting and others of using their position as broadcasters to favor certain messages, so this is not at all far-fetched. Regardless of your viewpoint, repeal of net neutrality holds frightening First Amendment implications for both lawyers and the general public.

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**Would phone service be better if companies could decide who we call and what we talk about when we do?**

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**THE CONTROVERSY SURROUNDING REPEAL**

As many readers may know, the FCC faces intense scrutiny for its actions surrounding net neutrality’s repeal. On behalf of my client, a journalist, I recently filed suit against the FCC regarding the fake comments submitted during the “Restoring Internet Freedom”/net neutrality rulemaking proceeding (the proceeding that led to the repeal of net neutrality). One of the FCC’s own commissioners, many members of Congress, 19 state attorneys general, a highly respected research institution, and others have concluded that the FCC’s commenting process was highly flawed and that a great many of the comments were fraudulent.

Instead of forthrightly dealing with the problem, the FCC refuses so much as to acknowledge and deal with the fact that literally millions of comments in the largest FCC rulemaking process in the history of the nation were fraudulent. Comments were submitted by bots, submitted using stolen identities, submitted using fake e-mail addresses, and submitted from e-mail addresses that do not even contain an “@” symbol. Some have posited that the FCC intentionally facilitated the fake and fraudulent comments. The FCC refused so much as to delay its vote on net neutrality, let alone make any real effort to uncover what happened. When citizens such as my client made Freedom of Information Act (FOIA) requests for records that would allow the people to determine what happened for themselves, the FCC decided to fight to keep what happened secret. While the case is ongoing, the judge already ruled that the FCC must produce a large portion of the records it fought to keep secret (both the .CSV files and the bulk submitters’ e-mail addresses).

The public should be skeptical of any position taken by the FCC that relies on secrecy and hiding information from the public, as its actions surrounding the repeal of net neutrality do. In this instance, the very voice of the people was silenced through the destruction of the comment process as comments from real people were buried by fake and fraudulent comments. How do we measure the cost to our profession and legal system of silencing the voice of the people?

Would our telephone service be better if companies were allowed to decide who we call and what we talk about when we do? If they could reduce call quality when they did not like the content of our conversations, all while charging us more?

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Privacy in the Digital World

By Jessica T. Ornsby
Data security should be front of mind for all attorneys, including sole practitioners and lawyers in small firms. Not only is it good business, but it is also impliedly mandated that all attorneys do so. As we all know, ABA Model Rule of Professional Conduct 1.6 prohibits attorneys from sharing client confidences. Subsection C of the Rule extends that responsibility a bit further by requiring attorneys to also prevent “inadvertent” disclosures of client information. Arguably the duty to protect against inadvertent disclosures extends to protecting clients’ information against potential security breaches. This makes data privacy solutions an important aspect of every attorney’s practice. When you are running a small shop, “data security” can seem burdensome and expensive, but in reality, taking the necessary precautions to protect data can be a lot less expensive than you may think.

PROTECTING CLIENT DATA AGAINST INTERNAL AND EXTERNAL SECURITY BREACHES

Technology places everything at our fingertips. It is not uncommon for an attorney’s entire practice to be paperless and accessible via various mobile devices. There is a law firm in the Washington, D.C., area known for its popular slogan: “If you have a phone, you have a lawyer.” This phrase conveys the message that this firm and its attorneys are accessible to most anyone who is seeking representation. The same idea applies to most law practices today, and on an even greater level. Our mobile devices connect us to our clients 24/7 and make it possible to access all kinds of information with just a quick swipe. Armed with only a laptop and an Internet connection, many attorneys are able to efficiently and effectively represent clients via “mobile” law offices. This style of practice is both convenient and cost-efficient; however, the cost savings should be invested into securing the information tucked into our briefcases.
Security breaches can be internal or external. Internal threats can be extremely challenging to defend against, but the Federal Communications Commission (FCC) provides some very helpful and cost-effective methods of protection. For small firms, cost is always a concern when implementing new processes. Thankfully, the FCC’s tips are all pretty cost-effective. The FCC’s recommendations are summarized below:

1. **Employee training**, including training of any support staff, is critical. You and anyone working with you, or for you, must understand the importance of taking proactive steps to protect client data. From intake to termination, there should be solid processes in place that each member of your practice is familiar with to ensure compliance with Rule 1.6. Training should be supplemented as new information is gained regarding potential new threats.

2. **Keeping all firm computers and all mobile devices used to access client data free from malware and viruses will help keep client information secure.** It is important to update all devices and computers regularly as well. Automatic system updates and virus scans will make this essentially burden free. If possible, use a separate computer for your legal work to limit the risk of security breaches from your personal use.

3. **Use firewalls both at the office and at home if work is completed remotely.** Require staff members to do the same if they are permitted to work from home. Otherwise, staff should only complete work in the office.

4. **Password-protect all computers and mobile devices.** If possible, password-protect mobile applications used to access data. Employees should also use encryption as a precaution. It should be noted that there is disagreement regarding whether unencrypted e-mail communications are protected by privilege. Change the settings on your mobile devices to automatically wipe the device if there is a password breach.

5. **All documents should be backed up regularly, and automatically, either on a cloud or on an external drive.** Preferably, both.

6. **Ensure that computers and mobile access devices are not easily accessible by unauthorized users.** Simply password-protecting devices and creating separate user accounts will help keep this issue at bay. You should also require employees to report when their cellular devices or laptop have been lost or stolen.

7. **Utilize Internet connections in the office and at home that are secure, encrypted, and hidden, and utilize a router that is password-protected.**

8. **Utilize secure payment systems.**

9. **Employee access to data should be limited as much as possible.** Every employee should not have access to the entirety of the firm’s data.

10. **Passwords should be changed every few months, and each member of your firm should utilize multi-factor authentication to access data as often as possible.**

Many of the same precautions attorneys take to protect client information can be utilized by clients to protect their information themselves. It may be advisable to flag potential security breaches for clients as they are made apparent.

**PROTECTING CLIENT DATA WHILE TRAVELING**

Protecting client data extends beyond creating firewalls and password-protecting law firm files.

If you are traveling with any devices that have access to remotely stored client data, or devices with privileged information stored directly on them, you should be aware of the border search policies of the U.S. Transportation Security Administration (TSA) and U.S. Customs and Border Protection (CBP).

There has been a recent increase in the frequency of seizures of electronic devices by the TSA, raising concerns about whether information stored on the devices was being searched. In March 2018, TSA responded to a lawsuit filed by the American Civil Liberties Union Foundation of Northern California seeking information about government searches of domestic travelers’ electronic devices. In its response, TSA alleged that while it may seize an electronic device to determine whether the device has been tampered with or compromised, the contents of seized devices are not searched.

While protecting privileged communications and documents during domestic travel may not be problematic, international travel could be an issue. Under the administration of Barack Obama, the CBP released a Privacy Impact Assessment for border searches of electronic devices. The assessment discusses the need to expand the scope of searches of

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essentially all electronic devices as part of CBP’s authority to search cellular phones, cameras, and laptops, among other things. This is an important document to be aware of to determine how to protect client data against breaches while traveling.

CBP’s Directive 3340-049A, “Border Search of Electronic Devices,” dated January 4, 2018, explains that border searches of electronic devices may include an examination of the physical components of the device as well as “information that is resident upon the device and accessible through the device’s operating system.” It is interesting that the stated purpose of the CBP is to “ensure privacy protections while accomplishing its enforcement mission.” A such, a search under the new Directive would not appropriately include information that is stored remotely. To prevent remotely stored information from being compromised inadvertently (or intentionally), a border patrol officer should request that the device’s network access be disabled. If you find yourself subject to search, be sure to turn your network connection off even if an officer is not kind enough to remind you to do so.

Data that is stored locally is not exempt from search, however. Further, encrypting locally stored data is not sufficient to avoid search, as CBP is permitted to require travelers to “present electronic devices and the information contained therein in a condition that allows inspection.”

Any attorney whose devices are subject to border search should immediately notify the CBP officer that the device contains privileged information. Doing so will get the Chief Counsel’s office involved to begin the segregation and filter process. This process will help ensure that privileged data is separated from non-privileged data and handled appropriately. After the search is completed, CBP will (or should) destroy copies of any privileged data that may be in its possession.

ADVISING CLIENTS ON DATA SECURITY

Clients should be made aware of the need to protect their data and ways to avoid unintentionally waiving the confidentiality of otherwise privileged communications. Courts are on both sides of the fence in cases dealing with attorney-client privilege and electronic communications. The data security measures discussed above can help clients better secure their data; however, clients should also be advised that they could unintentionally waive privilege by sharing sensitive information or documents with third parties, or via unsecured means.

Prevent your remotely stored information from being compromised during a border search.

PROTECTING CLIENT DATA ON SOCIAL MEDIA

Social media includes many forms of communication and is quite broad. According to D.C. Legal Ethics Opinions 370 and 371, social media includes blogs, chat rooms, Listservs, Facebook, LinkedIn, Instagram, Twitter, Yelp, Angie’s List, Avvo, and Lawyers.com, among other platforms. When sharing information and communicating on a social media platform, or by any other medium, it is imperative to keep Rule 1.6 in mind. With the prevalence of social media accounts being hacked, it should be each attorney’s priority to protect his or her social media account from being compromised and possibly leading to client information being inappropriately disclosed. For an attorney using social media to communicate with clients, a hacked account is more than an inconvenience—it is a potential violation of Rule 1.6.

Many social media platforms do offer heightened security measures that should be employed by any attorney who utilizes these means of communication. For example, Facebook, Instagram, and Twitter all offer two-factor authentication features. This security feature must be opted into, and it will immediately notify an attorney of questionable login attempts. Attorneys should also seek to limit communications with clients and potential clients via social media. Linking social media accounts to third-party applications or accounts should also be limited to avoid security breaches.

CONCLUSION

The convenience of a modern-age law practice comes with the burden of taking necessary steps to properly secure and protect client data. You definitely should not cut any corners when it comes to data security, and you should consider consulting with an expert to ensure your practice’s security measures reflect industry best practices.

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2018 Tech Gift Guide

By Jeffrey Allen and Ashley Hallene
PSolo magazine has published an annual technology gift guide in connection with the holiday season for many years. This year, we continue that tradition. We will share our ideas about technology-related gifts for spouses, friends, family, partners, employees, and others. Many of the items we discuss may prove helpful to you professionally and/or provide enjoyable additions to your personal life. We have chosen items in a price range from less than $20 to more than $1,000. We believe that we have created a list broad enough to let you find an appropriate gift for everyone on your list and maybe a few things you want for yourself.

In 2015 the “Internet of Things” (IoT), a network of physical objects with embedded electronics, software, sensors, and network connectivity that enables objects to collect and exchange data, became a popular buzzword among those interested in the evolution of technology. The IoT focuses on machine-to-machine automated communication, built on rapidly evolving cloud-computing network technology. This technology opens limitless windows of opportunity.

In 2016 and 2017 we saw an increasing number of these windows at the consumer level, as the IoT grew in scope and functionality. Exciting trends emerged, ranging from biometric authentication in hardware such as smartphones and computers, to auto-adjusting home-surround systems (not just sound, but access, heating, cooling, lighting, and security), to intelligent cars and self-driving vehicles.

In 2018 the IoT continued to grow in scope and in applications. We predict that it will remain a “thing” for many years to come (think in terms of the staying power of the Industrial Revolution). We will focus on some of the offerings available as part of the IoT, as well as include our evaluation of new offerings in more traditional examples of technology suitable for gifting—some of which have actually started to evolve into the seamless web of the IoT, much as plants tend to grow toward sunlight.

In keeping with tradition (and the requirements of the ABA’s legal department) and common sense, we have a few disclaimers and disclosures that we need to include in this article as we are telling you what we think about particular products, so let’s get them out of the way and focus on the good stuff:

1. Nothing said in this article constitutes tax advice. Consult your tax preparer about deductibility, depreciation, and other tax-related matters. If you think that something in this article constitutes tax advice, you made a mistake. You cannot use information in this article for purposes of tax evasion. You may cite this article in support of an argument that something is tax deductible because of its utility in your practice. If you do, we wish you the best of luck in making this work, but we make no representation to you that it will (and accept no responsibility if it does not). Notwithstanding the foregoing, remember that, if you think of something as a “gadget” or a “toy,” you should not try to deduct it as a business expense. If, however, you see it as a “tool” to assist you in your practice, you may have a shot at making it work as a deduction.

2. When it comes to clients, make sure any gifts comply with your state rules. Under the Model Rules, lawyers can give gifts to clients, subject to some qualifications. Rule 1.8(e) discusses some limitations: “A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.” In general, a token of appreciation for a client around
the holidays should be safe. There are a lot of potential client gifts that can help keep your firm name on their minds. You may want to consider the Boardroom Silver Stylus Penlight ($0.99 each for 50, amsterdamprinting.com). The light is helpful in a power outage or low-light conditions, and the stylus end works on all touch-capacitive smart devices (phones, tablets, etc.). If you have a lot of clients wearing glasses, they might like the Screwdriver Pen with Stylus ($1.40 each for 250, amsterdamprinting.com). The screwdriver portion features a Phillips or flat-head tip. Another handy tool is the Slide Out Magnifier with Light ($2.79 each for 150, adcomarketing.com).

3. Nothing in this article constitutes the endorsement of a product by the American Bar Association or its Solo, Small Firm and General Practice Division. The article contains Ashley’s and Jeff’s personal opinions and observations respecting the products addressed. Please do not give anyone else credit for our opinions. If you buy it and don’t like it, give it to someone else, but don’t blame us.

We can only tell you how we reacted to a product and what we thought about it. Desirability of tech tools and toys, however, like beauty, rests in the beholder’s eye. If you look around hard enough, you can find someone who will disagree with each thing we say in this article. That’s okay, they are entitled to their opinions, no matter how incorrect we think they are.

4. Opinions and information contained in this article do not replace, modify, alter, amend, staple, mutilate, bend, damage, destroy, or supplement manufacturers’ warranties, instructions, or specifications.

5. Price references in the article reflect available information regarding manufacturer’s suggested retail prices (MSRP) as of the time of writing, unless otherwise stated. Although some items rarely sell for discounts, you can find discounts for most products if you look hard enough. Often products go on sale late in the holiday season as vendors grow concerned about the likelihood of having surplus inventory that they did not sell. (This makes it a great time to buy something for yourself). We have finished this guide in the early fall for publication in the late fall to help you in your holiday shopping. It is likely that prices on some of the items will change from September to November.

6. Often products sell online for less than in brick-and-mortar shops. If you shop online, be careful to take steps to ensure both that you protect your payment information and that you get what you wanted. Some vendors sell “gray market goods.” These goods are manufactured for sale in other countries and imported (not always through proper channels) into the United States and then resold. Generally (particularly respecting photographic products), gray market goods sell at a lower cost than those packaged for resale in this country. They often do not include the manufacturer’s U.S. warranty but, instead, include an “international warranty” that may not apply in the United States. Sometimes a vendor will provide its own warranty instead of the manufacturer’s warranty or package a third-party warranty from a warranty service, billing it as a “U.S. warranty.” If you find such goods at a discount and elect to buy them, you may save a significant amount. But, if it breaks and you want it fixed, remember: caveat emptor! As a general rule, we prefer getting non-gray-market electronics goods with the U.S. warranty.

7. Some products discussed in this article were provided to us for review purposes by manufacturers, their public relations (PR) agents, or vendors willing to work with us; others were purchased for our own use; and still others were borrowed from friends or, in a few cases, simply ogled and played with in a store. A few products were announced prior to the preparation of this article but not available for us to test, poke, prod, play with, or evaluate prior to writing this article. As to those products, we offer the information we have learned about them through research and information provided to us by the manufacturer or its PR firm. We try to stay away from products we have not held in our hot little hands; but some products (like the new iPhone) have such significance that we would be remiss in not including them, even though we will finish this article before ours get delivered.

8. We have not endeavored to look at, let alone test, every product on the market in each field once we find one we like. We acknowledge that there may be very good products available that we do not mention in this article, even in product areas we discuss at length. The article reflects our observations about the products we have looked at and that attracted our attention. It is not intended to provide a thorough comparison of every product on the market in each area we find something interesting.

9. The Surgeon General has not yet opined on the subject, but we believe that technology products have proven addictive and, to the extent that you give up physical activity in favor of technology or allow it to distract you when driving a car, steering a boat, piloting a plane, or walking, bike riding, roller skating, ice skating, skiing, surfing, snowboarding, skateboarding, or doing anything else involving motion, can
prove dangerous to your health and potentially to the health of others. Accordingly, while we recommend and commend the use of technology to you, we also advise you to use it carefully and in moderation.

10. The authors make no warranty, express or implied, respecting any of the items discussed in this gift guide, except that if we say we like something, we really do!

Gift giving at or around year-end holidays has grown ubiquitous. Whether you seek ideas for the holidays, as a token of gratitude or appreciation, or just a reminder to someone that you care, gift giving is a universal custom. Technology gifts are often shiny, fun, and useful, with many gifts offering a range of multitasking features. Over the last several years, we have adopted the tradition of sharing our insights as our holiday gift to you.

JEFF’S AND ASHLEY’S LISTS
As an introduction to the gift guide and a suggestion of what comes next, we will continue our practice of starting with lists of our top ten products, the ones we want the most—or would if we did not already have them. In preparing these lists, each of us operated from the premise that we had none of the technology discussed. (In fact, we have most of the items on our lists.) Working from this premise, we each present (at right) our top ten choices for 2018.

HEALTH-TECH DEVICES
More and more of us have grown increasingly health conscious. Where consumers have an interest, manufacturers flock to make products. As a result, we have seen substantial growth in what we will refer to as “health-tech” devices. Health-tech devices represent technology that assists in developing and maintaining healthful behavior patterns or lifestyles or in treating existing health conditions. We continue to see enormous growth in this classification, as more and more people become health conscious as our population ages and becomes more aware of the need to pay

<table>
<thead>
<tr>
<th>JEFF’S LIST</th>
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<tbody>
<tr>
<td>1. iPhone Xs (gold colored, 512 GB memory)</td>
</tr>
<tr>
<td>2. iPad Pro (gold colored, 10.5”, 512 GB memory, WiFi + Cellular)</td>
</tr>
<tr>
<td>3. MacBook (gold colored, 16 GB RAM, Core i7 processor, 512 GB SSD)</td>
</tr>
<tr>
<td>4. Sony Cyber-shot RX100 VI camera</td>
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<tr>
<td>5. Kindle Oasis e-reader</td>
</tr>
<tr>
<td>6. Fitbit Charge 3</td>
</tr>
<tr>
<td>7. Apple Watch Series 4 (gold colored, stainless steel, with Milanese Loop band)</td>
</tr>
<tr>
<td>8. NutriBullet Balance blender</td>
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<tr>
<td>9. Bose Hearphones</td>
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<tr>
<td>10. Amazon Echo Show</td>
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</tbody>
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<table>
<thead>
<tr>
<th>ASHLEY’S LIST</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. O.M.G. bag by Lo &amp; Sons</td>
</tr>
<tr>
<td>2. XY37 Travel Jacket</td>
</tr>
<tr>
<td>3. Razer Kiyo streaming webcam</td>
</tr>
<tr>
<td>4. MacBook (rose gold, 16 GB RAM, Core i7 processor, 512 GB SSD)</td>
</tr>
<tr>
<td>5. Once Upon a Book Club</td>
</tr>
<tr>
<td>6. Apple Watch Series 4 (GPS+cellular, gold aluminum case, pink sand sport loop)</td>
</tr>
<tr>
<td>7. GoPro HERO 7 Black camera</td>
</tr>
<tr>
<td>8. Microsoft Surface Pro 6 (16 GB RAM, Core i7 processor, 512 GB SSD)</td>
</tr>
<tr>
<td>9. WGCC Fingerprint Padlock</td>
</tr>
<tr>
<td>10. STYLIO Zippered Padfolio portfolio binder</td>
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</table>
more attention to their health.

Health-related technology runs from what we would now consider low-tech (such as corrective lenses) to the cutting edge of technology (such as highly portable devices capable of continuously monitoring the blood sugar, blood pressure, and heart beat and rhythm of active people and highly sophisticated medical technology that has made routine surgery out of what we considered almost impossible 50 years ago).

Health-related technology includes thousands of apps designed to work alone or with various pieces of hardware to help you monitor your activities, exercise, food consumption, blood sugar, sleep, etc. It also includes apps to help you sleep better, relax better, and focus better.

Accordingly, health-related hardware ranges from wearables, to smartphones and tablets, to sophisticated surgery robots and everything in between. As sophisticated medical equipment exceeds the scope of this article (and the budgets of those reading it), we will focus on health-tech devices intended for consumer consumption. We have also not included in this article any discussion of the vast array of tech-based and tech-friendly exercise devices (stationary bicycles, rowing machines, weight machines, treadmills, etc., all of which would qualify as health-tech devices). This exclusion results from the fact that it proved very difficult for us to coordinate any reasonable evaluative process for such devices. Accordingly, while we think you may find them useful or interesting or desirable as potential health-tech items for yourselves or for giving, we cannot help you with the choice of what to get other than to suggest that if you want to consider a stationary bike, our research suggests that if you are over 50 or have back problems, you may find that a recumbent version works better for you.

When we think of wearable health-related devices, we think in terms of smart watches and hearing assistance devices. When it comes to fitness-tracking smart watches, GPS helps you keep more accurate track of your progress and activities. Watches with GPS enable users to achieve and maintain recommended intensity levels. GPS watches collect a live stream of data (speed, distance, pace, heart rate, etc.) that you can see on the watch’s display. Recognize also that these devices fall into one of two categories: (1) smart watches that include fitness tracking functions (such as the Apple Watch) and (2) fitness trackers that also function as smart watches (or at least reasonably intelligent watches), such as the Fitbit Charge 3. Most, if not all, the fitness tracker/smart watches have apps that connect them through your smartphone, computer, or tablet to a database in the cloud, enabling you to track your progress over time. Some devices include alerts (vibrations or sound), giving you feedback during a session. When choosing one of these devices, consider:

1. What is your goal?
2. What is your price range?
3. How important are size and weight factors?
4. How important are fashion and style to you?

Your goal is the first place to start. Fitness trackers have increased in popularity owing to our inherently competitive nature and the tracker’s ability to motivate us to push ourselves. Reaching a step goal can be as satisfying as checking an item off your list of to-dos. If you just want to get off the couch more, the simpler devices can achieve this without a knockout punch to your wallet.

If you plan to train for a marathon, or compete in a triathlon, you may want a device with more features to address your training needs. As with most consumer products, your choices in fitness trackers span an array of price ranges. If your goal is knowing how far you walked in a day and you’re not too fashion conscious, you can easily get by for under $150. The more features you require (and the more important you consider fashion), the more you will have to spend. Adding GPS and smartphone integration features will inflate the price. Adding style features will inflate the cost even further, as will upgrading the quality of materials. If you want a designer label, you can, of course, pay a premium for that (on top of the premium you pay for the name on the item itself). For example, the Apple Watch Hermès costs significantly more than the equivalent Apple Watch without the “Hermès” designation but gives you the same basic watch with a designer band and a few additional watch faces.

Lastly, wearable technology only works if you actually wear it, so consider the size and weight, along with how comfortable it feels, before you make your purchase. In terms of basic style and appearance, while attractiveness will always be focused on the observer, we think that the smart watches look better than the fitness trackers.

To assist you in your research, we have identified our favorites for your consideration.

**Apple Watch.** We like the Apple Watch best of the smart watches that also function as fitness trackers. The Apple Watch in its various iterations has garnered a lot of attention. The Apple Watch is really more than a fitness tracker, but it also functions as a fitness tracker. The Apple Watch runs apps, connects to your iPhone, tablet, and computer, lets you know when you have a call, displays text and e-mail messages for you, and connects to your credit and debit cards through Apple Wallet. As all the Apple Watch devices in each series of each generation use the same internal hardware and the same OS and deliver the same features, the price differences among the various styles relate to the choice of materials for the case and the band you select (and whether you desire to get one with a designer name attached). For full details, check out the Apple website (apple.com). We like the Apple Watch and think most people would be happy having one. In
our opinion, the aluminum body version offers the best value, but we prefer the stainless steel as a style preference and because it just feels more solid to us. As for bands, we have a strong preference for the Milanese Loop but recognize that it adds quite a bit to the cost of the device. Note that you can get multiple bands and easily switch them, allowing you to give the watch a variety of appearances. Apple has so many configurations of its watch that you should be able to find a case and strap option to suit everyone. You can check out all the models, cases, and Apple bands in detail on the Apple website. You may also find it useful to note that if you go to Amazon’s website, you can find third-party bands made to work with the Apple watch at less than the cost of a genuine Apple band. We have even found an inexpensive third-party Milanese Loop band, not as nice, but not as costly. Oh, a word of good news: Apple has kept the fittings the same on its Apple Watch models so that your older Apple Watch bands should remain usable on the newest models.

Although we like the Apple Watch, the simple fact of the matter is that until last year we thought of it more as a fashion statement than a useful tool. The more powerful processors in the Series 3 made it more capable of running the connected apps; and the Series 3 offered a significant upgrade to the Series 2. The larger display in the Series 4 improves the readability of information on the watch. We still consider the display small for much information, but we think that the Series 4 gives us more of what we thought the Apple Watch would be when it was first announced. We find the inclusion of the ability to provide ECG information particularly impressive. If you own a Series 3, you may not find the improvements to the Series 4 worth the cost of upgrading (unless you have heart issues and want the ECG capabilities or vision issues and want the larger display). If you do not own an Apple Watch and want one or if you have a Series 1 or 2, we think that the improvements justify springing for a new one, and we would take the Series 4 over the Series 3.

**Fitbit.** When it comes to fitness trackers, we think Fitbit represents your best choice in terms of the combination of function and value. Although Fitbit calls the top two models in its line smart watches, we think of the Fitbit line as essentially activity trackers with some models that have smart-watch-like functions.

Fitbit (fitbit.com) has taken on the heavyweights (Apple, Samsung, Google, etc.) with a line of devices adding additional features (at increasing cost levels). The top-of-the-line Fitbit devices bring you into almost the same price range as the least expensive Apple Watches (Series 3 Apple Watches start at $279, and the top of the Fitbit line starts at $299.95). We prefer the style of the Apple Watch, however. The one thing that makes the Fitbit devices stand out over the Apple Watch is the length of the battery life per charge. We consider that significant as the Apple Watch requires recharging far more often than the Fitbit devices. As a result, most users will recharge the Apple Watch at night, rendering it useless in terms of monitoring your sleep because you won’t have it on your wrist. And, in fact, the top half of the Fitbit line (Charge 2 and up) appears better able to monitor your sleep than the Apple Watch.

Fitbit’s Charge 2 is our current favorite, and although it was recently discontinued by Fitbit, it is still available on third-party sites (some offering it for as low as $49.99). The Charge 2 packs a lot of features into a small, fairly stylish package. We have received many complements on our Charge 2 (worn with an inexpensive Milanese Loop band purchased through Amazon). The Charge 2 does not have GPS built in, but it can use your phone’s GPS to track your distance and pace. Fitbit incorporated guided breathing sessions into this device as well. This device is not water-resistant, so if you are looking to take it for a swim or in the shower, you may want to look at other devices. Fitbit recently upgraded to the Charge 3, for sale on its website at $149.95. The Charge 3 offers all the features of the Charge 2, enhances some, improves water resistance, and improves the band-replacement technology (meaning your Charge 2 bands won’t work on the Charge 3). Fitbit has advertised the only quality reduction we know of respecting the Charge 3 as a feature: The Charge 2 uses a steel case, while the Charge 3 uses aluminum. We like the idea of steel and consider the move to aluminum a downgrade. Fitbit says that the aluminum case reduces the weight by about 20 percent. Because the Fitbit does not weigh much, we don’t consider that a big deal and would personally prefer the steel. All in all, the Charge 3 does not offer enough more than the Charge 2 to justify replacing a properly functioning Charge 2. If, on the other hand, you do not have a Charge 2, you might try to get one now at a discount or just bite the bullet and take the aluminum case. Either way, you should do fine. Note that Fitbit offers more sophisticated (and more expensive) as well as less sophisticated (and less expensive) options than the Charge. We believe that, for the average user, the Charge 2/3 will give you everything you need, but if you want to spend more, get a few more features, and get something that looks a bit more like a watch, Fitbit will accommodate you with its $199.95 Versa (same features as Charge 3, but with a larger face, designer accessories, apps, and music) or its $329.95 Ionic adidas edition (same features as Versa except it adds adidas workouts, removes designer accessories, and has its own operating system).
own GPS as opposed to the connected GPS using your smartphone). You can compare all the models and features in detail at fitbit.com.

SitTight. The SitTight offers a low-tech device that makes high tech easier and more comfortable to use. The device gives you a comfortable seat on a movable pedal that sits on a spherical base, enabling you to sit more comfortably at a computer table or desk using what they refer to as “active sitting.” With active sitting, you move around a bit as you work to prevent backaches and even do a little bit of light-duty core exercises to help keep you shapely (or in shape). It does require that you develop a bit of a sense of balance (always a good thing). The inherently clever design lets you work more or less hard depending on your skill level. You adjust the difficulty level by increasing or decreasing the air pressure in the bladder in the base sphere. The device costs $595. You can check it out in more detail at the SitTight website: sittight.com.

NutriBullet Balance. Who among our readers does not like smoothies? If you really do not like them, you should skip this write-up (unless you want to buy a present for someone who does like them). If you don’t know, you should pay close attention. If you do, you should go out and get one before you even finish reading this guide. It is that good! We discovered the NutriBullet Balance while we were writing this gift guide. In the Balance the NutriBullet folks have mashed high and low tech together to come up with one of the best products to hit the kitchen since sliced bread. You can check the NutriBullet Balance out on the company website at nutribulletbalance.com.

Those of you who make smoothies at home for snacks or as meal replacements know how tasty they can be. You may not know that, while they can be quite healthy, it is very easy to overdo things when building a smoothie and end up with something so highly caloric that it destroys your diet. The Balance can fix that problem for you. The Balance works in conjunction with an app that you download to your smartphone or tablet. (Doesn’t damned-near everything these days?) The app has a number of recipes for you and allows you to create your own. So far, no big deal, right? What makes the Balance special is that you use the app to build your smoothie: The device measures the ingredients for you as you put them in and gives you information as to calorie content and food value. If you use its recipes, it tells you when you have added enough strawberries, banana, kale, whatever. If you build your own, it tells you what you have added in terms of food values and calories, measuring each ingredient you tell it you will add to the mix. When you finish putting everything in, you tell it to blend, and it automatically figures out how long to run to get the optimal mixture. Then you simply remove the food container, put the travel cap on, and you are off to the races (or the salt mines or whatever). We think this is one of the cleverest gifts we found this year.

While you can order it directly from the company, we recommend that you do not. Bed Bath and Beyond regularly offers 20 percent discount coupons good for a single-item purchase. We got our $179.94 NutriBullet Balance at Bed Bath and Beyond using one of those coupons and saved $36. Whether you go that route or order it from the company, or Amazon, or somewhere else, we think that this represents one device you will want in your own kitchen.

Say what? Back in the day, hearing aids or hearing assistance devices did not work all that well and looked bulky and uncomfortable. As a result, people who needed them tended to not want to wear them. Back in the day, when we saw someone walking down the street carrying on a conversation with nobody near them, we thought that someone should evaluate them for transport to a mental health facility. Nowadays, more people than not do this, but we don’t think anything of it as we either see that they are wearing some form of earphone or assume they have one on and are carrying on a conversation with someone on their smartphone. As a result, we think nothing of the fact that more and more people wear a variety of devices sticking out of or covering their ears. Most, but not all, of these devices function as music devices or telephone headsets. Some of these devices are legitimate hearing aids (which tend to have very high price tags, often as much as several thousand dollars per ear). Others, while not technically hearing aids, can aid hearing (and usually at a far lower cost). We have found some that do this, and below we have singled out two for you to consider. We like them each for different reasons.

If you have read our gift guides over the years, you know that we like the Bose (bose.com) line of speakers and headphones quite a bit, notwithstanding that they tend to sell for premium prices most of the time. We have been Bose fans for many years. Last year, Bose came out with a combination music headset, telephone headset, and assistive hearing device that it calls the Hearphones. The Hearphones look like many other Bluetooth headsets. It gives you typical Bose quality sound, comes with Bose active noise cancellation technology, helps you focus on the sound/conversation you want, and costs $499.95. While we consider the $499.95 inexpensive by comparison to a set of hearing aids, it is on the expensive side when it comes to telephone headsets or even music headsets. Certainly, a part of that costs gets attributed to the noise cancellation technology, but compare that price to the cost of the other Bose headsets.
with noise cancellation technology ($249.95–$399.95) and you see that it is more expensive than those devices as well. Despite its price point, we like it as it does a great job on everything—noise cancellation, music, phone, and conversation. Oh, yes, it has its own downloadable app to help you fine-tune it to your personal tastes.

If you like the idea of the Bose Headphones but consider them too costly, then check out the BeHear Now (wearandhear.com). The BeHear looks like many Bluetooth music/telephone headsets. Indeed, it functions quite well as a Bluetooth music and telephone headset. It differs from most such devices in that it has built-in hearing enhancement features to enable you to hear conversations, television, and other environmental sounds better and more clearly while you wear it. Amazingly, it even has software capable of slowing down speech when listening to voice mail or recorded messages. Like many other assistive devices these days, it comes with a free downloadable app that works with Android or iOS devices. It will test your hearing and make some automatic adjustments, which you can fine-tune to your personal preference. We won’t tell you that it gives you perfect sound; it does not. It does, however, give you a better ability to hear conversations. Importantly, at $249, it costs less than a set of hearing aids and, for those with a mild to moderate hearing impairment, it may prove all you need. We can deal with the BeHear Now as a music headphone (although that is its weakest leg). We have no issue with it as a telephone headset, and it works very well respecting conversations, etc.

If your hearing needs some help, and music is really important to you, then you may want to consider springing for the Bose Headphones. If cost is an issue for you and/or music is not critical to your use and you are primarily concerned with conversational and telephonic use, the BeHear Now costs half as much and works very well. For $249 it appears to be a great value.

For those who suffer from tinnitus, sleep with someone who snores, or find environmental noises disruptive to sleep patterns, a variety of white noise devices have been available to help for years. With the advent of the smartphone, we even got apps that would generate white noise to help blank out objectionable sounds. Now Bose has taken the evolution of this technology one step further. No more external devices to generate the white noise. Bose’s sleepbuds use Bluetooth to connect to your phone, and you run them using a free downloadable app. They come with a charging case so that they charge when you do not wear them. Unlike the other devices we have discussed in this section, they do not work as music headphones or as telephone headphones. They do one thing only: pump the white noise of your choice into your ears to help you sleep better. You can check them out at bose.com or at your local Bose store (other retailers should have them by the time you read this). They cost $249.95 per set.

**PICTURE THIS**

Most smartphones take excellent still photos as well as movies these days, as do tablets (although their size makes them a bit more unwieldy than the phones). For many, the smartphone or the tablet has become all the camera they need or want, and this has posed real challenges to the camera manufacturers. The newest phones always sport improved cameras over their predecessors. In all honesty, the pictures we can take with the cameras included in the top-of-the-line iPhones and Samsung Galaxy series compare quite favorably with those from lower- to middle-level dedicated digital cameras. In some cases, particularly in the hands of a competent photographer, the quality of the results will exceed those from a dedicated camera, both for still photos and videos. You certainly cannot know the convenience of including the camera in your smartphone and carrying one small pocketable device as opposed to a phone, a digital still camera, and a video camera. While we still prefer dedicated video cameras for videos and high-quality digital cameras for stills, this does not mean we do not use the camera in our smartphone often. We do, particularly for grab shots or candid photos in our home area, when we are less likely to have a dedicated camera with us. Although we have seen any number of people using the cameras in their tablets for similar purposes, we have found that a less positive experience due to the fact that the size of the tablets makes them less comfortable to use for those purposes, and we like the results we get with the phones better.

The number of megapixels in a camera, although important, is not everything—the quality of the lens as well as several other factors bear directly on the quality of the image. No smartphones have lenses that compare favorably in terms of quality or flexibility with the variety of lenses manufactured by Canon or Nikon or by Zeiss for the better Sony cameras. Although you can add third-party accessory lenses to some smartphones, the general quality of the accessory lenses comes under the heading of “adequate” and, more often than not, detracts from the quality of the built-in lens. Even with add-on lenses, smartphones do not have the range offered by many dedicated cameras, especially system cameras (those with interchangeable lenses).

We think that, if you want high-quality photos, you should still use a dedicated stand-alone camera. Similarly, although many digital cameras also take pretty fair video, you should get a camcorder if you want high-quality videos. People with even a moderately serious interest in photography will look at the smartphone as an accessory camera to use for a grab shot every once in a while, but they will not rely on it as their primary camera.

If you plan on finding an inexpensive point-and-shoot camera from a second- or third-tier manufacturer,
you may, in fact, not get noticeably better images than you could get from the camera in a good smartphone. In fact, you can even find some that will generate lower-quality images. If you stay with the top-line manufacturers—Canon, Nikon, and Sony—and focus on the top of their range, you will end up with much better equipment for picture taking than your smartphone. Other manufacturers, such as Olympus, Fuji, and Samsung, also produce reasonably priced high-quality camera models, but we prefer Canon, Nikon, and Sony cameras. (That said, over the years, we have owned very satisfactory cameras from many manufacturers, including all those mentioned in this paragraph as well as several other manufacturers.)

When you look for a camera, remember that you frequently can find last year’s top models available at a discounted price. Manufacturers often make a few cosmetic changes and put the camera out with a new model number. Last year’s model then drops in price. In some situations, the specifications for the earlier model may prove as good or even better than the new one. In others, photographers may conclude that the previous model performed better, even though it may not have all the features in the newer one. You can usually find older models online at a discount (sometimes even from the manufacturer). Additionally, Costco regularly sells older models of Nikon, Canon, Fuji, and other manufacturers at reduced prices.

When looking to purchase a new camera, the first question to decide is whether to go with a system or point-and-shoot style camera. System cameras offer interchangeable lenses, while point-and-shoot cameras come with a single, non-exchangeable lens (often a zoom lens). If you opt for a system camera, the next choice is a mirrorless camera or a DSLR. A mirrorless camera is a digital camera with interchangeable lens that uses an image sensor to provide an image to a rear display or an electronic viewfinder. DSLR cameras have a built-in mechanical mirror to switch the scene between the optical viewfinder and the image sensor. Because they contain more hardware, the DSLRs are bulkier and heavier. Because of the built-in mirror components, DSLRs are more complicated to build (read: more expensive). You can also use lenses from some film cameras (sometimes without an adapter). Because DSLRs have been around for a while, you have a huge selection of lenses to choose from.

Sony Cyber-shot RX100 VI. The RX100 VI ($1,199.99, sony.com) is the best single-lens digital camera for general use for a moderately advanced to advanced photographer. We also consider it the best overall travel camera on the market for all but the professional photographer. This is not a beginner’s camera! This is the sixth generation of this range of exceptional compact camera from Sony. All the previous models (except for the RX100 V, which Sony replaced with the RX100 VA) remain available from Sony or from third-party sellers at less than their original selling price. In fact, the older models have seen multiple price reductions, as they go down each time Sony releases a new model.

As with most of Sony’s top-end models, Zeiss makes the lens for the RX100 series cameras. What really distinguishes the RX100 line of cameras, however, is Sony’s use of a much larger sensor (1.0”) than manufacturers commonly use in compact cameras. That results in consistently higher quality images. The RX100 VI also supports 4K video recording, which some earlier models do not. Although the lens for the VI works a bit slower than the lenses on earlier versions, the trade-off is that the VI gives you a much wider zoom range (24–200mm equivalent) than any of the predecessors. That additional zoom range makes it our undisputed champ for travel. Earlier versions, which had shorter zoom ranges, did not provide the telephoto functionality that most people want in a travel camera. The VI offers that. While the earlier versions work brilliantly for short to medium distances, they did not work so well for long distances, meaning that you either had to give up certain shots or have a different camera to take them. With the VI, you no longer need to do that. In a recent trip to Europe, one of the authors (Jeff) took about 1,000 pictures in the course of a month. The zoom range on the RX100 VI he took with him worked perfectly for all but about ten. It was the first time in many years he traveled out of the country with only one primary camera and his iPhone for a backup. One of the most amazing things about the RX100 VI is that it has a virtually identical form and size as its shorter-ranged predecessors (4.02” x 2.28” x 1.69”, 3” display, 10.62 ounces). The camera easily fits into most coat pockets and certainly does not take up much room in a briefcase, purse, or backpack. Due to its light weight, you can comfortably wear it around your neck all day. The only disadvantage that it has compared to its most immediate predecessor (now upgraded to the VA) is that the longer focal length of the lens results in a slower f2.8–4.5 lens.

If you want to give a gift that anyone serious about photography will appreciate, any of the RX100 cameras would be a good bet. The RX100 VI represents our first choice, with the upgraded VA as the second. The RX100 is unquestionably an enthusiast’s camera. While it offers a host of features, an inexperienced photographer might find it difficult to take advantage of many of them, but it will satisfy the needs of most experienced photographers and does create an opportunity for growth as a photographer for those who have not yet acquired that experience.

From our point of view... Point of view (POV) cameras have become quite the thing over the last several years. You can often see sports enthusiasts wearing a POV camera while they roller board, snowboard, snow or water ski, bike ride, river raft, or do lots of other things. We
have also seen many tourists with POV cameras strapped to their heads or posted out in front of them as they tour. The POV camera records video of whatever you put in front of it. If you strap it to your forehead, it sees the same thing you do and records what you look at as you tour the Acropolis or Fifth Avenue or London’s West Side. When they first came out, the POV cameras shot fair-quality video but would not have been our first choice for a video camera. As time went on, the quality improved and, while still not our first choice, some of the POV cameras do quite well and produce highly satisfactory video footage with minimal effort.

The GoPro HERO 7 Black represents our first choice for a POV camera. GoPro has been a leader in the field for several years, and each generation of its POV cameras has shown noticeable improvement over its predecessors. This year, GoPro released the HERO 7 to replace the HERO 6 at the top of the GoPro line. Please note that GoPro has tried something different this year. It has three HERO 7 models and has labeled all of them “HERO 7.” The feature sets of the three models are distinguished by the color of the camera: the HERO 7 Black ($399.99), HERO 7 Silver ($299.99), and HERO 7 White ($199.99). You can see images of the three HERO 7 cameras and compare them on the company website (gopro.com). Bottom line: we like the HERO 7 Black as it can make a great gift. For the most part, you are looking for high resolution. Lower resolution will make the video appear grainier. When shopping, look for a resolution of 720p or higher. Numbers such as 720p, 1080p, etc., refer to the horizontal lines on the display.

Streaming webcams. For the aspiring vlogger or the next YouTube star, consider a webcam. Many laptops come with built-in webcams, but the quality is severely lacking. You can pick up a quality webcam fairly inexpensively, and it can make a great gift. For the most part, you are looking for high resolution. Lower resolution will make the video appear grainier. When shopping, look for a resolution of 720p or higher. Numbers such as 720p, 1080p, etc., refer to the horizontal lines on the display. The exact resolution for a 720p webcam is 1280 x 720p, which qualifies as high definition (HD). Resolution of 1080p, or 1920 x 1080, is often referred to as full HD (FHD). Another feature to consider is the frame rate, measured in frames per second (fps). You need to be above 15 fps in order to stream video, although you will be better served with 30 fps or higher. Lower frame rates might produce images that appear to stutter or freeze.

With all this in mind, take a look at the Logitech C920 Pro ($49.99, bestbuy.com). The C920 offers full HD resolution at 1080p. The camera features a glass lens for better-quality images, flanked by two microphones to capture stereo sound. It offers a 20-step auto-focus for consistently high resolution. Setup for this camera is very easy: Simply plug the USB connector into the computer, and the Logitech camera app will download automatically. It offers a 78-degree viewing area that can easily capture two people in the frame at the same time.

Another great webcam to consider is the Razer Kiyo full HD 1080p streaming camera ($99.99, razer.com). The quality microphone and built-in lighting make this camera a great buy. The camera lens is a circular shape surrounded by a light ring and dial that can adjust the light’s brightness, giving the webcam a distinctive look. The light ring is one of the most notable features of this camera. Anyone who has worked with webcams before can appreciate the difficulty of trying to arrange the right lighting. Poor lighting can make the person look sinister or sickly—it does not convey the overall professional image you are going for. The webcam secures to your desktop or laptop monitor with a hinge grip that works well. If you do not wish to mount it to your monitor, there is a mount on the lowest disc that allows you to attach brackets or a tripod. The only apparent drawback to the Kiyo is the 4.9-foot braided USB cable that

The HERO 7 Black is 2.45” x 1.77” x 1.29” and weighs only 4.09 ounces. A number of accessories from GoPro and third parties will help you take action videos while holding or wearing the camera. The accessories range from a few dollars to the price of the camera. If you want to hold the camera, we particularly like the flexibility and functionality of GoPro’s Karma Grip Stabilizer ($299.99). On the other hand, for most general uses, GoPro’s $29.99 Handler works just fine. For $39.99 you can get the Chesty rig to mount the camera on your chest (good for skiing, snowboarding, hiking, touring, bicycling, etc.) or the Fetch rig (designed to mount the camera on the back of your favorite dog). You can also get the $19.99 Head Strap to allow you to wear it on your head or over a hard hat, or rigs to mount the camera on a helmet (bike, motorcycle, skiing, etc.) for $14.99 to $29.99. If you have a serious interest in POV cameras, we think the HERO 7 Black represents your best bet. If you just want to try out the genre, the HERO 7 Silver or HERO 7 White versions will work just fine; but if you think you (or your giftee) might develop a serious interest in POV photography, we would encourage you to consider the HERO 7 Black to allow for growth in skill and functionality.
More and more people have started writing about 5G devices and 5G technology. Although we have seen (and actually have) some devices capable of running 5G, 5G is not really available yet, so don’t worry about getting a device to run it. By the time 5G comes out and has some serious availability, you will undoubtedly have replaced any phone you get this year. As none of the networks works equally well everywhere, you should get a phone that works on the system of the provider that dominates your area. The major providers now offer both the iPhones and the Samsung Galaxy S series phones, so your choice of provider should not be influenced by a preference for one or the other. If the major providers work more or less comparably in your area, note that phones on the AT&T network have one significant advantage over those on the Verizon and the Sprint networks: AT&T lets you concurrently talk on the phone and browse the Internet; Verizon and Sprint smartphone users can do one or the other, but not both at the same time. The available 4G networks do not have the same scope of coverage as the 3G networks, and you may find that some areas have little or no 4G coverage at all or only have 4G coverage from one or another provider. Each of the 4G phones we recommend uses earlier technology in areas where they cannot access 4G, so you are covered in that respect.

New iOS. As we write this article, Apple has just released the newest iteration of the iOS: iOS 12. If you currently use iOS 11, the switch to iOS 12 will not create any serious culture shock. Unlike the switch from iOS 10 to iOS 11, Apple did not reinvent the wheel this time, it just polished it up and refined it. The new OS will kill some of your apps unless and until they get upgraded to work with the new iOS. The upgrades of all our devices from iOS 11 to iOS 12 went smoothly, easily, and quickly. We did not suffer a single glitch in the upgrade process of numerous iOS devices (various models of iPhones and iPads dating back over the last few years). One caveat: As we have seen in the past, using the new iOS on earlier versions of the hardware has resulted in reports of a noticeable drop-off of time between required recharging. These authors have made the same observations. The older the device, the more likely that you will have this issue. Moreover, some older devices do not offer all the features available in the new iterations of the iOS as a result of hardware differences between the devices. For example, you cannot get facial recognition on an iPhone 7 or on an iPad, as they lack the required hardware.

iPhone Xs and iPhone Xs Max. The new iPhone Xs and Xs Max, announced as we write this but not yet available, offer the same phone and feature set (other than the fact that the Xs Max costs a bit more, weighs a bit more, and has a larger form factor and a larger display). As a result of the Max’s bigger screen, the resolution numbers differ between the two devices, but you will not see a difference on the display. Both offer improved water resistance and a better camera than predecessors. Both phones offer facial recognition for biometric security. The price depends on where you get it and what memory capacity you want. The top-of-the-line (512 GB) versions cost $1,349 for the Xs and $1,449 for the Xs Max. If you go to Apple’s website, you can get a full comparison of the specs of the two phones at apple.com/iphone-xs/specs. Here is a brief summary of the difference (identical unless otherwise noted): CPU: A12 Bionic; storage: 64 GB, 256 GB, or 512 GB; memory: 4 GB; screen size: 5.8 inches, 6.5 inches (Max); resolution: 2,436 x 1,125, 2,688 x 1,242 (Max); connectivity: Bluetooth, NFC; battery: 2,658 mAh, 3,174 mAh (Max); size: 5.65” x 2.79” x 0.3", 6.2” x 3.05” x 0.3” (Max); Super Retina HD, Multi-Touch, OLED display with fingerprint resistant oleophobic coating; water resistant rating of IP68 (up to 30 minutes at 2 meters); colors: gold, space gray, and silver.

Other iPhones. Apple has retained the iPhone 8, 8 Plus, 7, and 7 Plus in its lineup. We have discussed the iPhone 8 and 8 Plus in detail in our 2017 Tech Gift Guide and the iPhone 7 and 7 Plus in our 2016 Tech Gift Guide, so we will connect it to your laptop or desktop. It is not detachable from the webcam, and at only 4.9 feet, it is shorter than some of its competitors. The overall design would benefit from having a detachable cord that could be substituted with longer cables as needed.
Samsung (samsung.com) has proven its line of Android smartphones from facing and a 12-megapixel rear-facing 10 nm 64-bit Octa-Core 2.8 GHz processor built the top end of this phone around a OS (Oreo) operating system. Samsung phones and meters) and come with the Android 8 water resistance (up to 30 minutes at 1.5 GB. Both phones have an IP68 rating for water resistance options of 64 GB, 128 GB, or 256 GB of RAM. The built-in memory is 4 GB for the S9 and S9+ is $839.99 and $959.99, respectively, with 256 GB of RAM.

**LAPTOP COMPUTERS**

The laptop computer presents an interesting option; there is an argument that it is moving toward obsolescence. More and more of our tasks get accomplished without using computers, as we rely on tablets, phablets, and smartphones instead. In another sense, these devices we rely on function as computers, and the argument may simply be semantics. The tablets and smartphones do an ever-increasing amount of work that previously we handled with a computer. It is simply a matter of using a new name and form factor. At any rate, the computer still exists on a current basis, and many people continue to use it professionally and in their personal lives. As portability has grown increasingly important to our lifestyle, we will focus only on highly portable laptop computers.

**MacBook**

Last year Apple updated the MacBook. It still has some power limitations, but it works well for the things most of us do (word processing, handling e-mail, reviewing documents, watching video, and surfing the Internet).

The MacBook comes in gold, silver, space gray, and rose gold. It has a 12” backlit LED display with 2,304 x 1,440 resolution that gives you an outstanding image. The MacBook now comes with up to 16 GB of RAM and up to 512 GB of SSD storage. Thanks to turbo boost, you can get a processor running as fast as 3.6 GHz. The keyboard gives you almost a full-sized work space. Although it took a bit of getting used to, it has proven quite usable. All in all, it offers an excellent traveling companion and work partner. In terms of size and weight, here is how it stacks up: height, 0.14”–0.52”; width, 11.04”; depth, 7.74”; weight, 2.03 pounds.

The MacBook runs on a low-power Intel Core processor. The Mac Book starts at $1,299 with 8 GB of RAM, a Core m3 processor, and a 256 GB flash drive. You can pay a bit more and upgrade to a Core i5 or a Core i7 processor and a 512 GB flash drive. We think the upgrades are worth it, and we would go with the Core i7, 16 GB of RAM, and 512 GB flash drive for $1,949.

The MacBook comes with only one port (USB-C) for extension to additional devices and charging. Fortunately, you can (and should) get an adapter that will allow you to concurrently connect to a standard USB device, an HDMI...
2-IN-1 OR NOT 2-IN-1?

A 2-in-1 is a hybrid device that can switch between traditional clamshell mode, tablet mode, and other positions in between such as tent or stand modes. 2-in-1s generally come in two different styles: detachables, with screens that come off the keyboard entirely, and flexible laptops, with hinges that bend back 360 degrees to change modes. Light laptop users or those who frequently switch between their laptop and tablet may enjoy the versatility.

Microsoft Surface Pro. Since the release of the Surface Pro hybrid laptop/tablet, Microsoft (microsoft.com) has continued to improve on the functionality and feature set of the Surface line. We refer to it as a hybrid because it works as a laptop, allowing you to run virtually any Windows 8- or 10-compatible software, along with some apps built specifically for the device. Microsoft built it like a tablet, without a physical keyboard, but Microsoft also designed a cover with a built-in keyboard that protects the display when closed and provides a stand when opened so that the display and keyboard have standard laptop-style configuration. It also has a stylus/pen.

The newest model, the Surface Pro 6, comes in one physical size only (the 12.3” display), and we think it is a bit large for a tablet (it is approximately the same size as the larger iPad Pro). That said, it works as a full-functioned laptop and, when you remove the keyboard cover, as a largish tablet with the capability of running the same software you run on any other Windows laptop or desktop computer. Should you want a simpler OS for the tablet, Windows 10 has a tablet mode in which it presents a simplified interface, more conducive to use without the keyboard. We like to think of the Surface line as a computer that thinks it is a tablet. The Surface Pro 6 measures 11.5” x 7.9” x 0.33” and comes with 8 GB or 16 GB of RAM and solid-state drive (SSD) options of 128 GB, 256 GB, 512 GB, or 1 TB. Depending on which version you get, the body weighs 1.7 to 1.73 pounds (without the cover/keyboard). You can configure the device to run on an Intel Core i5 or Core i7 processor. The cost depends on the configuration, with the bottom of the scale costing $899 (i5 processor, 8 GB of RAM, and a 128 GB SSD) and the top end costing $2,299 (i7 processor, 16 GB of RAM, and a 1 TB SSD). Our choice would be the i7, 16 GB of RAM, and a 512 GB SSD ($1,899) as we do not think the extra 488 GB of memory in the SSD justifies the $400 price bump.

Although we like the Surface Pro line very much, we prefer the 10.5” iPad Pro as a pure tablet. The advantages of the Surface Pro by comparison include the fact that it runs as a tablet but uses the same software as a laptop. The advantages of the iPad Pro in comparison (assuming you choose the 10.5” version) include smaller size, less weight, the use of iOS 12, and the variety of applications available in the iTunes App Store.

Lenovo Yoga 920. Another great option to consider in this category is the Lenovo Yoga 920 ($999.99 to $1,599.99, lenovo.com). The 920 is a premium 2-in-1, equipping Intel’s latest eighth-generation Core i-series processor that delivers outstanding performance without sacrificing battery life. It has a 13.9” Multi-touch display, up to 16 GB DDR4 SDRAM, and up to 1 TB solid-state drive. It is a hinge-style 2-in-1 with the ability to bend back 360 degrees to switch modes.

TABLETS

The market for pure tablets has not continued to grow, and, in fact, it appears that the rate of growth of tablet sales has slowed. As the price and power of tablets increases, more and more people have chosen to treat the tablet like a laptop rather than a smartphone, upgrading every few years instead of annually or even every other year. We will only focus on pure tablets in this section as we discussed 2-in-1 devices in the previous section. Consider each of the 2-in-1 devices as both a tablet and a laptop, but we think of them primarily as laptops.

Apple has dominated the tablet market since it introduced the iPad. Once again, Samsung provides Apple’s strongest competition in terms of pure tablets. Apple, however, remains the runaway leader. If you want to get or gift a tablet, we recommend you go with Apple; both of us continue to use the iPad. One of us has evolved to use the iPad Pro, which, overall, we favor as the best available tablet.

iPad and iPad Pro. Since last year, Apple has not done much to modify its iPad/iPad Pro line. It only offers one new model this year, the iPad 9.7”. We consider it a nice basic tablet with a number of good features and an insufficient amount of memory for our personal tastes, but an adequate amount for most users (it tops out at 128 GB). It does work with the Apple pencil, which is good. It also starts at only $329 for a
32 GB, WiFi-only version. We like it as a gift because of its price and functionality; but we would not buy one for our personal use, as we consider the iPad Pro a far superior device. We considered the iPad Pro at length in the 2017 Tech Gift Guide and refer you to that for a detailed discussion of its features. You can also go to the Apple website (apple.com) and check out the specifications and features of all models of the iPad and the iPad Pro.

CARRY ON

With all the great tools out there, inevitably you are going to need something to carry them around. Your needs may change depending on where you are going and how long you will be there. Whether it is a quick weekend errand, a day at the office, a short-term trip, or a longer vacation, bags of all shapes and sizes can make great gifts for your friends, family, and associates (or even for yourself).

Smart bags. As people today demand access to their technology at all times, luggage providers have answered by introducing what can be affectionately called “smart bags” into the marketplace. Generally, these are small, handheld pieces of luggage designed specifically for those traveling with technology. Smart bags are designed with electronics-friendly organizational patterns. They usually have dedicated pockets, labeled slots, and sometimes charging capabilities for your gadgets. Smart bags range in configuration from cross-body, to messenger, to backpack styles, with every conceivable pattern included.

Briefcases. No matter the gender, age, or experience level, every lawyer appreciates a quality briefcase. When it comes to price, you could be looking at anywhere from $100 to $1,000, depending on what you want. With so many to choose from, what should you look for?

1. The quality of the material
2. The quality of the hardware
3. The style
4. The size
5. Your lifestyle or the lifestyle of your intended recipient

When it comes to material, our favorites are leather (which costs the most and looks the most luxurious) and ballistic nylon (not exactly a cheap date, but it wears extremely well). Some of the new technical fabrics also appear to wear quite well, but we have not had them long enough to see how they compare to the ballistic nylon and leather over many years of use.

As far as we can tell, nobody has ever designed one case that everyone thinks represents the “perfect” case. In fact, we think it unlikely that such a case exists, as people will have different needs at different times. In fact, a case that we may think of as “perfect” for court may not work well at all for vacation use. A case that may work perfectly for one person may not work for another, even for the same type of use. Few things in terms of professional accessories will prove to be more personal than the case(s) you select to carry your gear. Most lawyers we know have found that a single case does not suffice, and, as a result, they have a selection of several cases to deal with differing circumstances (some of us admittedly overdo it, but that is a different issue).

Some of the different styles of cases to consider:

1. Cross-body bags. Generally, a small bag that gets its name from the fact that the strap crosses over the body from one shoulder to the opposite hip. These bags do not work well for business but work nicely for personal use. Depending on the size, they will hold a smartphone, an e-ink reader, a tablet, or even a small laptop. The larger-sized bags tend to get classified as messenger bags.

2. Messenger bags. A larger cross-body style bag designed to accommodate a larger payload, including laptop computers.

3. Slings. Sometimes thought of as a single-strap backpack, the sling strap goes across the body like a cross-body bag, with the bag itself designed to hang on your back like a backpack. For security reasons, many people wear slings with the bag in the front. Slings vary in size and will often hold laptops as well as tablets, phones, and other incidentals.

4. Backpacks. This refers to the traditional two-strap device that you mount on your back with a strap on each shoulder. Generally, backpacks can hold much more than the other types of carried cases, and because of their structure, they allow you to carry the weight more easily.

5. Attaché cases. You don’t see a lot of these anymore, particularly among young lawyers. These are the rectangular-shaped, hard-sided cases that you carry by a handle in one hand.

6. Briefcases. We use this term to apply to a variety of cases, including attaché cases. Briefcases may have single or double handles at the top or a strap that you wear over one shoulder, or both, giving you the option of carrying it more than one way.

7. Rolling cases. This is a completely different class of case that can come in a multitude of configurations but has a telescoping handle and two or four wheels (or sets of wheels) to enable you to roll it along like a suitcase. We prefer the cases with four sets of double wheels as they seem to roll the best and easiest.

In terms of brands, Tumi (tumi.com) is one of our favorites. Although we think their cases are often overpriced, they have established a long track record of well-designed, long-lasting, and reliable cases. We have found the Alpha Bravo (being upgraded to the Alpha 2) line very much to our liking, and the ballistic nylon used in most of the Alpha Bravo cases has worn better than most leather cases in our experience (although it costs less than the leather equivalents). As much as we like Tumi, we tend to stay away from the Tumi stores except when they have sales. Several times a year they will offer special sales of 20 percent off almost everything in the store. Other times, they will have only discontinued...
items on sale. You can sometimes save quite a few dollars by planning ahead and buying during one of Tumi’s sales. Be sure you get on their mailing list to get notice. You can also often get discounted pricing on discontinued lines or colors (still quite good) online, at the retail stores, and at outlets.

Tumi builds a lesser line of merchandise that it pushes out of its outlet stores, so be careful about what you get. The pieces built for the outlet generally cost considerably less than the retail pieces but still carry the cachet of the Tumi name, if that is what you seek. Although these bags are generally well designed, this is one of the situations where you get what you pay for. The material used in many of the designed-for-outlet pieces does not appear to have the same quality as that used in the retail stores: The nylon often appears stiffer and more coarse in the body of the bag as well as in the straps. Although it does not impact the functionality of the bags, we have found that Tumi normally includes a small leather initial patch on its retail bags but does not include it on the made-for-outlet bags. While not every item in the retail line includes this feature, we have found that it works as a pretty fair litmus test of whether a bag is made for the outlet or the retail store. If you are in doubt, ask at the outlet. Most of the time their experienced staff knows which is which. That said, Tumi’s made-for-outlet bags offer good quality and appear to wear quite well, even if they don’t look quite as nice or have all the same features as the made-for-retail products. We have acquired several over the years, and they have proven quite satisfactory.

Among our favorites from Tumi:
- Alpha 2 T-Pass Business Class Brief Pack ($495 in ballistic nylon). This large backpack has lots of pockets for organization and space for your gear. You can have the same bag in leather for $675.
- Alpha 2 Three-Way Brief ($495 in ballistic nylon). This bag works as a briefcase, a messenger bag, or a backpack, depending on your needs at the time. It’s well designed with lots of space for your gear.
- Alpha 2 4 Wheeled Compact Brief ($645 in ballistic nylon). Take the load off. This bag holds a lot of gear, organizes it well, and moves it along very smoothly and easily without straining your back or shoulder.
- Alpha Bravo Nellis Backpack ($395 in ballistic nylon, $595 in leather). Smaller and sleeker than the T-Pass, it’s still capable of holding a lot and letting you carry it comfortably.
- Alpha Bravo Albany Slim Commuter Brief ($425 in ballistic nylon, $625 in leather). This bag carries with two top handles or over the shoulder with an included, removable/adjustable shoulder strap. The bag has dedicated laptop and iPad compartments and pockets for accessories. And if things get too crowded, it expands.

In the days of yesteryear, Coach turned out some of the most incredibly durable leather products. They continue to make excellent products, but their leather cases do not have the durability of the older cases (Jeff has a couple of Coach bags that he acquired as a young lawyer, still uses, and are a number of years older than Ashley). Unfortunately, over the years, Coach has moved from thick, practically indestructible leather exteriors with natural leather interiors to more polished, thinner exteriors and fabric linings. The thinner leather looks more “designer,” but, in our experience, the thinner the leather, the less durable the bag. Coach still makes some very nice leather bags, they just don’t hold up like the ones they built 40 years ago.

Like Tumi, Coach builds some products for its outlets. Coach’s outlet products are usually decent, but not as nice or as well made as what they sell in the retail stores. Coach also uses its outlets to dispose of excess inventory and discontinued items at good discounts. If you check the outlets for discontinued retail store items, you can get particularly good values. Coach outlets have more sales and deeper discounts than Tumi.

Coach and Tumi, while not the most expensive cases you can get, tend to cost more than most. If you want a less expensive, but decent-quality bag, check out the Victorinox line (victorinox.com). Victorinox costs considerably less to start with and often ends up on sale in luggage stores and online.

When it comes to backpacks, we have another suggestion for you: Tom Bihn (tombihn.com). The folks at Tom Bihn have been around for a while making well-thought-out, well-designed bags for a variety of purposes. They designed several of their products for electronics, and two of our favorites are their...
Synapse backpacks. The Synapse comes in two sizes: the Synapse 25 (larger) and the Synapse 19 (smaller). The Synapse 25 (13.4” x 20” x 9.1”) starts at $200 for the basic bag, and the Synapse 19 (11.4” x 16” x 7.9”) starts at $190. We say “starts at” because, for the base price, you get the shell with a minimal amount of interior organization and the flexibility to build the inside to suit your personal needs. You can choose the exterior fabric as well. They offer three choices: ballistic nylon (our favorite), 400d Halcyon (our second choice and a good lightweight choice), and 1000d Cordura (we are not big fans of Cordura as we do not think it wears as well as the other choices and it tends to collect dust, dirt, and pet hair more easily than the other choices). In terms of the insides, you can purchase and add a large variety of accessories, ranging from laptop pockets, to tablet pockets, to key leashes, and even safety lights. One of our favorite accessories, the Freudian Slip, gives you a removable package with numerous organizational pockets for things such as cell phones, batteries, pens, cables, chargers, etc. The Freudian Slip for the Synapse 19 or the Synapse 25 costs $50. Padded sleeves for laptops and tablets cost between $30 and $45 each. We have always liked Tom Bihn’s ingenious design features and the quality of workmanship. The pricing appears pretty good, too, by comparison to other top-quality bags. You can check these pieces and the full line out at tombihn.com.

We also found a few other bags for you to consider. The O.M.G. bag by Lo & Sons ($275, loandsons.com) is a lightweight bag that works well at the office or on overnight trips. Gone are the days of trying to balance a tote on top of your suitcase, only to have it fall and spill your precious contents all over the terminal. Here, the suitcase handle sleeve makes it easy to slide onto any roller bag. When you are not traveling with a suitcase, the bottom and top of this sleeve zip up, turning it into an extra-large exterior pocket. The side sleeve pocket is a great way to store gym shoes or umbrellas without dirtying anything inside the bag. The laptop storage sleeve can fit up to a 13” laptop. The opposite interior wall offers two additional tech compartments, one for your smartphone and one for a tablet (sans tablet case). It would have been nice if the tablet sleeve was a teensy bit bigger to accommodate a case around the tablet, but you can fit the tablet and case nicely in a second sleeve attached to the laptop sleeve. The front pocket is divided into multiple pockets for ample storage and organization. There is a key leash tucked into the front pocket that is very useful for storing your keys while traveling by air (no more tearing apart your luggage at the airport when you return.) The outside construction of the bag consists of a water-resistant poly nylon material that looks very sleek and chic. The inside is lined with a water-resistant poly jacquard material featuring Lo & Son’s signature hummingbird pattern.

Travelpro Platinum Magna 2 Check Point Friendly Laptop Backpack ($134.99, amazon.com) is a great piece to add to your travel wardrobe. The exterior of this bag is made of durable ballistic nylon with leather accents. The bag is designed to unzip and fold open, allowing you to pass through airport security without removing the laptop or tablet. It is compact enough to fit under the seat while flying, which is particularly useful on basic economy flights that will not allow you any overhead bin space. There is a key holder built in, as well as an RFID wallet holder to help keep your credit card information secure. The overall design is sleek and professional looking without sacrificing comfort or support.

Booq Cobra Squeeze ($195, boobags.com) is a highly functional, though unusual looking, backpack. It features a turtle shell design that is very spacious while appearing compact. It has been hailed by Macworld as the “best commuter bag,” a title the company is very proud of. Despite its unusual structure, the monochromatic look gives it a sleek and professional appearance. The interior storage can hold a laptop up to 15.4”, a tablet, and the accessories that power your daily life.

Samsonite Ladies Leather Zip Brief ($169.99, amazon.com) is a beautiful bag to carry to and from the office. Like the O.M.G. bag, it features a suitcase handle, making it convenient for air travel as well. The exterior construction features sleek Saffiano leather. The front zip pocket offers ample pockets for organizing your items. There is also a removable, adjustable shoulder strap to make it easier to carry when you are on the move. The laptop compartment will hold up to a 15.6” laptop and 9.7” tablet. And there is an easy-to-access key clip for added convenience. Samsonite also offers the Red Easy-Way 2 Backpack (regular price $130 but currently $104, Samsonite.com), a fetching convertible bag that can be worn as a backpack or carried as a briefcase with the shoulder strap. It is a smaller design, and, as a result, the padded laptop compartment will only hold up to a 14.1” laptop. There are four convenient exterior pockets designed to organize your belongings. It also features dual side and top carry handles, providing a variety of carry options. The exterior is a durable polyester fabric.

Travel clothes. If you want to just carry a few things and do not want to schleip a briefcase around or if you want to carry a few extra things that won’t fit in your case, think about clothes that function as carry-on bags for yourself or as a gift.

Frequent fliers who have ever had
The pockets can hold phones, tablets, wallets, keys, water bottles, sunglasses, Kindles, dog leashes, and more. The coat is a soft-shell jacket with a crisp, classic A-line shape and a detachable hood. They make the coat from a machine-washable polyester/spandex blend.

**ACCESSORIES FOR MOBILE DEVICES**

Accessories for mobile devices to purchase as gifts include a variety of protective cases, carrying cases, earphones, external speakers, and other miscellaneous devices.

**Protective cases.** If you are the type to shell out hundreds of dollars on the newest smartphones as soon as they come off the assembly line, it only makes sense to protect your investment. Every year new smartphones emerge, and every year there are new cases designed to protect them. The number of manufacturers and models of cases has grown so immense and changes so rapidly that it makes little sense to try to list them individually. We found ourselves in that position while doing last year’s Tech Gift Guide, so instead of going into detail about various cases, we presented a discussion of the process of selecting a case and gave you some tips in that process. We refer you to last year’s guide rather than repeating it here.

**Power up!** Most smaller communications devices come with batteries that have a hard time lasting the day in the hands of a power user. As we have all started to use our devices more and more, many of us have evolved into what, historically, we might have called a “power user.” As a result, more and more of us find that our devices require recharging during the day. We have read numerous articles about how to prolong battery power in devices and have done enough experimenting that we could write several of these articles ourselves. Unfortunately, most of the power-saving suggestions we have seen cause a loss of (or reduction of) functionality. The more power you save, the more features you need to give up. We don’t like this approach. In truth, most heavy users will need and want to recharge their devices during the day. We have found it helpful to keep chargers available for ready use in our offices, homes, and cars (and hotel rooms when we travel). We also carry a charger in our briefcase and we carry a portable external power source (sometimes called a power bank) for convenience and insurance against running out of power at an inopportune time—when we cannot find a convenient outlet or when we continue on the move, so we cannot tether our devices (or ourselves) to a stationary outlet.

Although we used to like phone cases with built-in batteries (and we know some people who still do), such cases add both size and weight to the phone, a problem that increases with the size of the phone, and the cases have the disadvantage of device specificity. We now prefer the more flexible (and often far more powerful) power banks capable of charging a variety of devices and, in some cases, charging multiple devices concurrently. We have not seen significant performance differences among the various models we have used, other than as a result of the size of the power reserve and the amperage of the output ports. We have seen differences in style, size, and functionality, however, even among devices with the same-sized power reserve. You can get some with built-in cable connections for devices and others that require you to use a separate cable. You can find chargers smaller than a roll of pennies and some as large as an iPad mini, but significantly thicker and heavier. You can get some that have a single USB port and some that have multiple USB ports. If you use an iPad, you will want the charger to have at least one port that puts out 2.1 amps. If you use a MacBook, you will want one with a USB-C output that will power and charge a MacBook or a standard electrical outlet for use with your computer. Many of the chargers have multiple ports with different outputs (usually around 0.5–1.0 amps or 2.0–2.4 amps), but some have “smart ports” that figure out what the attached device takes and put out that much power through the connecting port. Some of the larger power banks accept a standard electrical plug, allowing them to accommodate almost any portable device.
We don’t ever leave home without one or more power banks. When we travel, we usually take at least two, one small enough to fit in a pocket and one that lives in the briefcase or backpack we carry, to ensure that we have plenty of power. You can find power banks almost everywhere these days: Best Buy, Fry’s, the Apple Store, Microsoft stores, Amazon, even Rite Aid and Walgreens. You can also get them at many airports and some gas stations. Well-known names include Mophie (mophie.com), Jackery (jackery.com), Monster (monsterproducts.com), Samsung (samsung.com), Anker (anker.com), and myCharge (mycharge.com).

The power supplies from RAVPower (ravpower.com) represent some of the best values we have found. Two of our favorite larger-capacity devices come from RAVPower: the RAVPower 26800 mAh ($59.99, amazon.com) and the RAVPower 12000 mAh ($19.99, amazon.com). Both offer very compact and relatively lightweight options to keep your tablet, phone, and e-reader running all day long and then some. These power supplies pack a remarkable amount of charge in a tiny package. When considering external batteries, keep in mind that the higher capacity, the more charge you get.

Slightly smaller in capacity (and less expensive) are the Anker 20100 mAh PowerCore ($49.99) and the Anker 10000 mAh PowerCore ($31.99); both are available from Amazon. These devices make reasonably priced gifts that almost anyone will find useful.

As Samsung’s phones have had NFC (Near Field Communications) wireless charging available for a while and Apple has included that feature in this year’s models, you might also consider gifting an NFC charging base as a gift. Samsung sells them, as do a number of other manufacturers. We have seen them online and in Best Buy stores. Other electronics stores will likely have them as well. Amazon has a pretty good collection starting at $11.39 (with free shipping through Amazon Prime).

Heavy-duty power banks that come with electrical power outlet receptacles include the MyCharge Portable Power Outlet ($179.99, amazon.com). Another good choice, the (TSA-approved) Jackery PowerBar 77Wh/20800mAh 85W (100W Max.) Travel Laptop Power Bank, costs $129.99 at Amazon. Another favorite, the HyperJuice AC External Battery Pack (100 Wh/26000mAh), costs $199.99 at Amazon. Remember, as a general rule, the more powerful banks cost more, weigh more, and take up more space than those less powerful.

**Earphones and headsets.** Give the gift of high-quality sound this year. Without regard to what phone or tablet you acquire, we recommend upgrading from the standard-issue earphones to higher-quality earphones or headsets to get more enjoyment from your portable devices. We have not found a single device that comes with earphones that we consider satisfactory. You can get headsets and earbuds in wired and wireless versions. Although some of the headphones only work to play music, many of them also handle telephone functions.

Another variable you should consider is how the headphones deal with external or ambient noise. Some devices ignore it completely, others use a noise reduction or cancellation technology. Such technology comes in two basic categories, so, if you want to get it, you need to choose whether to get active or passive noise reduction. Headsets with active noise cancellation use white noise to counter outside noise, effectively canceling the sound created by the outside noise. Passive devices form a virtually soundproof seal to the ear, keeping the noise (or at least most of it) out. In our opinion, in-ear devices provide the best passive noise reduction as they form a better seal against outside noise. Standard headphones and earphones do not offer noise reduction. In relatively quiet environments, such as a living room, they work just fine. In noisier environments, such as an airplane cabin, noise reduction or noise cancellation can make a big difference. You have a wide selection to choose among. Options range from lightweight devices that fit in your ears, to larger and bulkier devices that fit on them, or even larger and bulkier devices that fit over them, enveloping them. Some of the manufacturers we particularly like include Bose, Beats by Dr. Dre, Bang & Olufsen (B&O), Jabra, Plantronics, Bowers & Wilkins, and Sony. Our list is not meant to suggest that you should not consider others; these recommendations reflect our tastes and judgment. You should never spend a lot of money on earphones without going to a brick-and-mortar store and trying them out (unless you have a reliable vendor that promises the ability to return them if you do not like them). Simply put, what sounds great to us may not sound as great to you. Take our recommendations for what they are worth, but try the devices out yourself.

Bose remains one of our favorite earphone/headphone manufacturers. We considered several of their models at length last year and refer you to the 2017 Tech Gift Guide discussion or the Bose website (bose.com) for detailed information. We have a couple new models that we will talk about this year, but most of last year’s favorites remain current and stay at or near the top of our list. Examples include:

- Bose SoundSport wireless earphones, featuring a connecting wire between the two ears ($149.95).
- Bose SoundSport Free wireless earphones, with no connecting wire between the two pieces ($199.95).
Bose SoundLink II around-ear wireless headphones ($229.95).
- Bose QuietComfort 35 II (QC35) acoustic noise canceling wireless headphones, now in their second generation ($349.95–$399.95).
- Bose QuietControl 30 (QC30) noise canceling wireless earphones ($299.95).

Other manufacturers we particularly like include:
- Beats by Dr. Dre (beatsbydre.com). Now owned by Apple, Beats still produces a harder and more driving bass. Note that the prices listed below are MSRP, but we have seen substantial discounts for Beats devices online. Worth checking out in this line:
  - Beats\(^x\) wireless earphones ($119.95). Good sound, less costly than Bose, but close in quality to the lower end of the Bose line. If you prefer a stronger bass, you will probably like these better than the Bose SoundSports.
  - Powerbeats\(^3\) Wireless earphones ($199.95). A step up from the Beats\(^x\), it produces a crisper and more dynamic sound. It’s our favorite of the Beats earphones. This device uses a new W1 chip in partnership with the Apple iOS devices to provide easy switching between your devices. Note that to take full advantage of the W1 technology, you need an iCloud account, iOS 10 or later, Mac OS X Sierra or later, and, if you plan to use it with an Apple Watch, WatchOS 3 or later.
  - Beats Solo\(^3\) Wireless headphones ($299.95). Excellent sound, very comfortable to wear on-ear headset.
  - Beats Studio\(^3\) Wireless headphones ($349.95). This is our favorite of the Beats headsets. We like the comfort and the sound quality of this over-the-ear headset a lot. A bit heavier than the Solo\(^3\), it comes with Apple’s W1 chip and a very competent active noise canceling system.

Apple has only one set of earphones with its own brand on it that we like: the AirPods ($159). The AirPods have an unusual configuration in that they have no physical connection to each other, so you place one in each ear but have a cylindrical piece sticking out of the bottom of the device and your ear. While the sound quality of the AirPods is significantly better than the earphones Apple generally provides with its devices, we do not think that it compares favorably with some of the other options available (we suspect that may be one reason that Apple acquired the Beats by Dr. Dre line). We do like the convenience of the automatic pairing and the charging case (although the case is fairly small, and we have managed to misplace one). When they first came out, people raised concerns about whether the AirPods would stay in the ear. We have not found this to be a problem, and we have tried some after-market devices to connect the two or make them less likely to fall out but found them unsatisfactory. We think you should use them as Apple made them. They do work quite well with the telephone, and we have noticed a substantial number of people using a single AirPod as a primarily telephone earphone.

**Portable speaker systems.** Portable speakers come in handy in a lot of situations and make great gifts. They can vary a great deal in terms of size and shape. When it comes to choosing the right speaker, there are a few factors to consider, but mostly it comes down to personal preferences.

In terms of pure sound quality, check out the Beoplay A1 from Bang & Olufsen ($249, beoplay.com). It provides a full, rich sound in a very portable package. It offers 360-degree sound production with surprisingly strong bass; easily fits into a pocket, bag, or briefcase; weighs only 1.3 pounds; and does double-duty as a very functional and high-quality speakerphone. It works with a special app available for iOS and Android devices. Battery life approaches 24
hours per charge, depending on volume. We also very much like the Bose SoundLink Revolve Bluetooth speakers. The SoundLink Revolve has a cylindrical form that pushes sound out in 360 degrees. It comes in two sizes, the larger of the two, the SoundLink Revolve+, costs $299.95 (bose.com) and the smaller, the SoundLink Revolve, costs $199.95. Although both come under the heading of “portable,” the SoundLink Revolve+ (7.25” x 4.13” x 4.13”, 2 pounds) is relatively heavy and not the kind of thing you want to carry around everywhere or even travel with, unless you happen to be driving. It has great sound, however, and works well in situations where you want a portable, but not necessarily diminutive, mobile speaker. Think your office or patio or at a picnic. The smaller SoundLink Revolve has a bit less of everything except quality. Aside from being physically smaller and weighing less (5.97” x 3.24” x 3.24”, 1.5 pounds), it does not have the same power, but it does a very nice job, particularly in a smaller room. Some of the other notable features of the SoundLink Revolve include the fact that the speaker is water resistant and comes with the ability to access Siri and/or Google Now by simply pushing a multifunction button. The SoundLink Revolve also acts as a speakerphone and comes with a universal mount to allow you to connect it to a tripod should you find yourself in a situation without a flat surface or just want to show off how cleverly it was designed.

Another excellent all-around Bluetooth speaker is the UE Boom 3 by Ultimate Ears ($149.99, ultimateears.com). The Boom 4 boasts a 15-hour battery life and powerful audio performance at a range of more than 30 feet. It is portable, durable, and waterproof. The company claims that you can immerse the speaker in up to a meter of water for 30 minutes before you run the risk of it leaking and being damaged. (Note: We have not endeavored to verify this claim; you do so at your own risk.) The cylinder-shaped speaker emits 360-degree sound that fills a room. You can use the Boom app to link multiple Boom speakers (including older models such as the Boom, Boom 2, and Megaboom) or set an alarm to wake you from sleep. Up to two people can connect to the speaker through the app. The Boom 3 adds a tap control feature that, when activated through the app, allows you to control the speaker with taps. You can tap the speaker twice to skip songs, three times to go backward.

**SMART HOME TECH GIFTS**

“Smart home” references a residence with appliances and features capable of communicating with one another and of being remotely controllable. Some of these tools can make great gifts for those who want to be more “green” or could use a little more convenience.

One of the easiest smart home gifts to set up is the Amazon Echo ($99.99, amazon.com). Since starting with the Echo in 2015, Amazon has expanded from the tower-shaped Echo to the hockey puck-shaped Echo Dot ($49.99, amazon.com), the Echo Show (a speaker with video screen for video/voice calling, streaming, etc., $229.99, amazon.com), and the Spot, a smaller video device ($129.99). This year, Amazon has upgraded many of its Alexa devices, most significantly the Show, providing it with a noticeably larger display. All the devices connect to the voice-controlled digital assistant service, Alexa, which responds when you speak that name or an alternate code word. The devices provide voice interaction and a variety of services, including playing music, making to-do lists, setting alarms, streaming podcasts, playing audiobooks, providing weather and traffic reports, and controlling smart home technology. Be careful, however, as you can turn the device on inadvertently by speaking its code word. For example, if you say, “I like my Alexa Show” or “I have found Alexa helpful,” the fact that you said “Alexa” will wake the device up and cause it to listen for and respond to a command. The same thing can happen if someone on the television or radio says “Alexa.” As Alexa always wants to help out, sometimes Alexa gets over-anxious and “hears” Alexa when nobody has said it.

There have been some questions
about whether devices such as this listen to more than they should and can transmit audio and visual information surreptitiously to third parties. The answer is yes, at least in some sense as one of Amazon’s features, called “Drop In,” allows you to designate some people who can simply drop in on your device and see and hear. When someone “drops in,” they see a blurred feed for the first ten seconds, during which time you can disable the camera or reject the call.

This has some advantages and some disadvantages. For example, if you have elderly parents and want to check on them, this offers a way to do that. You could also use it to remotely check on your house or office. On the other hand, as it does not ask you for permission each time, it can have a negative impact on your privacy. Accordingly, you might want to think about where you place such devices (whether for Alexa or a speaker or device keyed to one of the other digital assistants such as Siri or Google). You might also think about where you have the video devices placed as they show whatever is in front of them when used this way. Another possibility is to simply turn them off when you are not using them and turn them on when you need them. That is somewhat inconvenient as it takes about a minute for the device to power up and connect, but it may work better than the alternative. This warning aside, we like the Alexa devices and use them heavily. By the way, you can put them throughout your house and use them as an easily set up intercom system.

To set up any of the Alexa devices, simply plug in the speaker, download and open the Amazon Alexa app on a smartphone or tablet, and follow its prompts. All of Amazon’s Alexa devices use Bluetooth technology to connect to your devices. They also connect to your wireless Internet to process voice commands. You will need an Amazon account to use the Echo and Alexa. (We highly recommend you get one anyway if you do not already have one; it is a great place for online shopping.)

Amazon designed the newest version of the Echo, the Echo Plus (2nd Gen, $149.99), as a control center for other smart devices. It offers improved sound through better speakers than the Echo and comes from Amazon packaged with a Philips Hue Bulb to give you the opportunity to experience how you can use the Echo Plus to control such devices. Check it out on the Amazon.com website.

The Echo Show offers better speakers than the Echo and a large touch screen display that can be used for video calling any other Echo Show or Amazon Alexa app users. The display can also show you videos from Amazon Prime, display pictures like a digital photo frame, and show you weather reports or the lyrics to a song as it streams music. More “skills” are being added by third-party apps. For anyone wanting a gift for communicating with elderly parents, this could be a great option to consider.

Google Home (store.google.com), Google’s response to the Amazon Echo, made its debut in the United States in November 2016. It is a voice-activated smart speaker powered by Home’s intelligent digital assistant, called Google Assistant. There are many Google and third-party services integrated into the speaker, allowing you to listen to music, look at videos or photos, or get news updates entirely by voice. Google Home uses Google Search when looking up answers and responses to your questions, a nice advantage over the Amazon Echo, which is powered by Bing. You activate Google Home with the wake words “Okay, Google” or “Hey, Google,” but not just by saying “Google”; this way you can avoid confusion. Google offers several sizes of its audio-only Home device. The basic Google Home costs $129. The Google Home Max costs $399. The Google Home Mini costs $49.

The Ring WiFi-enabled Video Doorbell 2 ($199, ring.com/video-doorbell) can provide alerts when visitors ring your bell or trigger the built-in motion sensors. You can then use the free Ring app to see, hear, and speak to guests from your smartphone, tablet, or PC, no matter where you are. This a great gift for the frequent traveler, allowing you to see who is coming to your door and communicate with them as though you are inside even if you are miles away. One note of caution: A number of people we know have found the Ring somewhat problematic to install. Accordingly, if you plan on getting one, you might consider hiring a professional to handle the installation for you.

Backyard barbecue enthusiasts will enjoy the Grillbot automatic grill cleaner ($89.95, amazon.com). The only downside to a perfect afternoon barbecue is having to clean the grill afterward. The Grillbot is a battery-powered robot with three removable rotating wire brushes that will automatically clean your barbecue grill. All you have to do is place the Grillbot on the grill, cool or warm, push a button, and close the lid.
You will need the surface temperature to be less than 250 degrees, but there is a sensor on the Grillbot that will alert you if the temperature is too high. While it is running, the Grillbot’s brushes will spin, stop, and restart at random, in a way that makes the robot crawl across the surface of the grill.

The indoor home chef will enjoy the offerings from the Perfect Company, such as the wireless Perfect Bake PRO smart kitchen scale and recipe app ($59.99, amazon.com), or the Perfect Blend PRO smart scale and app ($94.99, amazon.com), or even the Perfect Drink PRO smart scale and recipe app ($99.99, amazon.com). All these smart devices work with Apple devices running iOS 10.0 or higher (with Bluetooth 4.0) and Android devices running Lollipopp 5.0 or higher (again with Bluetooth 4.0). All three scales have a corresponding app, but actually you can use all three apps with any of the scales. Each app comes with a bank of recipes, but you can also add your own to the database. All this combines to make food preparation at home easy, which makes it a great gift for those of us not-so-gifted in the kitchen. Following the apps and recipes makes it easy to keep track of your nutritional intake as well.

Everyone wants to be connected these days, but if your wireless network does not extend very far, it can feel like a pretty short leash when you move about the house. Put some slack in that leash with the TP-Link N300 WiFi Range Extender ($19.99, amazon.com). The TP-Link is compatible with standard routers and access points, and it is quick and easy to set up. Once you have it set up, you can access and manage everything through the TP-Link Tether app (available for iOS or Android smartphones). There is even a handy signal indicator to direct you to where the best place to locate your extender is for optimal WiFi range. As an added bonus, you can set up a schedule to turn the extender on or off, which can help enforce bedtimes for the youngsters.

The next time you host a movie night, you can take the entertainment outdoors with the ViewSonic PA503S 3600 lumens SVGA HDMI projector ($299.99, amazon.com). The picture quality on this outdoor movie theater is impressive. You can connect it with a Roku or Apple TV to project your entertainment choices on whatever surface you desire (a white wall, a projector screen, the side of a pole barn . . .). It operates quietly, so you do not have to worry about where you place the projector. While the image projection is amazing, the sound quality is a bit lackluster, so you may want to plan on picking up a quality external speaker to connect to it.

Kids and grown-up kids-at-heart will get a kick out of Clocky, “the alarm clock that runs away” ($39.99, clocky.com). Clocky is especially useful for anyone who has difficulty getting up in the morning. When your designated wake-up time arrives, Clocky’s alarm will sound. If you think you are going to keep hitting snooze for “five more minutes,” think again. The next time you tap the snooze button, this little robot on wheels rolls away, still beeping and chirping, requiring you to get up and chase it in order to silence it. To end the beeping, you have to switch it off.

You can also increase your outlet access with the PowerCube 5-outlet wall adapter ($18.97, amazon.com). The PowerCube can turn one power outlet into five. You can connect multiple cubes together to exponentially expand your power capacity. Be sure to keep your wiring outlet capacity in mind before connecting multiple devices. You might want to have an electrician advise you on the capacity and even install a new circuit or two to safely increase the capacity for you before you start to tax it with multiple outlet extensions.

Dog owners will enjoy interacting with their pets with Furbo Dog Camera ($199, amazon.com). The Furbo is one of the most popular pet monitors on the market. There is a built-in camera and two-way audio system that allow you to check in on your pet. You can even dispense a treat to the good boys and girls through the Furbo app, no matter where you are. There is a built-in barking sensor that will send push notifications to
Amazon, Barnes & Noble, and others have e-reader apps available for both iOS and Android devices. Apple also has its own iBooks app available for iOS devices only. Although the Android and iOS apps do excellent Kindle and NOOK emulations, there are several reasons why some of the dedicated electronic reading devices continue to have a place. First, the e-readers/tablets generally cost less than the top-of-the-line tablets, making them a reasonable choice if you want a less expensive gift. Second, some of the subscription materials available on the e-readers do not work with emulation apps. Third, although tablets (and the tablet-like color e-readers) work very well indoors, they do not work well in bright sunlight. The E Ink e-readers, however, work quite well in bright sunlight as well as indoors. Some of them have internal lighting mechanisms, making them very well suited for use in a darker environment (such as an airplane cabin at night). The E Ink devices generally do not provide quality Internet or e-mail access. Think of them purely as electronic books. The E Ink devices we will discuss are smaller and lighter than their color relatives, allowing them to fit very easily in many coat pockets as well as in a variety of purses, messenger bags, and briefcases.

We recommend that you stick with Kindle or NOOK as a dedicated electronic book reader for personal use or as a gift. The NOOK line has proven quite satisfactory, but we have a strong preference for the Kindle (we have tried them both over several years and many versions). You can’t go wrong with either, but we think you will be happier with a Kindle. Most people we have talked to about e-readers also expressed a preference for the Kindle. When it comes to the color e-reader/tablets, we would be more inclined to get an iPad and an e-reader app than any of the color tablet offerings from Barnes & Noble or Amazon.

**Kindle.** Amazon offers several Kindle models. The least expensive Kindle costs only $79.99 (amazon.com). It is a 6”, WiFi-only, E Ink electronic reader. It comes with what Amazon calls “special offers” (read: they push ads onto your device). If you do not want the special offers, you can pay a $20 premium and get the device without the ads. For what it’s worth, the special offers do not impinge on your reading experience; they only appear on your lock screen when the device is on but timed out. This version, simply called the “Kindle,” measures 6.3” x 4.5” x 0.36” and weighs in at a shade less than 6 ounces. It represents a solid basic e-reader.

Amazon’s Kindle Paperwhite has proven itself a popular and reliable choice. The WiFi-only version costs $119.99 with special offers; the WiFi plus 3G version costs $189.99 with special offers (each version cost $20 more without special offers). It has a 6” display with built-in illumination, measures 6.7” x 4.6” x 0.36”, and weighs 7.2 ounces (WiFi-only) or 7.6 ounces (WiFi plus 3G).

Our favorite E Ink reader, the Kindle Oasis, sits at the top of the Kindle line. The Oasis sports a larger, 7” illuminated screen (with adaptive light sensor) but measures only 6.3” x 5.6” x 0.13–0.33” and weighs 6.8 ounces (WiFi-only or WiFi plus 3G). In our opinion, it works better than any other E Ink device in Amazon’s line—and we have not found another we like better in the lines of any competitors. The Oasis starts at $249.99 with special offers for the WiFi-only version. The WiFi plus 3G version costs $349.99 with special offers. Without special orders, the cost increases by $20.

Amazon calls its color e-readers Fire Tablets. Amazon treats the Fire as a different type of device than the E Ink readers. The Fire models, all WiFi-only, work both as readers and as tablets, allowing Internet browsing, e-mail capabilities, and the use of a relatively limited selection of apps. Although the Fire models are both inexpensive (starting at $49.99) and decent, we have a strong preference for the iPad as a tablet. We would not consider the Fire tablet as a purchase for ourselves. We think of them as a less expensive gift for someone or, perhaps, a gift for a young user. Speaking of young users, Amazon also has a “Kids Edition” of its...
Fire tablets, built with a little more protection against casual injury. The Kids Editions range in price from $99.99 to $199.99.

Amazon provides a detailed comparison of options, features, and pricing as well as technical specifications for all Kindle and Fire Tablet models on its website (amazon.com). You will need to view the comparisons of the E Ink e-readers and the Fire Tablets separately, as they appear on separate web pages.

**MEMORY STORAGE DEVICES**

An external hard disk, particularly a small, portable hard disk, can make a gift that will get a lot of use. It also makes a useful personal acquisition. Our current favorite comes from Samsung: the T5 Portable SSD. SSDs generally cost more than traditional hard disk drives, but they come in smaller form factors, weigh less, work faster, and are less susceptible to damage. The reduced size and weight and increased price results from the fact that SSDs uses flash memory rather than a spinning disk. We recently saw Samsung’s 500 GB T5 Portable SSD for $109.99 at Amazon. Other SSDs that we like include SanDisk’s 500 GB Extreme Portable SSD ($109.97, amazon.com) and Western Digital’s 512 GB My Passport SSD Portable Storage ($124.99, amazon.com).

When it comes to traditional hard drives, you can still get a pretty portable device, albeit a bit larger and heavier than the T5 (but at a lower price). We like Seagate (seagate.com) and Western Digital (wdc.com) hard disk drives, as they offer good quality at reasonable prices, and we have had very good luck with them. We have used them for back-ups in and out of the office for some time. Both make desktop as well as portable drives, offered in various configurations ranging from small to smaller and thin to thinner. You can find Seagate and Western Digital drives available for the Mac OS as well as for Windows. In reality, it makes little difference which you get as you can easily reconfigure a drive formatted for either platform to a drive formatted for the other. Drive manufacturers frequently charge a premium price for hardware formatted for the Mac but otherwise identical to that formatted for Windows. You often can save several dollars by getting a Windows-formatted version and reformatting it for the Mac (that’s what we usually do). Both companies make drives that work with USB 3.0 and are backward-compatible to USB 2.0. The 3.0 devices have more rapid transfer speeds when connected to a computer running 3.0. A 3.0 drive plugged into a 2.0 port runs at 2.0 speeds. Check out Western Digital’s 2 TB Elements portable drive ($64.99, amazon.com), Seagate’s Backup Plus Slim 2 TB drive ($63.99, amazon.com), and Toshiba’s 2 TB Canvio Advance Drive ($59.99, amazon.com).

**TELEVISION ACCESSORIES**

We will not explore the various models, features, and sizes of televisions in this guide. When it comes to accessories for televisions, we want to focus on two categories: media streaming devices and sound bars.

**Media streaming devices.** Several manufacturers make devices to connect your television to Internet content, including for movies, television shows, sports, news, videos, and more. The devices we like best include the Apple TV, Amazon Fire TV, and the various offerings from Roku.

Apple offers two devices, the Apple TV 4K and the Apple TV. The Apple TV 4K offers 4K and HDR (High Dynamic Range), complete with Dolby Atmos home theater quality sound. You can get it with your choice of 32 GB or 64 GB of memory for $179 or $199 (apple.com). The Apple TV comes with 32 GB of RAM and will cost you $149. Please note that if you do not have a 4K TV and do not plan on getting one in the near future, the Apple TV 4K will not give you anything that you cannot get from the Apple TV. Both the Apple TV and the Apple TV 4K use a remote that features voice command powered by Siri. The Apple TV is generally easy to set up, but if you are worried, keep in mind that every Apple TV purchase comes with complimentary telephone
technical support for 90 days after your purchase. So, if you are planning to give this as a gift, you may want to time the purchase closer to your intended date of gifting.

The Roku devices (roku.com) cost substantially less than those from Apple, starting at $29.99 for the Roku Express and going up to $99.99 for the Roku Ultra (which includes 4K and HDR capability, along with numerous advanced features on the remote control).

Amazon (amazon.com) offers the Fire TV Stick ($39.99) and the Fire TV with 4K Ultra HD ($69.99); both feature a remote that work with the Alexa digital assistant to help you find what you want to watch. Amazon recently added a new top-of-the-line model, the Fire TV Cube ($119.99), which features 4K Ultra HD and what Amazon bills as a “hands-free” experience. In addition to the Alexa-powered remote control, the Cube itself has eight built-in microphones so you can turn it on and operate it through Alexa entirely via voice command.

All these devices have the same basic functionality: They enable you to stream media from the Internet (including various media accounts, such as Netflix, Hulu, HBO GO, Showtime Anytime, WatchESPN, or MLB.tv). Note that all of them require a broadband Internet connection and WiFi. We think the Apple TV has the best physical remote, particularly for those with other Apple paraphernalia (e.g., iMac, MacBook, iPad, iPhone) and a good-sized stake in media from the iTunes store.

Bose sound bars. The quality of the built-in audio on most televisions has not kept up with the quality of the HD images they can display. As a result, many after-market audio systems to upgrade the sound quality of televisions are now available. You have probably already figured out that we have a certain partiality for the high-quality engineered sound generated by Bose products (bose.com). Accordingly, it should not surprise you that the audio add-on system we like best comes from Bose. Bose has more expensive speaker systems that you can connect to a television, but its sound bars offer a very attractive and easy-to-use package. The lineup now consists of four bars, ranging from the top-of-the-line Soundbar 700 ($799.95) to the Solo 5 ($249.95).

**MISCELLANEOUS GIFTS**

**Keyboards.** You can find Bluetooth stand-alone keyboards and keyboards built into covers for iPads from a variety of sources. Apple’s stand-alone Magic Keyboard ($99, apple.com) has worked extremely well with Apple products. Although designed for use with desktop computers, you can use it with any Bluetooth-enabled device (such as an iPad or iPhone). Incidentally, Apple also recently redesigned its Trackpad ($129) and Magic Mouse 2 ($79), making both better and employing rechargeable batteries.

Apple also offers covers with built-in keyboards for both sizes of the iPad Pro. The Smart Keyboard cover for the iPad Pro (starting at $159 for the 10.5” iPad Pro, $169 for the 12.9” iPad Pro) comes with a physicalitäts-konforme device (such as an iPad or iPhone). Incidentally, Apple also recently redesigned its Trackpad ($129) and Magic Mouse 2 ($79), making both better and employing rechargeable batteries.

Apple also offers covers with built-in keyboards for both sizes of the iPad Pro. The Smart Keyboard cover for the iPad Pro (starting at $159 for the 10.5” iPad Pro, $169 for the 12.9” iPad Pro) comes with a physical and electronic connection to the iPad. The Smart Connector has the advantage of drawing its power from the iPad Pro and an immediate connection without the need to pair or charge as you would normally do with a Bluetooth keyboard. Others mostly use Bluetooth connectivity (although we have seen a few that use the Lightning connector) and require that you separately charge them. Additionally, the Smart Keyboard cover uses laser technology to build keys from specially woven, water-resistant fabric, creating some feeling of resistance when you strike the key without using the standard physical mechanism. Significantly, this process avoids the existence of crevices around the keys that can allow liquids and other foreign matter to get in and damage the keyboard. Apple’s keyboard covers (in fact, virtually all keyboard covers) give you a configuration substantially the same as a laptop. If you don’t happen to like that configuration, a stand-alone Bluetooth keyboard will give you more flexibility. You can use Apple’s stand-alone keyboard or a third-party Bluetooth product.

Logitech (logitech.com) offers a collection of well-made Bluetooth keyboards that work very well with
computers, tablets, and smartphones. They also offer keyboard covers for the iPad. Logitech has been one of the most respected Bluetooth keyboard manufacturers for some time. We have tried any number of their keyboards and found them quite satisfactory.

Get a Dragon on your side. The Dragon speech engine has taken over the world of VR software (meaning old-school “VR” for voice recognition, not virtual reality). Having watched this genre of software for many years and tested and reviewed the last several versions, we can tell you that having VR software on your computer saves a lot of effort. Each new version of Dragon we have tried on both the Mac and Windows OS has improved over its predecessors in ease of use and accuracy. Dragon represents the best in its field on the Mac and Windows side as well as for mobile hardware users. Dragon software for the Mac or Windows would make an excellent present to buy yourself or give to someone you care about. Go to nuance.com for details of options and pricing.

Travel folios. An e-padfolio is a great gift for the planner on the move. A traditional padfolio typically holds a notepad and pens, with one or more pockets for organization. The “e” version adds a pocket for a tablet and sometimes a smartphone as well. If you are looking to pick one up for a loved one this year, consider the STYLIO Zippered Padfolio Portfolio Binder ($23.95, amazon.com). The exterior of the STYLIO is a soft faux-leather material. The tablet pocket will hold up to 10.1” tablets, which will fit the iPad or the Samsung Galaxy Tab S3 nicely, but not the iPad Pro. There is also a sleeve for your smartphone designed for easy access. The Wundermax Padfolio Portfolio ($24.99, amazon.com) is a great option as well. The sleeve for securing a notepad is designed so you can slide the notepad in from top or bottom, making it adjustable for left-handed or right-handed users.

Tech trackers. For those who cannot always find their stuff, consider gifting a five-pack of the TrackR pixel Bluetooth tracking device ($59.25, amazon.com). The pixel uses Bluetooth technology to find items within a range of 100 feet. The pixels are great for your keys, cell phone, wallet, purses, anything you might be prone to lose. As an added perk, when it is time to change the battery, you can order a free replacement battery from TrackR directly via the app itself. TrackR will alert you whenever a battery is low. There is two-way communication as well, meaning you can use the pixel to trigger the app on your smartphone to make an audible alert, even if you left your phone in silent mode.

GIFT SUBSCRIPTIONS
Gift subscriptions are one of the many ways technology helps you out around the holidays in choosing gifts for those hard-to-shop-for family members, friends, or associates. You can find something for nearly everyone, young or old. And the gifts keep coming throughout the year. Most services will let you choose to gift every 1, 3, 6, or 12 months, depending on your preference. Although these do not all truly qualify as tech gifts, we include them as you will likely order them on the Internet (how techie do you want it?), and we know that you may still have one or two people for whom a tech gift just may not work.

For the techie. Check out TekCrates ($24.99 and up, tekcrates.com). Each gift crate may contain up to seven items. There are different subscriptions you can choose instead of a gift subscription, including the TekCrate Geek ($34.99), which will contain collectibles, memorabilia, and novelty items. The popular gadgets included in these boxes are based on the current market trends and designed to help you maximize your use of technology in your daily life. A fun version of a tech gift box for kids is Bitsbox (starting at $24.95 per month, bitsbox.com). Bitsbox is designed to help children age 6 through 12 learn to code. Even adults do not need any coding experience to help their children build and share apps. Each level introduces a new computer science concept along with a set of crazy fun app projects.

For the book lover. The Book of the Month subscription service (BOTM; $12.50 per month if purchased for a full year, bookofthemonth.com) delivers five selections monthly to you via e-mail on the first of the month, and then you have until the sixth of the month to choose your favorite among them. Once you choose your favorite, BOTM will ship the book to you. You can add extra books to your shipment for $9.99 each. If you find yourself behind on your reading for the month, you can easily put the membership on hold by clicking “skip” in the e-mail, and the remaining gift months will be there when you are ready.

Feeling a bit more adventurous? Check out the Once Upon a Book Club gift boxes (OUBC; $32.50 per month if purchased for a full year, onceuponabookclub.com). Even a single month gift box ($34.99) could make for a fun and interesting gift. Each month’s box contains a curated reading experience for readers to be immersed in the world of the book they are reading. For each month, the box not only contains a newly released book, but OUBC also selects three to five specific items pulled from the book as gifts to enhance the reading experience. Each gift contains instructions on which page to open the book. Boxes are shipped between the 17th and the 20th of each month. Because the selections are so carefully curated, the recipient is not able to make specific requests, but you can designate between adult fiction and young adult fiction.

For more serious reads, consider Business Book Monthly ($28 per
There are also top-of-the-line office supplies to fuel you during your work day. The box also comes with yummy and nutritious power snacks to fuel you during your work day. There are also top-of-the-line office supplies to help you tackle the day. The box will also help you stay on top of the most relevant business headlines with *Business Monthly News*.

A subscription to Audible (audible.com) will cost you $14.95 per month. Your subscription gets you one credit per month to download any audio book, unlimited access to audio fitness programs, and the ability to download two of the six monthly “Audible Originals”—audio programming created by Audible itself, running the gamut from fiction, to journalism, to interviews, to self-help guides. You can stockpile credits for audiobooks and purchase additional credits if you run out. As Audible is owned by Amazon, you will find there are Audible versions of many Kindle books, and if you buy a Kindle book with an audio edition, the system offers it to you at a discount. Many pairs of Audible/Kindle books enable the “Whispersync” feature, allowing you to switch seamlessly between listening and reading without losing your place.

**For the pet lover.** BarkBox ($21 per month if purchased for a full year, barkbox.com) is a subscription-based online service where members receive monthly surprises for their dogs, consisting of all-natural treats, hygiene products, and toys. Every month is a themed collection with at least two innovative toys, two all-natural bags of treats, and a chew of some sort. If there is anything in the box that your pet doesn’t love, you can send it back and have it replaced for free. meowbox ($22.95 per month if purchased for six months, meowbox.com) is similar to BarkBox, but for cats. Each meowbox contains four to six items that cats go crazy for. The gift recipient can create an account with the gift certificate, tell the service about the cat or cats, and wait for the monthly surprise. Each month has a theme, similar to BarkBox. Food treats that are included contain natural ingredients and are nutritious, grain–free, organic, locally made, and tasty (although, in the interest of full disclosure, neither of the authors consumed the cat treats to test their tastiness).

**For the foodie.** Culinary creators will eat up the RawSpiceBar, a spice-of-the-month gift subscription ($18 per month, rawspicebar.com). At RawSpiceBar, you can set up a gift subscription, purchase a gift card, and let the recipient designate the quantity and frequency of spices, or purchase a single gift box. The $18-per-month subscription provides for three spices monthly. You can take the site’s quiz for suggestions on spices you may love or request the top spices of the season. RawSpiceBar uses high-quality, whole ingredients.

Another alternative to consider is Pi-quant Post ($9.99 per month if purchased for a full year, piquantpost.com). Each month, boxes from this subscription service contain four unique spice blends and four new recipes to accompany them. Each recipe is designed to serve four people. Brewmasters will enjoy the Craft Beer Club ($42 per month, craftbeerclub.com), a monthly subscription service that provides four different styles of craft beer (three bottles each) from up-and-coming microbreweries. Your initial shipment will include up to three free bonus gifts, plus an optional greeting card. Vinebox ($72 per quarter, getvinebox.com) is a great solution for wine lovers. Each box contains nine glasses of various wines for the recipient to try. (If you want to gift a single box, it will be $79 instead of $72.) They also offer a “12 nights of wine” box for $129, which contains 12 different glasses of wine from around the world to help you count down to the holidays with flair. For the at-home bartender, consider SaloonBox ($49 per month if purchased for a full year, saloonbox.com). Each box contains top-shelf spirits and recipe cards and sometimes even a free bar tool. Spirits are provided through a partnership with Plumpjack Wine & Spirits. The recipes are seasonal, so your recipient will be ready to wow the audience at the next party (picturing scenes from *Cocktail*).

If you want to remove the element of surprise, you can purchase and gift a past box set in order to know what is in it ahead of time.

**For teens.** Teenagers (and maybe adults, too) might enjoy a subscription to Casely ($15 per month, getcasely.com). Casely is for iPhone users (you can choose from the iPhone 6/6S, 6/6S Plus, 7, 7 Plus, 8, 8 Plus, or X/Xs). Each shipment contains a new, fashionable cell phone case. Each case is engineered from high-quality, protective polycarbonate. The subscription is customizable to the recipients; every month they will receive an e-mail with the exclusive new cases for that month and can choose one of the new ones or a previous club case design.

**For the offbeat.** Quirky acquaintances of all ages will get a kick out of the Apollo surprise box ($30–$50 per month or quarter, theapollobox.com). Members...
get a surprise box every month or quarter, with quirky gifts tailored to your likes and preferences. Gifts can include one-of-a-kind accessories, decorations, and more, and every box is guaranteed to contain full-sized unique items that you won’t find in your local chain store. Recipients can choose what genre best reflects their personality and style, including cute, geek, minimalist, punk, romantic, rustic, vintage, and modern.

For the dapper gentleman. Consider SprezzaBox ($28 per month if purchased for a full year, sprezzabox.com), a subscription service that curates the perfect box of fashion and lifestyle products for men. Each box will contain five or six pieces, and it is guaranteed to be worth more than $100 in value. For the ladies, Birchbox ($9.17 per month if purchased for a full year, birchbox.com) is a very popular subscription service. Birchbox delivers five high-end beauty samples tailored to the recipients’ personal style as well as their hair or skin care needs. There is also BirchboxMan ($9.17 per month if purchased for a full year, birchbox.com/gift/men) so the guys don’t have to miss out on all the fun.

Gift baskets. Looking for the perfect gift basket? Check out gifttree.com for options such as the California Classic Wine Basket ($49.95) and the As Good As Gold Basket ($49.95). You can shop for gift boxes by personality, too. Want to build a custom gift box? Head over to BOXFOX (shopboxfox.com). There, you can build a box of your choosing from their selection of products, including accessories, decorations, books, sweet treats, and home goods.

Last-Minute Stuffers
The WGCC Fingerprint Padlock ($49.99, amazon.com) makes for a great stocking stuffer. It’s a fast and easy way to secure a bicycle, gym locker, golf bag, cabinet door, or a variety of other lockable items. The fingerprint reader means you will not have to remember letters or numbers or the pattern of a twist dial. If you have ever set up the fingerprint lock on your smart device, the setup for this lock is very similar. You add your fingerprint through the padlock’s app, which takes six readings at various directions to map your fingerprint. You can also remove registered fingerprints through the app. You can store up to 15 fingerprints.

You could get USB sticks for stocking stuffers. These devices (sometimes also called “thumb drives” as they approximate the size of a thumb) are small enough to fit inside any stocking, with a large-enough capacity to be useful to many. Amazon lists hundreds of them from a variety of manufacturers and in a variety of sizes. We found some as inexpensive as $30.99 for ten drives with 2 GB each and some costing far more, such as the Kingston 1 TB DataTraveler Ultimate for $585.34. The best values appear to be in the range of 128 GB to 256 GB. Check out the SanDisk Cruzer Glide CZ60 256 GB drive for $47.99 or the PNY Turbo 256 GB drive for $49.99, both at Amazon. You might also want to consider the PNY Turbo 128 GB for $24.99 at Amazon. If you want something with even less memory, look at the SanDisk Cruzer Fit CZ33 64 GB low-profile flash drive ($14.99, at Amazon). USB sticks have grown tremendously useful, and we never leave home without at least one of them!

Happy Shopping!!
Happy Holidays!!

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A SOLO’S ADVENTURES IN THE PATENT MICROVERSE

By Justin D. Cotton

A fter years of being priced out of the process by the high cost of patent filing, prosecution, and legal representation, micro entities—these “garage, workbench, and coffee shop” inventors—can finally afford to pursue patent protection for their works of individual and small business genius. Thanks to the 2011 Leahy-Smith America Invents Act (AIA), the patent process suddenly became accessible to an entirely new class of inventor, and, by extension, a new class of patent attorney.

To boldly go where no micro has gone before. One of the many changes enacted by the AIA over the course of its rollout was the pricing structure for fees payable to the U.S. Patent and Trademark Office (USPTO). What was once a two-tiered system, which offered a 50 percent discount on certain patent filing fees for applicants that qualified for “small entity” status, became a three-tiered system with the addition of a “micro entity” status that provides a 75 percent discount on certain fees for qualified applicants. To date, the basic undiscounted cost to file a nonprovisional patent application before the USPTO is $1,720, which presumes that the application includes no more than 20 claims, no more than three independent claims, no multiple dependent claims, and no more than 100 total pages.

Lost in (the patent) space. How did we get here? In much the same way that small-scale inventors have been overlooked, due to what has been an expensive and marginally understood patent process, would-be patent practitioners have also been subject to the high barriers to entry in patent law practice. To get experience, one must (somehow) have experience. Further complicating this paradox is that full-price and small-entity patent filing fee structures have often made it impractical for true patent law startups to represent fellow budding entrepreneurs. Patent law novices have, until more recently, been lost in this patent “space”: We seldom have been taken seriously by large patent law firms that are reticent to train new patent practitioners for fear of talent jumping ship. We have been financially unable to gain experience on our own because large clients have refused to gamble on small patent practices. And small-scale clients simply could not afford the patent process. At least part of this problem was apparently resolved thanks to the AIA micro entity pricing structure described above, but there’s another black hole: the lack of understanding of what patents are, and why they are worth the associated time and cost, by this new class of inventor.

File. Or file not. There is no try. Upon starting my own firm, I was not sure how much client volume to expect. As it turned out, my first year was indeed full of calls. But many client consultations ended with informing the party that either (1) what they were seeking protection for was merely an idea at that point and therefore not patentable yet; (2) what they had created was an idea for a business, which would not be patentable; or (3) what they had created was a logo, for which I could file a trademark application on their behalf. It became clear that one of my biggest hurdles in patent law practice would be explaining to my market what a patent is.

The value proposition for small-scale inventors, following an explanation of the patent process itself and its seemingly miniscule odds of success without extended proceedings, is a difficult one for many reasons. But the main one is because micro entities are, and perhaps must be, price-sensitive. My initial solo patent law practice was full of frustrating phone calls dealing with daunting factors including costs and delays associated with the patent process amid the low probability of ultimate patent allowance.

Live long and patent. The perfect client really is out there. Two clients stand out who were knowledgeable about patents and the patent process, had developed inventions that were ripe for patent filing, and had uncanny motivation along with supernatural...
patience to pursue patent applications despite the commitment of time and resources. The first client had already done some research on possible prior art, and she had already budgeted for the upcoming patent application process for a product that she, and soon both of us, believed was technologically and commercially promising. As a result, the value pitch and patent application drafting phase went smoothly, and both the patent application’s progress and the client relationship were stellar.

Another exceptional client was one whom I met through a young professionals networking event. This client had been busy for months developing an exciting invention, and he had already filed a provisional patent application on his own. It demonstrated his belief in his product, which I soon shared. Given the one-year deadline to file the nonprovisional following the already filed provisional application, the client and I worked together diligently to fully disclose the invention in the specification and drawings. My original vision of patent law solo practice seemed to come into clear view: partnering with fellow entrepreneurs and startups to produce something that could change how end users connect with each other and their world. This client and I are now pursuing international patent protection for his invention, working with foreign counsel in multiple languages and connecting with patent offices in countries that we will perhaps never visit.

To infinity and beyond. Here are some of my recommended takeaways to help other aspiring patent law solo practitioners. Be prepared to explain what patents are, along with a stratospheric view of the patent process, and find a way to make it fun! An out-of-this-world website with interactive features or games, along with a solid “elevator pitch” that you can use at networking events and during impromptu small talk, can spark anyone you interact with to think of inventions that they should consider getting patented. Every person you interact with knows at least ten other people, and that means 11 potential clients for you.

As you identify potential micro entity clients, the best gauge of whether they are ripe for representation often is how succinctly and confidently they can describe their inventions. While a well-organized explanation, ideally in a written invention disclosure after a non-disclosure agreement is signed, tends to show that the invention has been fleshed out in some level of detail, a potential client who suggests, “wouldn’t it be great if there were a gadget that could” or “I had an idea” without anything substantial may present red flags related to how much they have actually invented up to that point, and how seriously they have investigated possible prior art. Before a potential client is ready to shoot for the moon, you must help them evaluate their dream from mere idea to full-fledged invention.

Among the potential clients you identify with inventions ready for patent prosecution, the most important remaining pivot points are their appetite for cost, delay, and risk. It is crucial to emphasize early on that despite the availability of the micro entity fee structure, it can take years to navigate the patent process from application to possible allowance, and that the mission will not necessarily be successful in the end. The limited resources of micro entities make them decidedly small in comparison to the availability of the micro entity fee structure, it can take years to navigate the patent process from application to possible allowance, and that the mission will not necessarily be successful in the end. The limited resources of micro entities make them decidedly small in comparison to the availability of the micro entity fee structure, it can take years to navigate the patent process from application to possible allowance, and that the mission will not necessarily be successful in the end.

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For more information or to obtain a copy of the periodical in which the full article appears, please call the ABA Service Center at 800/285-2221.

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CLE AND OTHER PROGRAMS: Annual Intellectual Property Law Conference; fall IP WEST seminar; multiple CLE webinar/teleconferences throughout the year.

GAM(BL)ING 2.0: OLD LAWS IN AN ERA OF NEW GAMES

By Andrew Kim

DIGITAL GAMING

Digital gaming has seen explosive growth over the past decade. It owes its meteoric rise in large part to a particular subset of the industry—digital games that are played online. This article highlights two problems posed by gambling laws that may trouble digital gaming developers. The first is a new take on a familiar problem—the issue of uniformity. Although most states use the same rudimentary formula with the same elements for determining whether a game can be considered “gambling,” they vary as to how much of each ingredient is necessary to violate the law. The second is a problem likely unforeseen when the gambling laws were first passed—the issue of secondary markets (i.e., how players place real-world value on otherwise worthless in-game items and use those items to place wagers on in-game events).

Digital games and gambling laws: The need for uniformity. The type of law most problematic for modern gaming also happens to be the most general: a prohibition on “gambling.” Most states have a statute that bans “gambling” as a general matter. “Gambling” is usually defined as a person offering a thing of value, placed on the outcome of a contest, for the opportunity to win a thing of value. These laws also have a third element: chance, described as “something that happens unpredictably without any discernible human intention or direction and in dissociation from any observable pattern” (People v. Shira, 133 Cal. Rptr. 94, 105 n.12 (Ct. App. 1976)).

In all but two states, the contest on which a wager is placed must be a contest of chance for gambling to occur. The rest of the states require at least a scintilla of chance for a wager placed on a contest to be considered gambling. In the vast majority of states, chance must predominate over skill for the game to be considered gambling. The second-largest group of states requires a “material” element of chance in the game, although these states differ on what the word “material” means. And the ambiguity of the word “material” itself causes problems because materiality is often difficult to quantify. Finally, for a small minority of states, any degree of chance is sufficient for determining whether there is gambling.

Another complication is the kind of role that chance must play. States generally require that chance be a part of the game’s design for a game to constitute “gambling.” On the other hand, random events that befall the competitors of a lawful skill-based game do not somehow transform the game into a contest of chance (even in states where “any” chance will do), as the design of the game itself would not contemplate or foresee the randomness.

In the abstract, these concepts may seem straightforward; in practice, particularly with “modern” digital gaming, the lines are difficult to draw. Take fantasy sports, for instance. Proponents argue that the game is one of analytics—athletes are selected as part of fantasy sports teams, but those athletes merely serve as vehicles for statistics and variables, with the end-game being to “create a lineup that will produce extreme outcomes” (tinyurl.com/j6byxsm) and better than everyone else’s. Detractors claim that the game is one of chance because “players exercise no control or influence over the actions of players” (tinyurl.com/zgagw6l) and because of random considerations such as injury, weather, and officiating. The protracted confusion over whether fantasy sports are games of skill or games of chance has forced state legislatures to step in to clarify that they are not gambling contests.

The skill/chance issue, standing alone, is not an insurmountable obstacle for game developers—in-game chance elements can be added and removed. But what inhibits some digital game innovators—whose success depends on the ability to reach as many players as they can, across the country...
and around the world—is the uncertainty created by a patchwork of different laws. Because states vary on how much chance is required for a game to be considered “gambling” to occur, it is difficult for developers to create a game that would neatly accommodate every law.

The problem of secondary markets. One unexpected source of potential legal problems is a feature of many digital games: in-game items. Although a game developer may not attribute any real-world value to an in-game item, the players themselves may assign it real-world value, which in turn has created legal headaches for developers. Most digital games are not designed with a real-world prize in mind: Players can collect in-game items, but those items have no inherent real-world value. So, in ordinary circumstances, they come nowhere close to violating the gambling laws because there is no opportunity to win anything of value.

Despite the lack of value, players may be able to use a platform as a vehicle for gambling by exploiting features that allow for the trading of in-game items. Some players may engage in a virtual quid pro quo arrangement—one player beats another, and the loser “trades” an item to the winner. But once value is ascribed to in-game items, the gambling can take other forms: Players bet on other third-party contests, or “trade” their items to third-party accounts in exchange for credit in online casino-like environments.

What results from this marketplace of in-game items is a thriving secondary market, where items and accounts are assigned real-world value by the players themselves, not the developer. And that market has spawned an unseemly outgrowth for those developers: gambling through the secondary market. These transactions raise the question of whether developers—who have no intention of fostering a gambling environment when they first release their games—could be liable for allowing gambling to occur through their games and on their systems. To be sure, no developer has been found civilly or criminally liable for violating the gambling laws of any state on a secondary market gambling theory, and it is highly unlikely that any will.

Recommendations. There are three steps states can take to alleviate the problems mentioned in this article. To address the lack of uniformity on the skill/chance question, states should approach the definition of gambling as a binary choice: Chance should either predominate, or it should not matter at all.

As for the issue of secondary market gambling, states should consider adopting laws preemptively clearing developers of any liability under the gambling laws for such activity. Developers should be held liable only if they intentionally design their game so that players could covertly use it as a means of gambling. Another approach is to hold developers liable only for intentional design or if they know their game is being used for gambling and they take no steps to put a stop to such secondary market gambling. Finally, states should stay ahead of the curve and keep abreast of the latest gaming trends. Education and cooperation with the digital gaming industry are the best ways to address other challenges that may arise as digital games play a more prominent role in American society.
AIRBNB AND LOCAL CONTROL OF LAND USE

By Stephen R. Miller and Jamila Jefferson-Jones

This article examines the tension between local regulatory control of land use and “Internet exceptionalism,” the notion that it is “justifiable to treat[] regulation of information dissemination through the Internet differently from regulation of such dissemination through nineteenth- and twentieth-century media, such as print, radio, and television” (Mark Tushnet, “Internet Exceptionalism: An Overview from General Constitutional Law,” Wm. & Mary L. Rev. vol. 56 (2015), at 1637, 1638). In particular, the authors of this article focus on suits brought by Airbnb against San Francisco and New York, cities seeking to regulate land use in a manner Airbnb argued was counter to prevailing norms of Internet exceptionalism, as codified in the Communications Decency Act (CDA). The tensions highlighted by these suits speak to the need for land use lawyers to understand the regulatory environment of the Internet.

In 2016, Airbnb sued San Francisco and New York City, among others, alleging local land use controls were preempted by CDA § 230. CDA § 230 is veritable hallowed ground for Internet lawyers; as an amicus brief in one of the cases argued, “Section 230 immunity is an essential part of the architecture of the Internet that serves the public interest by promoting speech by a diverse array of voices” (Amicus Curiae Brief of Elec. Frontier Found., Ctr. for Democracy & Tech., Daphne Keller, Eric Goldman and Eugene Volokh in Support of Plaintiffs’ Motion for Preliminary Injunction at 6, Airbnb, Inc. v. City & Cty. of San Francisco, No. 3:16-CV-03615-JD (N.D. Cal., filed Sept. 9, 2016)). But, in November 2016, a federal district judge denied Airbnb’s request for a preliminary injunction, finding that CDA § 230 did not preempt San Francisco’s regulation of short-term rentals. The decision has caused significant hand-wringing over the future of CDA § 230 and protections for Internet platforms. On the other hand, the case has exposed a growing rift between the type of Internet exceptionalism preferred by many Internet proponents and the desire to retain local control of land use decisions that govern how our cities and neighborhoods function.

The San Francisco case arose out of the city’s effort to regulate aspects of the “sharing economy” for accommodation rentals. Beginning in 2015, San Francisco enacted a series of ordinances that lifted a previous ban on short-term rentals in the city. Under the new regulations, permanent residents could engage in short-term rentals if they registered the residence with the city and met several other requirements, including proof of liability insurance, compliance with municipal codes, usage reporting, and tax payments. Compliance with these regulations was low. The city also found enforcing the regulations difficult because Airbnb and other hosting platforms do not disclose addresses or booking information about hosts.

In response, San Francisco enacted another series of ordinances to assist enforcement. At issue in this case was the last of these ordinances, which made it a misdemeanor to collect a fee for providing booking services for the rental of an unregistered unit. The ordinance defines a “Booking Service” as “any reservation and/or payment service provided by a person or entity that facilitates a short-term rental transaction between an Owner . . . and a prospective tourist or transient user . . . for which the person or entity collects or receives . . . a fee in connection with the reservation and/or payment services.” The ordinance defines a “Hosting Platform” as a “person or entity that participates in the short-term rental business by providing, and collecting or receiving a fee for, Booking Services.”

The ordinance expressly states that a Hosting Platform includes more than just an “online platform” and encompasses non-Internet-based services, too. The ordinance permits a Hosting Platform to “provide, and collect a fee for, Booking Services in connection with short-term rentals for Residential Units located in the City and County of San Francisco only when those Residential Units are lawfully registered on the Short Term Residential Rental Registry” at the time of rental. The city’s enforcement office interpreted “lawfully registered” to mean that a host has obtained a registration number from the office. A violation constitutes a misdemeanor punishable by a fine of up to
$1,000 and imprisonment for up to six months. Airbnb challenged this ordinance and sought an injunction against its enforcement.

Airbnb’s primary argument was that CDA § 230 preempted the ordinance. CDA § 230(c)(1) states that “[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider.” The CDA includes an express preemption clause, which provides “[n]o cause of action may be brought and no liability may be imposed under any State or local law that is inconsistent with this section.” Airbnb argued that the threat of a criminal penalty for providing and receiving a fee for Booking Services for an unregistered unit requires that it actively monitor and police listings by third parties to verify registration, which would be tantamount to treating them as a publisher because it involves the traditional publication functions of “reviewing, editing, and deciding whether to publish or to withdraw from publication third-party content.” The court disagreed. By the court’s reasoning, the text and plain meaning of the ordinance demonstrates that it does not regulate what can or cannot be said or posted in the listings; rather, under the San Francisco ordinance, Airbnb is perfectly free to publish any listing they get from a host and to collect fees for doing so—whether the unit is lawfully registered or not—without threat of prosecution or penalty under the ordinance. The ordinance holds Airbnb liable only for providing, and collecting a fee for, Booking Services in connection with an unregistered unit. In analyzing existing case law, the court held that because the regulation only regulated the collection of the fee, CDA § 230 did not apply. Determining that Airbnb had not demonstrated a likelihood of success or a serious question of preemption under CDA § 230, the court denied the injunction. Surprisingly, after losing the injunction, Airbnb did not appeal but instead settled with San Francisco.

On October 21, 2016, New York Governor Andrew Cuomo signed into law an amendment to the state’s Multiple Dwelling Law (MDL) that prohibits the advertising “occupancy or use” of units in “class A” multiple dwellings for purposes other than permanent residence use. “Permanent residence purposes” are defined as the “occupancy of a dwelling unit by the same natural person or family for thirty consecutive days or more.” Such short-term rentals were already prohibited under the MDL. On the same day MDL § 121 became law, Airbnb filed suit seeking to enjoin the new provision, claiming that it violated CDA § 230 (Complaint, Airbnb, Inc. v. Schneiderman, No. 1:16-cv-08239 (S.D.N.Y. Oct. 21, 2016)). In particular, Airbnb contended that the new law could apply to hosts as well as to platform owners. Airbnb objected to the application to platform owners as a violation of CDA § 230.

The Airbnb suit seeking to enjoin the enforcement of MDL § 121 was short-lived. Airbnb settled with the New York Attorney General in November 2016 and with New York City in December 2016 (See Stipulation of Settlement and Dismissal as Against Defendant Eric Schneiderman, Airbnb, Inc. v. Schneiderman; New York Stipulation of Settlement and Dismissal, Airbnb, Inc. v. Schneiderman). Under the terms of the settlement agreements, neither of the parties admitted to any unlawful actions. Per the settlement agreements, both the attorney general and the city agreed not to enforce MDL § 121. Airbnb agreed to continue to “work cooperatively on ways to address [the city’s] permanent housing shortage, including through host compliance with Airbnb’s ‘One Host, One Home’ policy” under which Airbnb permits hosts to post listings at only one address.”
With the new year approaching, this is an obvious time for us to consider making changes in the upcoming year. For many solo attorneys, the biggest decision is whether or not to close up shop and join a team, be that private work, the public sector, or getting out of law altogether. Meanwhile, many government and small firm attorneys wonder whether they would like to have the freedom of a solo practice. In the end, I am reminded of the Clash’s song, “Should I Stay or Should I Go?” Here are some things you should consider before making such a career move, coming from someone who has been a solo and small firm attorney and has worked in three levels of government prior to getting a law license.

 WHAT ARE YOUR TRUE GOALS?
It never ceases to amaze me how many times people talk about their plan without ever actually making certain that’s what they truly want. Some years ago, I learned that if you want to truly consider your long-term plans and goals, you must not only think about them, you must visualize them in physical form. For most of us, this means writing them down and considering them on a regular basis, including updating them as needed. Another popular method of goal visualization is making a vision board that you can put up on a wall. With this technique, you add images of what you want your life to look like in the future. This doesn’t have to do only with material objects such as houses and cars, but can also be done with emotions and relationships, such as a happy family or friends enjoying time together. This board can be a neatly organized board or a simple collage of various objects, but it’s important that you put images you want on it and that you put the board in a place you see often, if not daily.

Over time, whether you write down your goals or create a vision board, these goals are reviewed frequently and thus enter your conscious and subconscious. You may decide over time that the goals you expressed verbally and initially visualized in material form are not what you actually want. Your goals can and probably will change over time with increased awareness, attention, and thought. This is why I ask you if you know what your true goals are—many people don’t. They have preconceived notions of what they think they want without ever making serious efforts to determine if those things are what they truly want. So, figure out what your true goals are, and you will be well on your way to making better and easier decisions for your future.

 DO YOU KNOW IF THE GRASS IS ACTUALLY GREENER?
Regardless of what position we hold in our career, unless we’re just making money hand over fist, we think about how life would be different “if only.” I have seen solos close up shop and join a governmental entity.
seen small firm lawyers part from the firm and start their own solo practice. I’ve seen attorneys leave the profession altogether and go into business or teaching. I am convinced that not all these moves were made with eyes wide open.

Many times, we have an idea of what it would be like to work in a different environment or do something different. Yet, that idea is not often an accurate representation of the reality of the conceived position. I suggest that you do some research before you pull the trigger on any career move.

Let me give you some quick thoughts. Most government jobs are not nine-to-five. You are working as much as if you were in private practice, but for lower pay. However, government benefits are real! When I had cancer, I was glad my wife worked for a governmental entity and we had great health insurance coverage that came with her job. I was not worried about the money she made at the time. When I was a small firm attorney, I was glad to have more resources and some personnel support that I didn’t have as a solo attorney. However, there was less freedom in my coming and going and living my life on my terms because there was someone to whom I had to answer. Lastly, as a solo attorney, I understand that the firm lives or dies with me, regardless of whether I have help or not. I have to pick good people, obtain good equipment, and implement good processes, in addition to being the attorney on whom my clients depend. Solo attorneys have more freedom but often give up that freedom to work hard for themselves. However, when the freedom is needed, it’s there. Additionally, a solo attorney can build a firm exactly as he or she wants and thus has the ability to build a spectacular business or become an utter failure. Some attorneys don’t like that risk or have family or health issues that require a more stable life and schedule.

Thus, once you know your goals, you really have to determine if your idea of the other environment matches its reality. As we know, the grass is not always greener, and that truly depends on your personal goals and life conditions.

HAVE YOU TALKED IT OUT WITH TRUSTED PEOPLE?

My third bit of advice to help you decide whether you stay or go is to get additional perspective. As smart as we all think we are, I have learned that we can use the power of the group to make better decisions. Before making big, life-altering decisions, I discuss them with people I trust. Such people include family, close friends, and trusted colleagues. They often give me things to think about that slipped my mind or were not as high on my list of factors to consider.

As is the case with most professionals, attorneys often think that they can easily make their own decisions because of their professional status. Those of us with significant others know better. Professionals are humans, too, and all humans are flawed. The collective brain power of a group of people will make up for the limited thinking of one person. This is the power of the jury. Just as a trial can have a jury, you, too, can have a jury for any life decision. Whether you follow the jury’s recommendation is up to you, but if you don’t consult the collective wisdom, you do yourself a disservice.

WISE DECISIONS ARE THE BEST DECISIONS

It may be cliché to state that wise decisions are the best decisions, but things become cliché for a reason. They are proven over and over, time and again. In making a career choice, a wise decision involves more than your own off-the-cuff thinking. A wise decision comes from knowing your goals and what the options really look like, and then discussing the options and goals with others to get a variety of perspectives on one of the most important decisions of your life. A wise person also recognizes that sometimes there is failure after making the best decision, and thus there is always some risk involved in everything you do. Be prepared to succeed or overcome failure.

I have been the owner of my own practice for almost 12 years now. I came out of law school on my own for almost five years and then joined small firms for about four years. As much as I don’t necessarily enjoy the ups and downs of a solo practice, I enjoy my freedom and being my own boss. It would be hard to let go of my firm. Now, whether to be a judge. . . .

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BATTLING (WITH) DOUBLE-EDGED SWORDS

By James Ellis Arden

Back in 1991 the Baltimore, Maryland, offices of Brobeck Phleger & Harrison were preparing for a large trial of 9,032 asbestos-related claims when a temporary secretary hit the wrong speed-dial button on a fax machine and sent psychological profiles of prospective jurors to the wrong law firm. The secretary testified the exposure “was a mistake.” Um, yes. The judge called the incident “bizarre,” halted the largest asbestos trial in U.S. history one month into jury selection, struck all the jurors, and started the trial over again: “I do that with profound reluctance.”

The law firm’s fax cover sheets, in bold print, proclaimed the documents to come were “Privileged and Confidential”—and warned third parties against copying or distribution. The lawyer who wrote the fax cover warning testified: “One of the things that is a fact of life in this day and age is that facsimile transmissions can go awry” (tinyurl.com/yagdwj2v).

Awry? Do faxes choose where they go?

We are stuck with technology when what we really want is just stuff that works.

To be ethical, a lawyer must be competent (see ABA Model Rule of Professional Conduct 1.1). To be competent, a lawyer must “keep abreast of the benefits and risks associated with relevant technology (Model Rule 1.1, Comment). But the Model Rules don’t actually address technology used or encountered by lawyers (see Cheryl B. Preston, “Lawyers’ Abuse of Technology,” Cornell Law Review, May 2018 (103:4), at 879, 885, and footnote 17).

Brobeck’s mistake in the asbestos case did not occur because the law firm or the secretary were incompetent, nor because they were unfamiliar with faxes or fax machines. Better training may have prevented the mistake from happening and could have prevented or mitigated any harm. Technological competence requires adequate instruction and ongoing training.

But greater than the danger of being perceived as incompetent because of technological ignorance, and frankly the greater ethical risk, is a Model Rule 1.6 violation, a breach of confidentiality. Model Rule 1.6(c) imposes on lawyers the duty to treat client information in a confidential manner: “A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.”

Hackers may not have succeeded in compromising your Internet-connected devices, but they have tried for sure. Threats to data security have become so prevalent that law enforcement officials regularly divide business entities into two categories: “those that have been hacked and those that will be” (ABA Formal Opinion 483, page 1 (2018)).

ABA Formal Opinion 483 is entitled Lawyers’ Obligations After an Electronic Breach or Cyberattack. One of the conclusions it reaches is that the strong client protections mandated by Model Rules 1.1, 1.6, 5.1, and 5.3 would be compromised if a lawyer who experiences a data breach that impacts client confidential information is permitted to hide those events from his or her clients. Model Rule 1.4’s requirement to keep clients “reasonably informed about the status” of a matter would ring hollow if a data breach was somehow excepted from this responsibility to communicate (ABA Formal Opinion 483, page 11).

But lawyers are not expected to be experts in technology, nor guarantors of their clients’ secrets. Attorney obligations to protect client confidences are measured by reasonableness standards. “Compliance with the obligations imposed by the Model Rules of Professional Conduct . . . depends on the nature of the cyber incident, the ability of the attorney to know about the facts and circumstances surrounding the cyber incident, the attorney’s roles, level of authority, and responsibility for the law firm’s operations” (ABA Formal Opinion 483, page 2). Electronically stored client property and information must be safeguarded and secured to the same extent as paper files and actual client property (ABA Formal Opinion 483, page 5).

Let us think the unthinkable, let us do the undoable, let us prepare to grapple with the ineffable itself, and see if we may not eff it after all.

Consider what happened to some lawyers who were not sufficiently concerned with the use of technology.

In October 2011 it was reported that an employee of Baxter, Baker, Sidle, Conn & Jones of Maryland had left an unencrypted portable hard drive containing 161 patients’ medical data and case information on a train. The employee returned ten minutes later to retrieve the hard drive, but it was gone (Stacy Berliner, “Hackers Are Targeting Law Firms: Are You Ready?”
An employee working with lawyers for an insurance company made a huge mistake by uploading the “claims file” to a cloud storage and file-sharing facility so it could be shared with outside counsel. Because the file was not password protected, it was available to anyone on the Internet who knew the link (the URL) to the claims file. The employee who uploaded the file and shared the unprotected links had never before used that cloud provider’s services and lacked a technical background. The law firm was not ultimately disqualified, but evidentiary sanctions were issued (Harleysville Insurance Company v. Holding Funeral Home, Inc. (104 Fed. R. Evid. Serv. 798 (2017)).

According to Robert Ambrogi’s Above the Law column, Pensacola, Florida, law firm Odom & Barlow never responded to motions seeking reimbursement of $600,000 in legal fees. After 14 months with no response, the judge ordered the fees paid. The law firm moved for relief, claiming it had never received the motions—or the judge’s order to pay the fees—because its email system thought the court’s emails were spam and automatically deleted them (tinyurl.com/y7ntvzlq). The motion for relief was, of course, denied: “[T]estimony was presented that the spam filter of Odom & Barlow’s server was deliberately configured in such a way that it could delete legitimate emails as spam without notifying the recipient, despite Odom & Barlow being warned against this configuration. . . . [The IT consultant] also recommended that Odom & Barlow hire a third party to handle spam filtering on a full-time basis and purchase an online backup system. However, these recommendations were rejected because the firm did not want to spend the additional money. . . . [T]he server had the ability to generate email logs, but was specifically configured not to create logs in order to save drive space” (Emerald Coast Utilities Authority v. Bear Marcus Pointe, LLC, Case No. 1D15-5714, Fla: Dist. Court of Appeals (1st Dist. 2017) (italics added)).

In 2017 a prankster posing as White House social media director Dan Scavino engaged White House special counsel Ty Cobb in a lengthy e-mail exchange: “Good evening Ty, I’ve sent a complaint to twitter about the content that drugged up extremist, Natasha Bertrand, is spouting about your correspondence. Things like this on social media die quicker than a Mexican’s hopes of Citizenship, Ha! but I wanted to tick all the boxes. I presume you’ve had no further contact from Ms Bertrand? Dan.” Cobb responded: “You the Man! She is insane. Thanks Buddy.”

Thirty minutes and several exchanges later, the prankster, still impersonating Scavino, wrote: “One final thing Ty, I’ve been really worried recently about the whole Russian situation. . . . The White House will be okay won’t it? I love my job, and the people I work with, I don’t want the dream to end up derailing. Dan.”

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“I have great confidence there is nothing there implicating the President or the White House,” Cobb wrote. “Manafort and Flynn have issues separate and apart from the WH that will cause the investigation to linger but am hoping we get a clean bill of health soon. Best, Ty.”

The prankster replied: “Thank you, Ty. I think I’ve overthought things. i’ve ruined the contacts on my damn iPhone! Can’t find the Big Man’s email address . . . apple have a lot to answer for!”

Cobb apparently figured out that he was being pranked. His next message: “Felony to impersonate a federal official” (tinyurl.com/yd8bwqzf).

Technology advances rapidly, ethics rules don’t; and electronic communications frequently cross several jurisdictions. So, you may have to reckon with ethical standards not just in your home state, but also in places you may never have been.

The fact that we live at the bottom of a deep gravity well, on the surface of a gas-covered planet going around a nuclear fireball 90 million miles away and think this to be normal is obviously some indication of how skewed our perspective tends to be.

—Douglas Adams, Salmon of Doubt, supra
SOCIAL MEDIA 101

By Christine M. Meadows

Whether you love it or hate it, social media (Twitter, Instagram, Facebook, LinkedIn, and all their progeny) has become woven into our society in a way that requires lawyers to pay attention. If the whole thing seems a little overwhelming, I offer you below some basic tips about using free social media in a way that is manageable and gives you a nice return on the time invested.

Make sure you are accessible. How does your website appear if you look at it from your phone or tablet? Can it be easily navigated using assistive readers? The website can serve as your primary location for content that you link to from your other platforms. If you are posting content from your website, make sure that it appears and is accessible from mobile devices.

Go where your potential clients and referral sources are. It is important to be familiar with the applications your clients use and how they use them. What are a potential client’s needs and expectations? Clients want content that is relevant to them and that adds value.

Think about what you want to accomplish. Do you want to generate a large volume of calls? Generate a niche? Cultivate high-quality, long-term referral sources? Be regarded as an expert on a specific topic? Just keep in touch with contacts? Different platforms have many different functionalities to help you focus on your goal. If you just want a virtual Rolodex that automatically updates itself, then you may set up a LinkedIn profile, link to others to build a professional network, and not do much else. If you want to generate referrals and stay in front of people, you will need to generate content and regularly post comments.

Leverage what you already do. If you are savvy, you can expand the scope of what you are already doing to reach many potential clients you might not reach otherwise. Giving a talk at the local bar association or chamber of commerce? You can link to the event to make people aware of it in advance. Afterward, post information that addresses a key point that might be useful. Writing an article for your website or blog? You can link to it to your Facebook or LinkedIn profile. It will show up in other users’ news streams or suggestions. If they comment or react to that article, it may also trigger interest from their contacts. Pin it to a Pinterest board using a topic name that someone looking to hire you for this type of work might use, such as “accommodations” or “child support issues.”

The goal is to spread your reach by a geometric progression with very little additional effort. You can link to or recommend content that is generated by others, keeping yourself in people’s minds and generating goodwill (provided the content is useful). If you have a blog or YouTube video, you can easily attach links to social media profiles or use individual articles or issues to drive people to your content by posting them as individual new events.

Consider the ethics rules. Yes, your state and local ethics rules could impact how you use social media. Rules about false and misleading advertising could be implicated. What is an unethical solicitation? Rules about incompetence or holding oneself out as an expert could be triggered if you overstate your experience or skills. Are you engaged in the unauthorized practice of law if you are holding yourself out as an expert in a jurisdiction where you are not licensed? Are you communicating with clients on social media in a way that could create confidentiality issues or claims of failure to communicate if you miss a message from them? Does that tweet violate a gag order? Is trolling through an opposing party’s Facebook page a violation of discovery rules? These are some features that I do not use, such as endorsements on LinkedIn, because they raise some ethical concerns in jurisdictions where I practice. This is something to consider as you are setting up your profiles, so check your own local rules and your own settings.

Christine M. Meadows (christinemeadows@q.com) serves as the assistant director of labor relations, University Shared Services Enterprise (USSE), Corvallis, Oregon. She also operates a labor and employment law practice, representing employers in private industry, government, and higher education on all aspects of the employment relationship. Christine consults, teaches, and is a frequent author and speaker on labor and employment, law practice, leadership, and diversity and inclusion topics. She is the Best of ABA Sections Editor for GPSolo magazine and a member of the GPSolo Editorial Board.
NEW! THE LAW AND LIABILITY OF SMALL AIRCRAFT

CECIL C. KUHNE III

“The airplane stays up because it doesn’t have the time to fall.”
—Orville Wright

Unfortunately, the father of modern aviation wasn’t completely right about this natural phenomenon—sometimes planes do have time to fall, and especially small ones. Flying in a small aircraft has its share of dramatic moments, mostly due to a combination of bad weather, mechanical failure, pilot error, and air traffic control miscalculations.

The jurisprudence of aviation contains a plethora of cases dealing with the difficult issues of liability resulting from flying small aircraft. The Law and Liability of Small Aircraft contains a compelling representation of judicial decisions—divided between product liability lawsuits and those that deal with the regulatory scheme that oversees aviation—that present the typical dilemmas of the courts in this area of law.

In the end, these opinions invariably portray the dramatic courtroom struggles resulting from the tense circumstances that often lead to the tragic loss of human life in this most alluring of human endeavors.

This new book looks at cases that involve questions of adequate design, pilot error, FAA safety standards, turbulence, and much more.

L. Rush Hunt and Lara Rae Hunt

A Lawyer’s Guide to Estate Planning: Fundamentals for the Legal Practitioner, Fourth Edition is full of helpful information on all aspects of estate planning to ease any attorney through the process.

This book is a thorough introduction to the basics of estate planning. It is written for the needs of general practitioners and those who are seeking to develop a specialty in the estate-planning field. For this reason, A Lawyer’s Guide to Estate Planning is presented in a user-friendly manner that provides basic text treatment of the subject along with cautions, examples, and planning pointers clearly denoted throughout the book. The cautions point out problem areas that must be considered to avoid an unwanted tax or other problem. The examples supplement the text and illustrate the point being discussed. The planning pointers show how to use the tax laws to benefit the tax and other planning needs of clients.

This is a great resource for understanding the basics concepts of estate planning.