

BAR BULLETIN

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REMARKS FROM THE PRESIDENT'S DESK —

By: Laurel A. Hoehn

This article coincides with the beginning of a new year and it amazes me how quickly 2011 passed...really, a new year already? Hopefully, everyone had a wonderful holiday season. The Spark of Love Holiday Party was an outstanding success this year. We collected a total of 203 toys for local children, a significant increase over last year's total of 120 toys. Angelique Bonanno was a gracious hostess and made a delicious lasagna. Thank you to all those who attended the party and/or contributed a gift.

Our State Bar membership fees are due again, and as a reminder to those with last names starting with H-M, you will need to report your MCLE compliance to the State Bar by February 1, 2012. This can be done online through the State Bar's website at www.calbar.ca.gov. Active attorneys must complete 25 hours of continuing legal education including four hours in legal ethics, on-hour in substance abuse and one-hour in elimination of bias. If anyone needs additional hours, the State Bar website also offers online self-study classes.

Since becoming the Bar Association's president, I have been inundated with emails and links to various law blogs out there, and wondered how many of you regularly read blogs? If you do, are they law related or concern other areas of interest? I know that I have talked to some of you about TMZ and other entertainment gossip sites, but what else is out there that you enjoy? Here are a couple blogs I find interesting, in no particular order:

Advocates Studio (advocatesstudio.com). A Boston-area attorney, who posts about the latest technology, apps and gadgets to improve your research, writing, and organization.

CEB Blog: Your Partner in Practice (blog.ceb.com). Offers valuable and on-point information about a wide range of legal topics, from legal writing to litigation strategies. It is affiliated with the State Bar of California and the University of California.

Corporette (corporette.com). Suggestions about what to wear to work, including a lively discussion about whether colorful nails are appropriate for the office.

From the Sidebar (fromthesidebar.com). Criminal defense trial practice advice, with personal anecdotes from the courtroom and commentary on criminal cases in the news.

January Almanac

By : Tony Sears

All times Pacific Standard Time (PST), which is minus eight (8) hours from UTC (Universal Time Coordinated). The January Full Moon is called the "Full Wolf Moon". One can imagine how unnerving it must have been to hear those wolves howling on a cold night on the prairie.

Due to the time of full Moon, there is a chance to see the full Moon on two consecutive days. Watch the nearly "Full Wolf Moon" rise at 4:45 p.m. on January 8. The Moon actually goes full at 11:30 p.m. on January 8. Watch the waning full Wolf Moon rise again at 5:47 p.m. on January 9, 2012.

The annual air show at Cable Airport in Upland is set for January 7 and 8, 2012. This is a really fun, inexpensive family event. Event tickets are cheap and there is free parking. Even surly teenagers are impressed by the stunt flying.

Winter Weather Alert! As this goes to press, it appears that we have an *La Nina* weather pattern setting up for the winter. This typically means less rain here in our region. However, that does not mean that we will not have moisture laden storms cross our region from the Eastern Pacific. Such storms often come in three (3) to five (5) day clusters and can cause a real headache. Just remember and practice a few simple things:

First, slow down. Please. Road conditions are especially tricky when there is heavy rain. A year's worth of oil, rubber, and dirt will be on the road surface, making it slippery. What is a slight dip in the road in June can be an axle snapper in January when there is a foot of water in it. Think of Baseline and Hermosa. A car can be swept up and carried down stream by only six inches of flowing water, especially on some of the steep streets in our area. My brother floated our '68 VW Bug fifty yards down San Antonio Avenue in Upland one rainy winter day in 1978. Lucky for him, it started right up.

Second, shut up and drive. Stay focused on driving. Turn the phone off, just like in court. Would you dare take a call in Department R-12? I think not. Arrive alive.

Third, take a few minutes the afternoon or night before the storm to prepare. Fuel up your vehicle and check your tires. Have your wiper blades replaced, as a years worth of exposure to the Sun usually degrades the rubber. New blades make a big difference, especially for night driving. Give your home the once over. Make sure things are covered up. Get your umbrella, coat, and boots set up in your car. You will sleep soundly knowing you are prepared.

Fourth, give yourself extra time to get to court or the office. It is much better to be sitting in the courthouse parking lot a few minutes early than stuck in the morning rush. You will be able to relax and focus on your business at court or your desk.

Finally, enjoy the cool clear evening after the storm passes. Open up the windows, air out the house, and breathe

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Hollywood, Esq. (hollywoodreporter.com/blogs/thr-esq). Entertaining analysis about the legal comings and goings in and around the entertainment industry. Jonathan Turley

Pancakes and French Fries (pancakesandfrenchfries.com). Not specifically law related, but rather the witty tales of a former attorney (and my friend) who gave up the practice of law to raise a family.

If you have the time, check out one of the blogs mentioned above, or let me know if there are others you enjoy. Happy New Year!

January Almanac

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in the clean crisp fresh air. The stars will be shining brightly, especially later in month with no moonlight to contend with. If you are up early the morning after the storm and check out the sun rising and lighting up the snow covered San Gabriel and San Bernardino Mountains.

Garden Notes: Take advantage of the fact that we live in some of the best climate in the world. It may be winter, but there are many cool season crops that thrive in January. In you raised beds or containers, try growing Bok Choy, lettuces, radishes, beets, leeks, and carrots.

Recipe of the Month:

This month, the featured recipe is a savory quiche, perfect for your New Year's celebration. One of the first recipes my mom taught me was a simple quiche Lorraine. If you like something savory with your morning coffee, this is the ticket. This recipe is for two, because frozen pie crust shells (always get deep dish!) come in two (2) packs. Like Lasagna or Tamales, for the mess you make for one, you might as well make two. One for you, one for your mom. If you can make your own pie crusts, then go right ahead. It will be just that much better...

It is crucial that you "blind bake" the crusts first. If you have a pie chain, then you know what to do. The rest of us should take some parchment paper (or foil if need be) and place it in the frozen shell, then place pie weights or dry beans on the paper to weigh it down. I picked up some ceramic pie weights for cheap. This wills et the crust and make certain it stays dry and flaky when you add the wet quiche filling. This recipe is for two (2) savory quiches, featuring three of the fabulous *Alum* sisters: Leeks, Onions, and Green Onions/Scallions. Sorry Garlic and Shallot, you'll get your chances later.

Cheesy Leek Quiche-Serves 8, takes about 1 hour.

Pre-heat your oven to 425° f. Two (2) frozen 9 inch deep dish pie crust, blind baked at 425° f for 15-20 minutes. Remove crust(s) from oven.

(3-4) medium or (2-3) large Leeks. Use the white and light green. Slice into 1/4 inch rounds and thoroughly

wash. I just put water in the sink and wash cut leeks this way. The grit will sink.

One (1) Red Onion, cut into half moon slices. If you can get Maui, Vidalia, or Texas Sweet Onions, then use those.

2 bunches of Green Onions/Scallions, chopped thickly.

In a large skillet or saucier, add 2 tbsp. of butter or olive oil, the leeks/onions-scallions, and 1 tsp. of kosher salt. Sauté (medium high heat) until tender and caramelized, 20-25 minutes. Place in clean bowl and let cool down for five minutes or so. It is important that you really cook the leek-onion-scallion mixture until tender and caramelized (not blackened!). This tames the flavors and yields the savory aspect.

Whisk together 1 tbsp. of flour, 3 large eggs, 1 cup of half & half, 1/2 tsp. kosher salt, 2 cups total of any of the following grated cheeses: Sharp White Cheddar, Pepper Jack, Extra Sharp Cheddar, or Monterey Jack. Stir in 3/4 of the onion mixture and combine. Pour into pie shells and sprinkle the remaining onion mixture on top, along with a bit more grated cheese. Bake at 425° f until a toothpick comes out clean, 20-25 minutes. Cover the crust edges with foil or a crust cover (a ring of aluminum that covers the crust to keep it from burning).

Let quiche(s) cool on rack for at least 15 minutes if serving for dinner, along with a chilled Sauvignon Blanc and a green salad. If you are going to have it for brunch, let it cool down an hour, cover in plastic wrap and then foil, place it in fridge. Wrap it tight and freeze if you want. Easiest to re-heat in microwave. Try a splash of Tapatio sauce on the quiche.

Bon Appetite! Tony Sears

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

By: Hon. Barbara A. Buchholz

Tell me, when you were a kid, what was better than a field trip during school? Like the grade school days that I fondly recall, a "field trip" was an adventure; a departure from our routine school life where we had a sliver of opportunity to experience new sights, sounds, people and to learn new things for which we had limited or no exposure to in our everyday life. Clearly, the ideology of a *field trip* was to expose students to a different environment, outside of their usual routine and comfortable world, and let them see something new, different, exciting and informative.

This "field trip" concept was adopted by our Inn a little more than five years ago and has been a huge success. We have had the opportunity to expose our Inn Members to panoply of varied legally related environments, such as the Court of Appeal, the Federal Court, the Coroner's Office, the Crime Lab, Sheriff's Aviation, the 911 Call Center and similarly related Firefighters Call Center, and the Juvenile Court system, just to name a few. It provides a chance to our Inn Members to step outside of their routine practice area and see a related (or completely unrelated) area of the law and gain insight into the inner workings of that group. The goal is to expose our Inn Members to new things with the aim that

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

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they will be better practitioners for having experienced this new legal environment.

Traditionally our December meeting is our field trip. In keeping with the tradition, we left the comfortable confines of the Arrowhead Country Club and ventured over to the Mental Health Court facility behind the Arrowhead Regional Medical Center to learn about the inner workings of the mental health court.

Hon. J. Michael Welch very graciously agreed to stay late and lead our panelists in the presentation which focused on a discussion of the working of the Lanterman-Petris-Short Act ("LPS") and mental health litigation. Also participating as panelists and speakers were: Wayne Henkelmann, San Bernardino County Court Mental Health Liaison, Bryan Hartnell and Ryan Sheehan, who act as Patient's Counsel, Jacqueline Carey-Wilson, Deputy County Counsel, and Anthony Sears, Attorney at Law.

It was expressed during the meeting that this court is "unique" in that the actual court itself is located in the Behavioral Health building behind the hospital and was equipped to handle these types of specialized matters.

Judge Welch started the discussion with introductions for the panelist participants and providing our Inn group with a brief synopsis of the purpose and history of the mental health court. There is a dual purpose for this kind of court: (1) to protect the public and (2) to protect the patient. Judge Welch described the 3 main types of hearing which include LPS Conservatorships, Writs of Habeas Corpus and Medication Compliance hearings (patient refuses medication). Judge Welch stated that it was important to remember that the patient is not a "bad" person, and it is generally unfortunate circumstances that occur in their lives that place them in the position they find themselves in front of the judge.

Mr. Henkelmann provided a basic overview on behalf of the Office of the Mental Health Counselors (and wonderful handouts explaining the process). He discussed how the calendars are coordinated for the hearings, such as the Medication Competency Hearings, Conservatorships, and the Writ hearings. Under the LPS Act a person can find himself/herself in a mental health court hearing if they pose a danger to themselves or others or are gravely disabled.

Mr. Sears discussed California's comprehensive statutory scheme that governs mental health issues (also outlined on a handout). The applicable statutes and code sections involved center around the Welfare & Institutions code ("WIC"). Mr. Sears spent time addressing each area of the WIC code and its purpose and application to the court procedures. Also addressed were the due process issues uniquely applicable to this practice area.

Ms. Carey-Wilson, Deputy County Counsel, addressed the role of County Counsel in the proceeding. Their job is to represent several groups, which could include the doctors, the hospital and/or the public Guardians, who are/can be appointed as conservators. She also addressed the standards of proof required at each respective hearing. Ms. Carey-Wilson had her share of real life stories to share for the audience in the courtroom. Like Mr. Henkelmann and Mr. Sears, Ms. Carey-Wilson

Also provided handouts to the audience which highlighted helpful information regarding the mental health court procedure.

If you did not get to the December "field trip" program, you missed another great program. You can always attend our next program which is planned to return to our usual local at the Arrowhead Country Club and is set for **January 11, 2012**. The topic will be "But I'm Just a Kid." This program will explore how the law treats minors and their parents when something bad happens.

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

All membership questions should be directed to our membership chairman, Donna Connally. She can be reached at (909) 758-5136 or you can e-mail her at: donna@noquitdefense.com.

Until next time,
Hon. Barbara A. Buchholz

Wilfrid C. Lemann is Honored with the Saint Thomas More Award at the 21st Annual Red Mass

By Jacqueline Carey-Wilson, Barbara Keough, and Teresa Zendejas

More than 100 members of the legal community and their families gathered at the 21st Annual Red Mass, which was held on October 11, 2011. This year the mass was moved from May to October to coincide with the opening of the annual term of the United States Supreme Court. The Red Mass is celebrated to invoke God's blessing and guidance in the administration of justice. The mass was held at Our Lady of the Rosary Cathedral in San Bernardino. Judges, lawyers, and public officials of several faiths participated.

In the opening procession, Mitchell Norton carried a banner depicting the Holy Spirit, the Scales of Justice, and the Ten Commandments, symbolizing the impartiality of justice and how all must work toward the fair and equal administration of the law, without corruption, avarice, prejudice, or favor. George Theios processed into the church with a vase of 30 red roses in memory of those members of the Inland Empire legal community who had passed away in the last year and three additional red roses for Linda Maybes, Helen Rodriguez, and Louise Biddle, members of the Red Mass Steering Committee who had passed away in previous years. The mass was dedicated to those who serve us in the armed forces, especially in Iraq, Afghanistan, and other places where they are in harm's way.

The chief celebrant was the Most Reverend Gerald Barnes, the Bishop of the Diocese of San Bernardino. The homilist was Decon Michael Jelley. Stephen Larson read a passage from the Old Testament, Jacqueline Carey-Wilson read a passage from the New Testament, and Patricia Cisneros and Mary Jo Carlos offered the Prayers of the Faithful, which included remembrances of individuals in the Inland Empire legal community who had passed away during the last year. Barbara Keough led the music and Lisa Padilla was the cantor for the mass.

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Wilfrid C. Lemann is Honored with the Saint Thomas More Award at the 21st Annual Red Mass

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During the homily, Deacon Jelley stressed that we are called to love and quoted from St. Paul's message to the Colossians, "[P]ut on heartfelt compassion, humility, gentleness and patience. And over all these put on love, the bond of perfection." Deacon Jelley went on to tell us he understands that it is not always easy to love: "However, one of the greatest values in the system of laws in this country is a built-in concern for every person, loveable and unlovable alike; even when we can see no redeeming value in a person, they are still entitled to the protection of the law; to adequate a representation; to be considered innocent until and unless proven otherwise. This, too, is a manifestation of love and compassion." Deacon Jelley asked those assembled to allow wisdom to be their guide and to recognize the gifts that God places within each person. "God trusts you and really does want you to pursue your passion; to follow your heart, not simply your head. We are to serve others without expecting anything in return, and we are to learn to really love those we serve." He ended by reciting Saint Thomas More's prayer, "Lord, grant me the grace to work for the things I pray for."

At the conclusion of the mass, Judge John Pacheco presented Wilfrid C. (Bill) Lemann with the Saint Thomas More Award. The Saint Thomas More Award is given to an attorney or a judge whose conduct in his or her profession is an extension of his or her faith, who has filled the lives of the faithful with hope by being a legal advocate for those in need, who has shown kindness and generosity of spirit, and who is overall an exemplary human being. When speaking about his own public activity at the service of the person, especially if that person was weak or poor; he dealt with social controversies with a superb sense of fairness; he was vigorously committed to favoring and defending the family...."

Bill Lemann was born in Donaldsonville, Louisiana in 1951 and was raised in San Bernardino. During his younger years, he attended Holy Rosary Academy and Aquinas High School. After receiving his B.A. from Santa Clara University in 1973, he earned his J.D. from Loyola University in New Orleans, Louisiana in 1977, passing the California bar exam soon thereafter. In 1978, he joined in partnership with his lifelong law partner, Robert V. Fullerton. Bill's legal practice involves business law, nonprofit corporations, estate planning, and probate. Shortly after the Diocese of San Bernardino was formed in 1978, Bill was appointed as the diocesan general counsel, and he continues to serve in that capacity.

Bill has a passion for education. In the 1980's, he participated in the Rotary Club program with youth in the community and was described as a "cool mentor" by then-high school student Philip M. Savage, IV. His passion is manifested in his commitment to developing, supporting, and furthering Catholic education in this region. He was instrumental in developing and funding the new seminary in Grand Terrace, Blessed Junipero Serra House of Formation, which currently serves 47 seminarians. This is the largest number of seminarians the diocese has had in formation since it was established in November 1978.

Bill's unique love and respect for the elderly go beyond merely serving their legal needs. Many of his clients regard him as a friend. He always has time to listen and give encouragement. Access to justice is also very important to Bill, and he assisted with the funding to relocate the Legal Aid Society of San Bernardino to its current expanded location on Fifth Street. Additionally, Bill played

a major role in developing Our Lady Queen of Peace Catholic Cemetery in Colton.

Bill has been recognized numerous times for his humble service to his local, legal, and religious communities. In 2002, he received the First Annual Bishop's Award, *Amar Es Entregarse*, which was presented by the Most Reverend Gerald R. Barnes, Bishop of the Diocese of San Bernardino. In 2008, he was honored with the *Pro Ecclesia et Pontifice* Cross, a papal honor given for meritorious service to the Universal Church by the Holy Father, Pope Benedict XVI. He received two naming honors in 2009, from St. Bernardine Medical Center Emergency Admission Center and from Aquinas High School, which created the Bill Lemann Baseball Complex. Bill has been married to Janice for the past ten years, and both are members of Our Lady of the Rosary Cathedral in San Bernardino.

Bill's lifelong service to the church and community exemplifies the ideals embodied by Saint Thomas More. He lives his faith daily, is kind and generous of heart and works tirelessly for those in need.

The Red Mass Committee is planning for next year's Red Mass, which will be held in October. If you would like more information or would like to be involved in planning next year's Red Mass, please call Jacqueline Carey-Wilson at (909) 387-4334 or Mitchell Norton at (909) 387-5444.

Jacqueline Carey-Wilson is a deputy county counsel with San Bernardino County and co-chair of the Red Mass Steering Committee; Barbara Keough is an associate with Lewis Brisbois Bisgaard & Smith LLP and a member of the Red Mass Steering Committee; and Teresa Zendejas is a paralegal with Fullerton Lemann Schaefer and Dominick LLP.



Magistrate Judge Sheri Pym

By Sophia Choi



Magistrate Judge Sheri Pym was appointed as a United States Magistrate Judge for the United States District Court for the Central District of California, and on April 15, 2011, she was sworn in. She filled the position vacated by Magistrate Judge Rosalyn M. Chapman and sits I Riverside in the court's Eastern Division.

Having come from a family in which her father is an attorney,

Judge Pym was ultimately led in the direction of pursuing a career in the legal profession. She saw her father working all the time, and she initially had no intention of becoming an attorney. However, as she began to learn more of what law school was about and started to get extremely interested in legal issues, she decided to pursue a career in the direction of her father.

Judge Pym graduated from Williams College in Massachusetts in 1989, with a major in philosophy. At that time, she did not know a major in philosophy would make for a good transition to the study of law. Prior to attending law school, Judge Pym was a Victim Advocate for the King County Prosecutor's office in Washington, at which time she gained a keen interest in criminal law. She then came to California for law school, graduating and earning her law degree from UCLA in 1994.

Starting her legal career in private practice, Judge Pym was an associate at Milberg Weiss LLP in San Diego, practicing civil law for seven years. She then joined the United States Attorney's Riverside office. She handled a wide variety of cases there and loved the experience she gained. She thoroughly enjoyed being a lawyer and trying to get to the right answer, trying to obtain justice. She enjoyed practicing both civil and criminal law, and her experience in both areas, as well as her experience in both private practice and government, has helped her transition smoothly into her role as a Magistrate Judge. Judge Pym indicated that she was aware who her Riverside colleagues would be and was convinced that she would like to work with them. She stated that she really likes fellow Magistrate Judges Oswald Parada and David Bristow, as well as District Judge Virginia Phillips.

With an official start date of April 18, 2011, Judge Pym trained in Los Angeles for one week and then immediately started in her new assignment. The types of cases she deals with include habeas corpus petitions, Social Security appeals, and pro se civil rights cases. She said that although there are many things to be learned, she undoubtedly likes the work.

Judge Pym is a member of the Riverside County Bar Association and the San Bernardino. She is currently President-Elect of the Federal Bar Association, Inland Empire Chapter, and will become President in January 2012.

Living in Claremont, Judge Pym is happily married; she is raising a son, who is going into kindergarten, and a daughter, who is going into the fourth grade. She enjoys spending time with family, including playing with Legos with her son and reading various book series with her daughter. She enjoys watching movies of all kinds, but since she mainly watches movies with her kids these days, her favorites have become Japanese animated fantasy films by Hayao Miyazaki, including *Howl's Moving Castle*, and most of the Pixar movies. As her husband loves comedies, Judge Pym also watches a great amount of comedies. She is also an avid Seattle Seahawks fan. The genres of music enjoyed by Judge Pym include

80's new wave. She is fortunate that her husband is a fabulous cook who can cook all types of tasty meals. She also enjoys outdoor activities, such as running, biking, hiking, and swimming. She takes pleasure in travelling and has been to many different parts of the world, including Austria, Costa Rica, Portugal, Japan, France, Germany, and Ireland.

Upon walking into her chambers, it was immediately apparent what a workaholic Judge Pym is. She grew up seeing her father as a hard-working attorney, and it is clear that his work ethic has followed her.

Essential Law Firm Technology Policies and Plans

By Sharon D. Nelson, Eq., and John W. Simek
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Technology users run amok. They are rogues, far more apt to do what they please than to do what their employers dictate. Sometimes law firms try to control their employees with technology. Our favorite example is using technology to ban visits to social media sites. Employees, after complaining bitterly about their bosses, will simply use their smartphones and go wherever they want on the Web.

Policies that have a dose of common sense can often accomplish more than technology.

Law firms also need plans - what if your firm is sued and you find yourself under a litigation hold? Do you know what needs doing and who will do it? What if a major earthquake or flood hits and you are suddenly without an office? In a modern day nightmare, what happens if you find out that someone has hacked into your law firm servers? What's the plan Stan?

We could write an article on each of the policies we've listed below, but space demanded a condensed version to get you thinking about whether you should be developing policies you don't have or reviewing those you do have to see if they need updating. Remember, there are a lot more policies and plans that law firms should have - these are specifically related to technology.

And for heaven's sake, TRAIN, TRAIN, TRAIN at least once a year. No one remembers the fine points of plans and policies without annual memory refreshers and the technology updates will necessitate minor changes at a minimum.

Electronic Communications and Internet Use Policy

Don't blame the employees if you haven't been clear about what they can and can't do. Most employers allow incidental use of e-mail and Web surfing for personal purposes and that seems fair enough to us. But if an employee is engaged in personal Web cruising or electronic communications for the bulk of their day, they are outside the policy.

You may want to forbid streaming at work (audio and video) which hogs bandwidth and can really slow down your network. Forbid downloading executable files without checking with IT - who knows what malware may ride in on those files?

Typically, users are forbidden to visit sexual sites, "hate" sites or sites involving illegal activity, such as gambling sites. When visiting interactive sites, they are generally encouraged to think twice before using the firm name in any manner. Privacy and confidentiality are always addressed.

A toothless policy won't work. If you are going to make rules, you need to be able to monitor conduct, at least periodically, and to punish infractions. This is true for all policies, so be prepared to police your policies once they are implemented.

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If you've no idea where to start, here's one model policy: <http://apps.americanbar.org/buslaw/blt/ndpolicy1.html>.

Social Media Policy

You might think this would fall under the policy above, but most businesses have a separate social media policy - in part, because social media has been a world in which the Indians run the reservation while the chiefs are helplessly wringing their hands.

Forbidding the use of social media doesn't work. It not only irks the employees but they ignore the prohibition. If you have technology enforcing the prohibition, they will use their smartphones or other personal communication device.

By way of contract, large businesses are generally embracing social media - at one General Counsels meeting in New York, we heard the general counsels of Sprint and Coca-Cola® happily laud their employees as "social media ninjas." They go out and spread the gospel on behalf of the companies. Of course, in law firms, we have to be mindful of our ethical rules - but within those rules, one can do a lot of good for the firm.

So...follow the KISS principle and keep the policy simple. No obscenities, no discriminatory postings, no angry postings, proof before you post, don't give legal advice, remember that social media lives forever, speak politely to everyone you interact with and report "problems" to a supervisor. To keep from reinventing the wheel, you can find a sample social media policy at <http://thebyrneblog.files.wordpress.com/2010/03/sample-social-media-policy.pdf>.

Document Retention Policy

If only law firms would learn to take out the digital trash. Instead, they tend to move all their data when they do a technology upgrade because storage is so cheap. What is NOT cheap is searching through all sorts of useless data either when looking for client documents or searching the data in response to a discovery request in a lawsuit.

You really don't need the 25 e-mails it took to schedule one meeting. But lawyers tend to keep it all. The first rule of creating a document retention policy (DRP) is simple: 1) If you are governed by federal/state law or regulations, follow them! If federal and state requirements conflict, obviously follow the more stringent requirements. The second rule is equally simple: 2) If you are governed by internal by-laws, other mandatory procedures, or industry standards, abide by them. Now comes the dicey part. Rule #3: If you are on your own after following rules 1 and 2, assume all the documents in your possession, paper and electronic, will be the subject of a lawsuit somewhere down the line. What is best kept and what is best thrown away? Drafting of these policies is no walk in the park. It requires more intensive thought than might appear at first blush. Will it help or hurt you to keep successive drafts of documents? The deeper you delve into policy formation, the more niggling issues tend to pop up. Don't expect to formulate a sound DRP overnight. You can find a sample DRP at <http://apps.americanbar.org/lpm/lpt/articles/ft07046.html>.

Secure Password Policy

Only the largest firms tend to have a secure password policy and this is a shame. This is an easy one to compose now that the Georgia Institute of Technology has proven that any eight character can be cracked in about two hours. It also proved that it takes

approximately 17 years to crack a strong 12 character password. So the key rules here are simply:

1. Employees must have alphanumeric passwords of 12 or more characters.
2. They must change their password at least every 30 days and cannot repeat them.
3. Suggest the use of passphrases (climbedEverestIn2000!) and prohibit storing passwords on computers or on sticky notes - though storing them on an encrypted flash drive is permissible.
4. Don't reuse the password elsewhere.
5. Have both a log-in and screen saver password.

Most of the above steps can be enforced through the technology. A typical Windows Group Policy can make sure that the passwords are a certain length, change frequently, are not repeated at a certain interval and are properly applied.

Incident Response Plan

This plan generally refers to some sort of security compromise, most often a data breach, though it can also cover attemptey breaches, security alarms, unauthorized access by employees, etc. The big kahuna is the data breach. More and more data breaches are occurring with a possible federal law looming on the horizon.

Incident response plans help to make sure you have an action checklist:

1. Verify what happened.
2. Who is in charge of the investigation?
3. Solve the immediate problem (usually getting hackers out of your network) while preserving the evidence.
4. Call in outside experts or use internal resources?
5. If a data breach has taken place, what steps does the law require you to take?
6. Harden your security so his particular incident can't happen again.

There is, as you can imagine, far more to consider. A good starting point may be found at <http://www.comptechdoc.org/independent/security/policies/incident-response-plan.html>.

Mobile Security Policies

Lawyer Mobility has expanded so much in the last 10 years that most of us can now work from anywhere and have access to our office documents as long as we have an Internet connection. But all this connectivity means we have serious security concerns as we connect with laptops, tablets and smartphones.

It is critical that our remote connections are secure and that we transport and store confidential data in a secure manner. Would it take an epic novel to tell you how? Yes. So it is very helpful that the SANS Institute has a suite of mobile security policy templates available at

<http://www.sans.org/security-resources/policies/mobile.php>.

Equipment Disposal Policy

It can't leave "home" with data on it. So you can't junk your computers or donate them to charity without doing a secure wipe of the data. We recommend a free product called Darik's Boot and Nuke (DBAN) which is available at <http://www.dban.org/>. Once again, there are terrific sources from the ABA at: <http://americanbar.org/groups/departments/offices/legal/technology/resources/resources/charts/fvis/computerdisposal.html>.

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Litigation Hold Plan

If you don't have one, you're asking for trouble. If you know you have been sued or are the subject of a regulatory action, or that either one is likely to occur, you are under a litigation hold and must proceed expeditiously to preserve the relevant electronically stored information (ESI). This will require a team of folks - legal, management, IT, etc - to gather quickly and take the necessary steps. You'll need to interview key players and the IT folks to locate the relevant data, decide if you have backup media that must be preserved and whether you need to cease automated janitorial functions on your network. Periodic litigation hold notices must be sent out. And that's just the beginning. Further fodder for thought may be found at

<http://tamut.edu/recoredeten/Sample%20Litigatoin%20Procedures.pdf>.

Though column space doesn't allow us to delve extensively into the components of all of these policies, we have tried to provide a snapshot of the most common policies and plans and give you a link to further resources. These policies and plans are an integral part of risk management and ensuring business continuity, two things near and dear to the heart of all lawyers.

The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology, information security and computer forensics firm based in Fairfax, VA. 703-359-9799 (phone) www.senseient.com

Equal Justice for All With the Help of Volunteers

By Katherine Hardy, Staff Attorney, Joint Federal Pro Se Clinic

The months of November and December 2011 saw two notable events for the newly minted Joint Federal Pro Se Clinic, which is located in the U.S. Bankruptcy Court in Riverside and offers on-site assistance to pro se litigants in civil actions in U.S. District Court and Bankruptcy Court.

First, the clinic opened its doors on November 3. Second, we had our grand opening on December 1. We were honored with the presence and words of four highly esteemed and dedicated judges. The message of the day: equal justice for all.

The Honorable Virginia A. Phillips, Judge, U.S. District Court, Central District of California, spoke first. The creation of such a clinic has been a personal project for her and one to which she has been very dedicated. Quoting Thomas Jefferson, Judge Phillips cited the need to deliver equal justice under the law to all people. She expressed the desire that the clinic would help accomplish this goal, especially given the incredible need in the Inland Empire for such assistance.

The Honorable Peter H. Carroll, Chief Judge, U.S. Bankruptcy Court, Central District of California, spoke next. He came here from Los Angeles to celebrate the opening, and he has been an ardent supporter of the clinic. He spoke of the sheer volume of cases filed in the Eastern Division, a good percentage (almost a third) of which involved pro se litigants. He described the clinic as "much needed and long awaited."

The Honorable Catherine E. Bauer and the Honorable Maureen A. Tighe, Judges of the U.S. Bankruptcy Court, Central District of California, and each a long-time supporter of the creation of the clinic, expressed their relief and gratitude for the opening of the clinic. Judge Bauer likened the bankruptcy court to a hospital,

an environment requiring triage, in which pro se litigants are expected to do surgery on themselves. She expressed hope that the clinic will relieve this difficult situation. Judge Tighe, coming from Woodland Hills, has long been involved in the debtor's assistance program. She spoke of an early experience in the Inland Empire investigating fraud and said she has never forgotten the poverty and helplessness she witnessed. She realized these victims often could not afford an attorney, to the detriment of their own cases and of the efficient functioning of the court. She called on attorneys to volunteer their time.

At the grand opening, we were also fortunate to have Dennis Wagner, President of the Federal Bar Association, Inland Empire Chapter, pledge his support for the clinic. He stated that the FBA would seek to obtain funding for clinic as well as encourage FBA members to volunteer for it.

Finally, Jennifer Loflin, an attorney who has worked tirelessly with many others to establish the clinic and who is the Program Director of the Public Service Law Corporation, which administers the clinic, delivered some compelling statistics justifying its creation. As of December 1, the clinic had been open for seven days of service (every Tuesday and Thursday from 10:00 a.m. to 2:00 pm.); during this time 143 persons signed up for assistance, and 124 were actually served. This amounts to an astounding 21 persons per day signing in for services and 18 persons per day being served by the staff on hand. The average wait time was 58 minutes. The need for volunteers was evident. Average wait time with two staff members was 74 minutes and with three staff members was 46 minutes.

The impact of volunteer attorneys cannot be overstated. On December 8, 2011, the clinic operated with not only the two regular staff members, but also two volunteer attorneys. What a difference it made! We provided more assistance in a shorter time. It was the smoothest and least stressful day we've had since opening. Each volunteer makes a difference, so please volunteer! We have a handful of individuals who have already donated their time and many others expressing an interest in doing so. An hour, or two, or four, or a week, or a month, we will take whatever you can offer. If you in federal district court or bankruptcy court, please consider stopping by after you finish and helping even just one person. It will make a difference. It will give meaning to the ideal of equal justice for all.

We offer special thank to the administrators of the federal court in Riverside. You have housed us and accommodated us, and you have been very gracious.

Ruminations on the Ethics of Law Firm Information Security

By Sharon D. Nelson, Eq., and John W. Simek
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Lest anyone may have forgotten Rule 1.6 of the ABA Model Rules, here it is - and similar rules apply everywhere:

Rule 1.6 Confidentiality Of Information

- (a) **A lawyer shall not reveal information relating to the representation of a client unless client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).**
- (b) **A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably necessary;**
 - (1) **to prevent reasonably certain death or substantial bodily harm**

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Ruminations on the Ethics of Law Firm Information Security

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- (2) **to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;**
- (3) **To prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;**
- (4) **To secure legal advice about the lawyer's compliance with these Rules;**
- (5) **To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or**
- (6) **To comply with other law or a court order.**

The trick, of course is how to keep client data secure in the digital era. It isn't easy. Computer security is expensive - and it takes time to understand it - and you will never be done learning because technology morphs constantly.

Are lawyers abiding by their ethical duty to preserve client confidences? Our opinion is that they are not. Here are a few reasons we have that opinion:

- Security expert Rob Lee, a noted lecturer from the security firm Mandiant has reported to us that Mandiant spent approximately 10% of it's time in 2010 investigating data breach at law firms.
- Security expert Matt Kesner, who is in charge of information security at a major law firm, reports that his firm has been breached twice - and that he is aware that other law firms have suffered security breaches - and failed to report them to clients.
- Our own company, Sensei Enterprises, Inc., has never performed a security assessment at a law firm (or for that matter, at any kind of business) without finding severe vulnerabilities that needed to be addressed.

Why do otherwise competent lawyers fail so miserably in their ethical duty to maintain the confidentiality of client data? Here are some of the reasons:

- Ignorance - they simply need education.

The "it can't happen here" mentality. This is flatly wrong - even the FBI issued an advisory in 2009 that law firms were specifically targeted by identity thieves and by those performing business espionage - much of it originating in China and state-sponsored, though of course the Chinese government has vehemently denied involvement in such activities. Matt Kesner, mentioned above as an expert, reports that the Chinese

- don't bother using their "A" squad hackers to infiltrate law firms - their security is so bad that the rookie "C" squads are able to penetrate law firms.
- It's expensive. And it is. Protecting the security of client data can present a big burden for solos and small law firms. This does not take away a lawyer's ethical duty, however - and it is one reason why the authors lecture so often on computer security. Once a lawyer sees the most common vulnerabilities, he or she can take remedial steps - or engage their IT consultant to do those things that are beyond the skill of the lawyer.
- Vigilance never stops. You can no secure your data once and think you're done - the rules of information security change on darn near a daily basis - certainly someone in the firm needs to keep up with changes on a regular basis or the firm needs to engage an security consultant to do periodic reviews - the standard advice is that security assessments need to be done twice a year. While that is desirable, it is in our judgment mandatory that assessments be done at least annually.

In the paper world, keeping client data confidential was easy and cheap. In the digital era, abiding by this particular ethical rule is hard and expensive - but it must be done.

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State Bar Achieves "Zero" Agency Clears Backlog of Investigations

By William Chiang

After more than four months of concentrated effort under the guidance of Acting Chief Trial Counsel Jayne Kim, the State Bar of California has eliminated its backlog of investigations into California lawyers accused of professional misconduct. This fulfills a pledge made by the bar's executive leadership last summer to permanently eradicate an issue that has existed since at least the 1980s.

Governed by state law, bar investigations are generally considered in "backlog" if an investigation is more than six months old and has not been completed or otherwise resolved. As of July 1, 2011, the bar had more than 1,500 investigations with backlog status with approximately 1,500 additional cases scheduled to roll into backlog had the Bar not completed or resolved those investigations.

"While we mark this success with pride, we also understand that the long-term challenge remains ahead of us," said Joseph Carlucci, assistant chief trial counsel, who headed the LA backlog team. "We are committed to maintaining this success by making sure that all future disciplinary cases are addressed promptly and appropriately."

Kim, a former bar prosecutor and assistant US attorney in Southern California, returned September 2011 as the bar's chief enforcer. While acknowledging the bar's historic inability to control its backlog inventory, Kim declared an end to the days of a chronic investigations backlog at the State Bar.

"It's a new day at the State Bar," she said. "It's exciting to be back and to see the high level of commitment by staff. This success is a result of their ability to step up and shine during challenging times."

Jon Streeter, president of the bar's 23-member Board of Trustees, underscored the board's efforts to create management

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State Bar Achieves “Zero” Agency Clears Backlog of Investigations

By William Chiang

parameters meant to help ensure a timely disciplinary process from initial complaint through final resolution.

“That work to create the necessary policies is underway,” said Streeter, who took office as president in September 2011. “And this board fully understands the critical, long-term importance of this work, not just in terms of disciplinary efficiencies, but on behalf of all Californians.”

The State Bar of California is an administrative arm of the California Supreme Court. All lawyers practicing law in California must be members of the State Bar. The missions of the State Bar is to “Preserve and improve our justice system in order to ensure a free and just society under the law.”

Kim added that her office has already initiated significant improvements to its organizational structure and to training development. She also credited State Bar executives - led by Executive Director Joe Dunn, a former state senator from Orange County - for spearheading the right level of philosophical and operational changes needed to permanently end the backlog issue. “The bar’s primary focus is public protection,” Kim explained. “And we cannot be an effective consumer protection agency if we are constantly battling backlogs.”

Once an investigation is complete, Kim added, the case is generally considered ready for filing of charges in State Bar Court or other forms of resolution, including dismissal.

During this post-investigation phase of the case, the bar and the accused lawyer may also engage in various settlement discussions that could require additional time and generate a post-investigations backlog. Since her return to the bar last fall, Kim and her office have reduced this post-investigations backlog from approximately 600 to less than 190.

“Jayne and her team truly deserve tremendous credit,” said Dunn, who made the so-called ‘Zero’ pledge in July 2011. “She saw what needed to be done and she redirected her resources and got it done. She’s the bar’s ‘new sheriff’ and I have absolute confidence in her.”

New Presiding Judge to Begin Two Year Term in Superior Court of San Bernardino County

Judge Ronald M. Christianson will become the Presiding Judge of the Superior Court of California, County of San Bernardino on January 1, 2012.

Judge Christianson has served as the Assistant Presiding Judge since January 2010 and has chaired and served on several court committees while also hearing a daily criminal trial calendar in the San Bernardino Central Courthouse. In June 2011 he was selected by his fellow judges to succeed Judge Douglas M. Elwell as the Presiding Judge.

Judge Christianson received his Bachelor of Arts Degree from UC Riverside, and his Juris Doctorate degree from the University of San Diego, School of Law.

Judge Christianson began his career as a Municipal Court Judge in 1994; then Governor Pete Wilson appointed him to the Superior Court Judge in 1997.

Prior to becoming a judge, Judge Christianson worked as a Senior Deputy City Attorney for the City of Riverside, and a Deputy District Attorney for the County of San Bernardino.

Also becoming effective January 1, 2012, Judge Marsha G. Slough will become the Assistant Presiding Judge of the Superior Court of California, County of San Bernardino.

Judge Slough received her Bachelor of Arts Degree in 1980 from Ottawa University, Ottawa, Kansas and her Juris Doctorate Degree in 1986 from the Whittier College School of Law.

Judge Slough was appointed to the bench in 2003 and currently hears a civil calendar in the San Bernardino District, Civil Division.

Is It Possible to Secure Law Firm Data?

By Sharon D. Nelson, Eq., and John W. Simek
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To answer the question, we interviewed our friend and colleague Matt Kesner, the CIO of Fenwish & West, LLP, a West Coast law firm representing high tech and bio-tech clients. Matt has “walked the walk” when it comes to security and protecting data.

Is the data at a law firm really different or are there “special” considerations when dealing with security within a law firm? Matt suggested that there are a lot of tensions at play within a law firm. There’s always the tension between IT and end-users. The end-users are more difficult to tame and are more independent than most other users. They don’t necessarily want to comply with the stated policies and procedures, thereby making security a more difficult task. Also, they tend to be driven by what the client wants, which may be in contradiction to the security procedures of the firm.

The press hasn’t really identified many data breaches that have involved law firms. Since law firms are very much reputation based, they are not all that willing to publicize any data breach that may have occurred. Current data breach laws have changed that practice, but we still don’t hear of many specifics concerning law firms. Matt acknowledged that there have been two breaches at his own firm. His advice for security is to learn lessons from breaches so you can avoid a recurrence - at least a recurrence of the same sort of attack. Fortunately for Matt’s firm, the security incidents did not involve access to their network. Both occurrences involved their website, which was hosted externally.

We are aware of some other firms being compromised, primarily through mobile devices and unprotected laptops. As a minimum you should have a lock code on your mobile device and the drives on laptops should be fully encrypted. Matt’s excellent advice is “When in doubt, encrypt it.”

Not to scare our readers (OK, maybe just a little), but Matt confirmed that law firms are seeing an increase in hacking attempts. Reviews of his own firm’s logs show repeated “door rattles” and attempted infiltration of the network. They are being probed a lot more often, tested with various scripts being used to determine vulnerabilities and have experienced a higher proportion of successful malware and phishing attacks against their users.

Many attacks appear to be originating from China, which is consistent with our experiences gleaned from security investigations involving these attacks. Our own government has cautioned us that every cell phone and smart phone that goes into China has spyware downloaded on it by the Chinese communications infrastructure. This spyware pretty much has unfettered access to the data that you are sending and receiving even if it is encrypted in transit. Another concern is bringing laptops to China. Matt advised us to weigh the laptop before and after

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taking it to China as many times hardware monitoring devices will be installed in the laptop itself. He also suggested taking a disposable cell phone when traveling to China. Many in the security field have stated that we are seeing activity from China's "C-level" (rookie) hackers since law firm systems are fairly easy to penetrate. China isn't even wasting the efforts of their "B-level" or "A-level" teams when attacking U.S. systems. Essentially, China's entry level hackers are practicing on U.S. law firm networks before "graduating" to more advanced hacking activities. Matt told us that Chinese students actually take hacking classes and hack Western websites as part of their homework. Pretty scary stuff.

Increased usage of the Internet, voluminous amounts of data and the sharing of that data for legitimate purposes has made the task of security even more difficult. There are many more attack points as the data grows and reaches out to many more parties as part of our normal business activities. Matt cautioned us to be wary of USB flash drives that we obtain at conferences since they may be infected with malware such as the Stuxnet virus.

We queried Matt if there really is a fix for the security state that we are currently observing. The answer, as you might have guessed, is that there is no silver bullet for security. His primary advice is to partner with a trusted security advisor and be prepared to budget some funds for security. Your firm needs to be constantly vigilant since the security risks of tomorrow will be different from those we see today.

If you'd like to listen to our interview with Matt on Legal Talk Network's Digital Detective podcast, you can find the podcast at <http://legaltalknetwork.com/podcasts/digital-detectives/2011/07/is-it-possible-to-secure-law-firm-data>.

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

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ANNOUNCEMENTS

SBCBA Events

January 19, 6 p.m. - 8:30 p.m.: Probate Symposium

January 20, 8 a.m. - 5 p.m.: Bridging the gap program for new admittees. Joint with RCBA

January 21, 8:30 a.m. - 4:30 pm.: MCLE madness program

CONFIDENTIAL HELP to Judges & Attorneys in trouble with alcohol or drugs. **Call (951) 683-4030**, 24 hrs., 7 days/week.

ASK A LAWYER NIGHT — "Ask A Lawyer Night" of the WSBBCBA is held every 3rd Wednesday of the month (except July & August) at 5:00 p.m. **For further information, or if you would like to volunteer, please call Noreen @ (909) 483-0548.**

The News Bulletin of the Western San Bernardino County Bar Association is published 11 times a year. Our circulation is approximately 400, including: our bar membership, state and federal judges, state and local bar leaders, legislators, and businesses interested in the advancement of our mission.

The majority of our membership includes attorneys located in the western regions of San Bernardino County as well as portions of the eastern regions of Los Angeles.

Articles, advertisements and notices should be received by our office no later than the 15th of the month prior to the month of publication.

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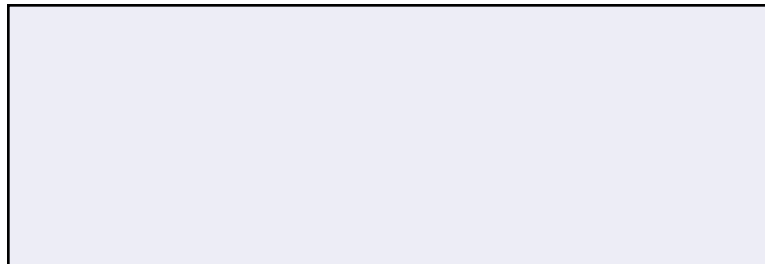
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