



## REMARKS FROM THE PRESIDENT'S DESK -

By: *Justin King*

### **A Plaintiff has a Constitutional Right of Privacy in their personal financial matters, and a mere showing that discovery of such information may be relevant is not enough to overcome that Right.**

Under California's Code of Civil Procedure Section 2017.010, "a civil litigant's right to discovery is broad [and] '[a]ny party may obtain discovery regarding any matter, not privileged, that is relevant to the subject matter involved in the pending action...if the matter either is itself admissible in evidence or appears to be reasonably calculated to lead to the discovery of admissible evidence.'" (*Williams v. Superior Court* (2017), 3 Cal.5th 531, 541 (2017), (quoting California's Code of Civil Procedure Section 2017.010).) Further, "Section 2017.010 and other statutes governing discovery must be liberally construed in favor of disclosure unless the request is clearly improper by virtue of well-established causes for denial...[t]his means that 'disclosure is a matter of right unless statutory or public policy considerations clearly prohibit it.'" *Id.* at 541 (quoting *Greyhound Corp. v. Superior Court* (1961), 56 Cal.2d 355, 377-378). California's civil discovery statutes are designed to "promote the important public policy of facilitating 'the ascertainment of truth and the just resolution of truth and the just resolution of legal claims. (*Fortunato v. Superior Court* (2003), 114 Cal.App.4th 475, 483.)"

However, "[w]hile the filing of the lawsuit by [Plaintiff] may be something like issuing a fishing license for discovery, as with a fishing license, the rules of discovery do not allow unrestricted access to all species of information. Discovery of constitutionally protected information is on a par with discovery of privileged information and is more narrowly proscribed than traditional discovery. *The party seeking the constitutionally protected information has the burden of establishing that the information sought is directly relevant to the claims*" (*Tylo v. Superior Court* (1997) 55 Cal.App4th 1379, 1387 (citing *Britt v. Superior Court* (1978) 20 Cal.3d 844, 852-853).) (Emphasis Added.)

In *Pioneer Electronics, Inc. v. Superior Court* (2007) 40 Cal.4th 360, 370, the Court explained that "the right to privacy protects the individual's reasonable expectation of privacy against serious invasion." Relying on *Hill v. NCAA* (1994) 7 Cal.4th 1, the Court set forth "the analytical framework for assessing claims of invasion of privacy under the State Constitution. First, the claimant must possess a 'legally protected privacy interest.'" (*Id.* at 370.) Second, "the privacy claimant must possess a reasonable expectation of privacy under the particular circumstances...'[a] reasonable expectation of privacy is an objective entitlement founded on broadly based and widely accepted community norms' (Citation) [and] '[o]pportunities to consent voluntarily to activities impacting privacy interests obviously affect the expectations of the participant.'" (*Id.* at 371.) Third, "the invasion of privacy complained of must be 'serious in nature, scope, and actual or potential impact to constitute an 'egregious' breach of social norms.'" (*Id.* at 371.) "Assuming that a [privacy] claimant has met the foregoing *Hill* criteria for invasion of privacy interest, that interest must be measured against other competing or countervailing interests in a 'balance test.'...(Citation); 'Conduct alleged to be an invasion of privacy is to be evaluated based on the extent it furthers legitimate and important competing interests. (Citation) (*Id.* at 370-371.)"

(Continued on page 3)

## **Welcome WSBCBA** **New Members**

**Hon. Bridgid McCann**  
**Christina Bernheim, Esq.**  
**R. Sam Price, Esq.**  
**Atkinson-Baker, Affiliate**

## Hon. Joseph B. Campbell

### American Inns of Court

*by David P. Colella, President*

Continuing our review of the new/amended Rules of Professional Conduct, our November Inns meeting delivered a lively, debated program. Each meeting is designed to touch upon a particular ethical duty. Accordingly, our Inn tries to offer those difficult to get specialty MCLE credits at each meeting. Currently, we are even trying to coordinate a judicial ethics program this year as well. Special events include our annual outreach field trip (December) and the Joint Inns dinner (typically February). Our Inn is hosting this year's Joint Inns dinner and more details will follow once we have the speaker confirmed.

November's meeting was focused on the duty of loyalty with Team Justice Souter being led by the Honorable John M. Pacheco and David D. Werner. Following an introduction of the team namesake given by Judge Pacheco, Christopher Lockwood moderated the program. The various teams were active in debate and strategy was employed in the hope of gaining a competitive edge - the results were mixed but the discussion was never dull. We had our first ruling overturned on a preemptory challenge. The ruling turned on the specific wording of a question that lent itself to different responses that were equally correct. If nothing else, we are an exacting profession.

#### Standings after two meetings:

<b>Team:</b>	<b>Total Points:</b>	<b>Average per Meeting:</b>
Team Goldberg	8200	4100
Team Marshall	7800	3900
Team O'Connor	5900	2950
Team Scalia	4000	4000 (hosted October)
Team Douglas	3700	1850
Team Souter	1600	1600 (hosted November)

After two meetings, we have a couple teams beginning to separate themselves from the rest of the pack. Team Goldberg and Team Marshall are solidly in the lead on point totals, but Team Scalia scored

well in its first opportunity as a non-host. With four Jeopardy programs remaining, there are plenty of points to be won and the field remains wide open.

December means it's time for our annual outreach field trip. Outreach is one of the Inns "core" competencies as it is intended to extend the mission of the Inns by providing exposure to the broader community and providing opportunities for the Inn members to represent the ideals of the Inns.

On December 5th, our Inn is going to visit Boys Republic, a treatment community for troubled youth located in Chino Hills. Since it's founding in 1907, it has directed more than 30,000 at-risk teenage boys and girls toward a positive future. This organization is truly making a difference in our community and their alumni include Steve McQueen. As part of this field trip, our dinner will be prepared and served by some of the youth at this facility.

Considering Boys Republic is an alternative for youth impacted by the legal system, it seems apropos to examine Civil Code §3523, the maxim stating "For every wrong there is a remedy."

In the context of what Boys Republic is, does, and provides to youth facing limited options, this maxim has application. Citing to this maxim, it has been held that "courts have broad equitable powers to fashion whatever remedies are needed to redress obvious wrongs." (Crain v. Electronic Memories & Magnetics Corp. (1975) 50 Cal.App.3d 509, 524.)

Not all wrongs are created equally and, especially when youth are involved, it is the policy of our legal system to allow judges the freedom to craft an appropriate remedy. Such "equitable" authority provides an avenue for youth to experience Boys Republic (and other programs similar thereto). Programs like these have proven instrumental in steering impressionable teenagers away from a life of crime and into becoming great contributors in society.

As many of us consider charitable giving during the holiday season, I ask that you reflect on the benefits that organizations like Boys Republic make in our community. These benefits are not just for the direct

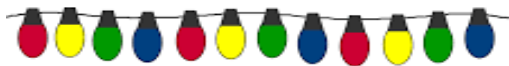
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individuals participating in the program, but positively impact all of us living and working in these communities.

If you are a member of the Inns, I encourage you to attend the December 5th trip to Boys Republic. Please remember to RSVP to the e-mail you have received. If you are not currently a member of the Inns, I invite you to consider joining. You can request an application and/or ask any questions of me (dcolella@flsd.com) or our membership chair, Eric D. Anderson (ericanderson@edalaw.com).

I wish everyone a very happy, safe holiday season.



**Happy  
Holidays!**

### December 2018 Calendar

**December 2, - Hanukkah begins**  
**December 7 - Holiday Celebration, Toys  
for Tots**  
**December 24—Christmas Eve**  
**December 25—Christmas Day**  
**December 31—New Year's Eve**

Ψ

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(Continued from page 1)

A plaintiff possesses a legally protectable privacy interest in their financial information. Specifically, "personal financial information comes within the zone of privacy protected by Article 1, Section 1 of the California Constitution." (*Moskowitz v. Superior Court* (1982) 137 Cal.App.3d 313, 315-316 (citing *Valley Bank of Nevada v. Superior Court* (1975), 15 Cal.3d. 652).) "There is a right to privacy in confidential customer information in whatever form it takes, whether that form be tax returns, checks, statements, or other account information." (*Fortunato v. Superior Court* (2003) 114 Cal.App.4th 475, 481 (citing *Schnabel v. Superior Court* (1993) 5 Cal.4th 704, 712-713).) And this "privacy protection is recognized in administrative as well as civil proceedings." (*Sehlmeyer v. Department of General Services* (1993) 17 Cal.4th 1072, 1079.)

Further, a plaintiff does not waive their right of privacy in their financial information by filing a personal injury action where examination of such information by the defendant may, arguably, lead to the discovery of relevant evidence. In *Britt v. Superior Court* (1978), 20 Cal.3d 844, 859, the Court considered the issue of "waiver" by a filing party of the constitutional right to associational privacy within the context of the scope of discoverable information. There, the Court stated "when such associational activities are directly relevant to the plaintiff's claim, and disclosure of the plaintiff's affiliations is essential to the fair resolution of the lawsuit, a trial court may properly compel disclosure (Citation)...[but] [e]ven under such circumstances... the compelled disclosure is to be narrowly drawn to assure maximum protection of the constitutional interests at stake." Further, in *Williams v. Superior Court* (2017) 3 Cal.5th 531, 556, the California Supreme Court explained that "when a discovery request seeks information implicating the constitutional right of privacy, to order discovery simply upon a showing that the Code of Civil Procedure section 2017.10 test for relevance has been met is an abuse of discretion."

## Director Article

By Diane Hartog



Christmas is upon us, once again. It seems to me that we just celebrated Christmas. This year has flown by, and has been quite eventful.

Those of you who know me well always hear me remind everyone about the reason for the season, and this year is no exception. In fact, if anything, we need this advice more than ever.

I often joke about the California seasons (especially having recently returned from a wonderful trip to Iceland, Ireland and Scotland), which include warm, hot and hotter seasons, wind seasons and fire seasons. It seems that just when things can't be worse, we have the monster of all fire seasons. For those who have survived the fires, they probably don't need to be reminded about the reason for this season.

But I wonder about the migrants who have marched on our border to the south. The march originated in Honduras, ostensibly to arrive at the Mexican/American border to seek refugee status and asylum. This began just days after our Vice President Pence met with the Central American country's leader to urge him to take a stronger stance on mass migrations. Some may argue that their "March of the Migrant" is suspiciously akin to a protest and that as non-citizens of the United States, they have no rights; therefore, they do not have the right to protest. Reuters reported that 64% of Honduran households live in poverty. It was reported that Honduras has one of the poorest economies and highest crime rates.

After having marched peacefully, this group of migrants has arrived at the Tijuana border crossing, in order to demand better conditions and push for entrance into the United States. The migrants have been told to apply for humanitarian visas in Mexico and to seek work in Mexico while trying to gain entrance into the United States. According to the Associated Press, apparently there are thousands of jobs available for them in Mexico; however, the marchers are still determined to convince the U. S. to

open our doors to them. So, are they interested in improving their lives over the opportunities available to them in Honduras by any means possible? Can that happen in Mexico? Or, do they believe that the only way they will improve their lives is to come to the U.S.?

The Associated Press reports that more than 5,000 migrants are camped out at the border, living in a manner that most of us would not consider and never have had to. Can we blame them for wanting the so called "American Dream" that most of us have come to take for granted. I've seen photos in the news showing young children waving the American flag.

The U.S. government only processes about 100 asylum applications per day at the Tijuana border crossing into San Diego and there are already several thousand migrants on a waiting list. It has also been reported that the more outspoken Tijuana residents are not happy and have made it known that the migrants are not wanted there. The migrants are stuck in a position where the mayor has said they are not welcome, and our President has stated that he is trying to keep them out. It has also been reported by Honduran citizens that the U.S. meddling in Honduran politics has created conditions that have made it impossible for residents to continue to reside in Honduras. So what to do, what to do.....

I wonder if any of the immigrants at the border will remember to the reason for the season. Folks, it's up to all of us, individually and collectively to extend a hand to those around us. Maybe we can't help everyone all at once, but certainly all of us, working together, can help one person at a time.

For me, I will continue my own efforts to help one person at a time. Personally, I know the reason for the season and hope all of you know as well.

Happy holiday season!



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Brian C. Unitt Recipient of the Saint Thomas  
More Award

&

Honorable Ingrid A. Uhler Recipient of the  
Saint Mother Teresa of Calcutta Award

at

The 28th Annual Red Mass

Judges, lawyers, and public officials of many faiths and their families participated in the 28th Annual Red Mass, which was held on October 3, 2018, at Saint Francis de Sales Catholic Church in Riverside. The Red Mass is celebrated each year to invoke God's blessing and guidance in the administration of justice. The mass is held in October to coincide with the opening of the annual term of the United States Supreme Court in Washington, D.C.

During the opening procession of the mass, 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. Patricia Cisneros processed into the church with a vase of 33 red roses in memory of those members of the Inland Empire legal community family who had passed away in the last year and three additional red roses for Linda Maynes, Helen Rodriguez, and Louise Biddle, members of the Red Mass Steering Committee who had passed away in previous years. The Red Mass was dedicated to all victims of child abuse in our communities.

The chief celebrant was the Most Reverend Gerald Barnes, the Bishop of the Diocese of San Bernardino. Rabbi Lindy Reznick, Rabbi of the Congregation Emanu El in Redlands, read a passage from the Old Testament. Kirk Garvin, Stake President, Church of Jesus Christ of Latter-day Saints, read a passage from the New Testament. Deacon F. Michael Jelley read the Gospel and Monsignor Howard Lincoln, Pastor of Sacred Heart Church in Palm Desert, gave the homily. Judge Gloria Trask (ret.) and Jacqueline Carey-Wilson offered the Prayers of the Faithful,

which included remembrances of members from legal community who had passed away during the last year. Barbara Keough led the music during the mass. At the conclusion of the mass, blessings on the legal community in attendance were offered by Bishop Barnes, Rabbi Reznick, Kirk Garvin, Pastor James Pike, Lutheran Church of the Resurrection, and Malek Bendelhoum, Director of the Shura Council of Southern California.

At the hosted dinner immediately following the mass, Peter E. Racobs presented Brian C. Unitt with the Saint Thomas More Award and Pastor James Pike presented the Saint Mother Teresa of Calcutta Award to Honorable Ingrid A. Uhler.

### **Brian C. Unitt**

#### **2018 Recipient of the Saint Thomas More Award**

Brian C. Unitt is an exceptionally deserving recipient of our Saint Thomas More Award for 2018. A native Southern Californian, Brian went to the University of California, Riverside for undergraduate studies, starting as a music major and finishing in political science in 1980. He went on to UC Davis for law school and graduation with his JD degree in 1983.

He is a shareholder and the managing partner of the Riverside firm of Holstein, Taylor and Unitt, and is a certified specialist in appellate law. He serves as an arbitrator and mediator for the Riverside Superior Court. Brian has taught continuing education seminars, and written articles for the *Riverside Lawyer*. He was the 2006 recipient of the San Bernardino County Bar Association Florentino Garza Fortitude Award.

Brian's involvement in his community reaches far and wide. He is a past member of the board of directors of the RCBA, and serves as chair of the steering committee for Project Graduate, a joint program of the Riverside courts, county, and bar to help foster youth graduate from high school and develop a plan for their future. His past community service includes: member of the Riverside County Workforce Investment Board; board member, Community Access Center, an organization that advocates for people with disabilities; leadership role in the Just Wage Coalition, helping to develop a living wage policy for the Catholic Diocese of San Bernardino; member of the Civil Bench-Bar Committee of the Riverside County Superior Court,

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developing strategies to deal with overcrowded civil court dockets; and, member of the RCC Citizens Bond Oversight Committee, working to assure proper use of Measure C construction bond funds. As an adult leader for the Boy Scouts, he served as troop committee chair, and taught advanced adult leadership training courses, for which he received the District Award of Merit. He is a member of the Leadership Riverside class of 2011.

Brian is married to Patricia Lennan and they have two adult children, Ian and Rebecca. As a family they have attended the St. Andrews Newman Center, St. Thomas the Apostle, and St. Catherine of Alexandria in Riverside.

Brian has a condition known as Retinitis Pigmentosa, which has left him totally blind. Brian's vision problems were first identified when he was a toddler. He had begun to learn Braille by the time he was in first grade. He was educated in mainstream classrooms all of his life and was always in the top of his class. In high school, in addition to being a brilliant student, Brian ran track and played trumpet in the marching band. In high school, in the marching band days, Brian still had the ability to differentiate light and shadows, so he would march with his head slightly turned to the left to make sure he would not crash into anyone. The band director would come over and turn his hat to the right to make sure it appeared that everyone was perfectly in line. He sat for the bar exam, in Braille, and was only given time and a half to accommodate his disability. He took barely over the standard time and, of course, he passed the first time.

As many of our local practitioners know, Brian is a truly accomplished appellate attorney. Watching Brian argue a case to the Court of Appeal is like being in the presence of one of the great silver-tongued orators. In addition to his successful law practice, Brian is a wonderful musician, playing the mandolin, the harp, the trumpet, the penny whistle and some guitar as well. He is a golfer, fisherman and hunter, although, since his former partner Bob Holstein passed away, Brian can't find many volunteers to take him hunting. Brian also has a vegetable garden that would put most others to shame.

Brian exemplifies the highest ideals of the legal profession and serves as an inspiration to those around him. Accordingly, the Red Mass Steering Committee was honored to select Brian Unitt to receive the 2018 Saint Thomas More Award for his extraordinary service and devotion to church, community, and justice.

**Honorable Ingrid A. Uhler  
2018 Recipient of the Saint Mother Teresa of  
Calcutta Award**

Judge Ingrid Louise Adamson Uhler was born in Taipei, Taiwan. Her father, Richard Adamson, worked for the Central Intelligence Agency as a family physician and was assigned there at the time. Her mother, Ingrid (Heuzeroth) Adamson, was a German war bride and became a U.S. citizen after her arrival in the states. Judge Uhler grew up in Arizona with her three siblings from the age of four until her marriage to Jerrel Uhler in 1983. Judge Uhler graduated from Arizona State University in 1979 and obtained her JD with distinction from the University of Arizona School of Law in 1982. She relocated to San Bernardino County after her marriage and has two adult sons, Jerrod and Lukas.

Judge Uhler was a deputy district attorney with Los Angeles County from 1983 to 1995, handling all phases of criminal trial prosecutions. In 1995, Governor Pete Wilson appointed Judge Uhler to the San Bernardino County Municipal Court and she elevated to the Superior Court in December 1998.

Since her appointment to the bench, Judge Uhler has been recognized as a thoughtful and well-respected jurist presiding over misdemeanor and felony criminal trials, along with a daily criminal calendar. From 1996 to 2007, Judge Uhler was the supervising criminal judge in the Rancho Cucamonga District Court. Judge Uhler was assigned to the mental health court in 2007 for one year. During that time, the San Bernardino County Sheriff's Department presented Judge Uhler with the Award for Distinguished Service for her work in that court.

In 2005, Judge Uhler was instrumental in organizing a Homeless Shelter Court. Defendants, cited for such offenses as illegal lodging and trespassing, often cannot secure transportation to the central civil courthouse to defend themselves, so with Judge

*(Continued on page 8)*

(Continued from page 7)

Uhler's assistance, the courts are able to travel and take justice to those most in need. Almost all defendants are able to attend their hearings and most are sentenced to community service. The Homeless Shelter Court ended in 2008 due to budget cuts, but began again last year and is held once a month at Carnegie Library in Upland. Since last summer, the case volume at the Homeless Shelter Court has increased exponentially to over 175 cases per month. Judge Uhler's involvement in this program is invaluable to the effort to assist these marginalized persons and keep them out of the "revolving door" of the court system and steer them toward breaking the cycle of living on the streets.

Most recently, Judge Uhler provided legal and social services to local veterans at the annual Riverside Area Veterans Expo and Stand Down at March Air Force Base on September 28, 2018. The Riverside Area Veterans Expo and Stand Down is a coordinated effort with the United States Office of Veterans Services and the Riverside Superior Court, where a myriad of resources is offered to those veterans in need including employment assistance, public health, and veterans counselling resources.

Judge Uhler has been a longstanding member of Grace Lutheran Church in Upland. Her involvement with the Mental Health and Homeless Shelter Courts, along with the Stand Down program for veterans, demonstrates how she has enthusiastically lived her faith in word and deed. Accordingly, the Red Mass Steering Committee was honored to select Judge Ingrid A. Uhler to receive the 2018 Saint Mother Teresa of Calcutta Award for her extraordinary service and devotion to church, community, and justice.

*Jacqueline Carey-Wilson is a deputy county counsel with San Bernardino County, co-chair of the Red Mass Steering Committee, and past president of the Riverside County Bar Association and the Inland Empire Chapter of the Federal Bar Association.*

*Mitchell Norton is a deputy county counsel with San Bernardino County and co-chair of the Red Mass Steering Committee.*



### WE REMEMBER THEM

The following members of the legal community family who passed away were remembered at the Red Mass:

Louise Biddle	Judge Harry Pregerson
Betty Jo (BJ) Burgess	Robert B. Presley
MaryAlice Byars	Ronald Powell
Judge Thomas Douglas	Judge Stephen R. Reinhardt
Timothy J. Farris	Helen Rodriguez
Agnes "Mimi" Han	Robert Roddick
Raymond Richard Hruby	Nathan Rosenberg
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Julius Jones	Scott D. Showler
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**If you would like to be considered for a board member or officer position with the Western San Bernardino County Bar Association, please send your nomination to the WSBBCBA office.**

**Please contact  
Lindsay Gilbert  
at (909) 483-0548  
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# 28th Annual Red Mass





The Board of Directors of the  
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## Holiday Celebration

Please come and join us  
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Kevin S. Marshall  
JD, MPA, PHD  
Interim Dean and Professor of Law  
University of La Verne College of Law  
320 East D. Street  
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**Western San Bernardino County Bar Association**

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The Judicial Officer of the Year Award is an annual award which honors a current or retired Judge, Commissioner, or Court of Appeals Justice from the San Bernardino County, Eastern Los Angeles County or Riverside County who has demonstrated a long-term commitment to the local, legal and judicial community, including significant work in upholding and providing impartial justice for all, improving the interaction between the judiciary and the bar, improving access for low and moderate income litigants to the court system, exhibiting appropriate judicial demeanor, and improving the efficiency and effectiveness of the court system.

If you know of someone who merits this award, please use the form below to make your nomination and return it to the Bar Association no later than Friday, January 4, 2019.

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*Awards dinner will be held March 7, 2019. Please mark your calendars. Invitations to the Awards Ceremony will be mailed once award recipient has been chosen.*

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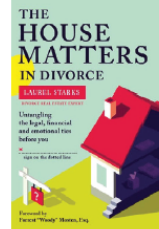
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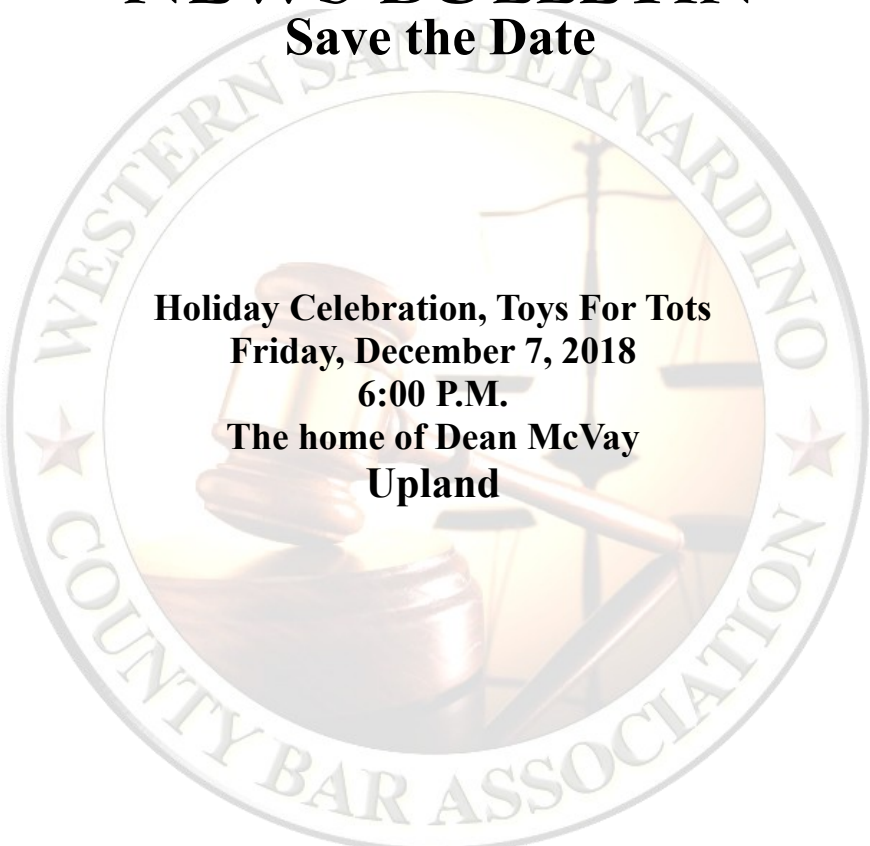
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# NEWS BULLETIN

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