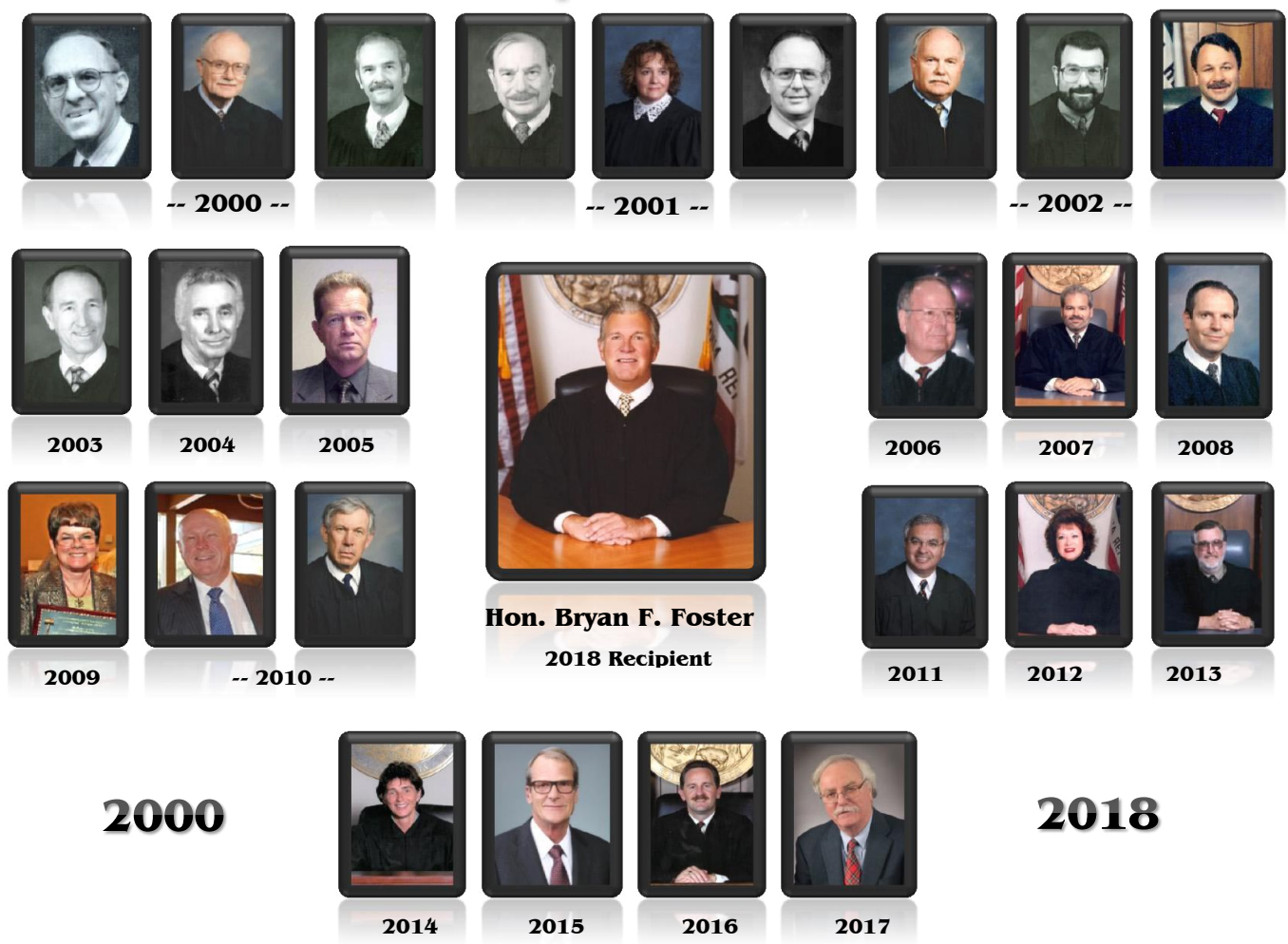




BULLETIN

18th Annual Kaufman Campbell Award for Judicial Excellence



Mark Your Calendar!

Annual Bench Bar Symposiums:

- Criminal Law - April 19, 2018**
- Probate Law - June 7, 2018**
- Civil Law - May 3, 2018**
- Family Law - (TBA)**

Kaufman-Campbell Award Banquet:

May 18, 2018

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LAW

SYMPOSIUM

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the date*

THURSDAY, APRIL 19TH

5:00 P.M. TO 9:00 P.M.

MITTEN BUILDING - REDLANDS

MCLE - 3 HOURS

DINNER

OPEN BAR



From the President's Desk

by Michael Reiter

Last night, I was reminded why I am a member of the Joseph B. Campbell American Inn of Court.

We had a dynamic speaker in our annual joint meeting with the Riverside, Temecula and Low Desert Inns. That speaker was Carl Douglas, one of the few O.J. Simpson lawyers I have not heard from personally.

I attended the Santa Clara University School of Law. The law school's dean was Gerald Uelmen, and before I started he left to be on the Dream Team. When he came back in my second year of law school, he organized a symposium on the Law and Media, and it had certain members of the Dream Team on the panel. I remember Jonnie Cochran, Robert Shapiro, and some media people, including Geraldo Rivera. It was held on campus in the Louis B. Mayer Theater, and students could attend free of charge.

It was a memorable conference with information of practical use. For example, they explained how important it was to use the media to help your clients, rather than use the "no comment" or "pending litigation" which was at the time the norm.

According to my internet research, the conference was called "Courts and the Mass Media: The Ethical Issues" and it was held on January 24th and January 25th, 1997. The first session was "Cameras in the Court" included a panel with Johnnie Cochran, Greta Van Susteren, and Steven Brill, the founder of Court TV. The next session was "Pundits and Procrastinators" and the panel included Leslie Abramson from the Menezes trial and Geraldo Rivera. The last panel included Robert Shapiro and Rikki Klieman from Court TV.

Dean Uelmen, which we called him even though he was no longer dean, later talked about the trial during a lunchtime talk. One emotional student confronted him, drawing on their personal experience with domestic violence. Dean Uelmen emphasized the need for everyone to have a defense.

I would meet Robert Shapiro once at a law firm event (my now-wife was an associate for Christensen, Miller, Fink, Jacobs, Glaser, Weil & Shapiro), but I recall the conversation was "Hi, I'm Bob Shapiro" and perhaps me introducing myself.

I believe my last brush with the OJ Simpson trial (before last night) was seeing Christopher Darden appearing on a misdemeanor in Central. I didn't approach him.

I'm almost certain this was the first time I heard Carl Douglas speak about the case. He is very charming and

he has a way with words. If you ever have the opportunity to hear him speak, take that opportunity.

That leaves Marsha Clark, F. Lee Bailey, and a few others to see to complete the Dream Team speaking tour.

Which brings me back to the Joseph B. Campbell American Inn of Court. Unlike some of your more stuffy Inns (naming no names), we have a pretty open Inn. It's open to all kinds of attorneys, and we at the San Bernardino County Bar Association fully support the Inn. And the Inn is very supportive of the Bar Association, always buying a table for our two big events.

The Inn meets monthly (except in the summer). The meetings, except for the joint meeting, which rotates, and the field trip, are held at the Castaway in San Bernardino. The Inn does important work regarding professionalism and professional education for both are Bench and our bar. Every year, there is a field trip (past trips have been to the CHP in Rancho, the Sheriff's Crime Lab in San Bernardino, and the Registrar of Voters).

The Campbell Inn is award-winning, receiving the American Inns of Court Platinum Award for years in a row. I attended the national organization's awards gala at the United States Supreme Court a few years ago.

Though I remember reading about the Inns movement in my law school ethics class, I was first invited to an Inns meeting by Roberta Shouse when I worked for Legal Aid. Roberta wasn't a member, of course, but she would often attend meetings.

Roberta asked me to come and eventually, after a few meetings, John Pacheco said that the board would give me a scholarship to be a member. I'm not sure anyone told the membership chair, because they took me aside later and asked me for my dues. I told them "John Pacheco said that I was getting a scholarship." That seemed to do the trick.

I'm not sure there are official records, but according to my LinkedIn profile, I have been a member since the year 2000. I made my way up the ranks from an Associate from 2000-2003, a Barrister from 2003-2008, and a Master from 2008 to now.

One of the reasons the Bar does not have a particularly active civil section (other than the Civil Symposium) is because of the success of the Campbell Inn. We appreciate all they have done for our organization over the years, and we hope to continue the partnership in years to come. We continue to help them with MCLE, and they help us by paying for that MCLE. We also have long given them Bulletin space, and you can get a better feel for the organization by reading President McGuire's column. There has been great personal benefit to me attending Inns meetings. I was able to meet future judges and commissioners, such as Commissioner Connally, Judge Schneider, Judge Pacheco, and Judge Williams.

If you want to attend a meeting and check it out, write me at mreiter@mbklaw.org or call me at (909)798-3300.

Join us for the 19th Annual
KAUFMAN • CAMPBELL
Recognizing

The Honorable Bryan F. Foster
Judge of the California Superior Court,
County of San Bernardino

Friday, May 18, 2018

Social 5:00 p.m. - Dinner 6:15 p.m.

National Orange Show Grounds • 689 South "E" St. • San Bernardino

HON. BRYAN F. FOSTER

Please reserve _____ dinner tickets @ \$80 each. OR... please accept my sponsorship for (circle):

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Indicate the no. of meals for each selection: _____ Beef _____ Chicken _____ Veggie _____ Vegan

Special accommodations (allergies, access, etc.) _____

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**OR: Watch for your mailed invitation; call us at 909.885.1986 to RSVP;
OR pay online at <http://tinyurl.com/kcsponsor2018>**



Judge Bryan Foster Tapped For Kaufman Campbell Award

by J' Amy Pacheco

Described as “an outstanding ambassador for the judiciary” and “richly deserving of this honor,” San Bernardino Judge Bryan F. Foster has been tapped to receive the Kaufman-Campbell Award from the San Bernardino County Bar Association May 18.

Named for former state Supreme Court Justice Marcus Kaufman and former Fourth District Court of Appeal Justice Joseph B. Campbell, the award honors jurists designated as having served on the bench with distinction and having made substantial contributions to the community as well as the practice of law.

Foster, who knew both Kaufman and Campbell, said being honored with their namesake award, “Takes my breath away.”

“I have never felt myself as something special,” he said. “I can’t believe people would suggest I would be in that classification. It’s amazing.”

Attorney Bill Weathers, who has known Foster for more than three decades, said Foster “was a superb trial lawyer who skillfully presented his cases, and I think those skills have helped him excel as a trial judge. He understands the practicalities of being a trial lawyer, and although he runs a tight ship, he also makes reasonable accommodations to the lawyers and parties.”

“Judge Foster is an outstanding ambassador for the judiciary and the legal community as a whole,” he observed. Weathers pointed out that Foster is active in continuing education, and has “created entertaining yet educational presentations for numerous bar associations and legal groups.”

“He’s also developed a unique PowerPoint program to educate prospective jurors on the voir dire and trial process,” Weathers added. “Judge Foster’s contributions to the legal community are significant and ongoing, and I can’t imagine a more deserving recipient of the prestigious Kaufman-Campbell Award.”

Attorney Jeffrey Raynes echoed those sentiments, saying Foster is “richly deserving of this honor.”

“He is universally respected by members of the bar for his accomplishments as a trial lawyer,” Raynes stated. “In that capacity, he was in the trenches and successfully so.

“He took the lessons of lawyering to the bench,” Raynes continued. “He is punctual, unfailingly courteous, respectful and cooperative with counsel and most importantly, he is even-handed. He uses humor effectively and strategically. Lastly, it is my impression that the law and the power of the bench never interferes with his love of his family and the value of shared friendships.

“Not flawless, he is an ardent SC Trojan,” he quipped.

Attorney David Driscoll was Foster’s partner before his appointment to the bench, and also has known Foster for more than 30 years.

“The law has always been his passion, particularly when it comes to factual analysis and getting to the heart of a dispute,” he said. “But aside from the technical aspects of legal analysis, Judge Foster has never lost sight of the human side of the equation that exists both as to the litigants and the jurors. He has always exhibited a special sensitivity to educating parties and jurors of the uniqueness and greatness of the American system of justice, sometimes to the point of giving them a history lesson dating all the way back to the Roman Empire.”

Driscoll observed of Foster that, “as an attorney and judge, it has been his goal to create an atmosphere where the court system is respected but not feared.”

“I am certain that Judge Foster has achieved these objectives during the course of his career and will continue to do so as long as he is on the bench,” he stated. “Judge Foster enjoys a deserved reputation for his civility and courtesies in and outside of the courtroom. The legal community is aware of his generosity with his time and his willingness to speak at seminars, awards ceremonies, legal association gatherings, etc. His excellence as a jurist has been well recognized in the legal community with awards from a variety of groups.”

Driscoll shared an anecdote that he said sums up Foster as a jurist as well as a “justifiable recipient of the Kaufman-Campbell Award.”

“One day while we were partners located in a large office building in downtown Riverside, a homeless woman suddenly appeared and situated herself on the ground outside the lobby door of the building, where she remained for most of the day,” he recalled. “The next day, I arrived early and discovered the homeless woman in Judge Foster’s office, sitting on a blanket and eating a sandwich in front of his desk. Judge Foster was seated at his desk busily reviewing a file as if there were nothing out of the ordinary. When I inquired, he told me she looked hungry and cold so he brought her into his office.

“I asked him how long she was going to stay, and he simply replied, ‘as long as she needs to.’ Such empathy and compassion for persons in distress, whether it be persons in a legal dispute seeking justice or those in situations of dire humanitarian need, is at the core of Judge Foster and the reason he is an exemplary judge.”

Attorney Bill Shapiro described Foster as “a great selection.”

“I’ve known Judge Bryan Foster as a worthy adversary and trial lawyer; a model trial judge, a phenomenal husband and father and fortunately for me, as a great friend,” Shapiro said. “For over three decades, I’ve observed the traits that make up Bryan Foster.

“He’s bright, dedicated, knowledgeable, sincere, humble, compassionate, stand-up, respectful, strong,

Next page >>

thoughtful, punctual, realistic and humorous, while being a model of integrity, humility and civility," Shapiro observed. "I could go on about Judge Foster; suffice to say this distinction is so fitting as he exemplifies the very qualities of Justice Kaufman and Judge/Justice Campbell, who again look down with great pride. Their rich tradition lives on.

"I join Judge Foster's family, his fellow judges and justices and the members of our Bar in congratulating Judge Bryan Foster on this amazing and so richly deserved recognition."

Judge Tara Reilly, who received the award in 2012, described Foster as "incredibly intelligent, big-hearted, and a steadfast supporter of the Rule of Law."

"He makes his courtroom user-friendly, especially when it comes to providing an excellent working environment for jurors," she opined. "He has an excellent sense of humor and always has a new, sometimes incredibly corny, joke at the ready for whoever will listen. He is a kind, fundamentally decent human being, an excellent jurist and colleague."

A native of San Francisco, Foster was the first attorney in his family – and the first to attend college. He earned his undergraduate degree from the University of San Francisco, majoring in History, then decided to remain at the school to study law after realizing that "History companies weren't hiring."

After earning his law degree, he joined a private firm in the Bay Area that was of counsel to the San Francisco Housing Authority. In 1983, he relocated to the Inland Empire, where he remained in private practice until his appointment to the Superior Court bench by then-Gov. Gray Davis in 2003.

On the bench, he initially was appointed to Joshua Tree, where he "did a little bit of everything," from a criminal calendar to traffic. He became the supervising judge in that court. He also handled Mental Health and Drug Court matters.

After Joshua Tree, he was assigned to the Central Courthouse, where he has had a civil courtroom for over five years.

Asked about his voir dire slideshow, Foster explained that a judge he met at a judicial conference sent him a copy of a PowerPoint tool he used in jury selection. Foster took "bits and pieces" of that presentation, and created one that explains the voir dire process using images and motion picture clips ranging from Thomas Jefferson to the donkey in the film "Shrek" calling, "Pick me! Pick me!"

"I know jury selection is dreary," he said. "I wanted to make it so jurors wouldn't feel intimidated; so they would open up to the attorneys. It gives them a sense that it's not something to be afraid of. It's important, and they should feel good about participating."

Presiding Judge John Vander Feer, who received the Kaufman-Campbell Award in 2016, described Foster as, "Truly collegial."

"I remember many years ago when Judge Bert Swift retired from the bench," he recalled. "The retirement party was in the evening at a restaurant in Yucca Valley in the winter. I remember it was very cold and windy, and a storm was coming in. Judge Foster made the trip out there and shared some very kind memories and thoughts about Judge Swift. It really made Judge Swift feel special."

He said Foster enjoys trying cases, and recalled that the jurist "took over a heavy trial calendar when he moved to a civil department in 2011."

"And he has been trying one case after another since then," he stated.

Last year's Kaufman-Campbell recipient, Judge Raymond "Chip" Haight, said Foster has been "Willing to take on every assignment he has been given, and done an excellent job on all.

"He is also a frequent speaker at civil bar conferences and meetings," Haight added. "Judge Foster has established a reputation as being hard-working and very knowledgeable on the law. He is a worthy recipient of the Kaufman-Campbell Award."

Patricia Vega, who serves as Foster's judicial assistant, said:

"He's awesome. He deserves the award."

Vega said one of Foster's most notable traits is that he is "down-to-earth."

"He makes people feel comfortable in his courtroom," she explained. "New attorneys, people representing themselves – he has a way of making people feel comfortable in here. He's not scary."

"He takes his job seriously, but he knows how to make people comfortable" she added. "He lets them say what they want to say. It's a big deal for people, but he gives everybody a chance."

"He's an awesome human being, who makes our jobs easy."

The dinner honoring Judge Foster will be held May 18 at the National Orange Show in San Bernardino.

Past recipients of the Kaufman-Campbell Award include Judge Raymond Haight in 2017; John Vander Feer in 2016; Associate Justice Jeffrey King in 2015; Presiding Judge Marsha Slough, 2014; Judge Larry Allen, 2013; Judge Tara Reilly, 2012; Fourth District Court of Appeal Presiding Justice Manuel Ramirez, 2011; Judges James McGuire and J. Michael Welch, 2010; Margaret Powers, 2009; Michael Dest, 2008; Brian McCarville, 2007; A. Rex Victor, 2006; Christopher Warner, 2005; Bob Krug, 2004; Patrick Morris, 2003; Michael Smith, Jules Fleuret and Dennis Cole, 2002; LeRoy Simmons, Betty Richli and Joseph Johnston, 2001 and Rufus Yent, Frederick Mandabach and John Ingro in 2000.

J'Amy Pacheco is the former editor of the San Bernardino Bulletin, published by Metropolitan News Company. J'Amy has graciously provided her writing talents to our Bulletin, once or twice a year, since 2004. She may be reached by email, at jamy.pacheco@verizon.net.

2018 SBCBA Monthly Membership Meetings

The following one-hour MCLE programs are to be held at the new San Bernardino Justice Center in Dept S-1 (except where noted), from 12:00 p.m. to 1:00 p.m. on the 2nd Tuesday of each month. The programs are free to SBCBA members and court staff, and \$10 to all others.

Please email us at RSVP@sbcbba.org or call 909.885.1986 to sign up.

MARCH BROWN BAG MEETING

Tuesday, March 13, 2018

“Education Law for Special Needs Students”

Speakers:

Elizabeth Eubanks (REZ Law Group, Rancho Cucamonga)

- Discussion of special education advocacy, IEP's, 504 hearings.

Elaine Rosen (Education Advocacy Project, San Bernardino)

- Educational issues with W & I Section 300 and 602 proceedings; Education Advocacy Project

John W. Short (Brown, White & Osborn)

- Discussion of Inland Regional Center educational programs for minors transitioning to conservatees

Q & A

San Bernardino County Bar Association, California State Bar-approved MCLE provider #2813, certifies that the above activity is approved for 1-hour of MCLE general credit by the California State Bar.

Upcoming SBCBA Membership (Brown Bag) Meetings

Tuesday, April 10, 2018

ABOTA Presentation: “Civility Matters”

Judge Gilbert G. Ochoa

Tuesday, May 15, 2018

“Pitfalls of Dual / Multiple Representation.”

Richard L. Scott (Diederich & Associates); Derek Raynes (Raynes - Erickson)
(1.0 hour Ethics*)

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FROM THE DESK OF THE PRESIDENT OF THE
HON. JOSEPH B. CAMPBELL
AMERICAN INN OF COURT

By Mark McGuire

*Our Second Look at Sexual Harassment, Assault, and
 Offensive Behavior – Take 2*

This two part article involves my thoughts on the current sexual harassment scandals so prevalent in the media. I wanted to know if there was something different about this issue in the legal field and how we, as members of this profession, should address it. To assist me along this path I interviewed two mentors of mine, Joan Nelms and Jack Osborn. In part one I presented Ms. Nelms' thoughts on the subject. She pointed out the need for both men and women, in professional situations, to be careful not to put themselves in situations where they could be subject to harassment or to be wrongfully accused. She also pointed out that given the law's requirements involving burden of proof and due process, we should be mindful not to convict people based on mere accusations alone. In Take 2, we will explore Mr. Osborn's rebuttal to Ms. Nelms' ideas. Mr. Osborn's rebuttal reminded me of another lesson I had learned from my father, for which I will propose not a solution but a possible path to a solution.

Mr. Osborn pressed two points. First, he stressed that many women are employed in places where they cannot always choose the situations in which they are going to be – and thus may possibly subject themselves to harassment with no error of conduct on their part. Second, he reiterated several times that the problem is the same in the legal field as in others, but that given the nature of our profession, we likely have a higher degree of duty to each other than in other professions.

His main point was that our profession may be different in one regard: that we all have a duty to each other, in order to raise the standards in our profession as a whole. Meaning, we not only have a duty to correct each other upon the occurrence of inappropriate behavior but we also have a duty speak privately to the parties after the fact, to raise the standards of behavior to come. Mr. Osborn stated that in some professions, the first step – standing up at the time to the bad behavior – may be sufficient, but not in ours. That may be the easy part. The harder part is likely the second conversation with the perpetrator of the bad behavior, attempting to educate and assist them.

The analogy, Mr. Osborn pressed, is that of our duty to our colleagues when it comes to drug and alcohol abuse of a fellow member. We have a duty to each other regarding these matters. It is not sufficient to raise the issue, stop the bad behavior in the moment, and move

on. The harder conversation with the parties must be had. Why did they say the things they did? Why did they think that behavior was appropriate? If we do not have the second harder conversations we not only do a disservice to the parties involved but to our profession as a whole. We must be the change we want to see in the world and that not only comes from standing up against wrongs, but for bringing up those who have fallen behind.

Mr. Osborn's points reminded me of one such occurrence I was witness to early on as a new lawyer. I was one of the attorneys involved in a heated four way settlement discussion. Present was an older male attorney, an older female attorney, a younger female attorney, and myself. The older male attorney was attempting to take charge of the conversation by belittling the younger female attorney – essentially patting her on the head saying, "There, there, you will learn how to do this one of these days, honey." I spoke up saying that the comments were inappropriate and not helpful to the task at hand. The discussions continued on but to no resolution. The older female attorney pulled me aside after saying that it was inappropriate for me to step in as I did to defend the younger woman. She explained that I needed to leave her on her own so that she could learn to stand up for herself and her client. Essentially she was charging me with sexism for defending the younger female attorney.

I have thought about this occurrence many times over the years. In the end I came to realize that given my upbringing (raised by two teachers and four World War II generation grandparents from Texas), I was likely speaking up because the comments were inappropriate and not because of the gender of the other attorney. Yet it always makes me think twice. There was likely a better way I could have spoken up in the moment. Perhaps speaking to the older man and younger woman privately would have had a better outcome. I could have done a better job of using Ms. Nelms' advice and changing the situation; and Mr. Osborn's of mentoring the colleagues. We all have a duty to ourselves not to create or choose compromising situations that lower our standards of civility and professionalism. Yet when those situations happen, we do have a duty to each other not only to speak up at the time, but also to speak to the parties in an effort to raise their standards as well.

Recently I have been reading reports of female politicians who have been at the forefront of the anti-sexual harassment embroiled in their own scandals and investigations. I have also been reading articles about the unintended consequences the movement has created for men in business and positions of power choosing to not have any female mentees nor ever be alone with a woman—even being fearful of taking an Uber from a female driver alone for fear of accusations being laid against them and believed outright. The harm in our society of having a system where men cannot be alone with women in professional situations is vast—it goes without saying that we cannot go down that path.

What is the solution, then? We all want the truth of abuses to be let out (exposed?) but the result should not be that all men are assumed guilty and shunned from their profession based on their gender. We cannot have men and women retreat to separate work spaces or impose such Draconian rules regarding interactions that no mentoring and exchange of ideas is done.

Attempting to find a solution to this conundrum, I thought of what is missing from this movement: statements of what we want out of men. We are only reporting on bad behavior. There is no #mydad, #mybrother, #myhusband or #myboss, laying out stories of good male behavior that should be modeled. We are focused on the negative - partially because scandal sells, and men are not reminded of what they are supposed to do, only what they are not supposed to do. This reminded me of when I was teaching my sons how to ride a bike. I never told them, "don't hit the tree", or "look out for the light pole". Why? When we focus on what not to do, guess what, we end up there. If you tell the kid not to hit the tree, they will focus on the tree and steer right towards it. When you learn to surf, you are taught to turn your head in the direction you want the board to go, and your body and the board will follow. If we want men to behave better, we must model that good behavior. I do not have all the answers for what that behavior should be, but I know it is missing from the conversations at present.

To model good behavior we need good leaders. This reminded me of how my father (John McGuire) was brought in to model good behavior after he had retired from a small college as a professor. A few years after he left, the school was consumed by a grade fraud scandal and most of the staff fired. An outside Chancellor was brought in to run the school for a year and hire all

new staff. He did something very wise right off the bat. Knowing that he did not know the community and could not accomplish the Herculean task of hiring all new staff to keep the doors open on his own, he sat the remaining skeleton crew of staff down and asked them, "Whom do I hire to assist me?" To a person they all said, "You go get John McGuire." That has always stuck with me. There are good men to model good behavior. Perhaps we should spend more time telling their stories as well.

Of course we are only in the early stages of this movement. We are not going back to the way things were, and that is a good thing. The truth of abuses must come out but there must be a place for men in the dialogue as well. One model for a resolution to this problem I have been looking at is the Truth and Reconciliation Commission ("TRC") that was set up after the end of Apartheid in South Africa. The system was not perfect but created a space for perpetrators and victims to tell their stories in an effort to seek reconciliation between abused black communities and white political leaders. One of the things the anti-sexual harassment movement has right is that the truth must come out. There can be no change without it. But it cannot be that the end result is to assume that all men are perpetrators on their own; or that a perpetrator, once he honestly admits fault, can never work in the profession again. The concept of repentance means to turn and walk in the other direction. It is not just to admit fault, but to change one's behavior - to turn and walk in the other direction. Men who have committed these horrible wrongs to women at their workplaces must be called out. But we must give them a road to walk back on once they turn and repent. That road must be the model for good behavior, not just a series of mile markers telling men what not to do.

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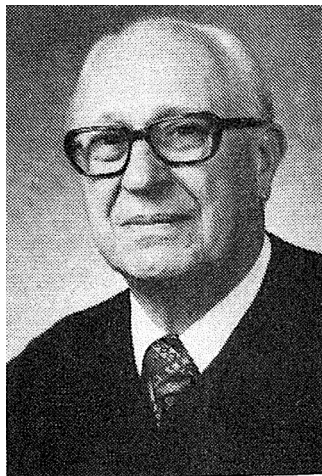
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PAST PRESIDENTS OF THE SAN BERNARDINO COUNTY BAR ASSOCIATION



1956-57: John P. Knauf, 29th President of the San Bernardino County Bar Association.

by Michael Reiter

The Honorable John "Jack" Paul Knauf was the 29th San Bernardino County Bar Association President. He was born on July 10, 1904 in Utica, Minnesota. His father was Edward Henry Knauf, and his mother was Margaret Louise Beech. He lived in Winona City, Minnesota until he moved to college in 1923. His father was a farmer in Minnesota, and moved in 1926 to Rialto, where he was a citrus rancher.

Mr. Knauf received his undergraduate degree from the University of California in 1925 and his law degree from the University of California (Boalt Hall) in 1928.

He was married to Florence Ryan, a school teacher. They both attended the University of California. They married in June 1933. They had a son named John P. Knauf II, born in 1939.

At the time he passed the bar, Mr. Knauf was the County Law Librarian, a post he held for about a year. He was notified that he passed the bar on May 19, 1930, which he took on April 7-10, 1930 in Los Angeles. He was sworn-in on June 3, 1930 in Los Angeles in front of the California Supreme Court.

He became a Deputy District Attorney in San Bernardino in January 1931 (appointed by Stanley Musell), and was appointed Chief Trial Deputy District Attorney in 1936. The Board of Supervisors appointed him as County Counsel to succeed Donald S. Gillespie starting January 1944 during the War.

He resigned as County Counsel effective April 1, 1946 to join Duckworth & King. Mr. Knauf became one of the senior partners with Curtis, Knauf, Henry & Farrell on April 9, 1950. The other senior partners were former Supreme Court Justice Jesse W. Curtis and his son, Jesse W. Curtis, Jr. and Kenneth R. Henry and Robert J. Farrell were junior partners. The firm became Knauf, Henry & Farrell when Jesse W. Curtis Jr. was appointed to the bench in 1953.

Mr. Knauf was nominated and elected to the presidency of our bar association at the regular meeting

held on May 13, 1956 in the Gold Room at the California Hotel in San Bernardino. Also elected were Rex W. Cranmer, Vice President; Max E. Henry, Secretary-Treasurer, and Stanford C. Shaw and William J. Johnstone, directors. There did not appear to be an installation dinner, so it is presumed that the term began on June 1, 1956 and extended to May 30, 1957.

On January 9, 1957, Mr. Knauf presided over a meeting at the Arrowhead Springs Hotel north of San Bernardino. The speaker was American Bar Association President David F. Maxwell. Approximately 160 people attended the dinner, which compares quite favorably to our current events.

Other highlights of the Bar year included the presentation of four new oil portraits of county judges to be displayed at the courthouse in October 1956, President Knauf addressed invitees to the Municipal Court's open house in January 1957; and a joint dinner-dance with the newly-formed Western San Bernardino Bar Association held at the Red Hill Country Club on December 21, 1957.

Mr. Knauf was the County chair of the San Bernardino County Committee to Re-Elect Attorney General Pat Brown in 1954. Other community activities included the Rotary Club of San Bernardino, the American Cancer Society, and various Catholic endeavors in town.

Judge Knauf was appointed to the Superior Court Bench by Governor Pat Brown in January 1960, and he was sworn in on February 8, 1960. Then-President James Lindsay King said that the county's attorneys are "well pleased over the appointment . . . you are well accepted." He served until he retired on June 30, 1974.

Judge Knauf appeared in 22 appellate cases, and was the attorney in five appellate cases, twice as County Counsel (on the same case), twice as private counsel (on the same case) and once as a Deputy District Attorney.

He died in San Bernardino on October 29, 1982. His obituary confirmed some of the basic details of his life, but nothing was written in our Bulletin at the time.

Our next column will be about our 30th President, Hon. Rex W. Cranmer. Our remaining columns are about Lawrence A. Hutton, James Lindsay King, Waldo Willhoft, Robert J. Farrell, Hon. Roy E. Chapman, Hon. Russell Goodwin, William O. Lewis, Robert J. Bierschbach, Hollis G. Hartley, James A. Smith, John T. Tomlinson, Allen B. Gresham, George W. Vinnedge, Caywood J. "Dag" Borrer, D. Elliot Whitlock, and George W. Porter. That will take us to our current era, at which time the column will be reassessed.

I would appreciate if anyone who knew these presidents would write to me about them, so that I can add a more personal note to these columns. Thank you to our past president Ed Keller for contacting me. Claire Furness will be setting up a lunch for us soon.

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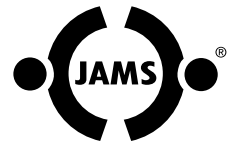
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Hon. Jeffrey King (Ret.)



Most recently an associate justice for the California Court of Appeal, Fourth District, Division Two, Justice King also handled civil and probate cases during eight years on the San Bernardino County Superior Court. Adept at keeping

cases on track and settling cases on appeal, he serves as a mediator, arbitrator, special master and referee in **appellate, business/commercial, employment, insurance, personal injury/tort, professional liability** and **real property** matters.

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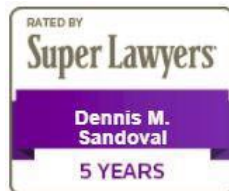
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What to Do When Your Data Is Breached

By Sharon D. Nelson, David G. Ries, and John W. Simek
© December 2017

When, not if.” This mantra among cybersecurity experts recognizes the ever-increasing incidence of data breaches. In an address at a major information security conference in 2012, then-director of the Federal Bureau of Investigation (FBI) Robert Mueller put it this way: “I am convinced that there are only two types of companies: those that have been hacked and those that will be. And even they are converging into one category: companies that have been hacked and will be hacked again.”

Mueller’s observation is true for attorneys and law firms as well as small businesses through Fortune 500 companies. There have now been numerous reports of law firm data breaches. The FBI has reported that it is seeing hundreds of law firms being increasingly targeted by hackers. Law firm breaches have ranged from simple (like those resulting from a lost or stolen laptop or mobile device) to highly sophisticated (like the deep penetration of a law firm network, with access to everything, for a year or more).

Lawyers and law firms are beginning to recognize this new reality, but all too often they expose themselves to unnecessary risk simply because they don’t have a response plan for security incidents and data breaches. Attorneys have ethical and common law duties to employ competent and reasonable measures to safeguard information relating to clients. Many attorneys also have contractual and regulatory requirements for security. Attorneys also have ethical and common law duties to notify clients if client data has been breached.

Compliance with these duties includes implementing and maintaining comprehensive information security programs, including incident response plans, for law practices of all sizes, from solos to the largest firms. The security programs and response plans should be appropriately scaled to the size of the firm and the sensitivity of the information.

THE OLD MANTRA: KEEP THE BARBARIANS AT BAY

In a more innocent time, we really thought we could keep the barbarians outside the walls that guard our data. The analogy was protecting the network like a fortress, with strong perimeter defenses, sometimes compared to walls and moats. Alas, those days are gone.

For years, the emphasis was on keeping villains—cybercriminals, state-sponsored agents, business espionage spies, and hackers—out. We went from fairly simple antivirus software and firewalls to more sophisticated antivirus software and next-generation firewalls, and, finally, to enterprise anti-malware security suites, next-generation security appliances, data loss protection and other strong technical defenses. The widespread use of mobile devices and remote connectivity, making data available outside protected networks, has added new challenges for defense.

The defensive tools have gotten more sophisticated and more effective. Sadly, what we have learned is that all the would-be intruders were not only matching the good guys step for step, they were outpacing them.

It took a surprisingly long time for everyone to “get it”—but in the end, the security community realized that if the bad guys are smart enough and target a particular entity, they are likely to be able to successfully scale the walls we built to keep them out. And with that realization, “detect and respond” became the new watchwords in cybersecurity.

Mind you, we are still trying to keep the bad guys out—that is our first line of defense. But now that we know that our first line of defense is too often a Maginot Line for sophisticated attackers, we have moved forward in our thinking.

Although detection and incident response have been necessary parts of comprehensive information security for years, they previously had taken a back seat to protection. Their increasing importance is now being recognized. Gartner, a leading technology consulting firm, has predicted that by 2020, 60 percent of enterprises’ information security budgets will be allocated for rapid detection-and-response approaches, up from less than 10 percent in 2014.

THE NEW MANTRA: IDENTIFY, PROTECT, DETECT, RESPOND, RECOVER



The increasing recognition of the importance of detection and response has been evolving for a number of years. It is a core part of the National Institute of Standards and Technology’s (NIST) Framework for Improving Critical Infrastructure Cybersecurity, Version 1.0, that was released in February 2014 (www.nist.gov/document-3766).

Although the framework is aimed at security of critical infrastructure, it is based on generally accepted security

principles that can apply to all kinds of businesses and enterprises, including law firms. It provides a structure that organizations, regulators, and customers can use to create, guide, assess, or improve comprehensive cybersecurity programs. The framework, “created through public-private collaboration, provides a common language to address and manage cyber risk in a cost-effective way based on business needs, without placing additional regulatory requirements on businesses.”

The framework allows organizations—regardless of size, degree of cyber risk, or cybersecurity sophistication—to apply the principles and best practices of risk management to improve the security and resilience of critical infrastructure (as well as other information systems). It is called “Version 1.0” because it is supposed to be a “living” document that will be updated to reflect new technology and new threats—and to incorporate “lessons learned.” (NIST released drafts of Version 1.1 for public comment in January and December of 2017 and plans to release Version 1.1 in early 2018.)

The core of the framework, its magic words, are “identify, protect, detect, respond, and recover,” which should shape any law firm’s cybersecurity program.

“Identify and protect” was where we started in the early days of cybersecurity—and while those words are still important, “detect and respond” have surged forward as a new focus—along with, of course, recovering from security breaches, no easy task. It is especially tough if you don’t know you’ve been breached—and the average victim has been breached for seven months or more before the breach is discovered!

INCIDENT RESPONSE PLANS

The core of the respond function is advance planning. This means attorneys and law firms need a plan, usually called an incident response plan (IRP), which often is focused on data breaches, but “incidents” can refer to ransomware, attempted hacks, an insider accessing data without authorization, or a lost or stolen laptop or mobile device.

Most large firms now have these plans in place, but many smaller firms do not. More and more, clients and insurance companies are asking to review law firms’ IRPs. In the face of ever-escalating data breaches, now is a good time to develop and implement a plan or to update an existing one. After all, football teams don’t get the playbook on game day.

The problem with all plans is that they may not survive first contact with the enemy. That’s okay. Far worse is having no plan at all and reacting in panic with no structure to guide your actions. The first hour that a security consultant or law enforcement officer spends with a business or law firm after the discovery of a data breach is very unpleasant. Kevin Mandia, the founder of Mandiant (www.fireeye.com) a leading security firm, has called it “the upchuck hour.” It is not a happy time.

Don’t rely on a template IRP. No two law firms are identical, and all have different business processes, network infrastructures, and types of data. Although templates may serve as a starting point, an IRP must be customized to fit the firm—the smaller the firm, the shorter the plan is likely to be. For a solo practice, it may just be a series of checklists, with who to call for what. Books and standards have been written about IRPs. (See “Further Resources” below for a few of our favorites.)

Qualified professionals also can be consulted for more details. The following is a condensed and, we hope, digestible overview.

THE ELEMENTS OF AN IRP

- **Internal personnel.** Identify the internal personnel responsible for each of the functions listed in the IRP. Identify them by position titles rather than by name because people come and go. A broad-based team is required for a firm of any size: management, IT, information security, human resources, compliance, marketing, etc. Have a conference call bridge line identified in case a breach happens at night or on a weekend, and include home/cell phone numbers and personal as well as work e-mail addresses. This list will need to be updated regularly as people join or leave the firm.
- **Data breach lawyer.** Identify the contact information for an experienced data breach lawyer—many large firms now have departments that focus on security and data breach response, and some smaller firms have a focus on the area. Don’t convince yourself that you can handle this without an attorney who is experienced in data breaches. Your data breach lawyer (if you selected a good one) will be an invaluable quarterback for your IRP team—and he or she may be able to preserve under attorney-client privilege much of the information related to the breach investigation.
- **Insurance policy.** Identify the location of your insurance policy (which darn well better cover data breaches). You need to make sure you are covered before you start, and list the insurer’s contact information because you are going to need to call your insurer as soon as you are aware of a possible breach.
- **Law enforcement.** Identify the contact information for law enforcement (perhaps your local FBI office), often the first folks called in.
- **Digital forensics consultant.** Identify the contact information for the digital forensics consultant you would want to investigate and remediate the cause of the breach. Often, a firm has been breached for seven months or more before the breach is discovered—it will take time to unravel what went on.
- **Containment and recovery.** Include in the IRP containment and recovery from a breach. A law firm that has been breached has an increased risk of a subsequent (or continuing) breach—either because the breach has not been fully contained or because the attacker has discovered vulnerabilities that it can exploit in the future.

- **Compromised data.** Determine the data that has been compromised or potentially compromised. You'll want to know if all data that should have been encrypted was indeed encrypted in transmission and in storage. If it was, this may lessen the notification burden. Identify any personally identifiable information (PII) that may have been compromised.

- **Systems logs.** Identify and pre-serve systems logs for your information systems. If logging functions are not turned on or logs are not retained, start maintaining them before a breach.

- **Intrusion and data loss logs.** If you have intrusion detection or data loss prevention software, logs from them should be preserved and provided to your investigators immediately. If you don't, you may want to think about implementing such software.

- **Your bank.** Identify the contact information for your bank in case your banking credentials have been compromised.

- **Public relations consultant (optional but often useful).** Identify the contact information for a good public relations firm. If you are not required to make the breach public, you may not need one, but if it does go public, you may need to do some quick damage control.

Your insurance coverage may provide for this, in which case the insurance company will put you in contact with the appropriate firm.

- **Clients and third parties.** How will you handle any contact with clients and third parties, remembering that you may wish not to "re-veal all" (if notice is not required) and yet need to achieve some level of transparency? Be forewarned that this is a difficult balance. You will feel like the victim of a data breach, but your clients will feel as though you have breached their trust in you. A data breach that becomes public can cause a mass exodus of clients, so work through your notification planning with great care. Be wary of speaking too soon before facts are fully vetted—it is a common mistake to try limiting the damage only to end up increasing it as the scope of the breach turns out to be far greater or different than first known.

- **Employees.** How will you handle informing employees about the incident? How will you ensure that the law firm speaks with one voice and that employees do not spread information about the breach in person or online? How will your social media cover the breach, if at all?

- **Data breach notification law.** If you have a data breach notification law in your state (and almost all do), put it right in the plan along with compliance guidelines. You may be required to contact your state attorney general. These laws vary widely, so be familiar with your own state law. Also, determine whether other states' breach notice laws may apply owing to residences of employees or clients, location of remote offices, etc. Make sure that the relevant data breach regulations are referenced in the plan and attached to it.

- **Other legal obligations.** Identify any impacted data that is covered by other legal obligations such as the Health Insurance Portability and Accountability Act of 1996 (HIPAA) or client contractual requirements, and comply with notice requirements.

- **Training on the plan.** Conduct training on the plan. Make sure that everyone understands the plan and their role under it.

- **Testing the plan.** Testing can range from a quick walk-through of hypothetical incidents to a full tabletop exercise. Include contacts with external resources to make sure that everything is up-to-date. This will help to make everyone familiar with the plan and to identify areas that should be revised.

- **Review of policies.** Does the breach require that IT and information security controls and policies be updated or changed? Does what you learned from the breach require that the IRP itself be revised? The IRP should man-date at least an annual review even without an incident.

FINAL WORDS: PREPARE NOW!

The new paradigm in security is that businesses (including law firms) should prepare for when they will suffer a data breach, not for if they may suffer a breach. This requires security programs that include detection, response, and recovery, along with identification and protection of data and information assets. Successful response requires an effective incident response plan. Attorneys who are prepared for a breach are more likely to survive and limit damage. Those who are unprepared are likely to spend more money, lose more time, and suffer more client and public relations problems.

Sharon D. Nelson (snelson@senseient.com) is an attorney and president of Sensei Enterprises, Inc., a legal technology, information security, and digital forensics firm in Fairfax, Virginia. David G. Ries (dries@clarkhill.com) is Of Counsel in the Pittsburgh, Pennsylvania, office of Clark Hill, PLC. John W. Simek (jsimek@senseient.com) is vice president of Sensei Enterprises, Inc. Nelson, Ries, and Simek are co-authors of Encryption Made Simple for Lawyers (ABA, 2015) and Locked Down: Practical Information Security for Lawyers, Second Edition (ABA, 2016).

Additional Resources

ABA Standing Committee on Law and National Security, A Playbook for Cyber Events, Second Edition (American Bar Association 2014)

Paul Cichonski, Tom Millar, Tim Grance, and Karen Scarfone, Computer Security: Incident Handling Guide, National Institute of Standards and Technology Special Publication 800-61, Rev. 2 (August 2012)

Federal Trade Commission, Data Breach Response: A Guide for Business (September 2016)

ISO/IEC 27035:2011 Information technology -- Security techniques -- Information security incident management (a consensus international standard)

Jason T. Luttgens, Matthew Pepe, and Kevin Mandia, Incident Response & Computer Forensics, Third Edition, McGraw-Hill (2014)

National Institute of Standards and Technology, Framework for Improving Critical Infrastructure Cybersecurity, Version 1.0 (February 2014) (NIST released drafts of Version 1.1 for public comment in January and December of 2017 and plans to release Version 1.1 in early 2018.)

U.S. Department of Health and Human Services, Office for Civil Rights, A Quick-Response Checklist (June 2017)

U.S. Department of Justice Cybersecurity Unit, Best Practices for Victim Response and Reporting of Cyber Incidents (April 2015)



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