

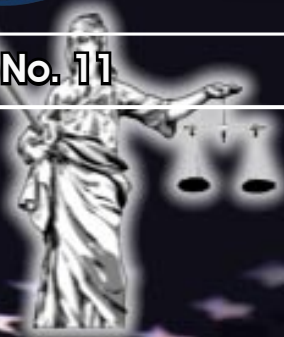


BULLETIN

Vol. 46, No. 11

Our 143rd Year

September 2018



*I pledge allegiance to the Flag
of the United States of America,
and to the republic for which it stands,
one Nation under God, indivisible,
with liberty and
Justice For All.*

Access to Justice Awards Dinner Thursday, September 27, 2018

(Details on page 9)

Mark Your Calendar!

General Membership Meeting
– Tuesday, September 11, 2018 –
See page 5

**18th Annual Bench Bar
Golf Tournament**
– Friday, September 21, 2018 –
See page 23

SBCBA Installation & Awards
– Thursday, October 25, 2018 –
Watch for your mailed invitations!

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- 20- High Desert Bar Association's Vegas Vacation!
- 21- ICLS 60th Anniversary Gala — Save the Date!
- 23- 2018 SBCBA Golf Tourney Sign-Up!

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From the President's Desk

by Michael Reiter

"I made you a cookie, but I ate it." I first saw this phrase as part of the first wave of LOLcat memes (see picture below), but despite the poor grammar, was actually from an older webcomic from the middle of the last decade which still does not have a good name (The aughts? The zeros? Terrible and uninspired).

According to "Know Your Meme" the phrase "is a catchphrase used to reveal one's feeling of shame in taking claim to something that he or she had initially prepared for someone else."

In this case, I wrote you a column but I deleted it. In my zeal to finish my column obligations, I wrote a September column in July. Then, in my further zeal, I wrote my final column as the October column. By writing over the September column.

So, let me tell you about the best column ever written. It was the September 2018 column. Not the one you are reading, but whatever I wrote in July, not this August replacement column. To paraphrase Tenuous D, it was the best column in the world, this is just a tribute.

I was saddened to learn of the death of David Whitney on August 2, 2018. When I first passed the bar, I volunteered in the San Bernardino County District Attorney's Office with David Whitney. The other attorneys there were Frank Vanella, Mike Ramos, and Dennis Stout.

I worked on Fourth, Fifth and Sixth Amendment issues regarding the confes-

sions of (now convicted) serial killer and Death Row resident, Wayne Adam Ford. You might remember him because he walked a victim's breast into the Humboldt County Sheriff's Department in Northern California and confessed to certain murders.

He was a trucker, and two of his victims were local. Lanett White was from Fontana, and Patricia Tamez was from Victorville.

Though the case was interesting (especially after my Criminal Law Professor pounded into that Constitutional Law was not an every day occurrence in most criminal law cases), I heard stories about how David Whitney made the journey from criminal defense attorney to the District Attorney's Office.

However, it was not until last week that I actually read a contemporary account. The December 1, 1985 San Bernardino Sun talks about the case that made him switch "It was the emotional burden of being misunderstood by the public for defending people accused of heinous crimes- crimes the defender himself found revolting."

"That conflict made the case of Bryan Joseph Mincey, sentenced for death for the beating death of a 5-year old, especially difficult for Whitney."



"You feel a clash between your belief in the system, and at the same time . . . you feel a sense of frustration because you know you did your job – you were right do what you did – but you also feel the feelings anybody would feel if he were a link in the chain that resulted in the death of another person."

I think as lawyers, we have all had moral conflicts in our job. I think it was testament to Mr. Whitney that he changed positions rather than continue to operate to his own detriment, and to that of his clients.

In closing, we are preparing for the next bar year, and I know that Eugene Kim has some exciting things planned for the Association.

Wine & Food

Under the Stars

Charity Fundraising Event

THURSDAY

SEPTEMBER 20TH, 2018

6^{PM} - 10^{PM}

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11:30AM - 1:30PM

Fine arts lunch breaks

CONCERT SCHEDULE

2016

- Thursday, September 15*
- Wednesday, September 28
- Thursday, October 20*
- Wednesday, October 26
- Wednesday, November 16
- Wednesday, December 14

**Bonus Days*

2017

- Wednesday, January 18
- Wednesday, February 15
- Wednesday, March 15
- Wednesday, April 19
- Wednesday, May 17
- Wednesday, June 21
- Wednesday, July 19
- Wednesday, August 16
- Wednesday, September 20
- Wednesday, October 18
- Wednesday, November 15
- Wednesday, December 13

2018

- Wednesday, January 17
- Wednesday, February 21
- Wednesday, March 21
- Wednesday, April 18
- Wednesday, May 16
- Wednesday, June 20
- Wednesday, July 18
- Wednesday, August 15
- Wednesday, September 19

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San Bernardino Justice Center
247 West Third Street | San Bernardino, CA



Social Media/Internet Evidence: Authentication & Foundation

by Joseph Jones

This is the 2nd installment of our 4 part series about Social Media/Online Investigations (SMI). In the first article, we discussed the importance of conducting Social Media and Internet Investigations, and how to find accounts online. This article will focus on the basics of authentication and how to lay the foundation for internet based evidence.

Forensic Preservation

The first concept to understand is that anything found online with relevance to your case is evidence and needs to be treated as such. Once a piece of content is identified that is germane to a case, it needs to be forensically preserved. Numerous cases have come out across the United States where “print screens” or other printouts from a social media profile have been excluded as evidence. One such case was *United States v. Vayner*, 2014 wl 4942227 (Oct. 3, 2014 2d Cir.), wherein the trial court allowed a printout from a VK (The Russian equivalent to Facebook) account into evidence; which decision was later overturned by the appeals court. The ruling indicated that even though the account in question had the subject’s name and picture, the presenting party could not verify that the subject was the owner of the account or if the subject had made the posts in question. Forensic preservation includes capturing not only the images, but also extracting the metadata (computer code) associated with that particular piece of evidence and creating a hash (digital fingerprint) for it. This step is going to require use of specialized software.

Authentication

To authenticate a social media account, I recommend first finding the account using a method which strongly ties it to the subject. The most preferable methods are linking it to a known phone number, email address, or user handle. From there, you’re going to need to look for at least 3-5 points of additional information which the courts have termed “specific indicia” contained within the account, that help establish that the person portrayed is in fact the person in control of the account. These are pieces of information posted by the subject or to their

account that only they would know. References to high school reunions, events attended, church groups, etc. are all great examples. From there, take the forensically preserved item and review the metadata to confirm that the posts actually came from the person indicated at the time/date in question.

Foundation

If the evidence is going to be used at trial, the foundation will have to be properly laid. This is another reason why forensic preservation is so important, because if the content has been forensically preserved, most of the information needed for foundation is easily accessible. The content contained in the metadata that will need to be used will be: Web address, date/time posted, account user ID, and exactly what the content looked like at the time of capture. Other information needed will be who captured the content, exactly when they captured it, and some assurances that the content wasn’t altered (hash value). Keep in mind that the person capturing the content needs to be eligible to testify in court; so attorneys need to be careful about conducting their own research or having their staff do it. It’s important to understand that Social Media and online content is very fluid and what’s there today may not be there tomorrow, or if it is, it may be significantly changed. If you find something of interest, preserve it immediately because if you don’t, it may be gone the next time you think about it, or you might run into foundational issues.

Stay tuned for the next installment on how to locate content on the surface web and deep web! In the meantime, if you have any questions or if you would like to set up a training for your firm, visit us at <https://www.boscolegal.org>.

Joseph Jones is a licensed Private Investigator and the Vice President of Bosco Legal Services, Inc. Joseph is a Certified Social Media Intelligence Expert, a Certified Expert in Cyber Investigations, and holds multiple degrees in Psychology and Social & Behavior Sciences. Joseph has received over 1,000 hours of specialized training and regularly teaches courses to judges, attorneys, paralegals, and insurance professionals.

SEPTEMBER GENERAL MEMBERSHIP MEETING

Tuesday, September 11, 2018 at 12 noon

Held at the San Bernardino Justice Center - Department 3

Members free, Non-members, \$10 - (RSVP required to receive lunch.)

Lunch Provided by BOSCO Legal Services!

rsvp@sbcba.org • 909/885-1986

Social Media Investigations: Don’t Miss the Boat - Joseph Jones

In this class Joseph Jones will discuss how social media and internet use have opened up new avenues for legal investigations. He will address why social media investigations are important to almost every case type. He will also discuss how to correctly locate, preserve and authenticate online content, and why a printed copy of something online is insufficient to produce as evidence. The discussion also includes ethical discussions on what you should/shouldn’t be doing in regards to sending “friend” requests or other communications with subjects of the investigation. Case law discussed will include what happens when law firms give no advice or bad advice to their clients regarding how to handle their social media accounts during litigation.

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



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Sign Up for the Annual Mandatory Settlement Conference Week and MCLE Training “How to Serve as a Settlement Conference Officer”

The San Bernardino Superior Court (“SBSC”) will be holding its annual Mandatory Settlement Conference Week (“MSC Week”) at the downtown Justice Center from Monday, October 29 to Friday, November 2, 2018. The Court will be closed for most routine business, but the judges will still be presiding over mandatory settlement conferences in selected personal injury cases. The Judges will be assisted by volunteer attorneys – so the Court is again looking for at least 60 attorneys to participate. Last year, more than 82 attorneys volunteered their time to help out with MSC Week.

Judge Michael A. Sachs will again be managing the MSC Week program. He said the Court will be using the same basic framework used in prior years. The Court will analyze its files and select those matters which it believes have a good chance of settling. The Court will give the parties notice of the MSC’s, and will be ordering the parties, trial counsel, and anyone necessary to effect a settlement, i.e., carriers, etc., to attend. The Court will also consider inviting parties who did not receive formal notice from the Court, but who may nonetheless be interested in voluntarily participating in MSC Week.

At least one party in each action must be represented by counsel. The parties must also be familiar with the SBSC Rules of Court, Rules 610-621, governing settlement conferences, and any additional requirements provided therein. Parties must submit a settlement conference brief five days before their scheduled conference; the briefs are to be filed in the department holding the MSC.

Judge Sachs will assign each volunteer attorney out to a specific courtroom as a settlement officer. The Judge and the volunteer attorney will then work collaboratively to settle their case. Judge Sachs is looking county-wide for volunteers and is inviting members of the San Bernardino County Bar Association, the Asian Pacific American Lawyers of the Inland Empire (APALIE), the High Desert Bar, Richard T. Fields Bar Associa-

tion, the Western San Bernardino County Bar Association, the Inland Empire Latino Lawyers Association (IELLA), the local chapter of the American Board of Trial Advocates (ABOTA), and others. Last year we had volunteer attorneys from each of these stellar organizations, and we also had attorneys coming up from Riverside County. Thank you! Membership in a bar organization is certainly not a prerequisite and we had a number of independent attorneys participating in last year’s program.

Judge Sachs proudly declared the Bench and the Bar settled more than 50% of the cases at last year’s MSC Week. He and his fellow bench officers acknowledge that much of the success of last year’s MSC Week was due to the fine efforts of the volunteer settlement officer attorneys. To show its gratitude, the Court presented a Certificate of Appreciation to each volunteering attorney.

The SBCBA Civil Bar Section will be holding a noon time MCLE class in Department S-28 of the Justice Center on October 2, 2018 – “How to Serve as a Settlement Conference Officer.” This program is designed to help prepare you for MSC Week, and to increase the effectiveness of the voluntary settlement officer attorneys. While most civil litigators have attended their fair share of MSC’s over the years, serving as the settlement officer is somewhat different and may be unfamiliar ground for many. We therefore invite all interested persons to attend the MCLE to gain some additional perspective on conducting an MSC, and then put those skills to work by signing up for MSC Week. Attendees will earn one-hour of MCLE credit for this program.

If you have any questions concerning MSC Week, or especially if you wish to sign up, send an email to Judge Sachs at: MSachs@sb-court.org. If you have any questions regarding the MCLE class, please contact the SBCBA at (909) 885-1986.

OCTOBER SPECIAL MEMBERSHIP MEETING

Come and learn why ‘Google Does Not Trust You’

Thursday, October 11, 2018 - 12 noon to 1:30p

Held at the San Bernardino Justice Center - Department 3

Lunch Provided by MediaSmack!

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FROM THE DESK OF THE PRESIDENT OF THE

HON. JOSEPH B. CAMPBELL
AMERICAN INN OF COURT

By David P. Colella

As this year's president, I am excited to continue the standard of excellence our Inn has established. I am quite proud of the fact that our Inn has been recognized as a "platinum" level Inn for the past six years. This is the highest recognition bestowed by the American Inns of Court and requires much hard work and dedication. To that end, I am honored to congratulate Mark H. McGuire on guiding last year's Inns to platinum level.

For those unfamiliar with what the Inns of Court is about; simply stated it is an association of lawyers, judges, and other legal professionals who share a passion for professional excellence. The stated mission is to inspire the legal community to advance the rule of law by achieving the highest level of professionalism through example, education, and mentoring.

Our Inn meets once a month beginning in October and running through June. Meetings are generally held at the Castaway Restaurant in San Bernardino on the second Wednesday of each month. The meetings include dinner and an MCLE program. We typically have a field trip in December and a Joint Inns dinner in February. The joint meeting is an annual gathering of the four neighboring Inns comprising our Inn, the Leo A. Deegan Inn (Riverside), the Warren Slaughter-Richard Roemer Inn (Palm Springs), and the Southwest Inn (Temecula). Our Inn hosts this year's joint meeting and we are working earnestly to secure a dynamic speaker.

Our Inn officers this year are:

David P. Colella, President

Joseph B. Widman, President-Elect

Susan B. Grabarsky, Vice President

Amar M. Hatti, Secretary

Stacey Wolcott, Treasurer

Hon. Cynthia Ludvigsen, Co-Counselor

Hon. Donna L. Connally, Co-Counselor

Hon. Christopher B. Marshall, Judicial Liaison

Hon. Gregory S. Tavit, Outreach Liaison

Eric D. Anderson, Membership Chair

Linda A. Lindsey, Co-Program Chair

Mark H. McGuire, Co-Program Chair / Immed. Past President

Looking toward our upcoming programs, it should be an entertaining and educational year. Co-Program Chairs, Linda A. Lindsey and Mark H. McGuire, are developing a Jeopardy-themed experience focused on educating our members about the new or amended California Rules of Professional Conduct

entitled "Don't be in Jeopardy of Failing the Ethics Test."

Given the fact that there are dozens of such rules, it will be a very worthwhile program year and geared to cover the specialty MCLE requirements. Also, we are seeking to obtain approval of judicial education credits for at least one program this year.

If you are interested in joining our Inn, please e-mail our Membership Chair, Eric D. Anderson, at ericanderson@edalaw.com for an application.

One of the attractions of the Inns of Court is its rich tradition. While the first American Inns of Court was established in 1980, it is loosely patterned after the traditional English Inns of Court dating to the 14th century. With this tradition in mind, I intend to focus my articles of various maxims of jurisprudence as codified in the California Civil Code §§3509, et seq.

California's maxims of jurisprudence are essentially a collection of legal truisms which are used as rules of thumb to aid in the just application of our statutes. Nonetheless, it has been held that "neither fiction nor maxim may nullify statute." (*Lass v. Eliassen* (1928) 94 Cal.App. 175.) It is clear then, while helpful, these maxims have no application when a statute is on point. That doesn't mean they aren't interesting to examine.

Our maxims include such nuggets of wisdom as: "when the reason of a rule ceases, so should the rule itself," "for every wrong there is a remedy," "the law never requires impossibilities," and "the law has been obeyed" among others.

Throughout this year, I'll be selecting several maxims to look at, consider the historical significance and manner in which they have been applied. What purpose do these maxims really serve? Are they of any current importance in judicial interpretation? I will be calling on some of our judicial officers for their perspective as well. If you are a judicial officer with a particular opinion about the use of maxims in legal advocacy or an attorney with a penchant for citing to these maxims, please contact me at dcolella@flsd.com - I'm intrigued to hear your story. I hope these monthly vignettes will prove informative.

My hope for the Inns year is to grow our membership, provide our members with an educational, memorable year of programs, and retain our platinum status. I am aided by an exceptional Board and I hope you take the opportunity to renew your membership or inquire into joining as a new member.

NOTICE

If you wish to have an article, notice, or advertisement published in the Bulletin, please submit it to the bar office by the 15th of the month prior to publication month.

Space for camera-ready ads must be reserved by the 10th of the month prior, ad copy submitted by the 15th. (Items submitted will be accepted depending on available space.)

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PAST PRESIDENTS OF THE SAN BERNARDINO COUNTY BAR ASSOCIATION



1961-1962 – Robert J. Farrell

34th President of the San Bernardino County Bar Association.

by Michael Reiter

Robert Joseph “Bob” Farrell was born on April 13, 1913 in Los Angeles, California. His parents were Francis I. Farrell and Jessie Guthrie. They moved to Ontario after his birth. His father and grandfather owned a dairy in Chino. He attended St. George’s grammar school in Ontario and went to St. Mary’s, a Jesuit high school in Kansas, through his junior year. He completed high school at Brophy in Phoenix, Arizona.

He attended Loyola in Los Angeles for his undergraduate work and received his JD at Loyola Law School. He played football for Loyola. Bill Ward stated that Mr. Farrell was a “watcharm guard” who “excelled at submarining and low-bridging his bigger opponents.”

Mr. Farrell was admitted to the California Bar on October 18, 1937. Also admitted at the same time were two other San Bernardino County residents, out of 116 new lawyers statewide.

After passing the bar examination, he started work in a law firm in Santa Monica and was employed in the trust department of a bank. Mr. Miller worked as a Court Clerk for Judge Charles Allison for three years starting in August 1938.

Mr. Farrell married his wife Marion Elizabeth Matz in 1938. Together, they had two sons, Patrick and William. William was his law partner later in life, from 1970 to 1994.

After his stint as the Deputy Clerk in Judge Allison’s court, he was appointed as a Deputy District Attorney on July 2, 1941. He took the post of Carl B. Hilliard (our 23rd President), who declined the appointment to remain in private practice. That position had been created with the resignation of Albert Weller, who was replaced by Donald S. Gillespie (our 28th President) and John P. Knauf (our 29th President).

When John P. Knauf replaced Albert Weller as County Counsel, Mr. Farrell’s salary was increased to \$300 a

month. He continued to serve as Deputy County Counsel until his resignation on December 4, 1948. After his resignation he joined King & Knauf, and took over Judge Russell Goodwin’s practice, which had been assumed by the firm.

He joined Jesse Curtis Jr., Jack Knauf, and Ken Henry to form Curtis, Knauf, Henry & Farrell on April 9, 1950. Ed Keller, in the pages of this publication, recounted a telegram sent to the new firm:

*“Drain the Flagon, broach the barrel,
For Curtis, Knauf, Henry & Farrell,
Whose quadranomenclature shames
Law firms bearing fewer names,
And proves, despite our rural past,
We’re metropolitan at last.”*

When Jesse Curtis Jr. was elevated, the firm became Curtis, Knauf & Farrell. In 1956, Mr. Farrell was appointed to both the City of San Bernardino Planning Commission and the Recreation Commission. While his legal concentration was probate by the end of his career, he was legal advisor to the East San Bernardino County Water District from 1965 to 1982.

In addition to the Bar, Mr. Farrell was a member of the Knights of Columbus, Serra Club and the Shamrock Club. In addition to Knights of Columbus, he was very active in other Catholic organizations and events. He represented the Diocese of San Diego, and then upon its creation, the Diocese of San Bernardino. He was the proud recipient of the Pro Ecclesia Et Pontifice in 1980, an award from the Roman Catholic Church.

Mr. Farrell was the Vice President the year before he was President. The Bar year shifted from beginning June 1 to November at this time, and Mr. Farrell was

installed as President at the installation dinner on October 28, 1961. Approximately 160 people attended, which is close to our attendance for last year's ceremony.

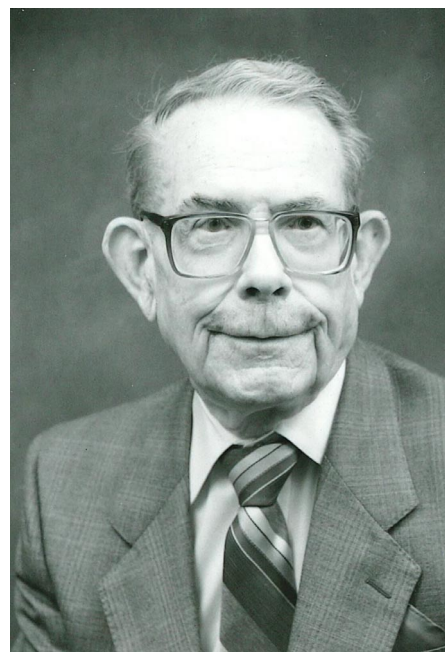
Roy E. Chapman was installed as Vice President, Hollis G. Hartley as Secretary, Edward P. Foley as treasurer, William Pitt Hyde and Richard A. Mulligan were installed as new directors.

The highlights of the bar year were a membership meeting at the Masonic Temple in San Bernardino with then-Attorney General Stanley Mosk, and the swearing-in of United States District Court Judge Jesse Curtis Jr.

Mr. Farrell died on December 29, 1994 in San Bernardino at St. Bernardine Medical Center. He is buried at Mt. View Cemetery in San Bernardino. He was predeceased by his wife Marion in 1992, and his son Patrick in 1979.

His obituary said, "Bob throughout his life never compromised a [principle], and true to his Jesuit education and training, never wavered in his loyalty to God, his country, and his wife and family."

Our next column will be about our 35th San Bernardino County Bar President, the Honorable Roy E. Chapman. We have touched on Roy Chapman before in our columns about Past Presidents Waldo Willhoft and H.R. Griffin, so we will not revisit that part of his career.



Robert J. Farrell in 1986.



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In Remembrance



Brian Jefferson Simpson
1945 - 2018

Submitted by Thomas W. Dominick

It is with a very heavy heart that we announce the passing of one of our Bar's Past Presidents, Brian J. Simpson, on Monday, August 20, 2018, after succumbing to a long and valiant battle with cancer.

The son of Robert and Elizabeth Simpson, Brian was born in Los Angeles, California, on January 8, 1945. He was admitted to the California State Bar on January 5, 1972, and joined the SBCBA shortly thereafter, where he was quite active. Brian chaired many bar committees, including the very first Bridging the Gap Program in 1977, and was also first to utilize Arrowhead Country Club for general member meetings. He served on the bar board for several years and, ultimately, as its President in 1981-1982.

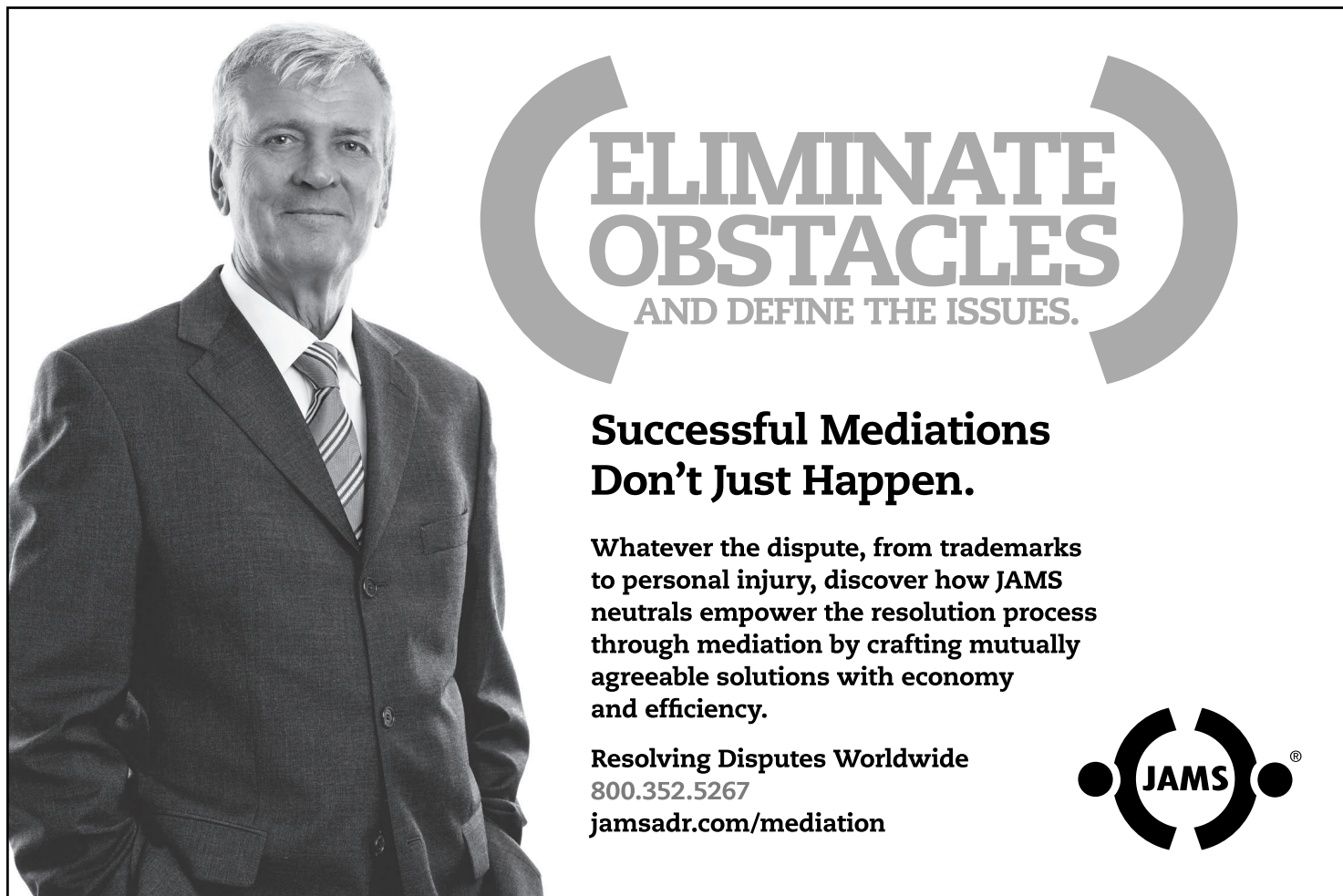
Brian received his undergraduate degree in 1967 in Business Administration from Arizona State University in 1967. He then attended University of San Diego School of Law, where he earned his law degree, graduating with honors. While there, he was a member of the Law Review and the school's Moot Court Board and Team, and was selected as Outstanding Labor Law Student. He was also admitted to practice in the states of Idaho (2002) and Washington (2006).

Brian practiced for several years with his father Robert J. Simpson at the San Bernardino firm of Simpson & Simpson

and, eventually, as a sole practitioner after his father retired. He specialized in business law, real estate, construction law, estate planning, and probate and trust administration. He was a long-time resident of Redlands, but eventually moved to Coeur d'Alene, Idaho in 2002 where he continued to practice law, at times returning to Inland Empire in his private plane to meet with clients at his Redlands office. Prior to moving to Idaho, Brian was "of counsel" to the law firm of Fullerton, Lemann, Schaefer & Dominick, LLP. Brian was an excellent litigator. He was known by colleagues as a true professional and a tough and zealous advocate for his clients.

Brian had a diverse and remarkable life. He was a member of the National Guard for six years and was honorably discharged. He was an active Rotary member for many years and served a term as president of the Coeur d'Alene chapter. Brian was an avid pilot and spent hundreds of hours in the air in his Cessna 182. He and his beloved wife, Melanie, experienced many memorable travels throughout the world. They shared a love of theater and often visited New York City to enjoy Broadway shows. His ready humor and captivating stories will be greatly missed by all that knew him.

Brian is survived by his wife, Melanie; his brother Reed Simpson; sister-in-law, Carol; stepson, Matthew Yankee; nephew, David Simpson; David's wife, Grace; nephew, Cory Cobb; and many great nieces and nephews. A service honoring Brian's life was held on Tuesday, August 28, 2018, at St. Luke's Episcopal Church, 501 E. Wallace Ave., Coeur d'Alene, Idaho. In lieu of flowers or other acknowledgments, please consider making a donation to the Multiple Myeloma Research Foundation, themmrf.org.

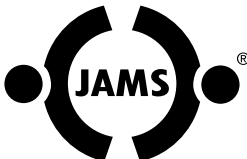


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Forest Wright

For those who have not heard, it is with sadness that we inform you of the passing of Forest Wright on Saturday, July 28, 2018.

Forest began his legal career working as an attorney for California Indian Legal Services from 1979-1985. He also served as a member of their board of directors from 1995-1998. He also worked as a public defender for Riverside County and for the last many years he was with the firm of Jeglin & Wright where he practiced primarily in the area of criminal defense.

Forest's life reflects a lifelong commitment to the legal services community. He had served as a board member of the Public Service Law Corporation of the RCBA (Riverside Legal Aid) since 1989 and was their board president from approximately 2001 to present. In 2002 he was appointed by the RCBA to the ICLS Board of Directors and served as their treasurer. Forest previously served on the State Bar's Legal Services Trust Fund Commission.

A "Celebration of Life" will take place at the Methodist Church located in Murrieta on October 20, 2018 at 10:00 am. The celebration will be casual; no suits or ties please. The family would like people to share funny stories and fond remembrances.

In lieu of flowers the family suggests donations to either the Wounded Warriors, Public Service Law Corporation (dba Riverside Legal Aid) or Inland Counties Legal Services, Inc.

Note from the Executive Director of ICLS:

I have been in touch with Edna, wife of Forest. I had the opportunity to express to her our collective condolences and offers of support for which she was appreciative.

She has asked me to let each of you know that a "Celebration of Life" will take place at the Methodist Church located in Murrieta on October 20th @ 10:00am. She asked me to emphasize that the celebration is to be casual. No Suits - No Ties. Rather, she would like to hear our funny stories and fond remembrances. Cookies will be served at the church and sandwiches will follow at the Wright residence.

In lieu of flowers Edna has suggested donations to either the Wounded Warriors, Riverside Legal Aid or Inland Counties Legal Services, Inc.

Respectfully,

Darrell K. Moore

David R. Whitney

April 1942 - August 2018



David R. Whitney died of lung cancer at his home on August 2, 2018.

David graduated from UCLA Law School in 1971. He was sworn in to the practice of law on December 14, 1972 and the U.S. Supreme Court Bar in 1985. He served as Deputy Public Defender in Los Angeles County from 1972-1974. After working as a private Criminal Defense Lawyer in San Bernardino County for several years, he became Senior Deputy District Attorney for San Bernardino County in 1986 and served in that capacity until his retirement in 2004. After retirement, Whitney worked as an Administrative Law Judge, Pro Tem until his death. A Memorial Celebration was held on August 26th on the Whitney Ranch.

He is survived by his wife, Marcie Green Whitney, brother Richard, sister Diane McCale, son Christopher, daughter LeAnne Gonzales, and six grandchildren.

Charitable contributions may be made in David's name to: *Valley of the Falls Community Center in Forest Falls/VFCCI P.O.Box 41, Forest Falls CA 92339.*

Hal Charles Smith

May 1948 - August 2018

We are saddened to report that Redlands criminal defense attorney Hal Charles Smith died on Monday, August 13, 2018. After suffering a heart attack at the San Bernardino County Superior Court, he died later at St. Bernardine's Hospital.

A Vietnam veteran, Smith had been practicing law in San Bernardino and Riverside counties since May of 1979.

Smith had been a member of the SBCBA since 1979, and served on its Fee Arbitration panel for many years. He practiced out of his office on Orange Street in Redlands. No services have been announced.

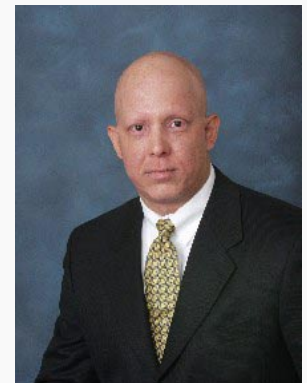
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Secure Computing Abroad: Evolving Law Firm Policies

by Sharon D. Nelson, Esq. and John W. Simek

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Traveling abroad? Worried about pickpockets? We have far bigger worries these days. If you travel abroad, you also have to worry about foreign governments – and our own – which may be interested in our data. Lawyers are not only not exempt from that interest – they are magnets. And when The New York Times published an article early this year about safeguarding data when crossing the border, we knew we were seeing a new hot cybersecurity topic – one that has primarily been considered at very large firms, until all the recent stories caught fire in the news. This article will focus on the dangers presented by our own government (the current runaway headline), but the advice is generally applicable to the risks presented by foreign governments, risks which may increase as there seems to be a worldwide ratcheting up of device seizure and examination at borders.

Three U.S. Border Incidents

There have been many, many border incidents, but here are three that caught our attention. A U.S.-born NASA scientist, Sidd Bikkannavar, returned to the U.S. in January of 2017. A seasoned international traveler, he flew back from Santiago, Chile to the George Bush Intercontinental Airport in Houston, Texas on Monday, January 30th, just over a week into the Trump administration.

Bikkannavar says he was detained by U.S. Customs and Border Patrol (CBP) and pressured to give the CBP agents his phone and access PIN. Since the phone was issued by NASA, it may have contained sensitive material that wasn't supposed to be shared. A Customs officer presented Bikkannavar with a document titled "Inspection of Electronic Devices" – which mentioned detention and seizure – and explained that CBP had authority to search his phone.

Bikkannavar was not allowed to leave until he gave CBP his PIN. Ultimately, feeling pressured, he agreed to hand over the phone and PIN. The officer left with the device and didn't return for another 30 minutes. The phone was returned to Bikkannavar, though he's not sure what happened during the time it was in the officer's possession. When it was returned, he immediately turned it off because he knew he had to take it straight to the IT department at NASA's Jet Propulsion Laboratory (JPL). The cybersecurity team at JPL was not happy about the breach.

Haisam Elsharkawi, an American citizen, was about to travel from Los Angeles to Saudi Arabia in February of 2017 when he was stopped at the airport, questioned, handcuffed, questioned some more and then released without charges three hours after his flight had departed. He reported that officers from the United States Customs and Border Protection repeatedly pressured him to unlock his cellphone so that they could scroll through his contacts, photos, apps and social media accounts. He said they threatened to seize the phone if he did not comply.

Also a veteran international traveler, he was appalled but felt pressured to unlock his phone and a Homeland Security agent looked through it for about 15 minutes.

In October of 2016, border agents seized phones from a Canadian photojournalist. He refused to unlock the phones, citing his obligation to protect his sources – he was blocked from entering the U.S.

As of March 13, 2017, NBC News had examined 25 cases in which American citizens said that CBP officials demanded that they hand over their phones and their passwords – or unlock them. In 23 of the 25 cases, these individuals were Muslim.

Keeping Private Data Private

Stories like these prompted The New York Times to investigate how to protect private data. As the paper states, U.S. citizens are not required to unlock their phones or share passwords with U.S. government officials. However, rules may vary depending on where you are traveling to and from. But being detained and intimidated is not an experience any traveler wants to go through.

So the Times recommended traveling with clean phones (so-called "burner" phones are often available at airports, as are phones you can rent) and clean tablets or laptops. It is recommended that you disable fingerprint readers because, in the U.S., law enforcement agencies can use warrants to compel you to unlock your phone with your fingerprint. We would go further and advise disabling all biometrics used to get into your phone, such as iris scans and facial recognition.

If you tell an official that you will not give up your password, the official may not be happy – to put it mildly. Better to use a password manager and tell the agent that you don't remember your one very long master password. And to avoid complications, don't have your password management software loaded on your devices. It is best to store the password vault (encrypted of course) in a cloud service like Dropbox and get access to it when you reach your destination.

If you are asked for passwords to your social media accounts or your e-mail, you can protect yourself by having two-factor authentication enabled – assuming that you have left your phone at home. Since the text code will be sent to that phone, officials will be unable to get into your accounts even with your password. You could leave your phone with someone you trust and get those codes that way but the general advice is to forego the use of social media while abroad.

When dealing with e-mail, do not install and configure any e-mail client on your laptop or cell phone. You don't want to have any e-mail on your devices. You should use some sort of remote access solution (e.g. Citrix, LogMeIn, etc.) to access your e-mail. Even using a browser could leave remnants of confidential information on your device.

Any device you use while abroad should be encrypted. The best way to ensure that your data remains secure is to back up your data to a cloud service and then wipe all of your devices before you return home. Once home, you can restore your data from the backup.

No matter what device you use abroad, assume that all electronic communication is subject to interception. This means you should always be using a secure encrypted connection. Make sure you have a properly configured VPN available and know how to use it.

The Authority of U.S. Customs and Border Protection Agents

Not only were we almost completely ignorant about the authority of CBP agents, it turns out that most lawyers have little knowledge of how expansive CBP authority really is. CPB officers have search power extending 100 air miles inland from any external boundary of the U.S. They can stop and question people at fixed checkpoints dozens of miles from U.S. borders. They can also pull over motorists whom they suspect of a crime as part of roving border patrol operations.

(Continued on next page)

You might say - But doesn't the Fourth Amendment protect us from "unreasonable searches and seizures?" Yes - however, those protections are lessened when entering the country at international terminals at airports, other ports of entry and any location within 100 air miles of a U.S. boundary.

According to federal statutes, regulations and court decisions, CBP officers have the power to inspect, without a warrant, any person trying to gain entry into the country - and their belongings. The CBP's authority extends to examining computers, disks, drives, tapes, mobile phones and other communication devices, cameras, music and other media players, and any other electronic or digital devices. That cuts a wide swath.

Current CBP policy dictates that officials should search electronic devices with a supervisor in the room when feasible and also in the presence of the person being questioned "unless there are national security, law enforcement or other operational considerations" that take priority. We already know that this language has been invoked to examine devices outside the presence of the person being questioned. CBP says it can conduct these searches "with or without" specific suspicion that the person possessing the items is involved in a crime.

With the approval of a supervisor, CBP officers can seize an electronic device - or a copy of the information on the device - "for a brief, reasonable period of time to perform a thorough border search." Typically, such seizures should be no more than five days (which seems a lot to us), but officers can apply for extensions in up to one-week increments. If the review of the device and its contents doesn't manifest probable cause for seizing it, CBP says it will destroy the copied information and return the device to the owner.

What if you are a lawyer? CBP has recognized that lawyers have an attorney-client privilege, but all this seems to mean is that agents have to get approval from an agency attorney before proceeding with the search. Not terribly comforting - and we suspect this is the reason why we have seen so many firms begin specifically to address the potential problems of re-entering the U.S.

What Have the Courts Said?

Unfortunately, the Supreme Court has not directly ruled on whether the CBP can search electronic devices without any specific suspicion that the owner might have committed a crime. In 2013, a decision for the U.S. Court of Appeals for the Ninth Circuit (<http://cdn.ca9.uscourts.gov/datastore/opinions/2013/03/08/09-10139.pdf>) affirmed that a cursory search of a laptop - for instance, having an owner turn on his/her devices and examining their contents - does not require any specific suspicions about the traveler. The court raised the bar for a "forensic examination" of the devices such as using "computer software to analyze a hard drive." For these more comprehensive and intrusive searches, including password-protected information and other private data, officials must have a "reasonable suspicion" of criminal activity. That court decision applies only to the nine Western states in the Ninth Circuit.

We like this quote from the court's decision: "'Laptop computers, iPads and the like are simultaneously offices and personal diaries. They contain the most intimate details of our lives . . . It is little comfort to assume that the government - for now - does not have the time or resources to seize and search the millions of devices that accompany the millions of travelers who cross our borders. It is the potential unfettered dragnet effect that is troublesome."

During the 2016 fiscal year, CBP officials conducted 23,877 electronic media searches, five times as many as in 2015. That's a striking escalation.

What Law Firms Are Doing

As part of our research for this article, we were given access to one law firm's security precautions when traveling abroad. They included the following guidelines:

- Use one of the firm's "clean" loaner laptops, wiping the laptop before returning home
- Store all documents on the firm's network - store nothing on the laptop
- Use a burner phone (not a smart phone) for calls and texting.
- Access the firm's network via Citrix for e-mail and documents from the laptop - do not access the network from the phone.
- Do not use Bluetooth.
- Lock the laptop in the hotel room safe or in locked luggage.
- Make sure microphones and cameras are turned off.
- Change your network password before leaving the U.S., change it again once you return, after you have turned in your loaner laptop.

We have boiled the essential instructions down - as you can imagine, the instructions are far more detailed. A guiding principle is that authorities cannot search what you don't have. For those who want to chance it and have their device/data with them, make sure the device is encrypted and that it is powered down before going through Customs.

Several experts have published arcane methods of protecting your data, but we have not included them as being beyond the ken of most attorneys. And none of them will protect you from actually facing an angry CBP (or foreign) agent telling them that you really don't have any way to get to your data. We much prefer the "they can't search what you don't have" way of thinking.

In March of 2017, The Electronic Frontier Foundation published a fairly lengthy guide called "Digital Privacy at the U.S. Border: Protecting the Data on Your Devices and in the Cloud" which is worth reading and may be found at <https://www EFF.org/wp/digital-privacy-us-border-2017>.

Conclusion

In an article, it is impossible to examine every possible precaution that lawyers might use to protect client data while abroad. And though we've focused on the U.S. border because of current events, we have spent years watching videos of the Chinese spies accompanying maids to hotel rooms and inserting a flash drive in a businessman's computer. And we've heard stories from our large law firm friends of laptops coming back from abroad with "a little something extra" - that transmits data back "home". If you are a mid-to-large firm lawyer, your firm probably has very competent IT/cybersecurity help to assist you - don't be afraid to ask questions! And if you are a solo or small firm lawyer, make sure you engage someone who has both technical and security certifications to help you make sure you have the necessary security precautions in place.

The authors would like to thank their friend, journalist Ben Kerschberg, for his kind assistance in researching some aspects of this article.

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



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The Calculation of Equity in Real Property

by Laurel Starks

How many times have you witnessed a divorcing couple arguing and negotiating endlessly over the proceeds of selling their home - or arguing and negotiating because one spouse wants to refinance and buy out the other, and they can't agree on the buy-out price and terms?

All too often, those acrimonious negotiations are for naught - because in reality one of two things is true:

There is little to no equity.

The spouse who wants the house can't qualify for a mortgage loan.

The formula for equity is:

$$\text{Value} - \text{Encumbrances} = \text{Equity.}$$

Establishing an accurate value (not an online automated valuation) is the first step. And then discovering all of the encumbrances is the second, and often most neglected, step. Proper discovery will reveal exactly what is owed against the house.

Examine the status of the house and its encumbrances, looking for things like:

- Loan modifications
- 2nd mortgages
- Pace or Hero loans
- IRS, Child Support and other liens or judgments

Homeowners whose second mortgage was "forgiven" during a loan modification often forget that the money will still be owed upon sale of the house. They also forget that principal deferred during the modification is still a debt, and that debt is due when the house is sold.

Hero or Pace loans create another problem. While the homeowner has been paying them off through their property taxes, a new lender will likely not subordinate, requiring the debt be paid in full when the house is sold.

These are all things that can be discovered early in the process, preventing costly 11th hour surprises down the road.

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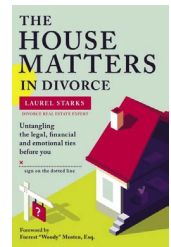
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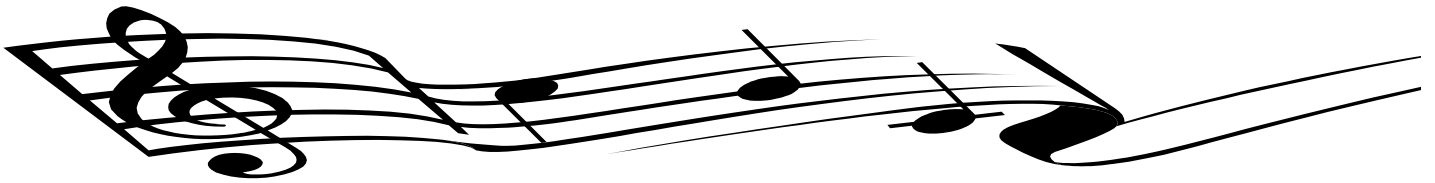
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Join the SBCBA at beautiful Arrowhead Country Club for our
18th Annual Bench-Bar Golf Tournament
Friday, September 21, 2018

Registration starts at 11:30a • Shotgun Start: 12:30 pm

\$150 player or ~~\$550~~ **\$500** team — Dinner only: \$25

Arrowhead Country Club | 3433 Parkside Drive, San Bernardino, CA 92404 | (909) 882-1638

Sponsored by Garcia, Artigliere & Medby

SPONSORS **NAME ON TEE SIGN:** _____

<input type="checkbox"/> Exclusive Hole Sponsor (1 per hole) HOLE # (subject to availability) <i>or</i> NO PREFERENCE	\$ 350.00	
<input type="checkbox"/> Shared Hole Sponsor (3 per hole) HOLE # (subject to availability) <i>or</i> NO PREFERENCE	\$ 175.00	
<input type="checkbox"/> Sand Trap / Lake Sponsor	\$ 100.00	
<input checked="" type="checkbox"/> Lunch Bags — Your name or logo on custom lunch bags (includes lunch)! — (submit by August 15)	\$ 800.00	SOLD!
<input type="checkbox"/> Golf Towel Sponsor (1 only!) Name or Logo on tournament towels (submit by Sept. 7)	\$ 750.00	
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<input checked="" type="checkbox"/> Sports Bottles (1 only!) — Your name or logo on 20+oz. sports bottles! — (submit by August 15)	\$ 500.00	SOLD!
<input type="checkbox"/> Raffle Prize - Your product or Gift Certificate(s) for our raffle:		

PLAYERS (Limited to 36 teams or 144 players)

Tournament Rules

- Each team must use a minimum of two tee shots per **player**.
- Select best tee shot, then all players must play second shots from one club length of that point, except putts, which must be played from the same point.
- Play continues in this manner until the ball is holed out.
- Longest drive - trophy awarded.
- Closest to the pin - trophy awarded.
- 1st, 2nd and 3rd place trophies awarded.
- Women play from red tees; men play from white tees.
- Each team may purchase/use maximum of 18 Mulligans (only one per team per hole).
- Each team must submit a score card.
- Really pitiful players may bring a croquet mallet.

PLAYER / TEAM FORM

Team/Company Name:		Single Entry?	
		Yes	No
1.			
2.			
3.			
4.			

PAYMENT \$150.00 per player; \$500.00 for team of four.
 Fee includes dinner & 2 Raffle Tickets / Dinner only is \$25.

Address below formatted for your windowed envelope.
 Make check payable to SBCBA and mail form and check to:

SBCBA 2018 Golf Tournament
San Bernardino County Bar Association
412 East State Street
Redlands, CA 92373

Amount Enclosed: \$ _____

Check# _____

To pay by credit card, please call the SBCBA at 909/885-1986 and have the following information:

Name on card, card no., expire date, security code, card billing address. Or you may use the cashier on <https://tinyurl.com/SBCBA-Cashier>

BULLETIN

of the
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Bar Association

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"The mission of the San Bernardino County
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Articles, advertisements and notices should be received by the bar office no later than the fifteenth of the month prior to the month of publication. For current advertising rates, please call the number listed above. Please direct all correspondence to the above address.

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September 2018

TO: