



San Bernardino County Bar Association

BULLETIN

Vol. 48, No. 8

Our 145th Year

June 2020



June 2020 General Membership
Webinar Meeting

Tuesday June 9, 2020
12:00 noon to 1:15p

**“Social Media Ethical Evidence
Collection & Use”**

Featuring: Joseph Jones

Please RSVP no later than 12pm on
Monday, June 8 to: rsvp@sbcba.org

NOTE: All attendees will receive the access
link and password on Monday, June 8,
by end of day.

MCLE: One (1) Hour Ethics
(See page 9)

In this issue...

- 3 - From the President's Desk "The New Norm" – by Eugene Kim
- 4 - From the President of the JBC Inn of Court – by Joseph Widman
- 7 - General Membership Meetings for 2020
- 8 - Double Whammy on Law Firms: COVID-19 and The Troubled Economy
- by S. Nelson & J. Simek
- 9 - June 2020 MCLE WEBINAR: You are invited!
- 10 - Job Opportunity: LASSB seeks Executive Director
- 12 - June 2020 Almanac - by Tony Sears
- 14 - Classifieds
- 15 - Attorney James F. Tierney, III joins *Dolen, Tucker, Popka & Abraham*

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From the President's Desk

by Eugene Kim



The New Norm

The last two months have been difficult. But there is light at the end of the tunnel. The Governor of California issued a four-stage roadmap to reopen businesses and public spaces; the San Bernardino County Board of Supervisors approved a County Readiness and Reopening Plan, and the San Bernardino County Superior Court was scheduled to re-open on June 1, 2020.

But COVID-19 will forever change society and our way of living. Thus, we can expect change. Do you know what changes to expect from the San Bernardino Superior Court?

First, the Court will look and feel a little different in order to maintain the social distancing mandate. For example, everyone is required to wear a face mask or else they will be denied access to the court, there will be bright orange signs in the hallways reminding everyone to social distance, benches will be marked with blue tape where you cannot sit, restrooms will have protocol posted on the mirrors, and only 2 people will be allowed in the elevator at a time. The San Bernardino Superior Court and its Executive Office carefully developed a site plan for each courthouse to manage its visitors, administer court filings, attend court hearings, and conduct trials.

Second, the clerk's office will only be open from 8:00 am to 2:00 pm during the first phase of the court's re-opening. In order to be more efficient, the clerk's office established a system that allows for appointments in family law, small claims, traffic, and unlawful detainer cases. Again, everyone is required to wear a face mask in the clerk's office. Also, in order to promote social distancing, attorneys are encouraged to use the exterior windows and drop boxes for filing.

Third, court hearings will be different. For example, hearings for civil and probate courts will now be staggered in order to promote social distancing. Thus, some matters may be set for 9:00 am, 10:30 am., and/or 1:30 am. The staggered times will be posted on the court website. Parties are also encouraged to make appearances through court call, except for Trial Readiness Conferences.

Fourth, trials will start soon. In terms of timing, criminal trials will start at the end of June, civil jury trials will not start until the end of August, and probate trials will not start until the end of August at the earliest. Obviously, these are just rough estimates and if there is an emergency the judge has the discretion to expedite a trial or give it priority. For civil cases, trials with preference under Code of Civil Procedure section 36 and trials approaching the 5-year mark will have priority for calendaring. For family law cases, domestic violence and custody hearings will have priority.

Fifth, trials will be conducted differently because there will be procedures to manage the number of people at trial. For example, courtrooms at the San Bernardino County Justice Center have a maximum capacity of 45-65 individuals with all seats occupied, counsel table, chairs behind counsel tables, a 16-person jury box, and a 45-seat gallery. If you maintain a six-foot radius, the maximum occupancy would be 11-16 people at a time. Thus, there will be procedures to manage the number of people in the courtroom and in the hallway. In order to minimize the number of people at trial, civil trials are encouraged to have bench trials and/or use less than 12 jurors. Also, criminal courts are generally not open to the media, family, friends, or significant others. A judge, however, has the discretion to allow their attendance if appropriate.

Changes are also happening at the San Bernardino County Bar Association.

The San Bernardino County Bar Association will continue hosting its general meetings on the second Tuesday of every month through Zoom or some other video-conference application. Our next meeting is on June 9, 2020, with details to follow. The Family Law division has been successfully and actively hosting section meetings through Zoom.

The San Bernardino County Bar Association will still honor Judge Michael Sachs and Commissioner Deborah Daniel as this year's recipients of the Kaufman-Campbell Award. It is unclear whether we can host a dinner as we have done in previous years. But we will honor these recipients and celebrate their accomplishments in a unique, safe, and exciting manner.

Finally, the San Bernardino County Bar Association is proud to announce that it donated 1,000 masks to the San Bernardino County Superior Court so that members of the public can comply with the Court's social distancing policies.

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

By Joseph B. Widman

Lawyering During the COVID Pandemic

Now, with the dust settled on the initial frantic period of the COVID crisis, it's time to wait. Wait for a vaccine or a surefire treatment. But with the restrictions on movements being slowly and incrementally loosened, we are left to live with this new reality — our hopefully short-lived, new normal. The crisis has proven enormously disruptive to most industries. Turns out physical presence with one another at the same time (also known as "meetings") is an integral part of many or most forms of human activity. When you take in-person gatherings out of the equation, much of our economy stalls or is dramatically impacted. Same goes for our social lives, recreational activities, religious and spiritual life, and, perhaps most tragically, rituals and practices we conduct for those who are grieving or otherwise suffering.

We're taking baby steps back to "normal," but it's clear that it's going to be months, if not longer, until we have this truly behind us. For the time being, if we have to be in the same physical place as one another, we are compelled to practice social distancing. Although this is plainly necessary to reduce the risk of harm to ourselves and our community's more vulnerable members, social distancing at least viscerally diminishes the basic bonds of connection during in-person interactions. Face masks, standing six feet part, not speaking unless necessary — these things strike at the heart of interpersonal connection. But still, we have to make do with what we have, and wait.

But we still have to make a living. We have obligations to clients, our colleagues, the court, and our families. And lawyering, at least litigation, can't ever really be wiped out by economic conditions. After all, litigation is centered on disputes, and when things go bad, disputes abound. There are new disputes stemming from the crisis, as well as many of the disputes from before the crisis which had never left. So, during the May meeting of the Campbell Inn of Court, we delved into practical considerations about how to practice law during this period, how social distancing can be reconciled with the inherently personal nature of law practice.

Our meeting began with the center of law practice for many attorneys, the courthouse. For litigators, the

prospect of an approaching trial date creates a sense of urgency, a need to either settle or start the run-up to trial, assuming a continuance is not in the cards. With civil trials being continued en masse, and with uncertainty surrounding when the court will be able to provide new firm trial dates, that driving force is suddenly absent, cast into a murk of uncertainty. But even without trials, much of the business of court can go on, in the form of jury-less hearings. So we received updates about the most recent orders governing court operations. We also heard in general terms about new procedures and scheduling changes under consideration by the courts, all meant to reduce the health risks inherent in in-person gatherings. But even with these interventions, all indications are that the court is going to have a huge backlog of filings and continued matters to sort through once the proverbial lights come back on.

After receiving these updates, our stalwart programs chair, Derek Raynes, led a discussion about how socially-distanced law practice is shaping up beyond the courthouse. By now, we are all used to online video-based meetings. This technology is now being used more widely for depositions and even court appearances. As with in-person professional gatherings, there are many best practices for presenting yourself and your client in the best possible light, starting literally with proper lighting (in front of you, not behind) and also the need to focus on the matter at hand (everyone can see you looking down at your phone).

Best practices aside, questions abound about when we should seek to conduct video meetings instead of simple (and now, traditional!) teleconferences. The lawyer should consider video instead of telephone-only when there's a need to establish trust and rapport, including with the client. These types of personal connections can be challenging even in person; trying to do so on video is all the more difficult. But those attorneys who develop their ability to do so will have an advantage, in litigation and business development. And beyond the interpersonal aspects, it may be harder to rely upon subtle cues, personal charisma, and whispered side conversations to amble your way through a deposition or court hearing; it's harder to fake substance when participating via video.

Our final membership meeting of this Inns year is scheduled for Wednesday, June 17, on Zoom. This is our traditional State of the Court meeting. This year we expect to have speakers from our local courts to address that topic in these most unusual times. Our scheduled speakers for the meeting will be Presiding Justice Manuel Ramirez of the California Court of Appeal, Fourth District, Division Two, and Presiding Judge Michael Sachs of San Bernardino County Superior Court. Until then, take care everyone, and be safe.

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SBCBA General Membership Meetings: 2020 Calendar

The following MCLE programs are scheduled to be held on the 2nd Tuesday of each month at 12 noon - all meetings will be presented online.

- June 9** Social Media Ethical Evidence Collection & Use – *Joseph Jones - SEE PAGE 9!*
- July 14** Why Google Doesn't Trust You – *Sean Stonehouse, MediaSmack*
- Aug 11** Fair Employment Law (Ethics) – *Galen Ages, Staff Attorney, Legal Aid at Work*
- Sept 8** Selecting a Guardian Ad Litem in Civil Cases – *Derek Raynes, Raynes-Erickson*
- Oct. 13** Substance Abuse – (Competence) – *Jamie Lamb, CEO, Cedar House*
- TBA** Cannabis Law – *David Colella, Panel Moderator*
- TBA** Additional Dwelling Units - New Laws Make it Easier to Build a Granny Flat – *Michael Reiter*

(All offer 1 hour of general credit unless otherwise noted. All are ONLINE meetings.)

NOTE: The topics listed may be switched between the listed dates, as some of the speakers may or may not be available. We will post the programs in the Bulletin and online each month as soon as we confirm the details.

San Bernardino County Bar Association, California State Bar-approved MCLE provider #2813, certifies that these activities are approved for California MCLE credit (as indicated above) by the California State Bar.



Susan Nauss Exon

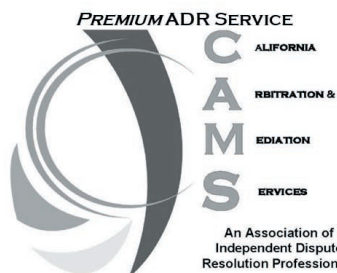


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Don Cripe



Double Whammy on Law Firms: COVID-19 and The Troubled Economy

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

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When lawyers turned the calendar page to January 2020, they could not have dreamt of the two-fold nightmare that would descend upon the profession so quickly. A global pandemic and a tanking economy at the same time? We thought we had seen the end of hard times when we finally emerged from The Great Recession in 2009. Some of our lawyer friends still have lines of credit to pay down from that recession.

While government leaders say the economy will “come roaring back” or “I’ll bring the economy back,” most lawyers are skeptical, to say the least.

The New Normal

What have we seen so far? Beyond the fact that virtually all lawyers are working remotely, with some phased re-opening in the works, we have seen dismal news.

Clio’s survey, released in May 2020 showed that during March, new legal matters were down more than 30% compared to the first five weeks of 2020 and down by more than 40% from the year’s highest weekly averages. 56% percent of legal professionals say they have seen a serious reduction in the number of people asking for legal help, and 53% say they are significantly less busy.

Though understandable, 49% of companies say that if they had a legal issue now, they would probably delay getting legal help until the pandemic has receded.

Sixty-seven percent of lawyers are worried about the success (and even the survival) of their practice and 57% are worried about making a living over the next few months.

The survey found that 75% of legal professionals report higher levels of stress and anxiety, and nearly half are more worried about their finances than their health. Not all lawyers are in pain. The bankruptcy attorneys are doing just fine – and other areas of law practice have not yet seen a decline.

Eleven percent of firms say they have already laid off staff, the survey found. Another 15% expect layoffs in the next three to six months.

On May 8, LAW.COM published a report on actions taken by major law firms in response to the economic downturn. It was a slash and burn story which rapidly made its way around the listservs and social media.

Firm after firm reported some mixture of layoffs, furloughs, hiring freezes, pay cuts, reductions in party distributions, freezes on discretionary expenses and suspension of summer associate programs.

Youngs lawyers are looking at a grim future. Those who are graduating this year and passing the bar will not likely find jobs and those who have been with firms for just a year or two are the most likely to be laid off or furloughed. Add to that the burden of their student loans and it is no wonder that they are so anxious.

Where Are We With Technology?

The Clio report says 69% of lawyers view technology as more important to their firm than before COVID-19. Cloud computing is now seen as a necessity for survival by 83%.

Will the way we practice law change? Two-thirds of lawyers believe it will. Shifting to law firm clients, 58% say that, at least for the next couple of months, they prefer meeting with a lawyer by videoconference rather than in person. Sixty-nine percent would prefer to work with a lawyer who shares documents electronically via a web page, app or online portal.

All of this is borne out by our own experiences. For years, lawyers have deferred (mostly because of cost considerations) upgrading their technology and cybersecurity enhancements. We have explained the importance of endpoint protection endlessly, but not until everyone was working remotely did that message hit home.

Cybercriminals, always sniffing the air for new opportunities, quickly realized that lawyers working at home were vulnerable, both because they were often using home machines (unprotected by their firm’s security) and using home networks, many of which were not secure. Everyone had to scramble to up their security game under this new working environment. Now everyone wanted endpoint protection – immediately.

Webinars we taught on “Working Remotely – and Securely” attracted hundreds of attendees, suddenly interested in recommended VPNs, ways to speed up home networks, video conferencing tools and their safe usage . . . the list of live questions was so long that we had to extend the webinars past their scheduled end times.

The Future Ain’t What It Used to Be

Yogi Berra’s words ring true more than ever for lawyers. In two months, we changed how we practice law more than we did in the last two decades. Virtually everyone now knows about e-notaries, how to prepare documents for electronic signature, how to videoconference with colleagues, clients and courts, how to deposit checks via a phone app – and that list just keeps growing . . .

We were struck by the recent words of Professor Richard Susskind, when he gave a virtual talk via Zoom for Harvard Law School to discuss his latest book, *Online Courts and the Future of Justice*. He talked about how we had grafted technology onto the way we had always practiced law, rather than fundamentally changing the way we practice law. But fundamental changes are now here in droves and we will not likely go back to the way law was practiced before this pandemic. As he said, what he has seen since in the last several months probably means he needs to write a new book.

More than we ever thought possible, we are looking at how we practice law and how we can evolve in practicing law. Online court proceedings are still new, but rapidly becoming normal. There has been lots of lawyer resistance to online courts in the past – but it appears that more and more lawyers and judges are rethinking how we solve our disputes. Mediators have quickly glommed onto Zoom as a tool for conducting mediations. Will we ever go back fulltime to brick and mortar offices? As the Clio study referenced above demonstrates, two-thirds of lawyers believe the future has changed.

When we look back from a future that it is hard to fully see at this moment, we may be astonished at how this topsy-turvy time advanced the practice of law.

Sharon D. Nelson, Esq. is a practicing attorney and the president of Sensei Enterprises, Inc. She is a past president of the Virginia State Bar, the Fairfax Bar Association and the Fairfax Law Foundation. She is a co-author of 18 books published by the ABA. snelson@senseient.com.

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Join the SBCBA for our next General Membership Meeting Webinar

**Tuesday June 9, 2020
12:00 noon to 1:15p**

Featuring:

Joseph Jones

*Certified Social Media Intelligence Expert
- Certified Expert in Cyber Investigations
(BOSCO Legal Services)*

“Social Media: Ethical Evidence Collection & Use”

In this presentation, Joseph will discuss various ethical issues and legal requirements relating to social media and the law. Topics discussed will be how to properly preserve and authenticate social media content, the fallacy of social media privacy and what should/shouldn't be discussed about your cases on social media.

MCLE: One (1) Hour Ethics

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

**PLEASE RSVP no later than 12 noon on
Monday, June 8 to:**

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Link information will be sent to attendees by close of business on Monday, June 8.

This ZOOM Webinar is hosted by SBCBA and BOSCO Legal.

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Legal Aid Society of San Bernardino County seeks Executive Director

The Legal Aid Society of San Bernardino County (LASSB) seeks an Executive Director to lead an evolving non-profit organization looking to continue its sixty-two-year history of providing high-quality, cost-effective legal services to low-income residents of San Bernardino County. LASSB was founded in 1958 and has a staff of twelve, supported by numerous community volunteers.

The Executive Director will lead a strong client-centered organization with a dedicated staff and Board of Directors committed to grant management and compliance and fostering collaborative relationships with the Courts, community leaders and the private bar. The Executive Director will be expected to bring passion, vision, compliance, litigation, and administrative experience. Additionally, the Executive Director will provide leadership to a growing organization dedicated to advocating for the indigent and senior communities. LASSB's challenges include a need to strengthen its financial position, implement effective internal controls, and ensure compliance with State Bar and other funder requirements.

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Responsibilities:

- Serves as the public face of LASSB; provides leadership in local, state civil legal aid forums; participates in administrative and private forums; engages with the local courts, community leaders, and with the private bar
- Assists members of the Board of Directors in developing the knowledge and skills needed for effective stewardship of LASSB
- Keeps the Board of Directors fully apprised of all aspects of the organization's work, with a strict focus on grant compliance and fiscal transparency and accountability
- Increases and diversifies financial support through private fundraising initiatives; maintains and strengthens governmental funding and provides strong financial stewardship
- Develops and cultivates relationships with individual and corporate donors, as well as grant makers
- Leads LASSB advocacy and promotes teamwork among all LASSB programs, staff, and services
- Thinks creatively about gaps in civil legal services and works to close those gaps, in partnership with other local, regional and state leaders
- Leads and promotes collaboration with other civil legal services providers and human services organizations in the region and throughout the state
- Mentors and builds other leaders within the organization; actively promotes supervisory training, improved communication, and the development of skills to address personnel and resource allocation issues
- Envisions and implements technological innovations that enable staff to work effectively and enable the public to access legal services
- Hires and retains top quality staff

Requirements and Desirable Qualifications:

- California State Bar License in good standing
- Significant civil law practice experience (three years minimum)
- Experience in compliance with grant, contract and legal-aid principles and requirements
- Demonstrated supervisory experience at a policy-making level including non-profit program planning, evaluation, staff supervision, legal systems development, financial oversight, reporting and budget development

Other Desirable Skills & Characteristics:

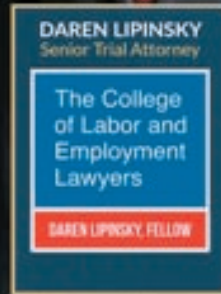
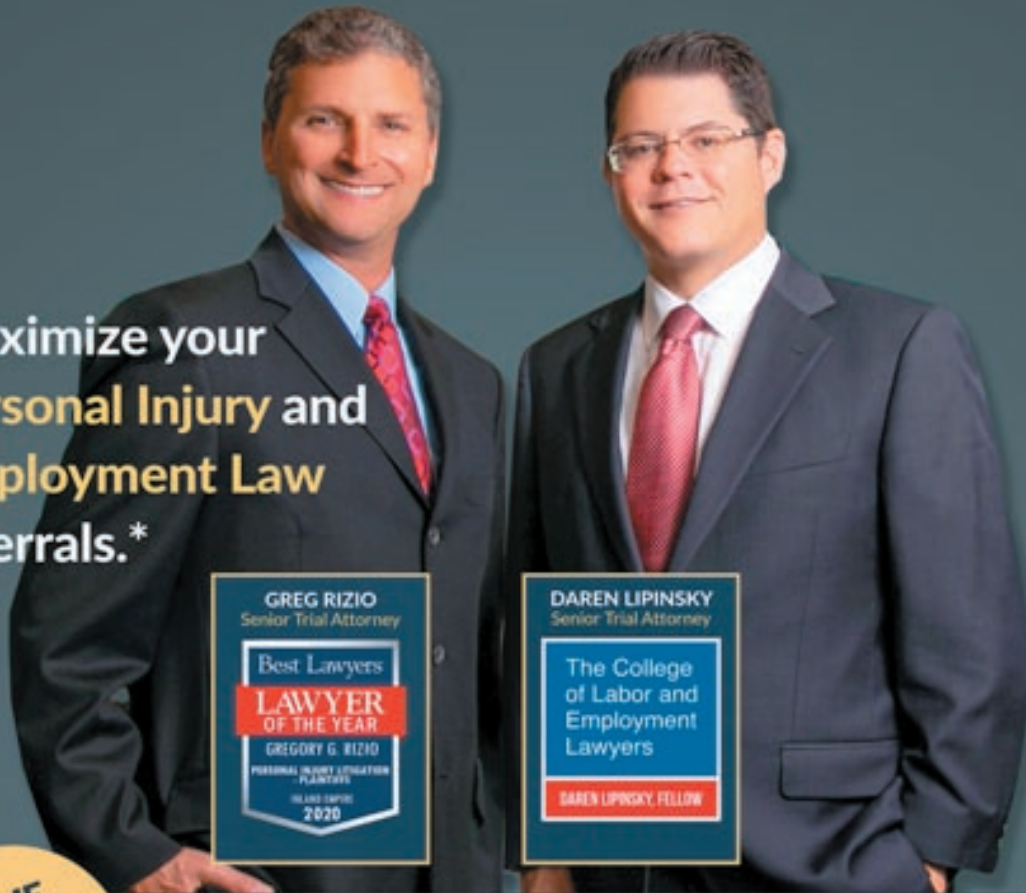
- Excellent leadership and communication skills; a positive leadership style; a collaborative and visionary approach to problem-solving
- Experience developing relationships for resource development and fundraising
- Commitment to the use of technology to improve and extend services
- Experience and skill in engaging with the legal-aid client community and with an active Board of Directors
- Good judgment, integrity, a sense of humor, strong interpersonal skills

Applications will be accepted electronically ONLY, and until the position is filled. To receive full consideration, please submit application materials to the Secretary of the Board of Directors, Connie Johnson at csjohnson@b3law.com by May 31, 2020. Please include a cover letter expressing in detail your interest in the position, your qualifications, and what you hope to contribute to the organization's future, a current resume, and the names and contact information for three professional references.



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Wrongful Death - San Bernardino

\$600,000

Auto vs. Truck - Riverside

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JUNE 2020 ALMANAC

By: Tony Sears

All times Pacific Daylight Time (PDT), which is minus seven (7) hours from UTC (Universal Time Coordinated).

Garden Notes: Hey. I'm back. My yard in Claremont and ½ acre garden at Rainbow Canyon Ranch in Azusa have never looked better. I have been harvesting carrots, onions, beets, snap peas, arugula, lettuce, and Swiss chard. I have planted patches of sweet and ornamental corn. Next up are more tomatoes, musk melons, peppers, summer squash, pumpkins, and watermelons. I have three raised beds which I am following until the fall planting season. The roses are spectacular and the sunflowers can be seen from space.

In early May, I planted nine (9) fifteen gallon fruit trees in an orchard at the ranch.

I actually did the research and was able to get three plums, three peaches, two nectarines, and an apricot. These trees will bear from April to October. These varieties need anywhere from 200 to 500 hours of chilling. This means that it as to get 45°F or lower. This isn't that many hours. Some varieties of apples and cherries require 1200 or more hours. The chilling is absolutely essential to getting a tasty crop. It starts to get cooler at night in our area in mid October. The vast amount of the chilling hours are at night.

Of course, the next morning, gophers had tunneled a good 10 meters from the riverbank directly into orchard and into the basin where a new tree was planted. You could see hump from the tunnel on the surface of the orchard. I look care of them with Maccabee traps.

Raven Rescue: On 21 May I went out to the ranch garden to water. To my surprise, there was a fledgling Chihuahuan Raven, *Corvus Cryptoleucus*, on the ground near my tool shed. It tried to fly, but it was not able to do so. With a brave assist from our ranch manager, Candy Pipkin, we captured the bird, which had hopped into a large Blue Agave plant. We carefully placed the bird in a Walmart box with a towel. I do believe the towel weighed more than the bird.

I immediately took it to Wild Wings Bird Rescue in San Dimas. They told me the it was 4-6 weeks old and was quite malnourished, which is why it couldn't fly. No chance of putting it back the nest, as the nest is under the bridge on Hwy 39.

The raven, which has been named "Lucky", is on the mend at Wild Wings. Lucky is set to be released back at the ranch later this summer after it bulks up all the way up to 24 ounces, grows to be 25 inches tall, and have three to four foot wing span. Lucky 's expected life span in the wild is 10-15 years. I thought briefly about keeping Lucky as a pet. Then I thought better of it. A fledgling raven raised in

captivity has a life span of 30-40 years. A group of ravens is either "an unkindness of ravens" or better yet, "a conspiracy of ravens".

June Almanac: The full Moon in June is known as the "Milk Moon" or the "Honey Moon" and will rise in east southeasterly sky on Friday 5 June at 8:14 p.m. , having gone full earlier at 12:13 p.m. At that point, the Moon will be a mere 228,320 miles away.

Recipe of the Month: Father's Day, 21 June 2020. Here is a simple menu for dear old Dad. The Flat Iron Steak was developed by the meat scientists at the University of Nebraska. This cut is similar to a Hanger or Skirt steak used to make carne asada.. This cut, technically the "Top Blade off of the Chuck", used to be added to mix for ground beef. It has recently been widely available, usually in a cryopack, weighing in at 1 to 1.25 lbs. This cut resembles an old time flat iron, hence the name. Plan on one steak for 2 Big Boys or 3 regular folks.

The Flat Iron Steak Father's Day Dinner:

Flat Iron Steak(s) - Kosher Salt and cracked Black Pepper.
About 3-4 hours before dinner, bring the steak(s) up to room temperature in the package. Unseal the package and season with nothing more than Kosher Salt and Cracked Black Pepper. No fancy dry rubs or marinades. Simply salt and pepper. Have your grill heated up, as you would for direct grilling. 3-4 minutes per side for rare; 5-7 medium rare. If you have a meat thermometer, please use it. Slide it horizontally into the thickest part of the steak. Set for Please be careful not to overcook this steak, unless you really truly like well done. As always, please let your steak(s) rest under foil for at least 10 minutes. This will allow the meat to reabsorb moisture and finish cooking evenly. Slice across the grain. Try not to eat all of it before you serve it.

Steamed Artichokes or Green Beans or Asparagus. Any one of these will work well with this recipe. The trick with the fresh green beans is to steam them until barely fork tender and remove from heat. The trick with the asparagus is the same, except put the asparagus into an ice bath, resulting in a firm texture. Steam the Artichokes until the base is fork tender and let cool down. Serve with drawn butter or a simple sauce of equal parts mayo and Dijon mustard and a tablespoon of dried dill, combined in a small bowl.

Oven Roasted Rosemary Garlic New Potatoes. Combine washed potatoes, 2 Tbsp. olive oil, 2-3 gloves of finely minced or pressed garlic, and finely chopped fresh rosemary. Roast at 325 f for 45 minutes or until potatoes are fork tender. Remove from oven, cover with foil.

Strawberry Shortcakes. Have you used Bisquick lately? Magic in a box. Buy a fresh box and follow the recipe for shortcakes (you may have to go online to get shortcake recipe). Strawberries should be well rinsed and trimmed. When you puree the Strawberries, add a splash of Grand Mariner or Cointreau. Break out the mix master for fresh whipped cream.

Buon Appetito! Tony Sears



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June 2020

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