

# CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

January 2017

The Criminal Courts Bar Association  
cordially invites you to the  
**JANUARY DINNER  
MEETING**  
with Guest Speaker



**RICHARD A. HUTTON**  
*"DUI: Case Law Update"*



**Tuesday, January 10, 2017**

**Cocktails/Reception**  
6:30 p.m.

**Dinner Meeting begins promptly**  
at 7:00 p.m.  
\$40.00 per person

**Les Freres Taix Restaurant**  
1911 Sunset Blvd.  
Los Angeles, CA 90026  
(Near Alvarado)

**1.0 MCLE Credit Approved**

Reservations advised.  
Call Elizabeth Ferrat at  
(626) 577-5005 or email at  
[criminalcourtsbarassociation@gmail.com](mailto:criminalcourtsbarassociation@gmail.com).

**PAY BY CREDIT CARD**  
**ONLINE REGISTRATION IS AVAILABLE!**  
**GO TO "SEE EVENTS."**  
<http://www.laccba.org>

## CCBA WELCOMES **RICHARD A. HUTTON** AS OUR FEATURED DINNER SPEAKER

Richard A. Hutton graduated from the University of California at Los Angeles in 1967 with a Bachelor's Degree, and with his law degree from the same university in 1970.

Mr Hutton is a past President of the Board of Governors of the California Attorneys for Criminal Justice (CACJ), past President of the Los Angeles County Criminal Courts Bar Association, and past President of California DUI Lawyers Association (formerly California Deuce Defenders).

Mr. Hutton is presently a partner in the Pasadena law firm of Hutton & Wilson. During his career, dedicated almost exclusively to criminal law, he has tried over five hundred jury trials. He has been designated as a Certified Criminal Law Specialist by the California State Bar Board of Legal Specialization. Additionally, he has represented various organizations appearing before the California Assembly Legislative Committee in Sacramento, testifying regarding proposed legislation.

In 1991 and 2010, Mr. Hutton received the Jerry Giesler Memorial Award from the Criminal Courts Bar Association. This award recognizes outstanding courtroom abilities.

In 2010, Mr. Hutton received Trial Attorney of the Year from the Los Angeles County Bar Association.

Mr. Hutton has lectured extensively in the field of criminal law, with emphasis in driving under the influence cases. He has previously taught classes for the U.S.C. Advanced Professionalism Program on the subject of driving under the influence. He has lectured to various bar association groups, including California Attorneys for Criminal Justice, San Diego Trial Lawyers Association, Criminal Courts Bar Association, and Orange County Trial Lawyers. He has authored numerous articles on driving under the influence which have been published in numerous periodicals including Scientific and Expert Evidence, Second Edition.

## **TONY BROOKLIER** (1946 - 2016)

*By Robert A. Schwartz*

I have written many pieces for this newsletter in the past 20 years commemorating the deaths of our colleagues in the defense bar, but one I never expected to write during my career was one about Tony Brooklier. The stunning news of his suicide is still difficult to process. Brooklier to a remarkable degree concealed from the outside world the depth of his grief and depression over the suicide death of his oldest son a year previously and, certainly near the end, his own personal demons masked by struggles with alcohol. No one, even those close to Brooklier, could honestly say that they saw this ending coming on the horizon.

Make no mistake, Brooklier was one of the great criminal defense attorneys of our time. He was the consummate defense attorney, equally adept at skillfully negotiating a favorable settlement for his clients as he was at waging a battle at trial, usually with great results. He had a great gift of extracting some useful gem from a witness on cross-examination, and the witness never knew what hit them. Not infrequently, he pulled a rabbit out of a hat. Blessed with Hollywood good looks, he lit up every

*(Continued on pg. 2)*

## TONY BROOKLIER *continued*

courtroom he entered, ingratiating himself with a disarming charm and irreverent wit, an endless inventory of jokes and priceless war stories, and a mastery of the nuances of his cases owing to methodical preparation. He made friends wherever he went, even where his clients had done horrible things. Over the years Brooklier's clients ranged from celebrities and mobsters, to cops, doctors and lawyers, and everybody in between. He had a big heart, and a special understanding of his clients' motivations and needs. Like every great author and trial lawyer, he saw things other people didn't see, and often employed this skill to uncover some underlying theme or narrative in each case to humanize the client and their case. Though remarkably skilled and smooth as silk in the courtroom, Brooklier was a model of humility and understatement. He was at once streetwise and a deep thinker. Even with his wide-ranging knowledge, he knew what he didn't know, and never hesitated to consult with others to fill in the gaps.

Brooklier's interpersonal skills were off the charts. He could effortlessly engage in in-depth conversation with a mere acquaintance, who would walk away thinking they had found a new best friend. It is notable, in the often adversarial if not toxic atmosphere of the criminal justice system, that Brooklier was so universally admired and respected for his integrity and buoyant personality, including judges, prosecutors, defense attorneys, and court staff. Recently a court reporter in Van Nuys who barely knew Brooklier began tearing up as we spoke about his death. A Sheriff's Deputy who has worked the attorney room at the Men's Central Jail for years approached me out of the blue to talk to me about Brooklier, and especially how he and colleagues appreciated Brooklier's professional manner and courtesy, especially when dealing with some problematic high profile inmates.

Brooklier was fearless in the courtroom, aided and abetted by a wicked sense of humor. He hated bullies, and stood up to them when challenged. In a particularly acrimonious high profile case in Ventura County where Brooklier was representing an alleged leader of the Hell's Angels accused of drug trafficking, Brooklier told off the prosecutor, who he believed was being deceitful and obnoxious, not to mention self-righteous, with a barrage of expletives. When the judge took the bench the prosecutor whined to the judge about what Brooklier had said to him. When the judge queried him about the prosecution's accusations, Brooklier instantly admitted the prosecutor's allegation, "And," Brooklier proudly proclaimed, "I said it because it's all true." Brooklier then noticed former CCBA president Mark Rafferty seated among a row of defense counsel, sat down next to Rafferty, and whispered to him the best Rodney King imitation: "Why can't we all get along." In a high profile sexual assault jury trial representing a prominent fashion designer before Judge David Wesley, a prosecution witness began veering off from what she was asked into a recitation of her personal problems. Brooklier objected. Judge Wesley asked for legal grounds. Brooklier was stumped for a moment, then blurted out "Dear Abby." Judge Wesley shot back, "Objection sustained."

It is now common knowledge that Brooklier grew up as the son of a Mafia boss, a circumstance that throughout his life proved to be both a blessing and a burden, and it will never be known how his past may have contributed to lapses in judgment, some would say recklessness, in missteps like the failure to file federal tax returns for several years. In his first trial as a defense attorney, Brooklier represented his father on murder and racketeering charges in federal court, an enormous pressure on any young attorney, let alone someone representing his own father. His father was acquitted on the most serious charges, but was sentenced to prison where he died. His father's name and

reputation gave Brooklier early on instant credibility with many hard core clients, many of whom harbored distrust of all attorneys; unfortunately it also made him a target of clumsy law enforcement attempts over the years to set him up. All of this drama may seem fictional to outsiders, but as we often say in court you can't make this stuff up.

Brooklier prized loyalty, and was in turn fiercely loyal, even to some who had wronged him. He was renowned as a mentor to many young attorneys for whom he always had a kind word and a pep talk of heartfelt encouragement. We are all diminished by the loss of this special man.

Two other well known criminal defense attorneys recently passed away. One of them was Ted Yamamoto, who succumbed after a long bout with lung cancer. Yamamoto's trademark was a perennially sunny disposition, and he carried into every courtroom an inner wisdom, an easy smile, and self-deprecating wit. He had many trial successes over the years. For those of us who were lucky enough to have done a trial with him, it is indisputable that he was just fun to be around, no matter the gravity of the case or circumstances. The other, Rowan Klein, was a leading figure in the fight to expand and protect prisoner's rights in California.

---

## PAUL POTTER (1947 - 2016)

Born March 30, 1947 in New York City passed peacefully on December 21, 2016 in Los Angeles, California. Paul lived a rich, complex and full life. Following graduation from Pasadena High School, he moved to San Francisco in the early 60's to live in the Haight Ashbury district. He was a voracious reader and included in his circle, Lawrence Ferlinghetti and Janis Joplin. In the late 60's he made his way through Mexico, Central America and South America by truck, bus, boat and car to Santiago, Chile where he worked as a stringer for Time Magazine and other publications. With the sudden assassination of Salvador Allende in September 1973, he fled with his family over the Andes to Argentina. They settled in northern Spain where he resumed writing and learned to speak Catalan.

Paul returned to the United States in the late 1970's. He worked as a Spanish language interpreter in the courts. He spoke formal Spanish and was appreciated by defendants, judges and attorneys. While interpreting, he enrolled in law school, excelled in his studies and graduated at the top of his class. He was admitted to the California Bar in 1980. He practiced primarily criminal defense law where he poured himself into the defense of complex fraud and death penalty cases. He practiced law in Pasadena with his father and brother for 36 years.

In 1995 he met Esther and together they forged a powerful bond that included hiking, bicycling, traveling, family, eating and cooking. As an avid reader who was able to appreciate and expound upon the finer points of Salman Rushdie, China Mieville and Umberto Eco. He enjoyed dramatic reading to his grandchildren. After many years of happiness, he and Esther married in September 2013. Paul continued to represent clients through November 2016.

Paul, the son of Vilma Potter and Bertram Potter (deceased) is survived by his sister Alexandra Watts, his brother, Joshua Potter, and his beloved wife, Esther Potter. He leaves behind his adoring children, Billie Melillo, Moira Potter, and Pablo Potter and his adoring grandchildren: Miette, Audrey, Eleanor, Colin, Spencer, Cameron, and his son-in-law's Jason and Shawn and daughter-in-law Jenny.

## CCBA MEMBERSHIP

You are hereby cordially invited to join or renew your membership in the Criminal Courts Bar Association.

The first meeting of the Criminal Courts Bar Association took place in 1954 at the old Levy's Restaurant located on Spring Street in downtown Los Angeles. Among the founders and active practitioners who helped form our organization were Al Matthews, Abbot Bernay, Max Solomon, John Marshall, Forrest Appell, Dick Erwin, Harold Ackerman, Joe Rosen, Maury Lavine, and Al Garber. Jerry Giesler actively participated in the organization in its initial stages and he was the only president to serve two terms.

The Articles of Incorporation state that "the specific and primary purpose of this corporation is to form a professional association of attorneys actively engaged in the practice of law who are dedicated to upholding and improving the standards for the administration of justice."

Quoting our revered past president, James G. Cooney, "since the beginning that statement of purpose has been and is the reason for our existence. Our association will grow in size, strength, and respect only to the extent permitted by the force, vigor, and diligence generated by the membership."

These are among the many reasons to join the Criminal Courts Bar Association:

- Networking opportunities through our monthly dinner meeting and social events.
- MCLE credits.
- Newsletter: Keeping you up-to-date with current case law and events of importance.
- Charitable opportunities through our fundraising, golf tournament, and annual clothing drive.
- Annual Awards Dinner where the best and brightest of our profession are honored.
- Lend your voice to the other professionals who make a difference in the criminal justice system.
- Be a part of the history and tradition of the Criminal Courts Bar Association.

Please join and consider upgrading to a CCBA Sponsor to support our association.

Thank you.  
CCBA Board of Directors

---

## CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

*People v. Munoz* (2016) \_\_Cal.App.5th\_\_, reported on November 21, 2016, in 2016 Los Angeles Daily Journal 11469, the First Appellate District, Division 1 reversed the superior court appellate department's finding that Vehicle Code section 31 did not violate the First Amendment. The constitutional deficiencies in Vehicle Code section 31, which criminalizes making of false statements to law enforcement officers while they are engaged in the performance of their duties, may be cured by construing or reforming the section to include a materiality provision. The lack of instruction that the defendant could not be convicted of violating section 31 unless his false statements to police were material, was harmless because the questions the defendant was convicted of answering falsely, "have you been drinking?" and "where are you coming

from?", were obviously material to the investigation of whether defendant was driving while under the influence. The Court of Appeal found that the lower court erred in relying on *United States v. Alvarez* (2016) U.S. , [132 S.Ct. 2537] given the fact that section 31 does not target protected speech, and the section is not a content-based restriction. It is of a "commercial establishment."

*People v. Selivanov* (2016) \_\_Cal.App.5th\_\_, reported on November 21, 2016, in 2016 Los Angeles Daily Journal 11403, the Second Appellate District, Division 4 held that in the trial of charter school operators, who were husband and wife, for financial crimes, the embezzlement conviction was supported by substantial evidence. It was reasonable for the jury to infer fraudulent intent from the defendants' use of school credit card to pay for meals at "business meetings" that occurred late at night and on weekend afternoons, and from their entering such expenditures in the school's books in categories including "utilities and housekeeping," "school supplies," and "dues and subscriptions." The trial court's failure to instruct the jury to determine under *Apprendi v. New Jersey* (2000) 530 U.S. 466 and *Alleyne v. United States* (2013) U.S. [133 S.Ct. 2151], whether the embezzled funds were "public funds" within the meaning of section 514 was harmless error because no reasonable jury could have found otherwise. However, the trial court did err in ordering one defendant to pay joint and several restitution for funds embezzled by the other defendant.

*People v. Villagran* (2016) \_\_Cal.App.5th\_\_, reported on November 22, 2016, in 2016 Los Angeles Daily Journal 11495, the First Appellate District, Division 5 held that there was sufficient evidence to sustain a conviction of section 288, subdivision (a). Here the defendant committed the crime of attempted lewd and lascivious acts on a child under 14, by communicating with the victim via text messaging. (See *People v. Imler* (1992) 9 Cal.App.4th 1178, 1179-1182.) The sexual intent and the touching required by section 288, subdivision (a) need not occur simultaneously. (See *People v. Lopez* (2010) 185 Cal.App.4th 1220, 1230-1233.) The rule that a defendant may not be convicted of violating a more general statute when a later enacted, more specific statute applies did not preclude the conviction under section 288, subdivision (a) given the fact that section 288, subdivision (a) contains an element not contained on the face of the allegedly more specific statute, section 288.3, which prohibits contacting a minor to engage in lewd behavior.

*People v. Walker* (2016) \_\_Cal.App.5th\_\_, reported on November 22, 2016, in 2016 Los Angeles Daily Journal 11493, the Second Appellate District, Division 1 held that where a defendant was convicted of murder "after" the offenses in which he would be eligible for a reduction under Prop 47, this court held, in spite of the language of the statute, that he was not eligible to have any of his prior convictions reduced to misdemeanors under Prop 47. The statute says the murder, etc has to be "prior" to the offenses where the defendant is entitled to have them reduced, not "after" the offenses that the defendant is entitled to have his conviction(s) reduced.

*People v. Guerra* (2016) \_\_Cal.App.5th\_\_, reported on November 22, 2016, in 2016 Los Angeles Daily Journal 11489, the Fifth Appellate District held that Code of Civil Procedure section 77, subdivision (d) mandates that the superior court appellate department issue a statement of reasons for its judgment overturning the trial court's ruling. There is no conflict between the statute and Rules of Court, Rule 8.887(a), which indicates that the appellate department need not issue written opinions, since a brief statement and an opinion are not necessarily synonymous.





## CRIMINAL COURTS BAR ASSOCIATION

c/o Law Offices of Hutton & Wilson  
1055 E. Colorado Blvd.  
Suite 310  
Pasadena, CA 91106

**YOUR LAST MINUTE NOTARY**  
**POWER OF ATTORNEY**  
**BANKS & REAL ESTATE DOCUMENTS**

*Rob Rutt*  
NOTARY PUBLIC  
FEDERAL CLEARANCE  
CERTIFIED SIGNING AGENT

☎ 310.907.3515  
☎ 877.574.6668  
✉ ROBONTHEJOB247@YAHOO.COM

*Nation Wide Service*  
*Serving all Jails & Attorneys*

*Call for Appointment Weekends & Holidays • Open 24 Hours a Day*

### JACK TRIMARCO POLYGRAPH, INC.

*When you need to impress someone with the truth...*

#### JACK TRIMARCO

CA P.I. # 20970

Former Polygraph Unit Chief, F.B.I. - Los Angeles (1990-1998)

Former Dept. of Energy Inspector General - Polygraph Program (1999-2001)

9454 Wilshire Blvd., 6th Floor  
Beverly Hills, CA 90212

(310) 247-2637  
jack@jacktrimarco.com

## SAVE THE DATE



*64th Annual*  
*Criminal Courts Bar Association*  
**AWARDS DINNER**  
*will be held on*  
*Saturday, March 25, 2017,*  
*at the California Club,*  
*Los Angeles.*