

CRIMINAL COURTS BAR ASSOCIATION
NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

February 2014

FEBRUARY MEETING

*The Criminal Courts Bar Association
cordially invites you to the
February Dinner Meeting*

with guest speaker

BEN FORER

Veteran Prosecutor with Los Angeles
County District Attorney's Office

**"ANATOMY OF AN
IDENTITY THEFT CASE"**



TUESDAY, FEBRUARY 11, 2014

Cocktails & Appetizers - 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 hour MCLE Pending

Reservations advised. Call Elizabeth at (626) 577-5005.

CCBA WELCOMES BEN FORER, D.D.A.

Ben Forer is a veteran criminal prosecutor with the Los Angeles County District Attorney's office. He has prosecuted thousands of cases, ranging from narcotic offenses to gang murders to complex white collar crime. Currently, he is a member of the prestigious High-Tech Crimes Division, focusing on technologically based crimes. He has been a member of this unit for approximately a year and a half. Mr. Forer is also a Privacy Law professor at USC and an experienced lecturer; having lectured on a wide-range of topics, including criminal justice, constitutional issues, complex fraud and white collar offenses.

☞ DINNER MENU ☞

Appetizers:

Cheese Platter and Homemade Potato Chips and Dip



The main entrees will be:

Short Ribs Provencal

*Braised with carrots, tomatoes and celery.
A house favorite.*

Fresh Filet of Salmon

Grilled and served with champagne sauce.

*Entrees include relish trays, soup du jour, fresh
sourdough bread, garden salad with house vinaigrette
dressing, fresh vegetable, rice or potato,
sherbet and coffee or tea.*

JAY GLASER

(1963 - 2014)

By Robert Schwartz

The sudden death of a colleague while in the prime of their life and career is always cause for a heavy heart. This is especially so in the case of criminal defense attorney Jay Glaser, who died instantly in a freak one car accident in the early morning hour of January 11th while driving near his home in Palos Verdes. Glaser was a highly respected even beloved advocate who earned admiration and affection in every sphere of his life, as reflected by the massive turnout at his funeral at Mount Sinai Cemetery that included family, friends, defense attorneys, judges, prosecutors, courtroom bailiffs, and even a homicide detective he had opposed in court.

What we are left with are the memories of a fearless litigator, with an engaging and dynamic personality, and a tireless work ethic who fought hard and effectively for his clients. A one-time Los Angeles County Deputy Public Defender, Glaser built a thriving private practice in Long Beach and was a rising star in the field of criminal defense. He was a member of the ICDA executive committee, driving in rush hour traffic from Long Beach to downtown LA and his contributions at meetings were thoughtful and insightful. He was serious about his work and his clients but never took himself too seriously, often flashing a self-deprecating wit. Glaser represented his clients with great passion but never crossed the ethical line. He had a big heart and handled cases pro bono or for fees a fraction of what his valuable services were worth. Anyone who knew Glaser well could attest to the fact that he was a social animal - - animated, fun to be around, funny with a ready inventory of jokes and quips - - but he was never flippant or mean-spirited. He was assertive and self-confident but not cocky. Beneath the gregarious demeanor, there was a wisdom beyond his years, a capacity to be introspective and even a bit of melancholy, the latter perhaps the product of being the child of a Holocaust survivor.

As noted at the funeral, family meant everything to him, particularly his young daughters who he adored and there were no bounds to his loyalty to his friends. Glaser, like many of his colleagues in the Long Beach area, had the good fortune of entering the social circle of the now deceased attorney Ted Viganes, who became Jay's mentor and second father, and with whom Glaser shared a love of racing cars, story-telling and good food and drink. The new Long Beach courthouse has only been open for a short time, but already Glaser was a courtroom fixture. It is difficult to walk into that courthouse now without picturing Jay and sensing our collective loss. None of us will ever know whether the instructions to his oldest daughter just days before his death that included a command to not sell his car should he die or the music that should be played at his funeral were an eerie premonition or merely a coincidence. What we can safely say is that we have lost a genuine brother and colleague, and that a great spirit has become extinguished before his time was due.



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IN THE TRENCHES

Your editor has himself been "in the trenches" the last several but has collected some interesting cases to share with our association.

Also, enclosed with the newsletter is an "In the Trenches" fact sheet. If anyone knows or participates in a trial of interest to our members please fax or email it to me so that it can be shared with everyone.

Congratulations to ALEX KESSEL who successfully argued a double jeopardy motion before the Honorable Kathleen Kennedy.

In a brief statement of facts Mr. Kessel's client and the codefendant allegedly carried out a hit for the Mexican Mafia. The main witness was an accomplice who testified at trial implicating Mr. Kessel's client as one of two shooters. After the jury convicted the defendant's, Judge Kennedy granted a new trial motion based on insufficient accomplice cooperation (P.C. Sec. 1111). Upon motion, the judge granted the defendant's double jeopardy motion and dismissed the case.

In granting the new trial motion Judge Kennedy said, "In 24 years on the bench, this was first new trial motion she has granted." In granting the new trial motion the judge stated that while the defendant was most likely guilty, Mr. Kessel provided legal authority requiring dismissal of the case.

Congratulations to JOEL ISAACSON and BILL SEKI, again in front of the Honorable Kathleen Kennedy.

Two Los Angeles motor officers were charged with perjury pursuant to P.C. Sec. 118(a), after testifying inaccurately before the Superior Court and the Department of Motor Vehicles regarding observations about a drunk driver. The defense claimed honest mistake with no motive while the prosecution alleged intentional lies by the officers.

The trial lasted six days and the jury deliberated for two hours. The verdict was not guilty on all counts for both defendants.

The defense called Dr. Elizabeth Loftus on memory issues.

Both defendants called numerous character witnesses and the evidence of honesty presented was well received by the jury. Mr. Isaacson recognizes that for the majority of our cases we rarely get the opportunity to call character witnesses but he suggests it is something to look for in the right case. He suggest that we consider an In Limine motion to settle any cross examination issues and the usual questions "have you heard?" or assume the defendant committed the crime.

Congratulated to former CCBA past president ROBERT SCHWARTZ for an acquittal he obtained for his client in an often acrimonious three week trial in Department 127 of the CCB. His client, an LAUSD elementary school teacher, was charged two counts of Penal Code Section 288(a) and one count of Section 288.5 (continuous sexual abuse of a child) arising from allegations that he molested a female student in his second grade class. If convicted as charged Mr. Schwartz' client faced a sentence of up to 32 years in state prison.

At the outset of the trial things looked pretty bleak for the defense. During jury selection, once the prospective jury panel learned of the charges and that the defendant was a teacher, nearly half of the jurors stated that the defendant was probably guilty, that the defense had to prove his innocence, and that a child wouldn't lie in such a case. One juror, a teacher, launched into a tirade about the "disgusting" actions of the teacher at Miramonte Elementary School. To help dispel some of these strong sentiments, Mr. Schwartz delivered an unusually long opening statement specifying in great detail what he intended to prove at trial: Although the alleged victim's version of what happened - - that she was sexually touched (i.e. that defendant placed his hand inside her private parts in the classroom during class nearly everyday) by the defendant while he was seated in a chair next to her - - was inherently improbable, the Deputy District Attorney from the sex crimes unit assigned to the case personally interviewed the al-

leged victim after which she unequivocally declared that she believed the girl was telling the truth and was very credible.

At trial the prosecution threw everything but the kitchen sink at defendant, attempting to characterize every act of caring, kindness, and understanding displayed to members of the class as a premeditated form of "grooming behavior." The prosecution presented the testimony over defense objection of the SART nurse who asserted that although she found during a thorough physical examination of the alleged victim the hymen entirely intact and no indication of any tearing or other damage to the hymen or any other part of the girl's genitalia, that nonetheless the absence of a physical finding was consistent with sexual abuse (not just the more neutral not inconsistent with opinion). The prosecution also called a psychologist, who was paid \$425 per hour by the District Attorney's Office, as an expert on Child Sexual Abuse Accommodation Syndrome (CSAAS), and in particular to explain grooming behavior by a perpetrator of child sexual abuse and the reasons why children victims of sexual abuse do not disclose the abuse to anyone while the abuse is occurring. (Here the alleged victim according to her own testimony told no one of the abuse during the school year while it allegedly occurred and not until the first day of the new school year when she found out that defendant would again be her teacher.) Mr. Schwartz confronted the psychologist with articles written by Dr. Roland Summitt, the creator of the CSAAS concept, about the secrecy element of the syndrome. As Dr. Summitt wrote, the hallmark of the abusive relationship between the child victim and the offending adult is that it is carried out in private, and that children are often reluctant to disclose such private conduct out of fear that no one would believe such an accusation against a grown-up, especially an authority figure. How, Schwartz asked, could this secrecy factor apply when the alleged conduct occurred nearly everyday in front of 19-25 other classmates. The well-paid expert danced around answering this question. The alleged victim stuck to her story in her testimony, weeping at times, and in a dramatic gesture, wailed and collapsed into the arms of her mother, who was sitting beside her as a support person, at the conclusion of her testimony in the prosecution case-in-chief. (She was brought back by the DA in rebuttal.)

The defense called two students from the class, who testified on cross-examination that they thought the alleged victim was lying and the school principal and counselor, who came in the classroom frequently unannounced and at all times of the morning and afternoon and never saw anything even remotely improper. The defense also utilized *People v. McAlpin* (1991) 53 Cal. 3d 1289, to call four character witnesses - three other teachers and a school librarian - - to give lay opinion that defendant was not sexually attracted to young girls. The court also, after Mr. Schwartz cited *People v. Hempstead* (1983) 148 Cal. App.3d 949, forbid the DA from asking the character witnesses if they would maintain their opinion if they knew he had committed the offenses he was charged with. Defendant also testified. The prosecution sought to call on rebuttal an LAPD detective assigned to child sexual abuse investigations who wished to explain in greater detail grooming behavior by sexual perpetrators and a link between child sexual abuse and child pornography (of which there was no evidence in this case.) The court, after Mr. Schwartz cited *People v. Carter* (1957) 48 Cal. 2d 737, and other authority, excluded such testimony as improper rebuttal, noting correctly that rebuttal is not merely an opportunity for the prosecution to present a second case in chief.


Schwartz's closing argument, spread out over two days, lasted over 3-1/2 hours, by far the longest of his career. The jury presented with over 75 exhibits, deliberated approximately three hours before acquitting defendant of all three charges.



CRIMINAL COURTS BAR ASSOCIATION

c/o Law Offices of Hutton & Wilson
1055 E. Colorado Blvd.
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9171 Wilshire Blvd. #660
Beverly Hills, CA 90210
www.martybrenner.com
marty@talktomartyb.com

"People can change."

SAVE THE DATE

- *CCBA Dinner Meeting will be held on
February 11, 2014, at Taix Restaurant.
The featured dinner speaker will be
Ben Forer, D.D.A., "Anatomy of an
Identity Theft Case."*