

# CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

APRIL, 2014

*Bringing glamour back to the Boulevard...*

You are cordially invited to the  
Criminal Courts Bar Association

## *61st Annual Awards Dinner*



**SATURDAY, APRIL 26<sup>TH</sup>, 2014**

Hollywood Roosevelt Hotel  
7000 Hollywood Boulevard  
Hollywood, CA 90028

*Cocktails at 6:00 p.m. at "Historic Lobby"*  
*Dinner at 7:30 p.m. at "Blossom Ballroom"*

*Master of Ceremonies*  
**Kyle Secor**

Installation of Incoming President Michael A. Goldstein  
As we install our 61<sup>st</sup> President we pay tribute to the 60 Past Presidents

**\$170 per person - Black tie optional**

After Party at The Spare Room  
Join us for music, cocktails, good company, special guests and some bowling...  
A suggested \$20 per person donation benefits Delancey Street Foundation

For more information contact Michael Goldstein or Irma Vazquez at  
Email: [mg@goldsteinlawgroup.com](mailto:mg@goldsteinlawgroup.com)  
Phone: 818-905-7272

**2014 CRIMINAL COURTS  
BAR ASSOCIATION  
AWARD WINNERS**

*The Criminal Courts Bar Association is pleased to announce that the 61<sup>st</sup> Annual Awards Dinner will be held on Saturday, April 26, 2014, at the prestigious Hollywood Roosevelt Hotel.*

**JERRY GIESLER MEMORIAL AWARD  
*CHRISTOPHER CHANEY***

**JOSEPH M. ROSEN JUSTICE AWARD  
*JAY JAFFE***

**JOURNALISM EXCELLENCE AWARD  
*CHARLOTTE STREET FILMS  
"THE HOUSE I LIVE IN"  
By Director Eugene Jarecki***

**ROBERT M. TAKASUGI  
JUDICIAL EXCELLENCE AWARD  
*HONORABLE LANCE ITO***

**MORT HERBERT SERVICE AWARD  
*JOHN YZURDIAGA  
& PAUL HORGAN***

**JOHNNIE COCHRAN AWARD  
*VERNA WEFALD***

**PRESIDENT'S AWARD  
*DR. MIMI SILBERT  
Founder, CEO & President  
DELANCEY STREET FOUNDATION***

**DONALD WAGER 1938 - 2014  
IVAN KLEIN 1938 - 2014**

*By Robert Schwartz*

March was not a very good month for the criminal defense bar and the legal community in general, as two of our distinguished colleagues, **Don Wager** and **Ivan Klein**, succumbed to cancer within two weeks of each other.

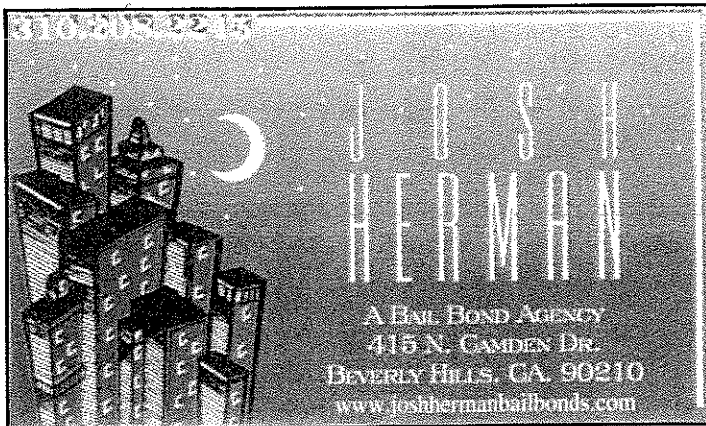
**Don Wager** was one of the great Criminal Defense lawyers and personalities of our time. A past president of the Criminal Courts Bar Association, he was a recipient of this organization's Jerry Giesler Award for trial excellence and in 2013 was presented with the CCBA's Joseph Rosen Award for career achievement marked by a video clip from former colleague, longtime friend, and federal appellate judge Stephen Trott, who saluted Wager in a touching and at time hilarious tribute. Wager possessed the whole package: he was a particularly effective plea negotiator who could shmooze with the best but when negotiations failed he was a brilliant tactician in trial -- a tenacious cross-examiner, a creative strategist, with a genuine and endearing oratorical style. Wager displayed a sharp wit and was a consummate story teller, and his infectious charm enlivened any room he walked into.

At Wager's core was an incorruptible moral compass; he was a righteous person but not self-righteous. Wager was a man of unassailable integrity, and would fight for his principles: he was an enemy of prejudice and injustice, mindless rules and policies, and bullies, and he would ferociously stand up to prosecutors and judges who abused their power.

Wager's unmatched professional ethics were shaped by his proud eight year tenure as a Los Angeles County Deputy District Attorney, including the time he spent in the Santa Monica Courthouse with future judges Trott, Robert Altman, David Fitts, Richard Neidorf, and Larry Mira, and future stalwart defense attorneys Harland Braun and Richard Hirsch. Trott and Fitts in particular were strong influences, the prevailing message being that the principal role of prosecutors is to do justice and not just secure convictions. Accordingly, Wager set a high bar for himself and other prosecutors once he entered private practice and often expressed great disenchantment in recent years with prosecutors who adopted a whatever it takes to win philosophy.

One of Wager's gifts was the ability to relate to clients from all backgrounds and social strata. He battled his own personal demons, and was candid about his own struggles overcoming alcohol and drug addiction. His self-reflections help him understand his clients, all of whom were blessed to have ended up in Wager's office. Over the years Wager's list of clients was lengthy and illustrious, including many high profile defendants, celebrities, and the son of a U.S. President. He was a mentor to many young attorneys and was generous with his time, knowledge and insights. In fact once he got started sharing his knowledge on a particular topic it was hard to get him to stop.

After Wager left the District Attorney's Office he racked up a remarkable string of acquittals in jury trials, including several murder cases. In one notable case Wager represented a mother, along with her son and daughter, who drove from Oregon to attempt to rescue her adult daughter from a Hare Krishna compound in Culver City so she could be de-programmed, believing



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## DONALD WAGER 1938 - 2014

## IVAN KLEIN 1938 - 2014

(continued)

that the group had turned the daughter into a thief and made her crazy. The Oregon family succeeded in the rescue but in the process attacked several Krishna members. In closing argument Wager traced the history of motherhood over thousand of years, and emphasized that the mother had a moral duty to protect her child no matter how old the child was. Two jurors cried during Wager's argument. After the jury returned not guilty verdicts they rushed over to hug and kiss the three defendants. Wager then took everyone to lunch. Fifteen years later one of the jurors called Wager and told him he clearly remembered after all those years the closing argument and revealed how much the argument had meant to him. You can bet Wager's legacy for the rest of us will be equally enduring.

**Ivan Klein** began his career as a criminal defense attorney as an Los Angeles County Public Defender in the 1970s. After several years he launched a private practice and handled many heavy cases assigned to him on the federal indigent panel. Klein was known for his meticulous and methodical preparation, and was highly regarded not only by his colleagues but also by federal judges and prosecutors, who recognized Klein's mastery of the details of a case and knew a trial against him would be no cakewalk. Klein was also known for his dry wit, and loved to share courtroom stories with other lawyers. Though his wit often ran caustic he avoided cynicism and was usually able to find redeeming qualities in his clients.

## CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

*People v. Infante* (2014) \_\_ Cal.4th \_\_, reported on February 21, 2014, the California Supreme Court held that section 12025 (now § 25400, subd. (c)(3)) and section 12031 (now § 25850, subd. (c)(3)) which are generally misdemeanor offenses, but they are elevated to felonies when the defendant is also guilty of active participation in a street gang in violation of section 186.22, subdivision (a). The defendant's illegal possession of a firearm (ex-felon in possession § 29800, subd. (a) (1)) is itself felonious conduct that is an element of the section 186.22, subdivision (a) offense. Therefore, possession of a firearm by a felon, which is a felony, constitutes "felonious criminal conduct" within the meaning of section 186.22, subdivision (a), so as to elevate to felonies the misdemeanor offenses of carrying a concealed firearm and carrying a loaded firearm in public when the crimes are gang-related. The decision in *In re Jorge P.* (2011) 197 Cal.App.4th 628, to the extent inconsistent with this opinion, is disapproved.

*People v. Superior Court (Flores)* \_\_ Cal.App.4th \_\_, reported on February 24, 2014, in 2014 Los Angeles Daily Journal 2095, the Fourth Appellate District, Division 1 held that the defendant's petition for recall and resentencing was dismissed under section 1170, subdivision (d) (2) (Proposition 9 in 2012), allowing defendants who were under 18 years of age at the time of committing a crime, for which they were sentenced to imprisonment for life without the possibility of parole, to petition for resentencing. Here, the defendant was sentenced to three consecutive terms of 25-years-to-life in prison for first-degree murder, albeit a very long sentence, this court found that it was not technically life without parole, and therefore neither section 1170, subdivision (d)(2) or SB 260 apply. This court did not do the same

analysis as the Court of Appeal did in *In re Heard* (2014) 223 Cal. App.4th 115, which came to a different conclusion on the question of whether there was an equal protection violation.

*In re Aarica S.* (2014) \_\_ Cal.App.4th \_\_, reported on February 25, 2014, in 2014 Los Angeles Daily Journal 2167, the Second Appellate District, Division 4 held that the trial court did not err when it overruled the minor's motion to exclude evidence under Evidence Code section 1161, subdivision (a) (Proposition 35, the Case Act 2012.) Said section provides that evidence of a sexual act is not admissible in a delinquency proceeding if the accused was a victim of human trafficking, following a finding that minor solicited and act of prostitution within the meaning of section 647, subdivision (b). The minor testified that she was "not working for a pimp at the time of the incident." The evidentiary exclusion only applies when there is a specific causal connection between the minor's status as a victim of human trafficking and the commission of the commercial sex act.

*Hinton v. Alabama* (2014) \_\_ U.S. \_\_, reported on February 25, 2014, in 2014 Los Angeles Daily Journal 2171, the United States Supreme Court held that the trial court did not properly apply *Strickland v. Washington* (1984) 466 U.S. 668. *Strickland* held that the defendant's Sixth Amendment rights are violated when an attorney's performance falls below an objective standard of reasonableness, and there is the probability that the result of the trial would have been different absent the deficient performance. Here, where the defendant's attorney rendered constitutionally deficient performance by failing to seek additional funds to hire an expert witness, after employing an expert he himself deemed inadequate. That failure was based on a mistaken belief that available funding was capped, and the mistake was an unreasonable failure to understand the resources state law made available to him.

*People v. Fernandez* (2014) \_\_ U.S. \_\_, reported on February 26, 2014, in 2014 Los Angeles Daily Journal 2222, the United States Supreme Court held, over the dissents of three justices, that the lower court did not err in denying appellant's motion to suppress, finding that *Georgia v. Randolph* (2006) 547 U.S. 103, which provided that an exception to permissible warrantless consent searches of premises when one occupant was present and objected to the search, did not apply in this case. A second occupant consented to the search of the residence well after the objecting defendant had been arrested and transported from the apartment. *Randolph* applied to objecting individuals that were near the premises being searched; allowing objections to cover indefinite durations would create many practical problems.

*Hilton v. Superior Court* (2014) \_\_ Cal.App.4th \_\_, reported on February 27, 2014, in 2014 Los Angeles Daily Journal 2315, the Second Appellate District, Division 3 held that the trial court does not have jurisdiction to modify a defendant's probation to impose restitution after the defendant's probationary term has expired. (§ 1203.3, subd. (a); *In re Griffin* (1967) 67 Cal.2d 343, 347.) The victim's constitutional and statutory rights to full restitution are not violated where the defendant complies with all restitution orders made during the term of the court's jurisdiction. The Court of Appeal also found that *People v. Bufford* (2007) 146 Cal.App.4th 996, does not change this conclusion.

*People v. Isaac* (2014) \_\_ Cal.App.4th \_\_, reported on February 28, 2014, in 2014 Los Angeles Daily Journal 2410, the First Appellate District, Division 1 held that section 1170, subdivision (h) does not authorize the imposition of a "parole revocation restitution fine" under section 1202.45 upon a defendant who, under the realignment Act of 2011, is subject to "postrelease community supervision" and not parole.