

CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

February 2015

FEBRUARY MEETING

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

**MAX
HUNTSMAN**



**LOS ANGELES COUNTY
INSPECTOR GENERAL**



TUESDAY, FEBRUARY 10, 2015

Cocktails / Reception - 6:30 p.m.

Dinner Meeting begins promptly at 7:00 p.m.

\$40.00 per person

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CCBA WELCOMES MAX HUNTSMAN LOS ANGELES COUNTY INSPECTOR GENERAL

Max Huntsman is married to former Deputy District Attorney Ann Huntsman (now retired) and they have two daughters, Caitlin (11) and Emily (16). Max joined the DA's office in 1991 after graduating from Yale Law School and served as a Deputy District Attorney for 22 years. Over those years he was assigned to branch and area courts in Downey, Bellflower, West Covina, Pomona, and San Fernando. He also worked in a variety of special units related to fraud and corruption: Automobile Insurance Fraud, Worker's Compensation Fraud, Special Investigations, Justice System Investigations, Public Integrity, and Real Estate Fraud. He served briefly as the Deputy-in-Charge of Real Estate Fraud and as the Assistant Head Deputy of Public Integrity. His notable prosecutions include a murder case which arose during an ATF undercover operation aimed at the Mongols motorcycle gang, two high profile trials arising out of a use of force by Inglewood Police Department against a handcuffed young man, and a number of public corruption investigations and trials. In late 2013, Max was appointed as the first Los Angeles County Inspector General and left the DA's Office to establish a new office for the monitoring of the Los Angeles Sheriff's Department.

DINNER MENU

Appetizer:

Imported Cheese Platter
Homemade Potato Chips
Country Platter



The main entrees will be:

Fresh Filet of Salmon
Grilled and served with a champagne sauce.

Short Ribs Provencal
Braised with carrots, tomatoes, and celery.
A house favorite.

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.

CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

People v. Losa (2014) __ Cal.App.4th __, reported on December 23, 2014, in 2014 Los Angeles Daily Journal 16813, the Fifth Appellate District held that the trial court did not err in denying the defendant's motion for resentencing under section 1170.126, Proposition 36, where the petition for resentencing is opposed on dangerousness grounds (§ 1170.126, subd. (f)), has no equal protection right to a jury trial pursuant to *Apprendi v. New Jersey* (2000) 530 U.S. 466, and its progeny, or to a finding of proof beyond a reasonable doubt. (*People v. Superior Court (Kaulick)* (2013) 215 Cal.App.4th 1279, 1301.) Defendants seeking resentencing under the initiative are not similarly situated to other defendants. (*Id.*, at p. 1306.)

People v. Franco (2014) __ Cal.App.4th __, reported on December 24, 2014, in 2014 Los Angeles Daily Journal 16892, the Fifth Appellate District held that a trial court may, but is not required to, order a supplemental probation report for the "dangerousness" hearing, pursuant to section 1170.126, subdivision (f), in making the determination whether the court should resentence the defendant under Proposition 36. Where as here, the defendant was ineligible for probation, even though he could have been resentenced as a "two strike" defendant, the failure to object to proceeding without one, such is a waiver and the forfeiture of that right to object on appeal. (*People v. Murray* (2012) 203 Cal.App.4th 277, 289, fn 12.) Waiver and forfeiture do not apply where the defendant is eligible for probation. (*People v. Dobbins* (2005) 127 Cal.App.4th 176, 178, 181-182.)

People v. Aparicio (2015) __ Cal.App.4th __, reported on January 6, 2015, in 2014 Los Angeles Daily Journal 152, the Fourth Appellate District, Division 1 held that the court of appeal uses an abuse of discretion standard when reviewing an appeal from a trial court's denial of a petition under Proposition 36, section 1170.126, when the trial court denied petitioner's resentencing based on the trial court's finding that release of the petitioner would present an unreasonable risk of danger to public safety. (§ 1170.126, subd. (f).) Petitioner had a very long, and violent, prior history of crime, but recently he had obtained his GED, participated in vocational programs and began Alcoholics and Narcotics Anonymous. Petitioner can file a writ in the superior court under section 1170.18, proposition 47, to determine if the definition of unreasonable risk of danger to the community, should be given the meaning defined in that section or whether the criteria did not change with the passage of Proposition 47.

People v. Solis (2015) __ Cal.App.4th __, reported on January 7, 2015, in 2015 Los Angeles Daily Journal 189, the Second Appellate District, Division 8 held that, consistent with *People v. Eid* (2014) 59 Cal.4th 650, where that court held, that where a defendant is charged but not convicted of the highest charged offense, kidnapping for ransom, he may be convicted of multiple, lesser included offenses, attempted extortion and false imprisonment, as long as none of the lesser offenses is included within any other of the other lesser offenses. In *Solis*, the defendant who was charged with one offense was properly convicted by a jury of two lesser related offenses, where neither of the two lesser related offenses was included in the other. Here the defendant was found not guilty of premeditated murder, second degree murder and voluntary manslaughter, but guilty of mayhem and assault with a deadly weapon, both as lesser related charges to count 1.

People v. Superior Court (Burton) __ Cal.App.4th __, reported on January 8, 2015, in 2015 Los Angeles Daily Journal 181, the Fourth Appellate District, Division 2 held that the trial court erred when it ordered the petitioner's petition for resentencing under the Three Strikes Reform Act, section 1170.126, continued for two years, so that the inmate could prove to the court he was no longer a danger to society, was without statutory authority. Where the trial court found the inmate to be a danger to the public as of the date of the hearing, the petition should have been denied.



CRIMINAL COURTS BAR ASSOCIATION

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