

CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

JUNE 2015



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*The Criminal Courts Bar Association
cordially invites you to the
JUNE DINNER MEETING*

“JURY SELECTION” TIPS FROM THE MASTERS

HARLAND BRAUN
RICKARD SANTWIER
MIA YAMAMOTO
WINSTON MCKESSON

Moderated by ROBERT SCHWARTZ



TUESDAY, JUNE 9, 2015

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*

1 Hour MCLE

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

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IN THE TRENCHES

Congratulations to Carey Caruso, son of past president, Paul Caruso for his success in a murder case with gun and gang allegations. It was alleged that the defendant driver was a member of MS 13. The case is dated back to 2006. The shooter and the passenger pled out in a MS 13 federal RICO case. The passenger gave seven proffers and got 10 years in custody before the Honorable Dale Fischer. The prosecution flew the witness out from Florida federal prison to testify at the preliminary hearing and trial. The defendant had no criminal record and testified. The defense, as quoted by Mr. Caruso was, "crummy gang member defense and lack of knowledge of shooters plans." Mr. Caruso says that the most interesting part of the trial was the late production of discovery by the prosecution which offended no one except Mr. Caruso.

The trial took eight days to complete and the jury deliberated one day before delivering not guilty verdicts.

The defense experts were John Jenks (drug usage expert) and Bill Sanders (gang expert). The prosecution expert was LAPD Detective Frank Flores. Mr. Caruso said that the District Attorney, Steve Gunson, was "straight up and a machine."

Congratulations to Tracy Grayson, Matt Kaestner, Mark Brandt, Murray Meyers, Norm Kallen, Jane Yang, and Vince Oliver, for their success before the Honorable Robert Perry.

This case was a 2010 provocative act murder between Echo Park Locos and Those Crazy Mexicans. This case involved jail house conversations between two defendants. The problem occurred over transcripts and the proper interpretation of the conversation between the two defendants. The court granted a mistrial as to those two defendants involved. The court granted Penal Code §1118 as to all of the defendants.

Congratulations to Steve Escovar for his success in two recent jury trials.

In one case the defendant was charged with violation of Penal Code Sections 245(a)(1) and 211(a) with GBI and use of knife enhancements. The case was tried in front of the Honorable Michael Garcia in Department 72 at the Metropolitan Courthouse. Mr. Escovar states that Judge Garcia did an excellent job, fairly ruling on objections and providing flexibility with attorney schedules.

The defendant is a street musician-harmonica player. He was playing music at the Grove on Fairfax when a spectator began to film him with an iPhone. The defendant asked for a donation, the spectator declined and the defendant allegedly became angry. Minutes later about a half mile away, the spectator testified that he saw the "harmonica player" walking toward him, and once they were near each other he was attacked. The attacker began hitting the spectator and demanding his iPhone. The spectator began to feel sharp pains in his neck and face and realized that he had been stabbed and slashed with a knife.

The spectator dropped his iPhone and stumbled away while experiencing paralysis in his right arm. At trial, the spectator made an in court identification and an independent witness identified the defendant as the attacker from a six-pack but not in a court identification (the defendant had cut off his long curly hair and shaved his beard). The defense was that the defendant was the harmonica player, but not the attacker a few blocks away. The result was hung jury, 11-1 for guilty on the Penal Code Section 245(a)(1) and 6-6 on the Penal Code Section 211.

The second trial involved an attempted murder with a gun and gang enhancements. It was tried in front of Judge Bachner in Department J at the San Fernando Courthouse. Mr. Escovar states that she was fair on both sides and great with evidentiary rulings. This case involved a two-defendant case that was tried with co-defendant counsel Curt Leftwich. Mr. Escovar's client was accused of bringing a .40 caliber revolver to a "gang turf fight" in Sylmar (the Shaking Cats vs. San Fer). The co-defendant was accused of actively participating in the altercation by fist fighting. The actual shooter was a third-defendant that plead guilty prior to trial and received a 39-year sentence. These three defendants were facing consecutive life sentences.

At trial, witnesses testified that Mr. Escovar's defendant pointed the gun at their heads while asking, "where are you from?" Witnesses also testified that Mr. Escovar's defendant was seen throwing gang signs shortly before the shooting and that he was in a group of four individuals yelling, "Shaking Cats." A fistfight broke out and the defendant exhibited the gun from his waistband and, later, pulled out the gun and held it to his side.

Several witnesses testified that he then handed the gun to the shooter. One witness testified that it was "snatched" from his hand. Two people were shot. One was approximately 10 feet away the other 30 feet away. The first victim was shot in the elbow, which was shattered and destroyed. The second was shot in the leg and could not run. Mr. Escovar's defendant ran away with the group of four suspects (alleged gang members). They were arrested within minutes, a block away.

The defense was that three of the four individuals were actually relatives (brothers and one cousin). The brothers and cousin only "hung out" with the "Shaking Cats" because they grew up in that area. They had gone to the park to defend the younger brother from threats made by possible gang members, not to further the gang. The gun was brought only to intimidate people in case they became outnumbered. There was no plan to use the gun and based on their intent and lack of violent history it was not a "natural and probable consequence" that the gun would be "snatched" and fired by the fourth non-related defendant. This, in spite of what the prosecution's gang experts testified always happens in "turf fights."

The trial lasted for three-weeks. The jury came back in three hours. Not guilty as to both defendants on all counts.

🌀 DINNER MENU 🌀

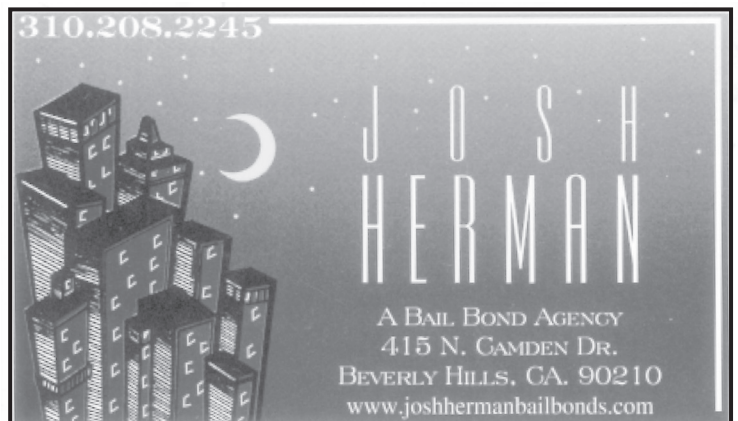
The main entrees will be:

Roast Top Sirloin

Sliced medium rare with mirepoix and roasted scallions.

Fresh Boneless Trout Almandine

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.



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1910 - HUMAN TRAFFICKING - 2015

By Robert P. Royce

The current Human Trafficking laws are the government's attempt to "reinvent the wheel".

The current government attitude towards sex trafficking has been stolen from history. Between 1908 & 1910 United States suffered from hysteria about foreign males entering the country and kidnapping women and young girls off the streets and forced into prostitution (there was an international conference in Paris France and the American human trafficking hysteria was passed on to foreign governments which led to international agreements).

During about the same time frame (1908 - 1910), a few African-American males in Illinois were transporting prostitutes across state lines to further their business opportunities. When it was publicized these few African-American males were now transporting white female prostitutes across state lines for business opportunity the Mann Act (1910) was passed. This was also known as the White Slavery Act. This hysteria helped the FBI increase its staff of 28 agents to hundreds of agents (similar to the grant money today that is being spent on human trafficking). For several years after the passage of the Mann Act, there were very few actual arrests for human trafficking. Because of the lack of this type of criminal activity, the government began prosecuting people for adultery and unmarried men and women crossing state lines who engaged in consensual sex and/or a relationship. From approximately 1931 until the late 1970s early 80s enforcement actions using the Mann Act was somewhat abandoned.

Between 1910 in 1931 the government's anti-human trafficking campaign continue and warned parents and women that these traffickers were utilizing train stations, ice cream parlors and other public places to meet victims (does this sound familiar as very similar to the government's current campaign).

The bottom line; there was no substance and very little factual basis for the hysteria the government created concerning human trafficking between 1910 and 1931 and now again in 2015 (in approximately the year 2000, the US government again entered into agreements with foreign countries pertaining to human trafficking issues, just like 1910).

California's human trafficking laws were formed in 2006. They were modified in 2008 and 2013.

In 2015, most presentations pertaining to human trafficking are based on fear and hysteria. There are very few facts that these presentations are based upon. Most often these government presentations are guaranteed to be in conflict with other government agencies who have done research and studies on the subject matter. A common presentation used against a defendant facing human trafficking allegations was taken straight out of the history books from 1910. The prosecuting agency will commonly place the victims on the stand and the victims will give their expected testimony of the events which occurred. The government's human trafficking expert will normally give a great presentation and use the best sales tactic known in marketing "fear" (same presentation the government gave between 1910 and 1931). Again very little substance and only partial facts.

Seldom does the government present solid evidence to support their position. They seldom if ever use informants, conduct surveillance, undercover agents, financial investigations, cell data collection and much more (Starting 2015, California law enforcement can use wiretaps). Keep in mind the new philosophy regarding human trafficking is a "Victim Centered" investigation and prosecution. However, how often does the government actually complete a true victimology report on the alleged victim? So why doesn't the defense base part or all of their theory on what they find during their "Victimology" investigation. You might be surprised what you will come up with!

Trying to keep it all real, most individuals charged with human trafficking at the state level are usually guilty of being pimps but not traffickers.

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FRANKLIN PETERS (1950-2015)

By Bob Schwartz

The entire legal community is in mourning after the startling, unexpected death of prominent defense attorney Franklin Peters, who recently succumbed to a massive heart attack. Peters, who had a long string of successes over the years in trial, where he demonstrated exceptional prowess in the courtroom, was probably one of the most underappreciated of the great criminal defense attorneys of our time, owing in part to his humility, grace under pressure, and disdain for self-promotion.

A gifted orator, Peters was able to talk to jurors as if he were having a friendly chat with a neighbor, and it was no act. This is someone who really enjoyed the company of others, even sometimes intransigent clients and despotic judges. Peters displayed a remarkable ability to bring a light touch to heavy cases and heavy causes but was dead serious in battling for his clients. He cut an impressive figure in court with his courtly manner and impeccable taste in well-tailored suits, and always carried himself with a certain elegance. Even in the high tension and high-stakes world of capital and other murder trials, he was never known to lose his composure even when he knew he and his client were not getting a fair shake. Colleagues who tried serious cases with Peters have all commented on his ability to take it all in stride, ready with a quip or a bemused look, designed to lower the temperature in the room. He was someone who was just fun to be around. Though completely dedicated to his clients, he was a complete person, devoted to his family, church, and charitable causes. Criminal defense work is a tough way to make a living, but Peters showed everyone that you can do it right without sacrificing your values, private life, or sunny outlook on life.



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SAVE THE DATE

- June Dinner Meeting will be held on June 9, 2015, at Taix French Restaurant. Speaker to be announced.
- 25th Annual Criminal Courts Bar Association and Pasadena Bar Association Golf Tournament to be held at La Canada Country Club on Monday, October 12, 2015.