

# CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

September, 2009



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## Contributor

Gary Mandinach

## SEPTEMBER MEETING



Guest Speaker

## ALAN EISNER

### “Insanity Defense: Nuts & Bolts”



**Tuesday  
September 8, 2009**

**Board of Directors Meeting  
(Everyone welcome to attend)  
5:30 p.m.**

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

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

**Les Freres Taix Restaurant  
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## CCBA WELCOMES ALAN EISNER

The Criminal Courts Bar Association is pleased to welcome Alan Eisner as the featured dinner speaker at our meeting to be held on Tuesday, September 8, 2009, at Taix Restaurant.

Alan Eisner has practiced criminal law for over 18 years in Los Angeles County. Mr. Eisner is a Certified Specialist in Criminal Law. (The California State Bar's Board of Legal Specialization has designated Mr. Eisner as a Certified Specialist based on his high level of proficiency in criminal defense, extensive litigation of complex cases, and review of his character and background amongst peers, prosecutors and judges)

Mr. Eisner has litigated hundreds of felony and misdemeanor criminal cases including murder, robbery, sex crimes, narcotic crimes, three strikes cases, white collar crimes, and theft crimes. He has represented successfully hundreds of clients at trial and all other stages of courtroom proceedings, including arraignment, bail hearings, preliminary hearings, probation violations and sentencing hearings.

Mr. Eisner received his BA degree from the University of California, Berkeley in 1982. He received his JD law degree from Loyola Law School, Los Angeles in 1985. Mr. Eisner was admitted to the State Bar of California in 1987, admitted to the United States District Court, Central District of California in 1992, and was admitted to the United States Court of Appeals for the Ninth Circuit in 2001. Mr. Eisner is a member of the National Association of Criminal Defense Lawyers (NACDL), California Attorney's for Criminal Justice (CACJ), the Criminal Courts Bar Association (CCBA), and the San Fernando Valley Bar Association.

## CCBA 19TH ANNUAL CHARITY GOLF TOURNAMENT

You are cordially invited to participate in the Criminal Courts Bar Association 19th Annual Golf Tournament to be held on Monday, October 12, 2009 (court holiday) at Braemar Country Club.

This is a great opportunity to spend an afternoon with all of your friends who are involved in the criminal justice system for a day of good food, good drink, good friendship, and great golf. You are welcome to join us for a day of golf but if you are unable to play golf consider supporting our cause by purchasing one of our sponsorship opportunities, making a donation or purchasing a raffle ticket. Information for all of these opportunities is included with this letter. All of the money raised at this tournament supports your association and Operation School Bell, which provides clothing for thousands of indigent children in the Los Angeles Unified School District.

Everyone who participates by sponsoring holes or donating gifts will be prominently thanked as a friend of the Criminal Courts Bar Association in a program to be distributed on the day of the tournament, thanked in the Criminal Courts Bar Association Newsletter which is sent to over 500 members of the legal community, and thanked in the Criminal Courts Bar Association annual Dinner Dance program.

We look forward to a great day of golf and fun and hope that all of you can join us. For more information please contact members of the Golf Committee: Robert J. Wilson at (626) 397-9700, Alison Triessl at (818) 990-5551, Sharon Morris at (818) 990-5551, John Tyre at (626) 960-0061, Mark Rafferty at (310) 677-4363 or Christopher Chaney at (626) 577-5005.

The Golf Committee

## DINNER MENU

The main Entrees will be:  
**Fresh Boneless Trout Almondine**

**Short Ribs Provencal**  
(Braised with carrots, tomatoes, and celery)

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

## MEMBERSHIP AND DUES REMINDER

The Criminal Courts Bar Association is a county wide organization of criminal defense lawyers in both public and private practice, law students, allied professionals, and private individuals. The goals of the Criminal Courts Bar Association are the protection of individual rights and liberties, improvement of the Criminal Justice System, enhancement of the Criminal Law Practitioners, and the continuing education of the Criminal Defense Bar.

The Criminal Courts Bar Association enjoys a position of trust and respect in the criminal justice system and has an important voice in the legal community. The Criminal Courts Bar Association will continue to remain active in both professional and civic affairs that are of importance to the rights of those accused of crimes.

The CCBA continues to seek the support of our core membership and is looking for new members to continue our strong traditions. For those who are already members, thank you. For those who have not yet renewed please consider doing so now.

If you are able, please become a sustaining member. Sustaining Members will be recognized in the monthly newsletter and recognized in the Dinner Dance Program thanking you for your generosity and support for the programs offered by our association. For those of you who have been so long a part of this organization please consider this new category.

For those of you who ask, "Why should I join the Criminal Courts Bar Association?" Please consider the words of our past president, David R. Evans:

"Each weekday morning in the courtrooms of this County, men and women of extraordinary courage and dedication rise on behalf of the accused and challenge the representatives of the most powerful nation in the world to prove their case. The work of those criminal defense attorneys is the reason for being of the Criminal Courts Bar Association. Outside those courtrooms, the Criminal Courts Bar Association is their voice. It functions as lobbyist, educator, and cheerleader. Its leaders—its officers and members of the board—are the leaders of the criminal defense bar in the County of Los Angeles. They include the Los Angeles County Public Defender, the Los Angeles County Alternate Public Defender, the President of California Attorneys of the Criminal Justice, partners from large downtown law firms, sole practitioners, white collar crimes specialist, DUI specialists, and death penalty specialists. They give of their time and money because of their deep shared concern for the rights of the accused and the well being of their advocates. On the second Tuesday of each month, they meet to discuss the pressing issues of the day, to break bread, and to hear talks by the luminaries of criminal practice."

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The Criminal Courts Bar Association thanks each of its Sustaining Members. Your contributions help support our programs for the 2009 year.

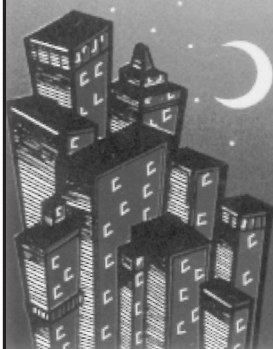
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# KENNY KAHN, THE CARNY LAWYER (1942-2009)

By Bob Schwartz

Colleagues and clients, past and present, are mourning the death of criminal defense attorney Kenneth (Kenny) Kahn, who passed away in a hospital in Cuzco, Peru after suffering massive internal injuries from a fall while climbing a steep mountain above Machu Picchu. During a 40 plus year career, Kahn brought dedication, zealous advocacy, and a quirky sense of humor to the criminal courtrooms and hallways.

Kahn overcame a deeply troubled, chaotic, and even maddening family upbringing which he revealed in his 2005 book, *The Carny Kid: Survival of a Young Thief*. The book painfully described his life as part of the only Jewish (and white) family in the Ramona Gardens Housing Project, his heroin-addicted parents who turned the apartment into a community shooting gallery, and his travels with his con-man father who regularly hoodwinked customers at carnivals throughout the West with booth games that were rigged to be unwinnable.

The book was written with an eye of detached amusement but told a gripping and at times heartbreaking story that forever endeared Kahn to its readers. Kahn never forgot where he came from, as reflected in his later involvement in charitable organizations and activities, promoting education and assisting at risk youths.

Achievements in school and athletics (despite contracting polio at an early age) were his path to a better life, yet his childhood appeared to have left him with a perpetual angst and restlessness. Kahn was a bundle of self-contradictions: he could be the life of the party but was innately shy; he was at times a shameless self-promoter (as when he hired several people to pass out flyers advertising his legal services outside the Criminal Courts Building until enjoined by a Superior Court Judge) but took on many clients for little or no fee (even taking some to trial) without any fanfare; he could be light-hearted and breezy in manner and at other times vitriolic and caustic, particularly in trial.

Kahn was serious about his cases and clients but never took himself too seriously. Known for his quick wit in even the most tense of courtroom scenes, he prized loyalty and would jump through hoops to help a colleague with an appearance no matter how inconvenient. According to his frequent co-counsel Stephen Rodriquez, Kahn was fearless in trial and plea negotiations, taking prosecutorial rigidity as a personal affront.

Late in his career, he carved out a niche as a stand up comedian, even distributing cards that read "World's Funniest Attorney" The late George Carlin once drew a parallel between trial lawyers and stand up comics, noting that each group tries to persuade and ingratiate themselves with their audiences with words. Kahn developed a clever shtick, walking out on stage with briefcase and attired in three piece suit. It didn't come easy at the beginning, as he was stiff and awkward for a trial lawyer with so much public speaking experience. But he polished his on stage persona and developed a network of venues where he performed, including Las Vegas, where he was well received. The material was largely apolitical, with lawyers often the butt at his punchlines. But he scored with many spicy zingers. One gem was his description of an experience before one well-known loony and cantankerous federal judge: "Mr. Kahn, is your client ready for sentencing?" to which Kahn shot back, "Judge don't you think we should have the trial first?" His strongest material was always about the absurdities of his childhood, squeezing every drop of lemonade out of very bitter lemons.

At the end Kahn walked away from the profession because of (in no particular order) disenchantment with judges, prosecutors, and clients. He will be missed.



## CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

*People v. Martin* (2009) Cal.App.4th , reported on July 21, 2009, in 2009 Los Angeles Daily Journal 10639, the Fourth Appellate District, Division 2 held that the trial court did not abuse its discretion in imposing probation conditions addressing domestic violence even though charges of corporal injury to a spouse had been dismissed, pursuant to *People v. Harvey* (1979) 25 Cal.3d 754, [a court may not consider facts that pertain solely to a charge that has been dismissed as part of a plea bargain], as *Harvey* does not apply to probation conditions according to this court, which disagreed with the Fifth Appellate District and its opposite ruling in *People v. Beagle* (2004) 215 Cal.App.4th 415.

*People v. Wagner* (2009) Cal.App.4th , reported on July 23, 2009, in 2009 Los Angeles Daily Journal 10829, the Fourth Appellate District, Division 2 held that the trial court can exercise its discretion in implementing section 1050, subdivision (a), by considering various departments and types of cases heard in those departments in determining courtroom availability. (*People v. Osslo* (1958) 50 Cal.2d 75, 106.) Prosecutors should have provided the trial court with "a full picture of the cases that it is charged with assigning." The trial court did not abuse its discretion in denying a nineteenth continuance for this last-day case. Given the fact that the prosecution chose to appeal this matter under section 1238, subdivision (a)(8), which is an election of remedies (see *People v. Dewberry* (1974) 40 Cal.App.3d 175, 183), it is precluded from refileing the case. (*People v. Chacon* (2007) 40 Cal.4th 558, 565.)

*People v. Carrington* (2009) Cal.4th , reported on July 28, 2009, in 2009 Los Angeles Daily Journal 11013, the California Supreme Court held that the confessions to two murders were not coerced, nor were they the result of a promise of leniency, when the police officer's comments to defendant, that in view of the overwhelming evidence that she committed a homicide and other crimes, her denial of participation in a second homicide was unlikely to alter the outcome of the case against her, and that it would benefit her emotionally or psychologically to "purge" herself by admitting second homicide, did not imply that defendant would receive leniency or favorable treatment at the hands of the authorities and thus did not render her confession to second homicide involuntary. Mere exhortation to tell the truth when unaccompanied by threat or promise, does not make the confession involuntary. (*People v. Howard* (1988) 44 Cal.3d 375, 398.)

**MEMBER APPLICATION 2009**

**CRIMINAL COURTS BAR ASSOCIATION  
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## IN THE TRENCHES

Congratulations to our featured dinner speaker, **Alan Eisner**, for his success in a recent trial in which his client was found legally insane at the time she suffocated her newborn daughter.

The defendant was found guilty of second degree murder and assault of a child causing death but the jury deadlocked 6-6 in March 2008 whether the defendant was sane or insane at the time of the incident.

As a result of the finding of insanity at the second trial the defendant is expected to be sent to Patton State Hospital.

Mr. Eisner has graciously accepted our invitation to teach us the nuts and bolts of insanity defense.

Congratulations to **Pamela Tedeschi and Michael Goldstein** on their recent victory following the dismissal of a 53 pound marijuana case in Van Nuys. Their respective clients were arrested with 43 pounds of packaged marijuana and 22 plants and were subsequently charged with possession for sale and cultivation of marijuana. At the time of arrest, their clients advised the officers that they were storing the marijuana for a medical marijuana dispensary that had recently been robbed. After presenting an affirmative medical marijuana defense, the court granted their motion to dismiss following the preliminary hearing.

Congratulations to **Winston Kevin McKesson** for his recent success in a murder trial in Rancho Cucamonga.

The prosecution contended that the defendant, a Pasadena firefighter, was upset that his wife was having an affair and insisted on a divorce. As a result of that anger and rage he waited for her to come home in the evening. Once in the house he attacked her with a sword. It was subsequently determined that the victim received stabbed wounds which led to her death. The defendant attempted suicide by cutting his wrist, his neck and stabbing himself in the chest.

The defense contended that all of the defendant's actions were in self defense. The firefighter responded after his wife attacked him with the sword and stabbed him with the knife. The jury was in deliberations for four days following a five week trial.

The judge declared a mistrial after the jury deadlocked at 6-6.

Congratulations to past president **Eddie Tolmas** for his recent success in a 1538.5 motion argued in the Fontana Court.

Mr. Tolmas' client was stopped on a traffic violation. The officer testified that the defendant had a white substance resembling cocaine on his tongue and that the defendant acted nervous and excited. Upon questioning, the defendant stated that he had no drugs and but that he had a beer can in the car. Upon a non-consensual search the officer found an open container of beer and a vial of cocaine. After the hearing finally the officer testified and after cross examination by Mr. Tolmas the motion pursuant to 1538.5 was granted.

Congratulations to Jerry Giesler Award winner **Thomas Mesereau and his partner Susan Yu** for their significant success in federal court before the Honorable United States District Judge Dean D. Pregerson. Mr. Mesereau and Ms. Yu's client was acquitted by a federal jury on thirteen counts and the jury was unable to reach a verdict on eight additional counts in a massive mortgage fraud scheme that caused more than 40 million dollars in losses to federally insured banks.

The two other codefendants were convicted on evidence presented at trial that showed that they were part of a scheme that included mortgage loans on homes in southern California's most expensive neighborhoods.

Congratulations to Jerry Giesler Award winner **James Blatt and Alex Kessel** for their recent success in the Jessie James Hollywood case tried in Santa Barbara County.

After a massive man hunt Jessie James Hollywood was located in South America and returned to the United States for trial. Three other codefendants had previously been tried and convicted of the kidnap murder of a young man in the San Fernando Valley.

In a highly publicized trial in which the defendant testified the jury returned a life verdict.

Congratulations to **David D. Diamond** for his recent success in the Airport Court. Mr. Diamond obtained a verdict of not guilty for a client who was charged with multiple felony counts, including attempted murder. The defendant was a young man who was accused of shooting two individuals in the Santa Monica area.

In closing arguments Mr. Diamond took the role of a prosecutor by making a case against the true perpetrators of the crime. After a two week trial the jury acquitted the defendant and returned him home after a year in jail.

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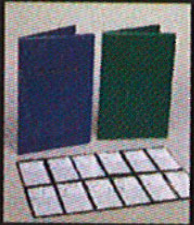
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## SAVE THE DATE

- *September Dinner Meeting* will be held on Tuesday, September 8, 2009, at Taix Restaurant. The featured dinner speaker will be Alan Eisner who will discuss "Insanity Defense: Nuts and Bolts."
- *The 19th Annual Criminal Courts Bar Association Golf Tournament* will be held on Monday, October 12, 2009, at Braemer Country Club. Please mark your calendar.
- *October Dinner Meeting* will be held on Tuesday, October 13, 2009, at Taix Restaurant. The featured dinner speaker will be City Attorney Carmen Trutanich.



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