

CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

JANUARY, 2005



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Editor

Chris Chaney
(626) 577-5005
ccchaney@pacbell.net

Associate Editor

Patrick Lake
WALTERLAKE@aol.com

Photographer

Mike Shannon

Associate Photographer

Jeff Yanuck

JANUARY DINNER MEETING

Guest Speaker

RICHARD A. HUTTON



"NEW DEVELOPMENTS IN DUI LAW"

Tuesday, January 11, 2004

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.

\$30.00 per person

Les Freres Taix Restaurant
1911 Sunset Blvd., Los Angeles, CA
(Near Alvarado)

1.0 MCLE Credit Approved

Reservations advised. Call Chris Chaney at (626) 577-5005. CCBA certifies that this activity conforms to the standards for approved education activities prescribed by rules and regulations of the State Bar of California governing minimum legal education.

**THE CRIMINAL COURTS BAR ASSOCIATION
WELCOMES RICHARD HUTTON TO THE
JANUARY DINNER MEETING**

The Criminal Courts Bar Association is pleased to announce that Richard Hutton will be addressing our association at the dinner meeting to be held on Tuesday, January 11, 2005, at Taix Restaurant. Mr. Hutton is always one of our most popular speakers.

Please join us as we learn about the recent developments in DUI Law.

For your dining pleasure, the dinner menu will consist of: Lamb Shank and Fresh Filet of Salmon. Entrees include a relish tray, soup de jour, fresh sourdough bread, garden salad with house vinaigrette dressing, fresh vegetable, rice or potato, sherbert, and coffee or tea.

The Criminal Courts Bar Association will serve complimentary imported cheese platter with country bread and chips and dipping sauces during the social hour.

We look forward to seeing you there.

**THE CRIMINAL COURTS BAR ASSOCIATION
CELEBRATES THE 52ND ANNUAL DINNER
DANCE AT THE PARK PLAZA HOTEL**

The Criminal Courts Bar Association is pleased to announce that the 52nd Annual Awards Dinner Dance will be held at the Park Plaza Hotel on March 12, 2005. Please mark your calendars, save the date, and get ready to enjoy an evening of fun and festivities with your fellow members of the criminal justice system.

The Criminal Courts Bar Association is pleased to announce the winners for 2005:

JOURNALISM AWARD
Stan Chambers

JOSEPH M. ROSEN JUSTICE AWARD
Johnnie Cochran

JERRY GEISLER MEMORIAL AWARD
James Blatt

PRESIDENT'S AWARD
Sean Kennedy
William Genego

MORT HERBERT AWARD
Thomas Mesereau

JUDICIAL EXCELLENCE AWARD
Honorable Norman Tarle

BITS & PIECES

**LIFE IS A GREAT BIG CANVAS:
THROW ALL THE PAINT ON IT YOU CAN.**

Danny Kaye (1913-1987)
Entertainer

**EITHER YOU DECIDE TO STAY IN THE
SHALLOW END OF THE POOL
OR YOU GO OUT IN THE OCEAN.**

Christopher Reeve
Actor

**IT'S NEVER TOO LATE TO BE WHO
YOU MIGHT HAVE BEEN.**

George Eliot (1819-1880)
Writer

**BE KIND, FOR EVERYONE YOU MEET
IS FIGHTING A HARD BATTLE.**

Plato (C. 427-347 B.C.)
Philosopher & Educator

**KEEP AWAY FROM PEOPLE WHO TRY
TO BELITTLE YOUR AMBITIONS.
SMALL PEOPLE ALWAYS DO THAT,
BUT THE REALLY GREAT MAKE
YOU FEEL THAT YOU, TOO,
CAN BECOME GREAT.**

Mark Twain (1835-1910)
Humorist & Writer

**CHARACTER IS DOING WHAT'S RIGHT
WHEN NOBODY'S LOOKING.**

J.C. Watts, Jr.
Politician

**I WOULD NOT WASTE MY LIFE IN
FRICTION WHEN IT COULD BE
TURNED INTO MOMENTUM.**

Francis Willard (1839-1898)
Educator

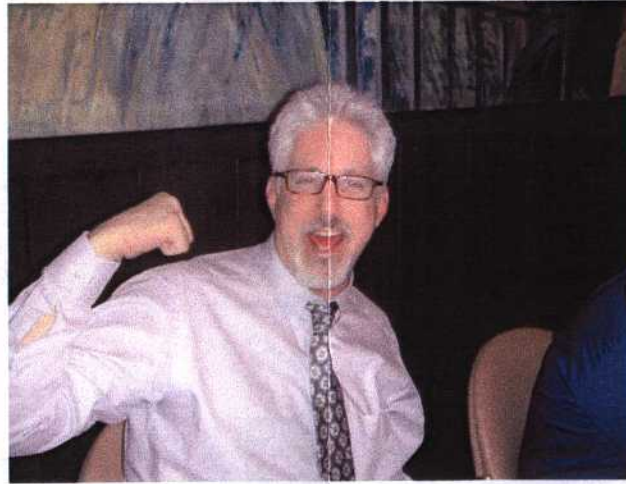
Surprise
60th Birthday Party
for
Richard Hutton
our January Dinner Speaker

Tuesday, January 11, 2005
at Taix Restaurant



Everyone is welcome to attend.
Please invite all of your friends who will
enjoy celebrating this Gala Birthday.

NOVEMBER DINNER MEETING WITH GUEST SPEAKER STEVE COOLEY



CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

Roland v. Superior Court (2004) __ Cal.App.4th __, reported on November 19, 2004, in 04 Los Angeles Daily Journal D.A.R.13930, the Third Appellate District held that section 1054.3, requiring a criminal defendant to disclose to the prosecutor the "names and addresses of persons, other than the defendant, he or she intends to call as witnesses at trial, together with any relevant written or recorded statements of those persons, or reports of the statements of those persons," compels the defense to provide reports of relevant unrecorded oral statements made by such persons, including relevant oral statements of witnesses communicated orally to the defense counsel by third parties such as investigators, and statements communicated directly to defense counsel.

People v. Emerson (2004) __ Cal.App.4th __, reported on November 19, 2004, in 04 Los Angeles Daily Journal D.A.R.13945, the Third Appellate District held that it was not error under *Blakely* for the trial court to consider defendant's prior drunk driving convictions in sentencing him to the upper term. Defendant did not have a constitutional right to a jury trial on the truth of the prior conviction allegations, and found the defendant waived the issue under *Scott*, where he did not challenge accuracy of the presentence report setting forth prior convictions, the court was entitled to rely on the report in finding they had been sustained. Without necessarily deciding, the Court assumed for the sake of argument that it was error to consider prior prison terms, and performance on parole in determining the upper term.

People v. Callahan (2004) __ Cal.App.4th __, reported on November 22, 2004, in 04 Los Angeles Daily Journal D.A.R.13961, the Second Appellate District, Division 6 held, consistent with *People v. Ault* (2004) 33 Cal.4th 1250, 1255, where the trial court granted the new trial based on ineffective assistance of counsel, the appellate court reviews both the determination that defendant was prejudiced and the determination that trial counsel's performance was deficient under abuse of discretion standard. The granting of the new trial motion was not an abuse of discretion where counsel failed to sufficiently impeach testimony of the two witnesses who supported the prosecution's theory that defendant drugged the victim, failed to call defendant to testify for that purpose, and failed to offer expert testimony to support a duress defense to the underlying felonies in the felony murder prosecution.

People v. Ackerman (2004) __ Cal.App.4th __, reported on November 22, 2004, in 04 Los Angeles Daily Journal D.A.R.13967, the Sixth Appellate District held that where the defendant admitted two strike priors, but then the court granted his *Romero* motion to strike one of the strike priors, it was not error under *Blakely/Apprendi*, to sentence him to the upper term.

People v. Zambrano (2004) __ Cal.App.4th __, reported on November 22, 2004, in 04 Los Angeles Daily Journal D.A.R.13991, the Fourth Appellate District, Division 2 held that it was error for the prosecutor to ask the defendant "were they lying" questions, as it pertained to the testimony of the police officers, since the questions sought the defendant's inadmissible lay opinion about the officers' veracity, invaded the province of the jury to determine the credibility question, and were irrelevant to any issue in the case. (See *People v. Melton* (1988) 44 Cal.3d 713, 744.) Additionally, the prosecutor committed misconduct by repeatedly asking "were they lying" questions relating to each aspect of officer's testimony that differed from defendant's to berate defendant and inflame the passions of the jury, and compounded the misconduct by calling one of the officers in her rebuttal case only to say he was not lying, and by further emphasizing the defendant's inadmissible lay opinion testimony in rebuttal closing argument. However, unbelievably the Court of Appeal held that the error in allowing the prosecutor to repeatedly ask improper "were they lying" questions was harmless where the defendant's version of the events as to which the questions were asked was patently unreasonable.

People v. Miller (2004) __ Cal.App.4th __, reported on November 23, 2004, in 04 Los Angeles Daily Journal D.A.R.14011, the Fourth Appellate District, Division 3, held that evidence seized in reliance on the defendant's waiver of Fourth Amendment rights as a condition of probation was obtained in good faith (see *People v. Robles* (2000) 23 Cal.4th 789), and thus admissible in a prosecution for a new offense, notwithstanding the fact that the court which imposed probation for the earlier offense, later allowed the defendant to withdraw his plea based on his claim that he would not have entered it if he had known that he would be required to register as a sex offender. (See *People v. Fields* (1981) 119 Cal.App.3d 386, 388.)

People v. Toscano (2004) __ Cal.App.4th __, reported on November 24, 2004, in 04 Los Angeles Daily Journal D.A.R.14065, the Second Appellate District, Division 1, held that where the defendant entered into a plea agreement allowing him to file a motion to dismiss a second strike allegation, without limitation as to the grounds upon which the motion could be based, the trial court erred where it failed to consider the merits of the motion to strike, where it was based on the ground that the defendant did not knowingly plead guilty to the prior. The Court of Appeal found that a plea bargain is interpreted according to the same rules as other contracts. (*Brown v. Poole* (9th Cir. 2003) 337 F.3d 1155, 1159.) Therefore, the defendant was entitled to a new hearing on that motion.

People v. Lee (2004) __ Cal.App.4th __, reported on November 30, 2004, in 04 Los Angeles Daily Journal D.A.R.14197, the Second Appellate District, Division 6, held that tape recorded statements by the police with witnesses who were contacted by the police, to investigate the incident, fall within the meaning of *Crawford v. California* (2004) 541__ U.S. __, [124 S.Ct.1354], and are testimonial. The brief interval of time between the occurrence of the crime and the interviews did not render the statements admissible as spontaneous declarations, under Evidence Code section 1240, where the witnesses were not the victims seeking help, but were being questioned by police who went to their residence after obtaining information from another witness; witnesses were subjected to lengthy interrogation; and one witness incriminated the defendant in response to leading questions while the other had time for reflection after initially telling the police she did not know what happened.



CRIMINAL COURTS BAR ASSOCIATION

c/o Law Offices of Hutten & Wilson
1055 E. Colorado Blvd.
Suite 310
Pasadena, CA 91106



Jon R. Takasugi
320 W. Temple Street, Rm. 35
Los Angeles, CA 90012

310.208.2245

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SAVE THE DATE!

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- *Criminal Courts Bar Association Awards Dinner Dance will be held at the Park Plaza Hotel on March 12, 2005. Mark your calendars, save the date and hire your babysitter.*