

# CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

JUNE, 2005



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## JOHN D. VANDEVELDE SPEAKS CCBA LISTENS

The Criminal Courts Bar Association is pleased to welcome Mr. John D. Vandeveld as the featured dinner speaker for our meeting on June 14, 2005, at Taix Restaurant. The title of his talk is "What's Different About Spy Cases (If I Tell You I Will Have to Kill You)."

John Vandeveld is a partner in a nine-lawyer litigation firm, Lightfoot, Vandeveld, Sadowsky, Medvene & Levine, in downtown Los Angeles. The firm emphasizes federal and criminal matters, particularly white-collar criminal matters, in state as well as federal courts. The firm's lawyers were identified in *Los Angeles* magazine as the best "white collar" criminal lawyers in the city.

John graduated from Loyola Law School of Los Angeles in 1975, was an Assistant United States Attorney from 1976 until 1980, where he served as an Assistant Chief of the Criminal Division, and received the United States Department of Justice Award for Outstanding Achievement. He has been in private practice at the same firm since 1980. He is an experienced trial attorney, with over fifty trials. He has represented domestic and foreign corporations, governmental entities, public employees, business persons, professionals and other individuals in federal, state and

transnational criminal investigations and prosecutions. He is a Fellow of the American College of Trial Lawyers, listed in *The Best Lawyers in America* as a criminal defense lawyer, identified by *Los Angeles* magazine as a "Superlawyer," chosen by *California Lawyer*

as one of the "Outstanding" criminal defense lawyers in the state, is "av" rated by his peers through Martindale-Hubbell and received Loyola Law School's "Distinguished Alumnus" award.

John volunteers his time in the legal community, having served numerous bar and community organizations, including being a Board Member and President of the Legal Aid Foundation of Los Angeles, a Commissioner on the California State Bar Legal Services Trust Fund Commission, Chair of the West Coast Region of the American Bar Association's White Collar Crime Committee and Vice Chair of the National Committee, President of the Los Angeles Chapter of the Federal Bar Association, a Ninth Circuit Judicial Conference Attorney Representative, and a member of the Ninth Circuit Advisory Board. In

June he will commence a term as a Trustee of the Los Angeles County Bar Association.

The Board of Directors welcomes you to this meeting.

Come early, stay late.

## JUNE DINNER MEETING

Guest Speaker

**JOHN D. VANDEVELDE**  
"What's Different About Spy Cases  
(If I Tell You I Will Have To Kill You)"

**Tuesday, June 14, 2005**

**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.

To me, a lawyer is basically the person that knows the rules of the country. We're all throwing the dice, playing the game, moving our pieces around the board, but if there is a problem, the lawyer is the only person who has read the inside top of the box. - JERRY SEINFELD



A jury is a collection of people banded together to decide who hired the better lawyer.



Lawyers have been known to wrest from reluctant juries triumphant verdicts of acquittal for their clients, even when those clients, as often happens, were clearly and unmistakably innocent. - OSCAR WILDE



After successfully trying her case, Clarence Darrow was embraced by his lovely client, who thanked him expansively and desired to know, "How can I ever thank you?"

"My dear," replied the lawyer, "ever since the Phoenicians invented money, there has only been one answer to that question."



The judge questioned the witness, "Do you understand that you are on trial for murder?" "Yes," replied the defendant.

"Do you understand the penalty for perjury?" "I most certainly do," was the answer, "and it's a lot less than the penalty for murder."

## DINNER MENU

Fresh Boneless Trout Almondine and Roast Tip Sirloin sliced medium rare with mirepoix and roasted scallions.

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

Appetizers will be imported cheese platter and fresh tortilla chips with salsa.

## CACJ SEMINAR

SATURDAY, JUNE 11, 2005  
AT THE SHERATON UNIVERSAL HOTEL

The featured speakers are:

**Dennis P. Riordan, Marcia Morrissey, Honorable Florence Marie Cooper, Michael Mack, Marty Roof, Father Gregory S. Boyle, John Philipsborn, Constance Istratescu, and Lesli Caldwell.**  
Contact CACJ at (916) 448-8868 for information.

## CCBA 2005 SUSTAINING MEMBERS

The Criminal Courts Bar Association thanks each of its Sustaining Members. Your contributions have helped support our programs for the 2005 year.

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**NEW APPLICATION / RENEWAL 2005**

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# CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

*Ricki J. v. Superior Court* (2005) \_\_ Cal.App.4th \_\_, reported on April 25, 2005, in 05 Los Angeles Daily Journal 4587, the Third Appellate District held that a juvenile court order of informal supervision pursuant to Welfare and Institutions Code section 654.2 is not an appealable judgment or order. Such an order of informal supervision, for six months, is an alternative to an adjudication of the petition; therefore, the court erred when it took the minor's admission to the petition prior to issuing such an order and conditioned such acceptance on outcome of minor's appeal based on his claim that the filing of the petition violated the minor's speedy trial rights under *Barker v. Wingo* (1972) 407 U.S. 514; *Serna v. Superior Court* (1985) 40 Cal.3d 239.) The Court of Appeal held that the minor's admission waived any claim to a speedy trial violation. However, where the admission was improperly induced by an unenforceable promise that the speedy trial issue had been preserved for appeal, the minor is entitled to withdraw the admission. (*People v. DeVaughn* (1977) 18 Cal.3d 889, 896; *People v. Hollins* (1993) 15 Cal.App.4th 567, 574 575.)

*People v. Roldan* (2005) \_\_ Cal.4th \_\_, reported on April 26, 2005, in 05 Los Angeles Daily Journal 4656, the California Supreme Court held that the trial court did not abuse its discretion in denying a continuance where counsel that stated he needed additional time to repair a breakdown of communication with the defendant and do to the defendant's threats to harm his attorney; however, the attorney did not seek to withdraw and could not explain why an additional delay would improve the situation. Where the court reasonably concluded that the defendant's threats were an attempt by the defendant to delay the trial, said threats did not establish an actual or potential conflict of interest between his attorney and the defendant. Evidence that the attorney tailored his examination of some witnesses to the defendant's stated preferences, acting contrary to attorney's own evaluation of defendant's best legal interest, did not establish a conflict where the evidence suggested the attorney's decision was not based on the defendant's threats, but was a tactical decision intended to help him maintain a viable working relationship with the defendant, and where the resulting examinations were not deficient in any way. To obtain a reversal based on a conflict, the defendant must show that an actual conflict existed that affected counsel's performance. The court goes into a lengthy discussion pertaining to potential v. actual conflicts. The trial court erred in denying the defendant's motions to discharge his counsel as untimely, within the meaning of *Marsden*, since such a motion is timely at any stage of trial, but the error was harmless given the fact that the court heard and considered the defendant's complaints in connection with each motion and where denying the motions was not an abuse of discretion, since evidence showed that counsel was providing adequate representation and the defendant's objections were based only on disagreements over trial tactics. The trial court did not abuse its discretion in denying defendant's requests to represent himself where requests were not unequivocal, and trial court reasonably concluded they were made in attempt to disrupt or delay the trial and would necessitate a mistrial. The court erred in finding that the defendant's objection to the prosecutor's challenge to a minority juror was untimely where it was made within a few minutes of the challenge and the only intervening event was the defendant's exercise of a peremptory challenge to another juror.

*United States v. Gust* (9th Cir. 2005) \_\_F.3d \_\_, reported on April 27, 2005, in 05 Los Angeles Daily Journal 4754, the Ninth Circuit Court of Appeal held that the "single purpose container" exception, (see *Arkansas v. Sanders* (1979) 442 U.S. 753 [overruled on other grounds]; see also *Robbins v. California* (1981) 453 U.S. 420; *United States v. Huffhines* (9th Cir. 1992) 967 F.2d 314), allowing a warrantless search of a container found by an officer in plain view if the only purpose for which the container might be possessed is to carry contraband, was inapplicable to the search of a gun case that was "of such a nature that [it] could have contained any number of things," not just a gun.

*People v. Pinedo* (2005) \_\_ Cal.App.4th \_\_, reported on April 27, 2005, in 05 Los Angeles Daily Journal 4747, the Second Appellate District, Division 2, held that the dismissal of a felony complaint due to unconstitutional preaccusation delay, amounts to a dismissal with prejudice, barring re filing. (See *Strunk v. United States* (1973) 412 U.S. 434, 439 440.)

*People v. Parras* (2005) \_\_ Cal.App.4th \_\_, reported on April 28, 2005, in 05 Los Angeles Daily Journal 4789, the Fifth Appellate District, held that when instructing the jury pursuant to *People v. Blakeley* (2000) 23 Cal.4th 82 and *People v. Lasko* (2000) 23 Cal.4th 101, which permits a defendant to be convicted of voluntary manslaughter for killing with conscious disregard for life but without intent to kill, did not constitute an unanticipated change in the law. Therefore, the court did not err in giving the post *Lasko/Blakeley* instruction (CALJIC 8.40) in the defendant's trial wherein the alleged crime was committed, in 1989, before the decisions were rendered.

*People v. Enos* (2005) \_\_ Cal.App.4th \_\_, reported on April 29, 2005, in 05 Los Angeles Daily Journal 4862, the Fifth Appellate District held that the ordering the imposition of three separate restitution fines on a defendant who pled guilty in three separate cases as part of a single agreement, where the cases were not tried together, nor were they consolidated, did not violate 1202.4, subdivision (b), which limits such fines to \$10,000 per case where total of fines did not exceed \$10,000. The Court of Appeal distinguished *People v. Ferris* (2000) 82 Cal.App.4th 1212, wherein the Court of Appeal reversed the court's imposition of a \$10,000 fine in each matter that was sentenced together.

12. *People v. Griffin* (2005) \_\_ Cal.App.4th \_\_, reported on May 2, 2005, in 05 Los Angeles Daily Journal 4895, the First Appellate District, Division 3 held that section 12022.1 applies regardless of whether the offense in which bail was posted is alleged to have occurred in California or in another state. The sentence imposed for the crime committed while on bail must be imposed to run consecutive to the sentence imposed for the crime in which bail was posted.

# CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

*People v. Thoma* (2005) \_\_ Cal.App.4th \_\_, reported on April 21, 2005, in 05 Los Angeles Daily Journal 4477, the Second Appellate District, Division 6 held that, in an opinion following a rehearing, the defendant's prior conviction of felony drunk driving involved "great bodily injury" within the meaning of section 1192.7, subdivision (c)(8), and therefore qualified as a "strike". The court at the time of the sentencing on the 1995 prior offense, where the defendant had pleaded guilty, and where the court had indicated that the defendant had broken nearly every bone in victim's body, was an adoptive admission pursuant to Evidence Code section 1221, (see *People v. Riel* (2000) 22 Cal.4th 1153, 1189), even though he was represented by counsel at the time, where the defendant did not voice a disagreement with the court's interpretation of the injuries to the victim. The Fifth Amendment precludes the admission of a defendant's silence as an adoptive admission if there is evidence that, by remaining mute, the defendant was exercising his constitution right to remain silent. (*People v. Preston* (1973) 9 Cal.3d 308, 313 314.)

*In re Jesse G.* (2005) \_\_ Cal.App.4th \_\_, reported on April 21, 2005, in 05 Los Angeles Daily Journal 4492, the Second Appellate District, Division 8, held that in a contested proceeding under Welfare and Institutions Code section 601, the probation officer must prosecute the case. Where the referee takes on the role of both judge and advocate by presenting and questioning the sole witness and then adjudicating the minor's status, the minor's constitutional right to procedural due process is violated. (See *In re Ruth H.* (1972) 26 Cal.App.3d 77, 84; *Gloria M. v. Superior Court* (1971) 21 Cal.App.3d 525, 529 530.) The hearing conducted in such a manner is reversible per se.

*People v. Frazier* (2005) \_\_ Cal.App.4th \_\_, reported on April 22, 2005, in 05 Los Angeles Daily Journal 4512, the Third Appellate District held that CALJIC 12.24.1, the Compassionate Use Defense instruct, which places the burden on the defendant to raise a reasonable doubt as to guilt of the unlawful possession or cultivation of marijuana, "does not impermissibly suggest to the jury that defendant has the burden of proving innocence, but accurately describes defendant's obligation to raise a reasonable doubt that his possession or cultivation was unlawful. (See *People v. Mower* (2002) 28 Cal.4th 457.) Trial court's instruction to jurors that a primary caregiver under the compassionate use statute is "an individual designated by the person exempted who has consistently assumed the responsibility for the housing, health or safety of that person" was consistent with the statutory definition (Health & Saf. Code § 11362.5) and was accurate. Finally, the Court of Appeal held that *People v. Mower, supra*, did not implicitly overrule *People v. Trippet* (1997) 56 Cal.App.4th 1532 which holds that the jury must determine whether the amount of marijuana possessed by a defendant is "reasonably related to the patient's current medical needs" when assessing the compassionate use defense.

*People v. Vo* (2005) \_\_ Cal.App.4th \_\_, reported on April 25, 2005, in 05 Los Angeles Daily Journal 4598, the Third Appellate District held that evidence that the defendant and co defendant (an aider and abetter to two separate predicate offenses, on two separate victims) acted together to commit two crimes, is sufficient to establish the commission of two predicate offenses by two persons on a single occasion within the meaning of section 186.22, subdivision (b). (See *People v. Zermeno* (1999) 21 Cal.4th 927, 933; *People v. Duran* (2002) 97 Cal.App.4th 1448, 1458, fn. 4. [the crimes did not have to be committed by two persons other than the defendant and one other person].) The gang instruction which allowed the jury to find a pattern of criminal gang activity based on the commission of only one offense by multiple participants was error. (See *People v. Zermeno, supra*.) But the error was harmless under either state or federal standards for harmless error where the jury convicted both defendants of determinate and indeterminate offenses, (murder and assault with a deadly weapon) as the test for an indeterminate term in pursuant to *Watson*, and based on *Chapman* for the determinate term offense. (See *People v. Sengpadychith* (2001) 26 Cal.4th 316, 320.) On remand from the Supreme Court in *People v. Lopez* (2005) 34 Cal.4th 1002, 1006, the Court of Appeal once again held that where the defendants were convicted of first degree murder, it was error for the trial court to impose consecutive three year terms as gang enhancements under former section 186.22, subdivision (b)(1), since first degree murder is "a felony punishable by imprisonment in the state prison for life." (5. *abid*, at 34 Cal.4th 1006 [a defendant convicted of first degree murder, which is punishable by imprisonment for life is not subject to a 10 year enhancement, applicable to other violent felonies when the crime is committed for the benefit of a criminal street gang, under section 186.22, subdivision (b)(1)(C), but he is subject to the 15 year minimum eligible parole date under section 186.22, subdivision (b)(5)].) Only former section 186.22, subdivision (b)(4), providing that individual who violated the subdivision "in the commission of a felony punishable by imprisonment in the state prison for life, shall not be paroled until a minimum of 15 calendar years have been served," was applicable. Finally, the Court of Appeal held that the firearm enhancement under section 12022.53, subdivision (d) can be imposed on a sentence of life without possibility of parole.

## MICHAEL G. GERNER

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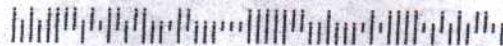


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## SAVE THE DATE!

- *June Dinner Meeting will be held on Tuesday, June 14, 2005, at Taix Restaurant. The featured dinner speaker will be Mr. John Vandavelde.*
- *JULY: NO DINNER MEETING. BOARD OF DIRECTORS MEETING ONLY.*
- *AUGUST: NO DINNER MEETING. HAVE A NICE SUMMER!*
- *Monday, October 10, 2005, 17th Annual Criminal Courts Bar Association Golf Tournament will be held at La Cañada Flintridge Country Club. Save the Date. Save Your Money.*

