

CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

NOVEMBER, 2005



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NOVEMBER DINNER MEETING



Guest Speaker

**DISTRICT ATTORNEY
STEVE COOLEY**

**Tuesday
November 8, 2005**

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

*Complimentary hors d'oeuvres
served courtesy of the Criminal
Courts Bar Association*

**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.

THANK YOU GOLFERS AND FRIENDS OF THE CCBA

The Criminal Courts Bar Association wishes to thank all of those who helped make the 16th Annual Criminal Courts Bar Association Golf Tournament a success. Thank you for the overwhelming generosity of the players and our friends.

The Golf Committee would like to give special thanks to Chickie's Bail Bonds for the generous donation of gift baskets, lunch sponsorship, free drinks on the golf course, and for all of their hard work in helping with the auction.

Also, thanks to Bad Boys Bail Bonds who stepped up in a big time fashion as they always do with gift bags, golf shirts, dinner sponsorship and a generous donation of ties and cigars for the auction. Richard Kiperman Bail Bonds and Josh Herman Bail Bonds once again proved their friendship and dedication to our association by making substantial gifts. Thank you.

The auction was once again able to raise substantial monies for Operation School Bell. As the checks are collected and the money is counted the Golf Committee will be able to give you the final tally in the December newsletter.

Thanks to the following people for their generous donations:

Law Offices of John Tyre
Criminal Courts Bar Association
Chickie's Bail Bonds
Minute Man Press, Jeff Chau
District Attorney Steve Cooley
"Z" Parking, Zemen
Christopher Chaney & Lindy Carll
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Law Offices of Hutton & Wilson
Linda & Bob Brooks, Jana & Steve Cooley
Law Offices of Mark Rafferty
Law Office of Dave Elden
Pasadena Recovery Center & Alison Triessl

Thanks also to our Tee and Green Sponsors:

Josh Herman Bail Bonds
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Law Offices of Leonard Levine
Pasadena Recovery Center
Hon. Marlene Kristovich
Law Offices of Donald Wager
Bad Boys Bail Bonds

CONGRATULATIONS TO OUR WINNERS:

**1st Place Team Lowest Gross (Winner of the Jay Goldstein Memorial Trophy):
MITCHELL BLOCK, STEPHEN LOEB, JEFF ADELMAN**

**1st Place Team Lowest Net Score:
ERIC BARTER, RODGER DEAN, BOB BROOKS, BOB MOORE**

**2nd Place Team Lowest Net Score:
RICK SANTWIER, JACK HEANY, DAVID AYALA, DAN AYALA**

**Closest to the Pin:
RODGER DEAN**

**Longest Drive:
STEPHEN LOEB**

CCBA WELCOMES DISTRICT ATTORNEY STEVEN COOLEY TO OUR NOVEMBER MEETING

The Criminal Courts Bar Association is pleased to announce that District Attorney Steve Cooley will be addressing our association at the dinner meeting to be held on Tuesday, November 8, 2005, at the Taix Restaurant.

It is always a pleasure to have Mr. Cooley attend our dinner meeting and we expect a large crowd to enjoy our complimentary hors d'oeuvres and delicious multicourse dinner.

Mr. Cooley will address us on the three greatest accomplishments in his term of office so far and three programs that he will be addressing in the future.

Your Board of Directors looks forward to seeing you at the meeting.



DINNER MENU

Coq Au Vin

Traditional French dish of chicken cooked in red wine sauce
with mushrooms and pearl onions.

Pot Roast Beef

Lean pot roast served with a Bordelaise sauce

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.



Complimentary hors d'oeuvres
served courtesy of the Criminal Courts Bar Association

CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

People v. Buser (2005) __ Cal.App.4th __, reported on September 26, 2005, in 05 Los Angeles Daily Journal 11653, the Third Appellate District held that the court did not violate the defendant's Sixth Amendment right to a jury trial by imposing an upper term sentence based on facts not proven to a jury beyond a reasonable doubt. The upper term, not middle term, is considered the maximum sentence (*People v. Black* (2005) 35 Cal.4th 1238, 12257), in limiting judicial authority to impose sentence in excess of what would otherwise be the maximum based on facts not determined by jury.

In re Phelon (2005) __ Cal.App.4th __, reported on September 27, 2005, in 05 Los Angeles Daily Journal 11665, the First Appellate District, Division 2, held that the court's staying of a count within the meaning of section 654, that involved a violent felony, precludes the Department of Corrections from applying the 15% credit limitation to the time appellant is to serve in state prison, (see *In re Reeves* (2005) 35 Cal.4th 765), and the trial court correctly declined to apply the limitation to presentence credits for the same reason.

People v. Smith (2005) __ Cal.App.4th __, reported on October 3, 2005, in 05 Los Angeles Daily Journal 11852, the Third Appellate District held that the court erred in failing to give specific acts unanimity instruction (see *People v. Jones* (1990) 51 Cal.3d 294), where the prosecution presented evidence of three distinctly different types of molestation that occurred in different locations of the residence and not necessarily on the same days. The failure to give specific acts unanimity instruction was not harmless beyond a reasonable doubt where jury found defendant not guilty on some counts and deadlocked on one count, and thus did not unanimously agree that the prosecution proved beyond a reasonable doubt that the defendant committed all acts described by alleged victim. Where the failure to give a specific acts unanimity instruction results in reversal, the burden is on prosecution to establish that retrial does not violate prohibition against double jeopardy. (See *People v. Burkhart* (1936) 5 Cal.2d 641.)

People v. Superior Court (Ferguson) (2005) __ Cal.App.4th __, reported on October 3, 2005, in 05 Los Angeles Daily Journal 11841, the First Appellate District, Division 3 held that a defendant who flees from a peace officer that is attempting to make a lawful arrest, "willfully resists" the officer within the meaning of section 148.10, subdivision (a), which indicates that "[e]very person who willfully resists a peace officer in the discharge or attempt to discharge any duty of his or her office or employment and whose willful resistance proximately causes death or serious bodily injury to a peace officer" is guilty of either a felony or a misdemeanor.

People v. Maestas (2005) __ Cal.App.4th __, reported on October 4, 2005, in 05 Los Angeles Daily Journal 1189, the First Appellate District, Division 5 held that failure to appear, as defined in section 1320.5, is a crime of moral turpitude, and a prior conviction may be used for impeachment in subsequent proceedings.

People v. Ribera (2005) __ Cal.App.4th __, reported on October 5, 2005, in 05 Los Angeles Daily Journal 11953, the Fifth Appellate District held that anal penetration through clothing is sodomy in violation of section 286 where there is penetration into a victim's anus by the defendant's penis.

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CRIMINAL COURTS BAR ASSOCIATION 16TH ANNUAL GOLF TOURNAMENT

PHOTOS BY JON TAKASUGI





CCBA NEWSLETTER CASE DIGEST

(Continued)

In re Kenneth S. (2005) _ Cal.App.4th __, reported on October 6, 2005, in 05 Los Angeles Daily Journal 11981, the Second Appellate District, Division 2 held that where the juvenile court, at time set for dispositional hearing, granted juvenile's motion for new trial on the basis that evidence of a confession was improperly admitted at the adjudication hearing in violation of *Miranda*, the ruling was not appealable under Welfare and Institutions Code section 800, subdivision (b)(5), but it was appealable under section 800, subdivision (b)(4), which permits appeals from an "order or judgment dismissing or otherwise terminating the action before the minor has been placed in jeopardy, or where the minor has waived jeopardy," since, by attacking trial court's previous findings regarding the admissibility of the confession, appellant implicitly agreed that he could be readjudicated, if necessary, if his challenge prevailed, thereby waiving jeopardy. (Cf. *Green v. United States* (1957) 355 U.S. 184; see also *People v. Garcia* (1966) 240 Cal.App.2d 9, 11 12 [by successfully attacking the judgment he at least subjects himself to a retrial that may reach the same result.]) Secondly, the court erred in ruling that *Miranda* warnings were required given the fact that appellant appeared voluntarily at the police station, was expressly told during the interview that he was not under arrest and could leave at any time, and was questioned for only 15 to 20 minutes, even though the interrogating officer testified that once appellant admitted his involvement in the incident he would not have been permitted to leave and that after the admission further questioning was conducted before *Miranda* warning was given. The court's reliance on *Missouri v. Seibert* (2004) 542 U.S. 600 [124 S.Ct. 2601], in which held that in custody suspect's rights were violated by police policy of obtaining conceitedly inadmissible confessions from suspects prior to giving warnings and then, after giving warnings, getting suspects to repeat confessions, was misplaced since there was no evidence of any similar policy and since juvenile was not in custody at time confession was obtained.

United States v. Jensen (9th Cir. 2005) __ F.3d __, reported on October 7, 2005, in 05 Los Angeles Daily Journal 11999, the Ninth Circuit Court of Appeal held that the police had probable cause to arrest the defendant without a warrant where the facts and circumstances known to the officer, including reasonably trustworthy information shared by other officers, including an informant's tip that defendant was traveling to a distant city with intent to acquire a large quantity of drugs, had engaged in such activity before, and that he had a secret compartment in the vehicle he was driving at time of the arrest where he concealed drugs, were sufficient to support a belief that the defendant had committed a narcotics offense. This concept of "collective knowledge, is sufficient to form probable cause to arrest, even though the arresting officer does not have first hand information of all of the probable cause facts. (See *United States v. Butler* (9th Cir. 1996) 74 F.3d 916, 921; see also *United States v. Bernard* (9th Cir. 1980) 623 F.2d 551, 560 561; *United States v. Hoyos* (9th Cir. 1989) 892 F.2d 1387, 1392.) Where officers had probable cause to stop defendant's vehicle to arrest him, and canine sniff test indicated presence of narcotics, the officers had reasonable cause to impound the vehicle, based on the "community caretaker doctrine. (See *Hallstrom v. City of Garden City* (9th Cir. 1992) 991 F.2d 1473, 1477 n.4.)

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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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SAVE THE DATE!

- *December Dinner Meeting will be held on Tuesday, December 13, 2005, at Taix Restaurant. Come and enjoy our holiday celebration. The dinner speakers will be Supervising Judge David Wesley and Assistant Supervising Judge Steven Van Sicklen.*
- *January Dinner Meeting will be held on Tuesday, January 10, 2006, at Taix Restaurant. The featured dinner speaker will be the great Richard Hutton.*
- *Criminal Courts Bar Association Dinner Dance will be held on Saturday, March 11, 2006, at the Ritz Carlton Huntington Hotel & Spa in Pasadena.*