

CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

OCTOBER, 2005



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Mike Shannon

OCTOBER DINNER MEETING



Guest Speaker

Laurie L. Levenson

"I love the law and love teaching students. I find we learn from each other. Unlike what many people think, there is not a big gap between the real world and law school. Law school simply gives students an atmosphere to search for the best and fairest answer."



Tuesday, Oct. 11, 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.

Laurie L. Levenson -Professor of Law,
William M. Rains Fellow and Director, Center for Ethical Advocacy

EDUCATIONAL AND PROFESSIONAL BACKGROUND

AB, Stanford University
JD, University of California Los Angeles

While in law school, Laurie Levenson was chief articles editor of the UCLA Law Review. After graduation, she served as law clerk to the Honorable James Hunter III of the United States Court of Appeals for the Third Circuit. In 1981, she was appointed assistant United States Attorney, Criminal Section, in Los Angeles, where she was a trial and appellate lawyer for eight years and attained the position of senior trial attorney and assistant division chief. Levenson was a member of the adjunct faculty of Southwestern University Law School from 1982-89. She joined the Loyola faculty in 1989 and served as Loyola's associate dean for academic affairs from 1996-99.

PROFESSIONAL MEMBERSHIPS AND ACTIVITIES

Attorney Representative to the United States Court of Appeals for the Ninth Circuit and the United States District Court for the Central District of California
LA County Bar Assoc. Judiciary and Judicial Appointments Committees
Bet Tzedek Legal Services
Board Member, UCLA Hillel Council
Special Master, Los Angeles County Superior Court and United States District Court

RECENT SCHOLARSHIP

California Criminal Procedure (2003)
Handbook On Federal Criminal Rules (2003)
Detention, Material Witnesses & the War on Terrorism, 35 Loyola of Los Angeles Law Review 1217 (2002)
"Drug Experts," National Law Journal at B11 (June 10, 2002)
"Stun Belts," National Law Journal at B11 (September 9, 2002)
"Character Evidence," National Law Journal at B11 (November 2002)
"Unconscionable Searches," LA Daily Journal at A7 (December 23, 2002)
"Searches 2002," 24 National Law Journal at B10 (January 21, 2002)
"Native Son: Prosecution of John Walker Lindh," LA Daily Journal at A7 (January 28, 2002)
"Guilty Plea Advice & Ineffective Assistance of Counsel," LA Daily Journal at A7 (April 22, 2002)
"Prison Rehabilitation Program Can Require Confession," LA Daily Journal at A7 (August 26, 2002)
"Police Corruption and New Models for Reform," 35 Suffolk Law Review 1 (2001)
"Unnerving the Judges: Judicial Responsibility for the Rampart Scandal," 34 Loyola of Los Angeles Law Review 787 (2001)
"Executive Summary: An Independent Analysis of the Los Angeles Police Department's Board of Inquiry Report on the Rampart Scandal," 666 PLI/Lit 169 (2001)
"Cases of the Century," 33 Loyola of Los Angeles Law Review 585 (2000)
"Working Outside the Rules: The Undefined Responsibilities of Federal Prosecutors," 26 Fordham Urban Law Journal 553 (1999)
"The Ethics of Legal Commentators III," 50 Mercer Law Review 737 (Spring 1999)
"Sentencing," National Law Journal B21 (December 7, 1998)
"Redefining the Way Grand Juries Work," LA Daily Journal 7 (August 28, 1998)
"Battered Woman's Syndrome Used to Argue Traditional Defenses," LA Daily Journal 7 (June 26, 1998)
Free Press/Fair Trial, Chapter in Supplement II of the Encyclopedia of the American Constitution (1998)
1998 Treatise Updates, Levenson on California Criminal Procedure
Roadmap Of Criminal Law (Aspen 1997)

COURSES TAUGHT

Criminal Law, Criminal Procedure, White Collar Crime, Ethical Lawyering, Evidence, Advanced Trial Advocacy

THE CORN FIELD IS OPEN

Past President Pat Lake sends along some great information for stress reduction.

Located less than a mile from the courthouse is a 23-acre cornfield that is open to the public at any time during the day (you just have to check in with the folks in the trailer at the north end of the cornfield) where you can walk around the one-mile outer perimeter dirt road, or even through the center of the field. The field will eventually become a state park, but for the next coming months, the Annendale Foundation is planting and harvesting decorative corn and has invited the public to "Come on down!" It is so quiet and peaceful, you will not believe that something like this could exist in the asphalt city.

To enjoy the cornfield go north on Alameda past Philippe's. Continue northbound as Alameda becomes North Main and then just before the road angles to the right before going over the L.A. River, you should angle left (watching out, of course for oncoming traffic) Take the road to its end, and you'll see the entrance.

For more information go to notacornfield.info.

DINNER MENU

Fresh Tuna Steak

Served with mango salsa or ponzu

Lamb Shank

Braised lamb shank

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

VIP MENTORS

VIP Mentors is a unique mentoring organization. It was created by California attorneys for one purpose only: to mentor young men and women on parole. VIP is the only program in California that recruits attorneys and judges to be guides, advisors, friends and role models for parolees as they struggle to return to our communities and turn their lives around. Since VIP's founding in 1972, attorney volunteers have helped thousands of former offenders begin new lives. Many members of the Criminal Courts Bar Association are VIP Mentors.

On Thursday, October 20, 2005, at 6:00 P.M. at the Sportsmen's Lodge, Mark Geragos will be the keynote speaker at the VIP Mentors Los Angeles and Pasadena 33rd Annual Awards Banquet. The event will honor all of the local attorney volunteers and the parolees they mentor in the VIP program, and bestow awards upon outstanding participants.

If you would like further information on how you can become involved with VIP Mentors, please contact Sharon Beverstock at 213-944-0757.

CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

People v. Rodgers (2005) __ Cal.App.4th __, reported on August 22, 2005, in 05 Los Angeles Daily Journal 10122, the Fourth Appellate District, Division 2, held that the police were justified in stopping the defendant as he was driving out of an apartment complex during early morning hours where officers received an anonymous tip that concerned ongoing criminal conduct posing an imminent serious threat to human life and made observations consistent with the anonymous tip. The Court of Appeal distinguished *Florida v. J.L.* (2000) 529 U.S. 266, and found that it was more related to the threats posed in *United States v. Holloway* (11th Cir. 2002) 290 F.3d 1331 [gunshots and arguing reported]; *People v. Coulombe* (2000) 86 Cal.App.4th 52 [two individuals, separately reported a man with a gun in a nearby restaurant]; and *United States v. Wheat* (8th Cir. 2001) 278 F.3d 722 [short time between tip and officers arrival supports reliability].) Here, the officer learned that in a moving car an anonymous tip informed the police that the driver of the particular car was going to shoot and kill a female passenger. The officer pulled the car over, had the driver get out, and then gained permission to search the car from one of the passenger, yielding a gun and other items.

In re Tommy A. (2005) __ Cal.App.4th __, reported on August 22, 2005, in 05 Los Angeles Daily Journal 10141, the Fourth Appellate District, Division 1 held that the payment by vehicle owner's insurance company for damages caused by the minor, who used the vehicle without the owner's permission did not come "directly from" the offender/minor within the meaning of Welfare and Institutions Code section 730.6, subdivision (a)(1) [the victim must receive payment from the minor for the loss], so neither that payment nor victim's release of civil liability relieved the minor of the statutory obligation to pay the restitution for the hit and run accident. The court distinguished *People v. Bernal* (2002) 101 Cal.App.4th 155, based on the statutory interpretation.

Hirschfield v. Payne (9th Cir. 2005) __ F.3d __, reported on August 23, 2005, in 05 Los Angeles Daily Journal 10187, the Ninth Circuit Court of Appeal held that lower state court did not abuse discretion by denying the defendant's *Faretta* request on grounds that it was made for the purpose of delay, where the request was made one day before the trial was scheduled to begin. Denial of defendant's second request for self representation, solely on grounds that he did not know the rules of procedure and evidence, was directly contrary to *Faretta* and required that ensuing conviction be set aside. (See *United States v. Erskine* (9th Cir. 2004) 355 F.3d 1161, 1167 [the request must be granted if not made for purposes of delay, and the request is knowing unequivocal and intelligent].)

Arnold v. Runnels (9th Cir. 2005) __ F.3d __, reported on August 25, 2005, in 05 Los Angeles Daily Journal 10322, the Ninth Circuit Court of Appeal held that the trial court violated the defendant's Fifth Amendment rights by admitting a tape recording of certain utterances made during an interrogation, even though the defendant unequivocally invoked his right not to speak by saying that he did not want to talk "on tape" and responded to all substantive questions on tape by saying "No comment." The fact that he did answer other questions, not on tape, did not waive his rights not to be taped.

16th ANNUAL
CRIMINAL COURTS BAR ASSOCIATION
GOLF TOURNAMENT

DATE: MONDAY, OCTOBER 10, 2005

TIME: 10:30 A.M. Check-in / Registration
12:00 P.M. BBQ Buffet Served at the Pool
1:15 P.M. Shotgun Start
5:30 P.M. Reception/Cocktail Hour
6:30 P.M. Mexican Buffet Dinner

PLACE: La Canada Flintridge Country Club
5500 Godbey Drive
La Canada Flintridge, CA 91011
(818) 790-0611

FORMAT: Best Ball Scramble - Foursomes

PRIZES: TROPHIES - 1st, 2nd, (CALLOWAY); 1ST PLACE LOW GROSS
Prizes-
Longest Drive (*Men & Women*), Closest to the Pin

ENTRY FEE: \$130.00/Player (Includes Green Fees, Cart, BBQ lunch, Hors D'oeuvres,
Mexican Buffet Dinner, No Host Bar & Various Tee Prizes.

AUCTION: Immediately after play; money to support CCBA and OPERATION
SCHOOL BELL

CONTACT: Mail Entry Fee, Players Names and Handicaps to:

Christopher C. Chaney
1055 E. Colorado Boulevard, Suite 310
Pasadena, California 91106
Phone: 626.577.5005 Fax: 626.397.9707

Make Checks Payable to "CCBA"

16TH ANNUAL
CRIMINAL COURTS BAR ASSOCIATION
GOLF TOURNAMENT

FIELD IS LIMITED; SIGN UP EARLY!!

Player: _____ **Phone Number:** _____

My Best Ball Partners Are: _____

Enclosed is a check for \$ _____ **for** _____ **Players**

TEE SPONSOR

- YES, I would like to sponsor a tee. Enclosed is my check for \$100.
Please reserve tee# _____, if possible.

GREEN SPONSOR

- YES, I would like to sponsor a green. Enclosed is my check for \$150.
Please reserve green# _____, if possible.

LUNCH/DINNER/CLOSEST TO THE PIN

- YES, I would like to sponsor lunch, dinner, or closest to the pin.
Enclosed is my check for \$500 dollars.
- Lunch Dinner Closest to the Pin

DONATION PLEDGE

16th ANNUAL CRIMINAL COURTS BAR ASSOCIATION
GOLF TOURNAMENT

SUPPORTING OPERATION SCHOOL BELL

The Criminal Courts Bar Association is seeking donations for its
annual auction to be held in conjunction with the
16th Annual Criminal Courts Bar Association Golf Tournament

Monday, October 10, 2005, at La Canada Flintridge Country Club

If you wish to donate, please fill out the form below and
bring your item(s) to the next CCBA meeting or mail/fax the information to:

Christopher C. Chaney
1055 E. Colorado Boulevard, Suite 310
Pasadena, CA 91106
Telephone: 626.577.5005 Fax: 626.397.9707

If you wish to donate the use of a vacation home, please provide pictures and/or a detailed
description of the property and amenities as well as the dates of availability.

I will donate the following item(s) to the Auction supporting Operation School Bell and CCBA.

Donor Name: _____ Telephone: _____

Address: _____

Description: _____ Est. Value: _____

1) _____

2) _____

*******OR*******

Enclosed is \$ _____ to be used by CCBA to purchase an auction item.

*******AND*******

_____ I would like to sponsor a tee at \$100. Please reserve tee # _____ if possible.

_____ I would like to sponsor a green at \$150. Please reserve hole # _____ if possible.

CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

In re Alex N. (2005) __ Cal.App.4th __, reported on August 24, 2005, in 05 Los Angeles Daily Journal 10257, the Sixth Appellate District held that a juvenile is required to register as a sex offender, within the meaning of section 290, only if the person has been "discharged or paroled" from the California Youth Authority and the CYA commitment was both after and because of a sex offense adjudication. When the minor is committed to CYA only for a nonsex offense, he will not be required to register as a sex offender even though he has previously been adjudicated a ward based on sex related offenses. Additionally, the trial court erred in ruling that it had no discretion not to aggregate the sentence with prior sex offenses and current nonsex offenses so as to avoid requiring ward to register as sex offender. The court erred in believing that it had to aggregate the sentence within the meaning of Welfare and Institutions Code section 726. Finally, the court erred in failing to exercise its discretion to set the maximum time of confinement in CYA at less than the maximum time. The court agrees with the holding in *In re Sean W.* (2005) 127 Cal.App.4th 1177, and *In re Carlos E.* (2005) 127 Cal.App.4th 1529.

Williams v. Roe (9th Cir. 2005) __ F.3d __, reported on August 25, 2005, in 05 Los Angeles Daily Journal 10352, the Ninth Circuit Court of Appeal held that the California courts violated the ex post fact clause when it applied the amended version of section 654, which mandated that the court impose the term carrying the greatest sentence, rather than the version of the statute that allowed the sentencing court the discretion to impose either of the crimes covered by section 654. (See *Weaver v. Graham* (1981) 450 U.S. 24, 29, 33.)

People v. Schmeck (2005) __ Cal.4th __, reported on August 26, 2005, in 05 Los Angeles Daily Journal 10433, the California Supreme Court held that the defendant failed to prove purposeful discrimination, based on peremptory challenges to Jewish venire members, where potential the jurors' voir dire responses suggested they were unlikely to vote for death penalty; where one of them said it would be difficult to serve if smoking were permitted in courthouse, as was the case at the time; and where the prosecution did not question venire members about whether they were Jewish but learned that some were or might have been Jewish based on responses to defense questioning, making it impossible to determine how many Jewish persons were in the pool or whether prospective Jewish jurors were challenged any more frequently than non-Jewish. Under the circumstances, deference was owed to trial judge's determination that no pattern of discrimination had been established. (See *Johnson v. California* (2005) __ U.S. __ [125 S.Ct. 2410], [setting forth the restated *Boston* standard for the California courts].)

People v. Medina (2005) __ Cal.App.4th __, reported on August 26, 2005, in 05 Los Angeles Daily Journal 10422, the Second Appellate District, Division 2, held that a defendant has been "convicted" of a prior offense for purposes of Three Strikes Law after a jury's guilty verdict is read in open court even if the jury poll or sentencing is pending. This is consistent with *People v. Williams* (1996) 49 Cal.App.4th 1632 [convicted has no set meaning] and *People v. Mendoza* (2003) 106 CAL.APP.4TH 1030, 1033 [for sentence, conviction only means ascertainment of guilt]. (See also *People v. Hendrix* (1987) 43 Cal.3d 584, 597; *People v. Bento* (1998) 65 Cal.App.4th 179, 188 [a verdict is generally complete if it has been read and received by the clerk, acknowledged by the jury and recorded].)

People v. Martinez (2005) __ Cal.App.4th __, reported on August 30, 2005, in 05 Los Angeles Daily Journal 10591, the Fourth Appellate District, Division 3 held that the lower court has a duty to maintain a confidential attachment to search warrant affidavit, which was brought to in camera hearing by police officer and returned to him at conclusion of hearing. (See *People v. Hobbs* (1994) 7 Cal.4th 948; Evid. Code §§1041, 1042.) The motion to unseal attachment was properly denied once trial court determined there were no material misstatements or omissions, that under the totality of the circumstances probable cause existed to issue the warrant, and that information contained in the attachment, if disclosed, would tend to reveal the identity of confidential informant or informants. (*Id.*, 977.) The officers delay of 25 to 35 seconds before entering detached garage and 30 second delay before entering house satisfied knock notice requirements where warrant was based on a reasonable suspicion that defendant had been selling narcotics. (*United States v. Banks* (2003) 540 U.S. 31, 40 [124 S.Ct. 521, 157 L.Ed2d 343].) Where only a daytime search had been authorized, and officers could, at 7 a.m., reasonably anticipate that any occupants would be awake.

People v. Love (2005) __ Cal.App.4th __, reported on August 31, 2005, in 05 Los Angeles Daily Journal 10609, the First Appellate District, Division 3, held that a defendant who waived right to speedy preliminary hearing, and was released from custody, who failed to appear and was ultimately taken into custody on bench warrant, was not entitled to a preliminary hearing within 10 days of his re-arrest. The defendant in that circumstance has only a constitutional, not a statutory right to speedy preliminary hearing within the meaning of section 859b. That statutory right was satisfied when the prosecution was prepared to proceed with the preliminary hearing 15 days after defendant was arrested on the bench warrant. Section 859b guarantees a statutory speedy preliminary hearing to a defendant who remains in continuous custody from the time of arraignment, but not to one who waives time and then fails to appear. Additionally, the Court of Appeal held that there is not violate an equal protection violation since the Legislature may rationally discriminate between those who are in custody involuntarily and those taken into custody after choosing not to appear when required.

LAST CHANCE FOR GOLF

The Criminal Courts Bar Association will be holding its 16th Annual Criminal Courts Bar Association Golf Tournament on Monday, October 10, 2005, at La Cañada Flintridge Country Club.

In addition to a great day of golf we hope to raise money for Operation School Bell. Now more than ever we need to care for the thousands of children in our community who cannot go to school because they lack basic school clothing. Your help is vital to Operation School Bell.

Please support our efforts by doing one of the following:

- Sponsor a tee with your name for \$100 dollars.
- Sponsor a green with your name for \$150 dollars.
- Donate a gift which can be raffled or auctioned off at the tournament.
- Donate money which will be used to purchase a gift in your name.
- Sponsor/Find a Sponsor for the lunch, dinner, and Closest to the Pin for \$500 dollars each.

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 due 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 Dinner Dance Program.

We look forward to a great day of golf and fun and hope all of you can join us.

For more information please contact Chris Chaney at (626) 577-5005, Bob Wilson (626) 397-9700, or Stephen Sadowsky at (213) 622-4750.

LADIES FIRST!

Congratulations and a huge round of applause to past President Mona Soo Hoo, Federal Public Defender Maria Stratton, Janet Levine, and Gigi Gordon for being named in the top 75 Women Litigators of California List.

Congratulations on the well deserved recognition for all of your hard work.

MICHAEL G. GERNER

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mggethics@msn.com

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.

Acosta	Oscar	Golden	Jonathan	Richland	Bruce
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Artan	Michael	Gutierrez	Joseph	Sadowsky	Stephen
Bad Boys	Bail Bonds	Herman	Josh	Salzman	Ira
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Bianco	James	Kavinoky	Darren	Schwartz	Robert
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Blatt	James	Levine	Leonard	Sheahen	Robert
Brooklier	Anthony	Marks	Donald	Shevin	Eric
Brookman	Daniel	Mathews	Charles	Stein	Andrew
Caruso	Carey	Mesereau	Thomas	Triessl	Alison
Chaney	Christopher	Michaelson	Alvin	Trimarco	Jack
Chaney	Michael	Nardoni	Daniel	Wager	Donald
Escovar	Steve	Norris	Michael	Weiss	Sammy
Forbes	Larry	Passanante	John	Weitzman	Howard
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Genego	William	Rafferty	Mark	Yanuck	Jeffrey
Gerner	Michael	Re	Donald	Zyurdiaga	John

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Garcia	Anthony	Meyer	Murray	Zimbert	Michael
Gordon	Gigi	Mizrahi	Ed	Zlotnik	Arna



CRIMINAL COURTS

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SAVE THE DATE!

- *October 10, 2005, Criminal Courts Bar Association Golf Tournament at La Cañada Flintridge Country Club.*
- *October 11, 2005, Dinner Meeting will be held at Taix Restaurant featuring guest speaker Laurie L Levenson.*
- *November 8, 2005, Dinner Meeting will be held at Taix Restaurant. SPEAKER TO BE ANNOUNCED.*
- *December 13, 2005, Holiday Dinner Meeting will be held at Taix Restaurant.*
- *March 11, 2006, Criminal Courts Bar Association Dinner Dance at the Ritz Carlton Hotel in Pasadena.*