

# CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

January 2014

## JANUARY MEETING

*The Criminal Courts Bar Association  
cordially invites you to the  
January Dinner Meeting*

*with guest speaker*

**RICHARD A. HUTTON**  
**“DUI: CASE LAW UPDATE”**



**TUESDAY, JANUARY 14, 2014**

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

*Cocktails & Appetizers - 6:30 p.m.*

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

*LES FRERES TAIX RESTAURANT  
1911 Sunset Blvd., Los Angeles, CA 90026 (Near Alvarado)*

1 hour MCLE Pending

## CCBA WELCOMES RICHARD A. HUTTON

Richard A. Hutton graduated from the University of California at Los Angeles in 1967 with a Bachelor's Degree, and with his law degree from the same university in 1970.

Mr Hutton is a past President of the Board of Governors of the California Attorneys for Criminal Justice (CACJ), and is a past President of the Los Angeles County Criminal Courts Bar Association, and California DUI Lawyers Association (formerly California Deuce Defenders).

Mr. Hutton is presently a partner in the Pasadena law firm of Hutton & Wilson. During his career, dedicated almost exclusively to criminal law, he has tried over five hundred jury trials. He has been designated as a Certified Criminal Law Specialist by the California State Bar Board of Legal Specialization. Additionally, he has represented various organizations appearing before the California Assembly Legislative Committee in Sacramento, testifying regarding proposed legislation.

In 1991 and 2010, Mr. Hutton received the Jerry Giesler Memorial Award from the Criminal Courts Bar Association. This award recognizes outstanding courtroom abilities.

Mr. Hutton has lectured extensively in the field of criminal law, with emphasis in driving under the influence cases. He has previously taught classes for the U.S.C. Advanced Professionalism Program on the subject of driving under the influence. He has lectured to various bar association groups, including California Attorneys for Criminal Justice, San Diego Trial Lawyers Association, Criminal Courts Bar Association, and Orange County Trial Lawyers. He has authored numerous articles on driving under the influence which have been published in numerous periodicals including Scientific and Expert Evidence, Second Edition.

**Scott J. Harris, Esq.**  
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## CCBA MEMBERSHIP

You are hereby cordially invited to join or renew your membership in the Criminal Courts Bar Association.

The first meeting of the Criminal Courts Bar Association took place in 1954 at the old Levy's Restaurant located on Spring Street in downtown Los Angeles. Among the founders and active practitioners who helped form our organization were Al Matthews, Abbot Bernay, Max Solomon, John Marshall, Forrest Appell, Dick Erwin, Harold Ackerman, Joe Rosen, Maury Lavine, and Al Garber. Jerry Giesler actively participated in the organization in its initial stages and he was the only president to serve two terms.

The Articles of Incorporation state that "the specific and primary purpose of this corporation is to form a professional association of attorneys actively engaged in the practice of law who are dedicated to upholding and improving the standards for the administration of justice."

Quoting our revered past president, James G. Cooney, "since the beginning that statement of purpose has been and is the reason for our existence. Our association will grow in size, strength, and respect only to the extent permitted by the force, vigor, and diligence generated by the membership."

These are among the many reasons to join the Criminal Courts Bar Association:

- Networking opportunities through our monthly dinner meeting and social events.
- MCLE credits.
- Newsletter: Keeping you up-to-date with current case law and events of importance.
- Charitable opportunities through our fundraising, golf tournament, and annual clothing drive.
- Annual Awards Dinner Dance where the best and brightest of our profession are honored.
- Lend your voice to the other professionals who make a difference in the criminal justice system.
- Be a part of the history and tradition of the Criminal Courts Bar Association.

**JOIN. COMMIT. ENGAGE.**

## ◊ DINNER MENU ◊

Complimentary appetizer:

Baked Brie with fresh sliced Baguette



The main entrees will be:

### Beef Bourguignon

Tender pieces of beef in Burgundy wine mushroom sauce.

### Chicken Cordon Bleu

Stuffed with ham and Swiss cheese.

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

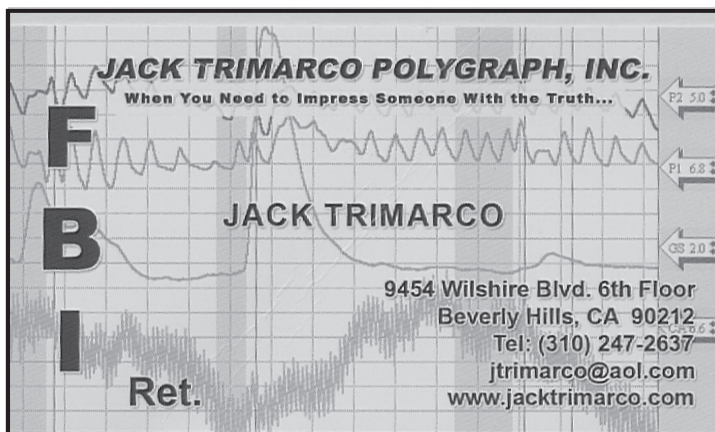
## CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

*People v. Vangelder* (2013) \_ Cal.4th \_, reported on November 22, 2013, in 2013 Los Angeles Daily Journal 15288, the California Supreme Court held that the trial court properly excluded challenged expert testimony as it pertained to Vehicle Code section 23152, subdivision (b) (over .08 alcohol). The expert testimony that breath tests are an inherently inaccurate measure of how much alcohol a person has in their system is inadmissible insofar as it relates to a Vehicle Code section 23152, subdivision (b) since it conflicts with the underlying premise and definition of the offense. The 0.08 percent breath-alcohol concentration formulated by the legislature in enacting Vehicle Code section 23152, subdivision (b) was adopted based on studies employing similar breath-testing machines that already took into account various physiological factors that may affect the results of breath machines generally. The fundamental reliability of breath-testing models used in the application and enforcement of Vehicle Code section 23152, subdivision (b) has been determined and endorsed as policy by the legislature, which approved its evidentiary use for such a prosecution. However, the defendant remained free to argue that the particular machines used in his case malfunctioned or were improperly calibrated or employed.

*People v. Haro* (2013) \_ Cal.App.4th \_, reported on November 22, 2013, in 2013 Los Angeles Daily Journal 15306, the Third Appellate District held that the trial court erred when it used a prior sustained juvenile petition for robbery, which had been dismissed pursuant to Welfare and Institutions Code section 782. Dismissal of the defendant's robbery sustained petition under Welfare and Institutions Code section 782 precludes the use of that adjudication as a strike under the Three Strikes Law. Welfare and Institutions Code section 782 is a general dismissal statute similar to section 1385. (*Derek L. v. Superior Court* (1982) 137 Cal.App.3d 288, 232-233.) In either case, the dismissal operates as a matter of law to erase the prior conviction as if the defendant had never suffered the conviction in the initial instance. (*People v. Barro* (2001) 93 Cal.App.4th 62, 66.)

*People v. Sanchez* (2013) \_ Cal.App.4th \_, reported on November 29, 2013, in 2013 Los Angeles Daily Journal 15526, the Second Appellate District, Division 5 held that in allowing the defendant's conviction of first degree murder under the natural and probable consequences doctrine, the trial court erred in sanctioning a jury verdict that was not unanimous as to the degree of the murder charge, and advising the jury that it had to find that the defendant, rather than the actual killer, acted with malice aforethought. Under the natural and probable consequence doctrine, the only premeditation which might elevate an aider and abettor's liability for murder to liability for first degree murder would be the premeditation of the direct perpetrator. It is not necessary for the jury to agree as to theory if they are unanimous that the defendant committed first degree murder. Unanimity was required as to the theory of guilt where different theories supported different degrees of murder. The jury was not required to find that the defendant acted with malice in a case prosecuted under the natural and probable consequences doctrine. Malice was only required on the part of the actual perpetrator of the murder.



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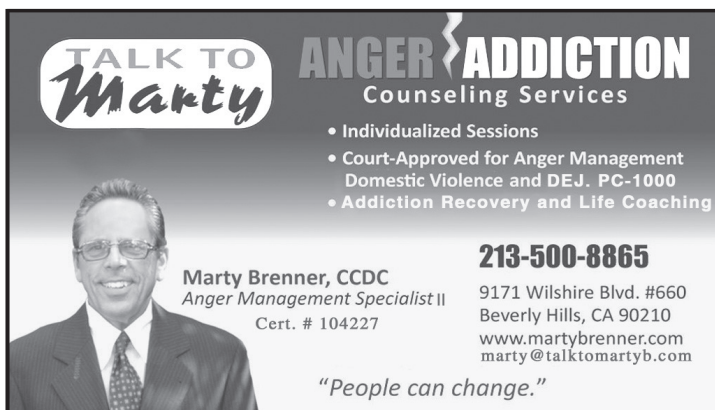
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marty@talktomartyb.com

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## CRIMINAL COURTS BAR ASSOCIATION

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

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- \*Commissary Accounts

**ERIC NELSON**  
(805) 603-6018

PO BOX 637  
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*Happy  
New Year!*

## SAVE THE DATE

- *CCBA Dinner Meeting will be held on January 14, 2014, at Taix Restaurant. The featured dinner speaker will be Richard A. Hutton, "DUI: Case Law Update."*