

CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

MAY, 2015

*The Criminal Courts Bar Association
cordially invites you to the
May Dinner Meeting with guest speaker*

Terri McDonald

Assistant Sheriff



*Custody Operations Division
of the Sheriff's Department*



TUESDAY, MAY 12, 2015

Cocktails/Reception

6:30 p.m.

Dinner Meeting begins promptly at 7:00 p.m.

\$40.00 per person

TAIX FRENCH RESTAURANT

1911 Sunset Blvd., Los Angeles, CA 90026
(Near Alvarado)

1 Hour MCLE

Reservations advised. Call Elizabeth Ferrat at (626) 577-5005 or email at
criminalcourtsbarassociation@gmail.com.

PAY BY CREDIT CARD/ONLINE REGISTRATION IS AVAILABLE!

GO TO "SEE EVENTS."

<http://www.laccba.org>

62ND ANNUAL AWARDS DINNER A GREAT SUCCESS

Congratulations to incoming president Christa Hohmann on a hugely successful 62nd Annual Criminal Courts Bar Association Awards Dinner held at the beautiful Millennium Biltmore Hotel. The crowd was buoyant and high spirited after a loud and noisy cocktail hour. The crowd was ushered into the Crystal Ballroom where the presentation came off without a hitch. Each of the award winners gave memorable speeches and were truly thankful for the honors that were bestowed upon them.

Congratulations to the newly installed Officers and Board of Directors:

Christa Hohmann
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Congratulations to all of our award winners:

JERRY GIESLER MEMORIAL AWARD
VICTOR SHERMAN MICHAEL D. NASATIR
VICKI I. PODBERESKY

JOSEPH M. ROSEN JUSTICE AWARD
EZEKIEL P. PERLO

JOURNALISM EXCELLENCE AWARD
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RICHARD G. HIRSCH

JOHNNIE COCHRAN AWARD
HONORABLE MICHAEL A. TYNAN

PRESIDENT'S AWARD
MICHAEL S. ROMANO
Director, Three Strikes Project • Stanford Law School
MARK FAUCETTE
Director of Community Relations • Amity Foundation

CCBA WELCOMES TERRI McDONALD ASSISTANT SHERIFF

Terri McDonald, a 24-year veteran of the California Department of Corrections and Rehabilitation (CDCR) was recently appointed to the position of Assistant Sheriff by Sheriff Lee Baca and will oversee the Custody Division of the Los Angeles County Sheriff's Department.

Assistant Sheriff McDonald's career in law enforcement began in 1988 as a Correctional Officer with the California Department of Corrections and Rehabilitation. During her tenure with the CDCR, she literally worked her way up through the ranks of the Department, working as an Officer, Sergeant, Lieutenant, Captain, including Captain at Folsom State Prison, Associate Warden, Chief Deputy Warden, Division Chief, Chief Deputy Secretary and Undersecretary. Additionally, she oversaw the Statewide Classification Unit, Statewide Population Management Unit, assisted in revamping the correctional officer academy, oversaw and activated out-of-state prisons with California inmates.

Prior to her employment with our Department, Assistant Sheriff McDonald oversaw California's state prisons, juvenile justice, gang unit, fugitive apprehension unit, victim services, rehabilitative programming and the Ombudsman's office. During her years with the CDCR, Assistant Sheriff McDonald supervised approximately 300,000 offenders in prison and parole serving as an executive leader for roughly 60,000 employees, with an operating budget in excess of \$10 billion.

Assistant Sheriff McDonald holds a Bachelor of Science Degree in Leadership in Law Enforcement, graduating with Honors, from the University of San Francisco.

Assistant Sheriff McDonald maintains a home in Northern California and resides in Los Angeles County. She is single; but in a long-term committed relationship and in her free time enjoys travel, golf and camping.

DINNER MENU

The main entrees will be:

Short Ribs Provencal

Braised with carrots, tomatoes, and celery. A house favorite.

Chicken Cordon Bleu

Chicken breast 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.

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CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

Rueles v. Superior Court (2015)__Cal.App.4th__, reported on March 23, 2015, in 2015 Los Angeles Daily Journal 3244, the Sixth Appellate District, on rehearing, held that mandatory sex offender registration under section 290, for a juvenile who was first adjudicated, in 1994, of violating section 647.6 (annoying or molesting a child) and then 3-years later committed various other offenses, which were not sex crimes, and the juvenile court committed him to the Division of Juvenile Facilities (DJF), but not for a juvenile who is adjudicated for violating section 647.6 and never committed to the DJF, does not violate the equal protection clauses of the federal and state constitutions. As part of the aggregate time calculation that the court imposed when it sent him to DJF, was a period that accounted for the violation of section 647.6. The statute, as amended, only requires registration where the two adjudications are aggregated at the court's discretion, so that the section 647.6 violation is one of the commitment offenses, and therefore, the two groups of offenders are not similarly situated.

People v. Scott (2015)__Cal.App.4th__, reported on March 24, 2015, in 2015 Los Angeles Daily Journal 3263, the Fourth Appellate District, Division 2 held that it is not cruel and unusual punishment to impose a sentence of 120-years to life on a juvenile for three counts of attempted murder with firearm enhancements given the fact that under section 3051 he would be eligible for parole review in 25 years. This is just another in the line of cases that split on whether the sentence must be constitutional on its face now since a defendant cannot rely on the fact that section 3051 may still be in place in the future.

People v. Velasco-Palacios (2015)__Cal.App.4th__, reported on March 25, 2015, in 2015 Los Angeles Daily Journal 3297, the Fifth Appellate District held that prosecution committed egregious or outrageous governmental misconduct, when it turned over to the defense an edited transcript of the defendant's statement to the police where it added fabricated language suggesting that the defendant had committed a more serious crime than that he actually admitted. The misconduct was prejudicial and warranted dismissal of the charges. (See *Morrow v. Superior Court* (1994) 30 Cal.App.4th 1252.) The Court of Appeal found that the prosecution's assertion that there has to be some form of physical brutality in order to support the sanction of dismissal is wrong. The act of the prosecutor prejudiced the defendant's right to counsel similar to the wrong found in *Barber v. Municipal Court* (1979) 24 Cal.3d 742.)

Grady v. North Carolina (2015) U.S. , reported on March 31, 2015, in 2015 Los Angeles Daily Journal 3543, the United States Supreme Court, held in a per curiam opinion that a recidivist sex offender participate in lifelong, satellite-based monitoring (SBM) subjected him to "searches" within the meaning of the Fourth Amendment. Where lower court erroneously ruled otherwise, the defendant was entitled to reversal and remand so the lower court could determine whether the requirement was also "unreasonable" within the meaning of the Fourth Amendment. (Cf. *United States v. Jones* (2012) 565 U.S. , [132 S.Ct. 945; 181 L.Ed.2d 911], the United States Supreme Court held that the government's attachment of a GPS device to the defendant's vehicle and its use of that device to monitor the vehicle's movements constituted a search under the Fourth Amendment.)

People v. Huggins (2015)__Cal.App.4th__, reported on April 2, 2015, in 2015 Los Angeles Daily Journal 3649, the First Appellate District, Division 5 held that the testimony of an accomplice must be corroborated pursuant to section 1111, but one accomplice cannot corroborate another. (*People v. Rodrigues* (1994) 8 Cal.4th 1060, 1132.) Additionally, there is a requirement that the testimony of an in-custody informant must be corroborated pursuant to section 1111.5. This Court of Appeal holds that an accomplice and an in-custody informant may corroborate each other.

CCBA 2015 PAID MEMBERSHIP

Ananian	Alexandra	Liu	Zhao
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Chapman	Stuart	Royce	Robert
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Freed	Evan	Santwier	Rickard
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Klink	Richard	Tyre	Samuel
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Kuyumjian	Hagop	Valone	Keith
LaPan	Richard	Yamamoto	Mia
Lemberg	Andrea	Zlotnik	Arna

CCBA 2015 SUSTAINING MEMBERS

The Criminal Courts Bar Association thanks each of its Sustaining Members. Your contributions help support our programs for the 2014 year.

Artan	Michael	Norris	Michael
Bezonsky	Brian	Passanante	John
Chacon	Richard	Re	Donald
Hohmann	Christa	Richland	Bruce
Hutton	Richard	Sadowsky	Stephen
Lake	Patrick	Schwartz	Robert
Levine	Leonard	Wilson	Robert
Marshall	Sharon Beth		

People v. Guzman (2015) __Cal.App.4th__ ourth Appellate District, Division 3 held that the definition of "unreasonable risk of danger to public safety," spelled out in Proposition 47, section 1170.18, subdivision (c), which permits resentencing of certain defendants previously convicted of felonies that have been reduced to misdemeanors by that initiative, does not apply to resentencing petitions brought by three-strikes defendants under Proposition 36 under section 1170.126. Additionally, the court did not abuse its discretion in denying the petition to modify his sentence within the meaning of section 1170.126.

People v. Diaz (2015)__Cal.4th__, reported on April 7, 2015, in 2015 Los Angeles Daily Journal 3849, the California Supreme Court, reversed the Court of Appeal and held that the trial court, if requested, has the duty to instruct a jury to consider a criminal defendant's out-of-court statements with caution, (see CALCRIM No. 358 to weigh evidence of statements in context and in light of how they were obtained; see also *People v. Carpenter* (1997) 15 Cal.4th 312, 392-393), when the statements at issue form the basis of a prosecution for making criminal threats, (§ 422), but there is no longer a duty to give the instruction sua sponte.

People v. Keith (2015 __Cal.App.4th__, reported on April 8, 2015, in 2015 Los Angeles Daily Journal 3879, the Second Appellate District, Division 5 held that In re Estrada (1965) 63 Cal.2d 740, 745, and *People v. Hyajek* (2014) 58 Cal.4th 1144, 1195-1196, which allows for a reduced sentence when a statute is changed to benefit the defendant applies in this case. Here, the penalty for possession for sale of cocaine base was changed from three, four or five years to two, three or 4 years after the defendant had been found guilty of the offense; there was no savings clause. Pursuant to Estrada and its progeny, appellant gets the benefit of the change, and the matter was remanded for a new sentencing hearing.



CRIMINAL COURTS BAR ASSOCIATION

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SAVE THE DATE

- *May Dinner Meeting will be held on Tuesday, May 12, 2015, at Taix French Restaurant. Guest speaker will be Terri McDonald, Assistant Sheriff.*
- *June Dinner Meeting will be held on June 9, 2015, at Taix French Restaurant. Speaker to be announced.*
- *25th Annual Criminal Courts Bar Association and Pasadena Bar Association Golf Tournament to be held at La Cañada Country Club on Monday, October 12, 2015.*