

CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

SEPTEMBER, 2014

SEPTEMBER MEETING

The Criminal Courts Bar Association

cordially invites you to the September Dinner Meeting

“LEVELING THE PLAYING FIELD; COMBATING PROSECUTION POWER POINT PRESENTATIONS”

Guest Speakers

LOS ANGELES SUPERIOR COURT JUDGE (TBA)

KAREN GOLDSTEIN

ANTHONY BROOKLIER

ARON LAUB

CHRISTOPHER CHANEY

Moderated by ROBERT SCHWARTZ

• • **NOTE DIFFERENT DATE** • •

TUESDAY, SEPTEMBER 16, 2014

Cocktails / Reception - 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)

1.0 Hour MCLE Credit

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

MESSAGE FROM SENTINEL

For more than 20 years, Sentinel has been an exclusive monitoring partner with Los Angeles County Probation and the Los Angeles County Sheriff's Department. This partnership has included more than 500,000 Los Angeles-referred participants that Sentinel has monitored through adult and juvenile populations, across pre-trial, post sentence, and in-custody statuses.

Sentinel provides a variety of offender supervision services which are supported 24/7 from our network of field offices around Los Angeles County, and our National Monitoring Center located nearby in Orange County. We offer substance testing as mandated by Judges for maximum participant. We offer several technologies and services to benefit you client's case. These include:

- GPS via UniTrak: Our non-removable one-piece ankle GPS tracking device. UniTrak's advanced technology and water-proof, rugged design ensures reliable tracking service 24/7 and offers geographic zone monitoring to enforce location compliance.
- Electronic Monitoring via Advance Trak RF: This latest model provides proven and reliable electronic monitoring/house arrest, without the need for a residential telephone line.
- BA/RT:A This portable, hand-held breath alcohol testing device uses deep lung, fuel-cell technology to confirm breath alcohol content. For security purposes, it is designed with a built-in camera to verify the person's identity at each test, along with test location identification via static GPS technology.
- SCRAM: A 24/7 transdermal, alcohol detection ankle device.
- MEMS 3000: A home-based, breath alcohol testing unit that utilizes offender picture comparison (original and test event images) for participant identity confirmation.
- Case Management: Full service case management provided through strategically-located field offices across the County with direct support from dedicated Sentinel case workers, field technicians, and support personnel.
- Drug Testing: Based on the needs of each individual case, we offer a variety of drug testing options including urinalysis, saliva, arm patch, and hair follicle testing.
- Court Testimony: Expert personnel are available to provide testimony as needed for any court proceedings.

We have locations throughout the County in Downtown LA, Compton, Walnut, and Lancaster to provide these services. Sentinel staff are also located at the Los Angeles County Central Jail to assist in monitoring device installation for participants being processed for program participation while in custody.

If you have any questions please contact 714-865-1769 (c) or via email at Mohamad.Khatibloo@sentrak.com. Thank you.

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The Criminal Courts Bar Association thanks each of its Sustaining Members. Your contributions help support our programs for the 2013 year.

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CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

Velasquez v. Superior Court (2014)___Cal.App.4th___, reported on July 21, 2014, in 2014 Los Angeles Daily Journal 9391, the Second Appellate District, Division 3 held that a bicyclist may be charged with a violation of Vehicle Code section 23103 (recklessly driving a vehicle). Vehicle Code section 670 defines vehicle in a way to exclude bicycles; on the other hand Vehicle Code section 21200, subdivision (a) provides that a bicyclist is subject to “all the provisions applicable to the driver of a vehicle.” The Court of Appeal balanced one section against the other and found that the bicyclist can be liable for this offense.

People v. Dowdell (2014)___Cal.App.4th___, reported on July 21, 2014, in 2014 Los Angeles Daily Journal 9394, the Sixth Appellate District held that a promise of leniency for a codefendant by police did not prevent a defendant’s statement from having been made voluntarily. (*People v. Boyde* (1988) 46 Cal.3d 212, 238; *People v. Steger* (1976) 16 Cal.3d 539, 550.) Failure of defense counsel to object to prosecution’s statement that “the presumption of innocence is over” forfeited the right to appeal this error. (*People v. Brown* (2003) 31 Cal.4th 518, 553.) There are two exceptions, neither applicable here: (1) the objection would have been futile; and (2) the admonition would have been insufficient to cure the harm caused by the misconduct. (See *People v. Panah* (2005) 35 Cal.4th 395, 462.) The trial court’s denial of the motion to relieve private trial counsel (see *People v. Ortiz* (1990) 51 Cal.3d 975) midtrial was not abuse of discretion where the motion was untimely, and the disputes between counsel and the defendant that motivated the motion were not so great that continued representation would result in lack of a fair trial. (*People v. Lara* (2001) 86 Cal.App.4th 139, 152-153.) The trial court erred under section 654 in sentencing defendant for kidnapping for carjacking and kidnapping for robbery, when both offenses were committed with a single intent and objective. (*People v. Latimer* (1993) 5 Cal.3d 12031205-1206.) The jury was improperly instructed as to intimate partner battering, when the trial court limited the jury’s use of such evidence to deciding whether defendant committed the crime to defend herself from an immediate threat of great bodily injury or death, not whether she formed the specific intent to commit the crimes. (*People v. Coffman and Marlow* (2004) 34 Cal.4th 1, 98-101.) However, the Court of Appeal found the error was harmless, where it was not reasonably likely that a correct instruction would have resulted in a more favorable verdict.

People v. Saetern (2014)___Cal.App.4th___, reported on July 21, 2014, in 2014 Los Angeles Daily Journal 9385, the Third Appellate District held that a sentence of 100-years to life in prison, imposed on a 14-year-old defendant, did not violate the Eighth Amendment because the defendant would still have an opportunity for parole after 25 years, pursuant to section 3051, subdivision (b)(3), any of his four 25-years-to-life sentences can serve as the “controlling offense,” and the new parole eligibility scheme is based on the sentence for the controlling offense. The defendant would be eligible for a youth offender parole hearing once he serves one of his 25-year-to-life sentences.

People v. Chenault (2014)___Cal.App.4th___, reported on July 23, 2014, in 2014 Los Angeles Daily Journal 9506, the Fourth Appellate District held that, the trial court did not abuse its discretion in permitting a minor witness from having a support dog present (see *People v. Spence* (2012) 212 Cal.App.4th 478, 516-517), in a case which involved forcible lewd acts on a child under 14 years of age, without individualized showings of necessity.

People v. Chavez (2014)___Cal.App.4th___, reported on July 23, 2014, in 2014 Los Angeles Daily Journal 9516, the Fourth Appellate District, Division 1 held that the matter must be remanded for resentencing for these defendants who were juveniles at the time of the offenses, in light of *Miller v. Alabama* (2012) U.S. [132 S.Ct. 2455] and *People v. Gutierrez* (2014) 58 Cal.4th 1354, which require circumstances of youth to be considered in imposing life imprisonment without possibility of parole.

People v. Rader (2014)___Cal.App.4th___, reported on July 24, 2014, in 2014 Los Angeles Daily Journal 9622, the Second Appellate District, Division 5 held that in this case the defendant committed a single act of theft by using counterfeit bills to pay for a meal at a restaurant, and where he has prior theft convictions which elevate his misdemeanor section 484 to a felony under section 666, he may be convicted only of a single count of theft. However, he may be convicted of the felony theft and not merely the misdemeanor defrauding an innkeeper. The court made this ruling even though defrauding an innkeeper is the more specific offense, within the meaning of *In re Williamson* (1954) 43 Cal.2d 651, 654, and the interpretation of *Williamson* in *People v. Fiene* (1964) 226 Cal.App.3d 305, 306-308. This Court of Appeal merely disagrees with the holding in *Fiene* to reach this conclusion.

People v. Whitmer (2014)___Cal.4th___, reported on July 25, 2014, in 2014 Los Angeles Daily Journal 9695 the California Supreme Court held that it is not error to charge and convict the defendant of “individual grand thefts of property” as separate counts of grand theft. In *People v. Bailey* (1961) 55 Cal.2d 514 this court held that a single criminal plan completed by a series of transactions over a period of time, each requiring the execution of separate documents to complete, constitutes by one crime. Here, an employee who fraudulently sold his employer’s merchandise to fictitious buyers, with resulting financial loss to the employer, may be convicted of a separate theft for each fraudulent transaction, even though the sales were part of a single overarching scheme. This is a new rule of California law, and it may only be applied prospectively. This court overrules those cases inconsistent with this opinion such as *People v. Jaska* (2011) 194 Cal.App.4th 971; *People v. Kronemyer* (1987) 189 Cal.App.4th 314; *People v. Brooks* (1985) 166 Cal.App.3d 24; *People v. Packard* (1982) 131 Cal.App.3d 622; *People v. Gardner* (1979) 90 Cal. App.3d 42; and *People v. Richardson* (1978) 83 Cal.App.3d 853.)

People v. Sweeney (2014)___Cal.App.4th___, reported on July 25, 2014, in 2014 Los Angeles Daily Journal 9689 the Fourth Appellate District, Division 2 held that there was sufficient evidence existed to prove an endless chain scheme within the meaning of section 327 where the victims paid for memberships and thereafter recruited others to purchase memberships. The ability to sell products does not convert an endless chain scheme into a legitimate business. Whether an investment is a security, i.e., dependent upon the managerial efforts of other persons, is a question for the trier of fact. California “endless chain” schemes are equivalent to federal law “pyramid schemes,” which are investment contracts and thus securities. Section 654 prohibits the imposition of concurrent sentences on counts involving the same act(s), and is not violated when a court stays the execution of the duplicative sentence. (See *People v. Duff* (2010) 50 Cal.4th 787, 796.) The imposition of victim restitution is not a criminal fine and therefore does not require jury findings under Apprendi. (See *People v. Pangan* (2013) 213 Cal.App.4th 574, 584-585.)



CRIMINAL COURTS BAR ASSOCIATION

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SAVE THE DATE

- *September Dinner Meeting will be held on September 16, 2014, at Taix Restaurant. Guest speakers will be Los Angeles Superior Court Judge (TBA), Karen Goldstein, Anthony Brooklier, Aron Laub, Christopher Chaney and moderator Robert Schwartz.*
- *Criminal Courts Bar Association and Pasadena Bar Association Golf Tournament will be held on October 13, 2014, at La Cañada Flintridge Country Club.*

SAVE THE DATE

You are cordially invited to join us for the
24th ANNUAL CRIMINAL COURTS BAR ASSOCIATION
&
PASADENA BAR ASSOCIATION
GOLF TOURNAMENT

- DATE:** MONDAY, OCTOBER 13, 2014
- TIME:** 9:00 A.M. Check-in/Continental Breakfast/Putting Tournament
10:30 A.M. Shotgun Start
12:00 P.M. BBQ lunch served on the course
3:30 P.M. Reception/Cocktail Hour
4:00 P.M. Buffet Dinner/Auction/Raffle
- 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 Place (CALLOWAY)
2nd Place (CALLOWAY)
1st Place (Low Gross)
Longest Drive (*Men & Women*)
Closest to the Pin (*Men & Women*)
Putting Contest
Raffle Prizes
- ENTRY FEE:** \$135.00/Player (Includes Green Fees, Cart, Continental Breakfast, BBQ lunch, Buffet Dinner, No Host Bar & Various Tee Prizes).
- AUCTION:** Immediately after play; money to support the charities of CCBA & the PBA Speech Scholarship Contest
- CONTACT:** Mail Entry Fee and Players Names to:
Christopher C. Chaney
1055 E. Colorado Boulevard, Suite 310
Pasadena, California 91106
(626) 577-5005 Office * (626) 397-9707 Fax
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Please make payment out to "CCBA"

**DONATION PLEDGE
SUPPORTING THE CHARITIES OF CCBA & THE PBA
SPEECH SCHOLARSHIP CONTEST**

The Criminal Courts Bar Association & Pasadena Bar Association are seeking donations
for its auction to be held in conjunction with the
24th Annual Golf Tournament

If you wish to donate, please fill out the form below
and mail/fax/email the information to:

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Telephone: (626) 577-5005 * Fax: (626) 397-9707
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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 the charities of CCBA & the PBA
Speech Scholarship Contest.

Donor Name: _____ Tel: _____

Address: _____

Description: _____ Est. Value: _____

1) _____

2) _____

(Arrangements can be made for pick up and delivery)

SPONSORSHIPS

Tee & Green Sponsors: \$100.00
(Send information to Christopher C. Chaney)