

# CRIMINAL COURTS BAR ASSOCIATION NEWSLETTER

PUBLISHED BY THE CRIMINAL COURTS BAR ASSOCIATION

MARCH 2017



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The Criminal Courts Bar Association  
cordially invites you to attend the

## 64th Annual Awards Dinner

Installation of  
Incoming President

*Evan Phillip Freed*



*-Limited seating is available for this event-*

**SATURDAY, MARCH 25, 2017**

*The California Club*

*538 South Flower Street • Los Angeles, CA 90071*

*Cocktails - Main Lounge at 6:00 p.m.*

*Dinner - Main Dining Room at 7:30 p.m.*

**\$180 per person • \$1800 per table (10 persons)**

**Black Tie Optional**

*Note: Venue Dress Code - No denim or athletic shoes, no open collars*

Please register and pay online at [www.laccba.org](http://www.laccba.org) or send check to:

c/o Evan Phillip Freed, Attorney at Law  
21143 Hawthorne Blvd., #520  
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# CCBA NEWSLETTER CASE DIGEST

By Gary Mandinach

## 2017 CRIMINAL COURTS BAR ASSOCIATION AWARD WINNERS

The Criminal Courts Bar Association is pleased to announce that the 64th Annual Awards Dinner will be held on Saturday, March 25, 2017, at The California Club. Limited seating is available for this event.

The Criminal Courts Bar Association is pleased to announce the award winners for 2017:

**MORT HERBERT SERVICE AWARD**  
**ROBERT SHAPIRO**

**JOHNNIE COCHRAN AWARD**  
**SCOTT SANDERS**  
*Orange County Assistant Public Defender*

**JERRY GIESLER MEMORIAL AWARD**  
**TRIAL LAWYER OF THE YEAR**  
**WINSTON MCKESSON**

**HON. ROBERT M. TAKASUGI**  
**JUDICIAL EXCELLENCE AWARD**  
**HONORABLE KATHLEEN KENNEDY**

**JOSEPH M. ROSEN LIFETIME**  
**ACHIEVEMENT AWARD**  
**DONALD RE**

**JOURNALISM EXCELLENCE AWARD**  
**MATT TAIBBI**  
*Author & Journalist*

**PRESIDENT'S AWARD**  
**HONORABLE JACQUELINE NGUYEN**  
*Judge of the 9th Circuit*



*People v. Jones* (2017) \_\_Cal.App.5th\_\_, reported on January 23, 2017, in 2017 Los Angeles Daily Journal 564, the Second Appellate District, Division 7 held that there was no Batson /Wheeler error in spite of the fact that the prosecution exercised three peremptory challenges against African-American jurors; that in and of itself did not create a prima facie case of discrimination. One of the challenges to a juror who previously sat on a hung jury, the Court determined was a legitimate, race-neutral peremptory challenge, and furthermore, the court was not inquired go into the circumstances of that juror's deadlock. The court also found that lack of life experience was a race-neutral reason for exercising a peremptory challenge. Additionally the defendant, who was 16 years old at the time that he was interviewed by the police, was of a sufficient age, educational level, and level of criminal sophistication to validly waive his Miranda rights, and did so implicitly by voluntarily answering the officers' questions after acknowledging that he understood those rights. Totality of circumstances, including lack of aggressive questioning and defendant's demeanor, established that defendant's statements to police were voluntary.

*In re Miles* (2017) \_\_Cal.App.5th\_\_, reported on January 23, 2017, in 2017 Los Angeles Daily Journal 577, the Fourth Appellate District, Division 3 held that the newly enacted section 1473 which lessened the petitioner's burden of proof with respect to a habeas corpus petition based on newly discovered evidence applies to a petition pending when the amendment took effect. The Court found that recent confessions by persons who previously had not been suspected of involvement in the crime, nor who had been suspected by police but not identified by witnesses, or who had denied all involvement, qualified as new evidence. Here, the Court of Appeal found that where the newly discovered confessions were, on the whole, credible and were material and presented without substantial delay, was sufficient to grant the habeas petition. The prosecution has a right to determine, after the defendant had been in prison for 19 years, whether to retry him on the matter.

*People v. Garrett* (2017) \_\_Cal.App.5th\_\_, reported on January 24, 2017, in 2017 Los Angeles Daily Journal 603, the defendant contended that his 74 years, 4 months-L sentence for non-homicide crimes which were committed when he was a minor constituted cruel and unusual punishment was, rendered moot by in *People v. Franklin* (2016) 63 Cal.4th 261, which held that sections 3051 and 4801 affords such defendants a meaningful opportunity for parole after 25 years. The Franklin court does require a remand to the trial court for the limited purpose of determining whether previously sentenced defendants have had an adequate opportunity to make a record of mitigating evidence that will be relevant at a future parole hearing.

*People v. Garcia* (2017) \_\_Cal.App.5th\_\_, reported on January 25, 2017, in 2017 Los Angeles Daily Journal 668, the Fourth Appellate District, Division 2 held that the defendant's sentence of 32 years-L for crimes which he committed when he was 15 years old is constitutional since he will be eligible for release on parole by the board during his or her 25th year of incarceration at a youth offender parole hearing pursuant to section 3051. However, the matter was remanded to the trial court to determine whether the defendant was afforded an adequate opportunity to make a record that complies with the requirements set forth in *People v. Franklin* (2016) 63 Cal.4th 261.

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*In re J.G.* (2017)\_Cal.App.5th\_, reported on January 25, 2017, in 2017 Los Angeles Daily Journal 663, the Third Appellate District held that where the trial court had placed the minor on Welfare and Institutions Code section 790 (DEJ), and then terminated probation after he completely complied with all conditions of his probation, except payment of restitution, and then dismissed wardship proceeding and converted the restitution order to a civil judgment was appealable since the order was a judgment within the meaning of Welfare and Institutions Code section 800, subdivision (a), because the juvenile court rendered a final determination of the rights of the parties in the wardship proceeding. Even though the trial court never adjudged the minor a ward of the court, since he was on DEJ probation, it can convert an unfulfilled restitution order to a civil judgment when it terminates a minor's DEJ probation and dismisses the wardship petition.

*Hudson v. Superior Court* (2017)\_Cal.App.5th\_, reported on January 26, 2017, in 2017 Los Angeles Daily Journal 693, the Fourth Appellate District, Division 2 held that the rule announced in *People v. Williamson* (1954) 43 Cal.2d 651, which in general prohibits the prosecution from prosecuting a case under a general statute when a more specific statute applies, precludes a felony prosecution for presenting a false record under section 115, when the "record" is Fair Political Practices Commission Form 700, which is prosecutable as a misdemeanor under Government Code section 87203. The trial court did not abuse its discretion in allowing the prosecution to amend the indictment clarify tolling allegations by explaining why crimes could not have been discovered sooner.

*People v. Winbush* (2017)\_Cal.5th\_, reported on January 27, 2017, in 2017 Los Angeles Daily Journal 782, the California Supreme Court held that the trial court did not err in denying the defendant's Batson/Wheeler challenges. The Supreme Court found that the prosecutor had stated rational and race-neutral reasons for their disqualification. The inference of discrimination resulting from prosecutor's acceptance of white and Latino jurors who stated reservations about how system treats minorities was rebutted by prosecutor's race-neutral explanations as to why those jurors were more acceptable than African Americans who made similar comments. Those reasons included one person's prior service on a hung jury and two persons' expressed skepticism about treatment of indigents and minorities by the criminal justice system. The trial court did not err in allowing the prosecutor to cross-examine a defense expert about antisocial personality disorder and future dangerousness. Given the scope of direct examination, these topics were properly raised for impeachment. Additionally, the defendant's false belief that his confession, given after proper Miranda warnings, would result in death penalty leniency does not render his confession coerced and inadmissible even if psychological pressure was used to induce the confession.

*People v. Sledge* (2017)\_Cal.App.5th\_, reported on January 27, 2017, in 2017 Los Angeles Daily Journal 750, the Fourth Appellate District, Division 3 held that the trial court did not err in denying appellant's petition under Prop 47. In determining whether a prior conviction disqualifies defendant from being resentenced under Proposition 47, the trial court may consider reliable hearsay in a probation report, and may find defendant ineligible based solely on such a report. (See *People v. Johnson* (2016) 1 Cal. App.5th 953, 968 [a petitioning defendant is entitled to present evidence from any source...]) A juvenile adjudication for forcible rape will disqualify defendant from having prior felonies reduced to misdemeanors under Proposition 47.

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- *Criminal Courts Bar Association 64th Annual Awards Dinner on Saturday, March 25, 2017, at The California Club.*
- *No March Dinner Meeting.*
- *April Dinner Meeting will be held on Tuesday, April 25, 2017, at Taix Restaurant. The featured guest panel will be Retired Judge Peter Espinoza, Alisa M. Dunn, LCSW, and Lana G. Lamotte, RN, "Mental Health Issues Facing Our Clients."*
- *May Dinner Meeting will be held on Tuesday, May 9, 2017, Taix Restaurant. The featured dinner speaker will be Los Angeles District Attorney Jackie Lacey, "The State of the District Attorney's Office."*