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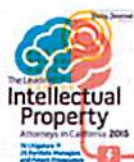
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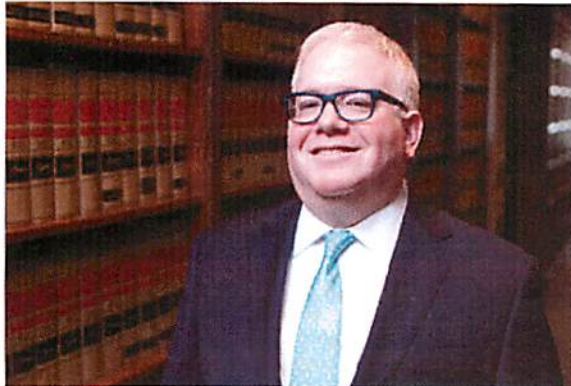
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Changes ahead for juvenile sentencing



Though California once led the nation in handing sentences of life without parole to juvenile offenders, the state had now begun to lead the way back through legislation, and two upcoming cases may be game-changers.



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Judge Bruce A. Young
Superior Court Judge Ventura County (Ventura)



Corporate Counsel
Reginald D. Davis
General Counsel and Chief Legal Officer of DocuSign Inc. San Francisco

Notable Decision

Torts
Deadlines for filing claims under Federal Tort Claims Act are subject to equitable tolling.
United States v. Wong (13-1074)
US Supreme Court

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Illegal local wage hikes?

If local minimum wage laws interfere with the collective bargaining process, they risk being preempted by the National Labor Relations Act and declared unconstitutional. By **Mark S. Ross**



This Week's Top Verdict

Patent Infringement - \$532,900,000
Bradley W. Caldwell, Jason D. Cassady, John Austin Curry, Hamad M. Hamad, Warren J. McCarty, Jason S. McManis, Justin T. Nemunaitis, Daniel R. Pearson, Christopher S. Stewart, John F. Summers, T. John Ward, T. John Ward for the plaintiff



ADR Provider
Kim Deck
Judicate West

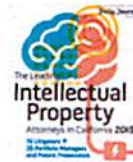
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Thursday, April 23, 2015

California Courts of Appeal Appellate court reversal chides trial judges for failing to properly advise defendants

California courts have strayed from correctly advising criminal defendants of their fundamental right to trial, to confront witnesses and to remain silent, a state appellate panel has warned, citing a series of lapses dating from 1994.

Law Practice

Arnold & Porter grabs IP group as boutique disbands

Patent litigator James C. Otteson has disbanded his firm, Agility IP Law LLP, after five years of operation, and led his group of eight intellectual property attorneys to Arnold & Porter's Palo Alto office.

Labor/Employment

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Mergers & Acquisitions

Dealmakers

A roundup of recent transactions across the state and the lawyers involved.

Criminal

Los Angeles County district attorney requests funds for conviction integrity unit
District Attorney Jackie Lacey has requested \$928,000 in funding to create a unit dedicated to reviewing all claims of innocence received post-conviction.

Litigation

Celeb fertility legal battles shine light on complicated area of law

Celebrities are known for seeking alternative options for having a baby, but in the last week alone, two high-profile stories on fertility have rocked Hollywood and rekindled discussion on the legal issues surrounding the topic.

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Changes ahead for juvenile sentencing

By L.J. Williamson

Though California once led the nation in the number of juveniles serving life terms without the possibility of parole, the state has now begun to lead the way in scaling back some of its most extreme sentences through groundbreaking legislation. Upcoming cases in the U.S. Supreme Court and the California Supreme Court may allow even more inmates a chance for early release.

Since the U.S. Supreme Court's landmark 2012 decision *Miller v. Alabama*, state courts have come to different conclusions about whether the ruling holding that the Eighth Amendment bars mandatory sentences of life without parole for those who were under 18 at the time of their crime applies retroactively.

That key question, which affects thousands of incarcerated juvenile offenders, may be resolved soon when the court issues a decision in *Montgomery v. Louisiana*, in which a petitioner who has been incarcerated since 1963 for a crime he committed at the age of 17 is asking to be resentenced.

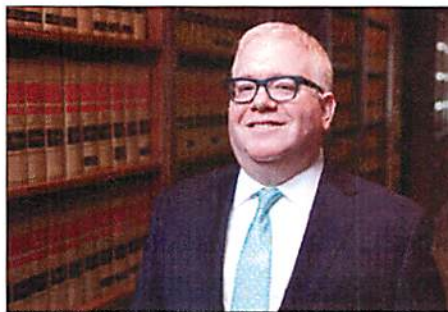
California's Supreme Court is also weighing questions of retroactivity in *Re Alariste* and *Re Bonilla*. Petitioners Jose Armando Alariste and Joseph Bonilla committed homicides as juveniles and were sentenced to lengthy state prison terms which they alleged were cruel and unusual punishment because they had no opportunity for release on parole. They argued that *Miller* should be retroactively applied to their sentencing.

"We're hoping that California's Supreme Court finds *Miller v. Alabama* must be applied retroactively to avoid results that would fly in the face of the concept that children are different," said Allen G. Weinberg, attorney for the prisoners in the *Alariste* and *Bonilla* cases. "*Miller* didn't say that children sentenced on a certain day are different, it didn't say that children sentenced in 2012 are different."

California has already attempted to make *Miller* retroactive through legislation. In 2013, the state passed SB 9, which allowed for post-*Miller* resentencing hearings, and SB 260, which establishes youth offender parole hearings after 20 years of incarceration. But those laws, which as statutory measures are subject to repeal, still leave a number of matters unsettled for juveniles whose cases involved public safety officers, torture, or have been in custody more than 25 years - and the larger question of whether life without parole for a minor is constitutional.

Weinberg says that California's system of youth offender parole hearings is "a safety net but not a fix. You can't delegate judicial discretion to the appointees of the executive branch."

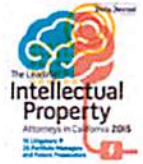
Christopher Hawthorne, a professor at Loyola Law School, also says that California's juvenile sentencing reform legislation, while important, is something of a Band-Aid. "SB 9 does not cure the unconstitutionality of a life without parole sentence if the judge doesn't follow certain prescribed factors in sentencing," he says. "The real distinction is,



Allen G. Weinberg, who represents prisoners sentenced as juveniles in two cases, hopes the ruling by the U.S. Supreme Court — barring mandatory sentences of life without parole for minors — will be retroactively applied to other matters.

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does giving a later solution to an incarcerated defendant cure the unconstitutionality of his or her original sentence?"

The California Supreme Court will also consider the cutoff line for "functional" life without parole - that is, sentences that do not allow for the possibility of parole until what may be outside of the defendant's life span. In the case of *People v. Franklin* - the defendant, sentenced after the *Miller* decision, was at the age of 16 sentenced to 50 years to life, making him first eligible for parole at the age of 66. The defendant supported his claims that a 50-year sentence was the functional equivalent of a life sentence by providing data from the Centers for Disease Control that the life expectancy of an African-American male born in 1994 has a life expectancy of between 65 and 73.

California is ahead of the curve in exploring the question of functional life without parole, Hawthorne says, referring to the question in *People v. Caballero* (2012). "But it's also because we have a unique problem in California - we sentence a lot of kids to functional life without parole, because gang and gun enhancements on top of a sentence for attempted murder can bump your sentence well over your life expectancy."

Weinberg said it's likely that the U.S. Supreme Court will decide that *Miller* is retroactive, but Hawthorne isn't so sure. "The way the question has been posed gives us a clue as to how the court might rule: It's asking does the court have the jurisdiction to declare retroactivity in state courts. And the answer, given the history of this court, is very possibly no, which means that state courts will be able to decide the issue of retroactivity themselves."

That might turn out to be a good thing for the approximately 300 youth offenders serving life without parole in California, but offenders in states like Pennsylvania, which has more juveniles serving life without parole than any other, and which has already declared *Miller* not retroactive, would be out of luck, Hawthorne says.

It's difficult to overstate the impact the pending U.S. Supreme Court decision will have, Hawthorne explains. "They could say *Miller* is not retroactive, which would kill a lot of pending petitions in a lot of states. They could declare that *Miller* is completely retroactive, which would overturn a lot of state Supreme Court decisions. Or it could say were going to leave this to the states. I think it's going to be a game changer no matter how you slice it."

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U.S. Court of Appeals for the 9th Circuit Appellate lawyer hits grand slam for ex-Giant slugger Barry Bonds

In a walk-off home run for appellate specialist Dennis P. Riordan, the 9th U.S. Circuit Court of Appeals ruled Wednesday that ex-Giants slugger Barry Bonds' answer to a grand jury's question about steroids was not obstruction of justice.

Corporate Counsel

Reginald D. Davis

General Counsel and Chief Legal Officer of DocuSign Inc. San Francisco

Intellectual Property

Intellectual Ventures patents struck down

A Delaware federal judge struck down two patents held by Intellectual Ventures Management LLC Wednesday after finding the claimed technology constituted "abstract ideas" that fell outside the bounds of federal protection.

Litigation

Lawsuit by fired employee accuses Disney of age, sex discrimination

A female employee at Lucasfilm Ltd. claims she was the victim of gender and age discrimination when was fired following the company's purchase by The Walt Disney Company, according to a lawsuit.

California Supreme Court

Coblentz loses tax case against San Francisco

The state Supreme Court denied review Wednesday of a series of cases brought by law firms against the City of San Francisco that were attempting to avoid additional taxes placed on them by proposition passed by voters in 2009.

Judicial Profile

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Perspective

Rulings narrow video privacy actions

The Video Privacy Protection Act was enacted when VCRs were still the rage. So courts are grappling with how to apply it in the Internet age. By **Mary Ellen Callahan and Julie Ann Shepard**

Criminal

Was the conviction dismissed or expunged?

California criminal convictions may be erased from defendants' record in two ways, pursuant to Penal Code Section 1385 or Section 1203.4 - and it matters which section applies. By **Azar Elihu**

Perspective

Prevent D&O liability for data breaches

Directors and officers are increasingly facing new prospects for shareholder derivative lawsuits related to data breaches. By **Peter Morrison and Dominique Caamano**

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What you should know about fighting a bill from the IRS

Whenever you disagree with the IRS, procedure is important. By **Robert Wood**

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