

## What Californians Think About Their Courts



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# Celebrate Court Adoption and Permanency Month!

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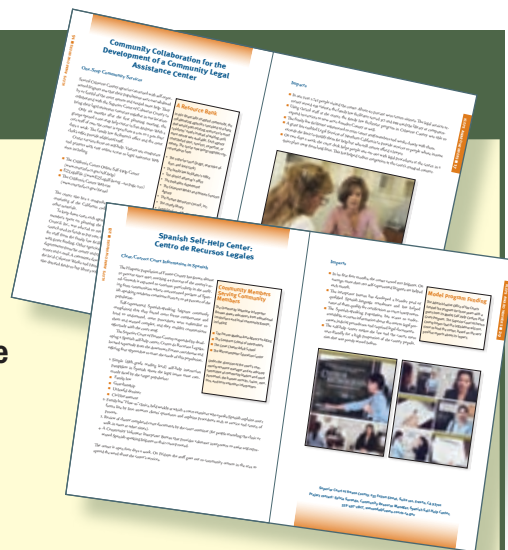
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For more information, contact Nicole Claro-Quinn, AOC Court Services Analyst, 415-865-8915, [nicole.claro@jud.ca.gov](mailto:nicole.claro@jud.ca.gov).





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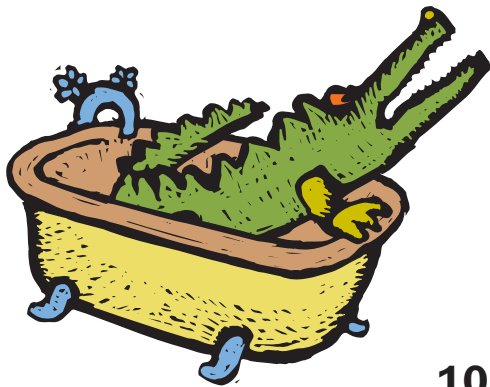
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A FORUM FOR THE  
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# Contributors



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FALL 2005

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*Anytime* something new is tried, there is a certain amount of tension and anticipation over the reaction to the product or the idea. So it was with the launch of *California Courts Review* in July.

A quarterly magazine by, for, and about a state judicial branch is a first in the nation—like so many other innovations, unique to California.

So we were elated with the enthusiastic response to the first issue. The initial reaction of many readers was delight with the presentation of the articles and the overall look and feel of the magazine. Soon after, we were gratified to receive readers' reactions to the contents. Some said they read the magazine from cover to cover; some focused on a particular article on which they had a different perspective; and some simply learned more about some of the issues confronting the courts.

That underscores a central goal of CCR: to record and serve as a catalyst for the continued evolution of a branch of state government in California by providing a forum for all of our readers—judges, court executives, administrators, and others—to communicate with one another on the big issues facing California courts today.

You are, after all, the experts when it comes to our court system: you know the problems, the options, and maybe even the solutions that could benefit the judicial branch and, most importantly, the public we serve. We welcome your contributions of story ideas, articles, essays, and letters.

—Philip Carrizosa  
Managing Editor

## Letters

I very much enjoyed Ron Overholt's article in your first issue, entitled "What a Difference a Decade Makes." I feel confident Mr. Overholt would include me in the group of "judges and court administrators (who) argued that local autonomy and control resulted in better service at the local level." That said, I would like to compliment Mr. Overholt on a very concise but informative review of the history of the progress the California courts have undergone in the transformation from an amalgam of separate, independent courts into a more homogeneous court system. It was enjoyable reading. Having lived through the majority of the history Mr. Overholt covered, as an attorney, a municipal court judge, and a superior court judge, I enjoyed the article very much. It is my hope younger and newer judges, who do not have firsthand knowledge of the transformation he covered, will find the time to read his article. If they do, I know they will gain a valuable background on the path court leaders, such as Chief Justice George, have paved to move our court system into a position where it is much closer to becoming a "separate but equal" branch of our state government.

My congratulations to Mr. Overholt on a very fine article.

*Judge Richard O. Keller  
Superior Court of Alameda County*

Thank you for the inaugural issue. It contains some arresting articles. It also contains a good deal of hyperbolic handwringing about the state of the judiciary, including, to my surprise, commentary by Professor J. Clark Kelso of McGeorge School of Law ["Why Article VI Needs Work"]. Professor Kelso, *inter alia*, offers diplomatic recommendations about improving Judicial Council membership and selection procedures, court executive participation, and the future of two voting legislative members, the last of which should be a "no brainer." (The separation-of-powers doctrine supervenes the notion of two voting legislators on the judiciary's governing body.) Professor Kelso then, however, veers into commentary about the alleged plight of California judges.

As a former county supervisor, 12-year state senator, and 45-year trial lawyer before my appointment to the superior court in January 1999, I disagree with the professor's observation: "Compared with 25 years ago, this is a dangerous time to be a judge. The politicization of the judiciary is upon us, and we are in danger of losing the branch as we have known it." This is of a piece with repeated contentions of my colleague Judge James Mize, as president of the California Judges Association, who bemoans the singular, and aborted, event of a group instituting a recall soon after the rulings of Sacramento Superior Court Judge Loren McMaster on two newly enacted state statutes ["The Judiciary Under Attack"]. Judge Mize even turned his

*Continued on page 36*

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**CORRECTION:** In the summer 2005 issue of *California Courts Review*, an article about disaster preparedness included a photo caption about wildfires. The caption incorrectly implied that the Big Bear and Twin Peaks courthouses are in San Diego County. They are in San Bernardino County.



CAROL SONSTEIN PHOTOGRAPHY

## STATE OF THE JUDICIARY

*Chief Justice Ronald M. George made these remarks as part of his State of the Judiciary address at the annual meeting of the State Bar of California on September 10, 2005, in San Diego.*

At the opening session of the State-wide Judicial Conference in San Diego, the results of the latest poll of the public's views concerning the court system was released. It showed that public confidence in the courts was noticeably higher than that expressed in a similar survey in 1993, but that there is ample room for improvement. Among the findings:

- Public familiarity with the court system remains low.
- The experience of serving as a juror increases confidence, but other experiences, such as traffic and family law court, do not.
- The cost of hiring counsel remains the most commonly perceived barrier to access to the courts.
- Other problems, including lack of child care, travel distance, and uncertainty about the outcome, also dissuade litigants.
- New immigrants and non-English-speaking individuals are particularly wary and ill-informed about the courts.

Confidence in the courts increased among individuals who believe the processes used are fair, regardless of the outcome. Interestingly, it is attor-

neys who are more focused on outcome fairness than procedural fairness.

Members of the public generally believe the courts are performing at a high level—but strong concerns were expressed about the influence of politics on court decisions, as well as the difficulty in understanding the proceedings, and a common reluctance and uneasiness about getting involved with the courts at all.

This survey will serve to help guide the Judicial Council and the entire branch as we seek means to increase public knowledge and trust in the courts. It is clear that there is a need for us to survey the public and to report regularly and publicly on the courts—and to determine the most effective ways of communicating. Procedures in family and juvenile courts in particular need to be evaluated to ensure that they not only are fair, but are perceived to be so. The large percentage of family law litigants who lack legal representation present special challenges for a court system traditionally designed for lawyers familiar with court processes and requirements.

During the conference, I participated in the State Bar ceremony recognizing pro bono contributions by lawyers

in every form of practice from every corner of the state. This is always an exciting and inspiring occasion, and the work of the individuals who were recognized is remarkable in its scope and effectiveness. So many individuals who otherwise would be without legal assistance gain help in family law matters, in dealing with immigration issues, handling eviction suits, obtaining medical or other social services, and a myriad of other problems that otherwise would remain unresolved.

The problem of unrepresented litigants remains acute. As the survey showed, the cost of counsel is a barrier to going to court for far too many Californians. Unassisted self-representation often results in frustration, anger, and distrust of the system.

Each of you can make a difference. By committing to pro bono services, you can make a very concrete difference in the lives of families and individuals. You can use your skills in countless possible ways, and thus be a part of making our justice system stronger. And I can assure you that the rewards that you will personally reap will far outweigh your expenditure of time and effort.



# What Californians Think About Their Courts

## Highlights From a New Survey of the Public and Attorneys

By  
**David B. Rottman**

**I**n 1992 the California Commission on the Future of the Courts authorized an unprecedented survey of California residents and attorneys to ascertain Californians' views on the judicial branch. The survey, described in the report *Surveying the Future: Californians' Attitudes on the Court System*, was conducted between September 14 and October 13, 1992. Among the five possible labels for the court system—"excellent," "very good," "good," "only fair," and "poor"—52 percent of all

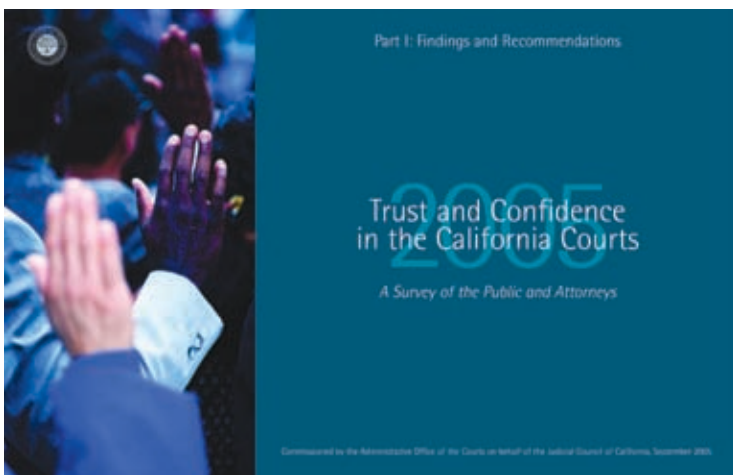
respondents chose one of the negative labels: 35 percent said "only fair" and 17 percent said "poor."

Disturbingly, the percentage of African Americans expressing a "poor" opinion of the system was 47 percent. The survey was conducted about six months after a Simi Valley jury acquitted three Los Angeles police officers of using excessive force in subduing African-American motorist Glen "Rodney" King during a 1991 traffic stop.

The years that followed the 1992 survey were momentous for California's courts: the trial courts were unified, funding shifted to the state, and initiatives such as court and community collaboration made their mark. In 2004 a new survey—one linked to the issues and concerns then before the Judicial Council and the Administrative Office of the Courts—seemed overdue.

Between November 2004 and February 2005, members of the public and lawyers again were asked to take a hard look at the way in which California courts are operating. More than 2,400 randomly selected California adults were surveyed regarding, among other matters, their:

- Trust and confidence in the state court system and local courts
- Experiences as jurors, litigants, or consumers of court information
- Expectations for what the courts should be doing



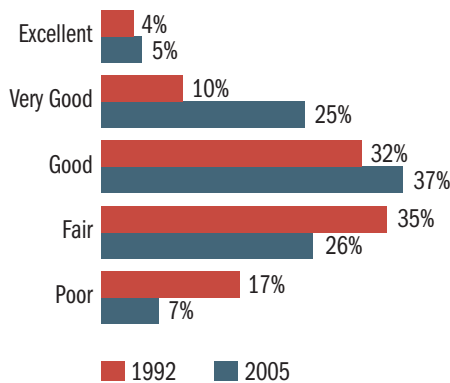
*Trust and Confidence in the California Courts* can be downloaded at [www.courtinfo.ca.gov/reference/4\\_37pubtrust.htm](http://www.courtinfo.ca.gov/reference/4_37pubtrust.htm).



- Sense of the accessibility, fairness, and efficiency of the courts.

At the same time, more than 500 randomly selected practicing attorneys were interviewed to obtain their views on topics covered in the public survey and on conducting business with the state’s trial and appellate courts. The results of this 2004–2005 survey, described in the report *Trust and Confidence in the California Courts*, provide some deep and telling insights for judges and court administrators to consider in regard to the courts’ service to the public.

**CHART 1**  
**Overall ratings of California court system compared to 1992 survey**  
*“What is your overall opinion of the California court system?” [Part 1, p. 8]*



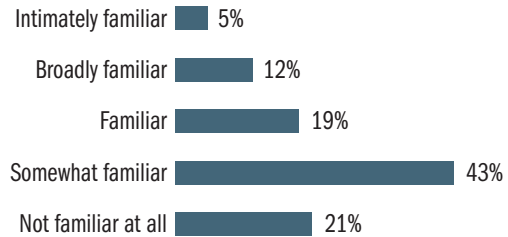
### Opinions Have Shifted

How much has changed since the 1992 survey? Both surveys asked for an overall opinion of the California court system (chart 1). As already noted, in 1992 less than half of Californians surveyed gave a positive response (“excellent,” “very good,” or “good”). The picture in 2005 is very different: 67 percent of the overall responses are positive. The proportional change is greatest among African Americans. While, in both surveys, African Americans tend to be significantly less positive about the courts than other racial or ethnic groups, the proportion of African Americans expressing a “poor” opinion (the most negative option) declined from 47 percent in the 1992 survey to 18 percent in the 2004–2005 survey.

What has not changed is the low level of knowledge Californians have about their court system (chart 2). In 2005, as in 1992, only 17 percent regard themselves as being either “intimately” or “broadly” familiar with their courts.

**CHART 2**  
**Familiarity with the courts**

[Part 1, p. 11]



### What Shapes Opinion on the California Courts

The growth in trust and confidence is noteworthy, but the real value of the survey is the light it can shed on what underlies, and can potentially improve, Californians’ opinions of their courts. The findings point toward three main factors, two of which are active in shaping opinion in all states: the public’s perceptions of fairness in court procedures and the experiences of those who have been involved in court cases. The third factor revealed by the findings, the legacy of immigrant experience, is of special importance in California.

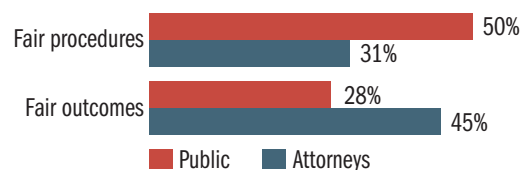
#### Perceptions of Fairness

The predominant factor shaping Californians’ assessments of the courts is the extent to which decisions are made through what are regarded as fair procedures (chart 3). Research in the state and elsewhere confirms four key elements that make procedures fair in the minds of citizens:

- Interpersonal respect—people are treated with dignity and respect.
- Neutrality—decision makers are honest and impartial, basing decisions on facts.
- Participation—litigants can express their views directly or indirectly.

**CHART 3**  
**Relative importance of fair procedures and fair outcomes for public and attorneys**

[Part 1, p. 25]



- Trustworthiness—decision makers are motivated to treat people fairly, being sincerely concerned with their needs and willing to consider their side of the story.

Popularity is not what is at stake when procedural fairness is low. Rather, the public generally, and litigants specifically, tend to comply with court decisions made through procedures they deem fair. A litigant may lose a case but, if treated fairly, may still be satisfied with his or her day in court and be intent on doing what the court ordered.

The perceived fairness of court *outcomes* also influences the general public’s evaluations of its courts but is consistently secondary to perceived procedural fairness. Californians see outcomes as being least fair for persons who have low incomes and persons who do not speak English. African Americans tend to perceive the greatest degree of outcome unfairness. For example, they are more likely than Latinos themselves to perceive that Latinos as a group receive “worse results” than non-Latinos and are only slightly less likely than Latinos to perceive “worse results” for non-English speakers than for English

speakers. A majority of Californians believe African Americans experience worse outcomes than other groups.

tive to the procedural signs of fairness that are of paramount concern to the public. The 2004–2005 survey suggests the value of education on procedural fairness for judges, temporary judges, and court staff. One support for this proposition is the striking finding that about 70 percent of both the public and practicing attorneys agree that many people in the communities in which they live or practice are “reluctant to go to court because they’re uneasy about what might happen to them.” Procedural fairness is a useful starting point for understanding why that might be the case.

**Court Experiences**

The implications of these findings on fairness are clearest among Californians with direct court experience. More than half (56 percent) of all Californians report that some kind of direct experience, contact, or involvement with a court case (including jury duty) brought them into a California courthouse.

The incidence of court contact varies among racial and ethnic groups (chart 4). The differences are marked for jury service (sworn jurors and alternates). Six percent of Latinos, 12 percent of Asian Americans, 19 percent of African Americans, and 24 percent of whites report having served as jurors. College graduates are significantly more likely than high school graduates to serve as jurors (22 percent versus 13 percent).

The survey offers evidence that information gleaned through direct contact with courts has lasting significance. In evaluating the courts, people with experience draw on what they saw and felt. Court experience is associated with a slightly lower level of perceived procedural fairness. This overall negative influence is small, however, and it is more useful to focus on some specifics.

Jury service is conducive to higher confidence and a perception of fair procedures. Juries are the prime audience for the courts in spreading the word that courts operate fairly, as well as imparting information about the significance and role of the judicial branch.

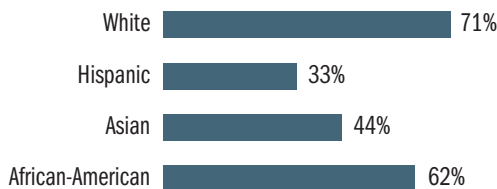
Another finding of the survey is that defendants in traffic cases and litigants in family or juvenile cases report less procedural fairness than do litigants or defendants in other kinds of cases. Attorneys seem to share this view. Family law practitioners rate procedural fairness in the California courts lower than do other attorneys. This finding suggests that courts should assess their current practices for those types of cases against the criterion of procedural fairness and initiate change as indicated. Policies that promote procedural fairness have the greatest potential to change how the public views the state’s courts and how litigants respond to court decisions.

The Californians surveyed in 2004–2005 share a common set of criteria for evaluating the courts, with the most important criterion being procedural fairness. If some groups are more approving and others less so, it is because they differ in their assessments of how neutral, respectful, attentive, and trustworthy the courts’ procedures are. Programs that promote procedural fairness have the greatest potential to reduce the gap between African Americans’ level of approval of the California courts and other racial and ethnic groups’ levels of approval. The average approval rating is 10 percent lower, and the average perception of procedural fairness 19 percent lower, among African Americans than among other Californians.

**Immigration to California**

Opinions on the California courts are influenced by the state’s demographics, specifically the proportion of the state’s populace born outside the United States. Thirty-one percent of respondents in the 2004–2005 survey were born outside the country. (No comparison can

**CHART 4**  
**Racial and ethnic groups’ direct experience with the courts**  
 [Part 1, p. 15]



speakers. A majority of Californians believe African Americans experience worse outcomes than other groups.

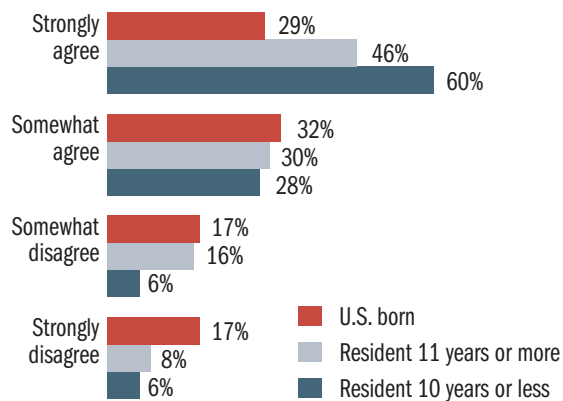
The relative relationship of procedural fairness and outcome fairness is reversed for practicing attorneys—outcome fairness is the primary influence on their opinions of the courts, and procedural fairness is secondary. One can infer from this finding that, since judges also are attorneys, their legal training may make them inatten-

CHART 5

**Belief in courts' protection of constitutional rights**

(by length of residency in the United States)

"California courts protect the constitutional rights of everyone." [Part 1, p. 22]



be made with the 1992 survey, because the question was not asked then.) The growth in this segment of the populace is significant for the courts because recent immigrants tend to hold the most positive opinions of the California state courts, as evidenced by their belief in courts' protection of constitutional rights (chart 5).

The 2004–2005 survey suggests that immigrants' positive views of the courts tend to decline only slightly with length of residence in the United States. If that pattern were to change or the rate of immigration were to decline, the likely result would be a decrease in the overall level of confidence in the California courts.


### Lessons for Future Research

The 2004–2005 survey offers lessons on the use of research in the strategic planning process and in court operations. Statewide surveys should be repeated no more than every 5 years and no less than every 10 years. Telephone surveys have strengths and weaknesses as sources of policy-relevant information. Their greatest strength is their capacity

to capture basic information about the views of all Californians; their greatest weakness is the difficulty of capturing the nuances and contexts of what citizens think and expect.

Some findings from the 2004–2005 survey cry out for deeper and broader examination, such as through the use of focus groups. For instance, the public's main unmet expectation is for the courts to report to

the public on the courts' job performance. Focus groups could address the question "What information, in what format, will meet this need?" Californians at all income and education levels believe the cost of hiring an attorney will be a barrier to going to court. Focus groups could ask, "What kinds of services are effective and appropriate to reduce that barrier?"

Exit surveys—interviews of court users as they leave the courtroom—are essential for designing and monitoring policies aimed at enhancing procedural fairness, in specific kinds of cases and in the courts generally. A useful role for the Administrative Office of the Courts would be to disseminate best practices for the exit surveys now used by California courts and to offer new approaches to exit surveys, drawing on the 2004–2005 survey findings. 

*David B. Rottman, Ph.D., is a principal research consultant with the National Center for State Courts in Williamsburg, Virginia, and the author of the report Trust and Confidence in the California Courts.*

## Eight Strategies for Improving Confidence in Our Courts

At its business meeting last August, the Judicial Council discussed eight specific strategies for improving public trust and confidence in California courts. Each strategy was referred to the appropriate council advisory committee for discussion of its implications and feasibility. The committees' recommendations to the council are due by December 19 and will be presented to the full council at its February 24 business meeting.

The strategies are:

- 1 Improve court users' satisfaction with the family, juvenile, and traffic courts.
- 2 Improve and enhance the courts' use of the Internet for disseminating information and conducting court business.
- 3 Reduce case delays and continuances.
- 4 Emphasize high-quality service to court users in all court staff and judicial officer training programs. In judicial officer training, also emphasize procedural fairness, observance of code and rules of court, and appropriate applications of court orders.
- 5 Leverage jury service and other venues of contact with the public as means of educating the public about the courts.
- 6 Revive community-focused court planning.
- 7 Increase the availability of affordable legal representation.
- 8 Expand services to non-English-speaking court users.

**For more information on the trust and confidence survey, go to [www.courtinfo.ca.gov/reference/4\\_37pubtrust.htm](http://www.courtinfo.ca.gov/reference/4_37pubtrust.htm).**

# The Crocodile in the Bathtub

## ... and Other Arguments to Extend Terms for Trial Judges



By  
**Roy A. Schotland**

Today, California is one of 39 states that have judicial elections for some or all of their judges. Whereas the nation’s founding fathers chose life tenure for federal judges, California began its history with a popularly elected judiciary to ensure judicial accountability to the public.

At the same time, the distinctive role of the judiciary requires careful protection of judicial independence. When we decide on the length of terms on the bench, we’re asking, “What’s the right balance between judicial independence and judicial accountability?”

Only Rhode Island has chosen the federal approach and granted life tenure for all its judges, and only two states—Massachusetts and New Hampshire—provide tenure until age 70.

At the other extreme are short terms:

- 45 percent of all states’ *appellate judges* have 6-year terms, and almost no terms are shorter than 6 years.

- 74 percent of all states’ *trial judges* of general jurisdiction have 6-year or shorter terms, and, disturbingly, 18 percent have only 4-year terms.

Giving short terms to trial judges has at least two fatal flaws. For one thing, it’s inconsistent with judicial independence: just imagine a short-term trial judge who may have to rule on a high-visibility bail matter or motion to suppress evidence, let alone conduct a high-visibility trial. (For example, last year trial judges were targeted for defeat in Arizona, Iowa, and Kansas because of specific decisions.) A second fatal flaw is the damage to job performance: during at least one-quarter or one-sixth of every term, the judge is too likely to put sitting at an endless parade of podiums ahead of sitting on the bench.

Our endless efforts to come up with an effective method of judicial selection surely have only one goal: to bring and keep on the bench the



most suitable people we can get. Remember this fact: every one of the 39 states where some or all judges are elected gives its judges longer terms than any other elected officials. That shows a national consensus that judges are different, and different in ways that make it necessary and proper to give them uniquely long terms. And it indicates that even the elective states want to underline to the public that judges are different.

There remains the question: What's the right term length? Obviously, views differ. Still, as the late New York Senator Daniel Moynihan used to say, "You're entitled to your own view, but you're not entitled to your own facts." The facts are:

- 39 percent of *appellate judges* have terms of 10 years or longer: four states have 12-year terms like California; New York has terms of 14 years; Maryland, 15 years.
- 27 percent of *trial judges* of general jurisdiction have longer terms than California's 6 years, including those in New York, with 14 years; Pennsylvania, with 10 years; and seven states with 8-year terms.

Why do California appellate justices have 12-year terms?<sup>1</sup> I see three reasons.

**Kaus's crocodile.** First and most important is protection against Otto Kaus's crocodile. Justice Otto Kaus, who served on the California Supreme Court from 1980 through 1985, described memorably the dilemma of deciding controversial cases while facing a retention election. "You cannot forget the fact that you have a crocodile in your bathtub," Kaus said upon announcing his retirement. "You keep wondering whether you're letting yourself be influenced, and you do not know. You do not know yourself that well."<sup>2</sup> He said that in 1985, the year before Chief Justice Rose Elizabeth Bird was denied retention, along with two of her colleagues.

Of course, what I mean by "protection against Otto Kaus's crocodile" is protection of judicial independence. An 8- or 10-year term gives judges far more ability to decide cases as they see them than does a 6-year term.

**Attracting the best people for the job.** A second reason to have long terms is that short terms make the job less attractive. We see that it isn't adequate to ask what the right balance is between independence and accountability. There's another question here, one that some would say is the most important of all and that everyone would agree matters mightily: How

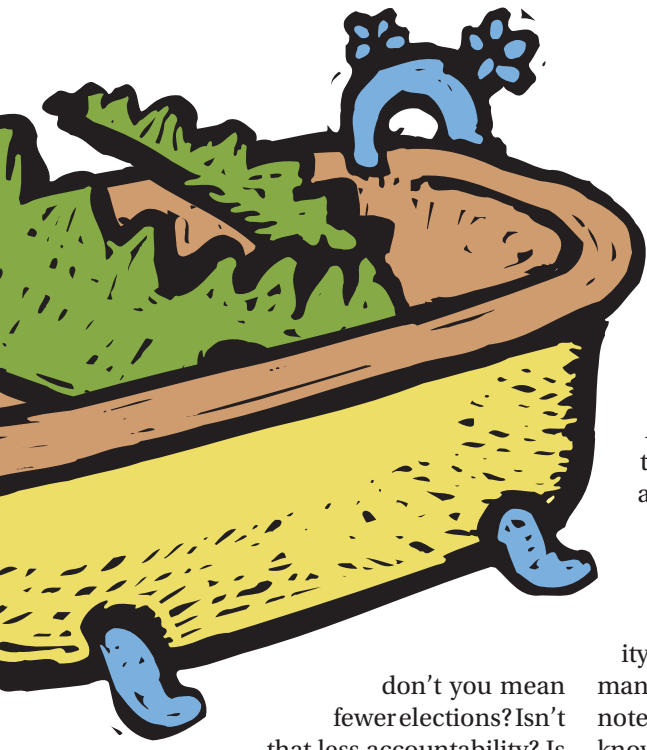
does term length affect who wants to come on the bench and who wants to stay there?<sup>3</sup> Clearly, we'll always have enough people wanting to be judges and wanting to continue on the bench. And wherever we go, the best possible judges are the ones who are sitting. Also, it's truly hard to say just what encourages or discourages the kind of people we want to see on the bench from being there. Judges know, in ways that I do not know, just what encourages or discourages a person's being on the bench. But having said all that, would anyone deny that unduly short terms make the job markedly less attractive?

How would your appellate justices feel if they had 6-year terms like 45 percent of their colleagues elsewhere? I expect agreement that California would have a weaker judiciary—that's easy. Not so easy is saying how much better California's trial bench, with terms now shorter than 26 percent of trial courts elsewhere, would be with longer terms and how much longer they should be.

The first step is to get on top of the demographics of the bench—not only your judges' ages, genders, and ethnicities but also what proportion are former prosecutors, the lengths of service of past judges, and where they've gone next. That is, for how many is the bench a stepping stone toward better-paying private judging or to other jobs they prefer? What proportion serve out their active careers on the bench?

**Minimizing the need for campaigning.** A third reason for long terms is also obvious. Long terms mean fewer elections, and let's be blunt about the several reasons that's a good thing. Fewer elections mean less campaign fundraising with its inherent problems. The problems of campaign statements and campaign ads are worsening steadily in more and more states, creating both the need for more recusals and an ever-more-damaging public view that judicial candidates, and therefore judges, are just one more bunch of politicians.

At last, here's the right question: What's the right balance of *three* elements—independence, accountability, and the quality of the people who serve? Getting to the answer requires some unpacking of common myths. After all, if we go to the street and ask people whether judges should have longer terms, or if we put the question to focus groups, it seems likely the typical response will be something like: "You say longer terms;



don't you mean fewer elections? Isn't that less accountability? Is your model North Korea?"

Let's call the imaginary citizen who has raised such questions "Tom Paine." Paine's argument against longer terms is that they unduly insulate the judges, causing too great a likelihood, or at least risk, that the judges will lose sight of community values and elevate their own values, and/or they'll be out of date about community values, and/or they'll be too arrogant.

But let's unpack "accountability" to examine the reality of judicial elections. Do California trial judges really have 6-year terms, or are they so rarely challenged that the current system gives only fake accountability, along with real drawbacks?

Does anyone think Los Angeles County's 429 superior court judges really have only 6-year terms? Each biennium, roughly 140 sitting Los Angeles judges' terms end, but in 2004 only 4 were on the ballot; in 2002, only 2; and in 2000, zero. "Ah," Paine says, "but that's L.A."

Yet outside Los Angeles, of the roughly 350 sitting judges whose terms ended in 2004, only 5 were challenged (slightly fewer than in the prior two elections). In all of California in 2004, about 2 percent were challenged. In the whole state since 1996, it's been well below 5 percent. In the whole state from 1972 to 2002, the percentage

challenged was greater than 2 percent in only two years—it was 5.1 percent in 1978, two years after Rose Bird won retention, and 3.2 percent in 1988, two years after she was defeated.<sup>4</sup>

Does Citizen Paine have any idea how many judges initially reach the bench by election? Around 10 percent, which is about the same as Minnesota and, so far as we know, lower than any other state.<sup>5</sup> "Ah," Paine says, "but once they're judges, having elections means they have to face the voters, and that brings accountability." Yes, they face elections, but how many actually face the voters? We just noted how few are challenged. We all know that judges who are challenged wouldn't be if they weren't vulnerable, and they're vulnerable because they seem to be performing poorly. But wait—the vulnerability may stem from their performing exactly as they should, maybe even courageously making an unpopular decision, as Judge Loren McMaster did in Sacramento with the domestic partners law.

"Come on," Paine says, "most judges who are vulnerable are performing poorly." Perhaps, but elections don't get them off the bench. Of last year's 9 judges who were challenged in California, not one had to go beyond the primary election. And from 1996 to 2004, of the 67 judges who were challenged, only 9 lost.

Even more striking is this: the great majority of these allegedly poor performers still had their performance ratified. Consider the last three elections, in which 39 incumbents were challenged and only 4 lost. Of those 39 incumbents, 21 were landslide winners, with more than 65 percent of the vote, and another 12 got more than 55 percent. So 33 of 39 not only won in the primary but won big. For them, the voters' message was: Keep it up!

Californians know that the effective way to correct poor performance or remove poor performers is not to wait until the end of 6 years but rather to invoke the disciplinary process, and

this state's process looks active and effective.

"Well," Paine says, "even if judicial elections do a punk job of giving accountability"—and that is unarguable—"having elections ensures that people can get on the bench even though the establishment won't appoint them." With this argument Paine has a point. Minnesota's Justice Alan Page was viewed as "just a black football player," which he said really meant "just a dumb black." In fact, for years now he's proved to be one of the most impressive Supreme Court justices in America. And last year in Los Angeles, perhaps Judge Mildred Escobedo wouldn't have reached the superior court bench without the electoral path.

No sober person suggests closing up the electoral path. But the fact remains that, for every Page or Escobedo, the record proves that among the judges who are initially elected are a relatively high proportion who perform so poorly that they must be disciplined. The dramatic California data make the point. The disciplinary rates between 1990 and 1999 in this state were:

- For judges who first reached the bench by *appointment*: 29.8 per 1,000 judges
- For judges who first reached the bench by *election*: 43.6 per 1,000 judges

New York and Florida have had the same experience.

There's one more reality to cool Paine's enthusiasm for more judicial elections: with elections comes the need for fundraising. Fundraising has five drawbacks:

1. It is impossible to avoid the appearance of judges' being influenced by contributions and being thought of as the same as other politicians. To quote the Third Circuit, "There is no aspect of the electoral system of choosing judges that has drawn more vehement and justifiable criticism than the raising of campaign funds, particularly from lawyers and litigants likely to appear before the court."<sup>6</sup>


2. We cannot deny the possibility that this is more than an appearance

problem; polls even of judges have shown very high percentages saying they think decisions are, in fact, influenced by contributions. We see large contributions such as the Orange County deputy sheriffs PAC's gift to a judge of \$35,000, a major proportion of that judge's funds.<sup>7</sup> In Ohio, in the month before that state's high court was to decide whether to take an appeal worth millions to a law firm, that firm's lawyers, the lawyers' spouses, and the firm's employees gave two justices major proportions of their funds.<sup>8</sup>

3. The very fact that there can be a challenge means that campaign funds must and will be raised by many who end up unchallenged, so fundraising involves potentially every contestable seat.

4. Wealthy candidates have less need of funds than nonwealthy candidates, and three studies of California's superior court races show that the candidates' own money has made up half of their funds.<sup>9</sup> I fear that for every Alan Page or Mildred Escobedo we get many who, as Santa Clara University law professor Gerald Uelmen put it, "buy their way onto the bench."<sup>10</sup> And if they're elected, then they repay themselves by exacting dues from the lawyers who appear before them. Of the \$850,000 that Sacramento's Trena Burger-Plavan spent in 2000 to win a superior court election, \$690,000 was debt. Another five candidates, who spent a total of \$1.4 million, together owed \$922,000.<sup>11</sup>

5. The greater the need for fundraising—i.e., the more often the need arises—the more likely it is that really fine potential judges will decide not to go for the bench, or that fine sitting judges will not go through another campaign.<sup>12</sup>

Every judicial selection system has pluses and minuses; one Chief Justice has said "there isn't a judicial selection system worth a damn." And every aspect of every system has pluses and minuses. But it should be clear that longer terms are, on balance, a clear plus. 

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#### Notes

1. Justice Joseph R. Grodin noted that, before the 1934 change for appellate courts and the birth of the so-called great age of the California Supreme Court, "tenure on the court was quite brief, averaging only a few years." J. R. Grodin, *In Pursuit of Justice* (Berkeley: Univ. of Calif. Press, 1989), p. 53.

2. D. Morain, "Kaus to Retire from State Supreme Court," *Los Angeles Times* (July 2, 1985), p. 1. See also Uelmen, *Otto Kaus and the Crocodile* (1997) 72 *Notre Dame L. Rev.* 1133.

3. "[P]eriodic elections can impair the quality of the bench and undermine its independence by deterring lawyers from seeking or accepting judicial appointments." California Judicial Council's Working Group on Judicial Selection (chaired by Justice Roger W. Boren), *Report on ACAI: Superior Court Elections* (June 2001), p. 11.

4. Author's data; Working Group on Judicial Selection, pp. 9, 11; M. Semler, *Electing Trial Court Judges: The California Experience* (paper presented to Midwest Pol. Sci. Assn., 2004), pp. 11–12.

5. The only study (unpublished) was conducted on 13 states by the American Judicature Society in 1998.

6. *Stretton v. Disciplinary Bd.* (3d Cir. 1991) 944 F.2d 137, 145.

7. Semler, p. 29.

8. See Schotland, *Proposed Legislation on Judicial Election Campaign Finance* (2003) 64 *Ohio St. L.J.* 128.

9. For 1974–1994 and 1996–2002, see citation and data in Semler, p. 22; for 1993–1996 in four counties, see Civil Justice Assn. of Calif., *A Study of Campaign Contributions to the California Judiciary* (1998).

10. L. Hwang, "The Price of Your Honor" (Feb. 2004) *California Lawyer* 18.

11. *Ibid.* That "fundraising efforts continued after the candidate became a judge" was noted by the Working Group on Judicial Selection, p. 14.

12. This point was made by retired Superior Court of Fresno County Judge Armando Rodriguez. "It's not a pleasant experience," he said of being challenged. "*The worst part is that you have to raise a ton of money to get your name out.*" [Emphasis added.] Rodriguez, who was appointed to the bench in 1975, was voted out in 1980, was reappointed later that year, and faced another challenge, which he won, in 1984. P. Lopez, "11 Vie to Be Fresno Co. Judges," *Fresno Bee* (Feb. 21, 2002), p. B1.

"Most judges are, by temperament, training and practice, uncomfortable engaging in public campaigns for election. . . . The need to raise substantial amounts of money . . . is one of the most serious problems . . ." Working Group on Judicial Selection, p. 12.



# Lawyerless, But Not Alone

## *Self-Help Centers Build Better Communities*

**F**or the times they are a-changin,’” sang Bob Dylan in 1963, and more than 40 years later the times are still a-changin.’ As times change, the courts must adapt to meet the new challenges created for our justice system. As Chief Justice Ronald M. George has acknowledged, the population appearing in today’s courts has changed in every respect.

**By  
Kathleen E. O’Leary**

One change is the dramatic rise in the number of litigants without lawyers. The same economic trends creating adverse fiscal conditions for the courts are also working to increase the population of self-represented litigants. Today more and more California residents are forced to come to court without the assistance of a lawyer, because they cannot afford legal representation and the availability of free legal services remains insufficient to meet the need. Many of those who find themselves lawyerless are what we have come to call the “working poor.” These individuals do not meet the income eligibility guidelines for traditional free legal services, yet their income is woefully inadequate to allow them to retain counsel.

### **Help for Litigants Without Lawyers**

In recent years, California courts have found themselves grappling with issues resulting from

the ever-increasing number of self-represented litigants using the courts. On an ad hoc basis, courts throughout the state are

in an ongoing process of developing and implementing strategies specifically designed to enable courts to meet the needs of self-represented litigants and to efficiently manage cases involving these litigants.

In 2001 the Judicial Council approved the creation of the Task Force on Self-Represented Litigants, with a goal of developing a comprehensive statewide plan to improve court access and services for self-represented litigants. After considerable research and study, the task force completed its charge and in February 2004 submitted its plan to the Judicial Council for consideration. At its February 2004 meeting, the council approved the Task Force on Self-Represented Litigants’ Action Plan for Serving Self-Represented Litigants. A new, smaller task force is currently addressing implementation issues.

The initial task force was immediately impressed with the number of existing self-help programs in California courts that were addressing the unique issues that litigants who don’t



have attorneys bring. Accurate legal information, the availability of simplified forms, and other resources provided through these programs have improved the ability of many litigants to represent themselves. Courts reported very positive feedback from self-help program participants, court staff, bench officers, and members of the bar.

### Young Amy Finds a Home

The courts presented the task force with some compelling stories of individuals who used self-help programs. A woman came to her local court's self-help center asking for assistance in obtaining guardianship for her great-granddaughter, Amy. Amy's mother, Bernice, had a long history of mental illness and drug abuse. Bernice would frequently show up unannounced and ask her grandmother to care for Amy. Bernice would then disappear for days or weeks at a time. The great-grandmother wanted to become Amy's guardian and provide some stability in Amy's life, but she lived on a fixed income and did not have the funds to retain an attorney. Staff at the self-help center assisted her with the paperwork, and a guardianship was established. This, in all likelihood, avoided eventual foster care placement for Amy.

Jack and Lynn, a divorced couple, needed to modify their custody and visitation orders. They were basically in agreement but lacked the information needed to do the modification themselves and were short on funds to hire a lawyer. Staff provided sufficient legal information to allow Jack and Lynn to submit a custody and visitation agreement to the court for approval without having to file a motion, attend family court mediation, or participate in a court hearing.

There are many more examples of self-represented litigants who, with the support of self-help services, were able to successfully access the court system.

In reviewing and assessing existing self-help programs, the task force found that many courts had discovered that improved assistance to self-represented litigants improved the efficiency and effectiveness of the court process. Assistance with paperwork preparation saved clerk and courtroom time and reduced the number of unproductive court appearances. Self-represented litigants conducted themselves more appropriately in the courtroom because

## Helping the Self-Help Centers

California's courts are facing an ever-increasing number of litigants who go to court without legal counsel, largely because they cannot afford representation. Self-represented litigants typically are unfamiliar with court procedures and forms as well as with their rights and obligations, which leaves them disadvantaged in court. Helping them navigate the system consumes significant court resources. Accordingly, the Judicial Council has made access to the courts for self-represented litigants one of its top priorities—meeting the needs of both the public and the courts. Here are just a few of the ways that the council is providing assistance.

### Model Self-Help Centers

The Judicial Council funded five self-help pilot centers. The centers provide distinct models for replication by other courts in addition to translated materials and technological solutions. An evaluation of the models and copies of the materials are available at [www.courtinfo.ca.gov/programs/equalaccess/modelsh.htm](http://www.courtinfo.ca.gov/programs/equalaccess/modelsh.htm).

### Equal Access Fund

The Judicial Council works in partnership with the State Bar's Legal Services Trust Fund Commission to award nearly \$1 million per year to legal services programs to provide court-based self-help services for low-income litigants in California. More than 20 programs have been started in California courts using these funds.

### Family Law Facilitators

The Judicial Council provides funds to every court for family law facilitators to help with child and spousal support matters. Many courts have supplemented these funds to expand the service to more areas of family law.

### Planning Grants

To encourage community-focused strategic planning to identify and meet the needs of self-represented litigants, the Judicial Council has allocated planning grants for local courts to develop and implement action plans for serving self-represented litigants. These funds have allowed courts to develop creative new strategies.

### Self-Help Web Site

The Judicial Council provides an award-winning California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)) for court users who do not have attorneys and for others who wish to become better informed about the law and court procedures. The site offers over 900 pages of information and over 2,400 links to legal resources. The entire site has been translated into Spanish ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)).

### Equal Access Web Site

The Administrative Office of the Courts provides a Web site for court staff and attorneys who work in self-help centers to share resources and gain new ideas. The equal access site ([www.courtinfo.ca.gov/programs/equalaccess](http://www.courtinfo.ca.gov/programs/equalaccess)) has instructions and translations prepared by local courts, as well as brochures, promising practices, and links to lots of resources.

## Link Your Court Web Site to the Online Self-Help Center

Contact your IT liaison to find out how!



### Free & Low-Cost Legal Help

Find Legal Help ...



### Ayuda legal gratis y de bajo costo

Cómo encontrar ayuda legal ...

### Small Claims

Basics, Collect Your Judgment ...



### Reclamos menores

Información básica, Cómo cobrar un fallo a su favor ...

### Seniors

Conservatorship ...



### Ancianos

Tutela ...

### Families & Children

Divorce, Support, Guardianship ...



### Familias y niños

Divorcio, Manutención, Tutela ...

### Traffic

Traffic Information ...



### Tráfico

Información de tráfico ...

### And more!

### ¡Y más!

[www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)

[www.sucorte.ca.gov](http://www.sucorte.ca.gov)

courtroom practices and the format of court proceedings had been explained to them in advance. Bench officers reported an improvement in the information that self-represented litigants provided during proceedings. Many courts found that self-represented litigants who had received adequate and accurate legal information through a self-help program were better able to focus on the issues and more capable of reaching a settlement.

## The Entire Community Benefits

The task force learned that when courts work well for cases involving self-represented litigants, significant benefits are produced for the community as a whole. Support from self-help programs allowed many self-represented litigants to navigate the court system more efficiently and minimize their absences from work. Time saved in the handling of cases involving a self-represented litigant allowed all cases to be resolved more expeditiously. Litigants who were properly prepared were far more likely to leave court with clear written orders regarding child custody, visitation, and domestic vio-

lence. Such orders facilitate the efforts of police and sheriffs to successfully enforce court directives. All of these positive outcomes for the community significantly contribute to the public's trust and confidence in the court and in government as a whole.

The action plan concluded that self-help centers significantly enhance access to justice for self-represented litigants and facilitate the timely and cost-effective processing of cases involving those litigants. The task force identified the model self-help center as being a court-based self-help center, staffed and supervised by court attorneys. The task force recognized, though, that a court self-help center was not the entire solution because some legal matters are best handled by lawyers. This is why a critical part of the action plan calls for collaboration with qualified local legal service providers so that when legal representation is required, prudent referrals can be made to either legal services staff or pro bono attorneys.

The implementation task force is now in the process of identifying those elements of successful self-help centers that have proven critical for positive outcomes. The next step will be to design guidelines for a model self-help

center that will be reasonably flexible so as to accommodate all of the variations that exist among California courts and the populations they serve.

From the first days of the initial task force, an overriding consideration has been the realities of the current fiscal condition of the courts. The Judicial Council has assumed a leadership role in advocating for self-help funding so existing programs can be maintained or expanded and new programs can be established, but cost continues to be a factor in all recommendations. Every effort is being made to maximize the benefit of the experience of courts that have been on the front lines in providing services to self-represented litigants. Both time and money can be saved by adopting or replicating proven methods, procedures, forms, and other resources.

Pilot programs have been funded to test different models. One pilot program confirmed that three county court systems could use shared resources to provide greater services in a cost-effective manner.

## Efforts Make a Difference

It is clear that efforts large and small can make a difference. More needs to be done to achieve our goal, but through the combined efforts of the courts, the Legislature, the executive branch, the bar, and the community, each day we are improving the administration of justice. The task force thanks all those who, through your hard work, consistently demonstrate your commitment to enhancing access to justice for the lawyerless. As Fleetwood Mac sang, "Don't stop, thinking about tomorrow," because the times will continue to be a-changin.'



*Kathleen E. O'Leary is an associate justice of the Court of Appeal, Fourth Appellate District, Division Three, in Santa Ana.*

# The Connected Republic

## Becoming “Citizen Centric” in the Digital Age

By  
**Carolyn Purcell**

**T**he Connected Republic reflects a dramatic, fresh point of view on the evolution of government as it confronts three significant challenges: defining the role and purpose of government in the Information Age, modernizing and reforming the public sector, and strengthening democracy. Developed by Cisco Systems, the Connected Republic is a model that combines technology with

organizational and policy innovations to achieve the goal of putting people and communities at the center of a responsive government. It has particular relevance for the courts as they strive to become more responsive to citizens—the ultimate customers for their services.

The vision of the Connected Republic rests on four central values for government:

- Putting citizens at the center
- Connecting people
- Empowering citizens
- Delivering public value

Any one of these values by itself is worthy of pursuit, but it is the combination of all four that makes up the Connected Republic vision.

Together, they speak to the search for legitimacy that lies at the core of delivering value to the public. Legitimacy is a compact between citizens and government: people willingly cede power to their government with the promise that, in return, the government will deliver the benefits that people value. Legitimacy is not an unintended consequence of the Connected Republic—it’s the whole point.

## Putting Citizens at the Center

Ongoing cultural, management, and operational obstacles have made it difficult to create the types of change that a true citizen-centric government requires. Overcoming these obstacles requires strong leadership and a clear idea of what is required. To become citizen centric, courts must focus on three things:

1. Acting as a single enterprise, so citizens feel they are being served by one organization rather than many
2. Organizing around citizens' needs rather than convenience or history
3. Becoming flexible to deal with and respond to complex problems as citizens' needs change

The judicial branch of California has a host of citizen customers. A recent survey by the Administrative Office of the Courts reveals that 56 percent of California citizens have been to a courthouse, mostly as jurors. Many people who are called for jury service are experiencing the court system for the first time. They generally do not distinguish between types of courts or kinds of law (civil and criminal) but rather consider courts as “the judicial branch.” This suggests that courts should present one face to the public through Web sites and phone listings, regardless of jurisdiction or geographic location. A single call center could redirect inquiries to the correct court, based on information from the citizen and a repository of public case and docket information shared by all courts. Such a service would move the citizen's discovery process to the courts.

In San Francisco, prospective jurors can communicate with the court via its juror Web site regarding scheduling and other conflicts, so that they are called for jury service only on cases for which they are truly needed. A single, common approach to electronic submission of court filings (using e-mail, for example) would improve attorneys' administrative processes and ensure more timely filings.

Acting as a single enterprise will require (1) new forms of governance, (2) the use of interactive and networked information, and (3) communications technology architectures and standards. This is not easy to do. It is a balancing act that requires a strong framework coupled with an approach that permits innovation and creativity to flourish.

Organizing around citizens' needs requires rethinking how courts do business, with the goal of making it simple (and, in the courts' case, safe) to conduct business. Without the discipline of citizen centricity, there is the danger that government ends up automating processes but not really changing what remains an essentially 19th-century model of court management.

To minimize the exposure of jurors, citizens, and court personnel to potentially dangerous defendants in custody, some California courts use videoconferencing during arraignments. An added benefit is the reduction in expenses associated with prisoner transport. This requires collaboration and coordination with the criminal justice agencies.

Courts around the country are applying technology to post and collect fines and fees online. In 2005 the Automobile Club of Southern California began “driving” its Web site visitors to the Web sites of courts in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties to learn how to pay their traffic fines online. This process has been used extensively in commercial and government applications. There are excellent examples in the public sector where a single payment “portal” can safely and accurately accept citizens' payments. The best ones allow the citizen or commercial participant—an attorney, for example—to manage a single account with all associated fees (for all courts) through one Web transaction. Advantages accrue to the courts when payments are made on a timely basis. If state government has already established a reliable Web-based payment process, the courts should partner with the state to use

the existing process. This will leverage the public's confidence, including the expectation of protection of personal privacy.

Providing this level of service requires courts to evolve toward a new model of organization that can be dramatically more effective if it breaks down the barriers between itself, its partners, and its customers and instead connects all stakeholders together in a network focused on making the best use of common resources to meet a shared goal. This organizational model is the key to the Connected Republic framework. It creates the organizational and technical architectures around which the Connected Republic can become a functional reality.

## Connecting People

The second value of the Connected Republic is connecting people. The goal is to connect people and organizations into networks of expertise and skills that are capable of tackling the policy and program challenges facing communities and government. This ambition has been a rhetorical staple of e-government advocates for some time. But, like the goal of creating a citizen-centric government, it has not yet been achieved.

We are witnessing the evolution of a new accommodation between the traditional arenas in which we construct our social identities and obligations—which are proving to be both more enduring and more significant than was thought in the early days of the Internet revolution—and the less structured and often invisible networks in which tentative new social or public demands are being confronted. Examples of the latter are blogs (online journals) and listservs (e-mail devices that allow multiple participants to view and comment on a subject or on each other's remarks asynchronously) that target issues related to the courts.

This phenomenon can create some difficulties for government. As these informal networks develop, the formal bodies and structures may experience



an erosion of trust and find it harder to secure the necessary commitment to larger projects of public value and social change. The risk is that trust and confidence in traditional structures and institutions erodes, replaced by scattered, less visible types of social organization that grow in power but not in authority.

The courts have multiple constituencies with differing needs. Informing constituents about issues by selectively sending topical e-mails to interested subscribers increases transparency and can foster trust.

## Empowering Citizens

The third value of the Connected Republic is empowering citizens by maximizing their role in decision making. Whether it is in education, justice, or health care, citizens and consumers want to be more engaged in shaping and delivering the services they need. We expect to be asked for our views and preferences, and we assume that they will then have some impact on what is produced and offered.

The other main aspect of empowerment is the democratization of public administration. In most countries, e-democracy has been a neglected part of the e-government project, but even the limited steps that have been taken are of huge potential significance. Indeed, one senior public-sector leader in Australia has suggested that the widening circle of democratic involvement has already “shaken irrevocably the old bureaucratic structures and, with it, the unchallenged authority wielded by its mandarins.”

The reason to pay attention to empowerment is that there is little value in making the machinery of government run faster and leaner if people do not trust or accept the legitimacy of what is being done. It is dangerous to focus only on how government works and not on what it does, why it does so, or how those questions are determined in the first place.

Governments have resorted to surveys and focus groups to ensure that the service they provide within the law

is what the people want. Many government agencies that have rule-making authority publish those rules on their Web sites or send e-mails to subscribers or known interest groups and encourage them to comment online. The federal government uses this technique in some environmental rule making, and the Judicial Council and Administrative Office of the Courts in this state do the same to solicit comments on rule proposals. The courts may have opportunities for similar outreach.

## Delivering Public Value

The fourth value of the Connected Republic is delivering public value. The success of the model is not measured solely in terms of gains in work processes, results, and efficiency. It is also measured by how well e-government helps enhance governance, transparency, and accountability—all issues of public value.

For courts, the issues of transparency and accountability have several constituents. The public expects transparency related to court actions that are, by law, matters of public information. The timely distribution of this information demonstrates transparency and accountability. The perception of these values also is enhanced by the publication of court actions, including the results of trial and appellate court cases, on an easy-to-navigate Web site—as is already done in several jurisdictions—or the use of a call center or Web site to help potential jurors, victims, and defendants understand their roles in court proceedings. For attorneys, accountability may mean receiving acknowledgment that an electronically submitted document has been filed on time, which can occur automatically when the submission is received.

Most important for courts is the confidence that the proceedings of any trial

## Putting Citizens at the Center of Jury Experience

Recognizing that jury service is the primary way that the public interacts with our court system, the Administrative Office of the Courts and the trial courts launched a program in 2000 to improve the jury experience through innovative use of technology. Implementation of rule 861 of the California Rules of Court, limiting service to one day or one trial, required the courts to process many more jurors than before. Outdated jury management systems could not support the increased technological requirements of the new length of jury service, and clerks were having trouble keeping up with the demands of the increased volume of jurors.

To increase juror satisfaction and alleviate pressures put on the courts by the one-day or one-trial system, courts around the state successfully implemented various jury management system innovations through a program administered by the AOC Information Services Division. The improvements include:

- **Integrated voice response.** In 28 courts, summoned jurors can learn when and where to report for jury service, update information, or postpone service by telephone on a 24-hour basis.
- **Web access.** In 23 courts, jurors can update information, postpone service, and respond to questionnaires online, around the clock.
- **Prompt payment for jury service.** In 24 courts, jurors receive prompt payment directly from the jury management system. In some instances, jurors are paid before they leave the courthouse.

Applying these new technologies to improve jury management systems in California courts over the past five years has reinforced the values of the Connected Republic, ensuring that citizens leave the courthouse feeling they were treated responsibly, fairly, and respectfully during their jury service.



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or hearing are fair and governed by the rule of law. Here the rights of multiple constituents may seem to conflict, but (where possible) the more information is made public, the more the public can trust its government. In many states, legislators have begun Webcasting plenary and committee hearings. The Webcasts are filed for asynchronous viewing. This transparency may not result in a big audience, but the confidence that anyone can access the information at any time improves accountability.

Public value also may accrue from the courts' broadening the definition of their constituency. For example, when considering a case that involves dependent children, it may be valuable to make the children's government workers aware of any impending action to minimize exposure to risk as a result of the court's action. This requires connections with the government agencies that have charters involving children. Real-time information exchanged between these government agencies increases accountability and transparency and creates public value.

## The Connected Republic Has Already Begun

Achieving the Connected Republic may seem an impossible goal, but some governments have already embarked on programs that point in its direction. The progress of these efforts is not uniform or consistent; the values and ideas that inform the Connected Republic resonate differently around the world, causing individual governments to adapt them in ways that best suit their unique needs.

Governments that have embraced the Connected Republic are responding to what citizens desire—the values that inspire the Connected Republic vision. As the examples given here suggest, it will not be possible to create the Connected Republic using simple or singular solutions. In fact, it is a daunting agenda, but this is what we should expect. We are talking about nothing less than a fundamental transformation of government on a scale not witnessed since the inception of the Industrial Age. 



*Carolyn Purcell is a director in the Internet Business Solutions Group of Cisco Systems and is one of the strategic partners involved with the California Courts Technology Initiative. Her State and Local Government Team works with the top thought leaders in those governments to develop business solutions that improve service delivery to constituents and employees.*

More on Cisco Systems' perspective on e-government can be found at [www.cisco.com/go/connectedrepublic](http://www.cisco.com/go/connectedrepublic).

# Tempering the CSI Effect

## *Raising the Bar on Proof of Guilt*

By  
Arthur Gilbert

**H**ere's the conundrum. This column is about the media's effect on our justice system. Addressing that topic necessarily involves watching TV. But I don't watch all that much television. Don't have the time, what with writing this column and all.

The truth of the matter is that, before I began writing this column, I didn't watch much TV because I have no aptitude for scientific gadgets, even though I like to watch science shows on TV. First, there is the cable box with its innumerable controls, which I can't see without high-magnification reading glasses. And when I remember where I last put the glasses, I still have to know which buttons to press and when to press them. I inevitably press the wrong button, which takes me to a menu I don't understand or to an infomercial. And there is the separate VCR player, with its complicated controls, and the impossible-to-operate DVD player. And all three have to work together—which on occasion I can get them to do. In the time this takes, I could have written the column. But the column requires that I watch TV. So out of necessity I have become more proficient at working and programming my television set.

No sooner do I master the TV set than I have to figure out how to work my new cell phone. It takes pictures,

connects to the Internet, and tells you what movies to see. And you may be able to watch TV on it. Included in the thick book of instructions is the suggestion that you should learn and practice no more than one task a day. If I follow

that regimen, in two years I will have learned how to use the phone. By then the phone will have been obsolete for a year and a half.

Science even affects my cat. Her carefully packaged food is called Science



Marg Helgenberger and William Petersen star in the highly rated television series *CSI: Crime Scene Investigation*.



Diet. Some day scientists may figure out how to make her food odorless. You can put a microscopic chip in her ear which contains her (our) address and phone number. If she is lost and turned in to the pound, someone might just call us before the extermination takes place.

This all proves that science and technology force us to change our lives.

Because science so pervades our lives, it is no wonder that questions involving science often arise in court cases. My panel on the Court of Appeal decided *People v. Axell* (1992) 235 Cal.App.3d 836, the first DNA case in California. I had a great deal to learn about DNA, but at least I didn't have to operate a contraption or work any controls. All I had to do was read the scientific journals that were part of the record that explained the process and procedures used to determine the defendant's DNA, which linked her to the crime. The next hurdle was understanding what I had read. Then my colleagues and I had to decide whether the scientific evidence met the appropriate legal standards to be admitted as reliable evidence in a court of law.

**Leave it to the TV scientists. They are cool and professional. The crime scenes are messy and bloody, but not the CSI lab, with its spotless metal tables, shiny precision instruments, and intricate machines.**

(If the lawyers arguing the case had known the difficulty I have in operating my VCR player, they might have moved to have me removed from the case.)

As in all criminal cases, the prosecution had to prove the defendant's guilt beyond a reasonable doubt. To arrive at guilt in the old days, the trier of fact had to have "an abiding conviction to a moral certainty." No one quite knew what "to a moral certainty" meant, although today many people are quite sure of their beliefs to a moral

certainty. To achieve a semblance of clarity, we have scuttled the "moral certainty" phrase in the reasonable doubt instruction. What we have retained is the admonition that proof beyond a reasonable doubt is not proof beyond *all* doubt. But in light of well-publicized "scientific evidence," there may be some jurors who demand proof beyond all doubt. These are the same jurors who cannot bring themselves to make a finding of guilt without scientific evidence, no matter how compelling the nonscientific evidence. ("Yes, 17 people witnessed the murder, but where is the DNA evidence?")

Where do you suppose my scientifically oriented jurors get their ideas? Not from the Kansas Board of Education. In large part they get it from television. I learned how to operate my television set so I could watch *CSI*. No, this doesn't stand for Contrived Silly Incidents, or Careless Stupid Idiots. The show I watched, which nearly everyone but me had seen, was *Crime Scene Investigation* or, if you will, *Better Living Through Chemistry*.

One episode I watched had a con-

volved plot involving a Kodiak bear who had been spirited out of the local zoo and killed so that his gall bladder could be removed and sold in Asia, where it is believed to be an aphrodisiac. I guess Pfizer has yet to make inroads in Asia. In carrying out this bear caper, someone gets killed. Who is the culprit? Leave it to the TV scientists.

They are cool and professional. The crime scenes are messy and bloody, but not the *CSI* lab, with its spotless metal tables, shiny precision instru-

ments, and intricate machines. This is the setting where the scientists work, banter, and at times reveal a fleeting attraction for one another—but never let it distract them from the job at hand. They speak in tight, clipped sentences. Pithy aphorisms and philosophical insights come tripping off their scripted tongues. One of them says, "People lie, but science catches them in the lie." Perry Mason, turn in your silver tongue.

A quick philosophical debate. One scientist says with smug certainty that we are programmed when the sperm hits the egg; DNA is what we are. Another scientist asks with sardonic skepticism, "Is that who we are?" The first scientist responds, "We never change what we are. But—"

"But what?"

"We do change *who* we are."

What a relief. In the difference between "what" and "who" there is a wee bit of stretching room for free will in our lives that are so constricted and determined by our DNA. Back to the plot of the episode. A leaf found in the defendant's car has the same DNA as a leaf found in the bear's hair. That nails the defendant.

Are juries now demanding a more rigorous standard of proof based on scientific evidence to convict defendants? Setting aside anecdotal stories by peeved prosecutors who have lost cases, I believe the jury is out on this question. But programs such as *CSI* may have a more-than-subtle and more-than-legitimate influence on how juries, lawyers, and the public in general view proof of guilt.

A few months ago, my colleagues and I judged the Richard Abbe Moot Court Competition, named after our much-loved late colleague. The students from competing law schools who were left standing in the final rounds argued a murder case. Preceding the crime in this case, the defendant and



his friends, and the victim and his friends—members of rival gangs—had been involved in a nonfatal car accident. Shortly after the accident, the defendant threatened the victim's friend. A few days later, the defendant, who lived near the victim, was seen driving past the victim's house. A gun was seen in the defendant's car.

What helped bring the defendant's innocence to light? A television program: *Unsolved Mysteries*.

To ensure that television watchers are competent jurors, judges should counter the "CSI effect" by explaining to them that "reality" shows often skew reality, and at best counterfeit it; reality is here in this courtroom. A


**To ensure that television watchers are competent jurors, judges should counter the "CSI effect" by explaining to them that "reality" shows often skew reality, and at best counterfeit it; reality is here in this courtroom.**

Late one evening, a neighbor saw a car stop at the victim's house. Someone got out of the car, went up to the victim, and shot him in front of his house. The car then sped away. The neighbor did not get the license number of the car, nor could she describe the car.

Was the circumstantial evidence sufficient to convict the defendant of murder? It wasn't the strongest case in the world. The student lawyers representing the defendant argued that, among other things, there was no scientific evidence to connect the gun seen in the defendant's car and the shooting. Not a bad argument to highlight the weak evidence connecting the defendant to the crime.

Of course, scientific evidence has to be as solid as any other evidence. DNA tests that are conducted improperly yield false and misleading results. But, conducted properly, the tests help ensure that justice is done. Recently the *New York Times* carried a story about a convicted rapist sentenced to life in prison. No fewer than six victims had identified him in a lineup. But 25 years later, DNA evidence showed he was not the rapist in one crime, and some of the other victims recanted their testimony.

brief overview of court procedures and operations helps ground juries in reality—the one in which they are participating and not the one they watch on a television screen with commercial breaks. Judges need to tell jurors that evidence, whether scientific or not, may or may not be persuasive—it is not the nature of the evidence that determines its strength.

I cannot prove to a moral certainty that that brief education will insulate juries from the influence of the fictional scientific evidence they see on television. But I believe jurors are, by and large, conscientious and usually follow the court's instructions. Of this I have an abiding conviction beyond a reasonable doubt. But then again, I could be wrong, since I don't watch all that much television. 

*Arthur Gilbert is the presiding justice of the Court of Appeal, Second Appellate District, Division Six, in Ventura.*

*New criminal  
jury instructions  
now available*

## CALCRIM

### Judicial Council of California Criminal Jury Instructions

**T**he Judicial Council approved new plain-language criminal jury instructions in August. The instructions were written by the council's Task Force on Criminal Jury Instructions. They will be sent to every judge and justice in California free of charge, and the courts will receive custom-designed jury instruction software.

The jury instructions fulfill Chief Justice Ronald M. George's mandate to improve access to justice and are:

- Drafted in plain English
- Supported by extensive bench notes and references
- Verified for accuracy through six rounds of public comments
- Vetted by experts in criminal law
- Teamed with easy-to-use, customized software

The jury instructions are available in PDF format at

[www.courtinfo.ca.gov/jury](http://www.courtinfo.ca.gov/jury)

# Fear Not—From a Former Skeptic

By Frederick Paul Horn

Well before my appointment to one of two positions for trial court judges on the California Commission on Judicial Performance, I harbored the same deductive pessimism many bench officers may share: a sort of philosophical acceptance that a career of solid work on the bench could be trumped by one rogue complaint. My perspective has changed in the two years since I was appointed. There is no cause to despair that the commission is out of reach of reason.

The genesis of the Commission on Judicial Performance lies in the structure of our government and the principles that support that structure. Because of the great power judges wield and the relative absence of scrutiny through the electoral process (compared to the other branches of government), the commission is essential to protect the public. The commission strives to maintain public confidence

in the judiciary and to increase awareness of proper judicial conduct as set forth in the Code of Judicial Ethics, promulgated by the Supreme Court of California.

The commission came into existence in 1960 through an amendment to the California Constitution. Every state, as

**The commission strives to maintain public confidence in the judiciary and to increase awareness of proper judicial conduct as set forth in the Code of Judicial Ethics, promulgated by the Supreme Court of California.**

well as the District of Columbia, has a judicial disciplinary organization. When judges fail in their duty to their office, the members of the organization are bound to take action. If something is obviously wrong, they proceed to enforce standards that maintain public confidence in the integrity and independence of the judiciary. When determining whether to impose discipline, the members consider the se-

riousness of the misconduct, whether there is a pattern of misconduct, and whether the judge has been disciplined before. Any level of discipline imposed must be supported by strict evidentiary standards and burden of proof. Failure in either of these areas results in closure of the matter. Only a very few mat-

ters ever progress beyond initial review to the level of a formal proceeding.

In the past two years, I have come to realize that California has one of the finest and most ethically upstanding judiciaries in the country. In the past 10 years, approximately 90 percent of complaints to the Commission on Judicial Performance were closed after initial review. An additional 6 percent were closed after investigation, without discipline. Only 3 to 4 percent of the complaints resulted in discipline.

As I participated in the review process, I was extraordinarily impressed by the resolve, commitment, and strong work ethic of the commission members and the excellent support by commission staff. Each member carefully evaluates the facts and examines the legal and ethical issues of every complaint before acting. Any baleful aspects of the complaint process are mitigated by the intellectual doggedness of the review by commission members.


One might speculate whether these facts support the notion that California judges are exemplary. But considering

## The Commission's Process

During 2004 the state Commission on Judicial Performance concluded 1,080 complaints against active and former judges. Of that number, 993, or 91.9 percent, were closed by the commission after an initial work-up by its staff because the alleged events that, even if true, might constitute misconduct were simply insufficient. Another 60 cases were closed following a staff inquiry or preliminary investigation because the charges were unfounded or unprovable or the judge gave an adequate explanation of the situation. Two cases were closed after the judge resigned or retired.

In the remaining 25 cases—2.3 percent of the original 1,080 complaints—discipline was imposed. The discipline consisted of confidential advisory letters (often called “stinger letters”) in 13 cases, private admonishment in 8 cases, public admonishment in 3 cases, and removal from office in one case.

for a moment the millions of successful dispositions in the exceedingly wide range of cases handled annually by more than 2,000 trial and appellate jurists in our state, a conclusion about the quality of the California bench becomes much more certain. In my experience, judges in California are extremely well educated about ethics. They are active in judicial education and are helpful and supportive of each other in terms of providing guidance and advice. These are critical elements in creating an outstanding judiciary.

Finally, in my view, the manner in which the commissioners and the commission staff approach their work reflects a central assumption—that bench officers were good before they became members of the judiciary and that they continue to exemplify the qualities expected of persons chosen to resolve disputes in the judicial branch. This bodes well for the judiciary, for it suggests a high degree of confidence by the commission in the quality of the men and women serving in the California trial and appellate courts. 

*Frederick Paul Horn is the presiding judge of the Superior Court of Orange County and vice-chair of the Commission on Judicial Performance.*

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A CONVERSATION WITH  
**Judge Michael T. Garcia**

## **When the Judicial Council Comes Calling**



Michael T. Garcia

*Since 1997, members of the Judicial Council have traveled in small groups to courts throughout the state in an effort to learn about local problems and solutions. During these visits they also gather direct feedback about programs and services offered by the council and the Administrative Office of the Courts. In this issue, Judge Michael T. Garcia of the Superior Court of Sacramento County talks about his experience with the court site visits.*

### **What is the value to you of the site visits?**

The greatest value for council members is the personal interaction with the judicial officers and staff of the court. These conversations help council members understand the particular operating culture of the court and thereby the court's individual operational needs. Viewing the facilities is also very informative—as to the daily difficulties the court faces and how the ingenuity of those in the court has addressed those challenges. Many of the solutions observed can be the basis for best practices that can be shared throughout the state.

### **What do you do with the information you obtain?**

After the visit, all the members of the site visit team participate in a conference call. The team members discuss all of their conversations and observations and share their insights. The staff is then directed to prepare a draft report containing the items that the team found to be the most significant. An oral report by the team and a finalized written report are given to the Judicial Council. The report notes the local court's areas of concern and makes recommendations for action.

### **What tangible benefit do the local courts get from the visits?**


The local courts have an opportunity to give the council specific examples of issues they've deemed to be of the greatest concern. Members of the council have the opportunity to view the problem firsthand and to talk with the judicial officers and staff about their assessments. Council members during the visit have often provided information that directly addresses and resolves many of the problems brought to their attention. Site visits have led to new procedures that have been adopted by AOC staff, at the direction of the Judicial Council, for the benefit of the local courts.

### **Is there a central theme or message from the local courts?**

Common themes expressed by the courts during the visits are a shortage of judicial officers to handle the existing workload; inadequate facilities to handle all case types; and insufficient security for the protection of the public, staff, and judges as well as for

delivery, movement, and monitoring of inmates in the courthouse. Many courts have outgrown their existing buildings. Many more weren't designed for the manner in which they're used today. Case management is negatively affected, and costs of security are greatly increased, because of the limitations imposed by existing facilities.

### **Are the site visits important?**

The site visits are immensely valuable to both the local courts and the Judicial Council. Additional lines of communication are opened between the judges and staff of the local court and the Judicial Council that previously had not existed. Local courts often discover the existence of statewide programs that give them assistance they need. The Judicial Council receives information that supports the adoption of new policies and procedures, which streamline the ability of the entire branch to address the needs of the public in providing fair and equal access to the courts. 



# New Habeas Limits Proposed

BY GREGORY E. MIZE



Gregory E. Mize

The U.S. Senate is moving quickly to establish new strictures for federal court review of habeas corpus petitions by state prisoners. The Streamlined Procedures Act of 2005 (Sen. 1088) was introduced on May 19. A month later, a companion bill was introduced in the House (H.R. 3035). These proposals would amend the Anti-Terrorism and Effective Death Penalty Act of 1996 (AEDPA), which overhauled the nation's habeas laws by placing time and substance limits on state prisoner filings.

The proponents of the two bills claim that the system for federal review of state convictions is painfully slow. They assert that court delays deprive defendants of justice and keep many victims of crime waiting too long for finality. Supporters of reform point primarily to cases coming from the U.S. Court of Appeals, Ninth Circuit, and California state courts as justification for additional changes in the AEDPA.

The Senate Judiciary Committee held a hearing and mark-up session on Senate Bill 1088 in July. The next mark-up session was held shortly after the hearings on the nomination of John G. Roberts as Chief Justice of the United States.

Both bills would make numerous changes regarding how and when federal courts can entertain petitions from persons convicted of capital or noncapital crimes. The amendments are intricate and would apply retroactively to pending cases. A sampling of their effects:

- The legislation would strip federal courts of jurisdiction to review claims that a state court found to be "procedurally barred," regardless of whether the procedural fault was attributable to ineffective assistance of counsel.
- The legislation would nullify three U.S. Supreme Court decisions—two

that clarify how time requirements are calculated under the AEDPA and one that addresses clemency review.


- Another provision would change the "opt-in" features of current law by removing federal courts' authority to certify that a state meets standards for providing competent counsel to indigent people in state proceedings. The certification authority would be transferred to the U.S. Attorney General.
- Another measure would require federal courts to dismiss so-called "mixed petitions"—those containing both claims that were exhausted in state proceedings and claims that were not exhausted. This provision would effectively require prisoners to quickly, but carefully, press each federal claim in state court and explain in federal court how they complied with federal law.
- The bills would create an exception to the AEDPA's time and content requirements, in that a petitioner would have to show actual innocence by very high and narrow standards of proof or show that the U.S. Supreme Court created a new retroactive constitutional doctrine that's applicable to the case.

Due to the fast pace of Senate action on Sen. 1088 and the complexity of the bill's subject matter, opposition to the legislation has surfaced only recently. Those voicing reservations include the Judicial Conference of the United States, the American Bar Association, California's Habeas Corpus Resource Center, several former members of Congress (including a chief proponent of the AEDPA, former Representative Bob Barr, R-Ga.), and numerous former judges (including William Webster and William Sessions, who are also former FBI directors). Ira Reiner and Gil Garcetti, former district attorneys for Los Angeles County, oppose the bills.

The opponents collectively raise claims that:

1. The bills present numerous constitutional problems that will foster years of further litigation and delay.
2. If the new time limits are adopted, numerous prisoners who would be exonerated under current law will suffer wrongful conviction and even death.
3. There is no empirical support for the premises cited by bill sponsors.

On the latter point, a significant group of state court leaders made a formal plea to Congress to slow down. The Conference of Chief Justices and Conference of State Court Administrators, at a recent annual meeting in Charleston, South Carolina, adopted a resolution urging the Senate Judiciary Committee to delay further action on the bills until a study can be completed. The recommended study would evaluate whether current habeas corpus law has led to unwarranted delays in dispositions and, if so, whether there are less disruptive solutions than the far-reaching measures contained in these bills.

California Chief Justice Ronald M. George was instrumental in getting the Conference of Chief Justices to promptly focus on the Streamlined Procedures Act. In his July 29 memo to his colleagues, he said, "[M]y ultimate concern is for fairness. If the traditional role of federal habeas corpus is to be fundamentally altered and diminished, it seems crucial that it be done only after careful consideration of the implications for the administration of justice nationwide, at both the state and federal levels." 

*Gregory E. Mize is a retired judge of the Superior Court of the District of Columbia and a judicial fellow with the National Center for State Courts in Washington, D.C.*



J. Richard Couzens



Tricia Ann Bigelow

# The Effect of *Crawford* on California

BY J. RICHARD COUZENS AND TRICIA ANN BIGELOW

In 1999 Michael Crawford was prosecuted for an assault with a deadly weapon. Although initially the police questioned both him and his wife, only Michael was charged. The prosecution wanted to call the wife at trial, but under the marital privilege she made herself unavailable to testify. The prosecution then sought the court's admission of her statement to the police incriminating her husband. The trial court admitted the statement, finding it was reliable. The U.S. Supreme Court granted certiorari.

Until *Crawford v. Washington* (2004) 541 U.S. 36, statements of unavailable witnesses were admissible in a criminal case if they were obtained under circumstances demonstrating "adequate indicia of reliability." (*Ohio v. Roberts* (1980) 448 U.S. 56.) Roberts had found no constitutional impediment to the admission of statements given by unavailable witnesses if the proponent was able to establish either that the admission was based on a "firmly rooted hearsay exception" or that the statement bore "particularized guarantees of trustworthiness." (*Id.* at p. 66.)

*Crawford* overruled *Roberts*, finding "reliability" is a subjective test not recognized by the Sixth Amendment right to confrontation of witnesses. *Crawford* determined that a testimonial declaration is inadmissible unless the defendant has an opportunity to cross-examine the declarant. "Testimonial declaration" was not comprehensively defined by the Supreme Court. At a minimum, however, the court found the term applicable to testimony from preliminary hearings, trials, grand jury

proceedings, and police interrogations, as well as any "similar pretrial statements that declarants would reasonably expect to be used prosecutorially." (*Crawford v. Washington, supra*, 541 U.S. at p. 51.) "Interrogation" was not specifically defined but in any event includes a "recorded statement, knowingly given in response to structured police questioning." (*Id.* at p. 53, fn. 4.) The court observed that its decision has no application to statements offered in a proceeding where the declarant appears and is available for cross-examination.

The Supreme Court's decision was seen as having a potential harmful effect in California, where prosecutors feared the rule would seriously hamper their ability to prosecute spousal and elder abuse cases and sex crimes against children. Prior to *Crawford*, statements of unavailable witnesses were admissible in a criminal proceeding under some circumstances, such

rules of evidence control the admission of the testimony. The following statements are considered nontestimonial: statements to friends and coworkers (*People v. Griffin* (2004) 33 Cal.4th 536; *People v. Cervantes* (2004) 118 Cal.App.4th 162); statements to a former friend and gang member (*People v. Rincon* (2005) 129 Cal.App.4th 738); spontaneous statements (*People v. Corella* (2004) 122 Cal.App.4th 461 [911 calls and statements to emergency personnel]); laboratory reports (*People v. Johnson* (2004) 121 Cal.App.4th 1409); a telephone call to buy drugs from the defendant (*People v. Morgan* (2005) 125 Cal.App.4th 935); hearsay statements to police, through official channels, to justify a search warrant (*People v. Gomez* (2004) 117 Cal.App.4th 531); proofs of service (*People v. Saffold* (2005) 127 Cal.App.4th 979); conviction records in a Penal Code section 969b prison packet (*People v. Taulton* (2005) 129 Cal.App.4th 1218); most police dis-

## The Supreme Court's decision was seen as having a potential harmful effect in California . . . .

as the statement of a minor describing abuse or neglect (Evid. Code, § 1360); the statement of a victim describing the infliction or threat of physical injury (§ 1370); and a declaration against interest (§ 1230). All of these exceptions to the hearsay rule must now be examined through the *Crawford* lens of constitutionality.

Most cases have sought to further define "testimonial statement." If a statement is not testimonial, traditional

patch tapes (*People v. Mitchell* (2005) \_\_\_ Cal.App.4th \_\_\_ [2005WL1907217]); and hearsay statements used by a gang expert to prove the defendant is a gang member (*People v. Thomas* (2005) 130 Cal.App.4th 1202).

The following statements have been held to come within the *Crawford* definition of testimonial declaration: declarations regarding domestic violence (*People v. Pantoja* (2004) 122 Cal. App.4th 1); statements of sexual abuse

given at a multidisciplinary center for interviewing children suspected of being abuse victims (*People v. Sisavath* (2004) 118 Cal.App.4th 1396 [declaring at least a portion of section 1360 unconstitutional]); statements of elder abuse (*People v. Pirwani* (2004) 119 Cal.App.4th 770 [invalidating section 1380]); statements offered in violation of the Aranda-Bruton rule barring the admission of a co-defendant's statement (*People v. Song* (2004) 124 Cal.App.4th 973); and monitored telephone calls with a defendant in which police feed questions to a co-defendant (*People v. Wahlert* (2005) 130 Cal. App.4th 709).

The California Supreme Court has determined that *Crawford* has no application to adoptive admissions. In *People v. Combs* (2004) 34 Cal.4th 821, the defendant and his attorney remained mute while the trial court detailed a parade of terrible injuries inflicted by the defendant on his victim. Such silence was considered an adoptive admission that justified a subsequent court's finding that the crime was a "strike" based on the infliction of great bodily injury.

Similarly, the court in *People v. Casittle* (2005) 129 Cal.App.4th 863 concluded that the Sixth Amendment had no application to statements given by co-defendants in each other's presence. The comments were either statements of a party or adoptive admissions.

In *People v. Price* (2004) 120 Cal App.4th 224, the defendant's wife gave a statement to the police and was questioned about it at the preliminary hearing, but she did not testify at trial.

The court held that the defendant had an adequate opportunity to cross-examine the wife about the statement at the preliminary hearing. *Crawford* was not violated, and the testimony was properly admitted under Evidence Code section 1290.

Finally, *Crawford* does not bar the admission of police reports for the purpose of determining whether the defendant is a sexually violent predator. The court found the Sixth Amendment inapplicable to civil commitment proceedings under the Sexually Violent Predator Act. (*People v. Angulo* (2005) 129 Cal.App. 4th 1349.)

While *Crawford* has invalidated several long-standing statutory exceptions to the hearsay rule, California courts generally have applied the holding narrowly, finding more often than not that its ruling is inapplicable. It seems the initial concerns that the decision would seriously undermine the prosecution of criminal cases have been unwarranted. CR

*J. Richard Couzens is a retired judge of the Superior Court of Placer County. Tricia Ann Bigelow is a judge of the Superior Court of Los Angeles County. They co-author California Three Strikes Sentencing and frequently teach felony sentencing at programs of the Administrative Office of the Courts' Education Division/Center for Judicial Education and Research.*



## Tune In to Justice

AOC-TV makes it easy for busy judges and court professionals to continue their education without leaving their courthouses.

The AOC provides more than 100 educational broadcasts for judicial officers, managers and supervisors, or court staff each year. With over 200 downlink sites in courthouses, video technology reduces travel costs and time so court personnel can focus on their number-one goal: improving justice administration.

The current broadcast training opportunities for judges and court professionals include:

- **Domestic Partner Rights and Responsibilities**
- **Family Dispute Resolution Forum**
- **Accessibility for the Disabled**
- **Domestic Violence**
- **Foster Care: The Critical Role of the Clerk**
- **Preventing and Responding to Sexual Harassment**

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*Scenes From San Diego*

# HONORS FOR JUDICIAL BRANCH HEROES

*Ralph Kleps once said of his late friend Bernard E. “Bernie” Witkin—the “guru of California law”—that he was an individual who demanded “conspicuous attention.” Witkin, the teacher, scholar, advisor, mentor, and good friend of generations of lawyers and judges, would have enjoyed the conspicuous attention given at the first-ever Statewide Judicial Branch Conference and Annual Meetings to the new leaders of the California judicial branch and to one honoree in particular—his wife, Alba.*



Kleps, the first administrative director of the courts, was the inspiration for the Judicial Council awards that this year recognized 11 exemplary programs in 16 superior courts for their innovations in administration of the courts. All the winners are model programs that are designed to be transferable to other courts.

Witkin lent his name to two awards: the Judicial Council Distinguished Service Award that honors an individual other than a member of the judiciary for outstanding contributions to the courts, and the State Bar’s Bernard Witkin Medal, which recognizes those “who have altered the landscape of California jurisprudence.”

Education was the key objective of the San Diego conference, with independence an important theme. As the leading light in the founding of the Center for Judicial Education and Research,





*Clockwise from left:* Alba Witkin accepts the Bernard E. Witkin Award from Chief Justice Ronald M. George; Judge James M. Mize, the CJA's 73rd president, James Heiting and John Van de Kamp, the 81st and 80th State Bar presidents, and Chief Justice George; former U.S. Special Prosecutor Kenneth Starr and California Supreme Court Justice Carlos R. Moreno share a laugh with state Attorney General Bill Lockyer after a panel on challenges facing the California judiciary; Supreme Court Clerk Frederick K. Ohlrich with Administrative Presiding Justice Judith D. McConnell of San Diego (Fourth Appellate District); Judge Terry B. Friedman, the CJA's 74th president, and AOC Chief Deputy Director Ronald G. Overholt meet with Administrative Director of the Courts William C. Vickrey.



Witkin would have regarded the first-ever gathering of the Judicial Council, California Judges Association, and State Bar for a joint conference and annual meetings as an educational tour de force.

Through the recognition of outstanding leaders and achievements and the realization of comprehensive learning objectives, we have a strengthened judicial branch. There are no footnotes to this story, because B. E. Witkin of the San Francisco bar, as he liked to call himself, didn't like them—just a plain and simple acknowledgment of the great work that continues to be done in the judicial branch on behalf of the people of California.



## Judicial Council Distinguished Service Awards

### Jurist of the Year Award

Justice Patricia Bamattre-Manoukian of the Court of Appeal, Sixth Appellate District, was honored with the Jurist of the Year Award for her significant contributions to judicial education, community outreach, and service to the courts and public. Involved in legal education programs in the community and local schools, she has lectured at high schools, colleges, and bar association seminars.

Presiding Judge Frederick Paul Horn of the Superior Court of Orange County, recipient of the Jurist of the Year Award, has demonstrated leadership and advocacy of access and fairness in the courts. He is a longtime and productive member and past chair of the Judicial Council's Access and Fairness Advisory Committee.

### Judicial Administration Award

Jody Patel, Executive Officer of the Superior Court of Sacramento County and recipient of the Judicial Administration Award, made significant contributions to court administration by advancing access, fairness, and diversity and modernization of management and administration. Critical to these efforts was the creation of a reengineering and innovation unit in the court to improve all court operations practices and procedures, as well as the establishment of a charter for all criminal justice agencies in the county to improve the delivery of services to the community and the local bar.

Karen M. Thorson, Director of the Education Division/Center for Judicial Education and Research (CJER) of the Administrative Office of the Courts (AOC), was honored with the Judicial Administration Award for her leadership in spearheading and developing new approaches to the design, development, and delivery of education for the trial and appellate courts.

### Bernard E. Witkin Award

Alba Witkin was selected for the Bernard E. Witkin Award for her ongoing support of judicial and legal education and for continuing her husband's work

in the judicial branch. Mrs. Witkin continues the work of their charitable fund, the Foundation for Judicial Education, dedicated to the improvement of social justice and society. Recently, the unique health, education, and enrichment needs of children have become a special focus of Mrs. Witkin's philanthropic endeavors.

### Benjamin Aranda III Access to Justice Award

Judge Aviva K. Bobb of the Superior Court of Los Angeles County, the recipient of the Aranda Award, is a longtime advocate of fairness and access in the state's family courts. Her judicial career has been devoted to pursuing full and equal access to the courts, with stress on fairness and respect for all litigants. She has been at the forefront of dramatic improvements in the family law system to make it friendlier and more accessible to self-represented litigants and more responsive to the evolving legal needs of all litigants, regardless of financial resources.

### Chief Justice's Exemplary Service and Leadership Award

Two people were honored with the Chief Justice's Exemplary Service and Leadership Award. Tressa S. Kentner, Executive Officer of the Superior Court of San Bernardino County, has made her expertise and experience available statewide through years of service to the Judicial Council and many of its advisory committees and workgroups. She has reengineered case processing and used automation and technology to improve all aspects of the clerk's functions. Under her guidance, technological tools are used to assess staff needs and an automated records management system has been installed.

Michael Bergeisen and his team at the AOC Office of the General Counsel (OGC) provide comprehensive legal services for the Judicial Council, its advisory committees and task forces, the appellate and trial courts, and the AOC. In presenting the award, Chief Justice George said, "Within a few short years, the Office of the General Counsel has established itself as one of the finest public law offices in the state." OGC staff assist with early mediation, litigation management, complex civil issues, court facilities issues, labor and employment matters, court administration issues, and business operations and contracting.

Counterclockwise, from top left: Award recipients Patricia Bamattre-Manoukian, Frederick Paul Horn, Jody Patel, Karen M. Thorson, Aviva K. Bobb, Tressa S. Kentner, and Michael Bergeisen.



**State Bar  
Bernard Witkin Medal**

The State Bar of California awarded the Bernard Witkin Medal to Chief Justice Ronald M. George for his significant contributions to the quality of justice and legal scholarship in the state. Chief Justice George was recognized for, among other things, his leadership in expanding legal services for the poor, simplifying the court system, advocating for adequate court funding, unifying the state trial courts, improving technology in courts, and advancing pro bono efforts.

**2004–2005 Ralph N. Kleps Awards**

**Legal Assistance Center: Superior Court of Calaveras County**

An extensive, communitywide legal assistance center staffed by a small claims advisor, superior court clerk, and family law facilitator, providing litigants with public computers equipped with access to self-help Web sites and forms.

**Siskiyou/Modoc Joint Court: Superior Court of Siskiyou County**

A historic effort that increases court services for residents living in remote and isolated parts of Siskiyou and Modoc Counties by allowing court users from both counties to be served by one judge.

**Gaining Education Through Determination: Superior Court of Yolo County**

A program of the unified family court that provides delinquent and dependent minors with one-on-one tutoring, books, support, and encouragement to enable them to pass the GED exam, complete high school, and see themselves as valuable citizens.

**Court Web Site for High-Profile Cases: Superior Court of Santa Barbara County**

A first-ever media and public Web site to manage the distribution of filed documents in the high-profile Michael Jackson case. It required a change in the California Rules of Court.

**Elder Abuse Protection Court: Superior Court of Alameda County**

Helps prevent the recurrence of elder abuse by improving court access. Offered in four court locations, the program provides dedicated calendars and immediate access for protection orders to ensure the safety of elders.

**New Judge Orientation: Superior Court of Los Angeles County**

An innovative educational tool, available as a CD-ROM or on the Web, that features one-on-one video discussions in which experienced judges share insights, practical information, and advice with newly elected or appointed colleagues to help them make a fluid transition from lawyer to judge.

**Complex Civil Electronic Filing Pilot Project: Superior Court of Orange County**

A technological solution that allows litigants with cases in the court's complex litigation program to file and track documents via the Web.

**Automated File Management: Superior Court of San Bernardino County**

A comprehensive, automated system that tracks more than 3 million files and records from 15 court locations. More than 70 percent of the inventory is active and immediately available for court hearings.

**ACCESS—Assisting Court Customers With Education and Self-Help Services: Superior Court of San Francisco County**

A multilingual information and assistance center that provides culturally appropriate services in English, Spanish, Chinese Cantonese, Russian, Tagalog, and Vietnamese. Emphasis is on services for communities that traditionally have been denied access.


**SHARP—Self-Help and Regional Assistance Program: Superior Courts of Butte, Glenn, and Tehama Counties**

A collaborative self-help center focusing on the needs of three rural counties, featuring extensive videoconferencing between counties to extend services to remote areas.



Top to bottom: William C. Vickrey, Administrative Director of the Courts, is interviewed by a National Public Radio reporter about the results of the Public Trust and Confidence Survey; engaging in a dialogue on the Public Trust and Confidence Survey were Superior Court of San Francisco County Judge Donna J. Hitchens, Bishop George D. McKinney of San Diego, and California Community Foundation President Antonia Hernández; Superior Court of San Joaquin County Judge William J. Murray, Jr., chats with Superior Court of Stanislaus County Presiding Judge Marie Sovey Silveira.

**Regional Education Consortium: Superior Courts of Monterey, Santa Cruz, San Benito, and Santa Clara Counties**

A collaborative project among four counties to share and expand training resources for court staff. The results include more extensive workshops, materials, and course offerings than any of the courts could provide alone. 

CAROL SONSTEIN PHOTOGRAPHY



## College Student Volunteers Help Thousands Navigate Court System

During the first year of the JusticeCorps program, the volunteers met with more than 104,000 self-represented litigants in Los Angeles–area legal access centers, all in all helping them complete more than 7,600 packets of legal forms, referring them to 540 community organizations for further assistance, and giving them a better picture of the legal process.

### Program Is a Win, Win, Win

The program not only helped litigants but saved time for court staff and judges, who have noticed an improvement in the quality of pleadings. It also provided the student volunteers, recruited from four local universities,

with a unique glimpse into a career in the law.

Each JusticeCorps volunteer agreed to complete 300 hours of service in a legal self-help center in return for a \$1,000 educational award. After attending a two-day orientation and training, the volunteers were individually assigned to legal access centers, family law information centers, and the small claims advisor office—10 locations in all.

### JusticeCorps Partners, Funding

[www.courtinfo.ca.gov/programs/justicecorps](http://www.courtinfo.ca.gov/programs/justicecorps)

### Contacts

Kathleen Dixon, Superior Court of Los Angeles County, 213-893-2942, [KDixon@LASuperiorCourt.org](mailto:KDixon@LASuperiorCourt.org)

Martha Wright, AOC Grants Unit, 415-865-7649, [martha.wright@jud.ca.gov](mailto:martha.wright@jud.ca.gov)

## Sacramento Gets More Room for Juvenile Cases

The Sacramento County court on August 11 celebrated the opening of its new state-of-the-art juvenile courthouse, which is five times bigger than the old facility.

“It is like moving from a studio apartment to a four-bedroom house,” says Superior Court of Sacramento County Judge John A. Mendez.

The new, 100,264-square-foot courthouse has six courtrooms and space for two more if needed. Other features include:

- A children’s waiting room
- A media waiting room
- A secure hallway to move in-custody juveniles to and from courtrooms
- Private interview rooms, where attorneys can speak with their clients, connected to each courtroom
- A pager system for calling cases
- Holding areas between courtrooms
- Artwork by local artists and high school students.

### Of Note

The courthouse is a joint venture between the court and the County of Sacramento Public Works Agency. No state

funds were used for its construction, since this project was approved prior to the Trial Court Facilities Act of 2002 (Sen. Bill 1732).

### Contact

Pam Reynolds, Superior Court of Sacramento County, 916-591-0050, [reynolp@saccourt.com](mailto:reynolp@saccourt.com)

## Work Begins on Merced Court’s New Digs

Court employees in Merced County helped break ground for a new courthouse, which will replace the modular trailers that have housed the court for almost 30 years.

Court and county leaders formally inaugurated the construction project on June 15 with a symbolic spadeful of dirt, but court employees received commemorative shovels and took their turns at the groundbreaking, too. “I wanted our staff to participate, since they’ve been patiently waiting for many years,” says Executive Officer Kathie Goetsch.

The new courthouse will feature a fortified entrance and passages specially designed for moving in-custody defendants to courtrooms without using public areas, a jury assembly room, and courtrooms and staff areas.



On August 2, JusticeCorps volunteers were recognized for completing 300 hours of service in Los Angeles–area self-help legal access centers.



**Funding for Project**

The county is managing the project and providing bond funding that will be paid off through a local Courthouse Construction Fund grant and civil assessments. The Administrative Office of the Courts requested and received legislative approval to use State Court Facilities Construction Fund monies to build an additional courtroom and support spaces.

Merced is one of three facility projects (the others are Contra Costa and Fresno) slated to receive state funding, pending final approval of the proposed fiscal year 2005–2006 judicial branch budget. These projects were selected based on their rankings in the branch’s Trial Court Five-Year Capital Outlay Plan.

**Trial Court Outlay Plan**

[www.courtinfo.ca.gov/reference/fiveyear.htm](http://www.courtinfo.ca.gov/reference/fiveyear.htm)

**Contact**

AOC Office of Court Construction and Management, 415-865-4392, OCCM@jud.ca.gov

**Santa Clara Helps Men Become Better Fathers**

Fifty special dads were honored in June at the court’s Top Dads Luncheon

and Father and Family Picnic. The men were selected on the basis of essays written by children on why their dads are “the best.” Ten-year-old Susan thinks her dad is the best because he is her hair stylist, a cheerleader at her softball games, and her best friend.

Later that week, the court hosted the 2005 Fatherhood Conference. Spearheaded by Santa Clara County Judge Sharon A. Chatman, the conference gave nearly 300 fathers a crash course on infant care, an overview of child support laws, and insight into their daughters’ self-esteem issues.

The conference was open to all fathers, but organizers actively recruited:

- Probationers
- Parolees
- Prisoners on work furloughs
- Fathers involved in family law cases or batterer intervention programs

Other topics included how to talk to your kids about sex and drugs; fathering with limited or no visitation rights; and how to protect kids from bullies, assaults, and abductions.

**Contact**

Jean Pennypacker, Families Resources Division, Superior Court of Santa Clara County, 408-534-5738, jpennypacker@scscourt.org



A group of fathers from Santa Clara County listen to an instructor at a fatherhood conference hosted by the superior court.

**Judicial Milestones**

The Governor announced the following judicial appointments.

**Martha Bellinger**, Superior Court of Los Angeles County, succeeding John D. Harris, retired

**Juliet L. Boccone**, Superior Court of Tulare County, succeeding William Silveira, Jr., retired

**Franklin E. Bondonno**, Superior Court of Santa Clara County, succeeding William R. Danser, retired

**Lawrence Cho**, Superior Court of Los Angeles County, succeeding Alan G. Buckner, deceased

**Dalila Corral**, Superior Court of Los Angeles County, succeeding Lloyd Jeffrey Wiatt, deceased

**J. Richard Distaso**, Superior Court of Stanislaus County, succeeding Wray F. Ladine, deceased

**Daniel B. Feldstern**, Superior Court of Los Angeles County, succeeding David W. Perkins, retired

**Susanne M. Fenstermacher**, Superior Court of Contra Costa County, succeeding Richard S. Flier, retired

**Gail Ruderman Feuer**, Superior Court of Los Angeles County, succeeding Dean E. Farrar, retired

**Larry E. Hayes**, Superior Court of Monterey County, succeeding John M. Phillips, retired

**Rex Heeseman**, Superior Court of Los Angeles County, succeeding C. Robert Simpson, Jr., deceased

**Roger Ito**, Superior Court of Los Angeles County, succeeding Veronica McBeth, retired

**Ross M. Klein**, Superior Court of Los Angeles County, succeeding Sandy R. Kriegler, elevated to the Court of Appeal, Second Appellate District

**Elizabeth Lee**, Superior Court of San Mateo County, succeeding Margaret J. Kemp, retired

**Richard C. Martin**, Superior Court of Lake County, succeeding Robert L. Crone, Jr., retired

**Robert P. McElhany**, Superior Court of Placer County, succeeding James L. Roeder, retired

**Robert D. McGuinness**, Superior Court of Alameda County, succeeding John Frederick Kraetzer, retired

**Beverly O'Connell**, Superior Court of Los Angeles County, succeeding Thomas William Stoeber, retired

**Charlotte J. Orcutt**, Superior Court of San Joaquin County, succeeding James E. Hammerstone, Jr., retired

**Carol W. Overton**, Superior Court of Santa Clara County, succeeding Charles W. Hayden, retired

**Gary L. Paden**, Superior Court of Tulare County, succeeding Martin W. Staven, retired

**Stuart M. Rice**, Superior Court of Los Angeles County, succeeding Thomas Lyle Willhite, Jr., elevated to the Court of Appeal, Second Appellate District

**Michael A. Savage**, Superior Court of Sacramento County, succeeding Tani Gorre Cantil-Sakauye, elevated to the Court of Appeal, Third Appellate District

**Kelly V. Simmons**, Superior Court of Marin County, succeeding Lynn O'Malley Taylor, retired

**Scott T. Steffen**, Superior Court of Stanislaus County, succeeding Aldo Girolami, retired

**Lauren P. Thomasson**, Superior Court of San Joaquin County, succeeding K. Peter Saiers, retired

**Charles S. Treat**, Superior Court of Contra Costa County, succeeding John C. Minney, retired

**Charles D. Wachob**, Superior Court of Placer County, succeeding J. Richard Couzens, retired

**Timothy R. Walsh**, Superior Court of San Diego County, succeeding William D. Mudd, retired

The following judges and justice retired from the bench.

**Phillip J. Argento**, Superior Court of Los Angeles County

**Robert F. Baysinger**, Superior Court of San Joaquin County

**Robert P. Dale**, Superior Court of Sonoma County

**Fred Dupras**, Superior Court of Fresno County

**Laurence Donald Kay**, Court of Appeal, First Appellate District

**Gregory C. O'Brien, Jr.**, Superior Court of Los Angeles County

**Alex Saldamando**, Superior Court of San Francisco County

**Vilia G. Sherman**, Superior Court of Riverside County

**Darrell W. Stevens**, Superior Court of Butte County

**Luis M. Villarreal**, Superior Court of Solano County




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## Letters

*Continued from page 4*

remarks into a political party differentiation between Judge McMaster, appointed by a former Democratic governor, and a Fresno County superior court judge appointed by a Republican governor, who issued a similar ruling on one such statute but suffered no institution of a recall. (Judge Mize's remark that the abandoned recall action regarding Judge McMaster occurred only because of his party affiliation was hardly consistent with the nonpolitical nature of the judiciary.)

Contrary to Professor Kelso, this is not "a dangerous time to be a judge." It may be the very best time in history to be a California judge, and perhaps a future issue of *California Courts Review* will amplify the history of the early-20th-century and latter-19th-century state of affairs in the judicial branch of government.

The number of electoral challenges to incumbent judges is minuscule; its rarity, in fact, renders it subject to uncommon publicity—and, I suppose, the inevitable handwringing over loss of "neutrality and independence." If Professor Kelso, Judge Mize, and like-minded judges want to deplore a politicized judiciary, I recommend giving some attention to New York State or Illinois, for starters. Then, if they believe in democratizing the selection process for the Judicial Council, I suggest they apply their considerable talent to securing a direct election procedure for California trial judges who constitute the objects of Judicial Council action.

*Judge Quentin L. Kopp (Ret.)  
Superior Court of San Mateo County*

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# Just for Justices and Judges!

A new section of the **Serranus Web site** called “**Justices and Judges**” brings together all the resources geared specifically to California justices, judges, commissioners, and referees.

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<http://serranus.courtinfo.ca.gov/jj>

## Look for the quick link to online courses.

The Administrative Office of the Courts' Education Division/Center for Judicial Education and Research offers online courses for judges and other bench officers in family, juvenile, and criminal law. Available are courses in:

- Calendar Management in Family Court
- Custody and Visitation
- Determining Income
- Child and Spousal Support
- Juvenile Dependency Hearings
- Proposition 36

Self-paced, interactive training is always available through your Web browser. Courses link to statutes, forms, job aids, and glossaries. For more information, go to:

<http://serranus.courtinfo.ca.gov/education>



# BEYOND THE BENCH XVI

## Strengthening Youth and Families

December 14–16, San Diego

*Register now!*

**This statewide conference will cover issues relevant to all aspects of the juvenile court, such as:**

- ▶ Child abuse and neglect
- ▶ Community justice
- ▶ Court Appointed Special Advocates
- ▶ Family violence
- ▶ Juvenile justice
- ▶ Foster care
- ▶ Permanency planning
- ▶ Indian Child Welfare Act
- ▶ Dual jurisdiction

*Register online:*

[www.courtinfo.ca.gov/programs/cfcc](http://www.courtinfo.ca.gov/programs/cfcc)



Lost In Hope by Haillee, age 8

For questions or to request registration materials, please contact:

Cindy Chen, 415-865-7644,  
[cindy.chen@jud.ca.gov](mailto:cindy.chen@jud.ca.gov); or

Robin Cummings, 415-865-8018,  
[robin.cummings@jud.ca.gov](mailto:robin.cummings@jud.ca.gov)



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