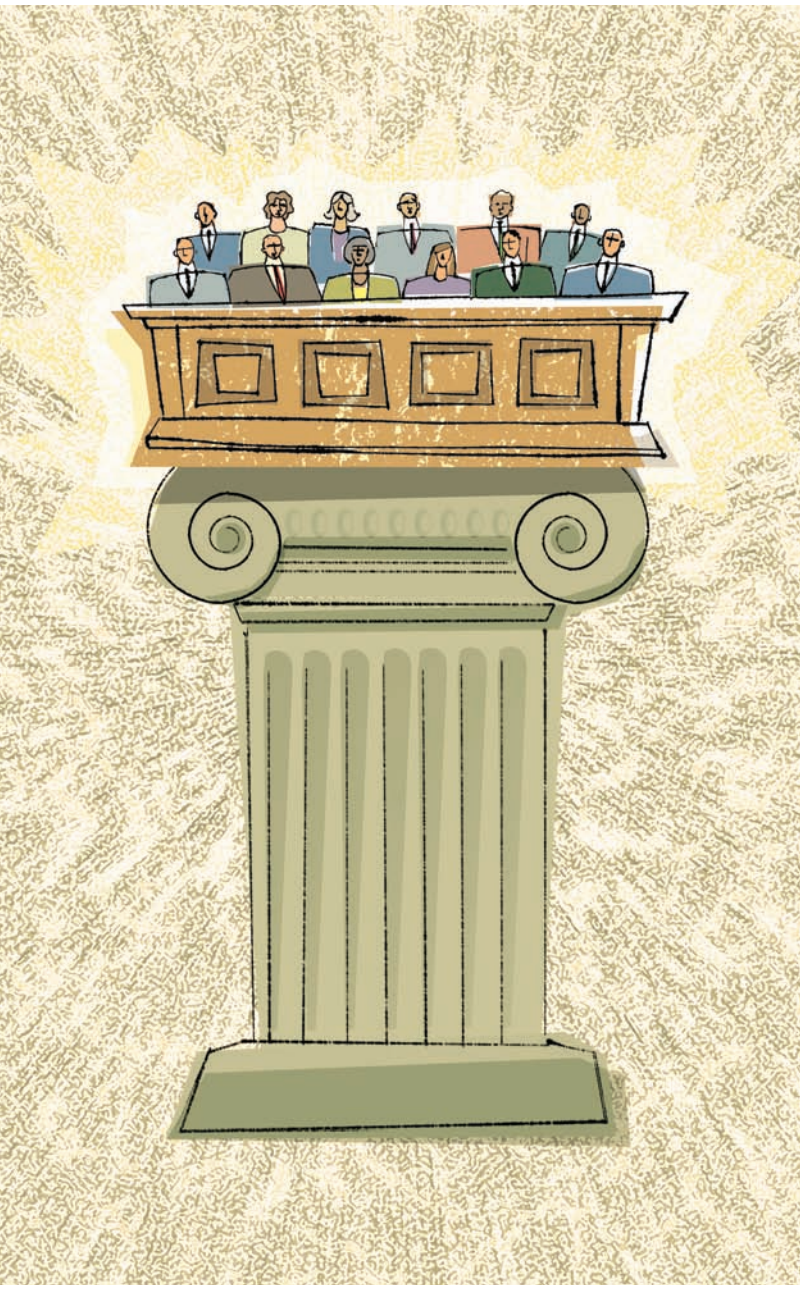
California Courts Review

A FORUM FOR THE STATE JUDICIAL BRANCH

FALL 2006

Special section on jury issues
—pages 6–17

Empowering Today's Juries



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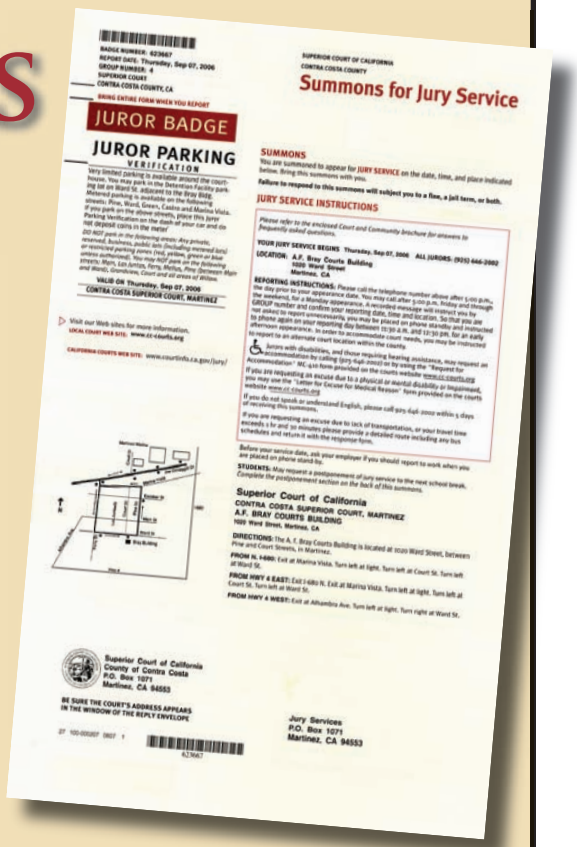

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CALIFORNIA COURTS REVIEW • FALL 2006

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This publication is also available on the California Courts Web site:
www.courtinfo.ca.gov/reference

ISSN 1556-0872

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California Courts Review

FALL 2006

California Courts Review is published quarterly by the Judicial Council of California, Administrative Office of the Courts. We welcome ideas and suggestions for articles about California's judicial branch.

Views expressed in *California Courts Review* are those of the authors and not necessarily those of the Judicial Council or the Administrative Office of the Courts.

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Printed on recycled and recyclable paper

I've lived in California for nearly 30 years, and, although I've been called several times, I have never served on a jury.

When I worked as a reporter or editor at a local legal newspaper, I usually got excused by the trial judge because I knew the attorneys (or the judge) too well. One judge even asked openly, "Oh, your paper does judicial profiles, right?" When I confirmed that, I was off the panel in seconds.

My experience has nonetheless been enlightening, particularly as I've seen changes in the way that citizens are treated by the courts. There are always those who dread being called to serve as jurors because they dread the amount of time that jury service will take out of their lives and the disruption of their daily routines. And I've heard some real whoppers from those who simply don't want to participate in the process at all. One gentleman pretended to be asleep during voir dire and always came to court late, hoping the judge would become so frustrated by his antics that she would excuse him. (She didn't.)

But, by and large, most people are reluctantly willing to serve. And their disinclination has been reduced as California switched to the one-day or one-trial system of jury service and telephone call-in systems so they know in advance if they actually need to trek down to the courthouse.

This issue of *California Courts Review* has a special section dedicated to jury issues, discussing ways in which jury service might be improved even more in certain cases and a proposal to give juries even greater say in civil cases.

We also have an article about the "JAIL 4 Judges" initiative in South Dakota, which will be voted on in November. If it succeeds, look for its backers to move west and eventually float the same proposal for California. When I talk to people who have no background in the courts, they think holding judges accountable for their decisions is a good thing, so perhaps judges and lawyers have their work cut out for them in educating the public.

As always, I look forward to hearing your reactions to these ideas and proposals.

—Philip Carrizosa
Managing Editor

IMPROVING JURY FOR THE BENEFIT

As Americans, we sometimes take for granted the rule of law, which is essential to the preservation of our freedoms. Too often we may forget that trial by a jury of one's peers is among the fundamental democratic ideals of our nation. And serving as a juror can remind us that these ideals can be realized only if individuals are willing to uphold them.

It often is repeated that voting is a privilege of citizenship. Jury service represents even more than a privilege; it is a civic obligation. Fulfilling that obligation often provides the most direct participation by individuals in their government. Providing a positive experience for jurors thus supports not only the judicial system but our democracy overall.

For many, serving as a juror is a memorable and even profound experience. Such service offers individuals an unparalleled opportunity to witness firsthand how the courts operate as they strive to deliver fair and impartial justice. Studies demonstrate that civic involvement as a juror increases public trust and confidence in the courts. Both the courts and the public stand to gain when the public learns more about the judicial system and the courts better understand public expectations and needs.

No matter how worthwhile the experience may be, jury service can make demands on our often scarce time, taking us away from our jobs and our families. To alleviate this burden, over the past few years California's courts have made many efforts to improve jury service.

Since the late 1990s, the courts have embraced many important jury reforms based on a series of studies that contained reports by the Blue Ribbon Commission on Jury System Improvement and the

Chief Justice Ronald M. George swears in a civil jury in San Francisco during last year's Juror Appreciation Week.

SERVICE OF ALL

Task Force on Jury System Improvements. These reforms included the adoption of a one-day or one-trial system, under which a juror reporting to the courthouse for service is either assigned to a courtroom on the first day or dismissed from service for at least 12 months. Courts have found that this system is far more manageable for prospective jurors—80 percent serve for just one day—and rates of response to summonses have increased in several counties in part because of this new approach. Other notable improvements include (1) publication of plain-English jury instructions for both criminal and civil jury trials; (2) the development of a "model" juror summons that has been adapted for use in several jurisdictions statewide, including the Superior Courts of Los Angeles, San Diego, and San Francisco Counties; (3) an increase in the fee and mileage reimbursement paid to jurors for the first time since 1957; and (4) the creation of *Ideals Made Real,* the first statewide juror orientation videotape professionally produced by the California courts. Local courts also have responded with improvements to jury rooms, free public transportation vouchers for jurors, and services designed to make jury service less burdensome.

Based upon these accomplishments, California, along with other states such as New York and Arizona, is considered to be a national leader in the area of jury reform. California was among the first states to move to a one-day or one-trial system and remains one of only a few states that have adopted a statewide model juror summons. Our new jury instructions have been recognized nationally as a model of user-friendly drafting. We continue to lead the nation in the use of innovative jury trial practices and an examination of juror management designed to make jury service more efficient and accessible, and to ensure that our juror panels are representative. Practices under study include allowing jurors to submit questions for witnesses, providing written jury instructions earlier in the process, and permitting lawyers to make short, targeted statements to the jury during trials in complex cases.

California… is considered to be a national leader in the area of jury reform…. California was among the first states to move to a one-day or one-trial system and remains one of only a few states that have adopted a statewide model juror summons.

This continuing quest to improve jury service provides benefits for those who serve, for the courts in which they serve, and for the litigants whose cases are decided by them. Broader public exposure to the courts and more representative jury panels strengthen the court system. The California court system is rightfully proud of what it has been able to achieve in the 10 years since the Blue Ribbon Commission first presented its recommendations to the Judicial Council. But we also continue to look to the future—seeking to build a statewide jury system that employs a juror's time in the most effective ways possible and helps to foster public trust and confidence in the courts. In the final analysis, improving jury service is a key element in our efforts to ensure the continued strength and independence of our court system and will continue to play a prominent role in our efforts to improve the administration of justice for all Californians.

Empowering Jurors

Creative Techniques Learned From the *Wal-Mart* Trial

By
Ronald M. Sabraw

One would be hard pressed to overstate the importance of the right to trial by jury in the collective psyche of the American public. Simply put, most Americans today believe the right to a jury trial is a bulwark in defense of liberty and democracy. Yet the public's abstract and fervent defense of one's right to a trial by jury, whether in civil or criminal court, rapidly abates when the discussion turns to the specter of actually serving as a trial juror. Who among lawyers and judges has not been present in polite company to witness the roll of the eyes and casting of the head at the mere mention of jury service? Indeed, it is most often referred to as jury "duty" by laypersons, as if one's service on a jury were akin to conscription into the armed forces of a Third-World country.

What can be done to change this reality? The solution lies partly in taking steps to empower trial jurors. A lengthy and complex jury trial about missed meal and rest breaks for employees that was conducted over three and a half months in fall 2005 suggests what these steps could be. The trial of *Savaglio v. Wal-Mart Stores, Inc.*, C-835687-7 (hereafter *Wal-Mart*), began in the Superior Court of Alameda County on September 12, 2005, and the jury rendered its $172.3 million verdict on December 22, 2005. With the collaboration of skilled counsel for the parties, I, as the trial judge, employed several creative trial techniques that empowered jurors and arguably made their experience more palatable. I describe them here, knowing full well that these techniques may not be suitable for all cases.

Make Evidentiary and Trial Management Decisions Early

If possible, set aside calendar time (preferably about a month before trial) to address motions in limine and other evidentiary issues. Time should also be taken to address practical trial management issues that will help facilitate the trial's orderly conduct. Obviously, if trials are assigned to trial departments off a master calendar and sent directly to your department, you will not have the luxury of addressing these issues weeks in advance of jury selection. Nonethe-

less, efforts should be made to resolve as many issues as possible before the prospective jury panel enters the courtroom. Two are of special importance:

Dealing with exhibits before jury selection saves trial time. The *Wal-Mart* case illustrates the benefits of dealing with documentary and other evidentiary issues before jury selection begins. In this case, the defendant produced a million-plus pages of discovery documents. Following a noticed hearing, briefing, and arguments, the court issued pretrial orders, inter alia, limiting the parties to 300 documents per side at trial and set a hearing a month before trial to rule on all document admissibility issues, including relevance, authentication, and foundational questions.

Thus, before the jurors appeared for jury selection, all document admissibility issues were resolved and documents were marked and received into evidence. This allowed counsel and technical staff to download all documents onto computers for instant visual display before the jury. Not a moment of time was wasted searching for exhibits during trial. The only exception to these documentary evidence protocols concerned documents used to impeach witnesses at trial.

Addressing key issues long before the trial alleviates juror frustration. The *Wal-Mart* case also illustrates the benefits of early development of protocols for witness disclosure, use of courtroom technology, and demonstrative exhibits. The court must take the lead in these areas. Addressing these issues well before jury selection will save copious amounts of time and alleviate juror frustration.

For example, resolving the editing and use of videotaped depositions is a must before trial. Designations and counter-designations must be resolved in order to ensure the smooth presentation of video testimony. Counsel and the court also should develop protocols for providing notice during trial of the order of witnesses, including the identification of documents that will be shown witnesses on direct examination. For example, at the beginning of each day during the plaintiff's case, plaintiff's counsel must disclose the identity of the next day's witnesses and the documents that will be used in direct examination of each witness. Similarly, two hours' notice is required before any demonstrative exhibit may be displayed to the jury. These are small matters in and of themselves, but dealing with them during trial can cause significant delays.

Don't Keep Jurors in the Dark About the Trial Schedule

Nothing provokes the ire of jurors more than poor time management, especially when it results in appreciable delays in concluding the trial. Quite simply, jurors justifiably feel abused under these circumstances. Why is it that jurors are kept in the dark about the overall trial schedule so often, including the basic timing of the case, such as when jury selection will conclude, when opening statements will be made, when the plaintiffs and defendants will finish their cases, when final arguments will conclude and instructions will be given? We can do much more to keep jurors apprised of the anticipated length of their service.

Consider the following time management tools:

Give jurors a trial calendar. Before beginning jury selection, counsel and the court should develop a detailed, conservative trial calendar that will be handed out to prospective jurors as they enter the courtroom. The calendar should specify dates for beginning and ending jury selection, hearing opening statements, the plaintiff's case, the defendant's case, and closing arguments and instructions as well as the submission of the matter to the jury for deliberations. In the *Wal-Mart* trial, the calendar factored in four extra weeks for the trial, two weeks each for plaintiffs and defendants. At the start of that trial, the court announced to all prospective jurors that the parties and court had committed themselves to abide by the schedule and that the case would conclude within the estimated time. In fact, the case concluded five weeks early. When compared to the glare of jurors when they hear about trial delays, jurors who are told that the case will conclude early express rapture beyond description. The lesson? Be conservative in your time estimates and *beat* your estimates.

Use creative, flexible trial schedules. Most trials are conducted from 9:00 a.m. to 4:30 p.m., with morning and afternoon breaks and an hour for lunch. Typically, courts are in trial four days a week to allow for ancillary court assignments. The *Wal-Mart* trial ran from 9:00 a.m. to 1:00 p.m., with two 15-minute breaks. Trial went Monday through Thursday each week. According

to several jurors who ultimately served, this schedule allowed them to keep up with work and personal responsibilities and yet remain available for the lengthy trial. Additionally, counsel for the parties were accorded time in the afternoon to prepare for the next day's proceedings. The court rigorously adhered to these daily schedules. On one or two occasions, with the express permission of the jury, the court remained in session until 1:15 p.m. to complete a witness's testimony. (Note: Some consideration must be given to court staff regarding lunch and rest breaks. In some instances it is necessary to arrange clerical coverage for the lunch hour.)

Plaintiffs' attorney Fred Furth, right, talks with Wal-Mart attorney Neal Manne outside of an Alameda County courthouse on the day that jurors awarded $172 million to thousands of California Wal-Mart employees who claimed they were improperly denied lunch breaks.

Update jurors on trial progress. As the trial progresses, it is helpful to keep jurors informed about the calendar, telling them whether the trial is on schedule. Further, when something unexpected happens, as it always does, bring it to the attention of the jury and apprise them of how these unexpected circumstances may affect the timeline.

Keep Jurors Informed, Engaged

The power vested in the hands of 12 jurors, citizens good and true, to change the course of lives and, in certain instances, the course of history and culture, is nothing short of astounding. Would it not seem appropriate to equip trial jurors with all that is necessary in the way of information and support such that their solemn duties might be faithfully discharged? For trial judges, though, creativity and innovation are often roadmaps to reversal. The legal culture of marbled courthouses and stare decisis is not given to indulging trial judges' flights of fancy in managing the core functions of the courts, namely, conducting fair and impartial jury trials. Nonetheless, in order to maintain the vitality of trial jurors, we must work to keep them interested in the process. Consider the following:

Allow mini–opening statements. In the *Wal-Mart* case, before jury selection commenced with the seating of the first 12 prospective jurors, the parties were given a brief opportunity to introduce themselves, their associates, and their clients and give a general description of what the case was about. These brief (approximately five minutes per side) mini–opening statements allowed the parties to orient the prospective jurors to the nature of the case and inspired their interest in serving as trial jurors. Prospective jurors whose interest in serving is tepid absent any meaningful knowledge of the case often become engaged through counsel's introductions.

Let jurors ask questions. In the *Wal-Mart* trial, jurors were permitted to ask questions of the witnesses at trial. The protocol was as follows:

- All questions had to be in writing and submitted to the bailiff. Jurors were permitted to simply raise their hands at any point and pass their questions to the bailiff. (There were fewer than 10 juror questions submitted for consideration in the *Wal-Mart* trial.)
- All proposed questions were taken up by the court and counsel in chambers at the next regularly scheduled break.
- The court, outside the presence of the jury, resolved all evidentiary or other objections of counsel to the proposed juror question.
- If the court ruled the question would be posed to the witness, the court read the question to the witness.
- If the court determined the question would not be asked, the court reserved the discretion to explain, or not explain, why the question was not asked.

Preinstruct the jury. In the *Wal-Mart* trial, prior to the opening statements of counsel, the jury was given full instructions on all issues pending in the trial, with the express caveat that the jury would again be instructed at the trial's conclusion. Each juror received a written copy of the instructions. The jury was told that the final instructions would likely be different in certain particulars based on what happened during the trial. The court further instructed the jury that the final instructions given at the conclusion of the case would be the instructions that the jurors must follow in their deliberations.

Supply a tentative special verdict form. The jurors were provided a tentative special verdict form setting forth the special interrogatories that must be answered by the jury during its deliberations. The jury was instructed that the final special verdict form might be different and would guide their deliberations.

AP/WORLDWIDE PHOTOS

Provide juror binders. Each trial juror and each alternate juror was provided a binder containing the following information:

- Courtroom rules and daily trial schedule
- Trial calendar agreed to by the court and counsel
- Tentative jury instructions
- Tentative special verdict form
- The 20 most significant exhibits offered by the plaintiffs and admitted into evidence
- The 20 most significant exhibits offered by the defendant and admitted into evidence

Consider using mini-arguments. At the conclusion of the examination of each witness, counsel for the parties each had 10 minutes to argue to the jury about the significance of the preceding witness's testimony. This proved effective in keeping the jury focused during the course of the lengthy trial. It proved particularly helpful when used in conjunction with the tentative jury instructions and the tentative special verdict form. For example, counsel were able to discuss a particular witness's testimony in light of the proposed jury instructions and how such testimony was instructive in reference to a specific interrogatory in the special verdict form.

Wal-Mart Juror Survey Shows Empowerment Is Appreciated

After the *Wal-Mart* trial, an anonymous and entirely voluntary written survey was taken of the trial jurors and alternates under the court's supervision. Six jurors responded. Their survey responses were uniformly positive in expressing appreciation for the trial calendar, the daily trial schedule, the binders, and the mini-arguments following each witness. Two jurors responded that the proposed jury verdict form and proposed instructions were not helpful.

Because jurors are integral to our system of justice, it is incumbent on judges and lawyers to do what they can to empower jurors in the discharge of their weighty responsibilities. Early decision making, time management, and keeping jurors informed as the trial progresses can make jury service a more rewarding experience for trial jurors and thus ensure the continued vitality of this essential democratic institution. CR

Ronald M. Sabraw has served as a judge of the Superior Court of Alameda County since 1989 and has been assigned to the court's complex litigation department since 2000. He was in private practice as a civil litigator before his appointment to the court.

The Costs and Benefits—But Mostly Benefits—of Unanimity

Jurors report being more satisfied with verdicts when they are unanimous

By
Shari Seidman Diamond
Beth Murphy
Mary R. Rose

Throughout most of the 19th century, unanimity was a standard feature of the American jury trial. But exceptions were gradually carved out. Currently in many states, including California, a 12-person jury in a civil case can render a verdict if three-quarters of the jurors agree, and 9–3 verdicts are commonplace.

However, in a recent resurgence of support for unanimous verdicts, the American Bar Association last year adopted new Principles for Juries and Jury Trials that, among other things, endorsed unanimity as the optimal rule for verdicts in both criminal and civil jury trials. The ABA principles have engendered discussions nationally and even internationally. For example, Japan, which puts a high value on group relationships and group approval, has been studying the American system as part of its move to allow lay judges, who are not lawyers, to participate in criminal trials, making decisions with professional judges on both guilt and sentencing.

Those who support the nonunanimous verdict assert that it protects the jury from the obstinacy of the erratic or otherwise unreasonable holdout juror, reduces the likelihood of a hung jury, and lowers the costs associated with retrying a case when the jury fails to reach a verdict. Critics claim that the nonunanimous decision rule weakens the

ability of jurors holding plausible minority viewpoints to be heard, undermines robust debate, and threatens the legitimacy of jury verdicts.

Scholars and judges who debate the merits of the unanimity standard, however, have also not had access to information about how actual juries deliberate when nonunanimous verdicts are permitted. By drawing on a unique set of 50 civil jury deliberations, researchers with the Arizona Jury Project were able to examine the dynamics of the decision-making process when unanimity is not required. In this study sanctioned by the Arizona Supreme Court, we videotaped a series of civil trials and the deliberations of the juries for the purpose of evaluating an innovation that allowed jurors to discuss evidence among themselves prior to formal deliberation.* We also examined exhibits and other written documents that were part of the trial record and collected posttrial questionnaires from the jurors, the judge, and the attorneys at the end of the trial. Juries in civil cases in Arizona consist of eight jurors. Six of the jurors must agree to reach a verdict.

Case Distribution and Verdicts

The sample of 50 cases mirrored the overall distribution of case types in Pima County Superior Court. It consisted of 26 motor vehicle cases, 17 non–motor vehicle tort cases, 4 medical malpractice cases, and 3 contract cases. The issues in the tort cases ranged from common rear-end collisions with claims of soft tissue injury to instances of severe and permanent injury or death. Plaintiffs received an award in 65 percent of the tort cases. Awards ranged from $1,000 to $2.8 million, with a median award of $25,500.

Of the 50 juries, 33 reached unanimous verdicts on all claims. One case ended in a hung jury. The remaining 16 cases ended with at least one holdout on at least one claim. Among the juries that reached nonunanimous verdicts, there were 31 individuals who held out on at least one claim or on a verdict involving one of multiple plaintiffs. In half of the holdout cases, two jurors held essentially the same minority position; in five trials involving holdouts, one juror was the lone dissenter. The remaining three juries each had two holdouts, but they disagreed on different plaintiffs in the same case or in different directions on the same plaintiff.

In deliberations of all 50 cases, the jurors were active participants, debating the evidence and evaluating competing accounts. They closely scrutinized the plaintiffs' claims with a skeptical eye, applying commonsense norms of behavior and drawing on their own experiences to sort out the inconsistent claims. The jurors relied on and tested their fellow jurors' impressions and corrected errors in recall and inference. Revealing a practical bent, jurors were determined to come up with the right verdict and to resolve their differences in a timely manner, consistent with what they viewed as their obligations as jurors.

Results of Using the Nonunanimous Option

Even though jurors were aware that unanimity was not required, some juries worked hard to arrive at a consensus verdict. For example, in one case two jurors did not sign the verdict form, but they had actively participated in reconstructing and assessing the events in the case well before the jury attempted any vote or mentioned the quorum required for a verdict. Indeed, many of the juries either never mentioned the option of nonunanimous verdicts or did so only when the verdict forms were being signed. The majority of the juries, however, revealed the salience of the quorum required to reach a verdict by pointing it out early in the deliberations. In 37 of the cases at least one of the jurors mentioned the size of the quorum required for a verdict at some point during deliberations; in 12 of those cases the quorum was mentioned within the first 10 minutes. Juries with eventual holdouts were twice as likely to have early mentions of the quorum rule (6 of 16) as juries that reached unanimous verdicts (6 of 33), raising the possibility that early attention to the nonunanimous decision rule undercut efforts in deliberations to resolve disagreement.

Some juries did use the quorum requirement to suppress debate. In one case an early vote revealed that the majority of the jurors found both the plaintiff and the defendant to be partially at fault. But one juror sided with the defendant because he believed the plaintiff was solely responsible for the accident. The foreperson then said to the juror: "All right, no offense, but we are going to ignore you." During the rest of the deliberations the dissenting juror participated sporadically, but in the end the group divided fault between the two parties without further participation by the dissenting juror on the percent allocation or the total damage figure. Yet the minority juror's argument was acknowledged by at

least one other juror when comparative liability was being assessed, so she had a continuing, although silent, impact on the outcome. In another case, jurors debated the extent to which a juror who had opposed liability should participate in subsequent discussions regarding damages.

No Edge to Plaintiffs

Some have suggested that nonunanimous verdicts give plaintiffs an advantage. If so, we would expect that holdouts would be more likely to favor the defendant's, rather than the plaintiff's, view of the case. But the data in the 50 Arizona cases do not support that prediction. There were fewer cases with holdouts for a defense verdict (3) on liability issues than for a plaintiff verdict (5.5). (Cases in which there were different decisions for two plaintiffs were treated as a half [0.5] case.) When the cases in which holdouts favored one side or the other solely on the issue of damages are added, a total of 6 cases had holdouts who would have found for the defense or given a lower award, while 6.5 of the cases had holdouts who would have found for the plaintiff or given a higher award. Although a sample of 50 cases does not guarantee that a larger sample would show the same pattern of results, it provides the best empirical evidence available on the positions taken by outvoted holdout jurors under a nonunanimity rule. Since holdouts tended not to favor the defense, the analysis does not support the prediction that plaintiffs are routinely disadvantaged by a unanimity requirement.

Although holdouts do not systematically favor one side, they can represent extreme or unreasonable positions. If so, a nonunanimous rule may potentially improve jury decision making by limiting the influence of those with irrational positions. On the other hand, if holdouts empowered by a unanimous decision rule can actually have a salutary and appropriate moderating effect, nonunanimous jury verdicts may threaten the ability of the jury system to deliver grounded and predictable jury verdicts. While it is not possible to know how juries operating under a unanimity rule would have decided these 50 cases, we examined the holdouts and their specific positions to analyze whether they represented extreme or indefensible stances that the juries might have been better off ignoring or discounting.

Holdouts and the Possibility of Premature Closure

Holdout jurors may be an impediment to effective deliberations if they hold unjustified views of the appropriate verdict and continually resist the arguments of the majority. We examined the holdout jurors for evidence of distinctive background characteristics and for indefensible positions taken during deliberations. The holdouts did not differ significantly from majority jurors on gender, race, age, education, or occupational background. The holdouts were also equally likely to have served on juries previously, to be selected as forepersons, and to speak as frequently as other jurors.

When the patterns of disagreement were examined, there was no evidence that the holdout jurors were advocating indefensible positions. The disagreements did not arise from confusion about the content of the evidence, but rather from conflict over how to interpret it and which witnesses to believe. The holdout jurors uniformly articulated reasons for their positions based on judgments about what constituted reasonable or proper behavior by the parties, inferences about what caused an injury, and assessments of how much injury or damage actually occurred, including the nature and amount of reasonable expenses the plaintiff incurred.

In all but one of the cases, divergent views about the credibility of witnesses were the defining factors that separated the majority from the holdouts. In the one case that did not involve credibility judgments, the disagreement centered on the meaning of a jury instruction, but it was the outvoted holdout who accurately interpreted the somewhat confusing language in the instruction. Although the same outcome might have occurred if unanimity had been required, another possibility is that the need to obtain the holdout's vote may have elicited a question to the judge to resolve the conflict over the meaning of the instruction.

The reactions of judges to these cases also suggest that valuable perspectives may be lost on occasion when the position of the holdouts is weakened by a nonunanimous decision rule. Each judge in the study completed a questionnaire while the jurors deliberated, indicating how the judge would have decided the case if it had been a bench trial. On eight of the holdout cases, the judge would have reached the same verdict as the jury did, but on six of the holdout cases, the judge reached the same conclusions as the holdouts. This agreement between the judge and the holdout jurors on a substantial number of cases does not tell us that the holdouts had the "correct verdict." It does suggest, however, that the conflict on some of these juries posed precisely the kind of challenge to the majority position that a deliberative process should address.

There is no way of knowing what verdicts the Arizona juries would have reached had unanimity been required. It is likely that the majority would have prevailed in most of them, as it typically does. Nonetheless, the deliberations provide evidence that the jury occasionally reached premature closure when the majority appeared to have the requisite number of votes, even when some of the votes were tentative.

Reassured by Unanimity

Jurors' views of the deliberation process provide other insights into the effects of unanimity. If jury deliberations enable jurors to fully discuss the evidence, present their arguments, and debate their different perspectives, jurors should come away from the experience with a favorable impression of the quality of their deliberations and the open-mindedness of their fellow jurors. On a scale of 1 to 7, the jurors rated how thoroughly other jurors' views were considered, how open-

minded the other jurors were, and how influential they personally were during deliberations.

Not surprisingly, holdouts indicated they had significantly less influence than did majority jurors and jurors who reached unanimous verdicts. Majority and unanimous jurors saw themselves as equally influential. In contrast with the majority jurors, however, the holdouts rated their fellow jurors as significantly less open-minded and their deliberations as less thorough. These differing perceptions could be a result of the satisfaction derived from being on the winning side. But the satisfaction of winning does not account for another difference: majority jurors rated their deliberations as less thorough and their fellow jurors as less open-minded than did jurors on unanimous juries. The presence of holdout jurors could explain why the majority viewed their fellow jurors as less open-minded, but it does not explain why the majority jurors saw their deliberations as less thorough. Although some jurors on unanimous juries indicated in a posttrial questionnaire that they would have preferred a different verdict than the one the jury settled on, jurors on the unanimous juries were, on average, significantly more enthusiastic about their deliberations than were the jurors who ended with a quorum verdict, regardless of whether the quorum jurors were among the holdouts or in the majority.

While the differing nature of the cases may explain these disparities, the three groups of jurors had similar ratings of how easy the evidence and instructions were to understand, how easy it was to decide who should win, and how close the case was. As a result, the process of reaching a verdict is a likely explanation for the lower ratings of the perceived quality of the deliberation process when the case ended in a quorum verdict. Unanimity signals confidence that a correct verdict was rendered and legitimizes the decision-making process. As one juror observed about the verdict his jury reached: "The fact that it was unanimous and that it was so quick tells them that we're sure."

Costs and Benefits of Unanimity

Unanimity enhances public respect for jury verdicts and the jurors' own impressions of the deliberation process, but there may be costs that outweigh the benefits of unanimous verdicts. Hung juries may burden the civil justice system when one or two jurors can block a verdict. But hung juries in civil cases are quite rare. In federal courts, hung jury rates averaged 0.8 percent between 1980 and 1987. Even in jurisdictions with 12-member juries required for unanimity, juries in civil cases rarely hang. For example, in Delaware the rate was 2.7 percent in fiscal years 1997–1999. In Cook County, Illinois, the rate was 0.0 percent during 2003–2004. Under a unanimity rule, a civil hung jury rate of 3 percent is a generous assumption. If a nonunanimous rule cuts that rate in half (another generous estimate), the drop would be 1.5 percent, bringing the remaining rate to 1.5 percent. While there is no systematic research on what occurs following a hung jury in civil cases, it is likely that most of the cases settle. If one-third of civil cases were retried, mirroring the criminal hung jury rate, an estimated trial savings of 0.5 percent would result—a real but very modest cost savings.

The low rate of hung juries in civil cases stands in sharp contrast to the much more frequent occurrence of majority verdicts on juries that do not require a unanimous verdict. Among the 50 juries studied in Arizona, 32 percent were nonunanimous. If the holdouts were neither eccentric nor irrational, as the analysis suggests, the failure to win them over may reflect a loss in the quality of debate within the jury even if they ultimately would have agreed to endorse the majority position if unanimity had been required. Unanimity may also provide a counterbalance to the occasional erratic verdict. As the proportion of jurors who must agree to endorse a verdict rises, the likelihood that the verdict will be the product of a deviant sample of juror opinions drops.

When unanimity is mandated, juries are likely to deliberate longer because more extensive debate is likely to occur. It is therefore of particular interest that jurors operating under a unanimity rule express greater satisfaction with their deliberations despite the greater effort required to reach consensus rather than a quorum verdict. While a unanimity rule may produce a slight increase in hung juries and the potential for longer deliberation, these costs may be outweighed by the benefits of a tool that can stimulate robust debate and potentially decrease the likelihood of an anomalous verdict. TR

As the proportion of jurors who must agree to endorse a verdict rises, the likelihood that the verdict will be the product of a deviant sample of juror opinions drops.

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This article is based on Shari Seidman Diamond, Mary R. Rose, and Beth Murphy, Revisiting the Unanimity Requirement: The Behavior of the Non-Unanimous Civil Jury *(2006) 100 Northwestern U. L. Rev. 201.*

Note

*See Shari Seidman Diamond et al., *Juror Discussion During Civil Trials: Studying an Arizona Innovation* (2003) 45 Ariz. L. Rev. 1, for a complete description of the evaluation.

MANAGING THE JURY IN A MEGA-CASE

From an anonymous jury to an eBay purchase, a jury supervisor tells what she learned during the trial of music icon Michael Jackson.

By
Ellen Scott

At times, it seems nothing can possibly prepare a court official for dealing with the mega-case, one involving a celebrity that draws in the media like blood in the water attracts sharks. But the quiet city of Santa Maria, population 89,000, found itself at the center of such a frenzy when pop star Michael Jackson came up for trial on child molestation charges in 2005. My role in this notorious trial was to handle all the details involved in preparing for a successful jury selection and tending to jurors' needs throughout the trial.

Crucial to the successful planning and jury selection process for this trial was the excellent communication I enjoyed with Judge Rodney S. Melville, presiding judge of the Superior Court of Santa Barbara County. We discussed every jury-related issue that we could think of, from the number of summonses to send to the anonymity of jurors and everything in between. He always welcomed questions or ideas and, perhaps the most valuable of all, kept open the line of communication.

Estimating the Number of Jurors Needed

When the *Jackson* case was set for trial, our court was in the midst of converting from a two-step jury process to a one-step process. Under the two-step process, qualifying questionnaires were mailed quarterly. Those who were qualified made up the pool from which summonses were then randomly issued. Under a one-step process, we mail one document that incorpo-

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Jurors and alternate jurors speak to the media after acquitting Michael Jackson of all charges in his 2005 child molestation trial.

rates the questionnaire and summons. There are no "prequalified" individuals in the one-step process. As a result, the one-step process requires us to issue many more summonses each week to net the same number of reporting prospective jurors. Our conversion date was only three weeks before the trial date. We had no experience working with the one-step process and all it encompassed before we had to use it for this out-of-the-ordinary case. We based our estimates of the number of jurors to summon and the number our pools would yield on statistics we gathered informally from similar-sized courts with one-step jury operations. Once we determined the number of qualified and available jurors needed to start the voir dire process (i.e., the number of people we would net after hardship deferrals were granted), we used that data to estimate the total number of jury summonses to send.

Overcoming Understaffing

With only myself, staffer Lori Hornbrook, and a temporary employee, and given the unusually high number of prospective jurors who needed to report, I knew from the start that we would need additional staff with jury experience. In a small court like the Santa Maria Branch, it is difficult to find staff trained in jury procedures. I looked first to Mark Hanson, the jury supervisor at our court location in Santa Barbara, 75 miles south of Santa Maria. He immediately agreed to help. I needed someone else with jury experience, but our court was tapped out. I turned to the Superior Court of San Luis Obispo County, about 35 miles north of Santa Maria. The deputy jury commissioner there, Cathi Vest, was willing to help, and her court administrators were generous in "loaning" her to us. That gave me five jury-savvy individuals. The San Luis Obispo court would gain experience with a high-profile case, and I would gain additional staffing without any funds exchanging hands. When people were needed for tasks that didn't require jury knowledge (directing foot traffic in the jury building, copying documents, and the like), the court management team sent help. Having a small department and a high-profile case meant I had to go out and find the expertise required to get the job done.

The Last-Minute Decorum Problem

Because of the high level of public and media interest in observing the pretrial proceedings, Judge Melville issued a decorum order almost seven months before the first day of jury selection. The order spelled out, among other things, what items were not allowed in the courtroom: purses, bags, backpacks, cell phones, large coats, cameras of any kind, recording devices, and so forth. But late on the day before the first jurors were to report for jury duty, I reread the order that I

Michael Jackson passes through a security checkpoint at the Santa Maria courthouse during his 2005 trial on child molestation charges.

had last read seven months earlier. The impact of the incoming jury pools became apparent. We would surely see people bringing almost everything that was listed in the decorum order. Because it was too late to notify the potential jurors, we had to devise a way to collect these personal items, store them, and then return them to their owners. We decided to put personal items in numbered paper grocery bags. We gave a ticket with the corresponding number to the owner, and the bag was stored in the jury office. When it was time to leave, prospective jurors came to the office to collect their belongings. In theory, it sounded pretty workable. In reality, too many people came to our too-small office in too short a period of time, creating a bit of a fiasco for staff. We reduced the collection of such items on subsequent days by using our prerecorded jury message to advise prospective jurors not to bring the forbidden items to court.

Gag Order for All

The judge wisely put in place a gag order on trial participants that extended to court employees. The court received many inquiries, but thanks to the gag order, there was never any doubt about what staff should or should not reply. Jury selection began smoothly at the end of January.

Meanwhile, the news media demanded parking, staff time, documents, and facilities. Court Executive Officer Gary M. Blair managed both media and public demands on staff by posting filed documents that were released by Judge Melville on a special court Web site for high-profile cases, *www.sbscpublicaccess.org,* after successfully lobbying to have the California Rules of Court changed to allow such a site for high-profile cases. The site helped the media, the public, and the court staff. For that innovation, the site won a 2005 Ralph N. Kleps Award for Improvement in the Administration of the Courts and took first place in the Justice Served Top 10 Court Websites for 2005.

Using Anonymous Jurors

To protect the privacy of every individual who reported for jury service in the case, the court decided to seat a totally anonymous jury. Access to the names of prospective jurors, and to the actual jury panel itself, was restricted to the jury office staff. Numbers assigned to the prospective jurors were used during both the excuse phase and voir dire. The sworn jury panel continued to be known only by their assigned numbers, not by name. All jurors seemed pleased that the court was actively seeking to protect their privacy. The additional work to keep the panel anonymous was well worth our effort.

Judge Melville decided to swear eight alternate jurors, making a jury panel of 20. A juror questionnaire was used but was completed only by those who did not claim hardship deferrals (or whose hardship requests were denied). Although our goal was 300–350 completed questionnaires, the judge decided that there were enough people to proceed with voir dire after our third session with prospective jurors, and a total of 243 individuals completed questionnaires. After two unavoidable delays during the voir dire process, a jury panel was sworn in on February 24. Because of the delays, the jury selection process was spread out over a four-week period, but it had taken only eight court days.

Finding Jury Box Seats on eBay

The 14 seats in our jury box were affixed to the floor, which meant there was not enough room between them for additional seating. Therefore, a new seating arrangement was needed to accommodate the panel. Wanting jurors to be comfortable for this five-month trial, Assistant Executive Officer Darrel Parker spoke with our office furniture vendor about theater-style seating for the box. The vendor was happy to oblige but at an unacceptable cost of $10,000. Parker quipped that he could probably find the seating cheaper on eBay. In fact, he looked at that Web site and found two rows of 10 seats each that would fit the jury box. Including shipping, the new theater seats had a price tag of $2,000. Installing them after the jury was sworn, we left off one seat to accommodate a jury member who used a wheelchair. Since all courts' resources are limited, innovative ideas like this help keep costs to a minimum.

During the first full week of May each year, California courts conduct Juror Appreciation Week. This panel was surely deserving of our appreciation. We provided snacks each day, lunch the final day, and coffee mugs from the court. Pens, bookmarks, and those popular rubber bracelets were provided by the Administrative Office of the Courts. At the end of the week, the jury staff was sent a thank-you card containing a poem that the panel had

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written. Because the jury was anonymous, they signed the card, "20 numbers without names, Jurors thank you all the same!" followed by their "signature" juror numbers.

Protecting the Jurors

Security for the jurors was tight. They parked each day in a guarded area and met in the jury assembly building. At a predetermined time, sheriff's deputies escorted them to the courtroom. At the end of each day, deputies saw them to their vehicles and out of the parking lot. During the deliberation, jurors parked off site at a planned location. They were brought to court in special vans, escorted from van to deliberation room and back out again at day's end. Because Judge Melville adopted a schedule of 8:30 a.m. to 2:30 p.m. (with two 15-minute breaks), the jury panel was never in a position to be approached by the press, either during trial or during deliberation.

When word came in June that the jury had reached a verdict, the alternates were called. All eight had expressed their desire to be present for the reading of the verdict, and all appeared. Special parking was set aside for them, and they were escorted to the courtroom by sheriff's deputies. They were taken to the deliberation room afterward, and when the jury met with the press, they asked the alternates to be there as well. Following eight days in jury selection, there had been 69 trial days.

Postverdict interaction with the press was swift and had been anticipated by court administrators. A courtroom was quickly set up as a conference room, complete with a draped background and enough seats for the 20-member panel. After the initial interview, the jurors were taken to the juvenile court, which is off site. There administration had arranged for the "bookers" to meet with those jurors who were interested. (Bookers are the associate producers or interns with the various networks who book "notables" for TV appearances.) Those jurors who were not interested in meeting with bookers were driven to their cars to return to their "normal" lives. This allowed those jurors who wanted to set up interviews to do so without being followed home by the media or met at their doorsteps by reporters.

Lessons Learned

I never expected that in my career in a relatively small court, I'd work a case bigger than O. J. With satellite beaming, the Internet, and constant live broadcasting, the media and public create the high-profile cases they then feed on—O. J., Kobe Bryant, Michael Jackson, Scott Peterson, the JonBenet Ramsey murder. All court officials have to assume they'll find a case like this on their doorstep, maybe tomorrow. Be ready to make controversial decisions; with the judge at the helm, establish a team for the various facets of the case and let these experts deal with the details; keep the lines of communication open at all times; establish a press member as a "media coordinator" who will be the go-between for the press and the court; plan, but plan to be flexible when the unexpected happens. You'll find that having to handle old tasks in a new way becomes the norm. A high-profile case takes time, efficiency, open communication, interagency cooperation, and plenty of ingenuity.

And a little caffeine doesn't hurt. CR

Ellen Scott has supervised the jury services office at the Santa Maria Branch of the Superior Court of Santa Barbara County for more than 13 years and has handled about a half-dozen death penalty juries.

Notable Facts About the *Jackson* Jury Process

Number of summonses mailed	4,000
Number of prospective jurors directed to report	900
Number of people reporting	432
Number of deferrals	189 (44 percent)
Number who completed questionnaires	243 (56 percent)
Number who went to court for voir dire	113
Number of people needed to select 12 jurors and 8 alternates	60
Number of other jury trials conducted during *People v. Jackson*	24
Courtroom seating for the media	47
Courtroom seating for sketch artists	2
Courtroom seating for members of the public	47
Courtroom seating for the parties	12 (6 each)
Courtroom seating reserved by the court	14

Source: Superior Court of Santa Barbara County, Santa Maria Branch

Jail for Judges

Challenging Judicial Independence

By
Kenneth L. Kann
Mark Jacobson
Nina Erlich-Williams

(left) Logo from a flyer used for the South Dakota JAIL initiative.

Jail for judges?

Sure, if a judge robs a bank, imprisonment should be an option. But what if a judge makes an unpopular ruling? Or an incorrect ruling? Should the judge be subject to criminal prosecution? What about allowing the losing litigant to sue the judge personally for an unfavorable decision?

If South Dakota's voters approve an initiative this November—the Judicial Accountability Initiative Law (JAIL)—judges in that state could find themselves criminally or civilly liable as a result of a judicial ruling. And if the judge reoffends, he or she could be permanently removed from office with retirement benefits cut in half.

A San Fernando resident, Ronald Branson, who has filed numerous lawsuits against the government, including several judges, brought the idea of stripping judges of their judicial immunity to South Dakota businessman William Stegmeier after Branson failed to gather enough signatures to place an initiative on the California ballot. Branson believes that judges should not always be immune from lawsuits arising out of their judicial acts, as they have been since the 19th century. Convinced that South Dakota would be more receptive and less expensive in terms of getting an initiative on the ballot, Branson recruited Stegmeier to finance the endeavor. Stegmeier reportedly spent approximately $140,000 of his own money to collect signatures, and the measure to amend the South Dakota Constitution will appear on the November ballot. Stegmeier has now distanced himself from Branson, who refers to himself as the "National JAIL Commander in Chief."

What JAIL Is All About

The JAIL ballot initiative in South Dakota, which needs a simple majority to pass, would create a special 13-member grand jury to review complaints and determine whether judicial immunity should be eliminated for "any deliberate violation of law, fraud or conspiracy, intentional violation of due process of law, deliberate disregard of material facts, judicial acts without jurisdiction, blocking of a lawful conclusion of a case, or any deliberate violation" of the state or federal Constitution. ("Blocking" a lawful conclusion of a case is defined as "any

act that impedes the lawful conclusion of a case, to include unreasonable delay and willful rendering of an unlawful or void judgment or order.") A complainant would also be permitted to file a criminal accusation against a judge if a prosecutor declines to file charges. If the special grand jury finds probable cause of criminal conduct, it can indict the judge and impose a "strike," defined as either an adverse immunity decision or a criminal conviction. If the judge acquires three "strikes," the judge would be permanently removed from office and his or her retirement benefits would be cut in half.

According to the JAIL Web site (*www.jail 4judges.org*), supporters of the initiative are active in all 50 states. Branson and JAIL cofounder Gary Zerman, a California attorney who has also unsuccessfully sued judges, hope to eventually prevail in larger states like California. But first they have their sights set on other, relatively small, states with an initiative process, such as Nevada. According to a February 1, 2006, article in *The Recorder,* Branson said that if a supporter can invest $1 million, he would like to make another attempt to qualify the initiative for the ballot in California. Branson said, "I'm gambling on the idea that if we prevail in South Dakota, we'll have the attention of so many news sources, and so many money sources will come to us. Success breeds success."

Strong Opposition in South Dakota

There is widespread and growing opposition in South Dakota to the JAIL initiative, which is identified as Amendment E. Organizations representing businesses, unions, school boards, hospitals and medical professionals, county commissions, city councils, insurance companies, law officers, lawyers, accountants, and agricultural interests have lined up against the amendment. In addition, Tom Barnett, secretary-treasurer of the South Dakota State Bar, has trained people throughout the state to make presentations opposing the initiative. Barnett and representatives of the No on E Committee have campaigned all summer with booths at state and county fairs across South Dakota. According to Barnett, the campaign will run radio and television advertisements leading up to the election.

The state government has also taken steps to oppose the measure. The South Dakota Legislature recently adopted a resolution urging voters to reject Amendment E. The resolution, which was passed unanimously by both houses of the South Dakota Legislature, states that Amendment E, among other things, would violate the U.S. Constitution and could cost as much as $2.65 million, which is the initial budget for the special grand jury. Stegmeier claims that the lawmakers acted illegally in adopting the resolution and asked them to rescind it, but they declined.

South Dakota Attorney General Larry Long has drafted an official explanation of the initiative that will appear on the ballot. Long's statement notes that because judges are not currently liable for money damages based on their decisions, they can "do their job without fear of threat or reprisal from either side." It explains that the proposal would be retroactive, allowing the special grand jury to "penalize any decision-maker still alive for decisions made many years ago." The ballot statement also warns that if the measure passes, it is likely to be challenged in court and found to be unconstitutional. If so, the state may be required to pay legal fees. The statement notes other forms of judicial accountability, specifically that judicial decisions can be reversed on appeal and that judges can be removed from office for misconduct or by election.

On the Web site of the South Dakota "JAIL 4 Judges" initiative, backers sell T-shirts to raise money and expand their grassroots support.

A poll taken in January in South Dakota showed strong support for the measure. Barnett is unaware of any polls conducted since January, but he is confident that the measure will fail, based on the strength of the opposition.

Balancing Judicial Independence and Judicial Accountability

Critics of the JAIL initiative claim that it poses a threat to judicial independence. What do we mean by "judicial independence"? In the context of the present controversy, "judicial independence" means that judges can make decisions, even unpopular decisions, based on the law and the facts of the particular cases before them, free from bias or inappropriate influence from outside pressures or special interests, and without concern for personal legal retribution.

The flip side to judicial independence is judicial accountability, which refers to the concept that judges are held accountable for their decisions. Whereas judges are appointed for

life to the federal judiciary, nearly every state holds some type of judicial election. Just as politicians are held accountable to the public through elections, state court judges can be voted out of office if the electorate is unhappy with a judge's performance.

Trial court judges in California serve six-year terms. A qualified attorney can challenge a judge, and voters can then choose between the candidates. Appellate justices, including California Supreme Court justices, serve 12-year terms. Although they are not subject to election contests against other candidates, appellate justices must stand for retention elections. In American government, being voted out of office has always served as the ultimate means of holding public officials accountable.

Judges in California are also held accountable for judicial misconduct by the Commission on Judicial Performance, which investigates complaints of misconduct and disciplines judges. Every state has an agency that performs this same function. And, of course, judges are kept in check by the Courts of Appeal when their decisions are reviewed. Thus, in California, judges are held accountable by the public, a disciplinary body, and other courts.

Judicial independence and judicial accountability are complementary principles. There also is a natural tension that exists between them, a tension that is highlighted by the JAIL initiative and all the recent discussion about "activist" judges, who are criticized for invalidating laws passed by Congress and state legislatures. South Dakota's JAIL initiative appears to be a reaction to a national concern about court actions that seem to ignore public opinion. The JAIL proposal would establish a high level of accountability, but, critics note, at the expense of unbiased, independent, well-reasoned judicial decisions. With the level of accountability that elimination of judicial immunity would bring, the delicate balance between independence and accountability would be upset, creating a peril that judges may decide cases based on popular opinion or fear of retribution rather than the law and the facts before them.

Lessons for California

If the desires of Branson and Zerman are any indication, there may very well be attempts to export JAIL 4 Judges to California, depending on the outcome of the South Dakota election in November. As Branson said, "Success breeds success."

Roger Warren, scholar-in-residence at the Administrative Office of the courts (AOC), a former superior court judge, a former president of the National Center for State Courts, and an expert on judicial independence and accountability, warns that California must be prepared for the arrival of a JAIL-like initiative. According to Warren, "Complacency is the enemy. California should be paying attention." He adds that the JAIL proposal must be soundly defeated in South Dakota to prevent it from gaining momentum and potentially succeeding elsewhere. Even a substantial minority of yes votes could keep the concept alive in other states, Warren says.

Few would question that judicial accountability is necessary and desirable. Warren believes that accountability drives performance. "A person who is held accountable is more likely to perform well," he observes. But critics of the JAIL proposal like Warren are concerned that stripping judges of their judicial immunity is too extreme a measure because judges should not be held personally liable for their rulings. After all, other elected officials cannot be sued or criminally charged for decisions made in their official capacity; they are merely voted out of office. So what is the appropriate level of accountability needed to permanently secure the integrity of judicial independence? As noted above, there are three ways in which California judges are held accountable: (1) they must stand for election; (2) they can be disciplined for misconduct; and (3) their rulings are subject to review on appeal. These three methods have been in place for a long time, so the JAIL initiative isn't necessary, although making people aware of these methods certainly is.

Educating the Electorate Could Help

Educating the California electorate about these concepts would help dispel any misunderstanding that there is insufficient accountability for the state's judiciary. Most Californians are familiar with the concept of appellate courts. They may not be as familiar with the fact that judges must stand for reelection and that the Commission on Judicial Performance has the authority to discipline judges for misconduct. If voters are made aware of the existing processes by which judges are held accountable, they will be less likely to vote for a JAIL-type initiative. Toward this end, the American Bar Association last year appointed a commission, cochaired by retired U.S. Supreme Court Justice Sandra Day O'Connor and former U.S. Senator Bill Bradley, to devise ways to educate Americans about the separation of powers and the role of independent, accountable courts.

Bert Brandenburg, executive director of the Justice at Stake Campaign, a nonpartisan national organization of more than 40 partners, recently opined that judicial accountability and independence are inextricably intertwined. He wrote: "It's also time for courts and those who care about them to embrace the notion of judicial accountability and define it properly instead of letting court-bashers corrupt it beyond recognition. Friends of the court need to remind the public that courts are already accountable and proud of it—account-

The American Bar Association last year appointed a commission, cochaired by retired U.S. Supreme Court Justice Sandra Day O'Connor and former U.S. Senator Bill Bradley, to devise ways to educate Americans about the separation of powers and the role of independent, accountable courts.

able to the law and the Constitution, not to politicians, special interests, and rage campaigns. It's not an overstatement to say that the road to independence runs through accountability."*

What the Courts Can Do

What else can be done to prevent JAIL proponents from launching a successful signature-gathering campaign in California? We know that certain experiences at the courthouse can leave court users with a negative impression of the courts as a whole. According to Warren, public clamor about the courts arises out of dissatisfaction with the courts, whether the source of the dissatisfaction is the judge or a court clerk. Even a disagreeable encounter with a counter clerk may turn a voter against the courts in general.

Ongoing efforts in California to boost public trust and confidence in our judicial branch are one proactive way to raise general awareness about the judicial branch with the eventual goal of improving the public's perception of our court system. This includes ensuring that litigants have an opportunity to explain to judicial officers the concerns that brought them to court and that court users understand court procedures and decisions that affect them. It also includes training for court staff on such topics as how much information they can provide without crossing over the line into giving legal advice and how to explain in a helpful way why they cannot provide the advice sought by the court user. These measures will promote public trust and confidence in the courts by making court users feel that they have been treated respectfully and politely, leaving them with a favorable impression of the courts.

Another lesson for California is recognizing the importance of building and maintaining strong alliances with our justice system partners. In South Dakota, the Legislature, the Attorney General, and the State Bar have come together to defend and promote the concept of judicial independence by taking measures to defeat the JAIL initiative.

We must also continue our efforts to improve access to the courts. A Californian who has difficulty accessing the courts is more likely to become frustrated and vote for a measure that appears to punish the judiciary.

How we talk about the importance of an independent judiciary also matters. South Dakota's Barnett argues that the term "judicial independence" signals "activist judge" to many members of the public. He encourages friends of the judicial branch to emphasize the importance of a fair and impartial judiciary rather than rely on a catch phrase that can be misconstrued by those who are pushing for extreme forms of judicial accountability.

JAIL Is a Wake-up Call

Win or lose, the JAIL initiative is a wake-up call for state courts throughout the country. As Warren warns, even if the initiative is defeated in South Dakota, we should not be complacent. California's judicial branch must continue its efforts to improve access to and fairness in the courts, to enhance public trust and confidence in the judiciary, and to educate the public about the courts as an independent third branch of government. CR

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Note

* B. Brandenburg, "Bench-Clearing Brawl: Judges Need to Join the Fight to Save the Courts," *Slate* (July 28, 2006), *www.slate.com/id/2146762*.

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The Dramatic Consequences of Words

By
Arthur Gilbert

The votes had been tabulated for the 1998 election. I was morose. My friend and colleague Justice William Masterson asked what was the matter.

"How could it be?" I moaned.

"How could what be?" he asked.

I sighed, "The election."

"You got 79.6 percent of the vote. What's the problem?"

"Well, 324,159 people voted against me. Why don't they like me?"

He tried to console me until I reminded him of his last election, when he expressed bewilderment that 327,863 people had voted against him.

He acknowledged that was true. And I vaguely remember he said something about being "teed off." We drank a glass of cranberry juice and our thoughts turned to the crocodile in the bathtub. This was a simile coined by the late California Supreme Court Justice Otto Kaus. He said that deciding a controversial case in which the public has a keen interest, such as an initiative, was "like finding a crocodile in your bathtub when you go to shave in the morning. You try not to think about it, but it's hard to think about much else."

I suppose Justice Masterson and I had decided our share of controversial cases, but we could think of nothing in the recent past that would have prompted people in the hundreds of thousands to vote against us.

"It must have something to do with how they perceive us," I mused.

"How can they perceive us when they don't even know us or even understand what we do?" he asked.

I was puzzled. We certainly are not all that scary, and I could not see how a black robe could be all that threatening. Or could it be the gavels that upset people? But I don't know of a judge, other than those on television shows and in movies, who uses a gavel. But then it occurred to me that judges wield the most terrifying weapon of all: words. The words judges use have dramatic consequences. Simple words like "denied" and its first cousin "granted" can drive litigants and lawyers nuts. Even people who have never seen the inside of a courtroom recoil at the mere use of those words, no matter how appropriate they may be in a given case. Maybe it is because these are the words that sorcerers, kings, witches, and fairy godmothers use.

Simple words like "denied" and its first cousin "granted" can drive litigants and lawyers nuts. Even people who have never seen the inside of a courtroom recoil at the mere use of those words, no matter how appropriate they may be in a given case.

And then when judges utter certain prefatory words, people's sweat glands go full throttle. Take, for example, "You are . . ." No one expects a judge to follow those words with "the promised breath of springtime." Instead, the word that follows can be "guilty" or, on rare occasions, its second cousin "not guilty." Other words that follow the phrase "You are . . ." include "in default" and "sanctioned in the amount of (large sum of money)." We hear a great deal about the "you are in contempt," but that rarely happens. It may be that most judges have trouble drafting an appeal-proof contempt citation. More often one hears different prefatory words followed by the words "in contempt." A common example is "one more outburst like this and you will be . . ."

If only I could explain to the 324,159 people who voted against me that I'm not all that bad of a guy. Sure, I have some faults, but I like animals, and I don't really have that much power. I am guided by rules, the standards of review that limit my authority. I'm just sort of a referee. I would like to send them a copy of an elegantly written piece by Justice Rick Sims titled "What Appellate Judges Do." It appeared in the fall 2005 issue of the *Journal of Appellate Practice and Process*, which is published by the William H. Bowen School of Law at the University of Arkansas at Little Rock.

With crystal clarity Justice Sims explains the limitations imposed on appellate judges. He explains the canons of statutory interpretation so that

everyone can understand them, even judges. By and large most judges follow the plain-meaning rule. If the Legislature enacts a law and its language is clear, then that's the law. My experience has been the same as Justice Sims's. Judges of differing political philosophies uniformly follow the plain-meaning rule when it applies. This represents the epitome of judicial restraint. Got a problem with the law? Go see your legislators. The judges did not create the law. As Justice Holmes said, "I don't care what the legislature meant, what did it say?" As an example, Sims posits that the sign that says, "No Parking on Thursdays. Street Cleaning," tells people it's okay to park on Friday but not on Thursday. You would not take your dog to the cat veterinarian whose sign says, "Practice Limited to Cats." (You might if you had a Pomeranian and were desperate.) Speaking for his appellate district, Justice Sims sees the "plain meaning rule as the glue that holds our court together." I think that glue may hold most appellate courts in the state together.

But because language is indeterminate, not all statutes are clear in every instance. Judges must interpret the law following rules of construction. Sims gives the example of the law that makes it illegal to make a criminal threat verbally or in writing. The defendant faces someone who has seen him commit a crime. The defendant draws his finger across his throat in a slashing motion as a warning not to tell the police. Has the defendant made a threat under the statute?

However one may decide this case, a reasoned decision goes a long way in giving the public insight into how the appellate courts work. And if the appellate opinion is written with the lucidity of Sims's article, then the point will make a lasting impression.

Sims notes that because today "the legal universe [is] occupied almost entirely by statutory language," the appellate courts today make fewer quasi-political decisions than they did in the day of Oliver Wendell Holmes, when courts were more regularly interpreting the common law. Sims is not all that worried about the future of the law or the appellate courts because "appellate judges are carefully interpreting the law in a disciplined way." I hope he is right. A proposition that recently qualified for the South Dakota ballot allows judges to be brought before special grand furies—I mean *juries*—who will determine whether they have abused their power. (See story, page 18.) Win or lose, the judge is not compensated for his or her defense. The judge who "loses" may be removed from office and lose one-half of his or her retirement benefits.

Not surprisingly, appellate judges up for reelection will get little sympathy from trial judges. Appellate judges face only voter reconfirmation. No one can run against them. But complacency is ill advised. Prior to 1970, trial judges had little to fear at election time, but that all changed when Judge Alfred Gitelson made his historic order in the *Crawford* case, mandating integration of Los Angeles public schools. Whatever Gitelson's view on busing, his ruling was based on a principled and reasoned interpretation of the law. He was defeated in his 1970 reelection bid.

In 1976, when the California Supreme Court ultimately affirmed *Crawford v. Board of Education* (1976) 17 Cal.3d 280, the voters had turned out of office the judge who had defeated Gitelson. The third judge to sit in what appeared to be a jinxed superior court seat found herself challenged in the next judicial election. On the ballot she designated herself "incumbent." Needless to say she was defeated. Even voters who knew what the word meant were uneasy.

The year 1976 was not a good year for, dare I say it, "incumbent" judges. A highly respected Los Angeles judge, Emil Gumpert, age 81, was defeated. Judge Gumpert was vigorous and energetic. He consistently displayed high mental acuity and handled a large caseload of complex civil cases with ease. No matter. At that same time a state Supreme Court justice, also in his eighties, was under investigation by the state Commission on Judicial Performance for an alleged failure to perform his judicial duties. The justice was ultimately removed from the bench because of "disabling disability."

This all goes to show that even judges, who are devoted to administering justice, do not always receive justice. Judges give reasons for their decisions, but the voters don't have to. But that is one of the consequences of democracy. The vicissitudes of life affect us all, even judges whose words can have profound effect on people's lives. We are all subject to random strokes of good and bad luck. And that realization should keep us humble, whatever limited power has been given us.

Kaus's simile highlights that all judges are aware of that menacing crocodile, but at least it's in the tub. It is no less disconcerting for those of us who take showers. You come in to shave or to brush your teeth, but if the shower isn't working, you may have to take a bath. We judges have to decide cases. That is our job. Crocodile or not, we have to get in that damned tub.

However "controversial" any one of my decisions may be, I have no choice but to accept the existence of that prehistoric reptile lurking just beneath the seemingly calm water. But I can make one choice at election time. You won't find the word "incumbent" next to my name. CR

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

José Dimas

Court Fee Intercept Bill Introduced in the Senate

BY JOSÉ DIMAS

One of the most difficult tasks that a modern-day court manager faces is trying to collect unpaid court fees, fines, and other debt owed to courts. In any given case the debt may be hundreds or thousands of dollars—funds that could assist the victim and support vital programs and operations. Court managers have used a variety of methods in their efforts to collect and settle outstanding court debt. Some of these methods include issuing summons and notices, making phone calls, and even contracting with collection agencies to recover some of the debt.

A new tool may soon be available to help them in this endeavor. On June 15, Senators Gordon Smith, R-Ore., and Charles Schumer, D-N.Y., introduced Senate Bill No. 3512, the Court Fee Intercept legislation. This bill would allow for the interception of federal tax refunds to pay for unpaid court fees, fines, and restitution owed to courts.

"Financially strapped courts need a way to collect on debts that are rightly due to a crime victim or to the court," stated Senator Smith when introducing the legislation. "Intercepting tax refunds is an efficient way to collect money that criminals owe. The influx of funding will go to victims, help courts enforce court orders, and create revenue that could be returned to a state's treasury."

In a June 15 prepared statement supporting the bill, Oregon Chief Justice Paul J. De Muniz added, "This will increase the enforcement of court orders and, by doing so, increase the collections of court ordered fines, fees, and victim restitution. This bill helps enforce our system of justice and ensure that defendants meet their obligations."

Courts Owed Millions

As budgets have tightened, some courts have stepped up their efforts to collect the millions owed to them. Estimates of unpaid court debt are difficult to gauge, but most agree that an average state is owed hundreds of millions of dollars. Oregon, for example, reported that it had $439 million in delinquent fines, fees, surcharges, and restitution in fiscal year 2004. Virginia reported $386 million in court costs and fines only.

Many states already intercept state tax refunds to pay for unpaid court debt. In 2002, Arizona intercepted $2.3 million to pay delinquent fines, surcharges, and restitution from state tax refunds. In 2004 and 2005, California intercepted over $6 million to pay delinquent court-ordered fines, fees, and assessments.

"Financially strapped courts need a way to collect on debts that are rightly due to a crime victim or to the court," stated Senator Smith when introducing the legislation.

How Intercept Helps

The proposed court fee intercept program would be patterned after the successful U.S. Treasury Offset Program (TOP), which collects unpaid child support debt. The list of allowable TOP intercepts now consists of (1) federal tax debt, (2) Temporary Assistance for Needy Families (TANF) child support debt, (3) federal agency nontax debt, (4) non-TANF child support debt, and (5) state tax debt (other than child support).

Under the legislation, an additional sixth category, for unpaid court debt, would be added to the list of allowable interception categories. The unpaid court debt would not supplant or supersede any of the current categories, including the unpaid child support enforcement categories, in order of priority. It would be optional for a state to participate in the federal tax intercept program for unpaid court debt.

Contact Your Senators

The National Center for State Courts is working to add cosponsors to this important legislation. We are asking members of the court community to contact their senators and ask them to cosponsor Sen. No. 3512. Key points to mention in your communications with your senator:

- These interceptions are on refunds that would otherwise be returned to a taxpayer. As such, there is no loss to the federal budget. The proposal is "revenue neutral" in terms of costs to the U.S. Treasury.

- Court-owed debts would be last in line after child support interception and other current debt priorities. The new category would not affect other recipients now intercepting refunds.
- This tax intercept proposal would be a revenue-generating instrument that is not a tax increase.
- Enactment of this law would alleviate or lessen the budget problems faced by many courts.
- The mechanisms are already in place to establish this program. There would be no need to install new, expensive protocols to implement the proposal.
- Payment of unpaid court debt would promote public trust and confidence in the nation's judicial system.

This legislation has the support of a broad-based coalition including the Conference of Chief Justices, Conference of State Court Administrators, National Association for Court Management, National Conference of State Legislatures, National Association of Counties, Government Finance Officers Association, and American Probation and Parole Association.

The bill has been referred to the Senate Finance Committee.

José Dimas is a government relations associate with the National Center for State Courts in Washington, D.C.

A CONVERSATION WITH

Kelly Popejoy ON

Trial Court Projects

Kelly Popejoy

In late August, the Judicial Council approved a new, simplified methodology for prioritizing major trial court building projects. The new policy was based on input from the Court Facilities Transitional Task Force, the Interim Court Facilities Panel, and court leaders throughout the state. Kelly Popejoy, manager of planning for the Administrative Office of the Courts' Office of Court Construction and Management, explains the importance of the new methodology and how it will work.

What is the general purpose of the new methodology?
The Judicial Council decides which projects to submit to the state executive and legislative branches for funding each year. The council needs a clear, simple way to select among many critical trial court projects for funding. The council also needs a consistent framework that allows flexibility in how it will select among projects from year to year and a method that is easy for the public to understand.

How does it differ from the previous methodology?
The previous methodology, while technically sophisticated, was difficult for staff to implement and for the public to understand. Instead of nine criteria, the new method uses four criteria—overcrowding, security, physical conditions, and access to court services—to develop five priority groups. In addition, the method outlines additional factors that the council can consider in selecting projects from among the top priority group—the immediate-need group—for funding. The other factors include the financial aspects of a project that save either capital or support dollars, such as a land or cash donation or operational cost savings realized from consolidation of facilities.

Will the new methodology reduce the number of trial court projects from the previously adopted list?
In the process of developing the new methodology, we provided each superior court with an opportunity to add or delete projects. Several courts requested changes to their project lists, and the result is a new statewide list of 181 projects. The previous list had 201 projects.

How would Senate Bill 10, which will allow the state to assume responsibility for buildings that have uncorrected seismic conditions, affect the funding criteria?
SB 10, which is likely to be signed by the Governor this month, does not immediately result in a new list of project priority groups for several reasons.

Under the new methodology, when will funding become available for the new list of trial court capital projects?
The new methodology does not affect how or when funding becomes available. It provides a basis for the council to select projects for inclusion in its annual funding requests submitted to the executive branch and the Legislature. Based on the direction provided to us by the council on August 25, we have submitted a funding request of nearly $1.3 billion to the state Department of Finance for nine new trial court projects—one each in Calaveras, Lassen, Los Angeles, Madera, Riverside, San Benito, San Bernardino, San Joaquin, and Tulare Counties. We anticipate that discussions with executive branch staff will occur throughout October and November during development of the Governor's fiscal year 2007–2008 budget proposal, which will be released in January 2007. CCR


J. Richard Couzens


Tricia Ann Bigelow

Court Rules That a Judge, Not a Jury, Determines the Facts of a Strike

BY J. RICHARD COUZENS AND TRICIA ANN BIGELOW

The California Supreme Court recently made a key ruling regarding the state's three-strikes sentencing law. The defendant, James McGee, was convicted of a number of serious and violent felonies. He also was charged with having been previously convicted of two robberies in Nevada. Both sides agreed that the Nevada robbery statute differed from California law in that Nevada requires only general criminal intent, while California requires proof of specific intent to permanently deprive another person of property. Further, while Nevada allows a conviction based on fear of *future* injury to anyone in the company of the victim at the time of the offense, California requires the fear to be of an *immediate* and unlawful injury to the person or property of the other person.

To qualify as a serious or violent felony for the purposes of the three-strikes sentencing law, a conviction in another jurisdiction must involve conduct that would qualify the crime as a serious or violent felony in California. (*People v. Avery* (2002) 27 Cal.4th 49, 53.) McGee requested a jury determination of the factual basis for the Nevada robberies. The trial court denied the request, believing that it had the responsibility to determine not only whether the defendant was the person who committed the crimes but also whether the facts of the Nevada priors qualified the offenses as strikes. The court reviewed the records of the defendant's prior robbery convictions, including transcripts of the preliminary hearings, a transcript of a plea colloquy, and a written plea form. It determined that the prior offenses qualified as strikes under California law.

In May, the California Supreme Court upheld the trial court's action in *People v. McGee* (2006) 38 Cal.4th 682. In light of the nature of an inquiry into recidivist conduct, which is strictly limited to a review and interpretation of documents that are part of the record of conviction, it is the trial court rather than the jury that should make the determination of whether specified conduct qualifies a crime as a strike. The court concluded that there "has been a clear expression of legislative intent that a jury play a very limited role in determining prior offense allegations and that a court, not a jury, examine records of prior convictions to determine whether the conviction alleged qualifies as a conviction under the applicable sentence-enhancement provision." (*Id*. at p. 695.)

McGee relied on the U.S. Supreme Court decision in *Almendarez-Torres v. United States* (1998) 523 U.S. 224 and its subsequent discussion in *Apprendi v. New Jersey* (2002) 530 U.S. 466. In *Almendarez-Torres,* the petitioner pled guilty to a violation of the United States Code for being present in this country after having been deported. The sentence normally carried a maximum of two years' imprisonment. In his guilty plea, however, the petitioner admitted that his deportation took place because of three earlier convictions for aggravated felonies. The prosecution then sought to increase the petitioner's sentence because relevant criminal statutes authorized a sentence of up to 20 years when an original deportation was due to an aggravated felony conviction. The petitioner's objection to the increased sentence was rejected. The high court explained why in *Apprendi:* "Because Almendarez-Torres had admitted the three earlier convictions for aggravated felonies—all of which had been entered pursuant to proceedings with substantial procedural safeguards of their own—no question concerning the right to a jury trial or the standard of proof that would apply to a contested issue of fact was before the Court.... More important,...our conclusion in *Almendarez-Torres* turned heavily upon the fact that the additional sentence to which the defendant was subject was 'the prior commission of a serious crime.'" (*Apprendi*, at p. 488.)

To qualify as a serious or violent felony for the purposes of the three-strikes sentencing law, a conviction in another jurisdiction must involve conduct that would qualify the crime as a serious or violent felony in California.

Also significant to the California Supreme Court was the nature of the inquiry undertaken by the sentencing court. *McGee* characterized the inquiry as "a determination regarding the nature or basis of the defendant's

prior conviction—specifically, whether *that conviction* qualified as a conviction of a serious felony." It was not "a determination or finding 'about the [defendant's earlier] conduct itself, such as the intent with which defendant acted.'" (*McGee* at p. 706; emphasis in original.)

Application of *McGee*

Although *McGee* addresses the qualification of a foreign conviction as a strike, nothing in its holding suggests that it should not be generally applicable to all factual decisions necessary to determine whether any prior conviction qualifies as a strike. Accordingly, it likely will be the court, not the jury, that will decide such questions as whether the record of conviction supports a finding that the defendant personally inflicted great bodily injury during the commission of a crime or whether the burglary was of a residence rather than a vessel.

The court likely will now decide other technical issues previously decided by the jury, such as the date of the prior conviction and where the prior conviction occurred. (See the concurring and dissenting opinion of Associate Justice Kathryn Mickle Werdegar, *People v. Kelii* (1999) 21 Cal.4th 452, 462, n. 4.) The judge also may decide the age of the defendant at the time a juvenile strike is alleged to have occurred.

The jury now is left with the very limited statutory role of determining whether it was the defendant who "suffered" the prior conviction. (Pen. Code, § 1025(b); *People v. Epps* (2001) 25 Cal.4th 19.)

A Final Thought

It is clear that the U.S. Supreme Court may be the final voice on this issue. As observed in *McGee*, "[W]e read the United States Supreme Court's decisions that we cite and discuss as authority for our conclusion that defendant's federal constitutional right to a jury trial was not implicated in the proceedings below. Unless and until the high court directs otherwise, we shall assume that the precedents from that court and ours support a conclusion that sentencing proceedings such as those conducted below do not violate a defendant's constitutional right to a jury trial. Although we recognize the possibility that the high court may extend the scope of the *Apprendi* decision in the manner suggested by the Court of Appeal, we are reluctant, in the absence of a more definitive ruling on this point by the United States Supreme Court, to overturn the current California statutory provisions and judicial precedent that assign to the trial court the role of examining the record of a prior criminal proceeding to determine whether the ensuing conviction constitutes a qualifying prior conviction under the applicable California sentencing statute. Such a function is a task for which a judge is particularly well suited and is quite different from the type of factual inquiry—assessing the credibility of witnesses or the probative value of demonstrative evidence—ordinarily entrusted to a jury. Because of these considerations, we are not prepared to assume that the high court will interpret the federal constitutional right to jury trial as requiring a state to assign this function to a jury." (*McGee* at p. 686.) 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 coauthor 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.*

Court Briefs

A July 16 fire in the Superior Court of Merced County caused extensive damage to the district attorney's office and blanketed three of seven nearby courtrooms in soot, smoke, and dust.

COURTESY OF THE SUPERIOR COURT OF MERCED COUNTY

Court Battles Fire Damage

A Sunday morning fire in the Superior Court of Merced County caused extensive damage to the district attorney's office and blanketed three of seven nearby courtrooms in soot, smoke, and dust. No one was injured in the July 16 blaze.

Even with the temporary loss of courtrooms and office space, the Merced court reported only minimal delays in case proceedings. The court shuffled hearings, trials, and other courtroom matters to any available rooms in the courthouse, including the jury assembly room. One jury trial was moved to three different locations within two days, including the Women's Club across the street.

The court set up a temporary information desk at a shady corner outside the courthouse to inform visitors where to go for their court business. The court also used the daily newspaper to reach the community with updates.

Unlike the district attorney's files, court files did not get wet or burned, but they were dirty. A restoration company wiped each piece of paper the court needed to save with a dry silicone sponge and then copied it. A documents expert who worked on the Hurricane Katrina aftermath flew in to supervise the restoration effort.

Electrical Fire Closes L.A. Courthouse

Overloaded high-voltage cables caused a power failure in the Superior Court of Los Angeles County's Central Civil West Courthouse, shutting down the building for several days. During the closure, which ran from August 5 to 22, most superior court business was transferred to other buildings.

Cases heard in the 12 courtrooms dedicated to complex and child support proceedings were successfully transferred to the Stanley Mosk Courthouse. The child support courtrooms can hear more than 200 cases per day.

Officials from the public defender's office, Child Support Services Department, and court clerk's office set up information tables in front of the Central Civil West Courthouse to answer questions and direct court visitors. The court also used the media to keep the community updated and sent messages by e-mail groups to hundreds of local attorneys.

Coming Soon: Disaster Recovery Plans for the Courts

The Administrative Office of the Courts (AOC) obtained U.S. Department of Homeland Security funds to create an electronic, Web-based business continuity plan for California trial courts. The plan will help courts address issues such as identifying alternate sites for court proceedings, working around phone or electrical outages, or informing court staff of changes to normal operations.

The Superior Court of Fresno County will be the pilot court for the new online continuity plan later this year. Until the new plan is fully implemented statewide, the AOC will provide courts with a brief checklist of items that should be addressed in the interim.

Contact

Jennifer Buzick, AOC Office of Emergency Response and Security, 415-865-8048, jennifer.buzick@jud.ca.gov

Marin Court Debuts Security Station

A new screening station debuted July 31 at the entrance to the Superior Court of Marin County, providing court visitors with a level of security not previously available at the San Rafael courthouse.

The courthouse is located in the county administration building, designed in the 1960s by Frank Lloyd Wright. The building is rich in architecture and design but lacked a single secure entrance to the courthouse floor. Now only one stairwell and one set of elevators, located past the screening station, stop on the court floor. Everyone entering the court floor is screened—including court staff.

The screening system currently uses a temporary rope barrier. The court plans to add a glass partition with brass posts on the ground-floor entrance to guide pedestrian traffic to the screening area.

Contact

Kim Turner, Executive Officer, Superior Court of Marin County, 415-473-6237

A new security station debuted in July at the Superior Court of Marin County in San Rafael, which previously lacked a secure entrance to the courtroom floor.

COURTESY OF THE SUPERIOR COURT OF MARIN COUNTY

Chief Justice Meets With Court Leaders, Justice System Partners

Chief Justice Ronald M. George joined court leaders on August 11 at a regional meeting in Sacramento to hear local perspectives on court administration and access-to-justice issues. Following the meeting, the Superior Court of Sacramento County hosted a two-hour event for the Chief Justice to meet with local justice system partners to discuss public trust and confidence, strategic planning for the judicial branch through the year 2012, and strengthening the justice system.

The outreach visits will continue in October when the Chief Justice will meet with court leaders and justice system stakeholders from northern and southern California in San Francisco and Los Angeles. These outreach visits mark the 10th anniversary of the Chief Justice's original visits to the trial and appellate courts in each of the state's 58 counties.

(top) Rosa Junqueiro, executive officer of the Superior Court of San Joaquin County, poses a question to Chief Justice Ronald M. George during his visit to a regional meeting of court leaders in Sacramento (below, left and right).

COURTESY OF THE SUPERIOR COURT OF SACRAMENTO COUNTY

First Statewide Youth Court Summit Held

More than 200 youth, teachers, peer court staff, and juvenile bench officers met August 7–9 at the University of California at Santa Cruz to create a statewide youth court network. The summit also focused on developing a youth court DUI-prevention curriculum aimed at educating youths on the dangers of driving under the influence.

Youth court offers an alternative to the traditional justice system. Also called peer, student, or teen court, this model presents real consequences for first-time offenders and involves teen volunteers and former defendants in the court process. According to the U.S. Office of Juvenile Justice and Delinquency Prevention, there are more than 1,100 youth courts nationwide, with over 40 in California.

More Information on Youth Courts

www.courtinfo.ca.gov/programs/collab/peeryouth.htm

Contact
Patrick Danna, AOC Collaborative Justice Program, 415-865-7992, patrick.danna@jud.ca.gov

California Case Management System Deployed in Fresno

The first deployment of the California Case Management System (CCMS) for criminal and traffic cases was launched July 3 in the Superior Court of Fresno County. Fresno is the first of several trial courts scheduled this fiscal year to deploy the criminal and traffic module of the statewide case management system.

The modules for civil, probate, and small claims cases are scheduled to be implemented in the courts of Orange, Sacramento, and San Diego Counties in November. Work on developing modules for family, juvenile, and mental health cases will begin later this year.

Contact
Keri Collins, CCMS Project Manager, AOC Southern Regional Office, 818-558-4805, keri.collins@jud.ca.gov

Statewide HR Information System Debuts in Sacramento

The Superior Court of Sacramento County on July 5 became the first trial court in the state to implement both the statewide Court Accounting and Reporting System (CARS) and the new Courts Human Resources Information System (CHRIS). This milestone leads the way for all trial courts to use a single, fully integrated system for finance, human resources, and payroll functions.

Three additional courts—in San Francisco, Shasta, and Riverside Counties—also went live on CARS in July, bringing the number of CARS courts to 35 statewide.

Contact
Jody Patel, Regional Administrative Director, AOC Northern/Central Regional Office, 916-997-4451, jody.patel@jud.ca.gov

Alameda Judge Recognized by Public Defenders

Judge Robert Fairwell, Superior Court of Alameda County, received the Rose Elizabeth Bird Award for Judicial Excellence from the California Public Defenders Association. The award recognizes members of the judiciary who have dedicated their lives to ensuring that their performance is guided only by the rule of law, regardless of any outside pressures.

Appointed to the bench in 1965, Judge Fairwell presides over the misdemeanor calendar in the Hayward branch.

L.A. Court Installs Hotline to County Services

The Superior Court of Los Angeles County in July installed special telephones on two floors of its downtown courthouse that connect callers directly to the 211 county hotline.

County advisors on the 211 hotline give out referral information on legal services, substance abuse programs, counseling, and job training. Callers can get help in 140 languages with three-way calling that joins them with a 211 advisor and an interpreter. Depending on their usage, more phones could be in store for additional Los Angeles courthouses.

Contact
Public Information Office, Superior Court of Los Angeles County, 213-974-5227

COURTESY OF THE SUPERIOR COURT OF LOS ANGELES COUNTY

Special telephones in the downtown Los Angeles courthouse connect callers directly to the 211 county hotline.

New Restorative Justice Manual

The *Balanced and Restorative Justice* manual describes promising practices and model programs in California and around the country. Examples featured include family group conferencing, victim-offender mediation, victim impact panels, teen courts, and community law enforcement.

Restorative justice is a collaborative process in which all the stakeholders to a crime are offered an opportunity to have a voice in the justice system and are empowered to ensure that their needs

are met. Victims, communities, and offenders have an opportunity to come to the table, create solutions that meet their needs, and agree on reparations for the harm resulting from the crime.

Released in July, the manual provides contact information for practitioners and encourages judges and community stakeholders to develop collaborative partnerships that can help youths in their communities.

***Balanced and Restorative Justice* Manual**

www.courtinfo.ca.gov /programs/cfcc/pdffiles /BARJManual3.pdf

To order print copies

Contact Ethel Mays, AOC Center for Families, Children & the Courts, 415-865-7579, ethel.mays @jud.ca.gov

Courthouses Continue Transfer to State

In addition to new courthouse design and construction, the Trial Court Facilities Act of 2002 charges the Administrative Office of the Courts with overseeing the transfer of responsibility from the counties to the state of California's more than 450 court facilities. Since the summer 2006 issue of *California Courts Review,* two more facilities have transferred:

Sacramento County: Credit Union Building

San Bernardino County: Rancho Juvenile Traffic Court

Source

Administrative Office of the Courts, Office of Court Construction and Management

Ken Simonson (right), chief economist for the Associated General Contractors of California, met with staff from the AOC's Office of Court Construction and Management on July 13 in San Francisco. Simonson offered the latest forecasts on volatile prices for construction materials.

RUSSELL SNYDER, ASSOCIATED GENERAL CONTRACTORS OF CALIFORNIA

Justice Joins ABA Board

The American Bar Association elected Justice Laurie D. Zelon, Court of Appeal, Second Appellate District, to its board of directors.

Justice Zelon, a member of the ABA since 1978, has served as chair of the association's Standing Committee on Lawyers' Public Service Responsibility, Law Firm Pro Bono Project, and Standing Committee on Legal Aid and Indigent Defendants. She is active on many statewide judicial committees, including the California Commission on Access to Justice and the Bench-Bar Coalition. She joined the Los Angeles bench in 2000 and was elevated to the Court of Appeal in 2003.

Justice Laurie D. Zelon

Milestones

The Governor announced the following judicial appointments.

Judge Edward H. Bullard, Superior Court of Santa Barbara County

Judge Carolyn M. Caietti, Superior Court of San Diego County

Judge Lewis A. Davis, Superior Court of Contra Costa County

Judge Susan I. Etezadi, Superior Court of San Mateo County

Judge Wendy Getty, Superior Court of Solano County

Judge J. David Mazurek, Superior Court of San Bernardino County

Judge Judith L. Meyer, Superior Court of Los Angeles County

Judge Laura H. Parsky, Superior Court of San Diego County

Judge James E. Rogan, Superior Court of Orange County

Judge Harold T. Wilson, Superior Court of San Bernardino County

The following judges departed from the bench.

Judge Leonard P. Edwards, Superior Court of Santa Clara County

Judge Nazario (Tito) Gonzales, Superior Court of Santa Clara County

Judge Laura P. Hammes, Superior Court of San Diego County

Judge Stephen D. Petersen, Superior Court of Los Angeles County

Judge David W. Ryan, Superior Court of San Diego County

Judge Terry Scott, Superior Court of San Diego County

BEYOND THE BENCH XVII:

Sharing Responsibility for OUR Children

December 13–15
Monterey Conference Center

PHOTO COURTESY OF THE MONTEREY COUNTY CONVENTION AND VISITORS BUREAU

Save the dates!

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
- Restorative justice
- Immigration
- Sexual orientation

Registration materials available in early October.
For more information, visit:

www.courtinfo.ca.gov/programs/cfcc

Please contact:
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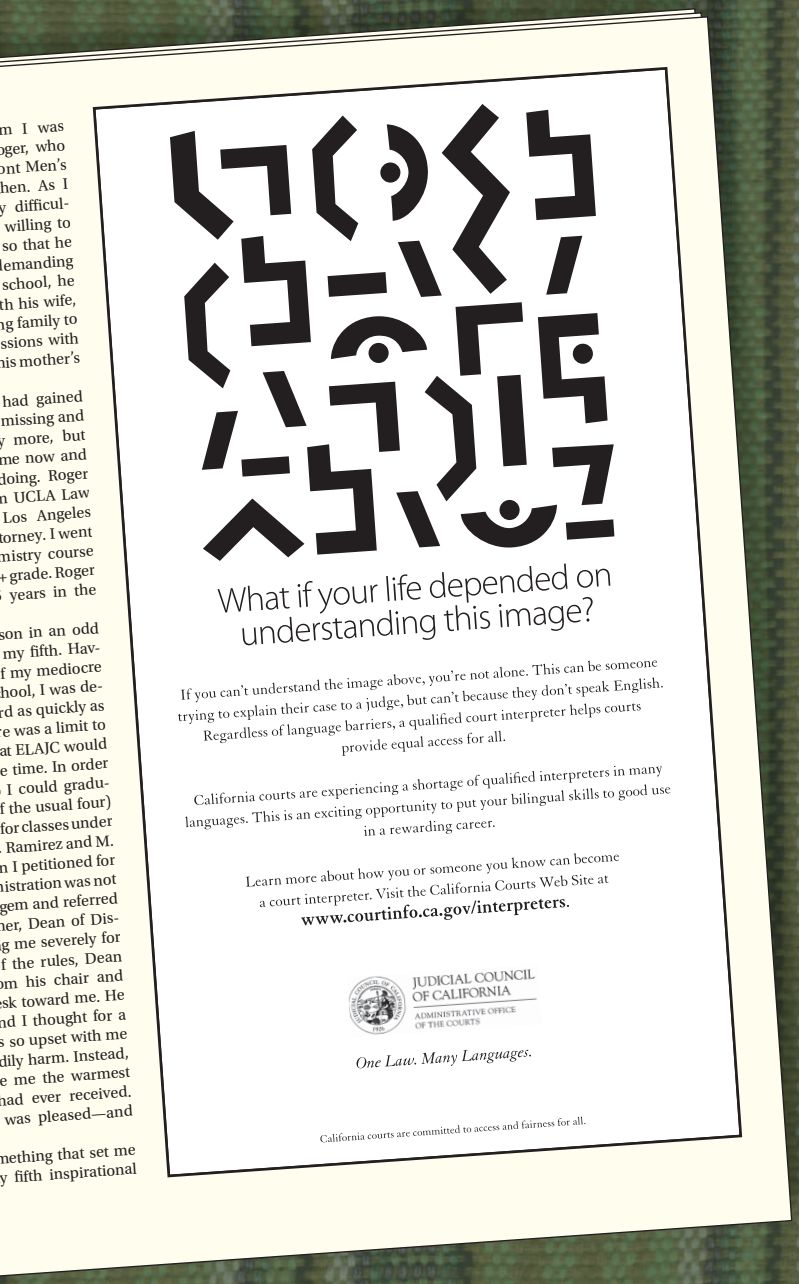

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