California Courts Review

A FORUM FOR THE STATE JUDICIAL BRANCH

WINTER 2006

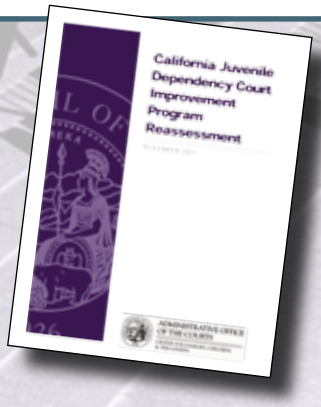
Los Angeles takes to the airwaves—see Briefs

—page 34

21st-Century Challenge

COMMENTARIES

Read About Improvements for Children in Juvenile Dependency Courts



The new report *California Juvenile Dependency Court Improvement Program Reassessment* by the AOC's Center for Families, Children & the Courts describes the most comprehensive examination of juvenile dependency courts ever undertaken in California.

The findings demonstrate substantial progress in improving the dependency system and point out remaining challenges.

- Nearly all children in dependency have legal representation at the trial court level.
- Judicial officers hearing dependency cases are highly experienced.
- In most courts, judicial officers and court staff are substantially engaged in collaborative efforts with child welfare agencies.
- Courts struggle to meet state and federal hearing timeliness guidelines.
- Judicial caseloads remain very high.

Read the report at:

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

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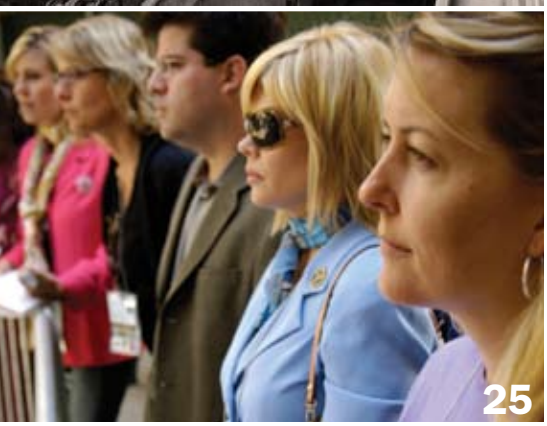
CALIFORNIA COURTS REVIEW • WINTER 2006

Contents

A FORUM FOR THE STATE JUDICIAL BRANCH



California Courts Review

A FORUM FOR THE STATE JUDICIAL BRANCH

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

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Contents

DEPARTMENTS

ON THE COVER

Detail of a watercolor by David S. Goodsell on display in the Center for Integrative Molecular Biosciences, at the Scripps Research Institute in La Jolla.

Contributors

MING W. CHIN
(*21st-Century Challenge,* page 8) is an associate justice of the California Supreme Court and chair of the Judicial Council's Science and the Law Steering Committee. He became an authority on DNA evidence while on the state's Court of Appeal, as he researched scientific literature for his groundbreaking opinion in *People v. Barney* (1992) 8 Cal.App.4th 798.

GEOFF L. ROBINSON
(*Bridging the Language Barrier,* page 14) is a partner at Bingham McCutchen's Walnut Creek office. He is a co-chair of the California Commission on Access to Justice, which produced the report *Language Barriers to Justice in California*.

MANUEL A. RAMIREZ
(*The Making of an Appellate Justice,* page 18) is the presiding justice of the Court of Appeal, Fourth Appellate District, Division Two, in Riverside and has won Outstanding Hispanic Alumni awards from Loyola Law School and Whittier College.

TOM R. TYLER, PH.D.
(*What Do They Expect?,* page 22) is a professor of psychology and law at New York University and has written extensively on the psychology of procedural justice.

LAURIE LEVENSON
(*Why Not Ethical Standards for Legal Commentators?,* page 25) is a professor at Loyola Law School in Los Angeles, the director of the school's Center for Ethical Advocacy, and a frequent legal commentator.

ALEX RICCIARDULLI
(*Crime & Punishment,* page 30) is a judge of the Superior Court of Los Angeles County.

California Courts Review

WINTER 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.

When planning began for the creation of *California Courts Review,* one of my personal concerns was finding good authors. Thus, it has been gratifying to see so many gifted, insightful people accept invitations to share their viewpoints about important issues facing the judiciary.

In this issue, Justice Ming W. Chin of the California Supreme Court discusses why science has become so important to the courts and why judges should educate themselves about scientific principles to stay abreast of cutting-edge cases. The article was taken from Justice Chin's convocation lecture at the Salk Institute in October, which itself is so comprehensive and enlightening that we have provided a link to it on the California Courts Web site.

Also in this issue is a guest column by Loyola Law School Professor Laurie Levenson. A frequent legal commentator, Professor Levenson argues for ethical standards for commentators.

From the State Bar, Geoff Robinson of the California Commission on Access to Justice highlights the lamentable problem that language poses for many ordinary litigants and the overwhelming need for more and better trained court interpreters.

Finally, Presiding Justice Manuel A. Ramirez of the Fourth Appellate District in Riverside offers a deeply personal and compelling account of the people who set him on his life's path.

We hope you find each article enlightening.

—Philip Carrizosa
Managing Editor

Letters

Thank you for the excellent article on self-help centers by Justice O'Leary [Fall 2005, "Lawyerless But Not Alone"]. She accurately describes the changing demographics of court users and the important role self-help centers play in helping folks gain access to the courts. In the Ventura County Self-Help Legal Access (SHLA) Center, we use an exit questionnaire for center users to evaluate our services and materials. We often receive comments from SHLA Center users indicating appreciation for the help they receive, such as:

"Great, thanks. It is good to see our tax dollars being used to assist our citizens. Keep it up."

"We came in with a feeling of helplessness and left confident."

"It is nice to get this option for help for those of us that do not know anything about the law."

"Thank you for being here. Possibly saved time, trouble and expense."

"Staff made a stressful situation much less stressful."

"I am very grateful and I thank God for having people like the staff that helped me with my problem, especially all the time that she was able to give to me and my grandchildren. I learned a lot from her, thanks again."

"Thank you very much for the help. Maybe for you it's a small thing, but for me it was a great help."

"For the average citizen the process of law can be a daunting task and expensive. This center is wonderful!"

These comments reaffirm the important role self-help centers play in promoting public trust and confidence in our courts.

Tina L. Rasnow
Coordinator, Ventura County Self-Help Legal Access Center

On a recent visit to the National Center for State Courts, one of their researchers showed me the Fall 2005 issue of your new magazine—a *very impressive* new resource for the California judicial branch. I have edited *Court Review*, the quarterly journal of the American Judges Association, since 1998 and am familiar with the work required to put together a publication that combines an attractive layout with useful content. I am amazed at the very high level at which your new magazine has entered the scene.

In just your first two issues you have had an article by the leading national researcher on public opinion and the courts, David Rottman, and the leading national expert on judicial selection systems, Roy Schotland. You have had practical overviews of self-help centers, Web access to the courts, court security, and disaster preparedness. And you have provided a valuable forum for commentary among those in the California courts community.

In 1922 Kansas newspaper editor William Allen White wrote, "When anything is going to happen in this country, it happens first in Kansas." At the time, his view of my home state was well taken: he noted abolition, prohibition, populism, blue-sky laws, and the adjudication of industrial disputes as among the movements that had begun in Kansas. In the 21st century, however, California stands

Continued on page 36

CAROL SONSTEIN PHOTOGRAPHY

Politics Aside

Chief Justice Ronald M. George made these remarks as part of an address before the Commonwealth Club in San Francisco on November 14, 2005.

Recent events vividly illustrate that ensuring the independence of judicial decision making is not a task to be taken lightly or for granted. Access to justice presupposes a court system that can fairly decide the claims and disputes brought before it. Judicial independence traditionally has meant that courts make determinations based upon applicable constitutional and statutory provisions and judicial precedent.

Members of the legislative and executive branches rightfully are expected to be responsive to current public preference, taking public opinion into account in deciding how to proceed. Judges, however, are supposed to avoid being influenced by such forces. This is not to say that judges do not bring their own personal histories and attitudes to the bench—but it is to say that in rendering their decisions, judges are expected to look at what the law requires and not at what outcome they might prefer.

The law is an inexact science. It is a creature of language and of all the ambiguity and uncertainty that language involves. Imperfect though it may be, the rule of law is the very essence of our society and something that distinguishes our democracy from so many other forms of government. It provides predictability, offers the promise of equality, and makes fairness not only possible but real.

Application of the rule of law does not—and must not—depend upon whom you know or how much money or power you have. It is an ideal to strive for, and an independent judiciary is at the heart of achieving it. Recent events and studies, however, suggest that this vision of the judicial function is not universally held or understood. Last July, for example, the Harris Poll organization undertook a poll on civics for the American Bar Association. The first point of the executive summary of the results states: "The majority of Americans could use a civics refresher course." This conclusion is not surprising when one considers the following findings. Only 55 percent of the respondents to the survey could correctly identify the three branches of government: executive, legislative, and judicial. More than one in five believed that the three branches of government are the Republicans, the Democrats, and the Independents.

Only 48 percent could correctly identify what is meant by the concept "separation of powers." Again, less than half could correctly identify the judiciary's role in the federal government—almost 30 percent describing the role of the judiciary as advising "the President and Congress about the legality of an action they intend to take in the future."

With this background, it is not surprising to find that the role of an independent judiciary, one that is free from inappropriate partisan and other pressures, often is not fully understood. And recent pronouncements by some in positions of power in the other branches of government—and even in the judiciary—in my view add to the confusion and the potential for undermining what is a crucial feature of our democratic system of government.

The actions taken by Congress during the Terri Schiavo tragedy provide one example. The courts—in Florida and up the chain in the federal system—refused to listen to calls from Congress, the executive branch, and others to overturn the Florida lower court ruling, made after a full hearing, upholding Ms. Schiavo's husband's power to make decisions concerning her future.

Robert Grey, Jr., then president of the American Bar Association, aptly described the role of the judges involved when he observed: They are "not killers as some have called them, nor are they activists bent on pushing an ideological agenda. They are simply dedicated public servants, called on to serve as impartial arbiters in a very difficult case. Instead of maligning them for applying existing law to the case at hand, even though it may not reflect the current will of Congress, we should praise them for dispensing evenhanded justice and upholding the independence of the judiciary even under the most difficult circumstances."

The circumstances surrounding the *Schiavo* case unfortunately have proved to be far from unusual. We expect criticism of judicial decisions—reasoned critiques are an important part of the discourse that makes our nation great.

Nevertheless, some recent events illustrate that the very concept of the impartial and objective judicial role that has provided the traditional framework for discussions and inquiries concerning our court system seems itself to be under fundamental attack. Those who disagree with a judicial decision at times will criticize the result in terms of political considerations rather than on the basis of the legal analysis contained in the court's opinion.

When Pennsylvanians went to the polls last Tuesday, among the matters on the ballot was the retention of two members of the state Supreme Court for 10-year terms. Four months earlier, legislators had enacted a pay raise for themselves, to the great dismay of many citizens of the state. However, no legislators were on the upcoming ballot to provide a target for disgruntled voters. Instead, some groups turned their ire toward the judges, arguing that they had benefited from the legislative vote, which granted them raises as well, although they themselves had not voted on the issue.

According to an article in the *New York Times,* leaders of the movement to repeal the pay raises characterized the judges as "dupes of the legislature." The *Times* stated that "rather than attacking the justices as too meddlesome in legislative affairs, people are complaining that they have not done enough." Some voters stated that they would vote "no" on the judges in order to "send a message." One of the Pennsylvania Supreme Court justices lost his seat and the other narrowly retained her position.

I do not know the details of these races, nor am I familiar with the record of the two justices. But in reading media reports, I was struck by the irony of judges being challenged because of action taken by the legislature—and because of the judges' asserted failure to intrude upon the legislative process.

This claim of judicial passivity stands in sharp contrast to more familiar claims of judicial activism. And the latter term often seems to be synonymous with subjective disagreement with a decision that a court has reached, no matter what the basis for the decision or the reasoning employed by the judges.

Another example: I am a member and past president of the Conference of Chief Justices, an organization comprised of the leaders of the state and territorial court systems of our nation. After our most recent meeting, I received a mailing from the Chief Justice of South Dakota, following up on a conversation we had on the subject. He sent me copies of a proposed amendment to the South Dakota Constitution and information about mass mailings sent to every business in the state, together with recent news articles about this measure. The proponents are using paid circulators to gain signatures to put their amendment on the ballot. I will not go into all the details of the proposal, but I will describe a few key provisions. It would remove judicial immunity—a longstanding principle that provides protection for judges from suit based upon their actions taken in the course and scope of their duties as a judge. It would create a "special Grand Jury," a 13-member group charged with reviewing civil lawsuits against judges to determine whether they are frivolous or harassing and with the power to indict judges for criminal conduct based upon their judicial decisions.

The proponents' declared purposes include ensuring that "judges will be held accountable for malfeasance of office for lenient treatment of criminals," as well as creating "a mechanism wherein the people can override 'judicial immunity' and punish wayward judges with civil suits and even criminal charges. After three adverse rulings—the equivalent of a 'Three Strikes' Law applicable to judges—incorrigible judges would be banned for life from holding any judicial position." Traditional appellate review to correct judicial errors apparently would recede to the background—if it survives at all.

According to the South Dakota Chief Justice, "these folks have plenty of money," and "they have obviously chosen South Dakota because they think it would be an inexpensive state to get the ball rolling." He advises that the movement apparently started here in California and describes itself as the Judicial Accountability Initiative Law, with the none-too-subtle acronym J.A.I.L.

This may seem a farfetched attempt at challenging judicial power, but rhetoric accusing judges of activist rampages against constitutional rights and thwarting the public will can be heard from many quarters. And the partisan politicization of the judiciary and of the role of the courts, whether in the debate on nominees to the United States Supreme Court or in local judicial election races, is a growing and deeply troubling trend.

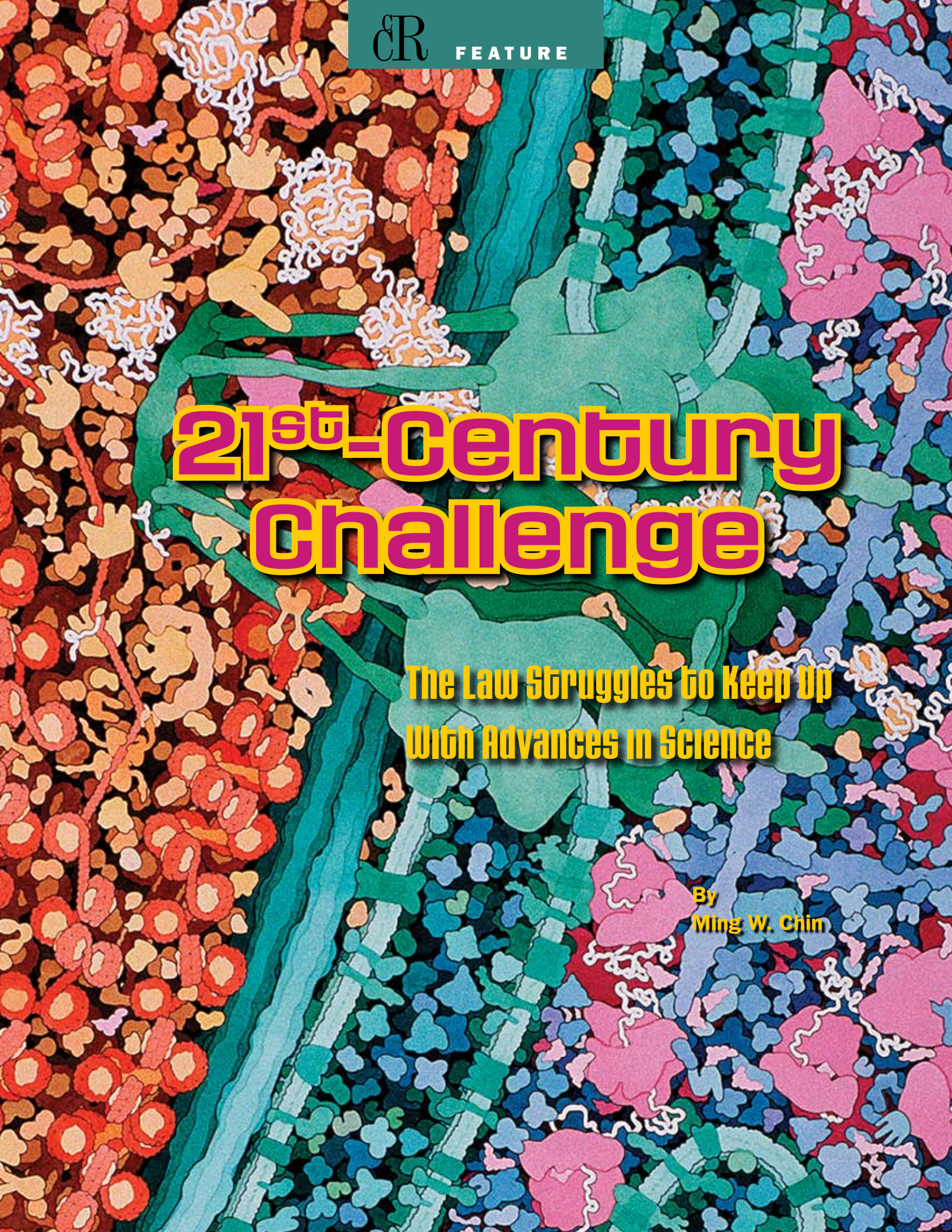
As I stated earlier, judges naturally bring their own histories and attitudes to the bench with them. Historically, however, the function of the judicial branch has been considered apolitical—in contrast to its political sister branches. In my view, the increasing focus on requiring declarations of partisan preferences and of beliefs severely undermines the concept of judicial decision making in the course of the application of existing law to the facts at hand. It contradicts the principle that judges, once on the bench, must look to the law, and not to the latest political trends, in making their decisions.

Modern lawmakers have not been reticent about attempting to overstep in that manner, whether it is in the hurried legislation enacted as part of the *Schiavo* saga or threats to strip federal courts of jurisdiction in certain areas because of disagreement with judicial decisions. Bills have been introduced to accomplish just that. For example, one measure now pending in Congress, the Streamlined Procedures Act, radically diminishes the use of the Great Writ, the writ of habeas corpus, in the federal courts to correct state court errors. Opponents include the Conference of Chief Justices, the Judicial Conference of the United States, several former attorneys general and federal judges (two of them former F.B.I. directors), scholars, and lawyers familiar with the subject. The measure is still, however, under active consideration.

As you can see, the concept of an independent judiciary, while constantly invoked, is not always consistently understood or applied. In my view, our commitment to improving access to justice for all will be meaningless unless we also are committed to preserving the kind of system of justice to which it is worth having access.

Both sides of this equation require public education and support. If justice is available only to certain segments of society, we are not fulfilling the vision of the founders and the mandates of our democratic system of government. We must demand an independent judicial branch untethered from partisan pressures. The judiciary must be capable of fulfilling its role in the process of checks and balances among the three branches of government as envisioned by the founders of our nation and our state. There are numerous examples in history of the dangers of a judicial branch beholden to partisan interests. Fascism, communism, and every form of totalitarianism have sought a weakened judiciary, subject to political pressure, as one of the first tools to be employed in bolstering the power of the government.

California's judicial system is the largest in the nation (and perhaps anywhere), with more than 1,600 judges and approximately 400 court commissioners—much larger than the federal court system nationwide. Each year, millions of matters are heard and disposed of in California's courts. We have been most fortunate to have individuals on our state bench striving to render justice fairly, objectively, and effectively. Your participation in the debate about the role of the judiciary will be important in maintaining our state's tradition of providing fair and accessible justice to all. I hope you will continue to focus on this crucial issue and contribute to the discussions concerning the proper role of the judiciary in our society.



21st-Century Challenge

The Law Struggles to Keep Up With Advances in Science

By
Ming W. Chin

For two centuries, science has been a major force in people's lives. In the 19th century, it was chemistry that yielded great revelations. In the 20th century, physics literally exploded before our eyes. Traditionally, the hard and exact sciences such as chemistry and physics have been the most highly regarded disciplines. However, in the 21st century, biology—and biogenetics in particular—will more than likely dominate advances in science. It is therefore critical to consider the legal and ethical aspects of bioscience and its worldwide impacts on the courts, the law, and society in the 21st century.

Only 50 years ago, Francis Crick and James Watson discovered DNA's double-helix structure. Now it seems that almost every day we hear about a new genetic breakthrough somewhere in the world. First, there was Dolly the sheep. Dolly was followed by Suzie the calf, Dot Com the piglet, Cc the kitten, and Promotea the horse. In 2003 scientists announced the birth of three genetically engineered miniature pig clones, a development hailed as a major step toward transplanting pig organs into humans. Another group of scientists met in 2002 at the New York Academy of Sciences to discuss proposed experiments for using stem cells to create human-mouse hybrids.

With the completion of the decade-long Human Genome Project, essentially all of the 3.1 billion biochemical "letters" of human DNA—the coded instructions for building and operating a fully functional human—have been deciphered. Armed with this genetic code, scientists can begin teasing out the secrets of human health and disease at the molecular level, which at the very least will revolutionize the diagnosis and treatment of everything from Alzheimer's disease and heart disease to cancer. Scientists can also manipulate plants and animals to increase food production and combat environmental hazards.

Modern genetic engineering eliminates the natural barrier between species that limits traditional cross-breeding techniques—that is, it enables the shifting of desirable genetic traits between two species that in nature could not combine their DNA to produce viable offspring. Thus, although modern genetic engineering is still in its infancy, its beneficial possibilities are unprecedented. It is no wonder, then, that each new genetic discovery is announced with tremendous excitement and anticipation.

Given the rapid pace of development, it is easy to be dazzled by the science itself and to overlook the ethical and pragmatic considerations. The legal and ethical issues—particularly for lawyers and judges—that have emerged in the wake of these astonishing advances are difficult and complex. Traditionally, the role of bioscience in American law was limited to matters of identity: DNA was used to establish paternity or compare blood samples. Today, however, the legal impacts of bioscience extend well beyond the

Pages 8, 10, and 13: Details from a series of three watercolors on display in the Center for Integrative Molecular Biosciences at the Scripps Research Institute in La Jolla. The paintings depict a macrophage engulfing a bacterium. Macrophages circulate through the blood, searching for bacterial infection. When they find bacteria, they engulf and digest them.

WATERCOLOR BY DAVID S. GOODSELL, THE SCRIPPS RESEARCH INSTITUTE

use of DNA evidence. Genetic testing is now used to help predict life expectancy or determine the likelihood of an individual's having a certain disease. Scientists have developed or are developing more than 900 genetic tests that screen for disorders such as Tay-Sachs, Lou Gehrig's, Huntington's, and Gaucher diseases; cystic fibrosis; inherited breast and ovarian cancers; colon cancer; sickle-cell anemia; muscular dystrophy; Li-Fraumeni syndrome; and multiple forms of Alzheimer's disease. And sophisticated brain testing techniques are beginning to shed light on the truth of what people say and the reasons for what they do.

Genetic and neurological tests will inevitably create tensions and raise new legal questions for society. On the one hand are the great benefits, such as more effective disease prevention and more effective treatment through early detection. On the other hand, advances in bioscience create enormous risks of privacy invasion, discrimination in employment, and denial of health or life insurance. They also give rise to the disturbing prospect of classifying individuals by their DNA or their brain functioning. We must carefully consider and balance these risks and benefits, or litigation involving bioscience will certainly overwhelm us.

As technology advances, science and law will become more deeply entwined. Technological strides have forced people to change and expand their ways of thinking about concepts such as privacy, discrimination, and life itself. To accommodate these changes, our legal system must be prepared. Unfortunately, in many ways, the legal system has already failed to keep pace.

On the medical front, advances in bioscience unquestionably offer enormous benefits. For the last 15 years, scientists and researchers have been trying to develop gene therapy techniques to treat a host of diseases and conditions. We now know that many diseases and abnormalities occur because a particular gene either does not work properly or is completely missing, and we end up with either too much or too little of certain proteins or enzymes. The idea in gene therapy is not merely to treat the symptoms of the disease but to fix the problem at its core by inserting a healthy gene into a person's cells.

To insert a healthy gene into a patient, researchers generally use a virus that has been altered so that it cannot reproduce or cause disease. The virus carries the healthy gene to the targeted cell and unloads it. Once inside the cell, the healthy gene can begin to function so that the body produces the right amounts of the necessary enzymes and proteins. Despite slow progress and numerous setbacks, many scientists still view gene therapy as a medical revolution that will eventually offer a cure—not just a treatment—for a broad range of ailments, including cancer and AIDS.

Two other areas of global importance are cloning and stem cell research:

- In reproductive cloning, a fetus is produced by implanting a cloned embryo into a woman's uterus.
- In therapeutic cloning and embryonic stem cell research, distinct types of tissues are grown from genetic material.

Embryonic stem cells are cells "whose job in the body is not yet determined."[1] They are the precursors to all adult cells in the body, including the cells that make up organs (such as the liver and pancreas). Because these stem cells have the ability to differentiate themselves, they are "good candidates for restoring tissues that have been damaged by injury or disease"; thus, the "goal of any stem cell therapy is to repair a damaged tissue that can't heal itself."[2] In experiments conducted with stem cells derived from adult human bone marrow, researchers have successfully demonstrated that "stem cells can be coaxed to differentiate into airway epithelial cells," which can be genetically altered, potentially to treat cystic fibrosis.[3] Stem cell research advocates believe that stem cells have the potential to treat a wide range of ailments and degenerative diseases, such as Parkinson's disease and spinal cord injuries. Research in this area has taken off since 1998, when scientists first isolated human embryonic stem cells.

In addition, since 2003, when researchers finished decoding human DNA, the search for better, faster, and more effective medications has begun in earnest. Increasingly, scientists armed with our genetic blueprint can identify the individual molecules that make us susceptible to a particular disease. With this information and some high-speed silicon-age machinery, they can build new molecules that home in on their targets like well-aimed arrows. In the new era of genomic medi-

WATERCOLOR BY DAVID S. GOODSELL, THE SCRIPPS RESEARCH INSTITUTE

cine, doctors will treat diseases such as cancer and diabetes before symptoms even begin, and will use medications that, with exquisite precision, boost or counteract the effects of individual proteins by attacking diseased cells while leaving healthy ones alone.

In addition, thanks to the emerging field of pharmocogenetics, patient-specific drugs will play a greater role in our health care, reducing the risks associated with medications. Currently, medications that were properly prescribed make millions of people seriously ill and kill over 100,000 people each year. But the era of one-size-fits-all medication is ending, as physicians are learning to read a patient's unique genetic code and tailor treatments accordingly. Researchers are now looking for the sites in the genetic sequence that differentiate one person from the next, which are called SNPs (single nucleotide polymorphisms), pronounced "snips." Decoding the estimated 10 million SNPs and determining how they affect individuals could lead to the design of drugs matching particular DNA profiles, which would avoid the complications and side effects of many traditional medicines and attack illness at the molecular level.

Already, researchers have identified the most prevalent cell receptors for certain cancers and are developing antibodies to block the normal, destructive activities of those cells. Drug companies are searching for new ways to use existing drugs on the basis of genomic studies. Treatments for AIDS, heart disease, depression, and even obesity may someday be available through pharmacogenetic research.

These advances pose new ethical and legal challenges. Several have already arisen in connection with gene therapy research. In 1999 Jesse Gelsinger, an 18-year-old volunteer for a university's gene therapy study—who was in relatively good health at the time, despite a metabolic condition—died from a reaction to a gene therapy treatment only four days after receiving it. Investigations into Gelsinger's death revealed some troubling information: the university failed to exclude him from the study, as it should have done based on his ammonia levels at the time of treatment; it failed to mention, as part of the informed consent process, that monkeys given a similar treatment had died; and it failed to report immediately that two patients had experienced serious side effects from the gene therapy. More broadly, the investigations revealed that gene therapy researchers in general were substantially underreporting adverse events associated with gene therapy trials, that some scientists were asking that problems not be made public, and that there may have been at least six deaths that were attributed to genetic treatments but went unreported.

Justice Chin pipetting, or loading, an agarose gel that is used to compare DNA.

A recent lawsuit in Massachusetts demonstrates another kind of disclosure issue associated with gene therapy. Roger Darke agreed to participate in an experimental gene therapy treatment for chronic heart disease, which required injection of a healthy gene directly into his heart. Less than 24 hours after undergoing the procedure, he died. A lawsuit was later filed alleging that the doctor performing the procedure and the hospital where it was performed were liable because they had failed to disclose a financial stake in the gene therapy treatment that gave them an incentive to encourage patients to submit to the treatment. The doctor and the hospital argued that this theory was legally invalid because the doctrine of informed consent requires only disclosure of medical information. The Superior Court of Massachusetts disagreed, finding that the informed consent doctrine is "broad enough" to require a doctor to disclose "that he has a financial interest in the treatment that he recommends."[4]

Of course, stem cell research also is very controversial, principally because most techniques for obtaining stem cells involve destroying an embryo. In addition, efforts to create patient-specific embryonic stem cells—stem cells that genetically match a patient's DNA—involve the cloning of human embryos. Thus, both cloning and stem cell research present society with difficult moral choices.

California's Legislature has weighed in on this debate through several laws and resolutions. One of those

Women of Color in the Courts

The emerging role of women of color as leaders and managers in the California courts is featured on a new Web site developed by the Judicial Council's Access and Fairness Advisory Committee. The site contains valuable information for women of color and other interested persons—both women and men.

Visitors to the site can

- Get updates on national issues, such as plans and proposals for regional and national conferences
- Read profiles of women of color who are serving as judges or court executive staff members
- Check a calendar of events, including International Association for Women of Color Day, to be celebrated on March 1, 2006
- Link to dozens of additional organizations, libraries, and other resources

Check out the new Web site at

www.courtinfo.ca.gov/programs/woc

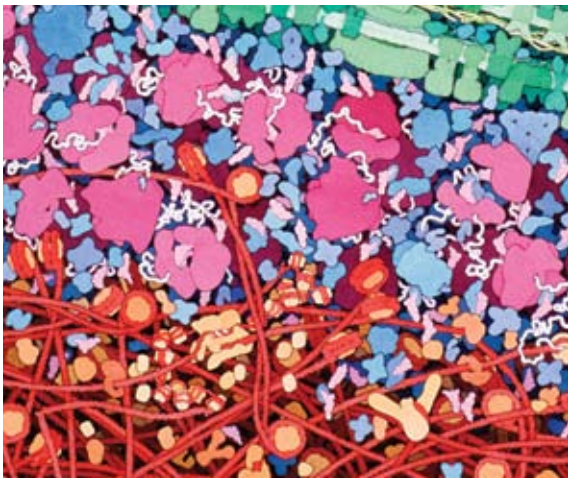
Your only limits are the ones you put on yourself. Don't set your goals too low. Associate with people who make you strive to be better.

— Judge Consuelo Callahan
U.S. Court of Appeals for the Ninth Circuit
(the first woman and first Hispanic appointed to the Superior Court of San Joaquin County)

laws indefinitely extends California's existing ban on human reproductive cloning.[5] Another law expressly declares that stem cell research "shall be permitted" in California and directs health care providers to present to people receiving fertility treatments "the option of storing any unused embryos, donating them to another individual, discarding the embryos, or donating the remaining embryos for research."[6] Under this law, donations of embryos for purposes of research require written consent, and the sale of embryos for research is strictly prohibited.[7]

In passing these laws, the California Legislature made an explicit policy declaration that stem cell research "offers immense promise for developing new medical therapies" for an "estimated 128 million Americans" who "suffer from the crippling economic and psychological burden of chronic, degenerative, and acute diseases."[8] At the same time, the Legislature expressly recognized that stem cell research raises profound ethical, medical, social, and legal concerns that must be carefully considered and balanced in formulating public policy. For this reason, the Legislature established a new panel—made up of representatives from the disciplines of medicine, human biology, cellular microbiology, biotechnology, law, bioethics, and religion—to study these concerns and advise the Legislature on how to pursue stem cell research "responsibly."[9] The Legislature also established a separate new committee—made up of independent bioethicists and representatives from medicine, religion, biotechnology, genetics, law, and the general public—to advise the Legislature and the Governor on human cloning.[10]

The California Legislature did not stop at the California border in trying to guide policy in this area. In 2002 it passed a resolution urging Congress and the President to "reject legislation that inappropriately impedes the progress of medical science by impeding stem cell and therapeutic cloning research, and denies Ameri-



WATERCOLOR BY DAVID S. GOODSELL, THE SCRIPPS RESEARCH INSTITUTE

cans legal access to effective medical therapies."[11]

In 2004 California voters weighed in on the debate by passing Proposition 71. That initiative created the California Institute for Regenerative Medicine to distribute almost $3 billion from the sale of bonds over the next 10 years for research into developing medical therapies that use stem cells. Some have said that Proposition 71 "could make [California] a world leader in one of the most promising, though controversial, fields of biology, perhaps touching off a new biomedical Gold Rush."[12] However, that rush has already been stifled by litigation. Three lawsuits have been filed—two in state court and one in federal court—challenging various aspects of the proposition, including its constitutionality. These lawsuits, which have effectively blocked the bonds from being issued, may substantially delay implementation of Proposition 71.

The controversy over Proposition 71 is a good example of the delicate and sometimes contentious relationship between science and the law. Scientists are primed and ready to develop cures based on stem cell research. However, their progress depends to some extent on how the courts resolve the legal issues related to Proposition 71.

Ultimately, there may be a nonjudicial, scientific light at the end of this tunnel. In August 2005 scientists at Harvard University announced a potential breakthrough that could eventually end the controversy over stem cell research: a technique for turning ordinary skin cells into patient-specific embryonic stem cells without either creating or destroying human embryos. However, in announcing their discovery, the Harvard researchers emphasized that several technical problems remained to be solved.

Of course, because these advances in genetic research use stem cells and human tissue, they pose a host of other new legal questions. As products of human genome research move into the marketplace, how does society address attempts to commercialize products developed from an individual's genetic information? How do the laws of intellectual property apply? Do donors have a right to know that their tissue and cells are being used? Do they have a privacy interest in this material? Do they have an ownership right in this material, or in any discovery or product derived from research on this material? In a famous case 15 years ago, the California Supreme Court held that an individual has no ownership right in his or her cells and tissue after their extraction, and has no right to know of postoperative research involving his or her cells or of their economic value unless the doctor has a direct interest in them that undermines his or her fiduciary duty to the patient.

New genetic technology also is forcing the medical community to address the tension between a physician's duty of confidentiality to the patient and duty of disclosure to others who may have a medical need to know genetic information about the patient. Should doctors inform a patient's relatives of genetic conditions that may affect them, even if the patient objects? What is the ethical answer to this question? What is the medical answer? What is the legal answer? Are the answers different?

This paper has touched on only a few of the issues raised by progress in bioscience—issues that our society must be prepared to confront. As promised, it has identified more questions and problems than answers and solutions. Scientists, lawyers, and judges will be in the forefront of society's attempt to grapple with these issues.

If history teaches us anything, it is that scientific progress is inevitable and unrelenting—and it will certainly overwhelm us if we are not prepared. It is my belief and my hope that if we begin to pose these questions, we will be much better prepared to find reasonable solutions to the complex problems that genetics certainly will bring to our courts. CR

Ming W. Chin is an associate justice of the California Supreme Court. This article is based on his convocation lecture in October 2005 at the California Science and the Law Conference, which was held at the Salk Institute for Biological Studies in La Jolla. The full text of the lecture is available at www.courtinfo.ca.gov/reference/documents/MingChinSpeech.pdf.

Notes

1. Genetic Science Learning Center at the University of Utah, "What Is a Stem Cell?" http://gslc.genetics.utah.edu/units/stemcells/whatissc.

2. Genetic Science Learning Center at the University of Utah, "What Is the Goal of Stem Cell Research?" http://gslc.genetics.utah.edu/units/stemcells/scresearch.

3. *Medical News Today*, "Combined Stem Cell–Gene Therapy Approach Potential Treatment for Cystic Fibrosis" (Dec. 21, 2004), http://www.medicalnewstoday.com/printerfriendlynews.php?newsid=18121.

4. *Darke v. Estate of Eisner* (June 3, 2004) 2004 WL 1325635 (No. 02-2194).

5. Health & Saf. Code, § 24185.

6. Health & Saf. Code, §§ 125300, 125315.

7. Health & Saf. Code, §§ 125300, 125315, 125320.

8. Stats. 2002, ch. 789, § 1(a), (c).

9. Sen. Conc. Res. No. 55, Stats. 2002 (2001–2002 Reg. Sess.), res. ch. 153.

10. Health & Saf. Code, § 24186.

11. Sen. Joint Res. No. 38, Stats. 2002 (2001–2002 Reg. Sess.), res. ch. 163.

12. C. T. Hall, "Proposition 71: State Voters Strongly Backing Cell Research," *San Francisco Chronicle* (Nov. 3, 2004).

Bridging the Language Barrier

The vast disparity between the number of litigants with limited English proficiency and the availability of qualified interpreters is restricting access to justice for a growing segment of California's population. The problem is beyond solution at the local level. Unless it's addressed as part of a comprehensive, statewide plan, it will continue to threaten the integrity of the judicial system and undermine the quality of justice in our courts.

By
Geoff L. Robinson

These stark warnings appear in a report by the California Commission on Access to Justice, a statewide body with representatives from the three branches of government; the State Bar; and business, labor, and community groups. The commission's report, *Language Barriers to Justice in California*, documents the acute need for language assistance in our courts.

Almost 7 million Californians have limited English proficiency. Without significant language assistance, they cannot comprehend court forms and documents, communicate with court staff and judges, or understand or participate in court proceedings. Those unable to pay for a lawyer face the daunting task of attempting to present their cases without the ability to communicate effectively with the court.

The report also highlights the unenviable position in which courts find themselves. The shortage of qualified interpreters and the absence of funding for language assistance make it impossible to provide adequate interpreting in the vast majority of civil proceedings. As a result, courts often must rely on untrained interpreters—in some cases, even children. This can lead to erroneous translation and threaten the court's ability to ensure justice. Moreover, most forms and pleadings provided by California courts—critical to many court proceedings—are provided only in English.

How can this be the case? The surprising reality is that there is no legal right to an interpreter in most civil cases in California,[1] and no right to

court documents in languages other than English. As the report illustrates, even if such rights existed, the current numbers of qualified interpreters could not meet even a small fraction of the need, and no funding is available for additional interpreters or translators of forms. The problem is only getting worse: despite extensive efforts by the courts to recruit and train interpreters, the number and availability of skilled interpreters have actually *declined* over the past decade. The largest single decrease has been in Spanish-language interpreters.

Origins of a Growing Need

The current predicament is partly a function of changing demographics. More than a quarter of Californians are foreign-born, and almost 7 million speak English less than "very well," the minimum realistic threshold for full participation in a judicial proceeding. Almost 5 percent, or 1.3 million, speak no English at all. California is also the nation's most linguistically diverse state, with more than 220 languages spoken within its borders.

These numbers are growing. Immigration to California from abroad is increasing, particularly among groups unlikely to speak English before they arrive. Annually, more than 200,000 people immigrate to California from other countries (principally those in Latin America and Asia). These trends are mirrored in sharp increases in "interpreter day usage"—a calculation of the number of days per year that interpreters of a given language are used in courts. For some languages (such as several Asian languages), day usage increased 35 to 135 percent over a recent five-year period.[2]

Despite the marked rise in demand for their services, the availability of qualified court interpreters—those who are either certified or registered[3]—has declined precipitously in the past several years. Between 1995 and 2002, the total number of court interpreters in California certified as passing a state exam that tests interpreting skills and and as meeting ongoing professional and educational requirements declined by almost 37 percent (from 1,675 to 1,108). The numbers of certified interpreters in California's key languages—Spanish, Cantonese, Vietnamese, and Tagalog—also are falling. Between 1995 and 2000, the number of interpreters certified in Spanish dropped by 36 percent; similar trends are seen in other key languages. Although, when statistics were first recorded, the initial numbers of certified interpreters may have been inflated through the inclusion of some who no longer actively worked as court interpreters, the decreases are still an alarming development.

JASON DOIY

A court interpreter translates for a defendant during a criminal proceeding.

The need for language assistance can be met only by fully qualified, neutral interpreters; anything short of that undermines the quality of justice in our courts. Court interpreting is a complex and demanding occupation, requiring considerable training and skill. Mastery of English and of the foreign language is only the starting point. The interpreter must instantly comprehend what he or she hears in one language, then accurately and idiomatically render it in the other with no change in meaning. Variations of dialect and jargon, nuances of connotations, cultural factors, and the use of specialized legal terminology all render the task infinitely more challenging than mere literal translation of words.

The use of unqualified interpreters not only masks the problem but can cause genuine injustice when, through no fault of the court or the interpreter, critical information is excluded or distorted. Fraud is also a real possibility when individuals with a potential stake in the outcome are used to interpret. Unless a judge happens to be fluent in the non-English language, he or she has no way of knowing whether the proceedings are being accurately and comprehensively interpreted.

Consequences of a Shortage of Interpreters

English proficiency is a prerequisite for participation in the legal system at virtually every stage. The commission's report illustrates the wide range of matters in which inadequate language assistance for non-English speakers impairs the operation of this system.

The report also underscores the human consequences:

- A child's grandparents need to enroll her in school and obtain health care for her but cannot do so without a court order. They go to court several times but are unable to explain what they need. After numerous delays—including hearings continued for lack of an interpreter—they learn they are pursuing the wrong order. Because the child's medical condition is worsening and the school year is approaching, they decide to give her up to foster care.
- A woman's husband is physically and mentally abusive. He locks her in the house and prohibits her from working or using the phone. At the urging of her friend, she finally goes to court to seek relief. During the proceedings, because of her limited English skill and lack of assertiveness, she is unable to convey her plight. Instead, her husband speaks for both of them, pretending to obtain her consent on matters without even discussing them with her.
- A mother wants to take her daughter to China to meet the child's gravely ill grandmother, but cannot get her a passport because the child's name is misspelled on her birth certificate. The mother is unable to explain to court clerks what she needs and is referred to the family law division for a custody order. After months of delay, she learns she has obtained the wrong order. She cannot wait any longer, and goes to visit her mother without her daughter. Her mother dies soon after, never having met her granddaughter.

The obstacles to access created by the unavailability of qualified interpreters also pose a fundamental threat to the institutional integrity of the court. The complexities involved in asserting legal claims or defenses are magnified exponentially for those not proficient in English. Many simply forgo their rights rather than attempt to overcome this daunting challenge. For this burgeoning segment of the population, the protection of the courts is not fully available. Affirmative legal rights—constitutional, statutory, contractual, and common-law—go unenforced, and discrimination and violations of law in areas such as housing, employment and working conditions, education, and consumer and lending practices go unredressed. Exclusion of a large sector of society from participation in an institution that shapes and reflects our values threatens the moral and normative authority of the courts.

The quality of judicial outcomes also is threatened when one party lacks the ability to fully understand and participate in the proceedings. Our adversarial system presupposes that just results follow from an equal contest of opposing interests before a neutral arbiter. That goal is unattainable if one party is unable to fully understand or communicate at any stage of the proceedings. Allowing the process to proceed when one party is incapable of full participation impairs the quality of both the process and its results.

Judges, above all, recognize and acknowledge these problems. A recent report to the Legislature regarding a pilot program to provide interpreters in certain family law proceedings found consensus among judges that interpreting of family and domestic violence proceedings was a "fundamental factor contributing to the quality of justice in their courts." As one judge put it: "Having interpreters equates to having a bailiff or a record of the proceedings; it is just that basic. The service needs to be provided."[4]

The Search for Solutions

Why does this problem persist? Certainly not because of lack of effort by the courts, which bear the brunt of the problem every day.[5] Nor is it due to lack of popular support. Polls show that a very high percentage of Californians believe interpreters should be made available to assist non-English speakers in all court proceedings. More than three-quarters believe interpreters should be provided free of charge to low-income non-English speakers.[6]

As the commission's report stresses, California cannot allow this situation to continue unaddressed. The report recommends specific changes to remedy the problem. Foremost among them is adoption of a comprehensive language access policy for courts—a policy that articulates a right to equal access to the courts without regard to language proficiency.

This statement of policy must be accompanied by a multifaceted strategy aimed at providing such access. The strategy should include:

- Adequate funding to provide qualified interpreting and translation services
- Availability of standard court documents in key languages
- Training and resources to assist court staff, administrators, and judges in identifying and addressing language issues (including training in cultural sensitivity)

The commission's report also recommends a thorough reevaluation of the current system of training and certifying interpreters. While rigorous standards for interpreter certification and registration are commendable and should be supported, the current system is not providing adequate resources. Existing certification exams should be analyzed to determine whether they pose unnecessary barriers to passing. Different models of training and interim registration and certification should be evaluated and considered. Finally, adequate funding should be sought so that compensation can be raised to a level that encourages people to pursue careers in court interpreting. The goal must be to have the highest quality of interpreting possible in every situation.

There are, unfortunately, no simple or short-term fixes. Even significant increases in funding coupled with extensive outreach, training, and mentoring for interpreters will not increase the number of qualified interpreters overnight. The problem demands a sustained, broad-spectrum approach based on a partnership of the Legislature, the executive branch, and the judiciary that includes statutory changes, appropriation of funds, and implementation of programs designed to attract and train individuals with the skills needed to become certified interpreters.

Given the overwhelming popular support for language assistance in our courts, the political will should be there. The courts should no longer be required to face this problem alone.

Geoff L. Robinson is a partner at Bingham McCutchen and a co-chair of the California Commission on Access to Justice.

Improving Language Access—What's Being Done

One of the most significant resources for non-English speakers is the translated pages of the comprehensive California Courts Online Self-Help Center at *www.sucorte.ca.gov.* All Judicial Council forms and instructions related to domestic violence are available in Spanish, Korean, Chinese, and Vietnamese. Six instructional sheets for juvenile cases are available in Spanish, Hmong, Vietnamese, Chinese, Russian, and Korean. Many commonly used forms in family law and small claims have been translated into Spanish. The translated Judicial Council forms, as well as instructional materials and brochures developed by local courts in a variety of languages, are available on the California Courts Web site at *www.courtinfo.ca.gov/programs/equalaccess/trans.htm.*

In addition, the site has videos in both Spanish and English on these topics:

- Domestic violence restraining orders for petitioners and respondents
- Going to family law court
- Preparing for custody mediation
- Preparing for a landlord/tenant hearing

Many court-based self-help programs have bilingual staff to assist litigants. The Superior Courts of Ventura, San Francisco, and Fresno Counties have programs designed specifically to assist non-English speakers.

A subcommittee of the state's Court Interpreters Advisory Panel has identified strategies for addressing the Judicial Council's charge to improve public trust and confidence by expanding services to limited-English-speaking court users. The strategies are:

- Review and develop certification test standards and procedures; address barriers that prevent interpreters from becoming certified and registered
- Establish a permanent interpreter recruitment campaign
- Recommend a policy on prioritizing court interpreter services for additional case types
- Expand on existing collaborations with educational institutions by identifying available opportunities and options
- Study the feasibility of telephonic interpreting through the modernization of audio equipment and the use of videoconferencing equipment

Notes

1. California statutes provide parties with the right to an interpreter only in a small subset of civil actions or proceedings, including those involving small claims, domestic violence, parental rights, dissolution of marriage or legal separations involving a protective order, and court-related medical examinations. (Code Civ. Proc., § 116.550; Cal. Rules of Court, rule 985; Evid. Code, § 755; Gov. Code, § 68092(b).)

2. Judicial Council of California, *2000 Language Need and Interpreter Use Study* (September 20, 2000).

3. In California interpreters can take written and oral exams to become *certified* for court interpreting in any of 11 languages: Arabic, Armenian, Cantonese, Japanese, Korean, Mandarin, Portuguese, Russian, Spanish, Tagalog, and Vietnamese. Interpreters of other languages, as well as interpreters who do not pass the oral certification exam, can *register* to interpret in court once they have passed a written exam. For the 11 designated languages, certified interpreters are given priority.

4. Judicial Council of California, Administrative Office of the Courts, *Family Law Information Centers: An Evaluation of Three Pilot Programs (Report to the Legislature)* (March 2003), p. 2.

5. The court system, through the Judicial Council and Administrative Office of the Courts, has pursued numerous initiatives to develop and recruit qualified interpreters. These initiatives have included pilot programs, workshops, outreach and training, active recruitment efforts, collaboration with colleges and universities, statewide organizational assistance for interpreter coordinators, and sustained efforts to increase funding for interpreter day pay. However, there is only so much that the court system can do in an era of shrinking budgets and other pressing needs, such as the shortage of judges and the poor (and even unsafe) condition of many court facilities.

6. The estimate is 85 percent. Judicial Council of California, Advisory Committee on Racial and Ethnic Bias in the Courts, *Fairness in the California State Courts: A Survey of the Public, Attorneys, and Court Personnel* (1994), pp. 4–79.

The Making of an Appellate Justice

Milestones Along the Route From L.A.'s Barrio to the Court of Appeal

By Manuel A. Ramirez

In 1954 a six-year-old boy played in the shade under the Hollywood Freeway overpass, in the area of Temple and Figueroa Streets. His home, just a block away, sheltered his family.

The boy's father was born to a Mexican immigrant in El Paso. While stationed in Italy during World War II, he met the woman who would become his war bride and then the mother of the little boy.

The boy's parents often took him on a familiar walk to the neighborhood store on the corner of Figueroa and Temple Streets. The intersection was a stone's throw from Angels Flight and the Grand Central Market, where his family shopped for groceries. He anticipated the wonderful sights and smells of the small store, including the large dill pickles in a jar and the odd-looking pigs' feet on display. In a rare contemplative moment, while savoring a pickle wrapped in waxed paper, he looked south toward pre-redevelopment Bunker Hill Heights, where his paternal grandmother lived in a Victorian house.

That little Angeleno from downtown Los Angeles, son of an immigrant mother who married the son of an immigrant, grew up to become the Honorable Manuel A. Ramirez, the first and only Hispanic presiding justice of a California Court of Appeal.

I and many leaders of this country have not arrived at the places of privilege we currently occupy because of our families' positions, wealth, or education. I would imagine that many prominent Americans would not be where they are today without the help of people they encountered when they were starting out in life. I know I would not be the presiding justice of a Court of Appeal today were it not for five special people who came into my life at just the right times.

These five people were typical Americans, but not in the sense of being ordinary. The manner

JUSTICE MANUEL A. RAMIREZ

COURTESY DACE TAUBE, REGIONAL HISTORY COLLECTION, UNIVERSITY OF SOUTHERN CALIFORNIA

Angels Flight provided a means for pedestrians to avoid a steep climb in the Bunker Hill area of downtown Los Angeles.

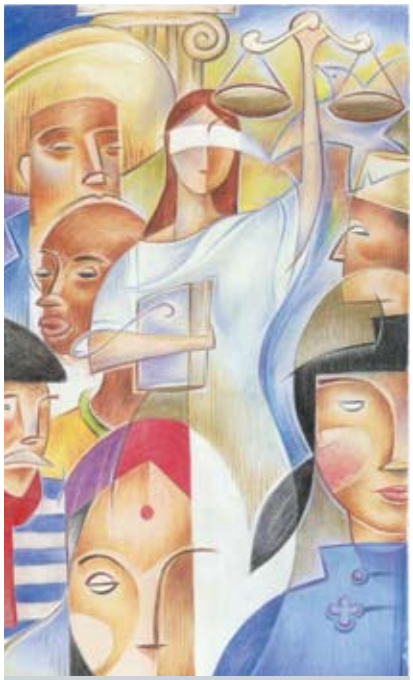
in which they exemplified the best in the American character made them truly great Americans. I tell you my story not because it is unique, but because it is such a common and typical American story. My story shows what often happens in America, because this is such a great and generous country with such a great and generous people, like these five friends who helped me.

My story is one of contrasts. My family lacked material wealth but abounded in the spiritual wealth of values, character, and encouragement. My family never submitted to poverty, and I was the beneficiary, in abundance, of my mother's and father's character-shaping values and encouragement. I absorbed the same kind of wealth from a wide range of people outside my family, including friends and neighbors who mentored and supported me. This love and support far exceeded in value any advantages that money could provide. I count myself rich in family, friends, and country, and I do not envy those rich in money.

I was born on January 11, 1948, and lived in Los Angeles until 1955, when, as a result of the Bunker Hill Redevelopment Project, my family relocated to the San Gabriel Valley, in the area known then as South San Gabriel and now as the City of Rosemead. There were 11 in my family: me, my 4 sisters and 3 brothers, a mother, a father, and a grandmother—*abuelita* in Spanish. We lived in a three-bedroom, one-bathroom house.

During the 1958–1960 recession my father lost his job, and I can't begin to describe how economically difficult that time was for my family. My father, like many, was a hard-working and productive man, and he derived a great sense of pride, self-esteem, and self-worth from his work. Now, however, he was left without a job, and he questioned his worth because of that. He was a husband and father who desperately wanted to work and to support his family.

It was at this time, when I was about 10 or 11 years old, that I began working to help my family, because I was the oldest son in a very traditional Mexican-American family. Often I would wake at 5 in the morning and leave the house with my mother to help her clean a dental office, a



pawn shop, and other business offices on Garvey Avenue. While my mother was cleaning, I would sweep the storefronts; each owner would pay $4 or $5 a month for that service. My mother, on the other hand, earned about $35 a month for each office she cleaned. My father, of course, worked whatever odd jobs he could find.

The first of the five people I want to tell you about is Ms. Florence Gottschalk. I met her in a common way: she was my first-grade teacher. Up until that time my family had spoken Spanish, Italian, and some English at home. The Spanish came from my abuelita, who spoke nothing else, and from my father; the Italian, of course, came from my mother. During the war she lived in Naples, which was liberated after the U.S. Army (including my father) invaded Italy from North Africa. Mom and Dad were married right there in Naples, and my father arranged for my mom to go to California and live with his mother while he finished his military duty. I was proficient in Spanish, less so in Italian, and very poor in English.

Ms. Gottschalk noticed my lack of English skills and asked my father to meet with her. She told him that, if he wanted his children to succeed in this country, "they must learn English." From that point forward, my father decided, our household would speak English only. While, sadly, I lost the ability to speak Spanish and Italian over time, this emphasis on English achieved the intended result—it made me a good English speaker, which became the foundation for my educational and professional success.

I met the second of my five people in an unexpected way. One of the things I used to do to make a little money when I was 10 or 11 was to collect glass soda pop bottles for the local businesses. Those of us old enough to remember know how that worked: bring a 7-Up, Pepsi-Cola, or Nehi bottle back to the store and get 1 or 2 cents' credit. I would load the pop bottles into a red wagon—which I also used for my Sunday delivery of the *Los Angeles Times*—and take them to Joe's Liquor on the corner of Garvey and Delta Avenues, a store owned by Joe and Beverly Schwartz. Joe or Beverly would count the bottles and pay me accordingly. One day I brought Joe an unusually large load of bottles. He called me over—"Hey, kid" (he always referred to me as "kid")—and proceeded to tell me how he had to sort the bottles by brand and how it took him more time than he had.

He asked me how much money per hour I made collecting the bottles. I didn't really know, but Joe said he bet I made a lot less than 50 or 75 cents an hour, which is what he would be willing to pay me to work a few hours a day sorting bottles and doing other odd jobs around the store. I was thrilled!

That began a wonderful relationship, which included the frequent benefit of Beverly Schwartz's delicious fruitcake and wonderful coffee—in my opinion, better than the local bakery's (or Starbucks', for that matter).

The Schwartzes gave me more than a job and a second home. Joe gave me a lesson in how to think about life: Why waste your time looking for bottles you may or may not find when you could earn more money working at a steady job with an hourly wage? What a great lesson for a 12-year-old to learn! And that was not the only way he taught me that lesson. He told me about his brother, a mechanical engineer who had graduated from the University of Michigan, and the need to get a higher education. "Now my brother, he's the smart one," Joe would say. "Oh, yeah, I may be a businessman and own my own business, but I work from 6 in the morning until 11 o'clock at night! My brother, on the other hand, got an education, doesn't work half the hours I work, and earns better money doing it." I took that lesson to heart; it was my first exposure to the value of getting a college education.

Later on, when I was working five or six hours a day for him at a $1.25 an hour, Joe said it was time I moved on. He told me I needed to get myself a union job at the local market, Beach's,

down the street on Garvey Avenue. "You can earn $1.45 an hour as a box boy and have a chance to better yourself." He gave that advice even though I know I helped him a lot in running the store, and he would be losing that help if I left. Both the liquor store and the market are still in operation; the liquor store is now called Roy's.

On Joe Schwartz's advice, I did go to Beach's and ended up working various shifts at night and on weekends. I worked throughout high school, even though I also played sports. After school and two or three hours of practice, I would work until late at night and then go home for a couple hours of homework and some sleep. Needless to say, even though I applied myself, my grades were not exemplary. When it came time to apply to four-year colleges, I found my academic record was not good enough. So I enrolled at East Los Angeles Junior College as a full-time student, taking classes at night while still working almost full-time shifts at the grocery store. As I recall, I was the first ELAJC night student to graduate in three semesters.

I married my high school sweetheart in 1969 and continued my education. Working in the grocery business put me through college and law school and supported my budding family until I got my first job as a lawyer.

At Beach's Market I met the third person who profoundly affected my life: Roger Gunson. He stocked shelves on the 1–to–10 p.m. shift Thursday through Sunday, and I usually worked the 7 a.m.–to–3 p.m. shift. He was attending UCLA Law School, which did not mean much to me at the time. What did mean a lot to me was the difficulty I was having with my introductory chemistry class. By the end of the first two weeks of the class, I knew I was in trouble and confronted the prospect of falling further behind every week and potentially failing the class. I was often taking 18 units and working 32 hours per week; it was hard to keep up on the classes I was *good* at, never mind chemistry!

I mentioned the problem I was having with that class to Roger, who had graduated from Claremont Men's College, as it was known then. As I talked with him about my difficulties, he asked if I would be willing to spend some time with him so that he could tutor me. Despite his demanding schedule of work and law school, he sacrificed precious time with his wife, Maureen, and his own young family to hold a series of tutorial sessions with me on Sunday evenings at his mother's home in nearby El Monte.

Within a few weeks I had gained the knowledge I had been missing and didn't need tutoring any more, but Roger still checked with me now and then to see how I was doing. Roger went on to graduate from UCLA Law School and become a Los Angeles County deputy district attorney. I went on to complete my chemistry course with a very respectable B+ grade. Roger recently retired after 35 years in the district attorney's office.

I met my fourth person in an odd way, and he led me to my fifth. Having lost time because of my mediocre performance in high school, I was determined to leap forward as quickly as possible. However, there was a limit to the number of units that ELAJC would allow me to take at one time. In order to take more units so I could graduate in three (instead of the usual four) semesters, I registered for classes under two names: Manuel A. Ramirez and M. Angelo Ramirez. When I petitioned for graduation, the administration was not happy with my stratagem and referred me to Bernard Butcher, Dean of Discipline. After scolding me severely for my circumvention of the rules, Dean Butcher rose up from his chair and came around the desk toward me. He was a huge man, and I thought for a moment that he was so upset with me he might do me bodily harm. Instead, he smiled and gave me the warmest congratulations I had ever received. Needless to say, I was pleased—and relieved!

He then did something that set me on the path to my fifth inspirational person. He called his friend, the Honorable John Arguelles, then a superior court judge in Pomona, and told him that he had someone in his office the judge ought to meet. I did meet with Judge Arguelles, and he told me to contact him after I had completed college to talk about law as a possible career.

Two years later I finished my undergraduate education at Whittier College, and I called Judge Arguelles. He invited me to lunch at the Pomona Courthouse, where he introduced me to several colleagues. These included Judges Carlos Teran and Charles A. Vogel, recently appointed to the superior court. Inspired by that meeting, I decided to go to law school, and Judge Arguelles and his colleagues all wrote letters of recommendation, which I'm sure played a significant role in my being accepted at Loyola Law School.

When I graduated and started with the Orange County district attorney, Judge Arguelles became my mentor, advising me on my various assignments. Although I do not know for sure that he was the reason for my appointment to the municipal court bench by Governor George Deukmejian in 1983, it wouldn't surprise me; I know the two were, and still are, close.

So these five people—an elementary school teacher, a liquor store owner, a coworker, a junior college dean, and a superior court judge (later a Supreme Court justice)—each brought something special into my life to make me who I am today. They exemplify the American people's generosity, which is the reason that I, a humble son of humble citizens born in humble surroundings, could join a gathering of distinguished California jurists for the Court of Appeal centennial celebration that was held last April in a grand hotel within walking distance of the neighborhood of my youth. As I have the privilege of reciting, I am forever grateful to them. CR

Manuel A. Ramirez is the presiding justice of the Court of Appeal, Fourth Appellate District, Division Two, in Riverside.

What Do They Expect?

New Findings Confirm the Precepts of Procedural Fairness

By
Tom R. Tyler

What do people want from the courts? One way to answer this question is to explore the factors that shape the public's satisfaction and dissatisfaction with the court system.

This exploration could involve collecting people's general views on the ways courts handle problems or their reactions to their personal experiences with the courts. In either case, the question is: What leads people to feel confidence in the courts and to be satisfied with the way the courts handle the problems that come before them?

Research conducted in California and throughout the United States provides a clear and consistent answer to this question. People react, more than anything else, to whether or not they believe the courts are using *just procedures* in dealing with the conflicts that come before them. In other words, people are very sensitive to how public officials exercise their legal authority.

The most direct evidence of this sensitivity to procedural justice comes from interviews with people who have been personally involved with the courts.[1] People go to court to deal with a wide variety of disputes and problems. And they can be in court because they have come for help or because they need to respond to a complaint against them by someone else. Irrespective of why they are in court, people's reactions are most strongly shaped by whether they think they have received a fair "day in court," in the sense that their concerns have been addressed through a just process.

The idea that people might be more interested in how their cases are handled than in whether or not they win often strikes people as counterintuitive and wrong-headed. Yet it is the consistent finding of numerous studies conducted over the last several decades, including a recent study of the California state courts.[2] These studies show that people use ethical criteria to evaluate their experiences, and that they particularly focus on their views about appropriate ways for authorities to act when deciding how to resolve legal problems.

What makes a process fair in the eyes of the members of the public? Four factors dominate evaluations of procedural justice.

1. **Voice.** People want to have an opportunity to state their case to legal authorities. They are interested in having a forum in which they can tell their story; that is, they want to have a voice.
2. **Authorities' neutrality.** People react to evidence that the authorities with whom they are dealing are neutral—that is, make decisions based on consistently applied

legal principles and the facts of the case, not personal opinions and biases. Transparency or openness about how decisions are being made facilitates the belief that decision-making procedures are neutral.

3. Respectful treatment. People are sensitive to whether they are treated with dignity and politeness and whether their rights as citizens are respected.

4. Trust in authorities. People focus on clues about the intentions and character of the legal authorities with whom they are dealing. People react favorably to the judgment that the authorities are benevolent and caring and are sincerely trying to do what is best for individuals. Authorities communicate this type of concern when they listen to people's accounts and explain or justify their actions in ways that show an awareness of and concern about people's needs and issues.

When people are dealing with a particular legal authority, they focus on whether that person seems trustworthy and caring. They try to discern whether that person is concerned about their situation and is sincerely trying to do "what is right" in the situation. Trust, in other words, is a key issue in personal experiences with judges and other court personnel.

If people are not personally involved in a court case but are rating their trust and confidence in the courts generally, they focus more on issues of neutrality—that is, whether they believe judges are honest, make their decisions based on the facts, and consistently apply the principles of law to everyone. In either situation, however, it is process-based evaluations that are central to people's reactions to the courts.

Of course, this concern about the fairness of procedures does not mean that people do not care about the outcomes of their cases. They do. In particular, people care whether their outcomes are fair. However, studies consistently find that procedural judgments are more central to people's willingness to accept the outcomes of court cases than are outcome judgments. And this is true of both cases handled through formal trials and cases handled through less formal processes such as mediation.

What is striking about procedural justice judgments is that they shape the reactions of those who are on the losing side. If a party who receives an unfavorable outcome feels that the outcome was arrived at in a fair way, he or she is more likely to accept it. And long-term studies show that people continue to adhere to fairly arrived at decisions over time, suggesting that their acceptance of those decisions is genuine and not simply the result of fear or coercion. People who believe they have experienced procedural justice in court rate the court system and court personnel more favorably than people who don't have that belief.

These same procedural justice judgments are a key factor in the public's evaluations of the courts as institutions. The findings of the recent California study of the courts are typical of studies of trust and confidence in the courts, including a national survey of public trust and confidence in state courts, reported on in 2001.[3] The national study also showed that the public's evaluations of state courts are based on evaluations of the fairness of court procedures.

In particular, people were sensitive to the issues of whether the courts protected their rights and whether judges seemed honest. While those interviews also explored whether the courts treated the members of different groups equally and other structural issues, the procedural justice judgments were the most important factor shaping trust and confidence in the courts.

The results of both studies of personal experiences with the courts and studies involving general evaluations of the courts are strikingly consistent, irrespective of the ethnicity or race of the people involved or of their economic or social status. Procedural justice concerns are central to people's reactions to the court, no matter who the people are. Since ethnicity and economic status often shape people's views about what constitutes a fair outcome, it is especially striking that there is a general willingness to defer to fair procedures.

There is also general agreement about what constitutes a fair procedure. The four elements already outlined—voice, authorities' neutrality, respectful treatment, and trust in authorities—generally shape reactions to the courts. Not only using just procedures but explaining them is therefore an ideal way to bridge differences in backgrounds among those who are disputing in court.

These findings have implications for the administration of the courts. In particular, they suggest the value of building public trust and confidence by designing court procedures so that court users have positive experiences. Based on the 2005 California survey, efforts in this state should be concentrated on traffic, family, and juvenile courts, where dissatisfaction is currently high. And they should be directed at all members of the community who deal with the legal system, since the survey indicates that jury duty and serving as a witness also educate people about the legal system.

What type of redesign is needed—aimed at which types of court customers? The specifics will vary depending on the particular context, but here are some ideas.

How to Behave Toward Self-Represented Litigants, Jurors, and Witnesses

- Understanding how things work is strongly associated with satisfaction. Explain in practical terms how the court works, what they should do, and what is going to happen. Ideally, have someone available to answer questions and explain court procedures.
- It would also help to distribute a brochure explaining what people need to do, where they need to go, and when.
- Give people a letter that tells them what their rights are and provides a contact person (with phone number and e-mail address) to whom they can complain if they have problems or concerns. The letter should come from the highest authority in a particular court. Remember that people react to whether they feel treated with politeness, dignity, and respect. This message needs to be made central to education efforts directed at court personnel. People want to have a mechanism through which to complain, even though few will actually use it.
- Acknowledge people's rights and status as citizens. People value knowing their rights and having them acknowledged by the court.

How to Behave Toward Parties

- Give parties an opportunity to explain the concerns that brought them to court. Studies suggest that people are much more willing to accept third-party decisions resolving their disputes if they feel they have had a chance to tell their stories.
- When presenting a decision, explain it by reference to rules and legal principles, demonstrating that the decision is not based on personal prejudice or bias. People are more accepting of a decision if they can understand the principle of law or justice behind it. It is important to show the losing party that the decision was made by applying rules and considering facts.
- Communicate evidence that people's concerns were listened to and taken seriously. If possible, acknowledge valid issues that were raised. People focus primarily upon whether the person in authority considers the needs and perspectives they have expressed, especially when the decision goes against them. Making a decision understandable and making clear that, in the process of deciding, the person's side of the story was heard—even if it was not accepted—communicates respect for the person.

How to Behave Toward the General Public

People respond to statements about the courts issued by court leaders, as long as they think those leaders are sincere and honest. The messages should:

- Acknowledge people's rights to use the courts. Knowing that there are places to go if you have problems is an important part of living in a democracy. Leaders of the courts need to find ways to send this message to the public.
- Emphasize the role of the courts in interpreting and applying the law. Basing decisions on the neutral application of principles to the facts of particular cases is central to the legitimacy of the courts.
- Orient public messages toward the role of the courts in helping people deal with their problems. The courts are a place people can go to for justice. Judges care about the concerns of citizens and listen to their grievances in court. They then apply the law in an effort to solve the problems they face.

Whatever you do, remember the four key procedural justice points: people want an opportunity to tell their stories to an authority who listens; they value being treated with respect; they are more likely to accept decisions when the authority's neutrality and the role of facts are emphasized; and they focus on clues that they can trust the character and sincerity of those in authority. CR

Tom R. Tyler, Ph.D., is a professor of psychology and law at New York University. His research and published works focus on the psychology of procedural justice.

Notes

1. T. R. Tyler and Y. J. Huo, *Trust in the Law* (New York: Russell Sage, 2002).

2. D. B. Rottman, *Public Trust and Confidence in the California Courts* (Administrative Office of the Courts, 2005).

3. T. R. Tyler, "Public Trust and Confidence in Legal Authorities: What Do Majority and Minority Group Members Want From the Law and Legal Institutions?" (2001) 19 *Behavioral Sciences and the Law* 215–235.

Why Not Ethical Standards for Legal Commentators?

By
Laurie Levenson

They're everywhere. Sometimes compared to locusts, legal commentators are now regulars in the media coverage of high-profile court cases. They furnish daily summaries of proceedings and offer opinions on the handling and progress of the case. Often, the public's only understanding of a case comes from legal commentators.

Despite this influential role, there are no ethical standards that govern the conduct of legal commentators. Any people claiming to have a legal degree—regardless of whether they are employed, unemployed, or disbarred—may be snapped up by the television and radio stations to provide minute-by-minute coverage of a high-profile case.

Ten years ago, my colleague Professor Erwin Chemerinsky and I served as legal commentators for the O. J. Simpson murder trial. It was apparent to us at the time, and has become more so since, that some set of standards was needed. Our goal is to make commentators more responsible and therefore more credible. We have seen horrifying abuses by legal commentators that ranged from daily "scoring" of the legal proceedings to predictions of the verdict by commentators who had never spent a day in the courtroom. Such abuses have undercut the public's confidence in both the news media and the legal profession.

Professor Chemerinsky and I crafted a proposed voluntary code of ethics, focusing on a few core principles:

1. The role of legal commentators must be to educate, not entertain, the public.

2. To be effective, commentators must have a firm understanding of the case and its applicable laws.

3. Commentators must be honest and respect both sides' right to a fair trial.

From these basic tenets we developed several rules to help guide the conduct of legal commentators. In doing so, we were mindful that most legal commentators are still members of the bar and therefore are bound by their ethical duties as lawyers. Thus, any proposed ethical rule should complement, not contradict, the ethical standards that ordinarily govern lawyers.

We were also aware that there could be a great deal of resistance to our proposal from some members of the media. Generally, the media don't like being told what to do. Already smarting from the modifications to rule 980 of the California Rules of Court and judges' increased use of gag and sealing orders, media organizations are extremely reluctant to embrace more rules that might infringe on their First Amendment rights of free speech and free press. Therefore, we knew from the start that any proposed set of rules must be voluntary.

Moreover, it was clear that a request for commentators and media outlets to adopt ethical rules must appeal to the media's self-interest. Thus, we consulted ethical rules adopted by individual media outlets and endeavored to demonstrate how an ethical commentator is a better commentator. (See, e.g., American Society of Newspaper Editors, Statement of Principles (1975).)

Finally, we kept in mind that while lawyers enjoy a First Amendment right to speech, the Supreme Court has already held that the right may be

AP/WORLDWIDE PHOTOS

Reporters listen to a courtroom legal analyst during a break in the Michael Jackson molestation trial at the Santa Maria courthouse, in April 2005.

outweighed when there is a "substantial likelihood of material prejudice" to legal proceedings. (See *Gentile v. State Bar of Nevada* (1991) 501 U.S. 1030.) While it is an open question whether the same restrictions apply when a lawyer is not serving in the role of counsel but rather as a representative of the media, *Gentile* and rule 5-120 of the Rules of Professional Conduct of the State Bar of California furnish some precedent for our suggestion that lawyers voluntarily adopt rules that will improve their performance in the role of legal commentators. Frankly, most of the rules are based on good common sense. Yet lawyers, like others, often must be reminded of what common sense and professional responsibility dictate.

Moreover, there are many ethical commentators who could use the support of an ethical code when they decline to use tactics that the media believe will drive up their ratings in covering a case. A code of ethics gives these individuals the moral high ground and support for saying no to the type of coverage they really are not comfortable providing in the first place.

In the end, we came up with four basic ethical duties for legal commentators: They are: (1) a duty of competence, (2) a duty to avoid and disclose conflicts, (3) a duty not to reveal confidences, and (4) a duty to serve the public.

The duty of competence is modeled on the rules of professional conduct that already require lawyers representing clients to possess the "legal knowledge, skill, thoroughness and preparation reasonably necessary for representation." (ABA Model Rules Prof. Conduct, rule 1.1.) The same rule should apply to legal commentators. A lawyer who has never been to a proceeding, watched it on television, or read its transcripts should not comment on it. Likewise, commentators should not comment on judges'

rulings if they have never read them. Frequently we encountered legal commentators who had only read wire stories regarding a court proceeding or ruling and then pontificated as to the wisdom of the court's or lawyers' actions. A competent legal commentator should have as much firsthand knowledge of court matters as possible.

Additionally, a competent commentator should have the necessary legal experience and knowledge of the applicable laws to render an opinion. We have all seen commentators from other jurisdictions render opinions based on laws that do not apply in California. When they get it wrong, they simply attribute it to the oddball legal system in California. This characterization is unfair and a cover for their own incompetence. Commentators unfamiliar with California law and procedure should not present legal analysis of proceedings in this state.

The question often arises whether nerdy law professors who do not work as litigators should provide legal commentary. Some professors have served as trial and appellate lawyers for years and therefore have the necessary competence. However, a transactional lawyer or academician who has never seen the inside of a courtroom probably should decline to provide trial commentary.

There also should be a duty for commentators to avoid conflicts or, at the very least, to disclose them. Many different types of conflicts may arise for legal commentators in a case. In my own case, I was put in the awkward position of commenting on a legal argument by my husband in his role as one of the media's counsel in the *Simpson* case. The public has a right to know a commentator's potential biases for or against the parties. If the commentator has a stake in the outcome of a case, that should be revealed. If a commentator is hoping that the court's ruling on a legal issue will help the commentator's next client, that conflict should be revealed. If a commentator is affiliated with an organization affected by a case, that conflict must be revealed. And, of course, if a commentator has a personal relationship with any of the parties, the counsel, or even the court, that relationship should be revealed.

There are many ethical commentators who could use the support of an ethical code when they decline to use tactics that the media believe will drive up their ratings in covering a case. A code of ethics gives these individuals the moral high ground and support for saying no to the type of coverage they really are not comfortable providing in the first place.

A commentator's duty of confidentiality may complicate his or her ability to avoid conflicts of interest. Because commentators are lawyers, they still maintain a duty of confidentiality to their clients even when the lawyers are acting in the role of legal commentators. Thus, it is quite alarming when a lawyer who has represented a client in a criminal case is then asked to serve as the legal commentator for a civil case against the same client. Not only is there the question whether the lawyer's duty of loyalty to the former client will skew the lawyer's analysis, but the lawyer may be put in the untenable position of having to reveal attorney-client confidences. For example, imagine a lawyer who represented a defendant in a criminal case and is now providing legal commentary on the civil case against that client. How can that lawyer address the credibility of that client's case or testimony without opening the door to attorney-client discussions?

Finally, commentators should not put their own interests ahead of those of the public or the justice system. Although most commentators provide commentary as a public service, the monetary benefits of serving as a commentator can be great. In a high-profile case, a commentator can make well over $100,000 providing legal commentary. There is a natural inclination for those commentators to "serve their masters" and sensationalize their commentary in a way that helps the ratings. The commentator's allegiance should be to the public and to providing an honest and fair assessment of the proceedings. Thus, we proposed a rule similar to the ethical provision applying to lawyers. "Commentators may be paid a reasonable fee for their work." (See ABA Model Rules Prof. Conduct, rule 1.5.)

Judges have a tendency to attack legal commentators. Indeed, judges are understandably reluctant to endure the type of scrutiny they must confront in a high-profile case. Yet if judges felt that commentators were being fair and competent in their assessments, the current strain between the bench and the media might be relaxed. For that reason and many more, a voluntary code of ethics for legal commentators is long overdue. AR

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Moving Ahead on Updating Article VI

State Senator Dunn delivered these remarks on December 2, 2005, as the Judicial Council prepared to vote on sponsoring an amendment to article VI of the state Constitution.

By
Joseph Dunn

Let me start first with a thank-you to everybody that has been involved in this process, which I know has been several years long. We started with the big, giant meeting here in San Francisco back in February; all the meetings subsequent, both at the council level as well as in the various courts; and so forth. And thanks to those who do not necessarily sit on the bench but certainly are involved in the judicial process, many of whom are represented at this table. Thanks to everyone for that process. It has been amazing to be part of that process.

I know there is not complete unanimity on all of these issues within the bench itself, nor should we expect it. This is very difficult; this is a very difficult area in many respects. And if it was unanimous from the very beginning, I would think we must have overlooked something in the process. So I am aware of that and I appreciate the fact that the council, under the direction of the Chief, have encouraged all of the various viewpoints, whether it's a majority or minority viewpoint on any aspect of this proposal. But if this council adopts it, I would ask that the bench speak with one voice from this point forward. The views have been shared and debated, and there will be a vote, and if it passes, we need the bench to speak with one single voice from this point forward.

I would like to remind everybody very quickly that we get immersed in the detail of any proposal such as this, and we oftentimes lose sight of the proverbial forest for the trees. And I want to remind everybody what I think I started with in the February meeting, and I think I referred to it, and still do, as: What you've been engaged in is Founding Father stuff. It was from the beginning and it still is, and I think we all lose sight of it as we look to see if the commas are placed correctly and the words are right. Take a step back. You are dealing with some very, very serious stuff.

The work has just begun. As difficult as it has been to bring us here, the rest of this journey just gets more difficult and the journey is not over.

I spoke to the defense counsel convention at 9 o'clock this morning, here in San Francisco, and I spoke about this issue—no surprise. And I said, like most of us in the legal field, the last time we dealt with the separation-of-powers issue was in constitutional law and first year of law school, and our response to it was to pray to God that it wasn't on the final exam. But here we are. We're right in the midst of a separation-of-powers issue with an extraordinarily unique opportunity for the Judicial Council right now to rewrite article VI and redefine the relationship between the branches of government here in California.

We look back in history, and at many times we go, "Wow, that was a unique point in time in history. Boy, it's too bad none of those occur anymore." This is one of those times. We're not going to remember it; we're not going to see it that way, because we've been part of it. But I will assure you at some point in the future, 10, 15, 20 years, 75 years from now, there's going to be reason to look back at what occurred here, and it's going to have huge historical significance, and I'm hoping that no one here at the council level ignores that fact. That's the seriousness of what we're up to in this process.

But I also want to say that the work has just begun. As difficult as it has been to bring us here, the rest of this journey just gets more difficult and the journey is not over. Some may say, "Well, it's over as far as us here sitting in this room." Oh, no, it's not; not at all. Everything that's occurred up to now, as difficult as it has seemed, is the easy stuff. Now we have to deal with the Legislature and the executive

branch on these issues, and I won't go into why that's difficult—we've talked about that in the past. And I think the *Recorder* quoted me today as: "Those other political entities are not going to give up any of their power willingly. That's the nature of the beast."

And whether we succeed in our discussions—and I hope and pray that it is successful with the legislative and executive branches—or we also prepare for the other alternative of taking this directly to the ballot by signature gathering, either route, I hope it's the legislative route. I am very prepared to go the other route. The next phase is where not only does everyone here need to ensure that they will speak with one voice, every ounce of energy you've dedicated to this process now has to be redoubled in the next phase. I think we're all infamous in our busy professional lives as saying, "I get it, I understand. Time for us to step up to the plate." And then we return to our offices and get sucked back into the day-to-day issues, and we're there in spirit but not there much beyond that. We won't succeed in this effort if that's the overriding approach for all of us here.

This is one of those times, as serious and as big time as this is, for all of us to now say, "[I] reprioritize my professional life a little bit to be able to dedicate even more time to this issue because of its significance long term. Yes to the judicial branch of government; yes to a sitting judge." But fundamentally—and do not forget, please—it is about the survival of the democracy that we live in; it truly is. We can ignore that. You may say, "Well, Joe, you're back in your high school civics class." But that is, in fact, what we're dealing with.

But I want to say something that I think may come as a surprise to some here or others who may be listening: You're not alone, not at all. I and others I know sitting here at the council today have spoken to many lawyer groups, big and small, up and down the state about this issue. And I find in every single one of those speeches—for example, this morning, as I referenced a defense speech—there is a hunger in the bar, for almost every lawyer that I come in contact with, to have an issue that . . . takes them above their differences in the practice of law—civil versus criminal, plaintiff versus defense, juvenile versus domestic. Whatever the divisions of lawyers there are, rarely does an issue come and approach us as lawyers that unifies us with one voice. This is it, and the bar is hungry for involvement in this.

Whatever the divisions of lawyers there are, rarely does an issue come and approach us as lawyers that unifies us with one voice. This is it. . . .

Defense lawyers, at the end of my speech, wanted to know: "What do I do, who do I call? I'm ready to get involved. What can I do to assist the council?" They're hungry for it. And I think, fundamentally, if the council opts to approve the issue before it, it's incumbent upon the council and each individual member to turn and now reach out to the lawyers, and bring them in—for the first time in probably our all professional careers—to unify the bar to speak on behalf of the judicial branch of government in the struggle to give meaning to that word *independence,* which is a little bit iffy right now.

So again I want to thank everyone for their involvement. My apologies for getting up on the soapbox. You know I'm a big fan of this, or I wouldn't have dedicated my time. My hope is for all of us now to recognize the significance of the work product and know that it won't happen unless we all step up to the plate at this point. CR

Senator Dunn says the judicial branch now must speak with one voice.

Alex Ricciardulli

Facing the New Sentencing Laws

BY ALEX RICCIARDULLI

Varied and sundry laws are enacted every year in California. Due to the prevalence of criminal cases, new laws dealing with sentencing usually have the greatest impact on the courts, and this year was no exception.

Granted, many of the big sentencing changes proposed for 2006 did not come to fruition: bills watering down the three-strikes law and narrowing the scope of Proposition 36 did not make it off the Legislature's docket.

Still, significant changes were made in child molestation sentencing, monitoring of probationers using global positioning system technology, and a host of DUI-related situations. Let's review the sentencing changes and focus on tips and nuances not found in government agency and bar compilations covering the new laws.

No More Probation in Most Child Molestation Cases

It was already rare for a judge to grant probation to a defendant convicted of lewd acts on a child or continual sex abuse. (Pen. Code, §§ 288, 288.5.) When there was substantial sexual conduct or multiple victims, or when pornography was involved, probation—although sometimes available—was almost never granted. In light of Senate Bill 33 (Battin), probation is now explicitly barred in substantial-sex, multiple-victim, and pornography situations.

Prior to 2006, probation could be granted for defendants in these situations only when the court found, among other things, that the defendant was a relative or a member of the victim's household, rehabilitation was feasible, and probation would be in the best interest of the child victim. (See pre-2006 Pen. Code, § 1203.066(c).) The old laws' exception in resident molester cases was grounded on the belief that child victims sometimes feel even more traumatized, and revictimized, when their testimony leads to their parents' being sent to prison, and that victims understandably may be reluctant to come to court if they know that will be the result. (See *People v. Jeffers* (1987) 43 Cal.3d 984, 994–995.) With its outright ban on probation in substantial-sex, multiple-victim, and pornography situations, the Legislature has now rejected this concept, erasing the difference between resident and nonresident sex offenders.

In light of the new law, probation is now barred when a defendant is convicted of molestation and any of the nine factors in Penal Code section 1203.066(a) is proved. The nine factors include those just discussed—substantial sexual conduct, multiple victims, and use of pornography in seducing a child—as well as acts causing bodily injury or involving the use of a weapon.

Judges should keep several things in mind:

- Because the new law increases punishment, it applies only when at least one of the acts of molestation occurred on or after January 1, 2006. (See *People v. Martinez* (1988) 197 Cal.App.3d 767, 777.)
- "Substantial sexual conduct" is a term of art and does not include every contact with a child. The term means "penetration of the vagina or rectum of either the victim or the offender by the penis of the other or by any foreign object, [or] oral copulation[] or masturbation of either the victim or the offender." (New Pen. Code, § 1203.066(b).) Molestations that involve only kissing or caressing a child with sexual intent can happen without "substantial sexual conduct." (*People v. Martinez* (1995) 11 Cal.4th 434.) Courts are allowed to grant probation in these nonsubstantial sexual conduct cases, provided they make the findings required by new Penal Code section 1203.066(d).
- Judges do not have inherent power to grant probation or to dismiss the no-probation factors under Penal Code section 1385. (See *People v. Cowan* (1987) 194 Cal.App.3d 756; *People v. Tanner* (1979) 24 Cal.3d 514.) Absent a finding that a prison sentence would be unconstitutionally cruel and unusual punishment (which is almost impossible to establish), the new legislation will bar granting probation in any case where the prosecution alleges and is able to prove any of the nine factors in Penal Code section 1203.066(a).

GPS Monitoring as a Probation Option

With the exceptions of sex cases and crimes in which a gun is used, the decision to grant probation is left to the sound discretion of the judge. The judge must strike a balance between protecting society and trying to rehabilitate the defendant outside the walls of a prison.

Senate Bill 619 (Speir) gives judges a means of better protecting the public when granting probation. A judge now has the power to order that a defendant, as a condition of probation, be continually monitored using global positioning system (GPS) technology. Assuming that local funding is available (the bill did not make an appropriation), a probation department fits the defendant with a transponder that will alert the department whenever the defendant approaches areas he or she is supposed to stay away from, such as schools or bars.

Courts' power to order GPS as a condition of probation or, alternatively, to bar the probation department from using GPS on a defendant derives from both the text and legislative intent behind the law. The new statute itself states that the "county chief probation officer shall have the sole discretion, *consistent with the terms and conditions of probation,* to decide which persons shall be supervised using" GPS. (New Pen. Code, § 1210.12(a); emphasis added.) Of course, if the terms and conditions of probation bar or require GPS, the probation department must abide by the conditions.

Judges' power here is reinforced by the history of the GPS law. As originally proposed, the new law left the decision whether to use GPS exclusively in the hands of the probation department; however, a subsequent amendment added that the probation department's decision must be exercised "consistent with the terms and conditions of probation." A legislative report had recommended adding this provision "to clarify that courts are responsible for establishing conditions of probation." (Assem. Com. on Appropriations, Analysis of Sen. Bill 619 (2005–2006 Reg. Sess.) July 12, 2005, p. 3.)

Two more quick points:

- The new law explicitly allows courts to use evidence of geographic violations or evidence of tampering with the transponder. (New Pen. Code, § 1210.9(b).)
- The GPS statute provides that "the county chief probation officer shall establish written guidelines that identify those persons on probation subject to continuous electronic monitoring" (new Pen. Code, § 1210.12(b)), so judges should check their local departments for further information.

Although GPS clearly is not appropriate for every defendant, its availability could mean the difference between freedom and incarceration for high-risk offenders.

Preconviction Impoundment of Vehicles in DUI Cases

Under current law, courts can order impoundment of defendants' vehicles when defendants are convicted of driving under the influence. Depending on whether the defendant has prior convictions, an impoundment can last from 1 to 90 days, and a court can refuse to impound a car if it finds that the impoundment would not be "in the interests of justice." (See Veh. Code, § 23594(a).)

Under Senate Bill 207 (Scott), law enforcement officers can now *immediately* impound the vehicle of a person arrested for DUI when the person had at least one prior DUI conviction within the past 10 years and either of the following also apply: the person's blood alcohol content was 0.10 percent or more, or the person refused to provide a chemical test. (New Veh. Code, § 14601.8(a)(1).)

The impoundment period is 5 days if the defendant had one prior DUI within 10 years, and 15 days if the person had two or more DUI priors within 10 years. (New Veh. Code, § 14601.8(a)(2).) The impoundment period is credited against any court-ordered postconviction impoundment. (§ 14601.8(c).)

The new law could be subject to constitutional challenges. Its problem is that no *conviction* is required for an impoundment. An Ohio appellate court held that a similar preconviction DUI law deprived defendants of due process and was unconstitutional. (*State v. Posey* (Ohio App. 1999) 735 N.E.2d 903.) Unlike the Ohio law, the new statute allows the impounded car's owner to demand a preconviction administrative hearing to get the car back (new Veh. Code, § 14602.6(b)), so it remains to be seen whether the new law will be constitutional.

Changes to DUI Mandates on Blood Alcohol Concentrations

A pair of changes was enacted for 2006, dealing with situations in which defendants are convicted of DUI with high blood alcohol concentrations (BAC). The two changes here deal with similar but distinct areas of law.

Pre-2006 law *requires*, when a court is sentencing a defendant to probation for DUI and the defendant either had a BAC of 0.20 percent or more or refused a chemical test, that the court order the defendant to complete a six-month alcohol education program. Assembly Bill 1353 (Liu) increases the length of the mandatory program in these situations from six to nine months. (New Veh. Code, § 11837(c)(2).)

A related but separate statute was enacted by Assembly Bill 571 (Levine). Pre-2006 law provides that if a DUI defendant either had a 0.20 percent or greater BAC or refused a chemical test, the court *may* use this fact in aggravation in deciding on the proper sentence. Under the new law, the BAC at which a court may use this factor in aggravation is lowered from 0.20 to 0.15 percent. (New Veh. Code, § 23578.)

Judges should be careful here: AB 571 did *not* lower the BAC to 0.15 percent for the longer alcohol program in Vehicle Code section 11837(c)(2). (See Sen. Com. on Public Safety, Analysis of Assem. Bill 571 (2005–2006 Reg. Sess.) June 20, 2005, p. 4 ["The bill does not mandate any specific increase in penalties but merely requires the court to consider enhanced penalties"].) AB 571 merely lowered the BAC for purposes of aggravation of a sentence, either in felony DUI cases when setting a prison term or in deciding the appropriate sentence in misdemeanor cases.

Driver's License Restrictions for DUI Offenders

Before September 20, 2005—the effective date of Senate Bill 1697 (Torlakson)—it was the court that restricted the driver's license of a person convicted of first- or second-time DUI. Under the new law, the Department of Motor Vehicles, not the court, can give a defendant a restricted license. The DMV suspends the defendant's regular driver's license and issues a restricted license allowing the defendant to drive to and from work and the alcohol program upon proof of enrollment in the alcohol class, of insurance, and of payment of fees. (Veh. Code, §§ 13352.4, 13352.5.)

- A court can bar the DMV from issuing a restricted license but cannot lift the suspension of the regular license. (Veh. Code, §§ 23538(a)(3), 23542(d).)
- A judge is allowed to bar the issuance of a restricted license "whenever, when considering the circumstances taken as a whole, the court determines that the person punished under this section would present a traffic safety or public safety risk if authorized to operate a motor vehicle." (Veh. Code, §§ 23538(a)(3), 23542(d).)

Driver's License Suspension for Commercial Drivers With DUI

Before September 20, 2005, a person who had a commercial driver's license would get a suspension if convicted of DUI while driving a commercial vehicle. For a first-time DUI in a commercial vehicle, the suspension was for one year; for a second-time DUI in a commercial vehicle, the suspension was for a lifetime.

Effective September 20, 2005, a person who has a commercial driver's license gets a one-year suspension for a first-time DUI when driving *any* vehicle (Veh. Code, § 15300) and a lifetime suspension for a second-time DUI when driving *any* vehicle (Veh. Code, § 15302). There is no provision allowing the DMV to issue a restricted license.

This huge change in the law could result in many more DUI cases' going to trial. Because of the drastic consequences of this law for the livelihoods of truck and bus drivers, defense attorneys will plead with courts to avoid the mandated suspensions, or will otherwise take even hopeless cases to trial.

There are lawful and unlawful ways to avoid the new suspensions.

- A lawful avoidance of the suspension is possible when the defendant is convicted of reckless driving involving alcohol (Veh. Code, § 23103.5). Since such a "wet reckless" conviction is not on the commercial license suspension list (Veh. Code, §§ 15300, 15302), a plea bargain allowing for a reduction from a DUI is an effective way to bar the one-year or lifetime suspension. To have the charge reduced, the prosecutor must submit an affidavit stating proof problems. (Veh. Code, § 23103.5(a).)
- An improper way around the law would be to allow the defendant to plead to a DUI, continue sentencing until the completion of an alcohol program and payment of fines, and then either dismiss the case or permit entering a plea to a wet reckless.

  It is true that the DMV will not act until it receives an abstract from the court (Veh. Code, § 13352(a)), and an abstract is not issued until the defendant is "convicted" (Veh. Code, § 1803), with "conviction" for licensing purposes requiring that a defendant be sentenced. (See *Boyll v. State Personnel Board* (1983) 146 Cal. App.3d 1070, 1073.) However, Vehicle Code section 23600 bars the suspension of imposition, or the staying, of sentencing on DUIs and requires pronouncement of sentence "in a reasonable time." In light of the intent behind the law—to hold drivers of commercial vehicles to a higher standard—continuing sentencing just to get around the law would not be reasonable and would likely constitute an abuse of discretion by the court. CR

Alex Ricciardulli is a judge of the Superior Court of Los Angeles County and a former attorney with the appellate branch of the Los Angeles County Public Defender's Office.

Gregory E. Mize

Cutting Back on Takings

BY GREGORY E. MIZE

Both Houses of Congress are now examining bills to sanction any state agency or anyone else who would acquire private property from an unwilling owner through eminent domain for economic development purposes. The Private Property Rights Protection Act was introduced in the Senate on October 19, 2005, and in the House of Representatives on October 25, 2005. The legislation quickly gained bipartisan support. Although the Senate and House versions differ significantly, both are in direct response to the recent decision of the U.S. Supreme Court in *Kelo v. City of New London, Connecticut* (2005) 125 S.Ct. 2655.

The *Kelo* case presented the question of whether a city's forced acquisition of privately owned properties in order to fulfill a comprehensive economic development plan for its waterfront qualified as a "public use" within the meaning of the Takings Clause of the Fifth Amendment to the Constitution.[1] By a 5-to-4 margin, the high court concluded that (1) the city's plan (the building of waterfront improvements, with leases thereof to private developers, to generate jobs and revenues for an economically stressed municipality) had a sufficient "public purpose" to meet the requirements of prior Supreme Court precedents; (2) the city's policy judgments were entitled to deference from the court; and, (3) as a general proposition, "economic development" can meet the "public use" requirement of the Takings Clause. The dissenting justices essentially said the "economic development" takings would benefit other private persons—the developer lessees. Hence, for those justices, the city's plan involved insufficient public use, making the exercise of eminent domain unconstitutional.

The Senate legislation, Senate Bill 1895, contains a lengthy "findings" section that quotes our nation's founders extensively regarding the importance of private property rights. It also quotes verbatim from Justice Sandra Day O'Connor's dissenting opinion in *Kelo*. At its core, Sen. 1895 prohibits any state or local agency from condemning private property, against the will of the property's owner, for a use that is not "public." If a government agency does so, the agency and any acquiring party will be ineligible to receive any federal financial assistance.

To enforce these strictures, the bill gives any property owner who receives a notice of condemnation the right to file a "Fifth Amendment Property Protection Statement (PPS)" in the appropriate state agency. The condemning authority may then seek a state court determination whether its proposed condemnation is a valid taking for a public purpose or public use as defined in the legislation. Sen. 1895 is pending in the Senate Committee on Finance.

Two days after its introduction in the House, the Private Property Rights Protection Act of 2005, House Bill 4128, was approved by the House Judiciary Committee by a vote of 27 to 3. No public hearings were held. One week later, on November 3, 2005, the full House of Representatives passed the bill by a wide margin, 376 to 38. The bill, as passed, prohibits any state or local government from condemning privately owned property for "economic development." Economic development is defined to include a taking from an unwilling private owner to another private owner "for commercial enterprise carried on for profit or to increase tax revenue."

The legislation also gives private property owners the right to enforce these prohibitions in state or federal courts. Once sued, the condemning authority would have the burden of showing, by "clear and convincing evidence," that the taking was not for economic development. The statute-of-limitation period for such suits would be seven years after the conclusion of the condemnation proceeding "and the subsequent use of such condemned property for economic development."

Not surprisingly, the House floor debates on H.R. 4128 were filled with vitriolic criticisms of the U.S. Supreme Court majority in *Kelo*. Proponents of the bill repeatedly argued that the legislation was needed to prevent *Kelo*-type condemnations for economic development purposes that might adversely affect minority communities, farmers, and tax-exempt property owners such as churches. The few voices against H.R. 4128 asserted that the bill undermined principles of federalism by making Congress the arbiter of matters traditionally left to locally elected officials. The opponents also claimed the measure was unworkably vague and inconsistent, raising the question of whether a condemnation for the purpose of building a sports stadium for a professional sports team would be outlawed by H.R. 4128.

As of this writing, there is no telling whether or when the U.S. Senate will jump into this "eminent domain." CR

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

Note

1. "[N]or shall private property be taken *for public purpose,* without just compensation." (Emphasis added.)

Motorists heard radio spots about online traffic services.

L.A. Court Takes to Airwaves to Tout Online Traffic Services

Millions of drive-time radio listeners are learning that paying a traffic ticket doesn't have to be as painful as getting one.

The Superior Court of Los Angeles County conducted a 13-week radio campaign to promote its online traffic services. The paid ads were broadcast on 75 area radio stations, reaching an estimated 7.5 million listeners in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties.

The 10-second spots explained that drivers can pay fines, enroll in traffic school, or schedule a traffic court appearance by visiting the court's Web site. The ads were broadcast in English, Spanish, and Chinese.

Superior Court of Los Angeles County Traffic Services

www.lasuperiorcourt.org/traffic/index.asp?RT=EX

Contact

Allan Parachini, Public Information Officer, Superior Court of Los Angeles County, 213-974-5227

Contra Costa's New E-filing System Works With Multiple Vendors

The Superior Court of Contra Costa County joined the Sacramento court to become the only superior courts in the nation able to receive and respond to electronic filings from multiple service providers. The Contra Costa court went live with its new e-filing system in October and received 43 filings the first day.

To use e-filing, litigants must register with an authorized e-filing service provider or build their own custom software. Litigants can then input case information, pay filing fees, and submit documents to the court.

Contra Costa developed its new service in concert with the Administrative Office of the Courts (AOC), using California's Second Generation Electronic Filing Specifications. The specifications have a role in the goal of bringing e-filing to the whole state in connection with the development of the California Case Management System.

The court expects to expand the e-filing system to other case types sometime next year.

"We believe that the work we've done will make it easier for other courts to do the same," says Judge Terence L. Bruiniers. The Superior Court of San Mateo County is leveraging the work done in Contra Costa to implement its own e-filing system later this year.

Contra Costa's E-filing System

www.cc-courts.org/cxlit.htm

E-filing in California

www.courtinfo.ca.gov/programs/efiling/

Second Generation Electronic Filing Specifications

http://serranus.courtinfo.ca.gov/programs/tech/data_int.htm#3

Alameda's Restraining Orders Now Get in CLETS Same Day

All domestic violence, civil harassment, and elder abuse restraining and protective orders issued in Alameda County are now transmitted electronically by the court to CLETS.

CLETS, the California Law Enforcement Telecommunications System, is a network that provides access to a database of state and national criminal justice information.

Some Restraining Orders Were Not Getting in System

An informal survey indicated that as many as half of the court's restraining orders weren't making it into the CLETS database. Courts had to fax or mail the orders, or even have the applicants drop them off at the sheriff's office, where the sheriff's staff would input the data to CLETS.

Now court clerks, managers, or judicial officers upload digital images of the orders directly to the system the same day as filing. Once in CLETS, the orders can even be accessed by patrol cars with onboard computers.

To date, only five courts—Alameda, Orange, Riverside, San Bernardino, and Sonoma—are entering data directly in the CLETS database.

DOJ Gives More Courts CLETS Access

The Department of Justice recently gave the Administrative Office of the Courts permission to have the California Courts Technology Center serve as a central distribution point for CLETS information.

And the AOC is seeking approval, on behalf of the courts, to enter restraining orders directly in the CLETS Domestic Violence Restraining Order System.

Contacts

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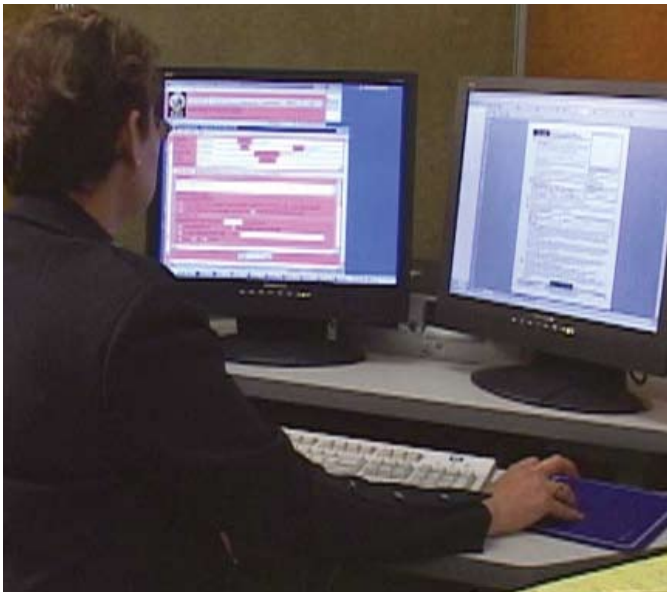

A clerk enters data in the CLETS network.

Judicial Milestones

The Governor has announced the following judicial appointments.

Robert P. Applegate, Superior Court of Los Angeles County, succeeding Meredith C. Taylor, retired

Eugene L. Balonon, Superior Court of Sacramento County, succeeding Jeffrey L. Gunther, retired

John A. Behnke, Superior Court of Mendocino County, succeeding Henry K. Nelson, retired

Mike Camacho, Superior Court of Los Angeles County, succeeding Ronnie B. MacLaren, transferred

Victoria Chavez, Court of Appeal, Second Appellate District, Division Two, succeeding Michael Nott, retired

Jonathan B. Conklin, Superior Court of Fresno County, succeeding Lawrence Jones, retired

Sean P. Dowling, Superior Court of Nevada County, succeeding Ersel L. Edwards, retired

Ginger E. Garrett, Superior Court of San Luis Obispo County, succeeding Christopher G. Money, retired

Kenneth J. Gnoss, Superior Court of Sonoma County, succeeding Laurence K. Sawyer, retired

Christina L. Hill, Superior Court of Los Angeles County, succeeding Phillip J. Argento, retired

Morris D. Jacobson, Superior Court of Alameda County, succeeding Horace Wheatley, retired

James LaPorte, Superior Court of Kings County, succeeding Charles R. Johnson, deceased

Julie A. McManus, Superior Court of Nevada County, succeeding John H. Darlington, retired

Daniel S. Murphy, Superior Court of Los Angeles County, succeeding Judith L. F. Abrams, retired

Lisa A. Novak, Superior Court of San Mateo County, succeeding Phrasel L. Shelton, retired

Margaret L. Oldendorf, Superior Court of Los Angeles County, succeeding Frances Rothschild, elevated

Craig Richman, Superior Court of Los Angeles County, succeeding Gregory C. O'Brien, Jr., retired

Houry A. Sanderson, Superior Court of Fresno County, succeeding Fred Dupras, retired

Patricia M. Scanlon, Superior Court of Contra Costa County, succeeding Garrett J. Grant, retired

Sandra L. Schweitzer, Superior Court of Butte County, succeeding Darrell W. Stevens, retired

Julia L. Scrogin, Superior Court of Yuba County, succeeding David E. Wasilenko, retired

Maria E. Stratton, Superior Court of Los Angeles County, succeeding Floyd V. Baxter, retired

Raoul M. Thorbourne, Superior Court of Sacramento County, succeeding Richard K. Park, retired

Douglas E. Weathers, Superior Court of Riverside County, succeeding Vilia G. Sherman, retired

Garrett L. Wong, Superior Court of San Francisco County, succeeding Alex Saldamando, retired

Otis D. Wright, Superior Court of Los Angeles County, succeeding Lorna Parnell, retired

The following justice and judges have retired from the bench.

Floyd V. Baxter, Superior Court of Los Angeles County

John H. Darlington, Superior Court of Nevada County

Lawrence Jones, Superior Court of Fresno County

Gus James Skropos, Superior Court of San Bernardino County

James D. Ward, Court of Appeal, Fourth Appellate District, Division Two

Horace Wheatley, Superior Court of Alameda County

The following justice and judge have died recently.

Presiding Judge Kathleen K. Akao of the Superior Court of Santa Cruz County died November 27.

Retired Justice Winslow Christian of the Court of Appeal, First Appellate District, died November 15.

Staff Moves

Sharon Stone is the new acting executive officer of the Superior Court of Mendocino County, succeeding Tania Ugrin-Capobianco.

Pat Sweeten is the new executive officer of the Superior Court of Alameda County, succeeding Arthur Sims.

Mary Smith is the new executive officer of the Superior Court of Lake County, succeeding William Jaynes.

Michael Roddy is the new executive officer of the Superior Court of San Diego County, succeeding Stephen V. Love.

Letters

Continued from page 4

both as the largest court system in the United States and, in its diversity, as a microcosm of almost anything that could happen everywhere else. It is fitting that the California courts have now added this excellent magazine as a tool to facilitate education and discussion about its courts. I look forward to following the discussion through *California Courts Review*.

Steve Leben
President-Elect, American Judges Association
Kansas (State) District Judge

Thank you for including me as a recipient of your outstanding publication *California Courts Review.* Receiving the fall issue proved most timely, as it coincided with my efforts in planning for Alabama's midwinter judges' education conference. As I am sure that your readers know, the *Crawford* case has had a tremendous impact nationally on both the criminal trial bench and the appellate bench. Several of our judges had requested that additional information and training be provided to them regarding *Crawford.*

While reviewing the fall issue of *California Courts Review,* I read with great interest the article by Judges J. Richard Couzens and Tricia Ann Bigelow titled "The Effect of *Crawford* on California." I was in the process of locating a speaker of national prominence to address our judges regarding this subject, so I attempted to make contact with the authors of the article. I did have an opportunity to speak with Judge Couzens, but unfortunately his schedule would not permit him to participate as a presenter at our conference. He was, however, able to provide me with additional contacts.

This is a small example of the far-reaching impact of your fine publication. In addition to providing the citizens of California with in-depth information regarding their courts, it has proven to be a resource for the courts in Alabama. Congratulations on your success.

Randy Helms
Administrative Director of Courts
Montgomery, Alabama

MONET'S BRIDGE, BY SEENDY, AGE 15

Four events in one week at a single location

Family Law Institute April 24–26

Representative courses: "Child Support Recent Developments," "Self-Represented Litigants and Case Management," "Parentage," and "Relocation Cases." April 26: joint sessions with the family dispute resolution institute.

Child Support Commissioners Roundtable Morning of April 24

Updates on changes in the child support program; forum for discussing best practices, new legal developments, and other issues of concern.

2006 Family Dispute Resolution Statewide Educational Institute April 25–26

Celebrating the 25th anniversary of child custody mediation, the conference covers issues of child custody mediation and evaluation and juvenile dependency mediation.
Representative workshops: "Advanced Issues for Mediators," "Creative Conflict Resolution," "Children With Unique Needs," "From Radio Scanners to Spyware: Technology Abuse and Domestic Violence," and "Testifying in Court."

Juvenile Law Institute April 26–28

Representative courses: "Dependency Overview," "Delinquency for Experienced Judges," "The Role of the Juvenile Court Judge," and "Finding Permanency for Older Kids."

All events will be held at the Sheraton Gateway hotel in Los Angeles, near Los Angeles International Airport.

For more information and registration forms for the Family Law Institute, Child Support Commissioners Roundtable, and Juvenile Law Institute, go to *www.courtinfo.ca.gov/cjer*. (Registration will be available in March.)

For more information and a registration form for the 2006 Family Dispute Resolution Statewide Educational Institute, go to *www.courtinfo.ca.gov/programs/cfcc*.

Ensuring Access to Justice for Self-Represented Litigants

March 16–17 • San Francisco

Preconference Legal Workshops: March 14–15

The statewide conference will address topics relevant to the future of court-based self-help services, such as:

- The sharing of successful models among similar-sized courts
- Tips on how to establish new self-help centers
- Discussion of how to expand the role of self-help services within courts
- Issues of staffing, volunteers, and partnerships in the community
- Identification of funding opportunities
- Use of technology in self-help centers and related technology demonstrations
- Discussion of ethical issues facing judges and court staff

Preconference legal workshops will offer education on a variety of areas of law to self-help center attorneys and court staff who work with self-represented litigants. Some workshops are eligible for MCLE credit.

For more information and to register, go to www.register123.com/event/profile/web/35778

For questions, please contact
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