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"Conservatees are vulnerable members of society who enter our system with the expectation that they and their property will be protected by a fair judicial system...."

—Chief Justice Ronald M. George

After a comprehensive, 18-month review of court practices, the task force presented its final report to the Judicial Council on October 26, 2007. By unanimous vote, the council accepted the final report and recommendations of the task force.

*The complete report is available for viewing and downloading at:
www.courtinfo.ca.gov/jc/documents/reports/102607itemD.pdf*



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STATE JUDICIAL BRANCH

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ISSN 1556-0872



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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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FALL 2007 – WINTER 2008

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.

Editorial and circulation:
455 Golden Gate Avenue
San Francisco, CA 94102-3688
415-865-7740
E-mail: pubinfo@jud.ca.gov

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Judicial Council of California/
Administrative Office of the Courts

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Letter

In 1980, when I first started reporting on the California courts, I was handed a press release from a candidate for an open seat on the local municipal court. The release declared that the candidate had been rated No. 1 by the local bar association.

I called the local bar to verify the statement. The executive director sounded surprised and said the bar didn't assign numbers; it simply issued endorsements. The director declined to elaborate but sent me the local bar's press release.

Then I understood why he was surprised. Yes, the local bar evaluated judicial candidates, but it did not endorse anyone unless at least 60 percent of the bar's evaluation committee agreed. The No. 1 candidate narrowly got the larger percentage over the No. 2 candidate though she had clearly failed to get the requisite 60 percent vote.

The candidate's campaign manager insisted there was nothing inaccurate about his press release because his candidate did get the largest percentage of the vote. And he declared there was nothing inaccurate nor unethical about their claim to No. 1.

The local bar director declined to comment further; the campaign manager for No. 2 cried foul. I got a small story out of the dispute, but the No. 1 candidate won the election anyway and apparently did a good job as a judge. (The No. 2 candidate was appointed to the same bench about 18 months later by the Governor and also did a fine job.)

The incident came to mind when Chief Justice Ronald M. George announced the creation of the Commission for Impartial Courts and four task forces to make recommendations for improvements in California's judicial selection process.

Nationally, politics are playing a greater role in judicial elections. While California has been spared much of the flat-out political campaigning that other states are experiencing, it is a matter of time before politics plays a role here.

Because this subject is so important, *California Courts Review* has decided to focus on several topics under study by the task forces. We begin with an introduction to the work of the commission by its chair, Associate Justice Ming W. Chin of the California Supreme Court.

Next is an article by Justice Maria P. Rivera of the Court of Appeal, First Appellate District on what constitutes ethical and professional conduct by judicial candidates under California's Code of Judicial Ethics and the effect of the emerging line of federal court decisions on the matter.

We plan to feature more articles on the commission and its task forces in future issues so all are informed and, we hope, become involved in the effort to improve and protect California's tradition of a strong and independent judiciary. Please feel free to voice your opinions.

And please note that you did not mislay the Fall 2007 issue of *California Courts Review*. For the sake of economy during this time of state budgetary cutbacks, we decided to publish a Fall 2007–Winter 2008 double issue.

—Philip Carrizosa
Managing Editor

A standard jury instruction came to mind when I read Judge Elwood M. Rich's commentary, "The Compelling Need for a Civil Master Trial Calendar System" (Summer 2007): "Two people witnessing an event often will see or hear it differently."

The criticisms leveled at the independent calendar system by Judge Rich are simply unfounded. The Superior Court of San Diego County has operated its civil division under an independent calendar system for 17 years. Jury trials are conducted without interruption from 9 a.m. to 4:30 p.m. each Monday through Thursday. Fridays are reserved for all hearings in each of the 23 independent calendar departments in San Diego. Each department carries an average inventory of 530 cases. Each department "oversets" trial calls each week. On trial call day, an independent calendar department left without a trial because of last-minute settlements is assigned a trial from another department that may have extra trials ready to start. If all independent calendar departments are engaged in trial, the remaining trials are assigned to a general trial department.

The majority of cases are tried within 12 months of filing, and virtually all cases are tried within 24 months of filing. That is not the by-product of lazy judges' devoting too few hours a day to trials or "undersetting" trials.

A successful independent calendar system depends on both a formal and an informal communication tree. The supervising judge and administrator at the helm of the "wheel" manage the team. Friday mornings are trial call in all departments. The goal of starting the trials on the following Monday is reached for all but a handful of cases each year, including close to a dozen civil jury trials transferred from a neighboring county last year.

The arguments made by Judge Rich fall short of the realities. Judicial resources are maximized in an independent calendar system managed as a team. Every case that desires resolution by a jury can rely on a timely trial date without concern about the availability of a courtroom. The debate between master calendar and independent calendar systems does not need to continue relying on faulty data.

Linda B. Quinn
Supervising Judge, Civil Division
Superior Court of San Diego County



ON PROTECTING IMPARTIAL COURTS

The following are excerpts of remarks delivered by Chief Justice Ronald M. George in September 2007 to the Conference of Delegates and the Annual Meeting of the State Bar in Anaheim.

One common theme unites [California's court system]—improving not only public access but also public confidence in the system. California thus far has avoided some of the harshly partisan and political judicial contests now on the rise in other states. Our judicial elections are nonpartisan, but this does not preclude political parties or special interests, should they wish to become more actively involved, from casting these contests in traditional political or partisan terms as has occurred in other jurisdictions.

Last fall, I had the honor of participating in Fair and Independent Courts: A Conference on the State of the Judiciary, convened in Washington D.C., by retired U.S. Supreme Court Justice Sandra Day O'Connor. The conference focused primarily on threats to the federal judiciary, but one panel was designated for state supreme court justices, including myself, to discuss the growing challenges facing state judiciaries. Justice O'Connor was in the majority in the U.S. Supreme Court's decision in *Republican Party of Minnesota v. White*, which struck down on First Amendment grounds some of the ethical constraints imposed by judicial canons on judicial speech during elections. The reach of the court's decision has been expanded by federal circuit court rulings. By the end of the conference, Justice O'Connor told us that perhaps the high court had not realized the impact of the *White* decision on state judicial elections, and indeed, despite her usual practice of never second-guessing an opinion in which she had participated, she thought the

White decision might be one that the court should reconsider.

Justice O'Connor repeated that statement when she attended the California Summit of Judicial Leaders held by the Judicial Council a few weeks later. And this fall, I shall be attending a follow-up conference convened by Justice O'Connor titled State Courts: The Debate on Judicial Elections and Judicial Selection. This meeting and its focus on the state courts reflect the growing national awareness of recent threats posed to the impartiality and independence of state court systems.

Here in California, I recently announced the creation of the Commission for Impartial Courts, composed of a steering committee chaired by my colleague Justice Ming W. Chin and four task forces that will focus respectively on judicial selection and retention, judicial candidate campaign conduct, judicial campaign financing, and public information and education, ultimately presenting a comprehensive set of recommendations to the Judicial Council. The membership of the commission includes judges, lawyers, professors, court administrators, and public members with backgrounds in areas such as journalism, the Legislature, and the League of Women Voters.

The partisan campaigns recently conducted in other states and heavily funded by special interests may not have directly reached California, but they may be close at hand—at least, that is the claim of their proponents.

I strongly believe that an impartial judiciary—and its corollary, adherence to the rule of law—are the cornerstones

of our democratic form of government. Ironically, at a time when our national government is proposing to export those concepts to other parts of the world, here at home some trends in popular culture and political discourse have undermined the public's understanding of the role of the judicial branch in the checks and balances that govern the relationships among the three branches of government. It was particularly distressing to learn that, according to a recent poll, two of three adult Americans cannot name the three branches of government and one of three is incapable of identifying even a single branch. We certainly cannot expect deep respect and concern for the independence and impartiality of the judiciary and the role of checks and balances among the three branches of government if, to begin with, large segments of the population are unaware that there are three branches.

This is an ongoing challenge. Fewer and fewer legislators are lawyers. More and more reactions to court decisions are based on the bottom line of who won and who lost, with no focus on the basis for the court's decision and no mention of whether it was compelled by applicable law.

Our tradition of an impartial and independent judicial branch cannot be taken for granted by any generation. It is incumbent upon all of us to do all we can to preserve this principle and the rule of law. That is a simple vision—but one that needs constant reinforcement to ensure it remains available to all Californians.

Court Briefs

Transfer of Death Penalty Appeals Proposed

Since the reinstatement of the death penalty in 1977, the backlog of cases waiting to be heard by the state Supreme Court has grown to levels that are threatening the operations and function of the state's highest court.

The Supreme Court proposed in November 2007 a state constitutional amendment that would address part of the problem by permitting the state's six appellate courts to hear up to 30 death penalty appeals. The high court would step in when a significant legal

issue needed resolution or justices found another reason to review it.

Chief Justice Ronald M. George testified in January before the California Commission on the Fair Administration of Justice, detailing the Supreme Court's inability to perform its core function of resolving questions of statewide importance in civil and criminal matters. Death penalty appeals account for nearly 25 percent of the roughly 120 opinions that the Supreme Court issues each year, up from less than 10 percent a few decades ago, he reported. The court receives between 25 and 40 death penalty cases a year.

In addition, the Chief Justice stated, the proposed amendment could effectively diminish the backlog of briefed cases while guaranteeing that death penalty appeals are afforded comprehensive review in both the Courts of Appeal and the Supreme Court.

In February, the Judicial Council unanimously endorsed the proposal but agreed to a request by the Chief Justice to delay seeking a constitutional amendment for at least a year until the state has sufficient money to provide additional staffing to the Courts of Appeal.

tions that address issues such as fraud detection, background checks, minimum visitation, conservatee advocate programs, care plans, training and education, and conservator oversight. The task force posted its draft recommendations for comment this spring and received and considered more than 200 comments that helped shape its final report.

The council approved the report and directed the Administrative Director of the Courts to refer the recommendations to the appropriate committees for proposed action.

News Release, Final Report, Task Force Roster

www.courtinfo.ca.gov/jc/tflists/probcons.htm

New Protections Recommended for Conservatorship Cases

The Judicial Council's Probate Conservatorship Task Force was created to suggest reforms and improvements to the overall system of conservatorship administration. The task force believes that every conservatee has the right to an attorney in conservatorship cases, just as juveniles do in dependency cases. The task force's final report recommends the automatic appointment of counsel and makes 85 recommenda-

Funding for New Judgeships Delayed

Although Governor Arnold Schwarzenegger signed legislation during the last two years authorizing 100 new judgeships, funding has been delayed for 60 appointments. On February 19, the Governor signed legislation that postpones automatic appointments for the last 10 judgeships created in 2006 by Senate Bill 56



Administrative Presiding Justice Roger W. Boren (left) answered questions from reporters in San Francisco on October 26, 2007, after the Judicial Council approved the report and recommendations of the Probate Conservatorship Task Force. Boren, of the Court of Appeal, Second Appellate District, in Los Angeles, headed the task force, which conducted an exhaustive 18-month study to identify ways to protect conservatees and improve court oversight and management of these cases.

and all 50 of the judgeships created in 2007 by Assembly Bill 159. The legislation came out of a special session called by the Governor to contend with the state's fiscal crisis. Appointments for the 10 judgeships under SB 56 were delayed until July of this year; the other appointments have been delayed until June 2009.

Newly Converted Positions

However, the Governor's action did not reverse the conversion of subordinate judicial officer (SJO) positions to judgeships that was authorized by AB 159. In accordance with AB 159, the Judicial Council at its October 26, 2007, meeting approved the conversion of 7 SJO positions to judgeships that trial courts have confirmed are either vacant or will become vacant by June 30, 2008.

AB 159 authorizes the judicial branch to convert a maximum of 16 SJO positions per year, starting in fiscal year 2007-2008, based on methodology in the judicial workload assessment. The SJO conversions aim to help achieve a balance between the numbers of judgeships and SJOs and to help trial courts handle their workloads.

Post Office Debuts Jury Duty Stamp

The U.S. Postal Service called attention to the importance of jury service by issuing a jury duty stamp at a ceremony on September 12 at the New York Supreme Court in Manhattan. The court systems in California, New York, Florida, and other states lobbied for the stamp along with other civic-minded individuals and organizations. California representatives at the unveiling included Judge Jacqueline A. Connor, Superior Court of Los Angeles County; Judge Dallas S. Holmes, Superior Court of Riverside County; and Don Vera, a retired jury manager from the Superior Court of Stanislaus County.

To view and order stamps: <http://shop.usps.com>



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Because vacancies do not exist at this time to convert all 16 positions, the Administrative Office of the Courts (AOC) will return to the council on behalf of eligible courts to seek approval for additional conversions as they become available.

Courts Eligible for Subordinate Judicial Officer Conversions

www.courtinfo.ca.gov/jc/documents/reports/102607item1.pdf

Judicial Workload and Judgeship Needs Assessments

<http://serranus.courtinfo.ca.gov/programs/courtresearch/jo.htm#jud>

Earthquake Insurance Program to Aid Courthouse Transfers

Paying for any future seismic damage has been a significant challenge to the transfer of court facilities from counties to the state. But a new statewide insurance program will provide counties with an opportunity to insure property damage risks associated with old, seismically deficient courthouses, which are most likely to suffer damage in an earthquake. Approved by the Judicial Council at its October 26, 2007, meeting, this voluntary risk insurance program will allow counties to accumulate funds

for addressing potential seismic damage when responsibility for these costs is transferred to the state. Counties remain liable for seismic damage for 35 years after facilities are transferred.

Council Report on New Insurance Program

www.courtinfo.ca.gov/jc/documents/reports/102607itemG.pdf

New Task Force to Simplify Criminal Fines, Penalties

A new bill signed into law during the last legislative session establishes a task force to make recommendations for simplifying California's system for

assessing, collecting, and distributing criminal fines and penalties. Sponsored by the Judicial Council, Assembly Bill 367 calls for the creation of the task force on or after July 1, 2009. The task force will be composed of judges, court executive officers, legislators, staff from the Administrative Office of the Courts, city and county officials, victim advocates, and representatives from the state Department of Finance and Department of Corrections and Rehabilitation. AB 367 also requires the Judicial Council to develop performance measures and benchmarks to review the effectiveness of collection programs.

Text of AB 367

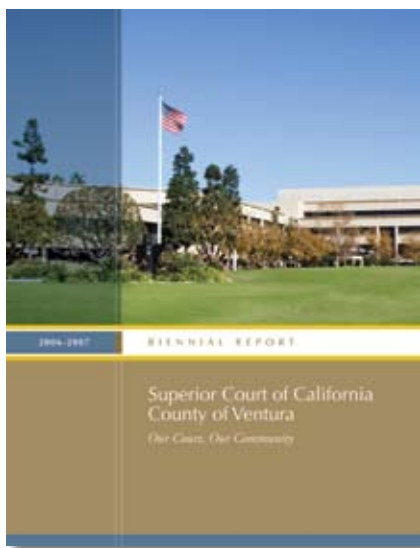
www.leginfo.ca.gov/pub/07-08/bill/asm/ab_0351-0400/ab_367_bill_20070727_chaptered.html

Ventura Report Highlights Court's Services, Goals

The latest biennial report from the Superior Court of Ventura County describes the activities and achievements of the court during the past two years, as well as its vision and plans for the future. The report includes information on judges, court staff, workload, self-help services, mental and behavioral health programs, domestic violence and drug courts, and technological advances in case management and other areas of court operations. Equally important, the report communicates the court's mission statement: "Our Court is here for the People we serve. Dignity—Respect—Excellence—Communication—Pride in all we do." It also describes the strategic plans that will guide the court into the future.

Biennial Report, Superior Court of Ventura County

www.ventura.courts.ca.gov/venturaMasterFrames21.htm



JASON DOY

Riverside Makes Paying Court Fines Easier

Superior court customers in Riverside County can check on their criminal fines 24 hours a day, 7 days a week, via a new automated toll-free phone system. Callers can determine the amount owed, make a payment, hear recent transactions, locate balances and due dates, or connect to an operator for more information. Callers can also find the nearest court location for in-person payments, schedule a date to pay, get court addresses to mail a payment, or obtain information on how to pay through the Western Union service.

The Riverside court sends monthly billing statements with corresponding self-addressed envelopes to customers who have arranged

payment plans. Each statement comes with an attached coupon for the customer to tear off and send along with the payment.

Santa Clara Begins E-ticketing

Giving someone a traffic ticket just got easier in Santa Clara County. A new pilot program from the Superior Court of Santa Clara County and the city of San Jose enables officers to send copies of traffic tickets instantly to the court, which saves time and cuts down on errors. Using hand-held ticketing devices, officers swipe a person's driver's license and print the ticket; the information is sent electronically to the court's case management system.

(Continued on page 10)

California Bench Bar Biannual Conference, September 26–30, 2007, in Anaheim

More than 850 judicial branch leaders, judicial officers, and court professionals came together for the California Bench Bar Biannual Conference. Cohosted by the Judicial Council, the California Judges Association, and the State Bar of California, the conference explored procedural fairness in the courts and offered collaborative courses planned by the bench and bar.

The opening plenary session featured a lively Fred Friendly dialogue on procedural fairness and its impact on public trust and confidence in the California courts. One of the many bench-bar courses focused on how judicial officers and attorneys can foster public understanding and trust in the courts and the values associated with judicial branch independence and impartiality.

The conference also featured workshops for judicial officers on topics such as victims in court, sexually violent predators, handling cases requiring special knowledge, military families and domestic violence, and dealing with diversity in the courtroom. A special luncheon honored recipients of the Distinguished Service Awards, Benjamin Aranda III Access to Justice Award, and Ralph N. Kleps Awards for Improvement in the Administration of the Courts.

After the awards luncheon, sessions for court executive officers featured the court programs honored with Kleps Awards. Following the sessions, attendees met with the award recipients to discuss their programs and how to replicate them.



Clockwise, from top: Harvard Professor Arthur Miller leads a group of distinguished panelists in a Fred Friendly dialogue on procedural fairness in the courts; Chief Justice Ronald M. George presents a Kleps Award to the Superior Courts of Monterey, San Benito, Santa Clara, and Santa Cruz Counties to recognize their efforts to help librarians better serve the public by showing them how best to use the courts' Web sites, online legal resources, self-help programs, and family law facilitators; a conference knowledge fair helps participants learn about the Assigned Judges Program, the California Court Case Management System, collaborative justice court programs, court interpreter issues, jury improvements, and more.



LAUREL HUNGERFORD

As part of the pilot program, 50 officers are using the hand-held devices. That number should increase to 200 in 2008.

New Director of Judicial Branch Education Appointed

Diane E. Cowdrey, a nationally recognized state judicial educator, has been appointed as the new director of the Administrative Office of the Courts,



Diane E. Cowdrey

Education Division /Center for Judicial Education and Research (CJER). She succeeds Karen M. Thorson, who has served as

education director since 2000 and is retiring.

In her new role Dr. Cowdrey will partner with the Governing Committee of the Center for Judicial Education and Research, a Judicial Council advisory committee, and local courts throughout California to advance the judicial branch's strategic goal of education for branchwide professional excellence. Dr. Cowdrey brings to the branch two decades of experience in the field of adult education and currently serves as director of education for Utah's Administrative Office of the Courts.

Santa Clara Judge Elected to National Board

Judge Katherine Lucero, Superior Court of Santa Clara County, was elected to the board of trustees of the National Council of Juvenile and Family Court Judges (NCJFCJ). Founded in 1937, the Reno-based organization is committed to improving the nation's juvenile and family courts. Judge Lucero was appointed to the bench in 2001 and is the supervising judge of Santa Clara County's juvenile dependency court. During her tenure on the bench, Judge Lucero started a special family treatment court that assists parents with substance abuse problems. In addition, she currently serves as the lead judge in the NCJFCJ's Child Victims Act Model Courts Project in Santa Clara, one of 31 model courts nationwide exploring how to improve the handling of child abuse and neglect cases.

AJA Elects Judge B. Tam Nomoto Schumann

Judge B. Tam Nomoto Schumann, Superior Court of Orange County, is the new president-elect of the American Judges Association (AJA). Judge Schumann has been a member of AJA since 2003 and has



B. Tam Nomoto Schumann

served as its secretary and vice-president and on its board of governors. The American Judges Association represents more than 2,400 judges from all levels of jurisdiction in the United States and Canada. Judge Schumann was appointed to the municipal court in 1979 by Governor Jerry Brown and was elected to the Superior Court of Orange County in 1997.

AOC Judge-in-Residence Honored

Retired Judge Leonard P. Edwards received the 2007 Judicial Award from the International Community Corrections Association (ICGA). The ICGA presents



Leonard P. Edwards

this award to an active or retired judiciary practitioner who promotes and furthers the cause of community corrections through active support and leadership. Judge Edwards served for 26 years in the Superior Court of

Santa Clara County and throughout his judicial career has received numerous awards and honors for leadership. He currently serves as judge-in-residence for the AOC Center for Families, Children & the Courts.

Milestones

The Governor announced the following judicial appointments.

Judge Antonino J. Agbayani, Superior Court of San Joaquin County

Judge Molly Bigelow, Superior Court of Shasta County

Judge Mark Boesse-necker, Superior Court of Napa County

Judge Terry A. Bork, Superior Court of Los Angeles County

Judge Robert A. Bur-lison, Superior Court of Monterey County

Judge Carol D. Codrington, Superior Court of Riverside County

Judge Douglas W. Daily, Superior Court of Ventura County

Judge Gregory A. Dohi, Superior Court of Los Angeles County

Judge Marguerite D. Downing, Superior Court of Los Angeles County

Judge Judith K. Dulcich, Superior Court of Kern County

Judge Elizabeth R. Feffer, Superior Court of Los Angeles County

Judge Marc A. Garcia, Superior Court of Merced County

Judge Thomas S. Garza, Superior Court of San Bernardino County

Judge Lesley C. Green, Superior Court of Los Angeles County

Judge Brian F. Haynes, Superior Court of Contra Costa County

Judge Candace S. Heidelberg, Superior Court of Nevada County

Judge Efren N. Iglesia, Superior Court of Monterey County

Judge Willie Lott, Jr., Superior Court of Alameda County

Judge Elaine Lu, Superior Court of Los Angeles County

Judge Sharon A. Lueras, Superior Court of Sacramento County

Judge Clare M. Maier, Superior Court of Contra Costa County

Judge Dwight W. Moore, Superior Court of San Bernardino County

Judge Gilbert G. Ochoa, Superior Court of San Bernardino County

Judge Carrie McIntyre Panetta, Superior Court of Alameda County

Judge Mitchell C. Rigby, Superior Court of Madera County

Judge Georgina Torres Rizk, Superior Court of Los Angeles County

Judge Jennifer Conn Shirk, Superior Court of Tulare County

Judge Elia Weinbach, Superior Court of Los Angeles County

Judge Dale R. Wells, Superior Court of Riverside County

Judge Melissa N. Widdifield, Superior Court of Los Angeles County

Judge Bruce A. Young, Superior Court of Ventura County

The following justices and judges left the bench.

Judge Stanley Able, Superior Court of Colusa County

Judge Bradford Andrews, Superior Court of Los Angeles County

Judge Gary S. Austin, Superior Court of Fresno County

Judge Larrie R. Brainard, Superior Court of San Diego County

Judge Michael Brenner, Superior Court of Orange County

Judge Paul Bryant, Jr., Superior Court of San Bernardino County

Judge Herbert Curtis III, Superior Court of Ventura County

Judge Lawrence W. Fry, Superior Court of Riverside County

Judge Thomas J. Hutchins, Superior Court of Ventura County

Justice Earl Johnson, Jr., Court of Appeal, Second Appellate District

Judge Talmadge R. Jones, Superior Court of Sacramento County

Judge Charles P. McNutt, Superior Court of Kern County

Judge Rodney S. Melville, Superior Court of Santa Barbara County

Judge Andria K. Richey, Superior Court of Los Angeles County

Justice Vaino H. Spencer, Court of Appeal, Second Appellate District

Judge James Stuart, Superior Court of Kern County

Judge Carlos Ynostroza, Superior Court of Alameda County

In addition, **Judge Valerie L. Baker**, Superior Court of Los Angeles County, was appointed to the federal bench.

The following have died recently.

Justice Paul Boland, Court of Appeal, Second Appellate District, September 5, 2007. (See page 36.)

Judge Vincent Bruno (Ret.), Superior Court of Santa Clara County, November 24, 2007

Justice Morio L. Fukuto (Ret.), Court of Appeal,

Second Appellate District, November 15, 2007

Judge Ben Hamrick (Ret.), Superior Court of San Diego County, November 13, 2007

Judge John Hunter (Ret.), Municipal Court of Ventura County, November 18, 2007

Judge John Kennedy (Ret.), Superior Court of Santa Clara County, October 31, 2007

Andrew Loyd Schultz, retired court administrator and jury commissioner, Superior Court of Alameda County, November 2, 2007

Judge Warren Slaughter (Ret.), Superior Court of Riverside County, December 1, 2007

Staff Moves

The following court executive officer has been appointed.

Kerri L. Keenan, Superior Court of Humboldt County

AN INTRODUCTION TO THE WORK OF THE COMMISSION FOR IMPARTIAL COURTS

By
Ming W. Chin

When Chief Justice Ronald M. George asked me last August to serve as chair of the Commission for Impartial Courts, my first thought was, “Not another committee!”

Nonetheless I accepted, because the Judicial Council can have no more important responsibility than preserving the right to fair and impartial courts that make decisions based on the evidence and the law, free of outside influence. Courts should be accountable, not to politicians and special interests, but to well-established codes of conduct that require them to follow the law and the Constitution.

In addition to distinguished appellate justices, trial court judges, and court executive officers, the commission’s membership includes prominent former members of the Legislature and officers of the executive branch as well as leaders of the bar, the media, law schools, the business community, educational institutions, and civic groups. That so many extremely busy Californians from so many different walks of life

have committed themselves to this endeavor reflects the many ways all Californians benefit each and every day from a court system dedicated to the impartial resolution of disputes based on the rule of law.

Californians have every reason to be very proud of their judicial branch. The California courts have long been recognized as among the finest in the country. Under the leadership of the Chief Justice, the California judiciary has implemented significant, far-reaching improvements over the past 10 years. During that time there have been few threats to the impartiality of California’s judiciary. The story elsewhere is different; in many states, courts increasingly are coming under attack from partisan and special interests seeking to influence judicial decision-making, and judicial elections are becoming more like elections for political office: expensive, nasty, and overly politicized.

We cannot ignore these national developments and simply rest on the California courts’ strong record of objectivity. In November 2006, at a two-day summit convened by the Judicial Council, California’s judicial leaders concluded that unless the Judicial Council took decisive

action, the question was not *if* these trends would spread to California, but *when*. So the time to strengthen support for fair and impartial courts is now. We must start building the intellectual bulwark against those who would seek to insert political and special interests into our judiciary; if we wait until such a campaign begins, it may be too late. Part of our effort will involve explaining the core value of courts' dispensing justice free from undue political pressure.

Participants in the Judicial Council's 2006 summit identified four basic approaches to preserving the impartiality of, and the public's

confidence in, California's judiciary. Following up on that work, Chief Justice George established the Commission for Impartial Courts with four task forces, each to study one of the four approaches identified at the summit. In 18 months the task forces are expected to submit recommendations to the commission's

steering committee, which in turn is charged with submitting a final report and recommendations to the Judicial Council by July 2009.

The commission's creation reflects widespread concern that unless we exercise leadership in addressing the contemporary challenges to nonpartisan and impartial judiciaries, the very legitimacy of California's court system may be in jeopardy. As the U.S. Supreme Court has noted, "[t]he legitimacy of the Judicial Branch ultimately depends on its reputation for impartiality and nonpartisanship."¹ Justice Anthony M. Kennedy put it this way in explaining why "judicial independence is a foundation" of "the Rule of Law": "The law commands allegiance only if it commands respect. It commands respect only if the public thinks the judges are neutral."² And he has also said: "Judges must be independent not so they can do as they choose, [but] so they can do as they must."³

In our effort to safeguard the impartiality of California's courts and preserve the public's trust in California's judicial branch, we would do well

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to consider the concerns of America’s founders when they first sought to ensure the independence and impartiality of our federal courts more than 220 years ago. As Alexander Hamilton said, judges are officers of the “weakest” branch of government; yet they have the “arduous . . . duty” of serving as “the bulwarks of a limited constitution against legislative encroachments” and “safeguard[ing]” the Constitution and the rights of individuals from “the effects of occasional ill

humors in . . . society.” Judges must possess not only great knowledge and skill in the law, Hamilton said, but also integrity, moderation, and an “uncommon portion of fortitude.”⁴ In seeking to maintain judicial impartiality in California, we too must promote the selection and retention of judges who have these outstanding qualities.

The founders also recognized the importance of judicial accountability. For improper judicial behavior they provided removal from office through impeachment. The standard of judicial accountability in decisionmaking, however, was to be “inflexible and uniform adherence to” the law, which, Hamilton said, is “indispensable in the courts of justice.”⁵ As Hamilton also said, committing judicial retention decisions to the executive branch, the Legislature, or the People creates an incentive “to consult popularity” in judicial decision-making. The challenge, then, is how to maintain judicial impartiality while providing for appropriate mechanisms of accountability.

Finally, as we approach our task, we also would do well to follow the lead of our founders by retaining a common and constant focus on achieving the *public* good. I submit that our goal should be to find solutions that serve the long-term and common interests of *all* Californians.

MR

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Task Force on Judicial Campaign Finance

Hon. William A. MacLaughlin, Chair
Judge, Superior Court of Los Angeles County



Task Force on Judicial Candidate Campaign Conduct

Hon. Douglas P. Miller, Chair
Associate Justice, Court of Appeal, Fourth Appellate District, Division Two



Task Force on Judicial Selection and Retention

Hon. Ronald B. Robie, Chair
Associate Justice, Court of Appeal, Third Appellate District



Task Force on Public Information and Education

Hon. Judith D. McConnell, Chair
Administrative Presiding Justice, Court of Appeal, Fourth Appellate District



For more information about the Commission for Impartial Courts, including full lists of task force members, news, and upcoming meetings, see

www.courtinfo.ca.gov/jc/tflists/commimpart.htm

“Judges must be independent not so they can do as they choose, [but] so they can do as they must.”

—Justice Anthony M. Kennedy

Notes

1. *Mistretta v. United States* (1989) 488 U.S. 361, 407.
2. Stephen Talbot et al., “Justice for Sale,” *Frontline* (PBS television broadcast, Nov. 23, 1999).
3. Anthony M. Kennedy, Associate Justice of U.S. Supreme Court, “The Role of the Judiciary in Promoting the Rule of Law,” remarks at the American Bar Association’s International Rule of Law Symposium, Nov. 10, 2005.
4. Frederick Quinn, ed., *The Federalist Papers Reader* (Seven Locks Press, 1993), pp. 163–167.
5. *Ibid.*

The Complexities—and Importance—of Running a Fair Judicial Election Campaign

By
Maria P. Rivera



Judicial elections are a sticky wicket. Quite apart from the dizzying array of rules from the state Fair Political Practices Commission, the deadlines for multiple filings, and the rush for endorsements, judicial candidates face many unpleasant surprises as well as difficult choices that must be made in the heat of battle.

I learned this from personal experience. In 1996, I ran for an open superior court seat in a county with nearly a half-million registered voters. I took seriously the judicial canon prohibiting a judicial candidate from making statements that “commit or appear to commit the candidate with respect to cases, controversies, or issues that could come before the courts...”¹ But my opponent, who ran as the “law-and-order”

candidate, freely voiced how he would aggressively enforce the three-strikes sentencing law and the death penalty. I was pounded in my opponent's campaign literature for not announcing my own views. Who was right?

I bought space on slate mailers, as suggested by my campaign consultant. Being a political naïf, I did not realize that my name might appear on highly partisan and/or issue-oriented slates—like on the candidate slate of the “Republicans Against Abortion” and on the slate for “Pro-Choice Democrats.” Did I fail to sufficiently inform myself? (Who has time for that?) Given the mandatory disclaimers on slate mailers, does it matter?²

I was asked to respond to questionnaires. While some were legitimate—requesting my background information and soliciting my views on how the administration of justice might be improved—others were blatantly political. They demanded to know whether I believed *Roe v. Wade* was incorrectly decided and whether prayer in the

schools should be permitted. They said a refusal to answer would be construed as a negative response. I ignored them. Was there a better way?

My opponent disseminated several misleading campaign pieces denigrating my qualifications and misstating my positions. As the election loomed, my consultant insisted that I would *never* win without at least one campaign piece that went on the offensive. So I agreed to a “negative” mailer. The piece was scrupulously truthful both in its facts and its inferences, but it *was* negative. Was this inappropriate for a judicial campaign? Does negative campaigning undermine the dignity of the office?

Well, I survived the crucible of the electoral campaign, and I'm now in a position to consider these issues at a more philosophical level. As a member of the Task Force on Judicial Candidate Campaign Conduct, which is part of Chief Justice Ronald M. George's recently formed Commission for Impartial Courts, I have the honor of serving with a group of wise and experienced people who are thinking about some of these issues.³ I offer a few of these for contemplation and comment.

Campaigning on the Issues: Drawing the Line

We begin with a rule, canon 5B, that essentially says: When campaigning for judicial office, a candidate can't make statements that “commit” the candidate with respect to cases, controversies, or issues that could come before the court.

So when does the stump speech step over the line and become a “commitment”? Does this canon allow the candidate to stop short of a “commitment” yet still clearly signal a distinct legal ideology? (“The three-strikes law works and I will enforce it at every opportunity!”)

Not only is the rule unclear, but the concept upon which it rests has been the subject of both criticism and debate.

Of particular concern is how the Supreme Court's decision in *Republican Party of Minnesota v. White* (declar-

ing unconstitutional a Minnesota canon prohibiting judicial candidates from “announcing their views on disputed legal... issues”)⁴ will be interpreted or potentially expanded to include other rules, such as California's “commit” clause.

Let's take a quick detour to look at the *White* decision.

In *White* the court concluded that Minnesota's prohibition on “announcing” one's views on disputed legal issues was not narrowly tailored to achieve the state's compelling interest in maintaining *judicial impartiality* with respect to particular parties and cases that might come before the court. The court said that prohibiting such announcements was both too broad—because personal views have nothing to do with actual cases—and too narrow—because voters can find out a candidate's views from other sources.

But did the court ignore an equally important compelling state interest in maintaining judicial *independence and integrity*? In an excellent law review article titled “Regulating Judges' Political Activity After *White*,”⁵ Wendy Weiser makes the case for recognizing this interest.

Ms. Weiser argues that judicial independence—that is, a judiciary free from political influences—is maintained by making a clear distinction between the core functions of government: Those serving in the political branches (executive and legislative) are elected to act as agents of the majority who elected them. Those serving in the judicial branch, however, are tasked to adhere faithfully to the rule of law, which may include acting *against* the will of the majority. The state's interest in a judiciary free from political influences therefore justifies its efforts to distinguish and reinforce these roles through campaign regulations.

In her dissent Justice Ruth Bader Ginsburg did appear to recognize this interest. She wrote that “the rationale underlying unconstrained speech in elections for political office—that representative government depends on the public's ability to choose an





agent who will act at its behest—does not carry over to campaigns for the bench.”⁶

I fully agree. Based on my own experience, the voters do not readily distinguish between political and judicial elections. To the extent we allow judicial campaigns to look and sound like political races, we reinforce the common misperception—assiduously nurtured by certain politicians—that it is a judge’s role to be responsive to the People’s will and to the majority’s interpretation of the law.

The wisdom of the ruling in *White* can be debated, but no one can doubt that *White* has played a significant role in the increasing politicization of judicial elections:

- Campaigners feel free to criticize and disavow Supreme Court precedent, to excoriate an opponent’s legal opinions on ideological grounds, or to trumpet their personal views on controversial legal issues.
- Special-interest groups insist that judicial candidates respond to pointed questions asking for their views on abortion rights, same-sex marriage, and other hot-button is-

sues. And they publicly criticize those who refuse to answer as “hiding behind” unenforceable canons.

- Voters demand answers to their questions about how the candidate “feels” about class action lawsuits, or three strikes, or sentencing sex offenders.

Don’t the Voters Have a Right to Know?

But wait! Don’t we live in a democracy? Why can’t the voters know about a judicial candidate’s view on the important issues of the day before casting their ballots? Why isn’t the electorate entitled to know the candidates’ leanings so it can pick the one who most reflects the community’s leanings? Why all the secrecy?

These are fair questions. We know there is no objectively achievable “right” way to interpret the Constitution, the laws, or even precedent. At the margins of the law judges exercise a great deal of discretion. If that is so, and if the community seeks a judge who will apply, for example, a more pro-plaintiff or a more pro-defense interpretation when making those discretionary calls,

why should candidates be so muzzled that the voters can’t learn about their views—or at least their *leanings*?

Let me suggest just a few concerns.

First, a “leaning” is never understood as just a leaning. It is mostly interpreted as a promise. So what happens when the elected judge who has indicated her “leaning” faces her first controversial issue? If she decides the case the way she said she (probably) would, there will always be questions about whether she did that only because that’s what she told the voters she would do. If she rules the other way, she is accused of deceiving the voters. That this kind of speculation can occur at all undermines confidence in the impartiality and integrity of the courts.

Second, unlike legislators, who enact laws that effectuate policy and apply broadly to large categories of people, judges decide cases based upon specific and unique facts. Although policy issues are often involved in judicial decisionmaking, the court’s decision will ultimately turn on the facts of the case before it. It is therefore impossible for candidates truthfully to say (or imply) that they will rule this way or that way on a given issue in the absence of a factual setting. But most voters (in my experience) don’t really believe or understand that. A judicious candidate who tries to explain this to a skeptical public is therefore seriously handicapped if the opponent is out there freely announcing his or her views on any and all legal issues.

Third—and most fundamentally—if we accept that a judiciary cannot be truly impartial and independent if its decisionmaking is influenced by the same considerations and interests as the political branches, then shouldn’t that distinction be *the* guiding principle of judicial action, whether in the courts or on the campaign trail? That is, if it is true that a judge’s adjudicatory work should *never* be influenced by political (as distinguished from policy) considerations—be they partisan, electoral, or patronal—then doesn’t it follow inexorably that political campaigning, or “pleasing the voters,” should also be

purged from judicial races? As South Carolina Senator Lindsey Graham has said, “Politics is about the popular; the law is about the unpopular.”⁷⁷ If we agree that judicial candidates should not be campaigning “on the issues,” meaning that they should not be stating their views on controversial issues in order to garner votes, then do we need something more than canon 5’s command to “avoid the appearance of political bias” and canon 5B’s “commit” clause? If so, what? If all canons limiting speech are vulnerable to constitutional challenge, what about opting for voluntary standards?

Before exploring those questions, I will briefly identify a few more campaign conduct issues under consideration by the task force.

Campaigning With Dignity

As big money has entered the Supreme Court races in other states, the tone of the campaigns has deteriorated. A recent ad for an Alabama Supreme Court campaign stated: “[My colleagues are] liberal activist judges... [who] invoke the Constitution even as they subvert it to promote the radical homosexual agenda, overturn the death penalty for murderers, ban school prayer, order tax increases... and attack the Boy Scouts of America.”

And an ad from Washington State declared: “[My opponent] and far right extremists are trying to buy our

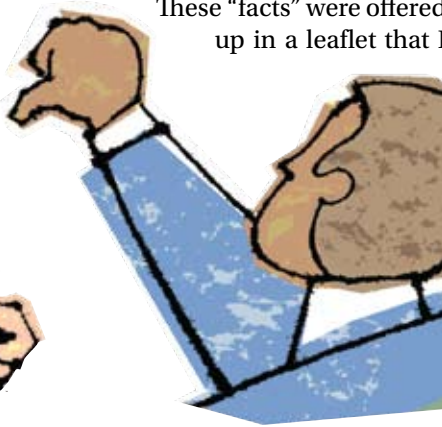


Supreme Court—so extreme they gut protections for our clean air and water. They oppose stem cell research and [a] woman’s right to choose.” (The opponent had never taken any position on these issues.)

It is interesting to note that while campaigns in other states have become more rancorous and more ideological, we are not seeing the voters respond to these approaches. With few exceptions, the attack dogs and the ideologues tend to be the losers.⁸ But in the process has something else been lost? I believe that demagogic or intemperate campaigning inevitably tarnishes the dignity of the office and corrodes the public’s confidence that its judges will be fair, impartial, and respectful. Perceptions matter. Why should the public respect judges if candidates do not respect each other?

In my own campaign, my opponent described me (incorrectly) as a “part-time appellate research attorney” who “refused” to state her views on the death penalty. He quoted me (out of context) as saying that I would “exercise my discretion to reduce criminal sentences.” And after thoroughly dissing my 22 years of legal experience, he went on to inflate his own qualifications.

These “facts” were offered up in a leaflet that I



found tucked under the windshield wiper of my car in a shopping center parking lot—and it was under the windshield wiper of every one of the thousands of cars in the lot. Ouch.

As campaigns go, mine was sometimes painful, but it was hardly the nastiest I’ve seen. My opponent was indecorous, to say the least. But what

about my own decision to turn the tables and put out a negative piece on my opponent—even a truthful one? Does one nasty leaflet deserve another? Should the prudent candidate simply refuse to take the offensive, even when the consultant says you must do so to win? Is controlling the tone of a judicial campaign just a quixotic ideal?

Slate Mailers

What, if anything, should judicial candidates do with slate mailers? You know, those cheesy postcards you get right before the election that tell you what “slate” of candidates to vote for if you are a Pro-Environmental Anti-Welfare Conservative Libertarian (or some such group). Of course, most candidates *buy* their way onto these mailers and care not a fig for their ideological message.

Slates can be a *very* cost-effective means of gaining name recognition in judicial races, where the need for name recognition is the greatest. Most voters have never heard of any of the candidates and frequently will choose to vote only if they at least *recognize* a name.

But slate mailers are a strange item because any given mailer may or may not actually represent the constituency announced on its masthead. Some slates are purely the invention of folks who know how to make money during campaigns. Those mailers use party names, but in a clever way that does not—if read carefully—purport that they are *actual* party-endorsed mailers.

So there are two issues. First, is the slate mailer itself misleading, and, if it is, should a judicial candidate be anywhere near it? Second, if it does represent (or appear to represent) a constituency, can judicial candidates really distance themselves from the clear implications of being on the same slate with an “Anti-Prop X” message? Fortunately, California law does require the slates to carry a disclaimer stating that appearing on the mailer does not imply endorsement of other candidates or issues. While this helps the judicial candidate maintain an ideological distance, is that enough?

Questionnaires

Any judicial candidate has received his or her share of questionnaires. They want to know lots of different things about you: How would you improve the experience for jurors? What in your background makes you the most qualified for the job? Which Supreme Court justice most reflects your legal philosophy? Would you ever place a released sex offender in the community? Have you accepted Jesus Christ as your personal Lord and Savior?

Needless to say, these things are all over the lot. So how does a candidate respond to the impertinent or improper questions? I decided just to ignore them. But now I think a better approach is to prepare a thoughtful, nonconfrontational response, which might include an explanation of your views on the role of the judiciary or other matters.⁹

But should we be more proactive on this issue? Would it be wise for the Commission for Impartial Courts or some other body to issue a model questionnaire and a description of “appropriate” and “inappropriate” questions? Is it better to show the way rather than just to react to each questionnaire as it arrives?


What to Do?

Having raised a lot of questions, I can’t say I have The Answers to any of them. There are few canons governing campaign conduct: There is the “commit” clause in canon 5B. There is the prohibition against misrepresenting the qualifications, position, identity, or any other fact concerning oneself or one’s opponent, also in canon 5B. There is the admonition against “political activity that may create the appearance of political bias or impropriety” in canon 5. And there is the rule against commenting on any pending or impending cases in canon 3B. Other than these, judicial candidates have nothing but their own good character and common sense to guide them on the issue of campaign speech and conduct.¹⁰

The Task Force on Judicial Candidate Campaign Conduct will be de-

bating whether the judiciary itself can and should offer guidelines for campaign conduct, including how to deal with questionnaires, what standards to apply to slate mailers, and whether there should be a statewide code of campaign conduct or, at least, a hortatory pronouncement from the judicial branch. (If you have thoughts about any of these issues, or any of the rhetorical questions posed in this article, please send an e-mail to maria.rivera@jud.ca.gov. We are interested in hearing your views.)

One idea is to have *voluntary* standards that will avoid the First Amendment issues that accompany mandatory conduct rules. Already, the board of the California Judges Association has approved a proposal to advocate for the adoption by county bar associations of voluntary judicial campaign conduct standards and oversight committees. The idea is that if we can reach consensus on elevated conduct standards for judicial campaigns and if we can put in place a neutral, well-respected public voice that can speak about those who refuse to comply with those standards, we will be better prepared to forestall and combat the infiltration of big-money, highly politicized, rancorous judicial campaigns into California.

But we must be realistic as well as idealistic. Judicial races are hotly contested. If you’re in the race, you’re there to win. So raising the bar on judicial campaign conduct is a great idea. But it’s a bit of a sticky wicket. 

Maria P. Rivera is an associate justice of the Court of Appeal, First Appellate District, Division Four, in San Francisco.

Notes

1. Cal. Code Jud. Ethics, canon 5B. The phrase “appear to commit” was deleted in 2003 after the U.S. Supreme Court decision in *Republican Party of Minnesota v. White* (2002) 536 U.S. 765.

2. Government Code section 84305.5(a)(2) requires all slate mailers to include the



following disclaimer: “Appearance in this mailer does not necessarily imply endorsement of others appearing in this mailer, nor does it imply endorsement of, or opposition to, any issues set forth in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an *.”

3. Associate Justice Douglas P. Miller of the Court of Appeal, Fourth Appellate District, Division Two, in Riverside chairs the Task Force on Judicial Candidate Campaign Conduct.

4. *White, supra*, 536 U.S. at p. 765.

5. 68 *Albany L.Rev.* 651 (2005).

6. *White, supra*, 536 U.S. at p. 806.

7. John M. Feder, “Make a Better Future: We Are Either Part of the Problem or Part of the Solution” (Fall 2007) *The Trial Lawyer* 6.

8. Justice At Stake, *The New Politics of Judicial Elections* 2006, p. 20.

9. The National Center for State Courts has put together an excellent set of suggestions for responding to questionnaires from fringe groups, available at www.judicialcampaignconduct.org.

10. Other canons cover endorsements, political activity and solicitation, and disclosure of contributions. These are beyond the scope of this article.

Serving the Immigrant Community

The California Experience and the Implications for Other States

By
José Octavio Guillén

Trial courts throughout the United States have experienced an unprecedented change in their caseload demographics during the last 20 years, resulting in higher levels of diversity, more complex legal issues, and greater demand for culturally diverse and appropriate court services. The convergence of substantially greater

numbers of immigrants residing in the United States and the judicial branch's reaffirmation and commitment to access, diversity, and fairness as the pillars of justice has brought both challenges and opportunities to the trial courts.

The Effect in California

California is not alone in experiencing this sea change; other states along the U.S.-Mexico bor-

der have had similar shifts in their demographics and are encountering similar challenges and opportunities. But while California's predominant immigrant population is Latino, as in those other border states, that is by no means the only immigrant-minority community that the trial courts are serving or need to include in their strategic planning processes. Our experience in California, as the following summaries illustrate, shows that responding to the immigrant community's needs not only benefits court users but also is consistent with the branch's long-term goals.

Court Interpreting Services

Not surprisingly, California's 8.9 million foreign-born residents—about 26 percent of the population—have dramatically increased the demand for court interpreting services in the state's trial courts, a demand that has outpaced the supply of qualified interpreters. The right to an interpreter is guaranteed under the California Constitution for criminal and juvenile matters, but interpreting services are also needed in other legal proceedings to ensure meaningful access to justice. According to the Judicial Council's *2005 Language Need and Interpreter Use Study*, approximately 80 percent of interpreting services are provided to Spanish-speaking court

This article is adapted from *Future Trends in State Courts 2007: Immigration, the California Experience, and Implications for Other States* by José Octavio Guillén, © 2007 National Center for State Courts, Knowledge and Information Services. Used by permission of the publisher.

users. Currently Spanish and 11 other languages are “certified,” meaning that interpreters in those languages must complete a challenging set of requirements to work in the courts. Confronted with the demand for more interpreting services and the shortage of qualified interpreters, the Judicial Council of California has taken the following steps:

- Established a standing Court Interpreters Advisory Panel to study the various issues and make recommendations to the council on systemwide improvements
- Sponsored legislation to raise per diem rates for contract interpreters
- Transitioned contract interpreters to employee status to provide them with employee benefits and make them part of the court’s core services
- Implemented proactive programs for recruitment, certification, and retention of new interpreters
- Established partnerships with educational institutions to promote students’ interest in entering the profession
- Implemented technology-based solutions for expanding interpreting services to remote locations and to exotic languages

Multicultural Workforce

As both court users and the labor force in most states have become more diverse, most state judicial councils have adopted strategic plans that emphasize access, fairness, and diversity along with quality of justice and service to the public as their top priorities. The fundamental underpinnings of these strategic goals are to make courts more accessible and a true representation of those they serve. Chief Justice Ronald

M. George, in delivering his 2006 address to the Judicial Diversity Conference, emphasized that “[e]mbracing the vast and rich diversity of our state—and viewing it as a resource and not a problem—can only strengthen our legal system.” Increasing diversity on the bench and among court staff has been made part of the 2006–2012 strategic plan for California’s judicial branch, and the Administrative Office of the Courts’ Education Division/Center for Judicial Education and Research offers training in cultural sensitivity to court staff.

Translation of Pro Per Court Forms

In response to the needs of the communities they serve and a greater understanding of the barriers faced by court users, the California courts have recognized that court forms and procedures are key impediments for most immigrants, especially when they are self-represented. The “plain language” movement has played an important role in identifying the need to translate court forms and legal information into simpler, clearer language to enhance access to court services and assist pro per litigants in navigating the court system. The California Courts Online Self-Help Center Web site is available in a Spanish version. In the areas of family and juvenile law, where court users are commonly unrepresented, many Judicial Council forms are translated into Spanish and guidance on interpreting services is offered. In addition, basic information and forms regarding criminal protective orders, domestic violence restraining orders, and child custody mediation is available in Chinese, Korean, and Vietnamese.

The state of Arizona was one of the pioneers in establishing self-help centers and providing pro per court forms

and legal information in Spanish. Many other states, including California, have followed suit, and now forms are translated into the languages of the majority of court users. Self-help centers, now established in all 58 counties, have the capacity to serve the needs of many non-English-speaking litigants. In Imperial County, the court created a formal partnership with the Universidad Autónoma de Baja California in neighboring Mexicali, so now three or four of its bilingual law students serve as interns in the court’s self-help center in El Centro.

Culturally Appropriate Services

Economic globalization, political instability, and war in many parts of the world, along with the need to expand the U.S. workforce as the sizable “baby boomer” workforce ages, are among the many long-term trends contributing to and driving ongoing change in American society. “Cultural competence”—understanding the culturally shaped beliefs and expectations of court users and staff about the essence of justice, what is right or wrong, appropriate or inappropriate, and fair or unfair—is essential knowledge for courts to respond to their communities’ needs. So too is an understanding of the complex interplay among ethnic/national, professional, and organizational cultures in forming beliefs about how justice is established and maintained, how the institutions of justice should work and be changed, and what it means to be a court employee.¹

Trial courts have begun to rethink their approaches in engaging these diverse groups and accounting for cultural differences as a key element of success. For example, in Imperial County, we have learned that for people of some cultures, attending batterers’ classes

Immigration by the Numbers

The number of naturalized U.S. citizens grew from 2.9 million in the years 1975 to 1990 to 8.25 million in 1991 to 2005, approximately 284 percent. During the same time periods the number of legal permanent residents nearly doubled, from 8.3 million to 16 million.

The total number of foreign nationals deported from 1990 to 2005 was approximately 20.5 million, an annual average of about 1.3 million. Ninety-two percent were from Mexico, followed by Brazil, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Jamaica, Nicaragua, and the People's Republic of China.

In the last decade, the United States has experienced an increase of 35 percent more foreign-born entering the country legally, an annual average of 32 million.

An estimated 12 to 15 million undocumented immigrants currently reside in the United States. Most of these individuals have resided in the United States for longer than a year.

The destinations for 64 percent of all immigrants during the past years have been distributed in six states: California (21 percent), New York (14 percent), Florida (12 percent), Texas (7 percent), New Jersey (5.2 percent), and Illinois (4.1 percent). The remaining 36 percent have settled in new destinations such as Georgia, Wisconsin, Minnesota, Pennsylvania, Virginia, Arkansas, and the Carolinas.

The Hispanic (Latino) population in the United States showed the largest increase by any group from 1990 to 2000—13 percent. Currently, it is estimated that the Latino population makes up 15 percent of the total U.S. population of 302 million. It is projected that by 2050, 24.4 percent of the U.S. population and 52 percent of the California population will be Latino.

Sources: U.S. Census Bureau and Office of Immigration Statistics, U.S. Department of Homeland Security, 2005 Yearbook of Immigration Statistics.

conducted by a highly trained, “objective” professional might be an effective technique for addressing some aspects of domestic violence, whereas for people of another culture, being counseled by a “subjective” but respected peer might be more appropriate. Trial courts that have experimented with these new approaches have found that culturally appropriate services go a long way toward improving the system. Some of the benefits include lower recidivism rates, higher rates of compliance with court orders, and expansion of resources through partnerships with other justice agencies and community-based organizations in building community capacity (e.g., public education, unemployment and job-training services, continuum of treatment, and community-based alternative dispute resolution).

Indigent Legal Services and Representation

Underlying our daily work is our key, ever-growing responsibility to protect the constitutional rights guaranteed to every individual accused of a crime: the right to counsel, to a speedy and public trial, to an impartial jury, to confront the witnesses against him or her, to have legal representation. During the last 10 years most U.S. trial courts have experienced significant growth both in numbers of filings and in their indigent populations, especially in the criminal arena. A 2005 trends report by the National Center for State Courts² cited higher occurrences of domestic violence and increased gang activity as immigrant populations have grown. Meanwhile, changes in federal and state policy ranging from immigration to labor as well as growing numbers of self-represented litigants have expanded the need for legal services and representation beyond the criminal arena.

Treaties and Other Legal Systems

The challenges to the trial courts posed by rapidly increasing populations of documented and undocumented immigrant court users across the nation have also created a need and an op-

portunity for courts to become more familiar with the applicability of international treaties, such as the Vienna and Hague conventions on the rights of arrestees and children in legal proceedings pending before U.S. and state trial courts. Many courts, but especially those located along the U.S.-Mexico border, have experienced higher numbers of cases involving dual jurisdiction, thereby prompting both legal systems to collaborate to learn about each other's legal system and its rights, responsibilities, processes, and limitations. Imperial County's superior court judges visited with their counterparts in Mexico and found that, although there were some differences in the two legal systems, they had much more in common. The court also established a relationship directly with the Mexican consulate so that court documents could be exchanged and California court judgments, on such matters as child support, could be enforced by Mexican courts.

Coalitions With Community-Based Organizations and Nontraditional Partners

External forces and changing demographics make it imperative for the courts to establish effective networks and coalitions with community-based organizations and other nontraditional partners (e.g., foreign consulates, churches, international education institutions specializing in law and linguistics, and Native American tribes). The courts are now challenged to:

- Provide services to sizable populations of litigants who are not residents but commute to work in the United States or reside here part time
- Offer culturally appropriate services—especially probation, litigant self-help, family support, domestic violence, traffic school, and substance-abuse treatment—to increasingly diverse populations
- Open up new opportunities for collaborative problem solving with other local, state, and federal agencies within the United States and with partner countries, including numerous Homeland Security agencies and the U.S. federal courts
- Improve work-process efficiency and effectiveness in light of limited state and local government resources
- Identify additional resources and establish comprehensive community-based resource networks³

Lessons Learned

As we in Imperial County go about the daily business of resolving disputes and striving for just outcomes, we have been guided by the goal of becoming more responsive and relevant to our ever-changing community. Along the way we have learned (and keep learning) these lessons:

- It is important to know the professional and organizational culture of the court.
- It is important to know, care about, and make honest efforts to accommodate the cultures of the populations that the court serves.
- We in the courts must build regional service networks that recognize both the realities of people's lives and the potential abundance of traditional and nontraditional resources available to address those realities.
- Cultural competency cannot be a separate program but instead must be a pillar in a new foundation for the way courts do business.
- Initiatives to improve cultural competency need to encompass the essentials of court management philosophy and operations, such as the core purposes of courts, case-flow management, and litigant assistance.
- Cultural competency initiatives need to be conducted by courts in close interbranch partnerships with state and local governments and community organizations. These initiatives require collective leadership and widespread participation throughout the court and justice community.

- A culturally competent court requires an ongoing executive commitment and active sponsorship.

The challenge of making our courts more user-friendly and responsive to the needs of our changing communities is also an important opportunity to ensure public trust and confidence in the justice system, both now and for the years to come. It is our responsibility to meet it head on.

José Octavio Guillén is the executive officer of the Superior Court of Imperial County.

Notes

1. See John A. Martin et al., "Becoming a Culturally Competent Court" and "Borderland Justice: Working With Culture in Courts Along the United States/Mexico Border" (Winter 2008) 22(4) *The Court Manager* (Nat. Assn. for Court Management) 6-30.

2. Virginia Suvelu, *Future Trends in State Courts 2005: Immigration and Its Impact on the State Courts* (Nat. Center for State Courts 2005).

3. The California Judicial Council under the leadership of Chief Justice Ronald M. George has led statewide initiatives aimed at promoting local community-focused strategic planning, community collaborations, and assistance programs for self-represented litigants. For information about the developing Connecting with Constituencies Program, see *Innovations in the California Courts* (Judicial Council of Cal., Admin. Office of the Courts 2007), www.courtinfo.ca.gov/programs/innovations/documents/innovations2007.pdf.

Developing a System of Justice at the International Criminal Court

**By
Joshua Weinstein**

I was fortunate enough to spend last summer in Europe, helping adjudicate thorny issues in an international war crimes tribunal. And I owe it all to Judge Donald Shaver. Avid *California Courts Review* readers undoubtedly remember Judge Shaver's article about his sabbatical at the International Criminal Court (ICC) that appeared in the Summer 2006 issue.

He served in the ICC's Trial Chamber as part of the Visiting Professionals Programme. A year after his time at the ICC, I too served in the Trial Chamber as a visiting professional.

During Judge Shaver's tenure, the court's Pre-Trial Chamber was gearing up for the confirmation hearing (its equivalent to a preliminary hearing) in the first case before the court, the prosecution of alleged Congolese warlord Thomas Lubanga Dyilo. By the time I got there, the Pre-Trial Chamber had completed the confirmation hearing and the Trial Chamber was preparing for the impending trial. My work focused on researching and writing memoranda on case-specific legal issues.

I learned of the ICC and the Visiting Professionals Programme when Judge Shaver's application to the Judicial Council for a paid sabbatical landed on my desk. Before reviewing the application, I, like many people, had heard about international courts and tribunals but never really understood what they are or, other than in a general sense, what they do. I knew there were international courts in The Hague. And, if forced to guess, I would have said something like "The Hague is a country near Belgium, right?" (Of

course that's wrong—it's a city of around 475,000 located about an hour south of Amsterdam in the Netherlands.)

To evaluate Judge Shaver's sabbatical application, I learned everything I could about the ICC. I read its Web site, researched the Visiting Professionals Programme, contacted the court and discussed its work. By the end of the process I was enthused and made a mental note to consider applying once the dust settled on his application. Eventually I did, and the rest, as they say, is history.

The International Criminal Court is the first standing international court devoted to adjudicating criminal cases. There are and have been several international courts. Some are permanent, but all of those have focused on civil or human rights law. Some are criminal courts, but those have been temporary and conflict-specific. Sparking interest in a permanent court was the recent need to create three conflict-specific courts: the International Criminal Tribunal for the former Yugoslavia (ICTY), the International Criminal Tribunal for Rwanda (ICTR), and, most recently, the Special Court for Sierra Leone (SCSL). The conflicts necessitating those courts—and the likelihood of other such conflicts—provided the momentum for the ICC's creation.

Created by a treaty called the Rome Statute, the ICC has been in existence for five years. The Rome Statute became effective in 2002 when 60 states became parties to the treaty. Today, some 105 nations are parties, but the United States is not among them. While former President Bill Clinton signed the treaty, it was not confirmed by the Senate; and when President George W. Bush succeeded Clinton, he withdrew the presidential signature. In fact, several articles hostile to the ICC and its mandate have been authored by various Bush officials.¹

One major complaint is that the ICC lacks accountability: the prosecutor has significant discretion and room to interpret the Rome Statute and needs only two ICC judges to agree to a decision of international significance. Another argument is that members of our military might be held criminally responsible if the United States were subject to the ICC's jurisdiction.

In the five years since the Rome Statute has been in effect no cases have made it to trial, but the court has been plugging along. The ICC has

found a site, a former government building in Voorburg, a suburb of The Hague. It has hired staff of about 350, many European, but also many from other continents, including the Americas and Africa. It has a prosecutor and 18 judges who are elected by the states that signed the treaty creating the court. The judges have hired a Registrar, the chief administrative officer for the court. The court has written and adopted Rules of Procedure and Evidence, Regulations of the Court, and Regulations of the Registry.

The prosecutor has been busy as well. The ICC's jurisdiction is limited to war crimes committed in member states or states that acquiesce to the court's jurisdiction. The prosecutor has been investigating numerous conflicts (or "situations," as they are known in ICC parlance). They include conflicts in the Democratic Republic of the Congo, Uganda, Central African Republic, and Darfur, Sudan. Numerous cases relating to one situation may be investigated. In Darfur, for instance, two cases are pending; in Uganda, five warrants of arrest are outstanding. And, of course, there is the prosecution of Thomas Lubanga Dyilo from the Democratic Republic of the Congo.

As of this writing, in late October 2007, the court was conducting its equivalent of motions in limine in the Lubanga case. Trial is scheduled to begin on March 31, 2008. The matters considered at these pretrial hearings include many issues that will undoubtedly be routine once the court has tried several cases. But given the infancy of the court, they are novel and ponderous legal and philosophical trial management issues.

Others of these issues are undoubtedly foreign to anyone (such as myself) who did not take a comparative law course in law school. The court is a hybrid, part common law (adversarial) system and part civil law (inquisitorial) system. The Rome Statute was negotiated to ensure a strong role for the court, as in the civil law system, and the respective parties, as in the common law system. Not surprisingly, there is a certain tension

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AP/WORLDWIDE PHOTOS

Judges of the International Criminal Court Akua Kuenyehia, then-president Claude Jorda, and Sylvia Steiner, top left to right, are seen at the start of a November 2006 hearing in the landmark first case for the permanent war crimes tribunal. The ICC opened the hearing to consider evidence against alleged Congolese warlord Thomas Lubanga, the only suspect in the court's custody, accused of recruiting child soldiers and using them to kill and mutilate his enemies. The hearing was meant to determine whether the evidence against Lubanga was strong enough to merit a full trial.

in trying to meld those two contradictory systems.

The role of attorneys mirrors that in the U.S. system. Like the prosecutor in common law jurisdictions, the ICC prosecutor investigates crimes and brings the defendant before the court; indeed, as in the U.S. criminal justice system, the charges are brought by the prosecutor. (Rome Stat., arts. 53–58, 61.) Defendants also have rights similar to those available in our criminal justice system. In ICC prosecutions, the defendant is presumed innocent and the prosecutor has the “onus” to prove, beyond a reasonable doubt, that the defendant is guilty. (Rome Stat., art. 66.) Defendants are to be afforded “adequate time and facilities” to prepare their defense. They have the right to examine the witnesses against them, to compel the attendance of witnesses in their defense, and to remain silent and not be compelled to testify. (Rome Stat., art. 67.)

Nonetheless, the court, much like courts in so-called civil law jurisdictions, is merely a neutral umpire calling the balls and strikes. For example, the court is to call witnesses and actively control the litigation so that the trial results in a “determination of the truth.” (Rome Stat., art. 69(3).) Additionally, the court is charged with protecting the “safety, physical and psychological well-being, dignity and privacy of victims and witnesses.” (Rome Stat., art. 68(1).) Thus, the parties have strong roles, but the court does as well.

All the issues that I worked on for the ICC revolved around this tension between strong advocates and strong court. And they were issues that would be straightforward questions in Califor-

nia courts or in civil law jurisdictions. But in this unique, hybrid system, they were issues of first impression.

In my two and a half months at the ICC, I analyzed three major issues for the court: whether to allow the parties to conduct witness familiarization and proofing; whether the court should be provided with all of the disclosure materials (essentially discovery materials); and the role of victims and their level of participation in the trial. While the advice I gave the court is confidential, the basic approach turned out to be the same for all the issues—the issues were framed in a legal context, but their resolution was actually a policy decision. Put another way, the law did not dictate a certain answer; rather, the philosophical preferences and practical concerns of the judges guided the resolution. This is so because, while the law is a guide, there is no binding authority on most of the issues and there were sound policy reasons to justify determination on either side of the questions.

Witness familiarization and proofing are commonplace practices in the United States. But they are either illegal or unethical in almost all other jurisdictions. Familiarization is simply informing a witness about what to expect in court, explaining how the court process works and what his or her role will be—in other words, explaining the physical layout of the courtroom; the role of the judge (or judges in the case of the ICC), attorneys, and witnesses; and how the testimony will proceed. Proofing is what we in California would call witness preparation and consists of reviewing the witness’s prior statements and expected testimony.

The issue under consideration by the Trial Chamber was whether to follow the Pre-Trial Chamber’s ruling precluding the prosecutor from conducting witness familiarization and proofing. The Pre-Trial Chamber did so because the ICC itself has a victim and witness unit that could conduct familiarization and proofing. Indeed, in England (obviously another common law jurisdiction), neutral agencies conduct witness familiarization and attorneys are precluded from proofing witnesses. Attorney proofing is prohibited because the witness’s testimony should be “uninfluenced by what anyone else has said” and, upon proofing, a witness may, even unconsciously, “improve” his or her testimony.² In civil law jurisdictions a party proofing a witness is unheard of, as the witness “belongs” to the court, not to a party.

There are obvious advantages to witness proofing in advance of the trial. Often witnesses give their statements years before the trial. Proofing can make trials more efficient by affording witnesses an opportunity to remember details and clarify inconsistencies, which reduces the chances of surprises during their testimony.

Thus, the court had to balance the concern of undue influence on witnesses to “improve” their testimony against the efficiencies that familiarization and proofing offer. In a court like the ICC that has a victim-witness unit whose obligation is to discover the truth and maintain the well-being of witnesses, it may be appropriate to allow familiarization and proofing but have it conducted in a neutral manner by the victim-witness unit. This could ensure the efficiencies

while reducing the concern of undue influence on the witness.

Whether the court should be provided disclosure (or discovery) is similarly settled in California and other jurisdictions, but it is an issue of first impression at the ICC and one that goes directly to the hybrid nature of the court. The disclosure packets in the ICC consist of extensive witness statements and the prosecutor's investigative files; they are most analogous to police reports. Of course, Penal Code section 1204.5(a) severely limits when a judge in California can review the police report (without the consent of the defendant). Conversely, in civil law ju-

found in other legal systems.³ Under the Rome Statute, at stages deemed appropriate, the court "shall permit" the victim's "views and concerns to be presented and considered" if (1) the victim's "personal interests" are affected and (2) it is done in a "manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial." (Rome Stat., art. 68(3).) Thus, unless the court deems it inappropriate at a certain stage and unless it is prejudicial or inconsistent with fair trial principles, victim participation is part of the adjudicative process at the ICC.

Nonetheless, in allowing victim participation, the court has considerable

procedures when it is necessary. There is only a court, itself determining what the Rome Statute says and means, going forward under that interpretation, without any accountability.

But whether these concerns outweigh the need for an institution like the ICC is far from clear in my mind. There is no apparent end in sight for international war crimes that need to be addressed, and it is unlikely that local courts in war-torn nations will step up to the plate. Indeed, creating new ad hoc tribunals every time the need arises seems overly cumbersome and time consuming (not to mention overly politicized).

Whether an ICC should exist may be debatable, but there is one now. And because of its creation I had the good fortune this summer to help develop the jurisprudence of that court. That jurisprudence, as I said above, very well may become routine someday. But, much as it must have been for those who shaped our justice system in its infancy, this summer was an exciting time to be at the ICC and in The Hague.

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risdictions, the judge conducts the trial by calling witnesses and setting the path of the litigation. By definition, the court in civil law jurisdictions must have pre-trial access to the witness statements and investigation.

While there is no law requiring a certain outcome of this issue at the ICC, the Rome Statute provides guidance. As the Rome Statute charges the Trial Chamber with determining "the truth" and allows the court to call witnesses and control the path of the litigation, it would appear that the court, to fulfill these mandates, should have access to the disclosure packets before the trial.

The final significant issue that I researched for the ICC was the victim's role and level of participation at the trial. Again, this would not be an issue in California courts or in common law jurisdictions as the victims, except for testifying, do not participate in the trial. But one of the ICC's unique features is victim participation. The Rome Statute and Rules of Procedure and Evidence evince a clear intent to expand victim participation from that typically

discretion in determining the level of participation. While victim participation is one of the major innovations of the ICC, significant structural questions remain: Should victim participation be limited to the pretrial phase? If victim participation is allowed at the trial phase, should it be allowed at the actual trial or only at post-trial proceedings, such as sentencing? If victim participation is allowed at trial, should the victims' representatives be seated at the counsel table with other parties or should victims merely be allowed to submit written observations?

The Trial Chamber will soon answer these questions, and in time the answers to all these issues may very well become routine. The questions raised by the court's critics could be more enduring. Without checks and balances, there may be a good faith argument against an institution like the ICC. After all, unlike our system, there is no executive branch acting separately from the court, exercising independent discretion on decisions from whom to prosecute to whom to pardon. Nor is there a legislative branch to change the laws or

Notes

1. Michael Chertoff, Secretary of the Department of Homeland Security, for example, authored an article questioning the lack of checks and balances in the Rome Statute ("Justice Denied," *Weekly Standard* (Apr. 12, 2004), www.weeklystandard.com/Content/Public/Articles/000/000/003/956xhybq.asp. See also Ruth Wedgwood et al., *Toward an International Criminal Court?*, Council on Foreign Relations Press, 1999, in which John Bolton, the former U.S. Representative to the United Nations, urged that the United States reject the Rome Statute.
2. See *R. v. Momodou and Limiani*, [2005] EWCA Crim 177, ¶ 61.
3. Carsten Stahn et al., "Participation of Victims in Pre-Trial Proceedings of the ICC" (2006) 4 *J. Internat. Crim. J.* 219, 219-220.)

Punch and Judy

By
Arthur Gilbert

Your Honor, Buffy wouldn't hurt a fly. Like all pugs she is sweet, tame, and friendly." The defendant gave a photo to the bailiff, who handed it up to Judge Judy, who examined the photo.

"*Pugnacious* is a better word," Judge Judy said. "Looks like she's part pit bull. She bit your daughter, and then you sold her to an unsuspecting buyer."

"It was only a nip," the defendant protested.

"Maybe it's time to take a nip—no, a bite—out of your wallet."

Judge Judy decided the case in favor of the plaintiff, who had purchased an allegedly tame pug only to be bitten when he tried to stop an altercation between his new dog and a ferocious Pomeranian. "From then on," complained the plaintiff, "the pit bull pug would bite me at every opportunity. I returned the dog, but the buyer would not return my money or pay for my doctor bills."

The dog was a pussycat compared to Judge Judy in her ferocious verbal assault on the seller. Judge Judy was angry, but her anger had nothing to do with the case. In fact, the tongue-lashing viewed by millions throughout the world gave her a sense of calm. At the end of the show, she walked swiftly to a conference room where her staff, her lawyer, and a few others from the network were gathered.

She stood at the head of the table, greeted everyone warmly, and said in a voice much softer than her television voice, "I don't care what the so-called critics say about me," she said,

"although I didn't relish Judge Wapner's comments posted all over the Internet. But this Peel bastard—that's another story. He went over the line. See if you can do something about it." She walked out of the room, leaving those assembled quietly thinking.

Judge Judy's lawyer looked through numerous articles in his new file labeled "PEEL" and concentrated on an article that Supreme Court Justice Anton Peel had written a few months earlier for a local bar journal. The article had been posted recently on the Internet, catching the attention of Judge Judy's staff. It was titled "Punch Judy: Judy Degrades Litigants, Herself, and the Judiciary."

The article attributed the decline of civility in the legal profession in large part to the "egregious antics of a harridan billed as Judge Judy. She sullies the judicial robes of her office. She mocks justice by mocking the litigants and witnesses who appear before her."

Peel went on: Judge Judy "cannot utter a word without violating the judicial canons of ethics." He praised Judge Wapner, "whose rulings in even the most bizarre small claims cases reflected the judiciary at its finest. Judge Wapner was stern when necessary but unfailingly treated the litigants with dignity and respect. His rulings were consistently fair and well reasoned. He reflected well on the judiciary and showed the world a first-rate jurist at work." Peel repeated a quote from Judge Wapner that had appeared on the Internet: "Judge Judy is a disgrace to the judiciary."

Peel ridiculed Judge Judy for being divorced three times and remarrying one of her former husbands. "She has trouble deciding whom to marry. How can she decide cases?" he mused.

These comments were inconsequential to Judge Judy—less annoying than a courteous litigant. It was the following sentences that caught her attention and prompted the meeting in which she demanded that they do something: "It is no wonder that Judge Sheindlin (her real name) resigned from the trial court in New York. She had no choice. It is believed by many in New York City's legal circles that Judge Sheindlin was under investigation by New York's State Commission on Judicial Conduct for the type of misconduct she engages in on television every day. What have we come to? A television personality acquires a net worth of \$100 million for pretending to be a judge that New York might not allow to sit as a judge."

After pondering the quote, the lawyer said, "I know what we should *not* do about it." Everyone in the room knew what he meant. A libel action was out of the question. It would prove to some the truth of the allegations, however false they were, and the sponsors would balk. Everyone sat thinking. Several minutes passed.

The lawyer again went through the file and said, "Just maybe there is something we can do about it . . . It's a long shot." He related his plan. Some people laughed; a few others acknowledged it was imaginative but that it

would yield nothing. The lawyer was determined to give it a try. He ran it by his investigator, who was glad to get the work and outlined a procedure that he and a colleague scrupulously followed. A month later, to their surprise and joy, the long shot paid off.

The payoff is related in investigator Peter R. Young's report. The report states that since 5 a.m. he and his assistant have been sitting in a vehicle across the street from Axel Peel's house, as they had done for several weeks. But on this particular day at 8:12 a.m., Young "observes subject Axel Peel pull out of his driveway in a gray 2006 Infiniti M35." Young begins videotaping the Infiniti, while his assistant follows the car at a respectful distance.

Young has been through this drill before, but this morning is different. The report details "subject Peel's route." After a 20-minute journey, Axel Peel drives to the underground garage of a state building. He waves at the security guard, who smiles and waves back. Peel inserts an access card into the security box near the driver's window. A large metal gate rises and "subject Peel" drives down the ramp.

It is here that Young's report ends. But no matter, because he has successfully completed his mission. He is ecstatic. Had he been able to follow Peel into the garage, his report would have described Peel easing the car into parking space number 5, the one reserved for state Supreme Court Justice Peel.

The report would say that Peel gets out of his car and takes the elevator

reserved for justices to the floor where his chambers are located. As he walks down the hall, a law clerk says, "Hello, Judge," and he returns the greeting.

In his chambers, he greets his secretary, who informs him that a "hot" habeas writ petition is on his desk. Peel walks into his office and peruses the writ petition.

One could well conclude there is nothing remarkable about the events just related—but there is: Axel Peel is not a Supreme Court justice. But Aston Peel, his identical twin, is.

Young titles his report "Peels Slip Up." He states his conclusion in the opening line of his report: "On February 9, 2007, Axel Peel, a successful litigation attorney, temporarily traded identities with his brother Aston Peel, an occurrence that has likely occurred frequently throughout their lives."

The investigator handed his report to Judge Judy's lawyer, who read it with a smile and placed it in the Peel file. Other papers in the file recited what many in the legal profession knew about the Peel twins. They went to law school and did moderately well. They might have done better scholastically but for their active social life, in which they are reputed to have traded dates—without informing the women. Though never proven, this presumed practice was well known on campus. Nevertheless, many women went out with them, and some of them even formed a club where they compared notes and tried



to determine if and when switches had been made.

The twins had accepted an invitation to attend the final club meeting. They good-naturedly agreed to answer questions in a press conference format. As in a presidential press conference, they never directly answered any question and did not admit that they had ever swapped dates. The event was carried off in good humor, written up in the college newspaper, and parodied in the law school's third-year graduation play.

After law school Axel and Aston went into practice together under the prosaic firm name Peel and Peel. Some had compared the Peel brothers to the gynecologist twins portrayed in David Cronenberg's movie *Dead Ringers*. The comparison was not apt. The Peel twins were both strong personalities and not psychologically unbalanced as were the twins portrayed in *Dead Ringers*. These qualities, thought Judy's lawyer, made their habit of changing identities easier.

Their friends argued that the Peel twins never traded identities but got a kick out of making people think they did. And even had they done so in college, it was all in fun and never to anyone's detriment. But one woman who claims to have dated the twins in

college tried to sue. She alleged that she had had a date with Aston, but that Axel took her out instead, pretending to be Aston in order to humiliate her. No lawyer would take the case, but an article about her allegation did appear in a local newspaper.

The twins' law practice did not thrive. Aston thought it was because clients were not sure which lawyer was representing them at any particular time. They disbanded their practice and went their separate ways, each becoming litigators in large firms. They became well known and even opposed each other in a law and motion matter, which received a front-page story in the leading legal periodical. Neither had filed a motion to recuse the other, and the trial judge just scratched his head and ruled. There was speculation that they had changed sides when arguing the motions. The senior partners from each of their respective firms questioned them about it. They both gave their usual evasive answers, and before the firms decided how to deal with the situation, the twins quit.

Throughout the years, notions and speculation about the Peels' trading identities ceased. They both achieved stellar reputations as canny, well-prepared litigators whose ethics were beyond reproach. Both were deeply involved in local and state bar activities. Aston became a judge and was eventually appointed to the Supreme Court. Axel formed his own successful litigation firm. They were trim and stayed in shape. Just as they looked and sounded alike, so too they aged alike, although a trained eye could see slight differences in the crevices of their faces.

After reading investigator Young's report, Judge Judy's lawyer then read investigator Sid P. Yardley's report detailing Aston Peel's activities on February 9, 2007. He left his house at 9 a.m. and drove north to Camarillo, California, where he played in a golf tourna-

ment, posing as Axel Peel. Later in the day the twins met for dinner at Axel's house. Investigators followed the Peel twins the next morning, February 10, 2007, and this time Aston Peel went to the court building and Axel Peel went to his law office. Young and Yardley were beaming. "We got them, swapping places on the links," said Yardley.

"Would they take such a risk over a lousy game of golf?" asked the lawyer.

"Maybe it's not such a risk," said Young. "The Supreme Court was not in session this past week. Maybe Axel Peel just went to the court and sat in his brother's chambers on February 9. He is known to drop by and have lunch with his brother. But even if they did nothing illegal, this act would embarrass the hell out of them and would lend support to the rumors about their past activities."

"That it would," said the lawyer thoughtfully. He was pleased but also uneasy. He wondered why the twins had even switched places. And now that his plan had produced fascinating information, what should he do with it? He decided that making it public to discredit the twins just might backfire. Would it not be better to let sleeping dogs lie? On the other hand, redacting the names of the investigators from the report and anonymously turning it over to Axel Peel just might inhibit his brother from further diatribes and unsubstantiated charges against Judge Judy. Moreover, it would avoid an allegation of extortion.

A few days later, Peter R. Young's assistant left an envelope at Axel Peel's law firm. In the envelope was a summary of the Peels' activities on the morning of February 9, 2007. Axel Peel read through the contents of the envelope and had a messenger deliver it to his brother. Immediately after reading the summary in the envelope, Aston feverishly set to work on his next Judge Judy article. Later that day, when Axel

stopped by the court, Aston handed him a draft of the article. "Take a look at this," he said.

The article explained that in late January, the Peel brothers thought they were being followed. After Axel's investigators "tailed" Young and Yardley "tailing" them, they were convinced. This led the brothers to hatch their own plan, which they executed on February 8 and 9.

They exchanged clothes and car keys in Aston Peel's chambers on the afternoon of February 8, 2007. They then went for drinks, after which they went to the parking lot and drove away, Aston in Axel's Aston Martin and Axel in Aston's Infiniti. They each drove to their respective sister-in-laws' houses, where they spent a restful night. Aston joked that they did not swap wives. Aston slept in

"Whatever Judge Judy is and however crude her form of justice, she sets things right for more than a hundred million people, and she does it in a courtroom."

a guesthouse and Axel slept in a spare bedroom. The following morning, Aston left Axel's home and drove to the court. Axel left Aston's condominium and headed for the golf course. The article then quoted verbatim the unsigned report left in Axel's office.

The article concluded with a reference to Peel's earlier article and asked in mock disbelief, "Could it be possible that Judge Judy was behind this scheme to silence my criticism of her? No, I am sure that Judge Judy is too busy investing her millions to bother with such a prank"

After reading the draft, Axel threw it back on his brother's desk. "Do yourself a favor," he said to his brother. "Do not publish this stupid article."

"Stupid, is it?"

"You bet. It takes an unfair shot at Judge Judy. Have you watched her show?"

"Of course I have."

"So have I. You know what? I agreed with every one of her decisions."

"That's not the point," said Aston. "The manner in which they are rendered sickens me. It reflects badly on our system of justice."

"You think our changing clothes and pretending to be one another reflects well on us?"

"Doesn't hurt either of us. This article exposes a veiled threat to uncover a deceit that did not happen."

"Which we accomplished through deceit," said Axel.

"You sound like a lawyer," said his brother. They laughed.

"What really bothers me," said Axel, "is your allegations about Judge Sheindlin when she sat as a family law judge in New York."

"That was reasonable speculation based on what I read on the Internet and what a prominent family law lawyer in New York said he heard was about to happen."

"Please, you are a judge. You of all people should know . . ."

"I didn't say it was true, and I am not broaching that subject in this article."

"You and I dislike Judge Judy's style. She calls the boyfriend who victimizes and steals from his girlfriend a deadbeat. But isn't that what most of us are thinking to ourselves? Maybe he deserves to be demeaned. Whatever Judge Judy is and however crude her form of justice, she sets things right for more than a hundred million people, and she does it in a courtroom."

"That's what drives me nuts," said Aston.

"Think twice before you attempt to tarnish her. Making public our little deception could make you look petty, self-righteous, and even envious. And that could undermine your judicial decisions. Set the standard for excellence by example rather than through an attack."

Axel turned his head slightly and raised his eyebrows, a gesture he made to juries after his closing arguments, a way of saying, "Think about it." He got up from his chair. "Do not publish this article. I can get your draft to Judge Judy's lawyer, then you and she can work something out and drop this issue. She will go on administering justice in her way and you will administer it in yours."

Axel smiled and left. Holding the manuscript, Aston could not help but think about how the deception that was not a deception could have deceived, how it would have put Judge Judy in her place, and how much fun it would have been to publish. He put the manuscript aside and reread the writ petition that had been left on his desk a few days earlier.

Right about now, Aston imagined, Judge Judy and her staff were choosing cases to consider for future shows. Their criteria were different from his. But was the decisionmaking process itself any different?

Aston was not sure how to decide the writ petition. He went to his restroom and looked at himself in the mirror. "How carefully we look at cases and issues," he thought to himself. "But how clearly do we really see the distinguishing and similar factors?" He looked at his face and said aloud, "My brother and I . . . we sure look alike." ■

Arthur Gilbert, a frequent contributor, makes one of his forays into fiction for this imaginative commentary. Gilbert is the presiding justice of the Court of Appeal, Second Appellate District, Division Six, in Ventura.

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Alex Ricciardulli

The Latest Developments in the Three-Strikes Law

BY ALEX RICCIARDULLI

Even though it has been nearly 14 years since California's three-strikes law was enacted, appellate courts are still trying to figure it out. Hundreds of opinions have been written regarding the law, and, while the flow of cases has ebbed to a mere trickle, the cases being handed down now are extremely important ones, shaking many long-held principles.

The most important developments of the past several months include the potential elimination of juvenile adjudications as prior felony convictions that count as strikes, the ability to conduct court trials without a jury on priors notwithstanding the *Cunningham* and *Apprendi* opinions, and the California Supreme Court's recent ban on considering probation reports in proving priors.

A Whirlwind Review of Three Strikes

Many are surprised to learn that there are actually *two* three-strikes laws: one enacted by the Legislature in Penal Code section 667(b)-(i) and another enacted by initiative in Penal Code section 1170.12. Thankfully, it has been held that both laws are virtually identical. (*People v. Hazelton* (1996) 14 Cal.4th 101. Citations here will be to the legislative version in section 667(b)-(i).)

The main feature of the law consists of a *three-strikes provision*: A defendant who commits any felony with *two or more* prior felony convictions must be sentenced to at least 25 years to life in state prison. (Pen. Code, § 667(e)(2).) There is also a *two-strikes provision*: A defendant who commits any felony

with *one* prior felony conviction must be sentenced to twice the base term of the current felony. (*Id.*, § 667(e)(1).) Finally, there is also a *reduction-in-time-credits provision*: A defendant who commits a felony with *one* prior felony conviction must serve at least 80 percent of his or her sentence in prison; the defendant's credits for good time or work time while in prison cannot exceed one-fifth of the total term in prison. (*Id.*, § 667(c)(5).) The defendant who gets 25 years to life gets no good-time or work-time credits while in prison to reduce the sentence. (*In re Cervera* (2001) 24 Cal.4th 1073.)

The three-strikes juggernaut went into effect on March 7, 1994, meaning that a current offense must have occurred on or after that date for the law to apply. (*People v. Cargill* (1995) 38 Cal.App.4th 1551.) Prior felony convictions that count as strikes, on the other hand, could have occurred before or after this date. (See *People v. Gonzales* (1995) 37 Cal.App.4th 1302 [collecting cases].) With regard to the handful of strike priors added on March 8, 2000, by Proposition 21—such as criminal threats and felonies on behalf of a gang—the current offense had to occur on or after March 8, 2000, but the priors could still be from before or after this date. (*People v. James* (2001) 91 Cal.App.4th 1147.)

Strike priors consist of convictions in California for "violent" or "serious" felonies under Penal Code sections 667.5(c) and 1192.7(c), such as robberies, residential burglaries, and assaults with a deadly weapon. (Pen. Code, § 667(d)(1).) Convictions from outside

California's jurisdiction for felonies that have all the elements of violent or serious felonies also count as strike priors. (*Id.*, § 667(d)(2).) Lastly, juvenile adjudications for certain offenses (usually only those listed in Welf. & Inst. Code, § 707(b)) are strikes if the juvenile was 16 or 17 years old at the time of the offense. (Pen. Code, § 667(d)(3).)

About Those Juvenile Strike Priors . . .

One of the hottest developments in three-strikes law came with the arrival of *People v. Nguyen* (2007) 152 Cal. App.4th 1205, the first Court of Appeal opinion to flatly state that juvenile adjudications no longer count as strike priors. Although the California Supreme Court has granted review, if the case's reasoning stands up, with one stroke of the pen an integral component of three strikes will have been totally wiped out.

Admittedly, the first big blow on the use of these types of priors happened years ago when the California Supreme Court held that, with very few exceptions, only adjudications for crimes on the list in Welfare and Institutions Code section 707(b) could count as strikes. (*People v. Garcia* (1999) 21 Cal.4th 1.) This was a big deal because the list of priors in section 707(b) is far narrower than the list of strikes that apply to adults; for example, priors for residential burglary and most attempts are not listed in section 707(b). The list is also narrowed by the statutory requirements that the defendant had to have been 16 years of age or older at the time he or she committed the crime

that resulted in the juvenile adjudication. (Pen. Code, § 667(d)(3)(A).)

Before *People v. Nguyen*, several courts had held that there were no constitutional problems with using juvenile priors as strike priors. (See, e.g., *People v. Fowler* (1999) 72 Cal.App.4th 581.) *Nguyen*, however, held that use of any juvenile adjudications as strike priors, even ones where the juvenile had admitted his or her guilt in the ad-

prior conviction) that increases the maximum penalty for a crime must be charged in an indictment, submitted to a jury, and proven beyond a reasonable doubt.’” (*Nguyen, supra*, 152 Cal. App.4th at p. 1219, quoting *Apprendi, supra*, 530 U.S. at p. 476.)

The sole exception to the jury trial requirement for facts that increase punishment is for prior convictions. *Nguyen* observed that from *Apprendi*

proof beyond a reasonable doubt’” (quoting *Tighe* at p. 1194). The trouble, as seen by *Nguyen*, is that juveniles have the right to proof beyond a reasonable doubt in their adjudications, but *not* the right to a jury trial.

Several cases before *Nguyen* had held that there were no *Apprendi* problems with using juvenile adjudications as strike priors. (See, e.g., *People v. Lee* (2003) 111 Cal.App.4th 1310; *People v. Bowden* (2002) 102 Cal.App.4th 387.) These opinions reasoned that all the “procedural necessities” required for juveniles was the due process right to a court trial, so use of adjudications as strikes was valid.

Whether *Nguyen* will stand up is unknown. On October 10, 2007, the California Supreme Court granted review in *Nguyen*. (See order in S154847.) An opinion by the Supreme Court likely will not be filed until the latter half of 2008.

One of the hottest developments in three-strikes law came with the arrival of *People v. Nguyen* . . . , the first Court of Appeal opinion to flatly state that juvenile adjudications no longer count as strike priors. . . . [I]f the case’s reasoning stands up, with one stroke of the pen an integral component of three strikes will have been totally wiped out.

judication, violated *Apprendi v. New Jersey* (2000) 530 U.S. 466 and was unconstitutional.

Nguyen first observed that in California, as elsewhere, a juvenile does not have the right to a jury trial in an adjudication; the judge is the sole trier of fact in these proceedings. (See *McKeiver v. Pennsylvania* (1971) 403 U.S. 528.) The Court of Appeal then observed that the U.S. Supreme Court in *Apprendi* “explicitly held that the Due Process Clauses of the Fifth and Fourteenth Amendments, and the Sixth Amendment’s notice and jury trial guarantees, require that ‘any fact (other than [the fact of a]

to *Cunningham v. California* (2007) 549 U.S. ___ [127 S.Ct. 856], which invalidated California’s determinate sentencing law, the U.S. Supreme Court’s opinions had found that a defendant does not have a right to a jury trial in the current proceeding regarding the truth of the prior convictions used to increase his or her punishment. *Nguyen*, however, relying on *United States v. Tighe* (9th Cir. 2001) 266 F.3d 1187, held that “the exception for prior convictions is a narrow one that is ‘limited to prior convictions resulting from proceedings that afforded the procedural necessities of a jury trial and

No Right to a Jury Trial on Strike Priors

Whether the prior felony conviction counted as a strike is for an adult conviction or a juvenile adjudication, an issue that was definitively settled by the California Supreme Court (for now) is that a defendant does not have the right to have a jury determine the truth of the strike prior. *People v. McGee* (2006) 38 Cal.4th 682 held that, despite *Apprendi*, a defendant is not entitled to a jury trial on any factual issues regarding a prior.

The California Supreme Court has been consistent in the position that there is no right to a jury trial on priors both before and after *Apprendi*. (See *People*

v. Kelii (1999) 21 Cal.4th 452; *People v. Epps* (2001) 25 Cal.4th 19.) The trouble is that this position is based on a U.S. Supreme Court opinion, *Almendarez-Torres v. United States* (1998) 523 U.S. 224, which was considerably undermined by *Apprendi*.

In *Almendarez-Torres*, the U.S. Supreme Court analyzed a federal law that increased punishment if the defendant committed the crime of illegal reentry into the United States with a prior conviction for an enumerated felony. The statute provided that the defendant had the right to a jury trial on whether he was guilty of the current illegal entry, but that a judge determined the truth of the prior conviction. The Supreme Court upheld the law in a 5-4 majority opinion.

Justice Clarence Thomas was part of the five-justice majority opinion in *Almendarez-Torres*. Justices John Paul Stevens, Ruth Bader Ginsburg, Antonin Scalia, and David H. Souter dissented. These four justices would have found the statute in *Almendarez-Torres* unconstitutional because the defendant should have been given the right to a jury trial on the prior.

Apprendi was also a 5-4 majority opinion. However, this time the four dissenters in *Almendarez-Torres* were part of the five-justice majority. The *Apprendi* majority opinion was written by Justice Stevens and joined by Justices Ginsburg, Scalia, and Souter, with Justice Thomas providing the critical deciding vote.

Justice Thomas in *Apprendi* wrote a concurrence in which he specifically stated that he had erred in finding no right to a jury trial on a prior in *Almendarez-Torres*. Moreover, the majority opinion in *Apprendi* stated that, although it was not reaching the issue, *Almendarez-Torres* may no longer be good law: “[I]t is arguable that *Almendarez-Torres* was incorrectly decided, and that a logical application

of our reasoning today should apply if the recidivist issue were contested . . .” (*Apprendi, supra*, 530 U.S. at p. 489.)

Despite all this, *Almendarez-Torres* has *not* been overruled; the U.S. Supreme Court since *Apprendi* has stated that the right to a jury trial on facts that increase punishment does not apply to priors. (See *Cunningham, supra*, 549 U.S. ___ [127 S.Ct. 856, 868]; *Blakely v. Washington* (2004) 542 U.S. 296, 301.) However, it also has not been confronted with the continuing validity of *Almendarez-Torres*, so uncertainty persists in this area of law.

No More Using Probation Reports to Prove Priors

The California Supreme Court upset long-standing rules with its opinion in *People v. Trujillo* (2007) 40 Cal.4th 165, holding that defendants’ statements in probation reports cannot be used to prove strike priors. This area of law had been settled since the Court of Appeal in *People v. Monreal* (1997) 52 Cal. App.4th 670 had held otherwise, but *Trujillo* expressly disagreed with the Court of Appeal.

By way of background, it had been held that the trier of fact, in considering whether a prior is true, is confined to the “record of conviction” of the prior. (*People v. Guerrero* (1988) 44 Cal.3d 343.) This means that the prosecution may not call eyewitnesses to prove the nature of the prior; the prosecution is limited to documents that are part of the record of conviction and are admissible under some exception to the hearsay rule. (*People v. Reed* (1996) 13 Cal.4th 217.)

The Court of Appeal in *People v. Monreal* had held that a defendant’s statements in a probation report (such as that a deadly weapon was used) were admissible to prove that the prior was a serious felony. *Monreal* reasoned that the report was part of the record because it was in the court file

in the prior case and the statements fell within the admissions exception to the hearsay rule under Evidence Code section 1220.

The Supreme Court disagreed that the report was part of the record of conviction: “[A] defendant’s statements, made after a defendant’s plea of guilty has been accepted, that appear in a probation officer’s report prepared after the guilty plea has been accepted are not part of the record of the prior conviction, because such statements do not ‘reflect[] the facts of the offense for which the defendant was convicted.’” (*Trujillo, supra*, 40 Cal.4th at p. 179, quoting *Reed, supra*, 13 Cal.4th at p. 223.)

Trujillo dealt with a *postconviction* sentencing probation report; what about a defendant’s statements in a *preconviction* or *preplea* report? The Court of Appeal in *People v. Thoma* (2007) 150 Cal.App.4th 1096, 1103 implied that *Trujillo*’s bar to statements applied only to statements in postconviction reports. *Thoma* refused to allow a court to consider a preconviction report to prove a prior, but only because the report contained hearsay statements made by other than the defendant that did not constitute adoptive admissions.

The upshot of these two cases is that perhaps *Monreal* is still good law regarding the use of preplea or preconviction reports containing admissible hearsay to prove priors, with *Trujillo* barring only postconviction reports. Undoubtedly, further appellate cases will have to resolve this issue, meaning that the litigating over three strikes is not likely to end in the foreseeable future. ■

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.

Congress Creates Incentives for Law School Grads to Enter Public Service

BY GREGORY E. MIZE



Gregory E. Mize

The prospects of relief for civil legal aid and criminal justice attorneys faced with large amounts of law school debt have recently improved.

Three proposals for relevant legislation have either passed or are proceeding successfully through the federal legislative process. The College Cost Reduction and Access Act became Public Law 110-84 on September 27, 2007. Among its many complex provisions, the new law creates “income-based repayment (IBR)” options for public interest lawyers (and others embarked on low-paying public service careers) to repay their federal education loan debts. The essential benefit of the IBR plan is that it caps an eligible borrower’s payment at roughly 15 percent of the borrower’s annual adjusted gross income minus 150 percent of the poverty level. Professor Philip Schrag of Georgetown University Law Center, a leading proponent of the legislation, estimates that, for a typical borrower owing \$100,000 and earning a \$40,000 annual salary, payments during the first year would be reduced from \$1,151 to \$309 per month. The IBR plan allows the remainder of the loan to be forgiven after 25 years. The IBR option will become available to borrowers beginning July 1, 2009.

The new law also provides an additional incentive for law school graduates to pursue careers in indigent criminal defense or civil legal aid. A student borrower may have his or her debt forgiven after 10 years if three conditions are met. First, the borrower must have either a federal direct loan or education debt that has been consolidated into a federal direct loan before starting to repay. Second, the borrower must work in full-time public service for 10 years. Lastly, he or she must faithfully make monthly loan payments during the 10-year pe-


riod. If these prerequisites are met, the remaining balance will be forgiven at the end of that time, rather than after the standard 25 years. For borrowers with government-guaranteed bank loans, the new law assures the opportunity to consolidate their loans in order to take advantage of this program.

As for employment that qualifies a borrower for debt forgiveness after 10 years, the law defines “public service” broadly to include civil legal aid, public defense, and public employment in government and in organizations that are exempt from tax under Internal Revenue Code section 501(c)(3). Borrowers with direct or consolidated loans were able to start counting the 10 years beginning October 1, 2007.

The IBR provisions and the 10-year forgiveness option hold great potential for helping employers retain civil legal aid and criminal practice attorneys. The National Association of Student Financial Aid Administrators explains the new law’s many details on its Web site at www.nasfaa.org/publications/2007/G2669Summary091007.html.

Additional financial incentives are being considered. Both houses of Congress have pending bills to create formulas to assist law graduates who remain employed as criminal prosecutors or public defenders with loan repayment. The John R. Justice Prosecutors and Defenders Incentive Act of 2007 (H.R. 916, passed by the House on May 15, 2007, and S. 442, pending in the Senate) would authorize government repayments of loans made or guaranteed under the Higher Education Act of 1965 (Pub.L. No. 89-329, 79 Stat. 1219) at a rate of up to \$10,000 per year, with a maximum aggregate over time of \$60,000. Similarly, the Civil Legal Assistance Attorney Loan Repayment Act

(S. 1167) would effectuate government repayment of Federal Direct Subsidized Stafford Loans, Federal Direct Unsubsidized Stafford Loans, and others made to full-time civil legal aid attorneys in amounts up to \$6,000 per year and with an aggregate maximum of \$40,000. The American Bar Association, the National Legal Aid & Defender Association, the Conference of Chief Justices, and others support these proposals.

The John R. Justice Prosecutors and Defenders Incentive Act of 2007, oriented toward criminal law practice, passed the House and was scheduled for debate in the Senate but has stalled due to procedural disputes. However, the Senate recently passed the reauthorization of the Higher Education Act of 1965 (S. 1642), which contains the provisions of H.R. 916 (the House version of the John R. Justice Prosecutors and Defenders Incentive Act) and S. 1167 (the Civil Legal Assistance Attorney Loan Repayment Act, pending in the Senate) and thus supports loan forgiveness for both civil and criminal legal service. As of late January, the House of Representatives had not yet acted on its own version of the reauthorization bill. However, the chair of the House Education and Labor Committee, George Miller, D-Calif., has indicated his intent to include the provisions of H.R. 916 and S. 1167 in any Higher Education Act reauthorization bill coming out of the committee. Such action must come after that committee considers reauthorization of the No Child Left Behind Act. Hence, good advice to law school students would be to “stay tuned.” 

Gregory E. Mize is a retired judge of the Superior Court of the District of Columbia and a judicial fellow of the National Center for State Courts.

ONE Last Look



PHOTO (RIGHT): COURTESY RUSS CURTIS

In addition to being a Court of Appeal justice, Paul Boland was a mentor, role model, husband, father, and dear friend to many.

THE LEGACY OF JUSTICE PAUL BOLAND

When Justice Paul Boland passed away on September 5, 2007, California lost more than a distinguished member of the California bench. His colleagues, friends, and family also lost someone kind and caring, a person who went out of his way to make everyone feel important and needed.

Administrative Presiding Justice Roger Boren of the Second Appellate District said, “His intelligent and helpful suggestions and advice were always given with humility and friendship. He was a unique and wonderful person.”

Jeffrey Barron, a partner at Morris Polich & Purdy in Los Angeles, told the *Recorder* newspaper that Boland “cared about people, and I think that was one of his greatest traits.” As a judge, Barron said, “he would even talk to the losing side in a case afterward and was

very willing to share his thoughts and assessments. He just had a great way of communicating with people.”

Justice Nora Manella of the Second Appellate District said, “In a world of takers, Paul was a giver.”

Perhaps it is best to remember Justice Boland with his own words, delivered at the University of Southern California bar admission ceremony in December 2002: “I urge you to commit yourselves to serving your community, whether you devote your energies to pro bono work,

educating the public about the justice system, or participating in some other community-oriented endeavor.

“Do these things and you will look back, years later, and take pride in the realization that you endeavored to make a difference. You also will realize that, through the collective efforts of others like you, things did change—not always with the speed you envisioned—but in ways that made the community and the profession better than they were.”

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This comprehensive book highlights programs and statewide initiatives that speak directly to the Judicial Council's mission of advancing the consistent, impartial, and accessible administration of justice. Now in its second edition, the book profiles past and present recipients of the Ralph N. Kleps Award, courts participating in the Connecting with Constituencies program, and important statewide initiatives to improve court operations and effectively meet the diverse and changing needs of the public. With descriptions of how these programs developed, the challenges they addressed, and the impacts they have had, it is sure to be a vital resource.

You can obtain the book by e-mailing your request to innovations@jud.ca.gov. It is also available on the California Courts Web site at www.courtinfo.ca.gov/programs/innovations/newspub.htm.

For information on the Kleps Award Program and the 2006–2007 Ralph N. Kleps Award recipients, please contact Deirdre Benedict, AOC Court Services Analyst, at 415-865-8915 or deirdre.benedict@jud.ca.gov.



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