

## Protecting California's Justice System



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# Learn About the New Strategic Plan for California Courts

A revised strategic plan, *Justice in Focus*, was adopted by the Judicial Council in December 2006.

Learn all about the history of the six-year strategic plan, the *Trust and Confidence in the California Courts* assessment that shaped the plan, and how this new vision will affect the mission and direction of California's judicial branch.



The plan will guide the priorities and work of the Judicial Council, its advisory committees, the appellate and trial courts, and the council's staff agency, the Administrative Office of the Courts.

For more information, go to:

**[www.courtinfo.ca.gov/reference  
/documents/strategic\\_plan\\_2006-2012.pdf](http://www.courtinfo.ca.gov/reference/documents/strategic_plan_2006-2012.pdf)**





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## Contributors



#### ROGER K. WARREN

*(Politicizing America's State Courts, page 6)* is scholar-in-residence at the Administrative Office of the Courts and a former president and chief executive officer of the National Center for State Courts (1996-2004). Before joining the NCSC, he served for 20 years in the trial courts of Sacramento County and was presiding judge of the superior court in 1992 and 1993.

#### JAMES BOPP, JR.

*(Judicial Activism, page 7)* is an attorney with the Indiana firm Bopp, Coleson & Bostrom, whose practice emphasizes biomedical and ethical issues, not-for-profit corporate and tax law, and campaign finance and election law. He represented the petitioners before the U.S. Supreme Court in *Republican Party of Minnesota v. White*, discussed in this issue.



## Contributors

### RICHARD D. HUFFMAN

(*The Next Six Years*, page 16) is an associate justice of the Court of Appeal, Fourth Appellate District, Division One, in San Diego, and chair of the Judicial Council's Executive and Planning Committee. He served in the Superior Court of San Diego County from 1985 to 1988. Justice Huffman has been an adjunct professor at the University of San Diego School of Law since 1972.



### MICHAEL RODDY

(*CCMS Goes Live*, page 19) began his court career in 1980 and was appointed executive officer of the Superior Court of San Diego County in 2006. A former president of the California Association of Trial Court Administrators, he has served on numerous Judicial Council task forces and advisory committees and won the council's Judicial Administration Award in 2001.



### TAMARA LYNN BEARD

(*CCMS Goes Live*, page 19), executive officer of the Superior Court of Fresno County, has successfully implemented several programs designed to increase public access to the courts. She received the Judicial Council's Judicial Administration Award in 2002 and has actively served on many court-related, community, and Judicial Council committees.



### ALAN SLATER

(*CCMS Goes Live*, page 19) is chief executive officer of the Superior Court of Orange County. He has served as faculty for professional training programs at the University of Southern California, National Conference of State Bar Presidents, National Judicial College, AOC's Education Division/Center for Judicial Education and Research, and National Association for Court Management.



### TIMOTHY B. TAYLOR

(*This Is Not My Parents' Divorce Court*, page 23) was appointed to the Superior Court of San Diego County in 2005. He previously was in private practice with the San Diego County firm of Sheppard, Mullin, Richter & Hampton.



### ARTHUR GILBERT

(*The Overlooked Value of the Past*, page 26) is presiding justice of the Court of Appeal, Second Appellate District, Division Six, in Ventura. He served in the Los Angeles County courts from 1975 to 1982. Justice Gilbert has authored numerous publications and has served as faculty for the AOC's Education Division/CJER.



### JAMES M. MIZE

(*No Judge Is An Island*, page 36) is the assistant presiding judge of the Superior Court of Sacramento County and a past-president of the California Judges Association. He received the first annual Humanitarian award from the Sacramento City Bar Association. He has served as faculty for Continuing Education of the Bar and the AOC's Education Division/CJER.



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*During the Summit* of Judicial Leaders in November 2006, one of the most understated but dramatic moments came when Indiana attorney James Bopp, Jr., presented his forceful argument in favor of elections for judges and allowing voters to consider a judge's activism in casting their ballots.

Bopp, who persuaded the U.S. Supreme Court in *Republican Party of Minnesota v. White* to allow judges to announce their views on disputed legal and political issues, held up a book he had read on the airplane on his way to the San Francisco meeting.

"This is the problem!" Bopp told attendees.

Bopp's exhibit A was former Justice Joseph R. Grodin's 1989 book *In Pursuit of Justice: Reflections of a State Supreme Court Justice*. Grodin, as many recall, had his judicial career cut short in 1986 when he and Chief Justice Rose Elizabeth Bird and fellow Justice Cruz Reynoso were defeated in a highly publicized retention election that focused primarily on Bird's nearly unvarying votes against the death penalty from 1977 to 1986.

In his thoughtful book, Grodin follows in the steps of his brilliant mentor, the late Justice Mathew O. Tobriner, and—just as forcefully as Bopp does to the contrary—argues that judges do indeed have an important role to play in making law, primarily when interpreting the U.S. Constitution. Particularly when it comes to generally phrased statements of rights and where no clearly applicable precedent exists, much of constitutional adjudication "is ultimately quite subjective, calling for the exercise of greater discretion on the part of the judge than is typical of statutory interpretation. Discretion is not unlimited, however; it is simply very broad," Grodin writes.

That philosophy, according to Bopp, is why many people are concerned about the judiciary, and to the extent they feel that judges are basing decisions on personal beliefs rather than simply applying the law, there will be attacks on the judiciary. The solution, Bopp says, is for judges to be restrained and not activist, even when it comes to deciding constitutional cases.

Who is right may be for history to decide, but in this issue of *California Courts Review*, we present a special section on the various aspects of this issue. We hope you find it thoughtful and useful in your dialogues and debates on the matter.

—Philip Carrizosa  
Managing Editor

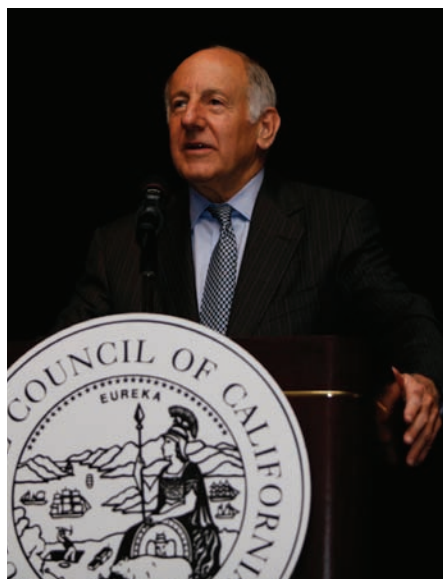
## NEW SESSION BRINGS NEW OPPORTUNITIES

The 2007-2008 Legislative Session will bring fresh opportunities to forge strong working relationships with new legislators and to continue efforts with returning members to build support for a fair, effective, impartial, and accessible judicial branch.

About one-third of our state's legislators left office in November 2006 because of term limits. In the 40-member Senate, 12 were termed out, and in the 80-member Assembly, 28 individuals were termed out and a total of 36 new Assembly members were elected. As legislators and legislative staff in the Capitol and in district offices turn over in large numbers, they will take with them institutional knowledge about the courts and the constituents we mutually serve. At the same time, the number of lawyers in the Legislature has continued its downward trend. As a result, there is an urgent need for our branch and our justice system partners to help educate new legislators and incoming staff about the importance to the public of a strong court system and what California's judicial branch needs to administer justice effectively for our state.

Each year, the Judicial Council sponsors legislation that supports key council objectives. In the 2007-2008 Legislative Session, the council will renew several of its critical legislative proposals, including new judgeships, subordinate judicial officer (SJO) conversions, reform of the judges' retirement systems, and facilitating the continuing transfer of court facilities from the counties to the state. These measures are aimed at enhancing equal access to fair and impartial justice, ensuring the necessary judicial resources to provide service to the people of California, and attracting to the bench and retaining highly qualified, diverse, and experienced individuals from all areas of legal practice and all parts of the state.





Chief Justice  
Ronald M. George  
addresses the  
Summit of Judicial  
Leaders in San  
Francisco last  
November.

At its December 2006 meeting, the council acted on specific proposals for sponsored legislation in 2007 that build on these goals. In 2006, after intense negotiations, the Legislature enacted Senate Bill 56 (Dunn), which created 50 new judgeships in the trial courts. The new positions were allocated based on need. They will help provide critical relief in 20 trial courts, but there remains a crucial need to secure legislative approval of the additional 100 new judgeships that the council initially approved in 2004 based on studies of workload and population growth across the state. The council authorized moving forward with legislation to create 100 new judgeships, 50 in 2007-2008 and 50 in 2008-2009. The judgeship initiative also will include the most critically needed appellate judgeships.

The council long has maintained that converting SJO positions to judgeships in courts that use SJOs as temporary judges will further public trust and confidence in the court system. This proposal will help ensure that judges who are accountable to the public are available to preside over significant cases. The council again has endorsed a measure that will allow the courts to move toward an appropriate mix of judgeships and SJO positions within their judicial officer pools. The proposed conversions will complement the proposed new judgeships by helping to correct imbalances in judicial re-

sources that have occurred as a result of the failure to add new judgeships during years of significant population growth.

California's trial court facilities have critical life safety, operational, and security deficiencies that can be addressed in a cost-effective way only through a statewide capital outlay program. The council continues to seek ways to improve the court facility transfer process and to provide additional flexibility where possible. Uniting responsibility for court operations and facilities management increases the judicial branch's fiscal and administrative accountability. In 2007, the council will sponsor legislation to further address facilities transfer and funding issues.

Lack of interpreter services jeopardizes the courts' ability to determine cases and may have substantial consequences for litigants in civil as well as criminal cases. In the civil arena, particularly family law, litigants' language and comprehension problems are exacerbated by the circumstance that many of those who require interpreter services are not represented by counsel. Access to a system in a language one cannot understand is not meaningful access. Legislation is being pursued to provide for court interpreters in certain civil matters to help ensure true access to justice. The council will continue to pursue resources to enable us to improve a variety of services provided to self-

represented litigants, including adding more self-help centers and exploring the potential for appointing counsel in certain categories of civil cases.

The courts must be able to attract and retain the highest caliber judicial officers to serve the public. The two-tier Judges' Retirement System (JRS) and Judges' Retirement System II (JRS II) must be modified to provide stronger incentives for more recent appointees to the bench to remain in service, while at the same time ensuring that judges are not forced to serve longer than they are healthy and fit for service in order to secure adequate retirement benefits.

During the 10 years that I have served as Chief Justice, legislation has been a key ingredient in many of the significant strides we have made to improve the administration of justice in our state. The progress we have achieved as an independent, accountable, and co-equal branch of government, combined with improved cooperation with our sister branches, has resulted in enhanced opportunities to better serve the public. The legislative measures outlined above represent the next steps in our focus on strengthening our branch's ability to fulfill its role in our state's system of government. I look forward to your support as we move ahead with these initiatives and continue our mission to provide fair and accessible justice for all Californians.

# Politicizing America's State Courts

## *Critical Challenges Facing the Judiciary*

**T**oday judges and the special rules that insulate them from politics are under political attack. State judicial elections have become increasingly like elections for political office: expensive, contentious, partisan, political, and dominated by special interests. Judicial elections today present four critical challenges to the ability of elected state judges to fairly and impartially uphold the rule of law. These challenges have taken many other state judiciaries by surprise. Unless the California bench and bar devote conscientious attention to them, there is little reason to believe that these same challenges will not also overrun the judiciary of California.



**By  
Roger K. Warren**

### **Justice for Sale**

The first critical challenge is the ever-rising tide of campaign spending, television advertising, and special interests. Electing state court judges attuned to a particular special interest or ideology, and defeating those not so attuned, is increasingly viewed by political parties and special interests as politics—and business—as usual. Reaching voters with a cleverly crafted political advertisement usually requires television time,

*Continued on page 9*



# Judicial Activism

## *Gravest Threat to Judicial Independence*



**By**  
**James Bopp, Jr.**

establishment that judicial elections are categorically different in such a way that the First Amendment does not have full application to them, this issue was settled by the United States Supreme Court in *Republican Party of Minnesota v. White*,<sup>1</sup> where it held that the states cannot prohibit judicial candidates from announcing their views on disputed legal and political issues. Moreover, the breadth of the *White* opinion now has been reflected in the decisions of

*Continued on page 13*

**F**or litigants to obtain the justice to which they are entitled, judicial independence is vital. Increasingly that independence is threatened. In my view, the threat comes from judicial activism. However, some commentators on this issue consider judicial elections to be the biggest threat to that independence and have advocated steps to move away from elections. Short of that, they argue that judicial elections are so different that judicial campaigns can and should be severely limited. I believe that judicial elections are different. Despite the near unanimous opinions of state supreme courts, the American Bar Association, and the judicial

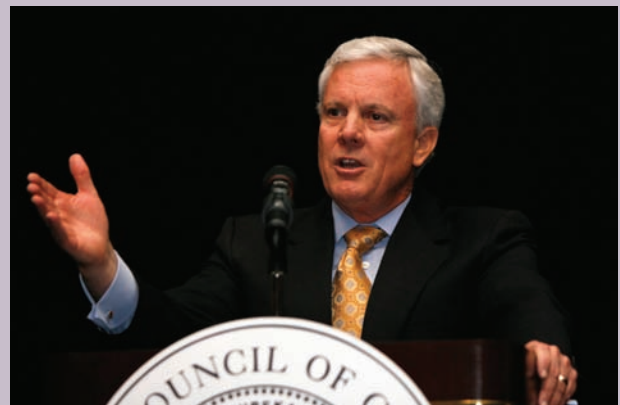
## SUMMIT OF JUDICIAL LEADERS • NOVEMBER 2006

### Summit Focuses on Judicial Elections

More than 300 state court leaders gathered in San Francisco on November 1–3 to examine the challenges facing America’s state courts from recent developments in judicial elections and increased attacks against judges by political and special interests.

The summit featured several guest speakers, including retired U.S. Supreme Court Justice Sandra Day O’Connor and Professor Kenneth R. Feinberg, the special master and administrator of the federal September 11th Victim Compensation Fund.

Sponsored by the Judicial Council of California, the summit also took an in-depth look at disaster planning and recovery. Speakers from New York and Louisiana described their firsthand experiences.



Among the speakers were (clockwise from top) retired U.S. Supreme Court Justice Sandra Day O’Connor; Professor Kenneth R. Feinberg of the federal September 11th Victim Compensation Fund; William C. Vickrey, Administrative Director of the Courts; and Chief Justice Ronald M. George.

*More highlights of the summit can be found on pages 10 and 15.*

## Politicizing America's State Courts

Continued from page 6

and television time is very expensive. So it takes money to be successful. Consider that:

- Campaign contributions to candidates for state supreme courts increased more than 750 percent between 1990 and 2004.
- Candidate fundraising broke records in 19 states in 2000 and 2004 and in at least four more states in the recent 2006 elections.
- Successful supreme court candidates now sometimes raise more money than many gubernatorial or U.S. Senate candidates.
- The three candidates for Alabama chief justice in 2006 reported a combined \$6.7 million in campaign contributions.
- The candidates raising the most money have won more than 80 percent of recent races.
- More than three-quarters of campaign contributions come from political parties and special interests: the business community, lawyers, and labor organizations.
- The U.S. Chamber of Commerce spent an estimated \$50 million on judicial races between 1998 and 2004.
- The business community claimed victory in 12 of the 13 state supreme court races that it targeted in 2004.

### Limits Easily Evaded

Although contributions to judicial candidates are subject to prescribed limits in many states, those limits have proven largely ineffective. Contribution limits typically do not prevent organizations from contributing through their employees and other related individuals and entities. The limits can also be easily evaded through contri-

butions to political action committees (PACs), political parties, and other independent third parties. The sources of contributions to "independent" groups are typically not subject to disclosure, concealing the involvement of special interests from the voters.

### The Cost of TV Ads

Fueling the rising cost of judicial election campaigns is the high cost of television advertising. In 2004, television ads appeared in four times as many states as in 2000 at more than two and a half times the cost. In 2006, ads

appeared in 10 of the 11 states with contested supreme court elections. Special-interest groups and political parties pay for almost 90 percent of the attack ads. In 2006, 95 percent of third-party spending on TV ads came from business groups. Candidates airing the most ads usually win; the amounts spent on ads supporting the victors are double the amounts spent on ads supporting the losing candidates.

A 2002 survey of state judges revealed that 58 percent of elected judges felt under pressure to raise money for their campaigns; half of those judges felt they

## Judges on Trial

### November 2006 Ballot Results

Here are the results of key elections affecting judges on the November 2006 ballot. Although all the proposed measures failed, the election marked the first time so many measures challenged the authority of judges.

California		
<b>Proposition 90</b>	Would have required a jury, not a judge, to determine in eminent domain cases whether the taking of private property was for a public use and would have prohibited "unpublished" opinions in eminent domain cases.	<b>FAILED</b> 52.2% opposed
Colorado		
<b>Amendment 40</b>	Would have limited judges of the Colorado Court of Appeals and justices of the Supreme Court to a maximum term of 10 years.	<b>FAILED</b> 53.6% opposed
Oregon		
<b>Measure 40</b>	Would have required Oregon Supreme Court justices and Court of Appeals judges to be elected by district rather than statewide.	<b>FAILED</b> 55% opposed
South Dakota		
<b>Amendment E</b>	Would have eliminated judicial immunity, permitted civil actions against judges and all others covered by judicial immunity, created a special grand jury with power to remove judicial immunity and criminally indict and appoint a special trial jury to conduct subsequent criminal trials.	<b>FAILED</b> 89% opposed



were under “a great deal” of pressure. More important, 32 percent said they felt contributions had some or a great deal of influence on judges’ decisions.

A recent examination of the Ohio Supreme Court found that the justices ruled in favor of their contributors 70 percent of the time. One justice voted in favor of his contributors 91 percent of the time. One campaign fundraiser confided, “I always knew you could buy the executive and legislative branches. But I never thought you could buy the judiciary, and that’s what really troubles me.” Justices rarely recuse themselves on the basis of a party’s prior contributions. “It’s pretty hard in big-money races not to take care of your friends,” one retired chief justice has acknowledged. “It’s very hard not to dance with the one who brung you.”

#### Public Trust Undermined

Campaign contributions also undermine the public’s trust in the impartiality of the judiciary. A 2004 national public opinion survey found that 71 percent believe that judicial campaign contributions affect judges’ decisions in the courtroom. As a *New York Times* editorial recently concluded, “There is no perfect way to choose a judge. But to undermine the whole purpose of the court system by allowing special interests to buy judgeships, or at least try to, is the worst system of all.”<sup>1</sup>

#### Attacking Judges

The second critical challenge to judicial impartiality arises from disagreement with judicial decisions and takes the form of political attacks on judges and courts. Such attacks certainly aren’t new. Yet even judged by a historical standard, the intensity, breadth, and nature of current attacks seem unprecedented. Attacks on state judges come not only from politicians and political parties but also from the special-interest groups that often constitute their political base. Special-interest groups have increasingly come to view the judiciary, in the words of one such group, as something “to be gamed and captured—just like Congress or the

### SUMMIT OF JUDICIAL LEADERS • NOVEMBER 2006

## O’Connor’s Second Thoughts

Retired Supreme Court Justice Sandra Day O’Connor provided one of the most surprising remarks at November’s Summit of Judicial Leaders.

In her closing-day luncheon remarks, Justice O’Connor said she has become increasingly concerned about the challenges facing judges, lawyers, and court administrators in preserving a fair and impartial judiciary.

“The level of unhappiness with judges today is at a very intense level. We hear the criticisms in the halls of Congress, in state legislatures, and from the public as well,” she said.

The retired justice then alluded to the Supreme Court’s decision in *Republican Party of Minnesota v. White* (2002) 536 U.S. 765, which struck down a state ethics canon that prohibited judicial candidates from “announcing his or her views on disputed legal or political issues.” Lower federal courts have expanded the reach of *White* significantly, ushering in a new era of politics in judicial elections.

O’Connor was a part of the 5–4 majority in *White* and said she normally never looks back at her decisions.

“I made it a policy as a judge to do the best I could with each case I had to decide, then make a decision, then not look back. Do the best you can and go forward. Don’t second-guess,” O’Connor told attendees.

“But that *White* case, I confess, does give me pause.”

She commented that the Supreme Court may revisit the question to “flesh out the issues.”

statehouse.” One spokesperson for the business community thinks it’s more than a game: “We’ve declared war on judges who aren’t doing their duty,” he said. A spokesperson for a state building industry group said that state court justices “must answer for their actions.” “Facing the retribution of voters is the key component to keeping justices in check,” she commented.

Religious conservatives have been particularly active in attacking judges on issues such as school prayer, abortion, and gay marriage. Colorado evangelist James Dobson compared the wrongs committed by black-robed judges with those of white-robed members of the Ku Klux Klan. Evangelist Pat Robertson claimed that “liberal judges” pose a more serious threat to America “than a few bearded terrorists who fly into buildings.”

Politicians and political parties regularly attack judges as a means of inciting their respective political bases. “A good fight on judges does nothing but energize our base,” said Republican Senator John Thune of South Dakota. Even the *Wall Street Journal* recently editorialized that a judicial “filibuster fight would be exactly the sort of political battle Republicans need to energize conservative voters after their recent months of despond.”<sup>2</sup> Indiana Chief Justice Randall Shepard has observed that in many instances “judges are not the target at all” but “just roadkill for some other venture.”

Attacking judges has been lucrative for special interests as well. In April 2004, for example, Dobson formed a new PAC to support various political issues and attacks on judges. In its first



SHELLEY EADES

six months—the period leading up to the November 2004 elections—the new PAC raised \$8.8 million.

We are also witnessing increasing attacks on the courts themselves and efforts to drastically change state judicial selection processes to subject judges to greater popular and political control. There are initiative efforts to replace judicial appointments with contested elections in some states and legislative efforts to require senate confirmation of gubernatorial appointments and reconfirmation upon every new term of office. Such efforts span the country. Bills have been introduced in the Georgia Legislature to return to partisan judicial elections. In at least three states, constitutional initiatives appeared on the fall 2006 ballot that sought to place checks on judges. A Colorado initiative sought to expand the state's term limits to cover appellate justices, and an Oregon initiative would have required appellate judges to be elected in the districts in which they reside. One of the most well publicized sought to essentially abolish the doctrine of judicial immunity. The J.A.I.L.4Judges (Judicial Accountability Initiative Law) initiative on the November 2006 South Dakota ballot would have created a special grand jury with jurisdiction to determine the applicability of judicial immunity, to indict, and to impanel a special trial jury to adjudicate and sentence offending judges. Only an active and well-funded campaign against the initiative resulted in its overwhelming defeat. (See "Judges on Trial," page 9.)

### Forcing Judges to Take Positions

A recent development constitutes the third critical challenge facing fair and impartial judiciaries: judicial candidates are now free to—and pressured to—announce their views on hot-button social and political issues. State codes of judicial conduct generally admonish candidates for judicial office to refrain from political activity that is inconsistent with upholding the integrity, independence, and impartiality of the judiciary. Over the last four years,

however, restrictions on political activities of judicial candidates have been found unconstitutional by the federal courts. The result is a new politics of judicial elections.

The leading case is *Republican Party of Minnesota v. White*, in which the U.S. Supreme Court found that a Minnesota canon prohibiting a candidate from "announcing his or her views on disputed legal or political issues" violated a candidate's freedom of speech.<sup>3</sup>

Four months after *White*, the Eleventh Circuit held sua sponte in *Weaver v. Bonner*<sup>4</sup> that a Georgia canon prohibiting judicial candidates from personally soliciting campaign contributions was unconstitutional under the reasoning of *White*. Although Justice Antonin Scalia's opinion in *White* had carefully observed that "we neither assert nor imply that the First Amendment requires campaigns for judicial office to sound the same as those for legislative office," the *Weaver* opinion flatly asserted that "the distinction between judicial elections and other types of elections has been greatly exaggerated, and we do not believe that the distinction, if there truly is one, justifies greater restrictions on speech during judicial campaigns than during other types of campaigns."

The impact of this expansive reading of *White* on judicial elections was immediate. Supreme court candidates blatantly announced their views on abortion, gun possession, right to life, gay marriage, and other disputed legal and political issues. One candidate for state chief justice in 2006 announced that "state supreme court judges should not follow obviously wrong [U.S. Supreme Court] decisions simply because they are precedents." Another supreme court candidate said that judicial candidates who failed to disclose their personal views were "cowardly."

Once judicial candidates were free to express their views on legal and political issues, elected judges were immediately pressured by special interests to do so, principally through distribution of questionnaires eliciting their views on issues of concern to the particular special interest.

At least four recent federal district court opinions arise from such questionnaires and reach similar results. In Kentucky, North Dakota, Alaska, and Kansas a right-to-life or other group distributed questionnaires to judges seeking their views on controversial issues. When judges declined to answer, citing the "pledges and promises," "commitments," and "recusal" canons of their state ethics codes, the groups filed suits claiming the three provisions were unconstitutional under *White*. The four federal district courts all held that the first two challenged provisions were unconstitutional under *White*.<sup>5</sup>

The courts upheld the states' recusal provisions requiring a judge to disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned. All four courts made clear that their decisions did not *require* judges to answer such questionnaires, and one court said that "a judicial candidate who responds to a survey... may indeed create a serious ethical dilemma for himself or herself that would require recusal at a later date."

As construed by the lower federal courts, *White* has introduced a new brand of politics into judicial elections—treating candidates for judicial office like politicians running for political office—that threatens to undermine judicial independence and judicial restraint while providing only illusory public benefit. To avoid electoral opposition or obtain electoral support, judicial candidates are pressured to express personal views that are an improper basis of judicial decision in the first place and irrelevant to any issue in the vast majority of cases. In those cases in which a judge's previously stated views are relevant the judge may very well be required to recuse. Having obtained election to office on the basis of the previous announcement, the judge might reasonably be expected to now feel some pressure to keep the earlier "promise" or "commitment." The judge's recusal in turn deprives those voters and special interests who relied on the judge's earlier announcement of the entire consideration for

which they provided their electoral support. It is difficult to imagine a judicial election process more likely to destroy public trust in the proper role of an elected judiciary.

### Partisan Politics in Judicial Elections

The final critical challenge is the threatened increase of partisan involvement in nonpartisan judicial elections. The United States has consistently sought from the very beginning of the republic to insulate state judges from improper political influence. First, through lifetime appointments (in most of the original 13 states), then in the 19th century through popular election under special rules unique to judges (including longer terms of office), and later in the 20th century through “merit selection” and “nonpartisan” elections, the states have sought to protect judges from excessive partisanship and inappropriate political influence. Nearly all 32 states with some form of nonpartisan judicial elections have adopted ethics codes designed to restrict the partisan activities of judicial candidates.

The decision of the Eighth Circuit Court of Appeals on the Supreme Court’s remand of the *White* case<sup>6</sup> now threatens to politicize nonpartisan judicial elections. In the Eighth Circuit’s *White* decision, the court held unconstitutional Minnesota’s restrictions on “partisan activities” providing that judicial candidates “shall not . . . identify themselves as members of a political organization . . . [or] attend political gatherings; or seek, accept, or use endorsements from a political organization.”

### California Must Stem the Tide

In consistently suggesting that there is no true distinction between judicial elections and elections for political office, lower federal court decisions after *White* have substantially undermined the states’ significant efforts to preserve their ability to attract and retain qualified judges, uphold the rule of law, and insulate sitting judges from inappropriate political influence.

Of course, no system of judicial selection or removal is totally devoid of political implications. The special challenge presented by judicial elections, however, is the usual absence of any impartial process for screening the suitability of candidates or for communicating relevant and unbiased information about the candidates to voters. Moreover, the use of elections for the purpose of judicial *removal* greatly compounds the challenge because removal of sitting judges presents much greater and more direct risks to judicial independence than the selection of new judges. Contested judicial elections involving incumbent officeholders thus present the greatest challenge to the ability of the judicial branch to attract and retain qualified judges and, at the same time, protect the independence of current judicial officeholders. The post-*White* decisions of the lower federal courts have greatly exacerbated these challenges.

### Protect the Rule of Law

The challenges described in this article erode public trust in state judiciaries, compromise their integrity, and limit their capacity to keep faith with the rule of law. Public trust in the courts is founded on the belief that judicial decisionmaking processes are apolitical and are in that important respect different from those of the other two branches. The rule of law is illusory if a judge’s decision must be submitted for approval to the leaders of the other branches of government, or to special interests, or to popular referendum, as a condition of the judge remaining in office.

The American people have as great a right and interest in impartial state courts, where 95 percent of all litigation is conducted, as in an impartial federal judiciary. Yet under these recent decisions Americans will ultimately be left with a two-tier court system: a federal judiciary that—although not fully independent of improper political influence—has, by reason of federal judges’ life tenure, much greater ability to safeguard the rule of law, and a substantially weaker state court system that may no longer be able to guarantee its ability to uphold the rule of law

or people’s individual rights in the face of any concerted political resistance.

These challenges pose significant risks—to elected state judiciaries in general and to the California judiciary in particular—that are not going to go away. The California court system is not immune from these dangers. These challenges to the ability of the California judicial branch to administer justice to all fairly and impartially are real and are presently upon us. It is time for the leadership of the California bench and bar to confront this reality and determine what it can do to stem the tide in California. ■

*Roger K. Warren is currently scholar-in-residence at the Administrative Office of the Courts, a former president and chief executive officer of the National Center for State Courts, and a retired judge of the Superior Court of Sacramento County.*

*This article was excerpted from Roger K. Warren’s State Judicial Elections: The Politization of America’s Courts (Judicial Council of Cal./Administrative Office of the Courts 2006).*

### Notes

1. Editorial, “Judicial Politics Run Amok,” *New York Times* (Sept. 19, 2006).
2. Editorial, “The Next Filibuster?,” *Wall Street Journal* (May 4, 2006).
3. (2002) 536 U.S. 765, revg. *Republican Party of Minnesota v. Kelly* (2001) 247 F.3d 854.
4. (11th Cir. 2002) 309 F.3d 1312.
5. *Kansas Judicial Watch v. Stout* (D.Kan., Oct. 6, 2006, No. 06-4056-JAR) \_\_\_ F.Supp.2d \_\_\_ (2006 WL 2873792); *Alaska Right To Life Political Action Committee v. Feldman* (D.Al.2005) 380 F.Supp.2d 1080; *North Dakota Family Alliance, Inc. v. Bader* (D.N.D. 2005) 361 F.Supp.2d 1021; *Family Trust Foundation of Kentucky v. Wolnitzek* (E.D.Ky. 2004) 345 F.Supp.2d. 672.
6. *Republican Party of Minnesota v. White* (8th Cir. 2005) 416 F.3d 738 (en banc), cert. denied *sub nom. Dimick v. Republican Party of Minnesota* (2006) 126 S.Ct. 1165.



## Judicial Activism

Continued from page 7

three federal circuit courts and about a dozen federal district courts where an additional 12 judicial canons have been struck down as incompatible with the strict scrutiny that is required by the First Amendment under *White*.

I say, however, that judicial elections are different from elections for the legislative or executive branch because, unlike them, judges have a dual role. One role that judges share with the political branches is to make law, most notably in the development of the common law. In the exercise of their discretion, they also make law concerning the litigants before them. Sometimes, though, judges illegitimately make law when they impose their own personal views, through interpretations of statutes or constitutional provisions, in a way contrary to the original meaning of those laws.

### Judges Have a Limited Role

More important, what makes judges different is that they are obligated to decide cases that come before them on the basis of the law and the facts of the particular case. Legislators and governors do not have to do that. They can ignore the law. They can remake the law by legislation or executive decree. And they can ignore the facts. Finally, they can pledge to do that during their campaigns. It is wrong, however, for judges to do that. It is a violation of their oath, a denial of one of the critical roles of a judge, to pledge or promise a certain result in a particular case or class of cases.

Thus, despite the fact that the United States Supreme Court has held that the state cannot prohibit legislative candidates from promising how they will deal with certain matters when elected, judges can be so forbidden. In the *White* case, I was taken to task for holding that position by Justice Anthony Kennedy in oral argument. But I believe that position passes constitutional muster and that it is a vi-

tal restriction on what judges can say in order to preserve the judicial role. Thus, in my view, judicial elections are different.

Nevertheless, I would disagree with many commentators on the cause of recent criticism of judges and what should be done about it. Let us first deal with the criticism. Criticism of the judiciary has been episodic throughout our history, and it is hard to justify the claim that such criticism is worse now than it has ever been. After all, we do not have sitting United States Supreme Court justices already impeached by the House and pending conviction before the Senate for essentially their opinions as judges. We do not have a president who is defying the Supreme Court or telling the Supreme Court to enforce their opinions if they can. We do not have a decision of the United States Supreme Court leading to the election of a president that then triggered a civil war in which hundreds of thousands of our fellow citizens died. We do not have a president urging the packing of the Court because he disagrees with its decisions. We do not have governors standing in the schoolhouse door, defying rulings of federal judges and asking the president to bring out the National Guard. If you look at historic criticism, it's really hard to top President Thomas Jefferson, who said in 1820: "The judiciary of the United States is the subtle corps of sappers and miners constantly working underground to undermine the foundations of our confederated fabric. They are construing our Constitution from a coordination of a general and special government to a general and supreme one alone."<sup>2</sup>

We should reflect on such criticisms as Justice Felix Frankfurter did in a famous and important case in this area, *Bridges v. State of California*, where he said: "Judges as persons, or courts as institutions, are entitled to no more immunity from criticism than other persons and institutions. Just because the holders of judicial office are identified with the interests of justice they may forget their common human frail-

ties or fallibilities.... Judges must be kept mindful of their limitations and of their ultimate responsibility by a vigorous stream of criticism expressed with candor however blunt."<sup>3</sup>

That was Justice Frankfurter in dissent. The majority decision, written by Justice Hugo Black, pointed out that actually shielding judges from criticism would be counterproductive to the standing that the judiciary seeks in our society.

That takes us to efforts to limit the independence of the judiciary, which, I've already stated, is a wonderful gift, one vital to justice. However, the judiciary is given that gift because of its limited role. Because we also believe in popular sovereignty and democracy, the Founders of our Constitution described the judiciary as the least dangerous branch, because they understood that the limited role of the judiciary is to interpret and apply the law, not to exercise the authority of setting public policy for the country. The public policy-setting role resides in the political branches—that is, the legislative and executive branches. This constitutes a tradeoff: If you want judicial independence, which I believe is vital to the central role of a judge—interpreting and applying the law impartially—then judges will only have a modest role in the development of public policy. If you assume the opposite—that judges have a predominant role in setting public policy—you deny popular sovereignty, which is contrary to democracy.

### Judges Can't Solve Society's Problems

Chief Justice John Roberts recently talked about this very point: that judicial activism threatens the independence of the judiciary. "Courts should not intrude," he said, "into areas of policy reserved by the Constitution to the political branches." And he explained that "judges should be constantly aware that their role, while important, is limited. They are not commissioned to solve society's problems, as they see them, but simply to decide cases before them according to the rule of

law. When the other branches of government exceed their constitutionally mandated limits, the courts can act to confine them to the proper bounds. It is judicial restraint, however, that confines judges to their proper constitutional responsibilities.”

Justice Scalia has recently said this, in his own inimitable way: “We can talk about independence as if it is unquestionably and unqualifiedly a good thing. It may not be. It depends on what your courts are doing. . . . The more your courts become policy-makers, the less sense it makes to have them entirely independent.” He concluded that “[w]hen [courts] leap into making [public policy], they make themselves politically controversial and that’s what places their independence at risk.”

Again, the problem is judicial activism. In 1977, then-Judge Lynn Compton criticized such a robust policy-making role for judges on the pages of the *Los Angeles Times*: “[Courts] are policy-making bodies. The policies they set have the effect of law because of the power those courts are given by the Constitution. . . . In short, these precedent-setting policy decisions were the product of the social, economic, and political philosophies of a majority of the justices who made up the court at any given time in history.”<sup>4</sup>

And Judge Pam Rymer of the Ninth Circuit has said about her own judicial activist colleagues, “My activist colleagues would probably say that the judge’s primary role is to protect individual rights and to achieve social justice, that justice is the guiding principle of the judicial branch. And they would say they should view the Constitution as a set of very broad principles to be viewed in light of contemporary problems. In my own view, this kind of judicial philosophy leads a judge . . . to behave more like a legislator than like a judge.”

So, if we believe in popular sovereignty, if we believe in democracy, and if we believe that the public policy role is one that the People should consent to, then judges, if they want a more robust role in setting public policy, must expect to be less independent and more

accountable to the People. Indeed, it is a grave offense to interpret the Constitution, to add rights that were not present in that Constitution when it was ratified by the People. And it is a grave offense to write out of the Constitution rights that have been in that Constitution when it was consented to by the People. They have chosen to limit the government and to guarantee rights in certain ways.

We have had instances of judicial activism. *Dred Scott*, *Plessy v. Ferguson*, *Wickard v. Filburn*, *Roe v. Wade*, *Lawrence v. Texas*, *Kelo v. City of New London*, and *McConnell v. FEC* are just a few that have added or undermined rights or other provisions in the Constitution. For instance, political speech is at the core of the First Amendment’s mandate that Congress should “make no law” and nude dancing is at best at its periphery, but if you look at the regulation of these two First Amendment rights, you see that political candidates are required by law to run under their real names and you can’t hardly get the real name of a nude dancer. Political contributions are limited, but you can give as much money as you want to a nude dancer. Political candidates cannot give quid pro quos, but nude dancers do. Political candidates must put a disclaimer on their advertising, whereas the United States Supreme Court, in a 5–4 decision, said that a state could require pasties and a G-string on a nude dancer, but that’s rarely enough material on which to put a disclaimer.

### Judicial Activism Undermines Public Support

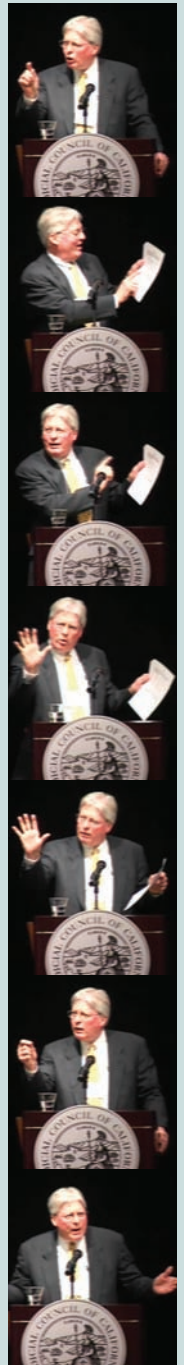
Many people in surveying the Court’s decisions on abortion, pornography, and sexual conduct generally have concluded that the courts have imposed a whole new culture on our country through those decisions and this is the essence of judicial activism. Most troubling to me is that the majority of the people of the United States believe that judges base their decisions on their own personal beliefs as opposed to applying the law. That takes us to the problem: judicial activism under-

mines public support for an independent judiciary. It also gives rise to efforts, some ridiculous and misbegotten, others firmly in the Constitution, to make judges more accountable and less independent.

Our response cannot be simply to deny that there is judicial activism or to say that we do not know what it is. Some people say that judicial activism is just a decision one does not agree with or that judicial activism is striking down a law or reversing a precedent. If that were true, one could determine whether a judge is an activist by simply adding up how many laws he or she has struck down or precedents he or she has voted to reverse. But all of those denials assume that the Constitution has no real meaning, that there’s nothing in there, that nothing is actually ascertainable that limits government or imposes standards on the judiciary when deciding cases. But of course that is not true; the Constitution is considerably more than that.

So we have judicial elections, and 75 percent of the people in the United States believe that it is through elections that we are most likely to get judges who are fair and impartial. (Only 18 percent said that the appointment process results in judges who are more fair and impartial.) The People want fair and impartial judges, and elections are how they believe they can get them.


The retention election of California Chief Justice Rose Bird in 1986 is a good example of the appropriate use of an election system to throw out a judge



James Bopp, Jr., makes his points while speaking at the Summit of Judicial Leaders.

who was essentially imposing her own personal views contrary to the law. In 100 percent of 58 or 61 or 64—I've seen each of these numbers—cases where the death penalty had been imposed, she voted to reverse. Even so, as one commentator observed, when she ran in her retention election, she emphasized in her campaign that judicial independence requires judges to set aside their personal views concerning the issues before the court. And there is no evidence to indicate that voters disagreed with Chief Justice Bird's view. To the contrary, they clearly felt that the Chief Justice and her two colleagues *had* interjected their personal views into these decisions, and, as a result, turned them out of office.

Those who want to get to the core of attacks on judicial independence, which have serious consequences for the conduct of the appropriate business of the judiciary, need to focus on the question of whether judges are restrained and what it means to restrain the exercise of judicial power. That is the root of the problem. That is why people are concerned about the judiciary.

The solution to this problem, in my view, is judicial restraint. 

*James Bopp, Jr., is an attorney with Bopp, Coleson & Bostrom in Terre Haute, Indiana, whose practice emphasizes biomedical issues of abortion, forgoing and withdrawing life-sustaining medical treatment, assisted suicide, not-for-profit corporate and tax law, and campaign finance and election law. He represented the petitioners before the U.S. Supreme Court in Republican Party of Minnesota v. White.*

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## Notes

1. (2002) 536 U.S. 765.
2. Jefferson to Thomas Ritchie, Dec. 25, 1820, *The Writings of Thomas Jefferson*, vol. 10, ed. P. L. Ford (1899).
3. (1941) 314 U.S. 252.
4. Letter to Editor, *Los Angeles Times*, Feb. 20, 1977.

## Urgency Before Emergency

During the Judicial Council–sponsored Summit of Judicial Leaders in November, the dominant theme was protecting judicial independence against politicization. But another critical theme was protecting the courts against disasters, ranging from fires to floods to terrorist attacks.

As Tamara Lynn Beard, executive officer of the Superior Court of Fresno County, succinctly put it: “We’re playing Russian roulette every day we’re not prepared.”

The session “Urgency Before Emergency: Disaster Planning and Recovery” was carefully designed to prepare judges and court executives for whatever challenges might lie ahead after a disaster or emergency strikes.

One of the speakers was Dr. Hugh Collins, judicial administrator of the Louisiana Supreme Court, whose resources were taxed to the limit last year when Hurricane Katrina struck and the levees failed, flooding courthouses, jails, law offices, police evidence rooms, and even the homes of judges. Collins advised courts to have emergency plans ready, be prepared to improvise on them, and prioritize the systems and operations that need to restart immediately and those that can wait.

“Believe an emergency will happen during your career,” he cautioned. “And be ready to commit resources for the long haul.”

On September 11, 2001, after two planes commandeered by terrorists destroyed the World Trade Center in New York City, court leaders there managed to keep the courts open until 3 p.m.

“However, at that point in the day, as the full scope of the catastrophe set in, we believed it was most important for our employees to be home with their families to deal with the traumatic impact of that terrible day,” recalled Judge Jonathan Lippman, chief administrative judge of the New York State Courts. New York City courts were closed the next day, and court officials used television, radio, and the Internet to communicate with the public and other court personnel. “Remarkably, it was our universal experience that jurors appeared for duty in great numbers no matter what the instructions, very much viewing jury service as a patriotic duty in that time of crisis,” he said.

In California, Malcolm Franklin, senior manager of Emergency Response and Security for the Administrative Office of the Courts, reported that his office is developing a Web-based continuity-of-operations planning system in collaboration with the Superior Court of Fresno County. A new emergency planner has just joined the AOC’s Southern Regional Office in Burbank, he said, and templates for a basic disaster plan are being developed.

Ask yourself and answer these questions, Franklin said: “If there was an emergency, where are your kids right now? What are your families doing right now? Do you have a plan for you and your court? If you don’t have a plan, you’re not prepared.

“Expect the unexpected—get ready for anything and everything,” Franklin advised.



# The Next Six Years

## Courts and Court Users Modernize the Branch

**By  
Richard D. Huffman**

**C**alifornia courts receive 9 million case filings each year, and each year nearly 10 million people are summoned to jury service. So improving our understanding of how court users perceive the courts and how the courts can best respond to their needs makes good common as well as business sense.

The California judicial branch embarked on such an endeavor in 1992 when then-Chief Justice Malcolm M. Lucas introduced the first strategic plan. He explained this ambitious effort by acknowledging the judiciary's responsibility "to take an active role in managing the courts and providing leadership for the judicial system."

Elaborating on this responsibility a year later, Chief Justice Lucas described the impetus for strategic planning: "Growing caseloads, increasingly complex cases, shrinking resources, and challenging multicultural and diversity issues all require our courts to act affirmatively and progressively to meet the needs of California's population."

I confess to a mindset in 1992 that viewed planning as something like working first on the case with the closest due date. I was there when we last revised the strategic plan and when we recognized the need for an operational plan that could be revised in short cycles to better implement the larger

strategic goals. I have come to believe that both levels of planning are needed to fulfill long-term aspirations incrementally with finite resources.

For this reason, California's judicial branch can take pride in *Justice in Focus: The Strategic Plan for California's Judicial Branch, 2006-2012*, the latest installment in our commitment to the people of California. *Justice in Focus*, I believe, anticipates and responds to the social and economic changes California will face in the next six years.

### **Challenges of Change**

The state and its residents are changing, and the judicial branch must change accordingly. Today, California is home to extensive immigrant communities from more than 60 countries. Some demographers predict the next 20 years will see California's population increase by 10 to 11 million—an increase roughly equal to the current population of Ohio.

Growth, of course, will not be the same in all parts of the state; some regions will put greater demands on the branch than others. For example, demographers predict that many inland counties, such as Riverside and Sacramento, will grow

by 50 percent over the next 20 years. The Inland Empire is already one of the fastest growing areas in the country, and other parts of the state—the San Joaquin Valley, for example—are expected to grow at a similar rate.

Meanwhile, California's economic prospects remain subject to the cycles that make for uncertain revenues and resources. Many economists predict continued economic uncertainties, with very little slack in the system. What *does* seem certain is that the judicial branch will serve a larger and costlier population.

### Focus on Reality

*Justice in Focus* has not lost sight of these realities. The council's advisory committees and task forces, as well as the full council membership, have worked to ensure that the strategic plan for California's judicial branch is responsive to public needs as well as to the contextual realities of California's demographics and economy. The results of this collaborative effort are evident in the plan's six goals and 53 policy directions, which set the course for California's courts over the next six years.

### Stakeholders as Coplanners

Beginning in early 2005, the Judicial Council, working through its staff agency, the Administrative Office of the Courts (AOC), set in motion a planning process designed to ensure the broadest possible involvement. *Justice in Focus* was molded by a wide, representative array of judges and individuals with a direct interest in the branch, including members of the public, community leaders, and other justice system partners. In all, nearly 3,200 individuals helped shape the goals and policy directions of the new six-year plan. In addition, trial court planning priorities submitted annually on the Serranus Web site for California judges and court staff were carefully analyzed and considered in developing the plan. The council also sought guidance from economic, demographic, and legal trends experts to help establish a statewide context in which to frame strategic deliberations.

### Focused Listening

A key component of the council's outreach efforts was the public trust and confidence assessment, phases I and II. The phase I assessment sought opinions and priorities from over 2,400 Californians and 500 practicing attorneys. Building on this information, phase II employed focus group methodology to reach out to nearly 200 individuals with direct experience of California's courts, as well as to approximately 60 judicial officers, court administrators, and branch and community leaders.

Presented at the Judicial Council's annual planning meeting in June 2006, the phase II report findings corroborated and expanded on the landmark phase I survey report released the previous year. Judicial Council members, branch leaders, and justice system partners—including the leadership of the State Bar—learned that the strongest predictor of the public's confidence in the courts is their sense that decisions have been made through procedures and processes that are fair and understandable. Attendees at the June meeting took to heart the public's concerns about the cost of hiring an attorney, the most commonly cited potential barrier to court access. They confronted, in frank policy deliberation sessions, the difficult language access issues reported by respondents to the phase I survey (31 percent of whom were born outside the United States). A wealth of information from actual court users helped the June planning meeting attendees consider how the public's experience of jury service, associated with high approval ratings, could shape policy to improve services in other court venues.

### Our Strategic Focus

*Justice in Focus* renews our commitment to the goal of "Access, Fairness, and Diversity" by charting a strategic route appropriate to California's increasingly diverse and expanding population. The plan establishes policy directions to increase access to legal assistance and interpreter services and to ensure that court procedures are fair and understandable—all concerns voiced by participants in the

council's trust and confidence assessments. Just as important, the plan renews a commitment to a judicial branch that mirrors the state's diversity.

The goal of judicial branch "Independence and Accountability," another long-standing branch imperative, sets forth policy directions to safeguard the ability of judicial officers to exercise appropriate discretion and independent decisionmaking. At the same time, new policy directions strengthen the branch's ability to secure resources, to allocate them where they are most needed in an environment of continuous growth and changing public needs, and to account for the efficient use of public funds.

"Quality of Justice and Service to the Public," yet another goal responsive to judicial and public needs, features new policy directions dedicated to the establishment of innovative and effective problem-solving programs and to improved services in high-traffic court venues. Likewise, the importance of procedures and processes that are understandable—that make sense to the court user—has been reaffirmed in policy.

Other goals, such as "Modernization of Management and Administration" and "Education for Branchwide Professional Excellence," establish clear policy directions responsive to court user priorities—such as timely and efficient case processing and a courteous, knowledgeable judicial branch workforce.

Of course, in order to meet the many diverse needs articulated by court users—as well as members of the branch and our justice system partners—the judicial branch must provide a suitable statewide administrative infrastructure. The branch must plan to redress long-standing infrastructural issues—such as ensuring the safety and accessibility of our court facilities.

Likewise, our commitment to efficient case-processing, information-sharing, financial, and human resources technologies depends on policy that is creative and far-thinking. *Justice in Focus* sets forth as a new goal the attainment of a "Branchwide Infrastructure for Service Excellence." This goal sets a course to quality of justice in California

## TURNING STRATEGY INTO ACTION

by advancing statewide values for the judicial branch and consistency in court operations while maintaining decentralized court management.

### Implementation Already Under Way

Of course, all plans require a commitment to action, to follow-through on the part of their creators. And efforts are already afoot to implement *Justice in Focus* throughout the state. During 2007, the Judicial Council—working through its advisory committees, task forces, and the AOC—will develop a three-year operational plan to set into motion specific programs and initiatives to achieve the six strategic goals.

Trial courts will play an important role in achieving these branch priorities by developing and implementing their own strategic plans. Court plans typically identify ways of meeting court user needs that are specific to each local jurisdiction. The results of all this strategic thinking and action will be available for branchwide sharing via the Serranus Trial Court Planning Web site.

Echoing the sentiments his predecessor expressed some 14 years ago, Chief Justice Ronald M. George has provided a fitting introduction to the revised plan, noting that it “affirms the importance of listening to the public, of effective information sharing... [and of] services that are responsive to the needs of the public—services that inspire the trust and confidence of Californians from all walks of life.” He also has likened our planning and policy-making responsibilities to those of a marathon relay—one without an end.

I thank all who have participated—and who continue to engage—in this most important strategic journey. It is ironic that a nonplanner like me has been assigned to chair a committee with planning in its name. But even a nonplanner can learn the necessity and critical value of that thoughtful process. ■

*Richard D. Huffman is an associate justice of the Court of Appeal, Fourth Appellate District, Division One, in San Diego and chair of the Judicial Council's Executive and Planning Committee.*

**By William C. Vickrey**

*Administrative Director of the Courts*

*Now that the Judicial Council has approved a six-year strategic plan for California's judicial branch to guide its actions and organize its resources, it must communicate the plan to all who have a stake in the branch. The Administrative Office of the Courts is formulating an operational plan that will be presented to the council at its annual planning meeting in late June. Bill Vickrey shares his perspectives on how the strategic plan will affect court operations in the years ahead.*

### **How will the amended strategic goals change the council's operational plan?**

It will change the operational plan in several key areas. The branch will place greater emphasis on the concept of procedural fairness—based on the data that the public's trust in the system is influenced more by process (e.g., how court users are treated) than by the outcomes of their cases—that every judge and every staff member who encounters the public must take the time to listen to them, to treat them with fairness and respect, and to ensure that they understand the proceedings and the opportunities available to them.

As a result of the extraordinary work that's been done on the studies on public trust and confidence in our court system, there will be much more of a focus on how our practices, policies, and procedures affect the public. Specifically, the plan will focus on high-volume courts, such as traffic, small claims, juvenile dependency, and family courts. And our operational plan will reflect the partnership we have with the Governor and the bar to increase diversity on the California bench.

### **What should trial courts do in terms of updating their operational plans?**

The tremendous leadership of our courts in implementing major court reforms, such as court unification, the one-day or one-trial jury system, self-help centers, and plain English jury instructions have had a major, positive impact on the public's confidence in the courts over the last decade.

In the future, operational plans of local courts, the creative initiatives of trial courts to improve access to information, access to courts, and public education will be critical. So, first, all trial courts need to work together in a partnership with the Judicial Council and the Administrative Office of the Courts to implement a statewide infrastructure in a

way that fulfills the promise of improved access to case information by the parties, improved access by the general public to information about their courts, and improved information needed by other state and local justice system partners to fulfill their responsibilities to California's justice system. The infrastructure strongly influences our ability to operate effectively and efficiently, to be transparent to the public and accountable to the other two branches of government and the public.

Second, our trial courts must develop plans and strategies to implement on a statewide basis those practices that have proven effective in improving the quality of justice and that have reduced barriers to access to the courts. These include demonstrated initiatives such as complex litigation courts, collaborative justice courts (e.g., mental health and teen courts), interpreters in civil cases, reforms in the child dependency area, and self-help centers.

Finally, more than half of California's population have some contact with the courts every year. We need to start there, with court users, to emphasize public education as well as procedural fairness. We need to assume responsibility for educating the public about the general process that they will undergo when they come to the courts, whether as a witness, a party to a case, an observer, or a juror. We must improve our ability to treat them with patience and dignity, placing special attention on high-volume courts.

### **What is the relevance of the strategic plan to court staff?**

The strategic plan reflects both a great opportunity and a great responsibility. Every judge and employee affects the public's perception of the trial courts. This strategic plan is going to place a major focus on the public, how our justice system impacts the public. That starts with each and every employee's interaction with the public—on the telephone, by written correspondence, or at the counter or in the courtroom. We must provide the information that the public needs to understand court processes. We know public education is a huge effort that needs to be undertaken. Our 19,000 court staff are the best ambassadors we have to try to improve the public's experience with the courts and thus their trust and confidence in the process and in the results. Our strategic plan will drive every activity in our branch, from our funding priorities and our legislation to how we organize resources and how we interact with the public and the legal community.





Counties with CCMS by the end of 2007

# CCMS Goes Live

## A Vision of the Future Becomes Practical Reality

**By**  
**Michael Roddy,**  
**Tamara Lynn Beard,**  
**and Alan Slater**

**Three court executive officers discuss CCMS, a new tool to improve access to the California courts and soon to be the world's largest judicial case management system.**

### The Vision

"In a statewide data distribution network, a single file, entered once, will be immediately available to an unlimited number of users. No intermediaries will be needed to retrieve requested documents. Sophisticated scheduling and case management applications will be available on line. Documents will be retrieved instantaneously at trial and displayed on monitors to all participants. On appeal, both clerks' and reporters' transcripts will be immediately available to the appellate tribunal.

"The network will be a clearinghouse for judges, court information managers, attorneys, clients, and the public. Every California court will have access to and share information through the network. It will contain scanned images of filed paper documents, electronically filed documents, and the courts' case management system. Once authorized, any user will be able to access and retrieve information or enter data, although clearance will be required to enter data."<sup>1</sup>

### The Current (But Changing) Reality

When this visionary system was described in 1993 by the Commission on the Future of the California Courts in its report *Justice in the Balance 2020*, the California Courts Case Management System (CCMS) was not even a glimmer in the Judicial Council's collective eye, though, in its 1991 annual plan, the council identified such a system as a priority. That year the council also established the commission, which used the tools of forecasting, alternative futures planning, and analysis not only to anticipate what the future of the judicial branch might be but also to propose what it *should* be. And what it should be, according to one of the technology recommendations, is an integrated case management system connecting all California courts.

It isn't a surprise that the judicial branch is making its vision a reality, but what *is* amazing is how quickly and how far the branch has traveled toward that goal. Two members of the 1993

commission deserve special credit. One is Sheila Calabro, then court executive officer at the Superior Court of Ventura County and now director of the Administrative Office of the Courts' Southern Regional Office and the executive sponsor of this statewide initiative. The second is Edward Kritzman, now retired, who was the court executive officer at the Superior Court of Los Angeles County in 1993. These two courts led the charge in developing the civil component of CCMS. Later they were joined by the trial courts in Orange, San Diego, Sacramento, and Alameda Counties.

Today more than 70 case management systems are in use in the California courts, each requiring support and maintenance. Many of these systems do not meet the basic need to communicate with the systems used by the Department of Motor Vehicles, the Department of Justice, the Judicial Branch Statistical Information System, and the Department of Social Services, not to mention legislative requirements. In addition, some courts have individual agreements with the providers of their case management system applications and independently negotiate their own upgrades, maintenance, and other services. These arrangements are not consistent and often result in multiple courts' paying for the same upgrades.

## Striking Benefits of CCMS

The system now known as CCMS is a statewide initiative to bring the courts together with one application for all case types. The AOC's Southern Regional Office in Burbank manages this history-making project, and five trial courts are leading the design and development: the Superior Courts of Sacramento, Orange, Ventura, San Diego, and Los Angeles Counties. Other courts have also participated in planning and design sessions: the Superior Courts of Alameda, San Francisco, Monterey, Riverside, and San Bernardino Counties.

The reason courts are jumping on board is that the benefits are numerous and compelling. CCMS enables courts

The California Courts Case Management System, depicted above, provides users with a wealth of information and options for keeping track of civil cases. Those already on the system say it provides great insight into the best practices of other courts around the state.

to share resources to achieve vastly improved outcomes in the following ways:

- Creating a common technical infrastructure
- Facilitating common business practices
- Using a common approach for all case types
- Adopting standards for configuration and data sharing
- Integrating with local and state justice partners to increase public safety and reduce liability
- Ensuring equal access to justice for the public and other justice partners

Transition issues have been considered, too. CCMS includes a strategy that allows courts to maintain their existing case management systems while preparing them to migrate to CCMS. The strategy thus addresses their basic functional needs while allowing reductions in the number of case management systems and the associated costs

of upgrading and maintaining them. Once completed, CCMS will be the largest court application in existence.

## Leadership Is Necessary

The *Justice in the Balance 2020* report also noted that “[i]f the data network is to be a reality, statewide leadership will be necessary to: ensure the installation of compatible hardware and software; develop norms and standards for access; create safeguards for transmitting and using sensitive information; and standardize nomenclature and procedures among courts, prosecutors, public and private defenders, all other elements of the public and private bar, human services and law enforcement agencies, other state and local agencies, the press, and the private sector.”<sup>22</sup>

Leadership is a critical success factor for a project of this magnitude, and, fortunately, many court executive officers have stepped forward to provide it. We asked three of them—Michael

Roddy, Tamara Lynn Beard, and Alan Slater—to share with readers how CCMS has affected their courts, what successes they have enjoyed, and what lessons they learned as they implemented the system. Here is what they told *California Courts Review*.

**CCR:** *During implementation of CCMS, have you seen improved business processes develop? Where have you seen the largest improvements? What is the history of how it was before and how it is now?*

**Michael Roddy (Superior Court of San Diego County, where CCMS went live in November 2006):** Many of the current business processes in the Superior Court of San Diego County were developed and implemented as a consequence of court unification. Unification created an environment in which we could look specifically at how things might be done universally and also consider better ways to do things. With the focus on developing a new statewide case management system in early 2004, the court also began looking at many processes to see where further improvements could be made.

While analyzing our current processes, we found that operations are heavily influenced by how information is captured and stored in our current case management system. Starting with our participation in the design and development of CCMS through to our current deployment activities, we have gained great insight into the best practices of other courts around the state. We are using this information to update our business processes to work as efficiently as possible with CCMS.

**Alan Slater (Superior Court of Orange County, where CCMS went live in November 2006):** The Superior Court of Orange County has deployed CCMS for small claims cases. Before, small claims was not automated, and there were multiple business practices occurring at various justice centers. During the testing phase of the deployment, the court conducted five “mock

days”—these were basically an opportunity to assess our procedures with the new system through the use of test scripts. These mock days verified the out-of-system business processes and helped ensure consistency. The participants, who represented various court departments and locations, developed uniform processes based on the outcomes from our mock days. One of the most significant improved business processes that resulted was the automated and formalized minute order process for small claims. Other small claims improvements include minutes recorded real-time in the courtroom and electronic images of the case files instead of physical files.

**Tamara Lynn Beard (Superior Court of Fresno County, where CCMS went live in July 2006 for traffic and criminal cases):** Our court has seen improvements in our accounting department, back-office processes, and queues. The daily distribution report generated by CCMS calculates where to distribute the money collected from fees and fines. Before CCMS, we manually distributed money for traffic school enrollment and red-light, health and safety, and insurance violations. The new system does this automatically. Our court staff processes bail forfeitures and traffic school paperwork more efficiently and faster because of CCMS. We have caught up on our backlog of case data entry while reducing the traffic counter queues from 30 or 40 customers to 3 or 4.

**CCR:** *What would you tell another county about CCMS implementation and/or deployment? What are some key lessons learned that you would like to pass along?*

**Roddy:** First and foremost, you can never have enough people involved in the project. Because this is a system that eventually will impact every aspect of how we provide services to the public, the more judicial officer and employee buy-in you are able to build the better off and more successful the

implementation will be. Our people who have been involved on this project have a real sense of ownership and pride in the work that we have been doing to implement CCMS, and they are serving as ambassadors at their locations to answer questions and concerns of other staff.

The other critical thing is long-term support planning. Because this system is still evolving and will continue to do so for several years, we are implementing a plan to define how operations and information technology [IT] work together to maintain this application once we go live with other case types. Each court needs to define who will be responsible for making local changes and updating operating procedures as well as reviewing and approving requests for system enhancements.

**Slater:** Users like to give feedback on the new system from a demo rather than from paper-based documentation, so where possible show the team the real system in working sessions. Use these sessions to walk through business discussions and to identify the gaps early in the process. Make sure that in-depth planning is done at the beginning of the project; cover business process changes as well as new technology. Give as much time as possible to training, adding local data to the system, test preparations, and testing itself.

Involve the court technology and end-user support teams early in the project so that they are gaining experience in how to maintain the system. Also, make sure that court operations management is involved all the way through the process with weekly meetings to review progress and discuss decisions made. CCMS is quite complex and takes time to learn, so try to keep a consistent team involved in the project.

**Beard:** Having appropriate staff dedicated to CCMS is critical to a smooth implementation. Assign technology and operations staff to the project 100 percent of the time, from preimplementation to after you go live. In Fresno, we assigned a senior IT manager as a



full-time project manager for CCMS. She has four IT personnel who manage interfaces, network, templates, calendars, and security for CCMS. We have 250 court staff users and over 750 justice partner users. The security person makes sure all the users have appropriate access to the system.

On the operations side we also have a full-time CCMS operations manager. She was assigned during the initial stages of the project and will stay assigned to CCMS for one year after we go live with new case types. She schedules all court staff training, develops operational procedures for use of the system, and directs operational staff. The staff assigned to her for CCMS maintains the bail schedule, reviews courtesy notices, and updates code tables. They know CCMS well since they did testing and training on the system during implementation.

Whenever possible collaborate with other courts; use what they have already created. We used docket codes and fee schedules that had already been set up by other counties. The codes had already been tested, and that saved us a great deal of time and energy. That also ensured standardization of codes between counties. CCMS is unifying the way our courts do business. We in turn have shared all our codes and procedures with Solano and Sonoma. These counties are planning on going live with CCMS in 2007. Collaboration between counties plays an important role in creating one case management system for 58 counties.

**CCR:** *What are key successes your court has had while deploying CCMS?*

**Roddy:** First, we made sure right away to define this project as a *court* project, not an IT project or an operations project. The key to our success has been working as a blended team to get the project done. On our core project team, you cannot tell who is from IT or who is from the operations area. And for the operations staff, I believe that many of them have learned more than they ever thought possible about database design

and how the internal part of this system works. Likewise for the staff in information technology—they have learned about operations down to the detail level! All groups involved were willing to roll up their sleeves to make this project successful. This is an approach that I would strongly recommend to other courts.

Second, when getting started, analyze your needs in all three case categories (civil, small claims, and probate) in CCMS. The system has a great deal of overlap in the set-up activities, and if you tackle them at the same time, that will prevent rework as well as allow for greater alignment of business processes, to the extent possible, across the application. Aligning these activities can really reduce the learning curve for training intricacies later.

And, last, don't underestimate your staffing needs in terms of the sheer numbers needed from different levels and with detailed expertise in each subject area and in each case type. We found that we really used many of our managers and supervisors full time on this project because of the vast number of critical decisions that needed to be made at the business level and because of the operational impact of those decisions.

**Slater:** There were many areas of success while deploying CCMS in Orange County. CCMS has not only given us improved functionality in many areas of court operation; the design allows us to update the system more efficiently when there are legislative changes. For example, the Web-based forms will allow us to modify court forms, and they will automatically be updated for all of our staff. The document management system, work queues, and system reminders will also benefit our operational efficiency. And there is a great benefit to the public. Kiosks and e-filing will be available for the public, providing better service and enhancing court efficiencies.

**Beard:** One success in Fresno is the DMV Abstract Interface. In our old system, abstracts were sent to DMV electronically at the end of every day. Now,

with CCMS, DMV has updated records every quarter-hour.

Another huge success involves the courtroom data entry procedures. Before CCMS the processes to enter docket codes and court minutes were conducted as back-office processes because the system was too slow. Defendants would receive a copy of the minute order as the fourth copy of a carbonless form that was difficult to read. With CCMS we are completing the courtroom data entry during the court proceedings. The system is so efficient that we are able to give the defendant a clear printout of the minute order at the end of the court proceedings. There are no more backlogs when it comes to courtroom minutes.

## A Safer California

What will the future hold for CCMS? If we could reconvene the Commission on the Future of the California Courts, the members would tell us that each milestone of this project takes us closer to the best possible future for the California courts.

Our state will be safer once we are able to share data effectively within the court system and with all our justice partners. Families and children will benefit from improved service and access to justice once courts are able to comprehensively manage multiple cases for families in crisis and share that information with other agencies that can provide services and assistance. And California residents will benefit from such standardization of data and access to information. When we foresee the future of the California courts, CCMS is part of that vision. It will transform our society for the better and use technology to revolutionize the judicial branch of government. ■

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### Notes

1. Commission on the Future of the California Courts, *Justice in the Balance 2020* (Dec. 1, 1993), p. 109.
2. *Id.* at p. 110.

# This Is Not My Parents' Divorce Court



A rookie judge reflects on why his qualifications for the family law bench derive not from a lifetime of study but from life itself.

**By  
Timothy B. Taylor**

In the winter of 2005, fortune smiled on me with a call from the Governor’s office appointing me to the superior court bench in San Diego. I had recently observed my 20th anniversary practicing law with Sheppard, Mullin, Richter & Hampton. Nothing there had prepared me for the next fortuitous call, this one from our presiding judge. “We need you in family law; you’ll be taking over Department 6.”

With the exception of having been pressed, as a first-year litigation associate, into a single near-disaster *ex parte* appearance for a French Riviera-bound partner, I had never set foot in a family law department. I did not study family law at Georgetown Law School. I became acquainted

with community property concepts in barely enough depth and detail to call the bar review course a success.

Indeed, I had not even *thought* about family law since 1973, when my own parents divorced. I was 14 years old at the time, so the focus of my high school freshman thinking was mostly on where my younger sister and brother and I were going to live and how our family was going to survive this major change in our lives. I knew there was a judge involved somehow, and I knew my dad, with whom the three of us lived, had to attend a couple of hearings. But that was about all I knew.

Given this (lack of) background, one can well imagine the thoughts and emotions that ran through my mind when our presiding judge called. I soon learned the assignment would last three years and that I was succeeding an experienced family law judge who had previously practiced in that area. I also learned I would be sent to a five-day “Intro

to Family Law” course in Monterey before taking over a very full and demanding calendar. That, and whatever observation time and reading could be squeezed in between sentencing misdemeanants, was to constitute my preparation for the new job. *Yikes.*

I learned one more thing: the calendar I was to take over would involve about 70 percent pro per litigants who would rely on *me* to know the law. *Gulp.* The other 30 percent of the cases would involve parties represented by lawyers who, if they had practiced family law for only 30 days, would know more about it than I did. *Uh-oh.*

As I write this reminiscence, that trepidation (and more) is 10 months in the rearview mirror of experience. In the intervening time I have learned a lot from some very fine lawyers and from a great deal of study and reading. (I’m content to let history and the California Courts of Appeal determine whether this learning is reflected in my rulings.) I’ve come to respect the difficult circumstances under which family law practitioners often work and to value highly the essential and underappreciated efforts of the folks in Family Court Services, the family law facilitators, and my own court’s family law staff. I’m starting to feel conversant with the lingo and the issues.

But one thing kept gnawing at me as my competence slowly increased: What qualifies me to occasionally lecture litigants on how to go about obtaining a civilized divorce? What in my background gives me the right to urge ways to resolve child custody disagreements so that the very treasures the parents are fighting over are not damaged in the fray?

The latter types of disputes make up a large percentage of what I have been doing for the last nine months. As the weeks of relentlessly large calendars passed, I kept wondering whether I could really speak with authority in admonishing litigants about child custody issues. To me, now, the training and study described above seem less important to addressing those tasks than the personal experience of (thus far) successfully raising two boys.

### My Parents’ Divorce Files

With this recent past as prologue, I decided to order up a copy of the 1973–1974 proceedings from my own parents’ divorce file from the Superior Court of Los Angeles County’s central archives. After some initial delays cured by a check for \$22 for the copying costs (and some very good help from the records clerks there), I was able to obtain a copy of nearly the entire microfilmed file. And there it all was: the Petition, with the clerk’s notation that the initial filing fee (a whopping \$44) was paid in full. (In this era not long after adoption of “no-fault” dissolution but before creation of the Family Code, the relief was sought under the old Civil Code, which seems quaint somehow.) The statistics are there as well: a marriage of 15 years, 6 months, and 20 days; the date of separation, July 4, 1973; three minor children, ages 14, 13, and 11. My own name listed first. The accompanying summons was returned only a few days later, and the Response was filed less than a month later. Prompt work by the small-firm lawyers each of my parents had engaged.

Filed the same day as the Response: the first and, as it turned out, the *only* Order to Show Cause. It sought orders regarding child custody, visitation, support, and attorney fees. (My stock in trade these days.) My father’s response to the OSC, filed only 11 days after the moving papers. A Financial Declaration, much shorter and simpler than the current Income and Expense Declaration form that I attempt to decipher each day. The minutes from the OSC hearing: both parties and their counsel noted as being present. It must have been hard for them, as they had been married in 1957 at a church only a few minutes from the courthouse in Glendale.

After an unreported chambers conference involving only the lawyers and the court (I could never do this today), the court ordered attorney fees payable forthwith to counsel for respondent in the princely sum of \$350. Custody of the minors was awarded to husband, with reasonable rights of visitation to wife. No

Family Court Services report; no detailed parenting plan; no disputes over drop-off and pickup; no haggling over curbside exchanges, timeshare, or midweek visits. *Wow.* I have a vague memory of writing something out about where I wanted to live; it is not in the file, but maybe it was shared with the court during the chambers conference.

In any event, I remember the aftermath of this hearing, when my mother called to set up the first “reasonable visitation” since her departure. I said some ugly things to her that day. It was awful, a 14-year-old son’s version of a proper defense of his dad’s honor. Thankfully, we’ve long since mended fences, and I hope I’ve made amends.

Less than two months later: an At Issue Memorandum, asking that the case be set for trial. Estimated trial time: one day. A few days later the Counter At Issue Memo, with a four-day trial estimate. The record does not disclose the reason for the discrepancy. Lawyers bluffing? Also lost in the mists of time is the reason for the passage of two and a half months between this flurry of activity and the next item in the file: the Notice of Trial, filed on what would have been their 16th wedding anniversary. I doubt the irony was intended.

Two more months passed. Our first incomplete Christmas came and went in the meanwhile. And then the trial: a little less than eight months after the case was commenced, it was over. One witness testified (my dad). One exhibit was received: an Integrated Marital Settlement Agreement. Lots of words like “hereof” and “hereto,” but only seven pages plus four pages of exhibits. My own name listed as one of the “issue of this marriage.” Custody confirmed. Assets divided. An equalizing payment evidenced by a five-year note. No spousal support, no child support. Each party to bear his or her own attorney fees. An ensuing Judgment of Dissolution and notice of entry thereof. *And that’s the last thing in the file.*

The difference between this file and so many of the files I work with these days could not be more profound. No





postjudgment OSCs. No move-away requests. No squabbling about whether assets were hidden or whether income was fully disclosed. *Case closed.* Until I asked for a copy 32 years after the judgment was entered, it is likely no one

handled this slender file again (except maybe to microfilm it). By contrast, in the last two weeks I have made decisions in cases in which the file exceeds four thick volumes and the parties have more or less constantly been at each other's throats for all of their children's elementary and teenage years.

#### Lessons Learned

The divorce was extremely hard on my father. We saw him cry. I know less about how it affected my mother, who was the departing spouse with the new relationship. But as difficult as it was, and even though he lost his own parents to disease only a short time later, my dad never allowed bitterness to infuse what he told us about our mother. He *never* spoke ill of her in our presence. He maintained a lifelong, wonderfully close relationship with our maternal grandparents, so we did too. He insisted that we visit with our mother, overruling my stiff resistance. He lectured me on the importance of not having unburied hatchets and unfinished business and required that I take affirmative steps to repair the relationship. As my brother has observed, at midlife our dad was forced to rearrange his whole outlook and life plan. An academic washout himself, he finished the raising of three teenagers, all of whom graduated from college and all of whom decades later have intact, long-term marriages and children of their own. He did all of this on instinct, with no manuals or handbooks, no parenting classes, and certainly no lengthy and detailed court-adopted custody and visitation plans.

Mom gets credit too. She probably could have asked for more money. She didn't. She could have "pushed" the issue of custody or at least sought more detailed visitation orders. She did neither, even though the maternal urge to do so must have been strong. In a marriage where the areas of disagreement obviously overcame the areas of agreement, there was still some final room for compromise. Perhaps she saw, more clearly than a teenager could, that time would pass and that the three

of us kids needed that time. Amid all the turmoil, a gift.

Even the lawyers get a nod here, though, like my dad, one has passed away and is not around to receive belated public thanks. There is nothing in the file suggesting anything other than an old-school, low-key, professional job of dispute resolution. No unnecessary discovery. No delay, as the chronology above makes clear. Nothing to suggest that the engine of the law was run unnecessarily to drive the parties farther apart than they already were. I'm sure they both earned a fair fee, but neither sent his child to USC or Stanford on my parents' case.

#### The Law's Wisdom

The California Legislature has directed family law judges to pursue the state's policy of ensuring that children have "frequent and continuing contact with both parents" following a divorce. The thinking behind this statute, at least in part, is that children can learn from both parents—even from the mistakes those parents make. Nowhere is the wisdom of this policy more evident than in my own family's journey. My sister, who walked the path with me, has said that we err if we do not use the past, good and bad, to change the way we think about the present and the future. So the people who come before me for the next two years—whom I am privileged to serve as a judge of this court—should get used to the lectures and admonitions. The moral high ground behind them derives not from a lifetime of study nor a book, a piece of legislation, or an appellate decision. It comes from the lessons of life, taught perhaps unwittingly, tardily discovered, but discovered just in time. **RR**

*Timothy B. Taylor is a judge of the Superior Court of San Diego County.*

# The Overlooked Value of the Past

By  
Arthur Gilbert

When I was in college studying English history, I read about the Venerable Bede. He was a monk who was reputed to be the first major historian of England. He completed his five-volume work, *The Ecclesiastical History of the English People*, in 731. It knocks me out that Bede's name is preceded by "the Venerable." No text or article refers to Bede without the appellation "Venerable." It connotes the enormous respect this unique individual had earned during his life for his wisdom and scholarship. Because such high praise signals a lifetime's achievement, it is reserved for an older person. It is a recognition of the value of a person's past.

The Venerable Bede fostered respect for the past when there was not all that much of a past. Today respect in general is in short supply, and respect for the past, in particular, is a rarity. No wonder we seldom call people "venerable" today. We have a lot more older people today than we did in the eighth century, but I don't know of any who covet the sobriquet "venerable." In fact, call someone "venerable" to their face and you just might get punched in the nose.

But there are not that many people today to whom the term "venerable" even applies. There is, however, one judge for whom the description is apt: Julius Title. He is an energetic 91-year-old who I hope will not punch me in the nose. I have admired him from the days when I was a practicing lawyer and he was appointed to the bench in 1966. Later, I was his student when he taught trials at

the Judicial College. Through his course and by example, he showed me and numerous other judges what it means to be a great judge, an ideal to which I can only aspire. Until recently he was sitting by assignment on the Superior Court of Los Angeles County. Now that the court has its full complement of judges and functions so efficiently, Judge Title has packed up his temporary chambers in the Santa Monica Courthouse.

Because Judge Title is, as they say in jazz circles, "on the scene," dozens of young lawyers and sitting judges have had the good fortune to be exposed to this great jurist. But many in the legal profession and the judiciary have little

McLuhan suggested that we make an art form out of the past, idealizing it but not examining or confronting it. Maybe that is because there is so much we have to do in the present. Judges, for example, must manage their calendars, keep abreast of the law, read points and authorities, and determine the precedent that applies to the facts.

Who has time to dwell on the past, let alone other or related disciplines? I suppose Justice David Souter does. When his name was placed in nomination for the U.S. Supreme Court, articles made much about how he loved to read history. This curious trait was explained and tolerated. He was single

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**Marshall McLuhan suggested that we make an art form out of the past, idealizing it but not examining or confronting it. Maybe that is because there is so much we have to do in the present.**

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interest in knowing about our predecessors. In fact, for many of us, the past is mostly forgotten or ignored. An opinion by Oliver Wendell Holmes reflects the work of a superb jurist and possibly the best writer ever to sit on any court. He could say clearly in 8 pages what it takes others 50 to say ambiguously.

There are those whose link to the past is watching old movies or collecting or reading about antique cars. Nothing wrong with that, but how many of us more deeply probe the past? Marshall

and lived in New Hampshire. But what about the rest of us?

Professions are more complex than they were in the past. Courses in law schools involve subjects that were unheard of a few decades ago. Employment, the environment, biology, genetics, DNA, gender discrimination, and toxic torts are specialties to which lawyers devote their entire practices. Judges take courses in these and related fields just to have some familiarity with the terms and basic principles

of these disciplines. In comparison to the explosion of new and developing technology today, the past may seem quaint, if not insignificant.

As an example of how complex life has become, the esoteric “science” of hotel management is offered as a major at Cornell and other universities throughout the world. I wonder whether the graduates have a passing familiarity with Plato, Dostoevsky, and Gibbon in addition to Hilton, Helmsley, and Marriott. I suppose knowing about Kierkegaard’s “knight of faith” may not be crucial to informing a guest that his room will not be ready until 3 p.m. But even with the complexities in managing a large hotel, I am convinced that a hotel manager versed in world culture will do a better job and in turn will be a more content human being.

Some 20-plus years ago I was on the planning committee that formed the Continuing Judicial Studies Program. Judge Allen Broussard, who later sat on the California Supreme Court, was the chair. We offered an in-depth course on jurisprudence. Justice Conrad Rushing and I, who were then trial judges, designed the course, and Justice Rushing later taught the course for many years. We invited scholars from around the country to lecture and interact with students on issues posed by current and past legal philosophers. Judges lined up to take the course, but I was informed that recently it was discontinued because student interest had waned.

What a shame. Judging is not just about plugging in a formula to get a result. That is why I require students who take my course at the Judicial College to read Shakespeare’s *Measure for Measure*. Professor Herbert Morris first turned me on to the play years ago, and I haven’t been the same since. The play was written 400 years ago, yet, astonishingly, it is no less relevant to the present time. It speaks to the tension between judicial activism and restraint. It posits

the cost to society and to our notions of justice when we interpret a statute too liberally or too literally. The play, like the writings of jurisprudential scholars, helps make judges conscious of their predilections when deciding difficult cases. Moreover, the play helps us cope with the inescapable fact that absolute justice is impossible.

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**Looking to the past and to other disciplines makes judges better at what they do. It gives them a broader view of the world and the people in it. They are better able to evaluate a case and to make informed judgments.**

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Reading Shakespeare is at first tough going with all those Elizabethan words, the meaning of which may be unknown to a modern audience. Reading the annotations can be ponderous. But the reward is worthwhile.


The same reward awaits the judge knowledgeable about the schools of jurisprudence present and past. Shakespeare and legal philosophy may seem far removed from moving a court calendar with dispatch or applying the Evidence Code. But an understanding of legal philosophy better equips a judge to decide issues in a diverse society.

Some may discount the value of the past because they see the past as a time of naiveté and simplicity that has no relevance today. Elmer Rice’s play of 1931, *Counsellor-at-Law*, portrays a successful, seemingly hard-boiled criminal defense attorney as a person of compassion and integrity. I do not believe that I am naive to posit that the attorney portrayed in Rice’s play reflects most of today’s criminal defense attorneys. Yet today the media portrays most lawyers as craven, unprincipled, and the devil incarnate. Some say the turnaround in perception

came during the Watergate scandal. They point to all those lawyers who were convicted. But I suggest we look at the lawyers who brought them to justice.

Looking to the past and to other disciplines makes judges better at what they do. It gives them a broader view of the world and the people in it. They are better able to evaluate a case and

to make informed judgments. Getting back to Shakespeare for a moment, he reminds us that “What’s past is prologue.” (*The Tempest*, act II, scene I.)

Knowing the human qualities of people from the past who have had a marked effect on our present is enlightening. Blaine Gibson recalls his father, Chief Justice Phil Gibson, coming to pick him up from grammar school in the middle of the day. “What could I have done wrong?” young Blaine wondered upon seeing his father in the principal’s office. The Giants were playing the Dodgers that afternoon at Candlestick Park, and Juan Marichal and Sandy Koufax were pitching against each other. “We are going to the game, son,” said the Chief Justice. Koufax? Marichal? Remember them? 

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





Alex Ricciardulli

# The Perfect Storm: Reconciling the Efforts of Voters and the Legislature to Get Tough on Sex Offenders

BY ALEX RICCIARDULLI

What do you get when the California Legislature and the electorate through the initiative process both decide to enact laws comprehensively dealing with sex crimes in the same year? A perfect storm of statutes greatly increasing punishment for sex offenders.

Governor Schwarzenegger's signing of Senate Bill 1128 (Alquist; Stats. 2006, ch. 337) on September 20, 2006, combined with the voters' approval of Jessica's Law (Proposition 83) on November 7, 2006, enacted no less than 81 separate sex crime provisions. New felonies and misdemeanors were created, with sentences for these crimes toughened across the board.

A comprehensive review and comparison of all the statutes enacted is beyond the scope of this article. The focus here will be on the most important provisions that were enacted, particularly on issues likely to arise in the courts' application of these laws.

## Reconciling the New Laws

The Legislature's compilation of sex laws was enacted under SB 1128, while the initiative was approved by the voters as the Sexual Predator Punishment and Control Act: Jessica's Law. SB 1128 and Jessica's Law are really two groups of statutes, all addressing the single subject of sex crimes and predation.

The two groups of laws started as competing tempests, with the Legislature proposing a number of sex provisions in SB 1128 in part to forestall the electorate's approval of the Jessica's

Law initiative. As the bill progressed through the Legislature, however, it was repeatedly amended to very closely resemble Jessica's Law.

In the end, when SB 1128 was signed by the Governor, it contained many provisions identical to Jessica's Law and some that were not in the initiative. To make things even more confusing, Jessica's Law also contained provisions not in SB 1128.

Courts will have to reconcile the two groups of laws guided by well-established principles of statutory interpretation. Generally the provisions of a later-enacted initiative will control over previous legislation. (*People v. Bustamante* (1997) 57 Cal.4th 693, 699.) However, "the law shuns repeals by implication." (*Board of Supervisors v. Lonergan* (1980) 27 Cal.3d 855, 868.) Thus, the provisions of the two measures must be compared to one another and each allowed to become effective if possible. Courts will eradicate the provisions of a measure only when they are "irreconcilable, clearly repugnant, and so inconsistent that the two cannot have concurrent operation." (*Western Oil & Gas Assn. v. Monterey Bay Unified Air Pollution Control Dist.* (1989) 49 Cal.3d 408, 419-420.)

There are a few areas where Jessica's Law clearly renders parts of SB 1128 invalid. For example, both Jessica's Law and SB 1128 change the state's existing Sexually Violent Predator (SVP) statute (Welf. & Inst. Code, § 6600 et seq.) to provide for indeterminate instead of two-year incarcerations. However,

Jessica's Law specifies that a defendant need have only *one* prior sex conviction to be eligible for incarceration while SB 1128's reenactment of the SVP law requires that the defendant have *two* prior convictions. (See Jessica's Law, § 24; SB 1128, § 53.) Jessica's Law, the later-enacted provision, trumps SB 1128 here.

***In the end, when SB 1128 was signed by the Governor, it contained many provisions identical to Jessica's Law and some that were not in the initiative. To make things even more confusing, Jessica's Law also contained provisions not in SB 1128.***

At the other end of the spectrum, Jessica's Law and SB 1128 contain provisions that deal with completely different areas—such as the requirement in Jessica's Law that defendants wear global positioning system (GPS) devices for life (§ 18) and SB 1128's addition of more crimes subject to registration under Penal Code section 290 (§ 11). In these instances it is clear that both laws' provisions will be given effect.

Then there are provisions in the two enactments that are very closely related, and these present difficult questions of whether both can be given

effect. For example, SB 1128 added the crime of arranging a meeting with a minor for the purpose of exposing private parts or engaging in lewd conduct “motivated by an unnatural or abnormal sexual interest in children.” (SB 1128, § 7, adding new Pen. Code, § 288.3.) This crime is punished as a misdemeanor unless the perpetrator is required to register under section 290, in which case the offender is subject to felony punishment with a maximum of three years in prison, or up to four years if the perpetrator actually attends the arranged meeting.

Jessica’s Law creates a crime for contacting or communicating with a minor, or attempting to do so, with the intent to commit sex crimes, including lewd acts under Penal Code section 288. (Jessica’s Law, § 6, adding new Pen. Code, § 288.3.) The punishment is set at the term prescribed for an attempt to commit the designated sex crime.

Which Penal Code section 288.3 went into effect? Can a court amalgamate the two versions to create a broader statute than either Jessica’s Law or SB 1128 envisioned? Or should the SB 1128 version of section 288.3 simply be wholly supplanted by the one enacted by Jessica’s Law?

Other examples of closely related provisions that will likewise have to be disentangled by the courts are Jessica’s Law and SB 1128 amendments to child pornography offenses (§§ 8 and 24, respectively) and provisions barring section 290 registrants from residing within 2,000 feet of schools and parks (Jessica’s Law, § 21) and from coming onto school grounds (SB 1128, § 25).

### Effective Dates

The Jessica’s Law initiative was approved by the voters on November 7, 2006. Under the California Constitution, an initiative becomes effective the day after it is approved. (Cal. Const., art. II, § 10(a).) Thus, the overall operative date of Jes-

sica’s Law is November 8, 2006, the day after the election.\* SB 1128 was signed by the Governor on September 20, 2006, and because it was “urgency legislation,” it went into effect that same date.

For the provisions common to Jessica’s Law and SB 1128, as well as those in SB 1128 unaffected by Jessica’s Law, the effective date is thus September 20, 2006, the date the bill was signed. Provisions supplanted by Jessica’s Law went into effect on September 20 and expired on November 8 when Jessica’s Law kicked in.

To make things even more complicated, because of ex post facto principles, the actual dates on which the laws became effective vary depending on the specific provisions at issue. To the extent that these laws increase sentences or fines for crimes, create new crimes, or change the elements that must be proved for a person to be found guilty, the offenses must occur on or after either September 20, 2006, or November 8, 2006, for the new laws to apply, depending on the provisions in question. Application of Jessica’s Law or SB 1128 to these offenses when the crimes happened before these dates would be unconstitutionally ex post facto. (See *Tapia v. Superior Court* (1991) 53 Cal.3d 282, 298.)

Provisions that require high-risk sex offenders released from prison to wear GPS monitoring devices for life (Pen. Code, § 3000.07) are only in Jessica’s Law but will likely be held to apply even when the crime occurred before November 8, 2006. Since this requirement is intended to monitor the person’s activity and not to punish the individual, there is a strong argument that it is not invalidly ex post facto. (See *People v. Castellanos* (1999) 21 Cal.4th 785 [lifetime registration requirement for sex offenders held to not be punishment and thus not ex post facto].)

Finally, the increases in the scope of the SVP law will also likely be held

to apply even to defendants in prison at the time that Jessica’s Law and SB 1128 became operative. When it was enacted in 1995, the original SVP statute was held not to be ex post facto for

**To the extent that these laws increase sentences or fines for crimes, create new crimes, or change the elements that must be proved for a person to be found guilty, the offenses must occur on or after either September 20, 2006, or November 8, 2006, for the new laws to apply, depending on the provisions in question.**

defendants who were in prison when the Legislature enacted the measure because the statute was not punishment for persons within its scope. (*Hubbart v. Superior Court* (1999) 19 Cal.4th 1138.)

### Increases in Punishment

Jessica’s Law and SB 1128 each increased fines for commission of a large number of sex crimes. They also increased sentences for many sex offenses.

The minimum fine for any felony or misdemeanor sex crime listed in Penal Code section 290 used to be \$200 for a first offense and \$300 for every second and subsequent crime. The crimes listed in section 290 are those for which a defendant must register as a sex offender, and they include just about every sex crime, ranging from forcible rape and sodomy to misdemeanor indecent exposure and annoying a child under 18 years of age. (See Pen. Code, § 290(a)(2).) The fines are now increased to \$300 for the first offense and

\$500 for every second and subsequent offense. (Pen. Code, § 290.3(a).) The fines are added “in addition to any imprisonment or fine, or both, imposed for commission of the underlying offense.” (*Ibid.*)

Sentences were increased for sex crimes like assault with the intent to commit a target sex crime, going up from two, four, or six years to life in prison with the possibility of parole when the assault is committed during a residential burglary. (Pen. Code, § 220(b).)

The punishment for possession of child pornography was increased from a misdemeanor to a felony for a first offense. (Pen. Code, § 311.11(a).) Moreover, the punishment for possession of child porn with a prior offense remains two, four, or six years, but the priors are increased to include *all* crimes listed in Penal Code section 290, rather than merely priors for child porn-related offenses. (Pen. Code, § 311.11(b).)

The list of crimes for which mandatory consecutive sentencing is required by courts was increased. (Pen. Code, § 667.6.) The scope of the “one-strike” law, which requires life sentences for sex crimes committed under specified circumstances, was also increased. (Pen. Code, §§ 269(c), 667.61.) And so, too, were the types of crimes for which a court cannot strike findings in order to render defendants eligible for probation. (Pen. Code, §§ 1203.06, 1203.065, 1203.075.)

### The Crime of Residing Near Schools and Parks

One of the most far-reaching crimes created by Jessica’s Law was making it unlawful for any person subject to section 290 registration “to reside within 2,000 feet of any public or private school, or park where children regularly gather.” (Pen. Code, § 3003.5(b).)

A violation of this crime is a misdemeanor, punishable with up to six

months in jail and/or a \$1,000 fine. (See Pen. Code, §§ 19, 19.4.) The law also specifically allows local municipalities to enact further restrictions on where section 290 sex offenders can live. (Pen. Code, § 3003.5(c).)

Prior to enactment of this law, no provision made it a crime for sex offenders to live within proximity of any place. Before Jessica’s Law, persons released from prison on parole for sex crimes had to be placed by the authorities no closer than 1,320 feet from a school and no closer than 2,640 feet from a school if they were deemed high-risk sex criminals. (Pen. Code, § 3003(g).) However, it was not a crime if parolees violated these rules. Jessica’s Law not only expanded restrictions to include parks, but also made violations misdemeanors and expanded the group of persons covered to include *all* persons subject to section 290 registration, not just persons newly released from prison.

One issue that arises here is what it means to “reside” in a prohibited zone. Although this term is not defined in the statute, courts are likely to look to the definition used for purposes of the section 290 registration requirement. “Residence” in this context has been construed to mean “ ‘any factual place of abode of some permanency, that is, more than a mere temporary sojourn [citation]’ ” and “as ‘cannot[ing] more than a passing through or presence for a limited visit’ [citation].” (*People v. McCleod* (1997) 55 Cal.App.4th 1205, 1218.)

Another issue is whether a defendant’s knowledge that a school or park was within 2,000 feet is an element of the offense. Comparison of the new law to other statutes strongly indicates that knowledge is *not* an element. Health and Safety Code section 11353.6, for example, increases punishment for committing drug offenses within 1,000 feet of a school and, like Jessica’s Law, does

not state that knowledge is required. The drug law has been held not to require that the defendant know that a school was nearby. (*People v. Atlas* (1998) 64 Cal.App.4th 523.) Similarly, violations of the federal school drug law have been held not to require knowledge. (See *U.S. v. Pitts* (9th Cir. 1990) 908 F.2d 458.)

In contrast, the California statute that bars possession of a firearm within 1,000 feet of a school specifically applies only when the defendant “knows, or reasonably should know” he or she is within 1,000 feet of a school. (Pen. Code, § 626.9(b).) This shows that when legislation is intended to require a knowledge requirement, its drafters specifically insert that requirement in the statutory language.

### Conclusion

There is much uncertainty surrounding the interpretation and proper scope of many provisions of the Legislature’s and electorate’s latest foray into the field of criminal justice. One thing is absolutely certain: as with prior statutes such as the three-strikes law and Proposition 36, it will take years of appellate opinions to fully work out the new laws. RR

*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.*

### Note

\*A U.S. district court judge issued a temporary restraining order on November 8, 2006, barring enforcement of that section of the initiative that bars any registered sex offender from living within 2,000 feet of a school or park, pending a further hearing on the section’s constitutionality.



# Court Briefs

## Governor Proposes Money for New Judgeships, Courthouses

Governor Schwarzenegger in January released his proposed state budget for fiscal year 2007–2008, which provides money for new judgeships, courthouse construction projects, and other programs designed to improve court services to the public.

The budget proposal includes, among other provisions:

- An augmentation of \$27.8 million for staff and related operating costs to support 100 new judgeships to be added over the next two fiscal years
- \$17.4 million in new funding for implementing the Omnibus Conservatorship and

Guardianship Reform Act of 2006

- \$5 million for the establishment of the Access to Justice–Civil Representation Program, which will support the appointment of counsel for low-income litigants in certain civil matters, in three pilot courts
- \$19.2 million from the State Court Facilities Construction Fund for seven courthouse construction projects

In addition, as part of a larger state infrastructure bond proposal, the Governor has proposed \$2 billion for the construction and renovation of court facilities.

In the coming months, judicial branch leaders will work with the Governor, state Department of Finance, and Legislature on details of the proposed budget. In May the Governor will



release a revised state budget proposal, which the Legislature must then consider before it is sent back to the Governor for his signature.

### Proposed Judicial Branch Budget

<http://govbud.dof.ca.gov/StateAgencyBudgets/0010/0250/department.html>

## First Statewide Summit on Homeless Courts

A special forum on October 26, 2006, at the Alameda Conference Center brought together judges,

justice system partners, service providers, and participants from across the state to network and share ideas about developing and establishing homeless court programs.

Homeless courts are special court sessions held in a local shelter or other community site where homeless citizens can resolve outstanding misdemeanor criminal warrants. There are 16 homeless courts in these California counties: Alameda, Contra Costa, Fresno, Humboldt, Kern, Los Angeles, Orange, Sacramento, San Bernardino, San Diego (2), San Joaquin, Santa Barbara, Santa Clara, Sonoma, and Ventura.

*Left:* John MacKanin, who spoke at the forum on homeless courts, was formerly homeless and now works as an advocate. *Right:* Attendees listen to a plenary session.

## JusticeCorps in the Bay Area

Nearly 40 local college students took the AmeriCorps pledge of service on November 17, 2006, in Oakland. The ceremony marked the students' initiation into JusticeCorps ([www.courtinfo.ca.gov/programs/justicecorps](http://www.courtinfo.ca.gov/programs/justicecorps)), a unique program to help courts with their overburdened self-help legal access centers. In the JusticeCorps program, college students are trained to help litigants complete pleadings, written orders, and judgments under attorney supervision. The Superior Court of Alameda County staffs the Bay Area JusticeCorps program in partnership with the superior courts in San Francisco, San Mateo, and Santa Clara Counties. JusticeCorps was piloted in Los Angeles County in 2004.



### Homeless Courts

[www.courtinfo.ca.gov/programs/collab/homeless.htm](http://www.courtinfo.ca.gov/programs/collab/homeless.htm)

### Contact

Yolanda Leung, AOC Collaborative Justice Program, 415-865-8075, [yolanda.leung@jud.ca.gov](mailto:yolanda.leung@jud.ca.gov)

## New Education Program Approved for Trial Courts

The Judicial Council unanimously has approved a comprehensive minimum education program for trial court judges and subordinate judicial officers, court executive officers, managers, supervisors, and court personnel.

The program was developed with input from judges, court administrators, attorneys, the Ad-

ministrative Office of the Courts, and justice system partners. Among other provisions, it establishes mandatory annual reporting by judges on their participation in educational programs. It gives the trial courts the flexibility to determine the content and subject matter of training taken by subordinate judicial officers and court personnel.

The rules took effect on January 1, 2007.

### News Release on Education Program

[www.courtinfo.ca.gov/presscenter/newsreleases/NR79-06.PDF](http://www.courtinfo.ca.gov/presscenter/newsreleases/NR79-06.PDF)

## Santa Clara Translates Court Web Site

The Superior Court of Santa Clara County has translated its 250-page self-service Web site into Vietnamese. The site explains court procedures, provides case information, and allows visitors to ask questions online—now in three languages. The court introduced a Spanish version of its self-service site last year.

The court offers free Vietnamese interpreters for courtroom proceedings for litigants who have domestic violence, child custody, child visitation, and child support hearings. It also participates in community activities and partners with local agencies that assist Vietnamese-speaking clients.

### Vietnamese Self-Service Web Site

[www.scsselfservice.org/viet](http://www.scsselfservice.org/viet)

### Contact

Carl Schulhof, Public Information Officer, Superior Court of Santa Clara County, 408-882-2856, [cschulhof@scscourt.org](mailto:cschulhof@scscourt.org)

## Council Presents Distinguished Service Awards

The Judicial Council presented its 2006 Distinguished Service Awards at the Summit of Judicial Leaders in November. Originally announced in August, the awards honor individuals who have demonstrated extraordinary leadership and made significant contributions to the administration of justice in California. The awards recipients are:

**Jurist of the Year—Justice Richard D. Aldrich**, of the Court of Appeal, Second Appellate District, Division Three

Justice Aldrich has worked to improve the access of self-represented litigants and persons with disabilities to the courts and was instrumental in establishing complex litigation courts in California. As chair of the Court Security Working Group since 2004, he helped bring together representatives of diverse organizations to establish statewide uniform funding standards for court security.

**Judicial Administration Award—Tressa Sloan Kentner**, Executive Officer of the Superior Court of San Bernardino County

Ms. Kentner has been dedicated to enhancing public understanding of



## Court Adoption and Permanency Month

At its October 20, 2006, business meeting the Judicial Council declared November to be Court Adoption and Permanency Month. The council invited Nancy O'Reilly (standing, left) and her mother, Patty O'Reilly (standing, middle), to share their story with meeting attendees. A few years ago, Patty adopted Nancy at age 24, proving that it is never too late to form a family and make a difference in someone's life.



Back row, left to right: At November's Summit of Judicial Leaders William C. Vickrey, Administrative Director of the Courts, stands with Judicial Administration Award recipients Tressa Sloan Kentner and Patricia M. Yerian; Judge Donna M. Petre, recipient of the Benjamin Aranda III Access to Justice Award; and Senator Joseph Dunn, who was honored with the first annual Stanley Mosk Defender of Justice Award. Front row, left to right: Justice Richard D. Aldrich, Jurist of the Year, and John Hancock, recipient of the Bernard E. Witkin Award, are seated with Chief Justice Ronald M. George.

the courts and providing improved court services to Californians. She has devoted a significant amount of time in support of continuing branch education and professional development for court staff.

**Judicial Administration Award—Patricia M. Yerian,** Director of the Information Services Division of the Administrative Office of the Courts

Ms. Yerian has set broad new directions for judicial branch information technology. She is leading the branch in developing a branchwide systems architecture and new court technologies, in order to create a com-

mon experience for the public when they come to the California courts and enable them to receive the same high level of quality and service from any location.

**Bernard E. Witkin Award—John Hancock,** President of California Channel

Mr. Hancock has been instrumental in improving public trust in the courts by televising important cases argued by the California Supreme Court and broadcasting judicial branch events. He has helped make California a national leader in public outreach programs.

**Additional Biographical Information on Award Recipients**

[www.courtinfo.ca.gov/presscenter/newsreleases/NR64-06.PDF](http://www.courtinfo.ca.gov/presscenter/newsreleases/NR64-06.PDF)

**Distinguished Service Awards Information, Nomination Forms**

[www.courtinfo.ca.gov/jc/distinguishedservice.htm](http://www.courtinfo.ca.gov/jc/distinguishedservice.htm)

unwavering support of individual liberties.

**Defender of Justice Award**

[www.courtinfo.ca.gov/presscenter/newsreleases/NR84-06.PDF](http://www.courtinfo.ca.gov/presscenter/newsreleases/NR84-06.PDF)

**Yolo Judge Receives Access to Justice Award**

Judge Donna M. Petre of the Superior Court of Yolo County received the 2006 Benjamin Aranda III Access to Justice Award at the Summit of Judicial Leaders in San Francisco. She was recognized for her leadership in improving court access and legal services for families and children.

The Aranda award, named for the founding chair of the Judicial Council's Access and Fairness Advisory Committee, honors a trial judge or an appellate justice whose activities demonstrate a long-term commitment to improving access to justice. The award is co-sponsored by the Judicial Council, State Bar, and California Judges Association, in cooperation with the California Commission on Access to Justice.

**Aranda Access to Justice Award**

[www.courtinfo.ca.gov/presscenter/newsreleases/NR82-06.PDF](http://www.courtinfo.ca.gov/presscenter/newsreleases/NR82-06.PDF)

**Courts Honor California Senator**

Chief Justice Ronald M. George presented California Senator Joseph Dunn (D-Garden Grove) with the first annual Stanley Mosk Defender of Justice Award for his work to strengthen the independence of the California court system.

As chair of the Senate Judiciary Committee for the past two years, Senator Dunn has been a champion of an independent judiciary. He has worked tirelessly with his colleagues in the Legislature, as well as bar and justice system organizations across the state, to call attention to the critical importance of an independent and accountable judicial branch.

The award is named after the late California Supreme Court Justice Stanley Mosk, who spent almost six decades in public service and was well known for his



## Los Angeles, Napa Web Sites Honored

The superior courts in Los Angeles and Napa Counties received awards in 2006 from Justice Served, which annually recognizes the top 10 court-related Web sites.

The Superior Court of Los Angeles County was recognized for its traffic services, online case summaries, court calendars, e-filing, civil and criminal case information, and online court appearances by video.

The Web site of the Superior Court of Napa County was honored for its online traffic payments, EZLegal forms, tentative rulings, case indexing, interactive jury services, and fillable questionnaires for service on the grand jury.

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### Los Angeles Court Web Site

[www.lasuperiorcourt.org](http://www.lasuperiorcourt.org)

### Napa Court Web Site

[www.napa.courts.ca.gov](http://www.napa.courts.ca.gov)

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## Flurry of New Bills Affect Court Operations

Governor Arnold Schwarzenegger signed a host of new bills during the final month of the 2005–2006 legislative session that promise to make substantial changes and improve

ments to court operations. Here are just a few areas affected by those bills.

### Increased Oversight for Probate Conservatorships

The Omnibus Conservatorship and Guardianship Reform Act of 2006, a package of four bills (AB 1363, SB 1116, SB 1550, and SB 1716), is designed to improve the administration of probate conservatorship cases in the trial courts. Among other changes, the bills will increase the frequency and scope of court investigations; increase court oversight over moves of conservatees and the sales of their homes; establish a new licensure scheme governing professional conservators, guardians, and other fiduciaries; and authorize court action in response to ex parte communications or informal complaints regarding a conservator.

### New Statewide Council on Foster Care

Among eight bills aimed at the child welfare system, Senate Bill 1667 requires that social workers give caregivers Judicial Council form JV-290 so that they can provide information about the child to the court. Another bill, Assembly Bill 2216, establishes a new California Child Welfare Council. The council will make recommendations to improve

how the courts and other agencies work together to provide services to youth in the child welfare and foster-care systems. The council will be cochaired by the Chief Justice, or his designee, and the Secretary of the California Health and Human Services Agency.

### More Judgeships

Senate Bill 56, which received a 67–0 vote in the Assembly and a 38–0 vote in the Senate, creates 50 new judgeships in California during fiscal year 2006–2007. The judgeships will be allocated according to the Judicial Council’s Judgeship Needs Study, which weighs the number and type of case filings per court.

### Contact

AOC Office of Governmental Affairs, 916-323-3121

## Chief Justice Honored by Judges, Lawyers

The American Judicature Society (AJS) presented Chief Justice Ronald M. George with its Third Annual Dwight D. Opperman Award for Judicial Excellence, which honors a sitting state judge of a trial or an appellate court for a career of distinguished judicial service. The award was presented on behalf of AJS by retired U.S. Supreme Court Jus-

tice Sandra Day O’Connor at the Summit of Judicial Leaders in San Francisco.

Chief Justice George was also recognized by Central California Legal Services, which presented him with the first Ronald M. George Equal Justice Award. Named in the Chief Justice’s honor, the new award is presented to individuals for their leadership and lifelong dedication to the legal system.

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### Opperman Award

[www.ajs.org/include/story.asp?content\\_id=494](http://www.ajs.org/include/story.asp?content_id=494)

### Equal Justice Award

[www.courtinfo.ca.gov/presscenter/newsreleases/MA35-06.PDF](http://www.courtinfo.ca.gov/presscenter/newsreleases/MA35-06.PDF)

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## Fresno Court Executive Named Woman of the Year

Tamara Lynn Beard, Executive Officer of the Superior Court of Fresno County and a Judicial Council advisory member, was named one of the Top 10 Business Professional Women of the Year. She was recognized for increasing access to the courts and building partnerships between local courts and community programs to address issues such as



Tamara Lynn Beard

substance abuse, juvenile delinquency, homelessness, and mental health.

The award was presented by the *Fresno Bee* and the Marjaree Mason Center, an organization that provides support services for women and children victimized by abuse and homelessness in Fresno County.

## Judicial Branch Honors Senator Don Perata

At its December business meeting, the Judicial Council presented state Senator Don Perata, president pro tem, with a resolution and an award for his leadership and commitment to preserving access to justice in California.



State Senator Don Perata

Under his leadership, the Legislature in 2006 authorized 50 new judgeships, facilitated the transfer of courthouses from the counties to the state, and ensured a salary adjustment that is essential to recruiting and retaining highly qualified judicial officers.

## Milestones

The Governor announced the following judicial appointments.

**Judge Rodney A. Cortez**, Superior Court of San Bernardino County

**Judge Gonzalo P. Curiel**, Superior Court of San Diego County

**Judge Loretta M. Giorgi**, Superior Court of San Francisco County

**Judge Helena R. Gweon**, Superior Court of Sacramento County

**Judge Dzintra I. Janavs**, Superior Court of Los Angeles County

**Judge Kathleen M. Lewis**, Superior Court of San Diego County

**Judge Kristen A. Lucena**, Superior Court of Butte County

**Judge Mark Mandio**, Superior Court of Riverside County

**Judge James E. McFetridge**, Superior Court of Sacramento County

**Judge Don Penner**, Superior Court of Fresno County

**Judge Stephen M. Pulido**, Superior Court of Alameda County

**Judge Timothy W. Salter**, Superior Court of Stanislaus County

**Judge Thomas D. Zeff**, Superior Court of Stanislaus County

The following elected judges took office on January 8.

**Judge Tom Anderson**, Superior Court of Nevada County

**Judge Sandra Bean**, Superior Court of Alameda County

**Judge Cara Beatty**, Superior Court of Shasta County

**Judge Sheila F. Hanson**, Superior Court of Orange County

**Judge Susan L. Lopez-Giss**, Superior Court of Los Angeles County

**Judge Daniel J. Lowenthal**, Superior Court of Los Angeles County

**Judge Steve Malone**, Superior Court of San Bernardino County

**Judge Michele McKay McCoy**, Superior Court of Santa Clara County

**Judge Daviann L. Mitchell**, Superior Court of Los Angeles County

**Judge William J. Monahan**, Superior Court of Santa Clara County

**Judge Lynn Diane Olson**, Superior Court of Los Angeles County

**Judge David Rubin**, Superior Court of San Diego County

**Judge Deborah L. Sanchez**, Superior Court of Los Angeles County

**Judge Roderick Shelton**, Superior Court of San Diego County

**Judge Lillian K. Sing**, Superior Court of San Francisco County

**Judge David W. Stuart**, Superior Court of Los Angeles County

**Judge Bobbi Tillmon**, Superior Court of Los Angeles County

**Judge Hayden A. Zacky**, Superior Court of Los Angeles County

The following judges departed from the bench.

**Judge Paul H. Alvarado**, Superior Court of San Francisco County

**Judge Michael Richard Cummins**, Superior Court of Stanislaus County

**Judge Robert H. Gallivan**, Superior Court of Orange County

**Judge John E. Griffin, Jr.**, Superior Court of Stanislaus County

**Judge Franklin P. Jones**, Superior Court of Fresno County

**Judge Morris B. Jones**, Superior Court of Los Angeles County

**Judge Robert F. Moody**, Superior Court of Monterey County

**Judge William D. O'Malley**, Superior Court of Contra Costa County

**Judge William R. Patrick**, Superior Court of Butte County

**Judge John G. Schwartz**, Superior Court of San Mateo County

**Judge Susanne S. Shaw**, Superior Court of Orange County

**Judge D. Robert Shuman**, Superior Court of Sacramento County

# No Judge Is an Island

By  
James M. Mize

“I don’t have time for another committee—besides, what difference would it make anyway?”

These are fair considerations that should be addressed before anyone assumes the awesome responsibility of serving on a Judicial Council or California Judges Association (CJA) advisory committee or a Judicial Council task force. I believe there are two reasons that you should consider it seriously: (1) you will receive significant opportunities for personal professional growth, and (2) you will invigorate and strengthen the justice system.

No judge can survive as an island. While an island may have incredible natural resources and a highly skilled workforce, if it is not continually refreshed with new shipments from the outside world, its residents will perish. Likewise, a judge may have considerable intelligence, education, and training, but if he or she does not keep acquiring knowledge, believing him- or herself to be self-sufficient, at best the judge will continue the same performance regardless of how out of date the work has become.

Having drained the meaning out of that metaphor, I will now be more direct. Every judge understands the obligation to keep informed. Many do it by simply doing the research necessary whenever a new case is presented for decision. Many others also read the advance sheets and legal periodicals and/or attend classes sponsored by the California Judges Association or the Administrative Office of the Courts’ Education Division/Center for Judicial Education and Research (CJER). These are all necessary and appropriate, but they are not enough.

Judicial Council and CJA committees serve a function unmet by these efforts.

Your law school, judicial college, and New Judge Orientation told you what the law *was*. Your advance sheets and CJER/CJA classes keep you current on what the law *is*. Committee and/or task force service is unique because it helps you understand what the law *will be*. In fact, knowing where the law has been and where it is going is the finest way to truly understand where it is NOW, for the case you are hearing today.

But that is not all. How often do we grumble about how the public misunderstands the work we do, how valuable it is to them and to our country and yet how constrained we are by current laws and procedure and our Constitutions? Educating people is one way we can help them be more satisfied with our performance—but education is not the only way. A second option would be simply to attempt to improve the laws and procedures themselves.

To this end, perhaps the primary function of Judicial Council and CJA committees is the review of current and proposed laws and procedures in all substantive areas in order to ensure that they function well. To the extent we have laws, rules, and forms that are inconsistent and/or confusing, we lose the public’s trust and confidence in the judicial system, even if those laws were created by legislators and not by judges. To maintain that trust we must continually work to improve the tools of our everyday operations. Our Judicial Council and CJA substantive and procedural law committees are, in fact, the workshops where the best of us gather to make our good system even better.


Our Chief Justice, Ron George, has encouraged all established judges (newly sworn judges get a short reprieve on this

request) to join Judicial Council advisory committees and task forces as a service to themselves and to the legal community. His exhortations are not inconsequential. Either we continue to improve ourselves individually along with the system of which we are a part or we cannot complain when the public (through the Legislature or initiative) imposes upon us “corrections” that erode the foundations of a strong and impartial third branch.

Here are a few of the advisory committees or CJA committees open for your application: Access and Fairness, Appellate, Civil and Small Claims, Collaborative Justice Courts, Criminal Law, Family and Juvenile Law, and Probate and Mental Health.

There are task forces in diverse areas such as Probate Conservatorship, Science and the Law, Self-Represented Litigants, and Court Facilities.

For a complete list, go to the California Courts Web site at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov) and click on the Judicial Council link and then on the Advisory Committees link, or go to the California Judges Association’s password-protected Web site and click on the Committees link.

Membership applications to Judicial Council advisory committees are accepted each spring for submission by June 30. Applications for task force memberships and CJA committee memberships are accepted periodically throughout the year. 

*James M. Mize is assistant presiding judge of the Superior Court of Sacramento County, a past-president of the California Judges Association, and a former member of the Judicial Council.*



# Courts Seek Interpreters

...d the problem I was  
...at class to Roger, who  
...d from Claremont Men's  
...was known then. As I  
...him about my difficul-  
...d if I would be willing to  
...time with him so that he  
...e. Despite his demanding  
...work and law school, he  
...ecious time with his wife,  
...d his own young family to  
...s of tutorial sessions with  
...y evenings at his mother's  
...rby El Monte.  
...few weeks I had gained  
...dge I had been missing and  
...d tutoring any more, but  
...checked with me now and  
...e how I was doing. Roger  
...o graduate from UCLA Law  
...d become a Los Angeles  
...puty district attorney. I went  
...plete my chemistry course  
...y respectable B+ grade. Roger  
...retired after 35 years in the  
...orney's office.  
...my fourth person in an odd  
...he led me to my fifth. Hav-  
...ime because of my mediocre  
...ance in high school, I was de-  
...l to leap forward as quickly as  
... . However, there was a limit to  
...ber of units that ELAJC would  
...e to take at one time. In order  
...more units so I could gradu-  
...ree (instead of the usual four)  
...ers, I registered for classes under  
...nes: Manuel A. Ramirez and M.  
... Ramirez. When I petitioned for  
...tion, the administration was not  
...with my stratagem and referred  
... Bernard Butcher, Dean of Dis-  
...e. After scolding me severely for  
...cumvention of the rules, Dean  
...er rose up from his chair and  
...around the desk toward me. He  
...a huge man, and I thought for a  
...ent that he was so upset with me  
...ight do me bodily harm. Instead,  
...miled and gave me the warmest  
...ratulations I had ever received.  
...less to say, I was pleased—and  
...ved!  
...e then did something that set me  
...the path to my fifth inspirational



What if your life depended on understanding this image?

If you can't understand the image above, you're not alone. This can be someone trying to explain their case to a judge, but can't because they don't speak English. Regardless of language barriers, a qualified court interpreter helps courts provide equal access for all.

California courts are experiencing a shortage of qualified interpreters in many languages. This is an exciting opportunity to put your bilingual skills to good use in a rewarding career.

Learn more about how you or someone you know can become a court interpreter. Visit the California Courts Web Site at [www.courtinfo.ca.gov/interpreters](http://www.courtinfo.ca.gov/interpreters).



One Law. Many Languages.

California courts are committed to access and fairness for all.



The AOC is recruiting candidates in seven priority languages:

- Spanish
- Mandarin
- Cantonese
- Tagalog
- Korean
- Vietnamese
- Arabic

## Spread the Word!

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

# HELP DEFEND THE IMPARTIALITY OF THE COURTS



Preserving an independent and impartial justice system is not just a good idea—it's fundamental to our rights under the Constitution.

## *Join the dialogue!*

Speeches, reports, and other resources for the public can be found at

***[www.courtinfo.ca.gov/jc/sp/impartialcourts.htm](http://www.courtinfo.ca.gov/jc/sp/impartialcourts.htm)***

Tool kits and resources for judges and court staff (including complete materials from the 2006 Summit of Judicial Leaders) are available at

***<http://serranus.courtinfo.ca.gov/jj/toolkits/impartialcourts>***

***<http://serranus.courtinfo.ca.gov/programs/meetings/2006summit>***

## California Courts Review

Judicial Council of California  
Administrative Office of the Courts  
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