JUDICIAL COUNCIL OF CALIFORNIA

Volume 6, Issue 1
January 2004

The Capitol Connection

ADMINISTRATIVE OFFICE OF THE COURTS • OFFICE OF GOVERNMENTAL AFFAIRS

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GOVERNOR RELEASES BUDGET

On January 9, 2004, Governor Arnold Schwarzenegger presented a budget that proposes state spending in 2004-05 of $99 billion. The budget identifies funding of $2.9 billion for the Judicial Branch, including $373.8 million for the Judiciary; $3.9 million for the Commission on Judicial Performance; $2.2 billion for the trial courts; and $276 million for judges' retirement.

Faced with a projected $22 billion deficit and an ongoing, annual budget shortfall of $14 billion, the Governor's budget includes reductions for nearly all state agencies and departments. In addition to higher college and university tuition fees, loans, and one-time fund shifts, cuts include $2 billion from schools and community colleges, $1.3 billion from cities and counties, $2.7 billion from health and human services and $1 billion from transportation.

The 2004-05 budget year proposal includes unallocated reductions of $9.8 million to the budget of the Supreme Court, Courts of Appeal, and the Administrative Office of the Courts. Those amounts, unlike the past few years, are permanent reductions, as opposed to one-time.

The proposed unallocated reduction to the trial courts is $59 million, but the actual operating impact will be significantly greater. In addition to this permanent reduction to the base, the budget does not fund all of the courts' increased costs. Additional mandatory costs of approximately $100 million for such areas as retirement, security, salary and benefit increases, and county charges have not been funded. The courts will be required to absorb these costs in their existing budgets. Also, a reduction in the court security budget from last year has been annualized and now amounts to $22 million.

2004 JUDICIAL COUNCIL-SPONSORED LEGISLATION

At its December business meeting, the Judicial Council approved a package of legislative proposals designed to improve the administration of justice and increase access to the courts.

Among the council's proposals is a bill that would permit minors to be classified as both dependents and wards of the juvenile court. This would allow minors holding "dual status" to receive services as both a dependent and a ward at the same time. The proposal would also make for more efficient use of judicial resources since dependents of the juvenile court that subsequently come under the court's jurisdiction as delinquents do not need to re-establish their status as dependents when their status as wards terminates. The bill, AB 129, is authored by Assembly Member Rebecca Cohn (D-Saratoga).

The council is also seeking legislation that will clarify to whom a clerk must provide notice when a check for filing fees has been returned for non-payment. Currently, the clerk is directed to notify the party tendering the check. However, the party tendering the check may not be the party in the action.

The council also hopes to improve access to the courts through a proposal to give emancipated minors standing to

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SPONSORED LEGISLATION

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sue in small claims court. Currently, the Small Claims Act does not expressly provide that an emancipated minor may sue in small claims courts. The statutory change sought by the council will conform the Small Claims Act to the Family Code, which provides that an emancipated minor shall be considered an adult, including for the purpose of bringing suit or being sued in the minor's own name.

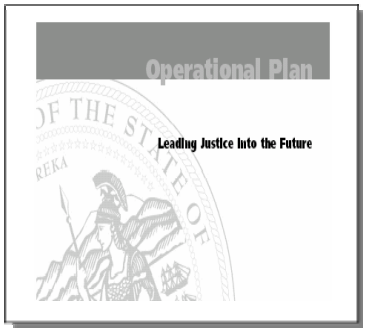
Other legislative proposals the council will be sponsoring this year include the clarification that appellate proceedings under the Lanterman-Petris-Short Act are exempt from filing fees, amending the Code of Civil Procedure to resolve confusion that can occur when the deadline for service of law and motion papers falls on a weekend or holiday, and a measure to allow retired subordinate judicial officers sitting on assignment to receive compensation analogous to that of a retired judge sitting on assignment.

NEW PLAN FOR THE FUTURE

The Judicial Council on December 5 adopted a new operational plan that sets forth short-term and long-term objectives for ensuring equal access to justice for all Californians. The plan, *Leading Justice Into the Future: An Operational Plan for California's Judicial Branch,* will direct and inform the work of the Judicial Council and its advisory committees, the California courts, and the Administrative Office of the Courts over the next three years.

Creating the Plan

The planning process, guided by the council's Executive and Planning Committee over a period of 11 months, was shaped by the dueling realities of increasing needs and decreasing resources—realities that call for highly focused judicial branch priorities. Likewise, throughout the planning process, participants were aware that challenging times underscore the need to affirm the judicial branch as an independent, co-equal branch of government.



Judge Jack Komar, Presiding Judge of the Superior Court of Santa Clara County and member of the council's Executive and Planning Committee, indicated in a recent *Court News* interview that the branch "needs to establish a higher level of operational and administrative credibility so that the other branches of government will recognize it as a co-equal branch." He also noted that "in order to acquire this level of independence, the branch as a whole needs to take a serious look at the way it does business."

In addition to council members, presiding judges and court executive officers, advisory committee members, representatives of the bar and Legislature, and AOC directors and managers also took part in the planning process. In addition to a careful consideration of their input, the council paid particular attention to an analysis of local trends and priorities as reported in the 58 individual trial court operational plans.

These efforts culminated on July 17-18 at the council's annual planning meeting. The meeting—moderated by William C. Vickrey, Administrative Director of the Courts; Justice Richard D. Huffman, Chair of the Executive and Planning Committee; and Clark Kelso, Professor at McGeorge School of Law—featured facilitated panel discussions, plenary sessions, as well as breakout workshops aimed at helping the council reach consensus on branch priorities and objectives—and the means for achieving them.

Next Steps

The new operational plan features 14 high-priority objectives linked to the six goals of the council's overall strategic plan. It also includes 52 specific "desired outcomes" to be achieved by June 2006.

Copies of the plan were forwarded to presiding judges and executive officers of the superior courts, presiding appellate court justices and court administrators, advisory committee members, and AOC directors, managers, and supervisors. In a memo accompanying the plan, Mr. Vickrey reiterated that the plan will undergo regular assessment to ensure that it remains appropriate to changing times and he welcomed continued stakeholder input in this process. He also encouraged the court community to use the branch operational plan as a guidebook and resource for their individual planning efforts.

UPDATE:
PROPOSITION 215

Since its enactment by the voters in 1996, the state criminal justice system has struggled to implement Proposition 215, the Compassionate Use Act. Conflict with federal law, varying practices among law enforcement jurisdictions, and uncertainty about the scope of the measure are among the issues that have arisen in its six year existence. The following article, excerpted from the January 2004 issue of California Lawyer, *provides an update.*

By Alice Mead

Proposition 215

Enacted by 56 percent of the electorate in November 1996, Proposition 215, or the Compassionate Use Act (Cal. Health & Safety Code § 11362.5), stands in stark contrast to the narrow constraints of federal law. Prop. 215 authorizes a seriously ill patient or the patient's primary caregiver to cultivate and possess cannabis for medical purposes as long as he or she has a physician's oral or written approval or recommendation. A recent California attorney general opinion states that the term marijuana in the initiative includes concentrated cannabis or hashish. (Cal. Op. Atty. Gen. No. 03-411 (Oct. 21, 2003).)

Prop. 215 abrogates California's own criminal laws prohibiting cultivation and possession of cannabis. Although the state is free to abolish its own laws without running afoul of the supremacy clause, patients, primary caregivers, cannabis dispensaries, and even physicians who act in accordance with Prop. 215's text and purpose may be at risk of federal prosecution or other sanctions.

Chinks in the Federal Fortress

In 1998 the government filed a number of federal civil actions against cannabis dispensaries in Northern California. It contended that the dispensaries were conducted in violation of federal law, which prohibits selling, manufacturing, or distributing cannabis. The federal district court agreed and refused to modify its injunction to allow distributing cannabis to patients showing medical necessity-that is, those who tried standard medications without success and for whom medicinal cannabis was the only treatment alleviating their symptoms. (United States v. Cannibis Cultivators Club, 5 F. Supp. 2d 1086 (N.D. Cal 1998).) The U.S. Court of Appeals for the Ninth Circuit reversed, however, ruling that there could be a medical-necessity defense to an action under the act. (United States v. Oakland Cannabis Buyers' Cooperative, 190 F.3d 1109 (9th Cir. 1999).)

The U.S. Supreme Court, however, subsequently determined that there is no medical-necessity exception to the CSA's statutory prohibitions against manufacturing and distributing cannabis. (United States v. Oakland Cannabis Buyers' Coop. (OCBC), 532 U.S. 483 (2001).) The Court concluded that placement in Schedule I establishes that cannabis has no medical benefits and cannot be used outside the confines of a federally approved research project.

Cannabis and the Constitution

Since OCBC, a number of additional cases have reached the Ninth Circuit-and they all raise two primary constitutional issues. First, the proponents of medicinal cannabis contend that the federal government lacks power under the commerce clause to regulate wholly intrastate, noncommercial cultivation of medicinal cannabis. Interestingly, the FDCA regulates only misbranded or adulterated food and drugs that move in interstate commerce, whereas the CSA purports to regulate the use and distribution of controlled substances in both intrastate and interstate commerce. (Compare, 21 U.S.C. § 331(a)-(d) with 21 U.S.C. § 801.)

Such challenges have been difficult to mount in the past. However, recent U.S. Supreme Court decisions appear to have narrowed the commerce clause's reach. (United States v. Lopez, 514 U.S. 549 (1995); United States v. Morrison, 529 U.S. 598 (2000).) And the Ninth Circuit has recently followed the Court's lead in this area. (United States v. McCoy, 323 F.3d 1114 (9th Cir. 2003); But see, United States v. Adams, 343 F.3d 1024 (9th Cir. 2003).)

Second, the medicinal cannabis cases contend that individual patients have a fundamental right to rely on their physicians' recommendations to use medicinal cannabis when it is the only medicine demonstrated to alleviate their suffering. This is the medical-necessity argument raised to a constitutional level. Past cases have generally held there is no fundamental right to choose an unapproved medicine. (See, Carnohan v. United States, 616 F.2d 1120 (9th Cir. 1980) (per curiam).) However, patients who cultivate their own medicinal cannabis or obtain it from intrastate sources avowedly beyond the jurisdiction of the Food and Drug Administration may be able to distinguish their situations from those in prior holdings.

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In addition, the fundamental-rights argument may have been bolstered by a recent U.S. Supreme Court decision that may portend a broadening of the doctrine. In Lawrence v. Texas (123 S. Ct. 2472 (2003)), the Court found a Texas statute criminalizing sexual relations between people of the same gender to be an unconstitutional restriction on liberty under the due process clause of the Fourteenth Amendment.

How Strong Is the Initiative?

Soon after Prop. 215 was enacted, many commentators, as well as state and local law enforcement personnel, concluded that the initiative provided only an affirmative defense that the patient-defendant would have to raise at trial. Accordingly, in many counties, patients who clearly possessed physicians' recommendations were arrested and forced to stand trial; they argued that they were entitled to complete immunity from arrest and prosecution.

That uncertainty was finally resolved in People v. Mower (28 Cal. 4th 457 (2002)), in which the California Supreme Court ruled that the status of a patient or primary caregiver may be raised either as a basis for moving to set aside an indictment or information before trial, or as an affirmative defense at trial. The court further ruled that although the patient-defendant has the burden of proof regarding status, he or she need only raise a reasonable doubt as to guilt rather than prove status by a preponderance of the evidence.

Who Qualifies?

Prop. 215 specifies a number of serious diseases and conditions that are presumed to constitute "serious illness" for which treatment with medicinal cannabis is appropriate: cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, and migraine. However, the law is not limited to these conditions. It also applies to "any other illness for which marijuana provides relief" as long as a physician has determined that the person's health would benefit from such a therapeutic option. The act therefore has a broad scope, enabling patients with a variety of conditions to qualify for its protections.

Where Do They Get the Stuff?

Unfortunately, many patients are too ill to cultivate their own cannabis. Furthermore, a patient's primary caregiver, defined as the individual designated by a patient "who has consistently assumed responsibility for the housing, health, or safety of that person," may not be skilled enough or have the space to manage a successful garden. However, Prop. 215 did not establish any other distribution mechanism, potentially forcing patients to obtain their medicine illegally.

Recognizing this need, even before Prop. 215 was passed, a number of dispensaries, then called "cannabis clubs," opened their doors. In some cases, the operators of the clubs were designated by hundreds of patients as the patients' primary caregivers. However, a California court determined that an operator did not meet the statutory criteria and therefore was not covered by the act. (Lungren v. Peron, 59 Cal. App. 4th 1383 (1997) and People v. Galambos, 104 Cal. App. 4th 1147 (2002).) Many cannabis dispensaries may now be operating in violation of both state and federal law.

Clarification, Not Modification

After Prop. 215 was passed, it became increasingly apparent that interpretations and applications of it were not fulfilling the initiative's purpose-and in some ways were undermining it. In 1999 state Attorney General Bill Lockyer convened a medical marijuana task force to draft guidelines to attempt to address these problems. The effort resulted in a bill, finally signed into law in October 2003 (S.B. 420 adds Article 2.5, commencing with § 11362.7, to the Cal. Health & Safety Code.)

Under California law, an initiative cannot be amended by statute, unless its language permits (Cal. Const., Art. II, Sec. 10(c)), and Prop. 215 does not allow for such amendment. So S.B. 420 was intended not to amend but to clarify the scope of the initiative: to identify qualified patients and their designated primary caregivers, to avoid unnecessary arrest and prosecution of these individuals, and to "provide needed guidance" to law enforcement officers.

To those ends, the new law requires the California Department of Health Services to establish a fee-based, voluntary identification-card system. A mandatory ID-card system would have constituted an invalid amendment to Prop. 215. (Office of the Legislative Counsel of California, "Medical Marijuana: Identification Program (S.B. 420)," #16771 (Aug. 20, 2003).)

S.B. 420 sets forth a transparent process by which qualified patients and their primary caregivers may obtain ID cards. It defines serious medical condition as one that "substantially limits the ability of the person to conduct one or more major life activities as defined in the Americans With Disabilities Act" or that "may cause serious harm to the patient's

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safety or physical or mental health." (Cal. Health & Safety Code § 11362.7(h)(12).) It also clarifies that a copy of the patient's medical records shall constitute the requisite documentation to substantiate a physician's diagnosis of a serious medical condition and that the use of medicinal cannabis is "appropriate." (Cal. Health & Safety Code § 11362.7(i).) The law also attempts to address, in a limited way, the "supply problem," by recognizing the existence and legitimacy of collective or cooperative medicinal cannabis cultivation projects, although they are not specifically defined. (Cal. Health & Safety Code § 11362.775.) It also facilitates cultivation by primary caregivers. Finally, by setting a specific amount of dried herb (eight ounces) and numbers of plants (six mature or twelve immature) allowable, the law attempts to protect patients against improper arrest and prosecution. (Cal. Health & Safety Code § 11362.77.)

What's Up with the Doctors?

A patient can claim Prop. 215's protection only if a physician has approved or recommended use of medicinal cannabis. Recognizing this importance in the statutory scheme, the electorate sought to encourage physicians' involvement by affording them explicit protection: "Notwithstanding any other provision of law, no physician in this state shall be punished, or denied any right or privilege, for having recommended marijuana to a patient for medical purposes." (Cal. Health & Safety Code § 11362.5(c).)

But even this forceful language has not been sufficient to attract significant numbers of physicians. Many of them do not like the idea of "smoking a medicine" and are further discomforted by the unstandardized nature of crude herbal cannabis products; some are not informed enough to discuss-much less recommend-medicinal cannabis; still others are fearful of being punished by the federal government.

Such fears, at least until very recently, have been well-founded. Immediately upon Prop. 215's passage, the federal government announced a policy under which physicians who recommended medicinal cannabis would be stripped of their licenses to prescribe all controlled substances-a death knell for most physicians' practices, barred from MediCal and Medicare, and potentially subject to criminal prosecution. The chill from that threat has hung heavy, deterring most physicians from even discussing the subject with their patients.

The First Amendment

In 1997, shortly after the "federal threat" had been broadcast across the country, a group of physicians and patients sought an injunction against the federal government, asserting that physicians had a First Amendment right to advise their patients concerning medicinal cannabis. The Court of Appeals for the Ninth Circuit agreed. (Conant v. Walters, 309 F.3d 629 (9th Cir. 2002).) The court stressed that the government cannot punish or even initiate an investigation against a physician solely for giving such an opinion unless it in good faith believes that it has substantial evidence that the physician acted unlawfully. The U.S. Supreme Court recently denied certiorari, rendering the Ninth Circuit's decision final. (2003 U.S. LEXIS 7446 (2003).)

However, physicians' freedom of speech is still not without boundaries. Conant emphasizes that those who step out of the role of medical adviser and act for the sole purpose of assisting a patient in obtaining cannabis could be guilty of aiding and abetting, or conspiring in, a violation of federal law.

(Ed. Note: On Dec. 16, 2003, a panel of the Ninth U.S. Circuit Court of Appeals ruled on the issue of whether the Commerce Clause of the Constitution permits the federal government to enforce the federal ban on marijuana, holding that the federal ban is probably unconstitutional as applied to individuals who obtain the drug without buying it, get it within their state's borders and use it for medical purposes on their doctors' advise and in compliance with state law.)

News From the AOC

In addition to *The Capitol Connection*, the Administrative Office of the Courts publishes several newsletters reporting on various aspects of court business. Visit these online on the California Courts Web site at www.courtinfo.ca.gov. To subscribe to these newsletters, contact pubinfo@jud.ca.gov.

CFCC Update: Reports on developments in juvenile and family law, including innovative programs, case law summaries from the AOC's Center for Families, Children and the Courts; grants and resources, and updates on legislation and rules and forms. Published three times a year. See www.courtinfo.ca.gov/programs/cfcc/resources/publications/newsletter.htm.

Court News: Award-winning bimonthly newsmagazine for court leaders reporting on developments in court administration statewide. Indexed from 2000 at www.courtinfo.ca.gov/courtnews.

WORKING GROUP LOOKS TO ENHANCE COLLECTIONS

Senator Martha Escuita D-Norwalk Authored Senate Bill 940

Judicial Council-sponsored legislation, Senate Bill 940 by Senator Martha Escutia, signed in September 2003, calls for the development of a comprehensive collections program for courts and counties. SB 940 establishes the framework to ensure that fees, fines, penalties and assessments ordered by the court are collected. Further, the bill recognizes that the prompt and effective enforcement of court orders is an important element of collections and helps ensure respect for court orders.

SB 940 charges the Judicial Council with establishing a collaborative court-county working group on collections to recommend to the council guidelines for a comprehensive collections program. It also requires each superior court and county to develop a cooperative plan to implement these guidelines and report jointly and annually to the Judicial Council.

The working group includes eight members appointed by the California State Association of Counties, eight members appointed by the Judicial Council – two judges, four court executives and two employees of the Administrative Office of the Court (AOC). In his signing letter, former Governor Gray Davis encouraged the Judicial Council to expand the working group to include members from the Victim Compensation and Government Claims Board, Franchise Tax Board, California Department of Corrections and the California Youth Authority. The membership of the working group has been expanded to included representatives from those agencies. The working group is chaired by Sheila Gonzalez, Southern Regional Administrative Director of the AOC. The goal of this group is to develop recommendations for a collections program based on best practices and accountability that will enhance compliance with court orders and increase revenue to the state, the courts, the counties, the cities, and victims of crime.

The collaborative court-county working group held its first meeting on November 14, 2003, where subcommittees were established to address eight major issues: court-county collaborative plans, training and education, guidelines and standards, operations, legislation, reporting, statewide request for proposals, and a standard fee schedule. More than one hundred people have volunteered to work on these subcommittees, holding weekly teleconference meetings to develop recommendations for the next meeting of the working group on March 4, 2004. An interim report will be submitted following that meeting to the Judicial Council with initial proposals and recommendations.

MEETING EXPLORES BRANCH FUNDING

More than 100 leaders from the judiciary and the bar came together on December 16 to discuss a pressing issue for both groups: how to ensure a stable and adequate budget for the California court system. The meeting may not have produced a magic formula, but it did provide an important step toward the goal of providing for sufficient funding for the judicial branch.

Chief Justice Ronald M. George convened the meeting—Securing Stable Funding for Justice—to highlight the volatility of current budget mechanisms, provide background on the policy goals of state trial court funding, and discuss potential options for providing more financial stability to the courts. "The need to find solutions that will keep our courts accessible to all who need their services has never been greater," said Chief Justice George in his opening remarks to participants at the meeting.

An additional goal of the meeting was to help define the agenda and objectives for the Commission to Secure Stable Funding for Justice, which the Chief Justice is expected to appoint early this year. Over the long term, the commission will consider and make recommendations about budget process changes. These changes may include a broad range of options, such as potential funding sources for the courts, the implementation of workload-based funding formulas, and changes in the way the judicial branch budget is submitted to and reviewed by the other two branches of government.

RIPPED FROM THE HEADLINES

"Ripped From the Headlines" highlights news stories of interest including headlines and lead paragraphs, without editorial comment from The Capitol Connection.

"Initiative Would Shake Up State Budget Process" *North County Times* (December 13, 2003)
California voters in March will decide an initiative that would shift a huge amount of political power from the minority Republicans in Sacramento to the majority Democrats.

The initiative on the March 2 primary ballot would lower the threshold to pass state budgets and take measures from the current 66.6 percent (two-thirds) to 55 percent.

Because Democrats are dominant in both houses and control more than 55 percent of the 120 seats, the majority party could, on its own, adopt spending plans and tax measures. Democrats no longer would need support from Republicans — unless, of course, the GOP were to capture many more seats.

"Governor's Actions Worrisome To GOP" *San Jose Mercury News* (December 17, 2003)
When Republican Arnold Schwarzenegger swept into office two months ago, his fellow party members celebrated that the new governor was one of their own.

Republicans figured the former action star would help resurrect their struggling party, which in 2002 lost all statewide constitutional offices and remained a decided minority in the Democratic-controlled Legislature. Democrats, by contrast, were unsettled by Schwarzenegger's victory, and wondered what his policy agenda would look like.

Now the tables have turned. In a sudden reversal, Schwarzenegger last week abandoned his tough GOP-backed stance for a firm cap on spending and cut a compromise pushed by Democrats for a softer spending limit, with a much smaller reserve. As a result of this bargain, which includes a $15 billion bond to refinance state debt, some GOP lawmakers and advisers are now questioning the governor's credentials as a fiscal conservative.

Republican lawmakers, many of whom have never served under a GOP governor, are learning a harsh political reality: Sometimes the goals of the governor and the party clash. While political parties aim to elect more lawmakers, the goal of governors is to advance their policy agenda, even if that means cooperating with the opposition to build a legacy.

"Stalled Revenue Drive Shows Some Get-Up-And-Go" *San Diego Union Tribune* (December 20, 2003)
City and county officials are mobilizing to re-ignite a long-stalled initiative, confident that the Legislature's reluctance to quickly replace reduced car tax revenues will convince voters that local services must be constitutionally protected from future state money grabs.

Gov. Arnold Schwarzenegger, whose recall campaign included references to giving voters the chance to override unpopular legislative decisions, also energized local officials Thursday when he said they shouldn't have to beg for money. He left open the possibility of endorsing the initiative.

There is no organized opposition this early, but cities and counties hope the California Teachers Association stays on the sidelines. The union may see the initiative as a threat to school funding because it would put some revenue off-limits. State employee unions also loom as a potential foe.

"New Chiefs May Mend Fences In Assembly" *Sacramento Bee* (December 30, 2003)
Their meeting lasted less than a half-hour and no new ground was broken, but when Assemblymen Fabian Nunez and Kevin McCarthy got together in the Capitol on Monday it was the beginning of the changing of the guard.

Speaker-elect Nunez is an unabashed liberal and former union official from Los Angeles. New Republican leader McCarthy, a Bakersfield businessman, is a former aide to Rep. Bill Thomas, one of the most conservative members of Congress.

Their ideological differences mirror the polarization in the Assembly in recent years. But during a post-meeting news conference, McCarthy and Nunez emphasized their friendship.

Friendship has its limits – which is likely to be the case when it comes to decisions on how to address the state's budget crisis. Democrats favor tax increases; Republicans cuts in state services.

Before term limits were enacted a decade ago, it took years to climb the leadership ladder in the Legislature. But after one year, Nunez and McCarthy are poised to become the leaders of the Assembly.

Most political experts cite such inexperience as one of the principal shortcomings of the modern Legislature. But McCarthy said there are a couple of advantages.

"We don't have the history of the past from (bitter) budgets," McCarthy said, referring to the annual battles. And because they have used up only a year of their six-year limit in the Assembly, the two men could conceivably serve in their leadership positions for five years. Recent leaders were limited to much shorter terms.

"Law Spurred Flood of Sex Abuse Suits" *Los Angeles Times* (January 1, 2004)
California's yearlong experiment designed to provide justice

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RIPPED FROM THE HEADLINES

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to victims of childhood sexual abuse drew to a close Wednesday, with hundreds of lawsuits having been filed against churches, charities and youth organizations across the state.

As many as 800 claims — filed over the last year by adults who said they had been molested decades ago as children — name Roman Catholic dioceses in California as defendants.

Tod Tamberg, spokesman for the Los Angeles Archdiocese, said that, although many of the claims are true, most allegations are so old that proving or disproving them is difficult.

The civil cases took on more public significance this summer after the U.S. Supreme Court overturned a California law that had permitted the retroactive criminal prosecution of decades-old child molestation cases.

"Governor's Vow: 'The State of Our State Will Soon Be Strong'" *Los Angeles Times* (January 7, 2004)
Gov. Arnold Schwarzenegger laid out a grand and personal vision for California in his first State of the State speech Tuesday, arguing that his natural optimism, celebrity salesmanship and sweeping reform proposals would fix the financial crisis and "help Californians do great things."

In the most explicit statement of his intentions in his new job, Schwarzenegger said his administration would offer a blend of bipartisan legislation, populist ballot measures and personal style — all in the service of improving California's economy.

Schwarzenegger called for spending cuts, changes in education regulations, a cap on university fee increases, reform of state purchasing, consolidation of duplicative government departments and commissions, renegotiation of state energy contracts and a solution to the state's unemployment insurance woes.

He said that he was steadfast in his opposition to taxes and that spending cuts were the key to fixing the state's budget crisis.

In the official Democratic response, state Senate President Pro Tem John Burton of San Francisco specifically advocated a tax increase on the wealthiest Californians in order to prevent cuts to social programs.

"Governor Readies Push To Garner Bond Support" *San Francisco Chronicle* (January 8, 2004)
With early polls showing Gov. Arnold Schwarzenegger's $15 billion bond losing, the administration is readying an aggressive campaign to ensure voter support in March for the centerpiece of the governor's fiscal plan. Part of the strategy will include telling voters that if the bond measure is defeated, higher taxes or severe cuts are the only alternative.

"L.A.'s Nuñez Is Formally Chosen Assembly Speaker" *Los Angeles Times* (January 9, 2004)
With a resounding "aye," the California Assembly on Thursday formally elected Fabian Nuñez, a 37-year-old freshman Democrat from Los Angeles, as its next leader. Nuñez will be sworn in and take charge of the 80-member body Feb. 9.

He is the fourth consecutive lawmaker from Los Angeles to lead the Assembly, a job that entails close negotiations with the governor and other legislative leaders to craft the state's financial and legal policy. As speaker, Nuñez also will assign fellow lawmakers to head committees and raise money to help them win elections.

Democrats, who dominate the Assembly and therefore have the prerogative to choose the speaker, say they are not unhappy with current Speaker Herb Wesson, though some have criticized him as being too indulgent to bring order to the often raucous house. His term in the Assembly does not expire until December. But Democratic lawmakers say they want a new leader, rather than a lame duck, to deal with the 2-month-old administration of Republican Gov. Arnold Schwarzenegger and plot Democratic victories in the March primaries.

Democrats praised Nuñez as a passionate, patient and hard-working man dedicated to bringing Californians good jobs, health care, safe neighborhoods and affordable college educations.

Some Republicans point out that he comes from a combative union background, and say they fear he will be more aggressive and overtly political than Wesson.

"Budget Prompts Sense Of Déjà Vu" *Sacramento Bee* (January 11, 2004)
Carried into office by voter disgust with fiscal flim-flam, Gov. Arnold Schwarzenegger vowed to look the state's budget deficit squarely in the eye and take the steps needed to tame it within his first 100 days.

He offered a budget proposal Friday that he said delivered on that promise.

Some agree that it is a refreshingly honest document. The $99 billion proposal for the 2004-05 fiscal year includes a raft of real cuts, evidenced by the howls of indignation from groups who would feel the effects.

The budget relies on steps already called into question by court decisions.

It also counts on public employee unions agreeing to certain changes, such as a bigger worker contribution to pensions. And it banks on economic assumptions that some see as rosy.

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RIPPED FROM THE HEADLINES

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"Curbs Sought In Program That Has Given Small Counties Big Bucks In High-Profile Murder Trials" *Sacramento Bee* (January 12, 2004)
By 2005, the state will have spent almost $100 million from a fund giving prosecutors from smaller and medium-size counties virtually unlimited resources to put away some of the state's most infamous serial killers and murderers.

With the state's financial crunch, lawmakers are taking a tougher look at the rarely scrutinized program.

The program was established in 1961 and grew rapidly in the '90s, when lawmakers began carving out pieces of the budget to pay for certain murder cases, maneuvering around cost-control rules.

"There are too many questions with the way the existing system works," said Assembly Appropriations Committee Chairman Darryl Steinberg. The Sacramento Democrat stopped an effort last year to subsidize the Scott Peterson case and has called for a review of the program.

"Budget Applause Unlikely Anytime Soon" *Contra Costa Times* (January 13, 2004)
If Gov. Arnold Schwarzenegger wants "action, action, action," he might have to wait.

The Republican actor, who has dazzled the state Capitol with his mix of charisma, optimism and good humor, must now shepherd his budget proposal through a reluctant Democratic-controlled Legislature.

"There's a long ways to go between now and the time the budget gets done," said Assemblyman Dave Cox, R-Sacramento, the former GOP leader of the lower house. "Every dollar of a budget has a constituent, and there will be those (legislative) members who will try to rile the waters."

"Budgets are a starting point," Senate President Pro Tem John Burton said. "(The governor says) this is what I think, and now we'll tell the governor what we think."

First, however, legislators want to know the fate of the March 2 vote on a $15 billion bond measure and whether the governor's rosy revenue forecast will still be merited after the state tallies April tax receipts.

"High Court Allows Pursuit of 1994 Northridge Earthquake Claims" *The Daily Journal* (January 13, 2004)
The Supreme Court on Monday let stand a federal appeals court decision that allows thousands of Southern California homeowners to pursue insurance claims stemming from the 1994 Northridge Earthquake that had been barred by the statute of limitations.

Without comment, the justices denied review of a decision by the 9th U.S. Circuit Court of Appeals that California Code of Civil Procedure Section 340.9, which allows claims after the normal one-year deadline, does not violate the Contract Clause of either the state or U.S. constitutions.

"Analyst Says Budget Plan Doesn't Go Far Enough" *Los Angeles Times* (January 14, 2004)
Gov. Arnold Schwarzenegger's proposed $99-billion state budget is a solid first step toward a balanced fiscal plan but the state would still be $6 billion short by mid-2005, California's nonpartisan legislative analyst reported Tuesday.

Legislative Analyst Elizabeth G. Hill said the governor's spending plan would result in "real and lasting savings." But it also "would have far-reaching consequences for the scope of state services" without coming to terms with lawmakers' penchant for spending more than the state receives in revenue. She urged lawmakers to consider either raising taxes or removing tax exemptions to increase revenue.

In her report, Hill wrote that the negative impact a limited tax hike might have on the economy "should be weighed against the negative consequences of the alternatives, including deeper cuts in public spending in infrastructure, education and other areas, or more borrowing."

"Bill to Update State's Unfair Competition Law Fails" *The Daily Journal* (January 14, 2004)
Another attempt to reform the state's unfair competition laws failed Tuesday in the Legislature and a consumer group said millions of dollars supporting a reform initiative shows big corporations, not mom-and-pop businesses, are behind it.

AB102, by Assembly Member Robert Pacheco, was similar to an initiative being circulated for signature gathering to qualify for the November ballot. The bill would have required a plaintiff to have suffered a "distinct and palpable injury" before suing under Section 17200 of the Business and Professions Code. Currently, a plaintiff need not suffer any injury in order to sue under Section 17200.

Proponents said the bill would have helped prevent lawyers from abusing the law by filing multiple suits against small business owners and extorting thousands of dollars from them in settlements to avoid litigation.

Opponents, some of whom are consumer groups, complained the measure would have gutted the law and prevented them from using it to protect consumers who could be harmed by defective products.

Anticipating further defeats in the Legislature, reformers

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formed Californians Against Shakedown Lawsuits to ask voters to change the unfair competition laws.

Trial lawyers have responded by backing several proposed privacy initiatives that would expand the definition of unfair competition to include any act that violates the right to privacy. They would extend the statute of limitations for unfair competition laws to 10 years from four and include a disgorgement feature requiring those found violating the laws to surrender financial gains. (Click here for a complete set of news stories compiled by the Office of Governmental Affairs.)

L.A. SUPERIOR COURT HOSTS LEGISLATORS

Twelve members of the Los Angeles delegation to the California Legislature were the guests of the Los Angeles Superior Court at the court's annual legislative luncheon on January 9, 2003. Over 200 people attended the event at the Los Angeles County Music Center in downtown Los Angeles.

After welcoming remarks from Judge Mary Thornton House, Presiding Judge Robert Dukes spoke about the LA Superior Court being the "world's largest neighborhood court," with one out of every two of the county's over nine million residents coming into contact with the court each year.

Senator Martha M. Escutia (D-Whittier), well known to the judiciary as the former chair of the Assembly Judiciary Committee and the current chair of the Senate Judiciary Committee, addressed the group. Senator Escutia shared her personal experience as a former research attorney with the Los Angeles Superior Court, and she congratulated the court on its implementation of the "one day, one trial" jury reform rule, which she said is working well. The Senator discussed the ongoing fiscal crisis facing the judicial branch, and warned that she would not be supportive of any additional filing fee increases this year due to her concerns about the need to maintain access to the courts for all Californians. Senator Escutia also spoke about the importance of improving court facilities, and the need to educate the public as to why courthouses are a critical part of the infrastructure of the community.

Assembly Member Marco Firebaugh, Majority Floor Leader, also addressed the group. He spoke about the budget challenges facing the Legislature this year, which he described as "daunting." Firebaugh also mentioned that Assembly Member Fabian Nuñez, who is in his first term, was just elected as Speaker of the Assembly, and that another freshman, Assembly Member Kevin McCarthy had recently been elected Minority Leader. The assembly member was hopeful that bipartisanship would be enhanced with this change in leadership since both members could serve in a leadership capacity for up to five years, rather than the little over two year average tenure of Assembly speakers since 1995.

Representing the Administrative Office of the Courts were Bill Vickrey, Administrative Director of the Courts; Ron Overholt, Chief Deputy Administrative Director; Southern Regional Director Sheila Gonzalez; and Dan Pone, Senior Attorney, Office of Governmental Affairs. Judge Eric Taylor, current California Judges Association president and Judicial Council member, also attended and addressed the group.