



THE CAPITOL CONNECTION

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LEGISLATIVE CALENDAR

July 11
Last Day for Policy Committees to Meet

COUNCIL SPONSORS LEGISLATION TO IMPROVE COLLECTIONS

In an effort to ensure compliance with court orders, the Judicial Council is sponsoring legislation that would call for the development of comprehensive guidelines for the collection of unpaid fees, fines, forfeitures, penalties, and assessments. Senate Bill 940 by Sen. Martha Escutia (D-Whittier) underscores the importance of ensuring proper respect for the orders of the court, and builds public trust and confidence in our justice system.

The bill was motivated in part by a resolution adopted by the Conference of Chief Justices that declared the conference's support for changes to federal law that would allow the states to intercept federal tax re-

funds for the payment of willfully ignored court orders.

SB 940 would also require that each superior court and county develop a cooperative plan to implement the guidelines established by the council. In addition, the bill would allow the council to establish a program for the suspension of the professional licenses of those owing money to the court, and to establish an amnesty program under which interest and collections costs may be waived if the debt is paid within the amnesty period.

The bill would also provide for a working
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PROFILES: NEW POLICY COMMITTEE MEMBERS

As part of its constitutional responsibility for the administration of the California court system, the Judicial Council takes positions on pending legislation that affects the courts. This responsibility is delegated to the council's eight-member Policy Coordination and Liaison Committee (PCLC), which has been chaired since 1996 by Supreme Court Associate Justice Marvin Baxter. Staffed by the Office of Governmental Affairs, the PCLC represents the council in discussions with other branches of government and state agencies, and makes recommendations on relevant issues and legislation. Four members joined the committee in recent months.

Justice Norman L. Epstein is the vice-chair of the PCLC. Currently sitting on the Second District Court of Appeal, Justice Epstein has worked with the Office of Governmental Affairs on Judicial Council-sponsored legislation for over 20 years, beginning with what is now the statewide economic litigation program for limited jurisdiction civil cases. He was appointed to the bench in 1975 and elevated to the Court of Appeal in 1990 by Gov. George Deukmejian.

Justice Epstein has also chaired the Los Angeles County Bar special committee on discovery, which played a significant role in the enactment of the Civil Discovery Law of 1986. A substantial part of the work of Judicial Council advisory committees on which he was a member or chairperson (notably Civil and Small Claims and Criminal Law) dealt with legislation. Other legislative experience includes Justice Epstein's work as vice chancellor and general counsel of the California State University system.

Judge Heather D. Morse has served Santa Cruz County Superior Court since 1989. She was appointed by Gov. Deukmejian and is currently the presiding judge of Santa Cruz County Superior Court. Morse served for almost ten years on the Presiding Judge Education Committee for the California Center for Judicial Education and Research (CJER), including teaching, planning, and chairing the committee as it accomplished the first educational curriculum plan for

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COUNCIL'S POLICY COMMITTEE MEMBER PROFILES

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entry, medium and experienced level presiding judges. Judge Morse also served on the CJER Governing Committee from 1998-2000.

Judge Morse expresses deep appreciation for the opportunity to serve on the PCLC. "It is such a pleasure and an exhilarating experience to work with the outstanding staff of the Office of Governmental Affairs and the members of the Policy Committee at the direction of Justice Marvin Baxter," she says, "Each of the committee members brings an exceptional understanding and perspective to the analysis of policy issues that will impact California courts for years to come."

Judge Gregory C. O'Brien Jr. was appointed to the Citrus Municipal Court in 1985 and elevated to the Los Angeles Superior Court in 1987 by Gov. Deukmejian. He has served as presiding judge of the Municipal Court and as a supervising judge in the Pomona District of the Superior Court. A member of the California Judges Association (CJA) for the past 17 years, he has edited the association's *California Courts Commentary* for four years. Judge O'Brien has also served as judicial editor of *Gavel to Gavel*, the monthly newsletter of the Superior Court of Los Angeles County. He is active in other professional and community organizations.

Now serving as president of CJA, Judge O'Brien points to the timeliness of his service with the PCLC. "Because of CJA's involvement with legislation, there is no better committee for the CJA president to serve on than the PCLC. It gives the president the opportunity to speak regularly to Office of Governmental Affairs Director Ray LeBov and Justice Baxter, and

to coordinate positions on numerous bills," he says. Speaking on the efficiency of the PCLC he says, "I particularly like the fact that the committee is able to meet by phone. Because of thorough staff preparation, the committee is able to accomplish a great deal in the short space of one hour meetings."

Judge Barbara A. Zúñiga was appointed to the bench in 1985 by Gov. Deukmejian. She is currently the secretary-treasurer of the California Judges Association Executive Board of Directors, and a teacher for CJER. She has served on the board of governors of California Women Lawyers and has also been nominated for district president of the National Association of Women Judges.

Judge Zúñiga welcomes the chance to provide input on issues that affect the court system. "When I was president of the National Association of Women Judges, upon occasion I was asked to comment on behalf of the organization on legislation pending in Congress. The role was reactionary. It is very exciting and rewarding to be involved in a process, with guidance provided by the Judicial Council's Office of Governmental Affairs, where one has the opportunity to analyze and meaningfully comment on legislation that directly impacts the California courts," she says.

Justice Baxter and the other committee members (including Fresno County Superior Court Judge Brad Hill, Orange County Superior Court Executive Officer Alan Slater, and San Diego attorney Thomas Warwick) have been profiled in previous editions of the Capitol Connection.

COLLECTIONS

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group of both court and county representatives. The working group would be charged with examining current methods of collection and making recommendations to the council regarding these methods.

The Ventura County Superior Court has a particularly effective collection program that relies on an in-house collections unit, the Franchise Tax Board's Court-Ordered Debt Collection Program, and an outside collection agency.

Last year, Ventura referred 44,000 cases, mostly misdemeanors or infractions, to its collections program, representing over \$28 million in fines, fees, and other assess-

ments. The amount actually collected as a result of these referrals was \$19 million, or 67 percent.

Not all courts and counties have developed a program as effective as Ventura's. SB 940 would help other courts design and implement, or improve, their own collection program.

SB 940 will next be heard in the Assembly Appropriations Committee. If passed by the Assembly, it must return to the Senate for a vote on the amendments made in the Assembly.

LEGISLATIVE REVIEW

Recent weeks have seen much activity in the Legislature as both houses had until June 6 to pass their own bills. The Assembly was especially busy, with several sessions going late into the night so that lawmakers could meet the deadline. Here is an update on selected court-related bills.

COURT ADMINISTRATION

AB 782 (Kehoe), as introduced. Trial court employees: employment relations

Grants to the Public Employment Relations Board authority to process claims involving violations of statutes or rules relating to employment relations between trial courts and recognized employee organizations.

Status: Senate Judiciary Committee

JC Position: Oppose unless amended

AB 1641 (Keene), as amended June 19, 2003. Emergency Powers

Gives the Chief Justice additional flexibility to take necessary actions in a state of judicial emergency.

Status: Assembly Judiciary Committee

JC Position: Sponsor

SB 328 (Senate Judiciary Committee), as amended June 4, 2003, Trial Court Facilities Act: Clean Up

Makes technical changes and corrections to the Trial Court Facilities Act. Repeals an obsolete provision related to Fresno County employee classifications.

Status: Assembly Appropriations Committee

JC Position: Co-Sponsor

SB 818 (Escutia), as amended June 17, 2003. Trial Court Interpreter Employment and Labor Relations Act: Clean Up

Revises a number of the implementation dates set forth in that act. Extends the ending date of the regional transition period for the program from January 1, 2005, to July 1, 2005. Makes other revisions to the act, including technical nonsubstantive changes.

Status: Senate Floor (Concurrence in Assembly amendments)

JC Position: Co-Sponsor

SB 940 (Escutia), as amended June 16, 2003, Enhanced Collection of Court-Ordered Penalties

Requires the Judicial Council to adopt guidelines for a comprehensive collection program, establish a collaborative court-county working group on collections, and report on the effectiveness of collection programs. Authorizes the Ju-

dicial Council to establish a program providing for the suspension and non-renewal of business and professional licenses and an amnesty program involving the collection of outstanding fees, fines, penalties, and assessments.

Status: Assembly Appropriations Committee

CIVIL

AB 95 (Corbett), as amended May 12, 2003. Unfair competition law: private actions

Includes new notice provisions to inform defendants of their rights in UCL actions, and clarifies joinder provisions. Provides that this bill becomes operative only if SB 122 is enacted, and provides that the provisions of the bill are not severable.

Status: Senate Judiciary Committee

AB 1712 (Assembly Judiciary Committee), as amended June 23, 2003. Civil omnibus

Conforms various statutory provisions of law to the abolition of municipal courts and their unification within the superior courts. Makes other technical and clarifying changes with respect to judicial arbitration proceedings, guardians ad litem, jury lists, service of process, small claims court, and witness fees.

Status: Senate Appropriations Committee

JC Position: Sponsor

SB 122 (Escutia), as amended May 15, 2003. Unfair competition law : private enforcement actions

Requires the court to review the attorney's fees to be paid in a settlement or other pre-trial disposition of any private action brought in the public interest to enforce the UCL. Provides that disgorgement is an available remedy in private UCL actions, and clarifies that defendants cannot be joined in a UCL action just because they are engaged in the same or similar businesses and are alleged to have violated the same or similar laws.

Status: Assembly Judiciary Committee

CRIMINAL LAW

AB 155 (Kehoe), as amended March 5, 2003. Criminal procedure: good cause continuance.

Provides that good cause for a continuance in a homicide or forcible sex crime case may include the temporary unavailability of requested forensic DNA analysis results and reports, when the DNA evidence at issue is pending analysis at a laboratory at the time a motion for continuance is made.

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LEGISLATIVE REVIEW

(Continued from page 3)

Status: Failed passage

JC Position: Neutral

AB 1273 (Nakanishi), as amended May 1, 2002. Continuances

States that provisions specifying the procedures to continue a hearing in a criminal proceeding are directory only and do not mandate dismissal of an action. Also provides that a court or magistrate shall not dismiss a case if a party fails to comply with these procedures.

Status: Assembly Public Safety Committee

JC Position: Neutral

AB 1306 (Leno), as introduced. Proposition 36: transfer of jurisdiction

Provides that if a person is sentenced pursuant to the Substance Abuse and Crime Prevention Act (Proposition 36), probation and jurisdiction shall be transferred to the defendant's county of permanent residence at the discretion of the sentencing judge.

Status: Senate Appropriations Committee

JC Position: Sponsor

AB 1653 (Mullin), as introduced. Appeals: attorneys: contempt

Allows an attorney for a party to a criminal proceeding to appeal a sanction order or finding of contempt against him or her to the court authorized to hear an appeal of the judgment in the main action. In the alternative, allows the party to a criminal action to include a challenge to the sanction order or finding of contempt in its appeal after entry of final judgment in the main action. Requires the court to stay the execution of the order or imposition of punishment pending appeal, unless it finds on the record that a stay would frustrate the interests of justice.

Status: Senate Public Safety Committee

JC Position: Oppose

SB 3 (Burton), as amended January 9, 2003. Death penalty: mental retardation

In response to the U.S. Supreme Court's decision banning execution of a mentally retarded defendant (*Atkins v. Virginia*, 536 U.S. 304), establishes a process requiring a court to order a trial, prior to the adjudication of guilt, to determine whether a defendant is mentally retarded. Places the burden on the prosecution to prove beyond a reasonable doubt that the defendant is not mentally retarded.

Status: Senate Floor

SB 877 (Hollingsworth), as amended April 23, 2003.

Criminal procedure: discovery

Provides that in cases in which the court orders the prosecution to provide copies of child pornography evidence to the defense, the court may issue any order it deems appropriate to limit the defense to using that evidence in ways that are reasonably necessary to developing and defending the case. Requires the court to give great weight to protecting the identity and the rights of any victim featured in the evidence when drafting orders directing the defense's use of the evidence, while still taking into account the defendant's right to prepare for trial.

Status: Assembly Public Safety Committee

JC Position: Neutral

FAMILY LAW

AB 111 (Corbett), as amended May 5, 2003. Child custody: emotional abuse.

In child custody proceedings, requires the court to consider unjustifiable mental suffering inflicted upon a child when determining the best interest of the child. Also revises the definition of unjustifiable mental suffering in the child abuse statutes in the Penal Code.

Status: Senate Public Safety Committee

AB 1108 (Bermudez), as amended June 2, 2003. Child custody: drug testing

Authorizes the court in a child custody proceeding to order a parent to undergo testing for "the illegal use of controlled substances or alcohol" if the court has determined, by a preponderance of evidence, that there is "the illegal use of controlled substances or alcohol."

Status: Senate Judiciary Committee

SB 265 (Kuehl), as amended June 12, 2003. Child custody: domestic violence

Changes the operation of the rebuttable presumption against custody to a person who has perpetrated domestic violence.

Status: Assembly Judiciary Committee

SB 734 (Ortiz), as amended May 22, 2003. Child custody and visitation

Makes various changes related to supervised visitation. Among other things, sets out various factors that the court must consider before granting unsupervised visitation.

Status: Two Year Bill

JC Position: Oppose unless amended

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LEGISLATIVE REVIEW

(Continued from page 4)

JURIES

AB 1180 (Harman), as amended May 13, 2003. Sanctioning of jurors

Clarifies that when an individual is summoned but fails to appear for jury service, the court may, in lieu of using contempt procedures, impose reasonable monetary sanctions on the prospective juror following an order to show cause hearing.

Status: In Senate

JC Position: Sponsor

JUVENILE

SB 59 (Escutia), as amended June 11, 2003. Dependent children: appeals

Creates a writ process for juvenile dependency cases involving disputed placement orders that are made after parental rights have been terminated.

Status: Assembly Appropriations Committee

JC Position: No position

THE GUBERNATORIAL RECALL: IN THEIR OWN WORDS

The Capitol Connection has collected quotes from public figures as reported in various publications.

Governor Gray Davis:

"This recall from the beginning has been pushed by people who lost the last election. I won that election fair and square; most Californians believe in the fundamental fairness."

Orange County Register (June 12, 2003)

"They can take a shot. Then they'll get their ass kicked. Folks have been underestimating me for a long time....I've won five elections in this state. And I'm not going to lose this one."

San Jose Mercury News (June 13, 2003)

Representative Darrel Issa (R-Vista):

"In the months ahead, Gray Davis will talk endlessly of risk. We will speak of confidence. Gray Davis will sling mud. We will advance ideas. Gray Davis will promote fear. We will offer hope.

"If I'm not their choice, I don't need the job so badly that I can't step aside if, in fact, a process says there's a better candidate. I want the job, though. And I want the job very badly."

San Francisco Chronicle (June 22, 2003)

Senator Diane Feinstein (D-CA):

"I have no intention of running. I'm a U.S. Senator and I'm seriously involved in what I do.

"The recall is really there for gross moral turpitude, corruption or some extraneous terrible circumstance in which you

have to remove somebody from office."

Los Angeles Times (June 22, 2003)

State Treasurer Phil Angelides:

"[The recall] is an odious use of the political process" and "a concerted effort...to link the policy debates on the budget to the politics of the recall."

"I do not intend, nor will I consider running in, this recall election."

Los Angeles Times (June 18, 2003)

Attorney General Bill Lockyer:

"I sincerely hope that the recall does not qualify. However, if it does, I do not intend to submit my name as a candidate, and I will do all that I can to convince California voters that supporting the recall will cause irreparable harm to our state and democracy.

"Nothing could be more threatening to the value of our votes and the future of majority rule in California than the overthrow of elected government by a sliver of the electorate."

Los Angeles Times (June 18, 2003)

Referring to the statements made by some democrats to not enter the recall election: "We were all lost in this fog of analysis, a swirl of dozens of possible permutations of outcomes. A different question is, 'what's the right thing to do?' You quickly decide it's an abuse of process, and we shouldn't participate."

The Recorder (July 2, 2003)

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The Gubernatorial Recall

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Lt. Governor Cruz Bustamante:

"I will not participate in any way other than to urge voters to reject this expensive perversion of the recall process. I will not attempt to advance my career at the expense of the people I was elected to serve. I do not intend to put my name on that ballot."

Los Angeles Times (June 20, 2003)

"Gray Davis won the election...no hanging chads, no butterfly ballots, no question about the final result."

Sacramento Bee (June 23, 2003)

State Controller Steve Westly:

"[If the recall qualifies for the ballot], the first guy who [enters the race] is Cruz. I'm sorry. He's going. [After that], Atty. Gen. Bill Lockyer won't be able to stay out. [In the end], you end up with 10, if not 20 people on the ballot."

Sacramento Bee, California Insider (June 19, 2003)

Actor Arnold Schwarzenegger:

"I'd love to be governor of California. If the state needs me, and if there's no one I think is better, then I will run."

Esquire (June 2003)

Bill Simon, GOP gubernatorial nominee 2002:

"Davis and his thugs argue that this is an abuse of the recall process and will encourage people to abuse it in the future – this is vintage Davis. This is somebody who has disregarded the interests of our people his entire career. All he wants to talk about are the faults of the people making the accusations. Let the people decide....Let them decide with the benefit of the truth rather than being distracted by the lies he puts forth."

Oakland Tribune (June 20, 2003)

San Francisco Mayor Willie Brown:

On leading Democrats' intentions not to run if the recall qualifies for the ballot: "They all did it in a very 'Willyish' way – all very sincere and all leaving out just enough key words to give them wiggle room if it becomes clear that Gray is dead in the water."

San Francisco Chronicle (June 22, 2003)

Carroll Wills, spokeswoman for Taxpayers Against the Recall:

"The recall is not about California's future. It's about Darrel Issa's future and his desire to be governor of California. [Issa's involvement] has been not motivated by grass-roots

outrage but motivated by calculated ambitions. Look at the record of the people behind it – Issa is the engine driving the train."

Los Angeles Times (June 11, 2003)

Roger Salazar, Davis campaign consultant:

"I think California Democrats see the recall for what it really is – a coup attempt by right-wing Republicans – and they want nothing to do with it."

Los Angeles Times (June 20, 2003)

"If [Issa] thinks he can scam the public, he's in for a sober realization. You can't steal elections as easily as you steal cars."

San Jose Mercury News (June 26, 2003)

Dan Schnur, Republican strategist:

"Once the recall qualifies, it will be the closest thing to political anarchy you will ever see in this state or anywhere else. Because there are no precedents. There are no guidelines. And there are no rules of engagement. Every single candidate is going to be making this up as he goes along."

Sacramento Bee (June 22, 2003)

"Whichever party does a better job at disciplining itself will elect the next governor."

Boston Globe (June 26, 2003)

Representative Nancy Pelosi (D-San Francisco):

"California is known throughout the world for its wine, but this recall is nothing but sour grapes. We will not allow the whims of the right wing to overturn a legitimate election held just months ago."

San Francisco Chronicle (June 28, 2003)

Sherry Bebitch Jeffe, political analyst:

"Darrel Issa may very well be funding Arnold Schwarzenegger's gubernatorial campaign. If [Issa] thought that he was going to have a clear field, he was naïve."

North County Times (June 24, 2003)

Tyler Snortum-Phelps, Green Party gubernatorial candidate Peter Camejo spokesman:

"The concept of recalling Davis is a reasonable one, we feel. A recall is simply the will of the people. It's ridiculous to describe this as an unscrupulous coup."

Los Angeles Times (June 26, 2003)

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*.

"Third Time Could Be A Charm For Pot Bill" *Oakland Tribune* (June 06, 2003)

Senator John Vasconcellos is pushing a medical marijuana registration bill for the third time in four years, but there's no sign yet that Gov. Gray Davis will deviate from his past refusals to sign it into law.

The bill, SB 420, would create a statewide voluntary photo identification card program for medical marijuana patients and caregivers. The cards would exempt people from arrest for marijuana cultivation, possession, transportation or use, although people without cards could still claim protection under the state's medical marijuana law.

Such backers as the California Medical Association, drug policy reform groups and Attorney General Bill Lockyer said it would help law enforcement officers distinguish those who have a valid medical need for marijuana from those using it for recreation.

"Bill on Confidentiality Advances" *Daily Journal* (June 11, 2003)

AB 1101, by Assembly Member Darrell Steinberg, which would allow attorneys to disclose client confidences to prevent a criminal act that is likely to result in death or serious injury cleared a key Senate panel Tuesday.

If passed, the bill would bring California into line with every other state in the nation as well as with the American Bar Association's Model Rules of Professional Conduct.

"Weigh Question As Adopted By Answer" *Daily Journal* (June 12, 2003)

Figuring out legal mumbo-jumbo is hard enough if English is your native language. Imagine trying to decipher it if it's not, as are the immigrants who increasingly make up California's juror pools.

A Judicial Council panel is in the final stages of incorporating plain English into jury instructions after a blue-ribbon commission concluded in 1996 that current instructions often are "simply impenetrable."

Regarding the pivotal issue of memory, "Failure of recollection is common," says BAJI 2.21. But then comes the double negative: "Innocent mis-recollection is not uncommon."

The panel offers this change: "People often forget things or make mistakes in what they remember."

The committee has been working on translating jury instructions into plain English for six years. Committee chair Justice

Carol Corrigan said part of the delay had resulted from the refusal of judges on the Los Angeles Superior Court, who wrote and copyrighted the original instructions, to grant the Judicial Council a license.

In fact, the Southern California bench threatened to sue if the panel used BAJI and CALJIC as a baseline for the new instructions.

"The State Budget Chasm Personified" *Los Angeles Times* (June 13, 2003)

John Burton and Jim Brulte might seem an unlikely solution to California's \$38.2-billion budget dilemma – a progressive San Francisco Democrat and a fiscally conservative Republican from Rancho Cucamonga, two political leaders of different generations and different worlds, divided by geography and ideology.

In a town where the summertime rite of budget-making traditionally falls to the "Big Five" – the governor and four top legislative leaders – the arithmetic has changed this year. It's now down to the "Big Two" many lawmakers say.

"If we have a budget, it will be because those two guys put it together," said Sen. Don Perata (D-Alameda). "The governor is besieged by the recall. The Assembly just doesn't have the experienced leadership. So it's really just going to be John and Jim."

"Paternity Bill With Shorter Limit OK'd" *Bakersfield Californian* (June 17, 2003)

What if you're not the father of an illegitimate child, but a judge has declared you the legal father and ordered you to pay child support?

Under current law, there's not much you can do about it even though you may be able to prove with DNA testing that you are not the biological father.

Two bills to provide relief for victims of what is called paternity fraud crossed paths at an emotional hearing Tuesday before the Assembly Judiciary Committee.

One of the bills, brought by Bakersfield's Republican Sen. Roy Ashburn, lost out as the Democratic-controlled committee endorsed a rival measure by Democratic Assemblywoman Hannah-Beth Jackson of Santa Barbara, largely on a party-line vote.

Women's groups and child support collection activists supported Jackson's bill, which would give designated fathers one year to challenge the designation with paternity testing.

"Controller Backs Open Primary Elections" *Sacramento Bee* (June 21, 2003)

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RIPPED FROM THE HEADLINES

(Continued from page 7)

Breaking ranks with the Democratic Party, state Controller Steve Westly announced Friday he will support an initiative to reopen the candidate nominating system in California to allow voters to cross party lines in primary elections.

Westly blames the current system that prohibits a voter of one party from casting a ballot for a candidate of another party in a primary election with polarizing the Capitol between liberals and conservatives.

Moderates, he and others maintain, were further marginalized by voting boundaries that were redrawn by the Legislature in 2001 to protect incumbents and reduce competitive races in general elections.

“Potential Swing Votes Feel GOP Heat On Budget” *San Francisco Chronicle* (June 21, 2003)

In any other time, they would be virtually ignored by the Capitol's most powerful players and left alone to do their business. But now, with the state facing a record-breaking deficit, the pressure is intense on a handful of Republican lawmakers to break ranks and vote to raise taxes.

Senate GOP leader Jim Brulte recently warned that if any Republicans voted for tax increases, he would work against them in the next primary. Lawmakers and Capitol observers were shocked, but then came the sucker punch.

Across the hallway in the Assembly, a conservative lawmaker arranged for anti-tax crusader Stephen Moore, visiting the Capitol from Washington, D.C., to lecture California Republicans on economics - and then finish with another, more powerful warning.

It involved something dear to the political heart: money. Moore's group, the Club for Growth, spent \$330,000 to defeat Republican Mike Briggs from Fresno County, after Briggs crossed party lines and voted for a state budget last year that included tax increases.

"Remember Mike Briggs? We kind of nuked him," Moore said in an interview. "One of the purposes of my visit was to remind people that if any Republican votes for tax increase, we would come out full guns. . . . They don't want to suffer the same near-death experience Briggs did. He was destroyed politically."

“Opponents Of Car-Tax Boost Fire Back After Trigger Pulled” *Ventura County Star* (June 21, 2003)

Declaring the state broke, Finance Director Steve Peace on Friday triggered a tax increase that will triple the fees motorists pay each year to register their cars.

Peace invoked a provision in a 1998 tax-cutting law that he

says allows the state to raise the fee back to its pre-1998 level if there are insufficient funds to continue to repay cities and counties for the money they are losing as a result of the lower fees.

Sen. Tom McClintock, R-Thousand Oaks, who agitated for the tax cut back in 1998, called Peace's legal argument "absolute horse manure" and predicted the courts ultimately would declare the tax increase illegal and order refunds.

“State's Plan To Upgrade Foster Care Approved” *Los Angeles Times* (June 26, 2003)

The federal government this week approved an ambitious California plan to improve child welfare services within two years, including reducing incidents of abuse in foster care and setting uniform training standards for social workers and foster parents.

The plan followed a federal audit gave the state failing grades in its handling of abused and neglected children. Federal authorities threatened to withhold \$18 million unless California submitted a detailed blueprint to improve services, and said the state might still face penalties if it did not achieve goals in a timely manner.

Major features of the plan include providing more supportive services to troubled families and less court intervention to remove children from parents' care. Biological parents will have more say in what happens to their children even if there is a need to place them outside the home.

“Ruling May Boost Civil Abuse Suits” *Boston Globe* (June 28, 2003)

The U.S. Supreme Court on Thursday struck down a California law extending the statute of limitations in criminal cases of child sex abuse, but left unscathed another state law that temporarily lifts the time constraints on civil cases.

The law that the high court rejected had retroactively opened prosecution in cases where victims thought they had long missed their chance at justice. That door has once again closed, but a window of opportunity remains open for victims to seek recourse in civil courts because of a law the California Legislature passed last year suspending the statute of limitations in abuse lawsuits for the entirety of 2003.

Ironically, the Supreme Court decision may yet boost the legal claims of abuse victims. Because accused molesters outside the statute of limitations no longer face the danger of criminal charges, they can no longer refuse to testify in civil trials by asserting their Fifth Amendment rights against self incrimination.

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RIPPED FROM THE HEADLINES

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“Deadlock Remains As All In Assembly Reject Budget Bill”

San Diego Union Tribune (June 28, 2003)

As if to dramatize the depth of the deadlock, the Assembly debated a budget bill at length yesterday and then the measure was rejected by everyone. The bill failed 0 to 43, with Democrats casting all of the “no” votes and no one voting “aye.” Republicans didn’t vote.

The bizarre exercise was an attempt by Democrats to show that Republicans, who oppose a tax increase to help close a record budget gap, would not be willing to vote for the devastating cuts required by their plan.

Republicans disowned the bill introduced by Democrats, calling it phony. But the maneuver may have advanced the debate by prompting Republicans to say they’ll propose a detailed plan for closing the budget gap without a tax increase.

“State Lures Court Interpreters” *Fresno Bee* (June 29, 2003)

Until now, court interpreters throughout the state have worked as independent contractors, hearing and speaking for those who understand only Spanish, Hmong, Lao, Russian or one of hundreds of other languages.

A new California law takes effect Tuesday, encouraging interpreters to become state employees. Supporters of the law say it means job security, a chance to organize and a better crop of professionals to aid non-English speakers as they wend their way through the justice system.

Bottom line for the supporters of the law is that the anticipated job protections will lead to better service to what is now an underserved minority, said Ray LeBov, director of the California Judicial Council’s Office of Governmental Affairs.

“In theory, everybody wins,” he said. “We think it will promote fairness for interpreters, increase access for the public and further sound management principles.”

“U.S., California Jury-Selection Language Ruled Equivalent”

Daily Journal (July 01, 2003)

The California Supreme Court tried Monday to put an end to the long-standing debate over whether the state’s standard for preventing racial bias in jury selection complies with the requirements of the U.S. Supreme Court.

The answer, according to the state high court, is that its own ruling in *People v. Wheeler*, is consistent with the federal standard of *Batson v. Kentucky*, so no change in the California standard is needed.

While both the federal and state decisions forbid using peremptory challenges to exclude jurors solely on the basis of race, the language in the two cases is different. But the majority of California’s high court said Monday that the standards

are actually the same.

“We conclude that *Wheeler’s* terms, a ‘strong likelihood’ and a ‘reasonable inference,’ refer to the same test, and this test is consistent with *Batson*,” wrote Justice Ming W. Chin for the 5-2 majority.

“Under both *Wheeler* and *Batson*, to state a prima facie case, the objector must show that it is more likely than not the other party’s peremptory challenges, if unexplained, were based on impermissible group bias,” he wrote.

“Defense Bar Cedes Ground In ‘Atkins’ Bill On Executions” *Daily Journal* (July 02, 2003)

Prosecutors and defense lawyers said Tuesday they are much closer to agreement on a measure that would implement the U.S. Supreme Court’s ban on executing the mentally retarded, after defense lawyers accepted major changes to the bill.

“We’re working hard for compromise. We’re very close,” said David Whitney, a San Bernardino prosecutor who testified Tuesday on behalf of the California District Attorneys Association at a hearing of the Assembly Public Safety Committee.

The committee passed the bill, SB3, introduced by Senate President Pro Tem John Burton, D-San Francisco, by a vote of 5-1.

Proponents of the bill, including representatives of California Attorneys for Criminal Justice, the American Civil Liberties Union and other groups, echoed Whitney’s comments, though less enthusiastically.

That’s because those groups and Burton were the ones who made major concessions late last week in an attempt to quell prosecutors’ opposition and give the bill a better chance of passing the Assembly and being signed by Gov. Gray Davis.

“For us, this is the most important bill of the year,” said CACJ director Paul Gerowitz. But “if CDAA doesn’t support the bill, getting the governor’s signature will very difficult,” he admitted.

Legislative advocates for CDAA and the office of Attorney General Bill Lockyer said one major sticking point still remains: whether the retardation phase of a trial takes place before or after the guilt phase.

As it is currently drafted, SB3 requires the retardation phase to come before the guilt phase, so jurors determining retardation would not be influenced by their knowledge of the crimes committed.



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BUDGET UPDATE

The Legislature's Budget Conference Committee began meeting June 4 and on June 9 approved components of the judicial branch budget for fiscal year (FY) 2003–2004 that were not already agreed upon by the respective Senate and Assembly Budget Subcommittees.

Readers will recall that the subcommittees rejected the \$133.7 million in unallocated reductions and the security flexibility, electronic recording, and ownership of the record proposals. The subcommittees instead adopted reduced reductions from \$17.7 to \$8.5 million in the Judiciary and from \$116 to \$85 million in the Trial Courts and replaced the funding for reductions that were tied to the adoption of the security, electronic recording, and ownership of the record proposals. The subcommittees also approved trailer bill language that directs the Judicial Council to work with the various Sheriffs' associations in reaching an agreement on ways to reduce overall security costs.

The Conference Committee approved a variety of new statewide fees and approved legislation that partially addresses the transfer of undesignated fee revenues. The Conference Committee also approved supplemental report language that requires that the Judicial Council report the amount of new revenue received for each fee.

Budget bills were debated on both the Senate and Assembly floors the week of June 23; both houses remain deadlocked however, and the bills have failed to reach a two-thirds majority.

Proposed New and Amended Fees

Increase Trial Motion Fee for filing any motion from \$23 to \$33. \$19 of the total fee will be deposited into the Trial Court Trust Fund.

Court Security Assessment – Establishes a \$20 assessment for court security for all civil filings (except small claims) and criminal convictions.

Increase Filing Fee to \$185 on Limited Jurisdiction Cases Over \$10,000

Increase Small Claims Fee from \$35 to \$60 for filers of more than 12 claims per year.

Increase Summary Judgment Motion Fee from \$100 to \$150 – \$50 of the total fee will be deposited into the Trial Court Trust Fund.

Establish a Continuance Fee of \$100 Does not apply to hearing or Oscs, only to continuance of trial.

Collection of Court Reporter Fees – Enhance collection of Court Reporter fees.

Court Reporter Fee – Implement a non-refundable court reporter fee of \$25 per party for the first hour to be paid when the plaintiff and defendant pay the first paper filing and response fee.

Transfer of Specified Undesignated Fee Revenues

Complex Cases Fee – Implement an additional fee of \$500 in complex cases, in addition to the initial filing fee.

Probate Fees – Establish graduated filing fees for probate proceedings based on the value of the decedent's estate of \$185 to \$3,500, depending on the size of the estate.

Increase Appellate Court Filing Fee from \$265 to \$485.

Increase Supreme Court Filing Fee from \$200 to \$400.

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.

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