California Courts Review

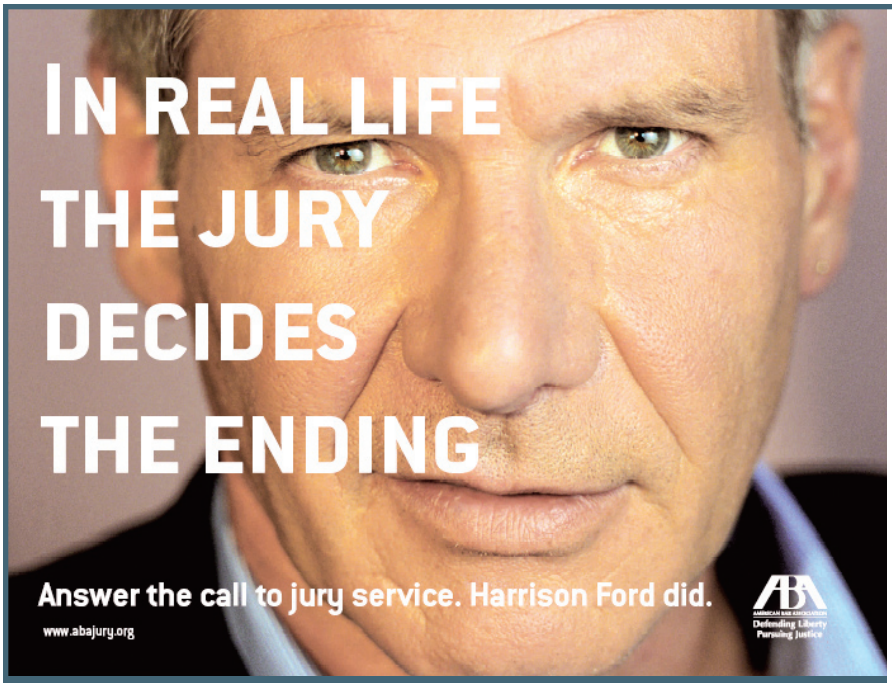
A FORUM FOR THE STATE JUDICIAL BRANCH

SPRING 2006

Milestones in a decade of court reform.

—page 10

The Long Run of Ron George



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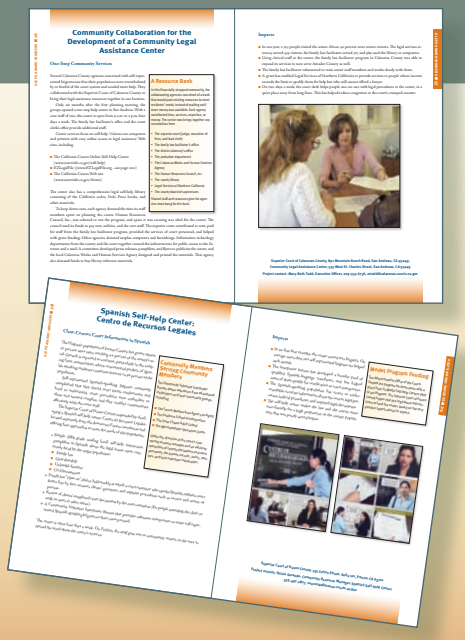

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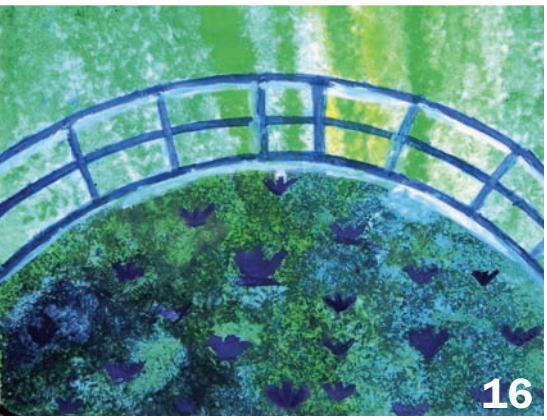
CALIFORNIA COURTS REVIEW • SPRING 2006

Contents

A FORUM FOR THE STATE JUDICIAL BRANCH



California Courts Review

A FORUM FOR THE STATE JUDICIAL BRANCH

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Contents

DEPARTMENTS

ON THE COVER

Chief Justice Ronald M. George leads the start of a Fun Run at the 1998 California Judicial Administration Conference in Monterey.

Contributors

PAUL BOLAND

(*In Conversation With the Chief Justice,* p. 5) is an associate justice of the Court of Appeal, Second Appellate District, Division Eight. A former journalist, he is on the editorial board of *California Courts Review.*

BOB EGELKO

(*The Long Run of Ron George,* p. 8) has covered California courts since 1979 and the California Supreme Court since 1984 for the Associated Press, the *San Francisco Examiner,* and, currently, the *San Francisco Chronicle.*

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(*Promise and Potential for Pro Tems,* p. 21) is a judge of the Superior Court of Alameda County and co-chaired the Temporary Judges Working Group, which drafted the new rules for temporary judges.

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(*Lawyers Must Close the Justice Gap,* p. 36) is a member of the California Assembly and chair of the Assembly Judiciary Committee. He is also a member of the Judicial Council.

California Courts Review

SPRING 2006

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When I began law school 32 years ago, I was fascinated by the amazing opinions coming from the California Supreme Court. Being a history buff, I found there were no biographies of these justices but plenty of law review articles, and the opinions themselves spoke volumes about the authors. Yes, my law professors assured me, there were "legal giants" in California—people like Chief Justice Roger Traynor and Justices Mathew O. Tobriner and Stanley Mosk. Just before I graduated, the court issued its stunning "palimony" decision in *Marvin v. Marvin* (1976) 18 Cal.3d 660.

After law school, when I returned to my first love, journalism, I was lucky enough to find a job in San Francisco covering this same groundbreaking court. Traynor was retired by then, but by interviewing him and appellate practitioners I soon learned about other justices, such as Chief Justices Donald Wright and Phil S. Gibson, the great court administrator. One of the pleasures of my life was developing a relationship with Justice Tobriner, the author of *Marvin,* who graciously complimented my work but always gently encouraged me to strive to do better.

Thus, when Ronald M. George became Chief Justice in 1996 and announced his vision of court reform, the reporter in me was a bit skeptical. How could he top these giants?

Yet over the past decade California's judicial branch has undergone reforms like never before. The state, not the counties, now funds the trial courts; the superior and municipal courts were merged and began operating as one unit; jurors were treated as important participants in the judicial process and even paid a bit more; and the state agreed to take responsibility for county courthouses, under the supervision of the judicial branch.

Californians are fortunate to live in these times when not only they but also their children will find a judicial system that tries its best to provide them with real justice and fairness. Congratulations, Chief Justice George!

—Philip Carrizosa
Managing Editor

Letter

The article "Bridging the Language Barrier" in the winter 2006 edition was both comprehensive and compelling. However, I'd like to offer two technical points of clarification to this otherwise fine piece.

It was stated that, "Interpreters of other languages, as well as interpreters who do not pass the oral certification exam, can *register* to interpret in court once they have passed a written exam." However, this is not technically possible, as registered exams, which test only for English proficiency, are not an option for languages in which a certification exam is offered. The article also cited there being 11 such certification exams available. In fact, there are actually 12 certification exams. Although Armenian was originally designated as a single language, because of dialectic differences it is appropriately tested as two, Eastern and Western Armenian, thereby increasing the count. I commend the author for this timely offering as these minor clarifications in no way detract from the important message that was so well spotlighted.

Mark Garcia, Supervisor
Court Interpreters Program
Administrative Office of the Courts

Corrections

The *2005 Legislative Summary,* an annual supplement to the winter issue of *California Courts Review,* contained an error in the "Criminal Law and Procedure" section. On page 9, the summary of a new mental competency statute incorrectly stated that a case is to be dismissed if a defendant in a misdemeanor or infraction case is not brought to trial within *10* days after criminal proceedings have been reinstated. In fact, the defendant is to be brought to trial within *30* days of reinstatement. We regret the error.

In the winter 2006 issue of *California Courts Review,* the note concluding Justice Ming W. Chin's article, "The Law Struggles to Keep Up With Advances in Science," cited an incorrect Internet address. The full text of the lecture on which the article was based is available at *www.courtinfo.ca.gov/reference/documents/MingChinSpeech.pdf.*

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In Conversation With the Chief Justice

In March, as Chief Justice Ronald M. George's 10th anniversary approached, Court of Appeal Justice and CCR *Editorial Board Member Paul Boland sat down with the Chief Justice to reflect on some of the most urgent issues in court administration.*

Your visit to the courts in all 58 counties during your first year as Chief Justice revealed significant disparities from county to county in court resources, funding, and personnel that affected public access to the courts as well as the quality of justice. How did those visits influence your agenda as Chief Justice, particularly as head of the judicial branch?

They were a very major factor because, in my view, the dispensation of justice is one of the most—if not the most—significant services provided by governments, and I found in those visits that justice was being dispensed very unevenly across the state. That had to do with the provision of resources: at the time, the courts depended on county government, and the various counties were funding their courts based in large part on their ability and their willingness to devote adequate resources to the courts in the face of many competing demands. The funding also related very much, I believe, to whether the particular individuals on the board of supervisors in the county that year had a good or a poor relationship with whoever was the presiding judge of the court. So that had a major impact, and I probably should go on to mention that it had a lot of impact on my desire to proceed with unification of trial courts. We had 220 separate entities, municipal and superior courts, that in many ways were independent fiefdoms. We had a judicial branch in name but not truly in function. One example I would give is that many very large but not densely populated counties in the northern part of our state had one superior court site, so a woman might drive 100 miles or more, two or three hours, to get to the county seat to seek a domestic violence restraining order, only to be told that those are given out only on Wednesday morning, it's Thursday, come back. And now, in many of those sites where there were formerly municipal courts, superior court services are offered in the various locations.

How will the proposed bond measure begin to remedy the deficiencies in the courthouses?*

We always knew we'd need some bond money. This would be very helpful to get us going, if we could be part of a joint proposal agreed upon by the Governor and Legislature. The Governor has put us in his infrastructure proposal. There are some who feel there are needs greater than courthouses. But I'd rather be among the four or five fighting to stay in the package than among the dozen fighting to get in. This will give us a good leg up, $1.8 billion. We ultimately would need another $8 billion over the next couple of decades. But we don't need all of that now, so I would just as soon be part—even if it's a small part—of an overall omnibus infrastructure bond than have a standalone courthouse proposal before the electorate, because they don't fully, at this point anyway, appreciate the significance of the need for courthouse construction and retrofit.

You've had a concern that jury pools have failed to represent a cross-section of the community, and that concern led to the adoption of the one-day or one-trial policy. Has that policy, based on the evidence that you've seen, increased the level of public participation in jury service?

I believe it has, for a couple of reasons. We seem to be getting a much greater cross-section of the population, including professionals. And I think—

—Including the Chief Justice serving on juries!

Well, yes. The day before yesterday I got my third jury summons from Los Angeles County since I've been Chief Justice. I've shown up both of the other times, and I plan to show up again for this one. I sat on the floor; there was insufficient seating on one occasion. I think it's important to set an example, and when federal judges and others have called me and said, "The superior court won't let me out," I say, Well, why should they? I'm showing up and we all can show up. I think what's important under the one-day or

one-trial mode is that people appreciate that they may have to be on call, which is a minor inconvenience. But their time will not be wasted by having to sit in jury assembly rooms for two weeks without seeing the inside of the courtroom. That they bitterly resent, and how we treat or mistreat our jurors I think comes back to haunt us in many ways when either judges are on the ballot or justice-related issues are on the ballot or communications are made to legislators. So I think that's very important, and we seem to be getting far more people showing up, and the other reason is, going to one-day or one-trial, we need far more people. So, consequently, trial judges have been far more stringent in requiring people to show up and to not disregard the jury summons, and in fact they have been following up with enforcement. So for all of that we're getting a much better turnout. And I think that, almost inevitably, if somebody actually serves on a case, the experience is almost always very positive, as opposed to just sitting in the jury assembly room, especially if it's for a two-week period.

You have been instrumental in securing funding for self-help centers to provide assistance for the increasing numbers of self-represented litigants in our courts. How involved do you think courts should be in assisting pro per litigants?

I think it's vitally important that we focus on pro per litigants because, in some parts of our state, 80–90 percent of the vitally important family law matters, whether it's marital dissolution, child support, child custody, or domestic violence matters, are heard with the parties unrepresented by counsel, and out of necessity people are having to represent themselves. I think judges have to do all they can to encourage that their local facilities assist pro pers. On the other hand, a judge cannot bend over backwards so far as to be unfair to the opposing side that may be represented by counsel. So it's a delicate balancing act, and, by the same token, the local clerks have to be careful that they are not engaged in the practice of law when they are giving advice on how to fill out forms and how to proceed. So it requires some sensitivity, but there's a very genuine and vital need to assist the pro per.

Despite an increase in the public perception that courts are fair, certain segments of the community continue to regard the justice system itself as unfair. What do you think the courts can do to promote the reality of fairness in the system, in addition to its perception?

I think it's very important that judges try to explain for those who are in attendance, or may hear of the court's ruling either by being present in the court or through the press, how and why the judge made the decision—just some sort of explanation so that the public has a better understanding. It really gets a distorted picture from television, certainly from motion pictures. I think it's important for judges to get out into the community, and I try to do that. I've participated in community outreach efforts from the Commonwealth Club in San Francisco to Watts in Los Angeles County. I think going out and explaining what the courts do, being responsive to questions put by the public, is very important. I think also—just one last thing—I think it is important in terms of the perception of the court system that we try to have people appointed to the bench who represent, not in a strict numerical sense, but who reflect, the diversity of California socially, economically, racially. And I think efforts to increase interest in applications for the bench among various segments of population are quite worthwhile in terms of getting qualified people on the bench—people will be more trustful of the system if they see people with various backgrounds in a position of authority.

As a former president of the California Judges Association, you have a unique appreciation of CJA's historic role as an advocate for the interests of the state's judges. With the changes in the role of the Judicial Council, what do you see now as CJA's current role?

I think that it is absolutely crucial that two aspects of our judiciary—the Judicial Council and CJA—work hand in hand in partnership, because when we are together on the same page the force of our efforts and persuasiveness is much more than the sum of the parts. On the other hand, when we take different positions, and I've heard this in past years, the effort by many who do not especially value the needs of the judiciary is one of "Well, you can't agree on anything, so why should we listen to you at all? You don't speak with one voice." So I think it's very important that we not only agree with each other, but also that we do, as I try to around this conference table, establish partnerships with other entities, any of the groups with whom I meet.

You've been very involved in initiatives to alleviate the chronic shortage of appellate counsel to represent the more than 600 defendants on California's death row. Nonetheless, some commentators still regard this state's capital appeals system as one of the nation's slowest, affecting defendants' efforts to obtain review of their convictions as well as the prosecutors' interest in shortening the time between conviction and execution from decades to years. What additional steps do you think can be taken to expedite the process without adversely affecting the court's ability to consider important noncapital cases?

The court has taken many steps, including greatly expanding the compensation of counsel handling these cases and increasing the allowable expenses, not as much as I would like to but as much as we can with the resources available to us. We've simplified and expedited our payment processes, im-

proved our recruitment processes. But it is true that we are one of the slowest courts in processing capital cases. I think it is unfortunately a negative reflection on the administration of justice in any state when, as so often occurs in California, it takes more than 20 years after a judgment of death is imposed to carry out the judgment or to bring about a reversal of that judgment. But I would never want to see us turning them out the way they do in some of these other states. I believe that the way we process death penalty cases in California is a reflection of the fact that we take great care to appoint two counsel, to provide funds for lengthy investigations, to provide ample opportunity for briefing, to recruit and appoint counsel who are well qualified. I pass on the qualifications of anyone before they get appointed, after our staff does a review. We just don't appoint anyone willy-nilly the way they do in some states. We look at their writing samples, their background, their experience; we conduct some inquiry in the defense community. So with all of that, unfortunately, there are periods in which a case goes on for three years or so when there's no counsel, so we have a backlog of cases because we don't appoint anybody. They have to be well qualified. So I've said on occasion that the virtue of our system is also its vice because of the care that we put into the appointment process and the processing of these cases takes much longer. I wouldn't want to turn them out the way they do in the southern states.

On the other hand, I believe that the people of California want to have a death penalty. The Supreme Court should be provided with resources adequate enough to process those cases in a timely fashion, according to a suitable compromise, if you will, between those extremes. And although I don't favor strict time limits, my visceral reaction is that it should be possible within five years to know that either the death judgment should be carried out or it should be overturned. If we want to have a death penalty in California, I think we have to pay for it and provide the resources so that the court could raise compensation levels and take other steps so we would be able to attract more attorneys and process the cases more expeditiously, with additional staff perhaps on the California Supreme Court devoted to helping the justices work through these cases.

Reflecting upon your first 10 years as Chief Justice, which accomplishments do you regard as your most significant?

I will say my favorite part of this job is still writing opinions; that's what I really enjoy and sometimes have to do so in planes, trains, and automobiles and very frequently on the dining-room table late at night or early in the morning. Having said that, I very much enjoy running the operations of this court, and also, of course, the fact that through the great efforts of many, many individuals we've been able to bring about some substantial structural reforms, whether it's trial court funding being transferred to the state, unification, transfer of court facilities, jury reform, improved technology, access-to-justice issues including self-help centers, and expansion of interpreter services. These are major satisfactions. Although it's very arduous having sometimes to convince others, both within the judiciary and the other two branches, of the necessity for these improvements, when they come about they have been truly gratifying because they represent something that will provide improved access to justice not only for current residents of California but for many generations to come, so that's been a very satisfying aspect of my responsibilities as the Chief Justice.

Conversely, what stands out as your most significant disappointment?

I suppose my most significant disappointment on a long-term basis is the fact that there is so little public awareness, and sometimes, frankly, so little awareness even among the educated portion of our population and even occasionally among those in the other two branches of government, of the existence and importance of the courts, of the judiciary, as a separate, coequal branch of government. I've had questions posed to me by persons in government about how the judiciary reports to the executive, through which department, about why we think we're independent. Sometimes, out of frustration, I have to proclaim we are not like the Department of Fish and Game or the Board of Cosmetology; we are a separate, coequal branch of government. It has been said that court reform is not for the short-winded and, as a runner, I like to also observe that the job of Chief Justice is a marathon without a finish line.

As you begin the next decade of your stewardship of the judicial branch and continue with the marathon, what do you hope to be able to achieve?

I would like to see us greatly expand our self-help services to where we're truly meeting the needs of unrepresented individuals who need access to our courts, and the same goal would apply to a much-needed expansion of interpreter services. We need to do much more in the area of technology. We've made some progress, but we really need to have access to court records from one court to another, and full access and communications among court-related agencies such as prosecutors, public defenders, probation departments, and law enforcement.

Thank you, Chief Justice George.

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*In the event that the courts are not included in a future state infrastructure bond, and given the many competing interests before the Legislature, the judicial branch and its legislative partners are continuing advocacy efforts to address court facilities needs. Additionally, all other revenue options need to be explored and evaluated as plans for a future court facilities bond are considered. —*Ed.*

The Long Run of Ron

By
Bob Egelko

Politically sure-footed, administratively innovative, affable, and seemingly inexhaustible, Ronald M. George has completed a decade as one of the most active and influential Chief Justices in California history.

The 66-year-old jurist has a formidable list of accomplishments, including the voter-approved unification of the state's trial courts, state funding for the trial courts, the transfer of responsibility for courthouses from the counties to the state, the beginnings of jury reform, and a marked improvement in relations between the courts and the Legislature, executive branch, and public. As the head of the state's judicial system, George may be in the same league as renowned Chief Justice Phil S. Gibson, whose tenure from 1940 to 1964 included consolidation of the fragmented trial courts and establishment of the Judicial Council as the judiciary's policymaker.

"I think ultimately he will rank with Gibson as one of our great Chief Justices," said Santa Clara University Professor of Law Gerald Uelmen, a veteran court analyst and criminal defense lawyer whose dismay at some of the court's rulings does not temper his admiration for its leader.

Some of George's achievements, however, have come with their own set of complications. Initiatives like the elimination of county municipal courts and the rewriting of statewide jury instructions, as well as the Chief Justice's forceful leadership of the Judicial Council, have reduced the autonomy and clout of local courts. The power shift has not sat well with some trial judges, whose support George will need in future legislative battles over court funding.

An argument can also be made that the state Supreme Court, a political storm center not long ago, has paid a toll for the calm waters in which

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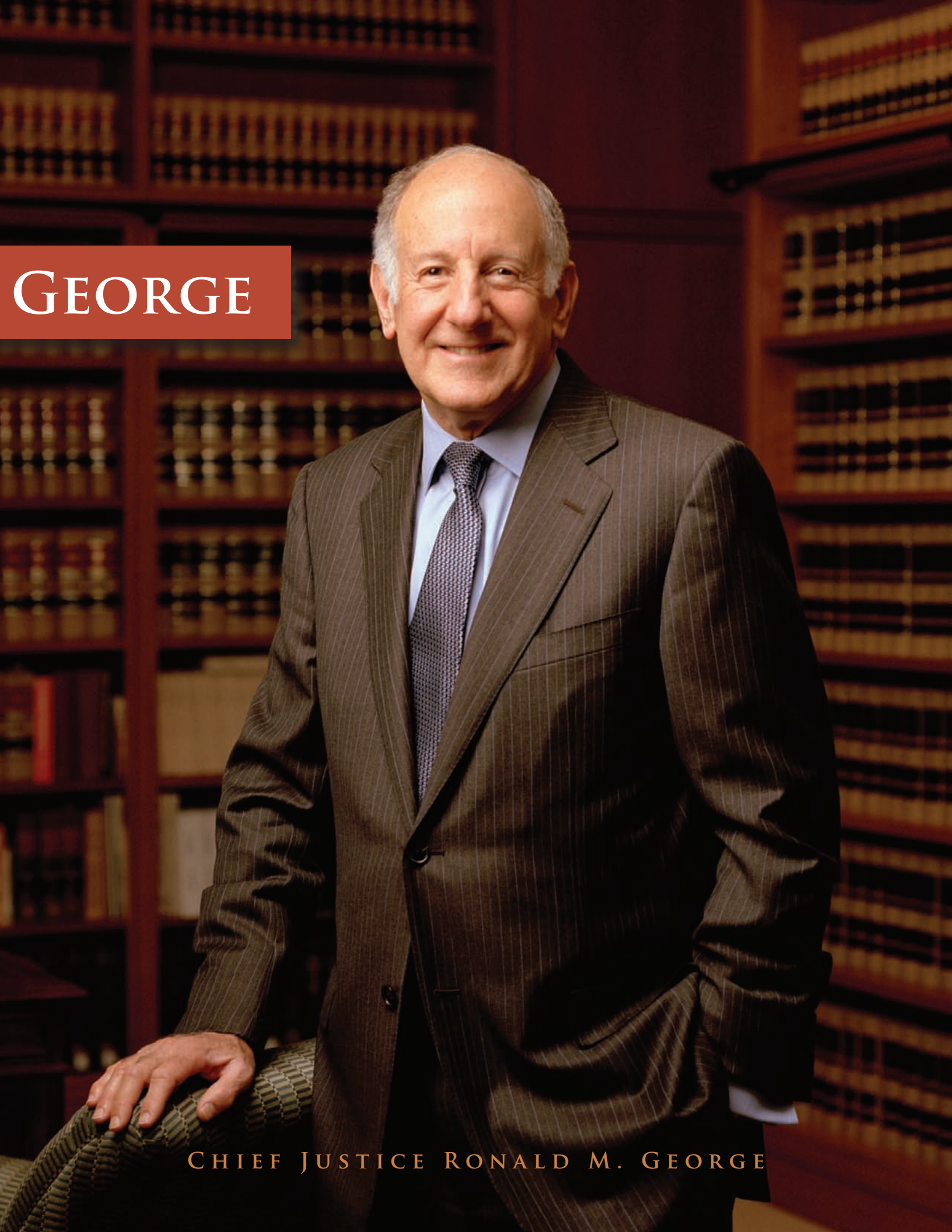
George



Chief Justice Ronald M. George

I was honored that the Chief Justice conducted the oath of office at my swearing-in ceremony as Governor of the State of California. I remember with fondness the inscription he wrote in the 1811 family Bible we used for the oath: "My best wishes to you on assuming your duties as 38th Governor of the State of California. This is a momentous and hopeful occasion for the people of our state. With great respect and admiration, Ronald M. George." Being Governor is the most fantastic job of my life. One of the next best jobs is held by [him].

—ARNOLD SCHWARZENEGGER,
GOVERNOR OF CALIFORNIA

it now sails. Justices such as George and his colleagues, who customarily uphold judgments of the Governor, the Legislature, and the voters, will seldom displease any of them but may as a consequence suffer a loss of their own voice in important constitutional debates. While the current court has generally been a model of judicial restraint in reviewing laws and executive actions, questions such as the length and structure of criminal sentencing in California, the power to grant and withhold parole, and the limits of the initiative process have been left for others to decide.

George, asked about the tension between deference and judicial independence, said he recognizes the need to separate his "political and decisional responsibilities." His record is not one of timidity. One of his first acts as Chief Justice was to call the bluff of antiabortion groups who had threatened retaliation if the court overturned the state's parental consent law for minors' abortions. George assigned the opinion to himself and led a 4–3 majority that struck down the law (*American Academy of Pediatrics v. Lungren* (1997) 16 Cal.4th 307)—a law supported, incidentally, by then-Governor Pete Wilson, who had named him to the court.

In 1998, facing the first organized opposition campaign against a sitting justice in 12 years, George won a resounding 75 percent majority. By then, George had been on the court for 7 years, after 19 years as a trial and appellate judge in Los Angeles and 7 years in the state Attorney General's office.

When he arrived in 1991 as Wilson's first Supreme Court appointee, the state's judiciary was still feeling shock waves from the political earthquake of 1986, when prosecutors and business groups fueled a campaign that unseated Chief Justice Rose Elizabeth Bird and two liberal colleagues, Justices Cruz Reynoso and Joseph Grodin.

One of my top priorities during my stewardship of the Senate Judiciary Committee was to rebuild California's courthouses so that they are safe, secure, and accessible. On one occasion, the Chief Justice joined me for a tour of the Huntington Park court facilities, which had far outgrown their ability to serve the surrounding community. He saw firsthand the judge's chamber that had been converted from a bathroom and criminal defendants being paraded by the potential witnesses and jurors, who were crowded into hallways because there was no separate jury room. But what may have moved him most was seeing the long lines of waiting people and how inadequate court facilities were choking off the people's access to their courts. He turned to me and expressed his commitment to make safe, secure, and accessible courtrooms a top priority. At that moment, I knew this was also a great man.

—MARTHA ESCUTIA,
STATE SENATOR

The election produced the court's first conservative majority in three decades and allowed new Chief Justice Malcolm M. Lucas to write some of his Bird court dissents into law, narrowing liability in tort, insurance, employment, and discrimination cases and affirming scores of death sentences. The death

AP/WORLDWIDE PHOTOS

A Decade of Reform

1996

Ronald M. George sworn in as 27th Chief Justice of California.

1997

Trial Court Funding Act shifts funding of superior courts from counties to the state.

The Task Force on Complex Civil Litigation convened to identify approaches for trial courts' management of complex civil litigation.

The Office of Family Law Facilitators, established in every county, begins to assist more than 30,000 unrepresented litigants a month.

California judges urged to adopt fairness training in areas of race, ethnicity, gender, disabilities, and sexual orientation.

Chief Justice George signs a resolution in 2005 declaring November as Court Adoption and Permanency Month.

penalty cases, in particular, immunized the justices from further voter backlash, but the new court's rightward push soon encountered some political headwinds. Rulings restricting the authority of the state Fair Employment and Housing Commission to compensate discrimination victims were overturned by the Legislature. Rulings favoring insurers stirred consumer groups to sponsor Proposition 103, a 1988 initiative that established state rate regulation and an elected insurance commissioner. And gradually, the appointments of more moderate justices such as Joyce L. Kennard, Kathryn Mickle Werdegar, and George shifted the court's center of gravity leftward. Probably the defining moment was George's 1995 opinion in *Warfield v. Peninsula Golf and Country Club* (10 Cal.4th 504), declaring that sex discrimination in private country clubs was forbidden by the state's Unruh Civil Rights Act. Only Lucas dissented.

The Lucas court's most damaging political wound was self-inflicted, a result of the Chief Justice's attempt to tap into voter populism. In an opinion upholding a legislative term limits initiative (*Legislature v. Eu* (1991) 54 Cal.3d 492), Lucas said it was justified by "the state's strong interests in protecting against an entrenched, dynastic legislative bureaucracy" and suggested the Legislature would be better off with the 38 percent cut in its operating budget mandated by the initiative. Irate lawmakers briefly sought a comparable reduction in the court's budget; more seriously, the judiciary suffered a loss

Most everyone acknowledges that the Chief is a great jurist. What few recognize is his mastery of political relationships. We would not be in the position we are today, working to strengthen the independence and equality of the third branch, were it not for the Chief. I have watched him deftly manage egotistical politicians and aggressive judicial branch stakeholders, all with differing agendas. The delivery of access to justice is the judiciary's first priority. The Chief's masterful management of the politics allows the rest of the judiciary to focus on that first priority. Through his work, that focus will be preserved.

—JOSEPH DUNN, STATE SENATOR

1998

Voters overwhelming support Proposition 220, authorizing consolidation of superior and municipal courts.

Governor signs bill requiring all trial courts to adopt a one-day or one-trial jury system by year 2000.

Task force on quality of justice in California initiated to study effect of private judging and court-affiliated alternative dispute resolution services on courts, litigants, and the public and ways to retain highly qualified judges for their full careers on the bench.

Chief Justice George and retired Chief Justice Malcolm M. Lucas exchange greetings with San Francisco Mayor and former Assembly Speaker Willie Brown at the dedication of the Malcolm M. Lucas Board Room in April 1999.

of influence and goodwill in Sacramento, one sign being the discontinuance of the Chief Justice's annual State of the Judiciary speech.

George, appointed by Wilson to succeed the retiring Lucas in 1996, quickly set about mending fences, meeting with numerous lawmakers and resuming the annual address to the Legislature. The amateur distance runner also embarked on a personal marathon during his first year as Chief Justice: visits to courts in each of the state's 58 counties to boost morale and get a feeling for local conditions, which George regularly cited in subsequent speeches on the courts' financial needs.

"We thought at first it was sort of grandstanding," recalled Peter Belton, longtime research attorney to the late Justice Stanley Mosk. "Then we realized that the man wants to know what's going on out there, wants to meet people."

George's first legislative coup came in 1997 with the approval of full state funding for trial courts, a goal that had eluded both Bird and Lucas since passage of 1985 legislation that made Sacramento theoretically responsible for shoring up cash-strapped county courts. Backers' predictions of an end to courts' fiscal hardships proved premature, as recent curtailments of civil court operations in Riverside County illustrated, but the shift to state funding has provided a degree of financial stability and uniformity lacked by other local programs.

In June 1998, voters approved a state constitutional amendment clearing the way for the consolidation of 220 municipal and superior court districts around the state into 58 countywide superior courts. Despite opposition by some local judges, unification was implemented in each county over the next two to three years. An Administrative Office of the Courts (AOC) study proclaimed efficiencies and cost savings that have freed funds for such programs as drug courts and domestic violence courts.

Along the same lines, the judiciary won passage of a 2002 law providing for transfer of the 450 county court

My first direct involvement with the Chief Justice was several years ago. I had been asked to organize a court-community outreach program at a local high school in the Coachella Valley, scheduled at the same time as the nearby California Judges Association mid-year meeting. Because I thought the Chief would be attending the judges meeting, I decided to see if he could also participate in the outreach program. I called my secretary from my car and asked her to leave a message for him. Within moments, she called me back and said the Chief Justice was on the phone. Knowing that she was a renowned practical joker, I said, "No, he is not." She quietly said, "Yes, he is." I said, "Come on, quit kidding me. No, he is not!" She said again, more sternly, "Yes, he is," and in a whisper added, "He is on the phone right now!" I said, "Chief Justice George?" and I heard "Yes." To my embarrassment, he had been on the phone the entire time. I should have known; in all that I had ever heard about him, he was always described as very approachable and gracious. As you would expect, he agreed to speak at the outreach program and was an overwhelming "big hit." He exemplifies both "Do as I say" and "Do as I do."

—DOUGLAS P. MILLER,
JUDGE, SUPERIOR COURT
OF RIVERSIDE COUNTY

A Decade of Reform

1999

Resolution adopted in honor of Court Adoption and Permanency Month as part of campaign to raise public awareness about problems facing California's adoption system and to provide hope and support to foster children and adoptive families.

2000

California jurors get their first pay raise since 1957 under the state budget approved by Governor Gray Davis.

Governor signs bill transforming trial court employees from county to court employees.

buildings to state ownership by 2007. Successful implementation remains uncertain, however; the transfers have been slowed by concerns over seismic safety, and proposed bond funding for courthouse repairs has been blocked by Democratic legislators. Equally cloudy are the prospects of another George proposal, now before the Legislature, for a state constitutional amendment that would protect the courts from cuts in state funding, create a commission to set judges' salaries, and enhance the powers of the Judicial Council and the appointment authority of its chair, the Chief Justice.

Whatever the outcome of his most recent efforts, George has established himself as a helmsman of the California judiciary in the tradition of Gibson, appointed by Democratic Governor Culbert Olson in 1940 as head of what was then a decentralized system with eight levels of trial courts. Gibson's achievements over the next quarter-century included trial court consolidation, establishment of the Judicial Council's rule-making authority, enactment of statewide appellate rules, passage of the Administrative Procedures Act, and creation of the Commission on Judicial Performance.

Asked if he was following in Gibson's footsteps, George agreed, while disavowing any intention to "create an overcentralized administration of justice with micromanagement of the local courts." Nonetheless, he said in an e-mail interview for this article, certain uniform policies are necessary for "fair and accessible justice throughout the state." Understandably, George added, "some judges miss the old days of doing things their own way."

The line between local and statewide concerns is subjective, of course, and George's location of the proper boundary is not above criticism. Even some of his supporters were dismayed when the Chief Justice told a 2003 gathering of the California Judges Association—an organization he had headed 20 years earlier—that any attempt to democratize selection of Judicial Council members and reduce his appointment power would be considered a "declaration of war."

"That was an unfortunate remark, an unnecessary remark," Superior Court of Los Angeles County Judge J. Stephen Czuleger, a George appointee to the Judicial Council, said in a recent interview. "It had the ring of foreclosing discussion." He said George has been more open to input from local judges since then. The council, Czuleger said, continues to operate "with a power flow toward San Francisco, but maybe with a new respect toward the local courts." George, however, has said that his remark had its intended effect.

Perhaps more than any of his predecessors, George has worked to expand public access to the courts on multiple fronts. For civil litigants without lawyers, the courts and the AOC have created self-help Web sites and local information kiosks, and George has pressed major law firms to increase their pro bono commitments while lobbying for state legal services funding. For jurors, he backed a one-day or one-trial system that frees prospective jurors from their obligations for a year if they aren't

Last year, Chief Justice George was recognized for his tremendous work on behalf of abused and neglected youth in our state's foster care system. Even more memorable than the Chief's gracious remarks at the event was his interaction with Pedro Martinez—a talented foster youth being honored for his artistic work. The passion and optimism reflected in Pedro's work clearly impressed the Chief, who made a point of seeking out the young artist afterward to spend time talking with him one-on-one about the ideas conveyed in his illustration. I know that this is a moment Pedro will long remember. It underscored anew that our Chief Justice is not simply a leader of tremendous capability, but also someone who puts his warmth and heart into everything he does.

—MIRIAM KRINSKY,
EXECUTIVE DIRECTOR,
CHILDREN'S LAW CENTER
OF LOS ANGELES

2001

Superior and municipal court judges in Kings County unanimously approve trial court unification, the last of California's 58 counties to vote to create a single and unified countywide superior court.

Task force initiated to assist litigants without lawyers through a statewide action plan.

2002

Governor signs law shifting responsibility for governing trial courthouses from counties to the state.

New policy prohibits retired judges sitting on assignment from engaging in paid, private dispute resolution activities.

> "The Man Who Can Keep His Head When All About Him Are Losing Theirs" might have been written specifically to describe Chief Justice Ron George. I have never seen someone so warm and so cool-headed, all at the same time. I was fortunate enough to participate in the Judicial Council's evaluation of gender bias in the courts and, although he had not even served on the subcommittee, the Chief Justice (then still an associate justice) was tasked with guiding the all-important implementation process for a report that ran to hundreds of pages. With fireworks all around him, and all of us diverse, empowered women and men insisting on priorities, Ron George listened, suggested, calmly cajoled, firmly insisted, and brought the whole subcommittee, not simply to consensus, but to unanimity! It was literally unprecedented in these touchy and controversial arenas.
>
> —SHEILA KUEHL, STATE SENATOR

called for a trial on the first day. He also commissioned an ambitious rewriting and simplification of both civil and criminal jury instructions; the eight-year project was headed by appellate Justice Carol A. Corrigan, helping to establish her credentials for her recent Supreme Court appointment.

And George, more than any other Chief Justice in recent memory, has been accessible to the press—returning phone calls, granting in-person interviews, hosting on-the-record briefings for reporters each December, and establishing media-friendly Web sites. He was the author of *NBC Subsidiary (KNBC-TV) Inc. v. Superior Court* (1999) 20 Cal.4th 1178, which found a constitutional right to attend civil court proceedings.

The court, meanwhile, has become a reflection of its Chief Justice to a considerable degree: pragmatic, cautious, consensus-seeking, sympathetic to individual rights but reluctant to get too far ahead of the Legislature or the public.

On the three-strikes law, for example, the court created a safety valve by giving judges limited discretion to disregard prior convictions (*People v. Superior Court (Romero)* (1996) 13 Cal.4th 497) but left for the federal courts the touchier question of whether sentences for minor crimes were so long as to constitute cruel and unusual punishment. On civil rights, the court upheld an injunction against racial slurs in the workplace (*Aguilar v. Avis Rent-A-Car* (1999) 21 Cal.4th 121) but gave a broad interpretation to the voters' anti–affirmative action mandate in Proposition 209 (*Hi-Voltage Wire Works v. City of San Jose* (2000) 24 Cal.4th 537). On gay rights, the court found legislative authority for child custody and adoptions by same-sex partners but sidestepped the more explosive issue of the Boy Scouts' exclusion of gays (*Curran v. Mount Diablo Council* (1998) 17 Cal.4th 670) and avoided constitutional questions—at least for the moment—in its first ruling on same-sex marriage (*Lockyer v. City and County of San Francisco* (2004) 33 Cal.4th 1055).

> In his decade-long tenure, Chief Justice Ron George has sworn in hundreds of legislators and dozens of constitutional officers. To me, it's a very good thing that newly elected officials get to see this example of professionalism and character right as they take their oath of office. I understand that the Chief has also performed some impressive weddings, which, one hopes, come with longer term limits than the rest of us get.
>
> —DON PERATA, PRESIDENT PRO TEMPORE OF THE STATE SENATE

George's most vociferous academic critic, University of California at Berkeley Professor of Law Stephen R. Barnett, says the court has managed to "stay on the good side of the Legislature by giving that body more than its due." He cites two rulings, both by George: *Obrien v. Jones* (2000) 23 Cal.4th 40, which upheld, against a separation-of-powers challenge, the appointment by legislators and the Governor of three new judges to the State Bar Court; and *Senate v. Jones* (1999) 21 Cal.4th 1142, which struck from the ballot an initiative that would have cut legislators' pay and transferred reapportionment authority from the Legislature to the Supreme Court. The latter ruling marked the first time since 1948 that

A Decade of Reform

2003

New civil jury instructions emphasize plain, straightforward language to provide an alternative to the often-confusing legal terminology used in California trial courts for the past 70 years.

Chief Justice George becomes president of the Conference of Chief Justices.

2004

Support sought for critical funding to repair and renovate many of the state's 451 court facilities as well as to institute new judgeships and uniform filing fees.

I first met the Chief Justice in my role as a newly elected Assembly member appointed to chair the Assembly Judiciary Committee. As a lawyer, I have to admit I was a bit nervous on meeting the "Chief" for the first time. He immediately put me at ease by welcoming me into his personal office and encouraging me to call him "Ron." Somehow, I just couldn't do it, but over the course of many meetings since, he has worn me down! Every time I speak with Chief Justice George I marvel at his unique combination of traits: intellect, compassion, leadership, and courage. Ron George is committed to making sure that Californians from all walks of life and from all backgrounds can have equal access to our courts. As Dr. Martin Luther King, Jr., once said, "The ultimate measure of a man is not where he stands in moments of comfort and convenience, but where he stands at times of challenge and controversy." Chief Justice George has always met this standard, and then some.

—DAVE JONES, STATE ASSEMBLY MEMBER AND CHAIR, ASSEMBLY JUDICIARY COMMITTEE

the court had invalidated an initiative for violating the state Constitution's single-subject limit and contrasted with the court's usual insistence that ballot measures be reviewed only after an election.

Santa Clara University's Professor Uelmen says the criticism is unfair and that the court is merely deferential to other branches, not politically motivated. Similar debates have focused on rulings giving the Governor broad leeway to block paroles (*In re Rosenkrantz* (2002) 39 Cal.4th 616) and upholding a law that allows upper-term prison sentences without jury fact-finding (*People v. Black* (2005) 35 Cal.4th 1238)—both written by George, who often assigns important and politically charged cases to himself. The *Black* ruling has been extensively criticized and could backfire if the U.S. Supreme Court, which has granted review, finds that California's sentencing system violates the right to a jury trial.

But George can also point to cases in which he's gone against the grain. Besides his parental-consent ruling, he frustrated Wilson, the Governor who appointed him, by allowing the State Bar to impose a fee to fund disciplinary proceedings after Wilson vetoed the bar dues bill (*In re Attorney Discipline System* (1998) 19 Cal.4th 582). He allowed a sexual harassment suit against the state prison system, based on allegations of sexual favoritism by a warden (*Miller v. Department of Corrections* (2005) 36 Cal.4th 446). And when the court refused to review an array of legal challenges to the 2003 recall election of Governor Gray Davis, George cast one of two dissenting votes.

"Our desire for good relations with the other two branches of government has never kept the Supreme Court or lower courts from invalidating legislative measures when they run afoul of the federal or state constitutions," George said by e-mail. "However, how we perform that task, and what we say about it in our written opinions, can be as important as the conclusions we reach." That seemed to be a reference to Lucas's inflammatory language in his term-limits ruling, a misstep George is unlikely to make.

Chief Justice George during May 2004 oral arguments on the validity of same-sex marriage licenses issued by San Francisco.

AP/WORLDWIDE PHOTOS

In any event, the George court, already longer-lived than any since Gibson's, is embarking on its second decade with no end in sight. Long since eligible for retirement and a more lucrative career in private judging, the Chief Justice says, "I tremendously enjoy all aspects of my job and cannot imagine anything I would rather do." CR

Bob Egelko has covered California courts since 1979 and the California Supreme Court since 1984 for the Associated Press, the San Francisco Examiner, *and, currently, the* San Francisco Chronicle.

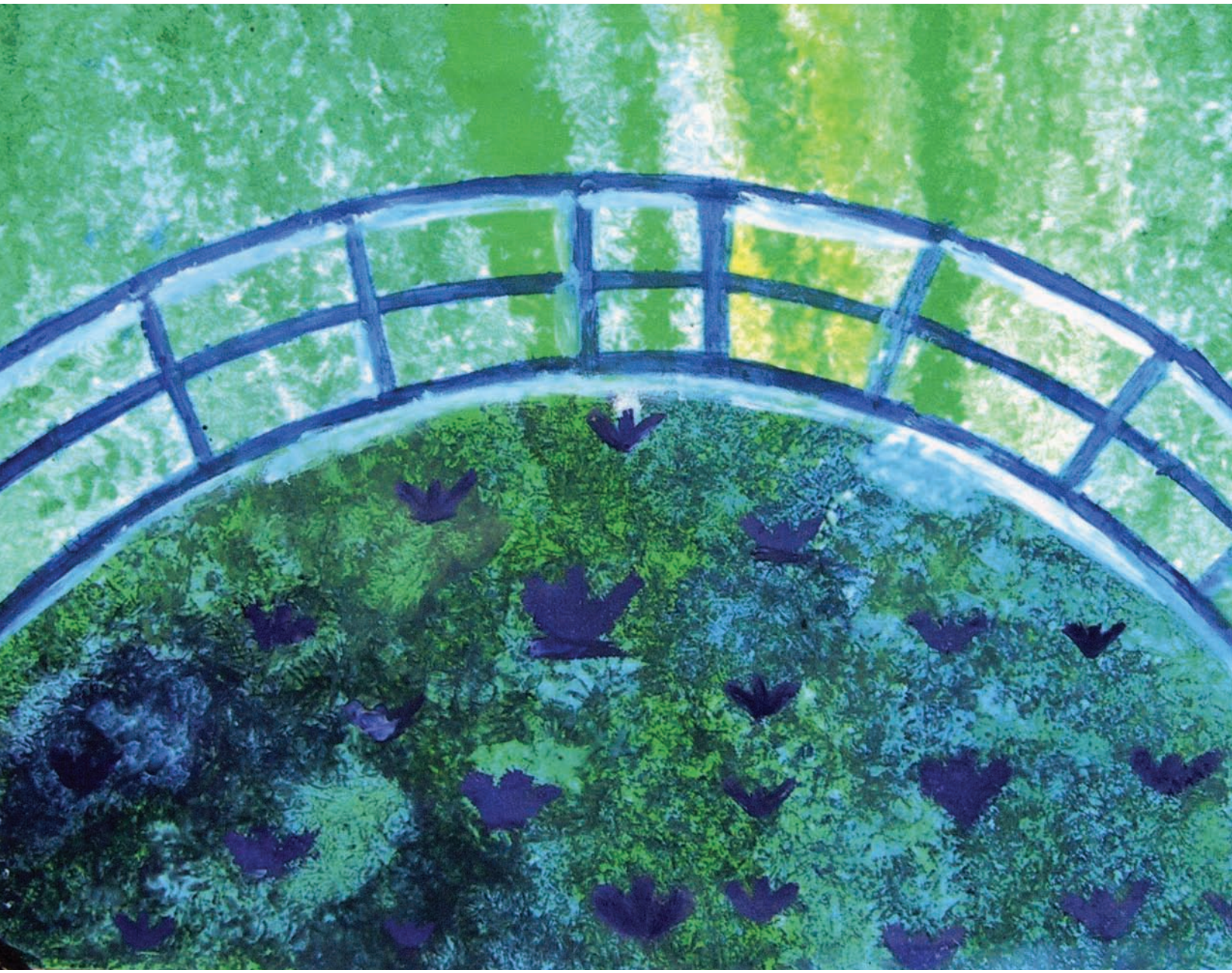
2005

First Statewide Judicial Branch Conference held in San Diego.

Legislation proposed to amend article VI of the state Constitution to promote access to justice, ensure the independence of the judicial branch, and enhance accountability within the branch for the fair and effective administration of justice.

New criminal jury instructions adopted as part of statewide campaign to reform California's jury system.

The Mediation Miracle



In the past few decades, California has led a national shift in paradigms for family conflict resolution that has freed trial courts to do what they do best—ensure due process of law and serve as the court of last resort.

By
Leonard P. Edwards

When mandatory child custody mediation was enacted into California law in 1981, there was great hope that this new way of resolving family conflicts would make dispute resolution more efficient and family-friendly. Now, 25 years later, we can confidently say this hope has been realized, with a profound shift away from the traditional adversarial model of dispute resolution in family matters and toward a system that supports the private ordering of these issues—a shift that's arguably the most significant legal development affecting family life in 20th-century American jurisprudence.

For this we must thank a small but organized group of California leaders whose pioneering work led to sweeping legislative reforms that expanded the courts' options for resolving family legal issues during separation or divorce.

California was the first state to make this bold leap to a legal process that engages families in a meaningful way and gives them the right to determine the structure of their future relationships. The 25th anniversary of the nation's first mandatory mediation law seems like an appropriate opportunity to reflect on how this was achieved.

The Way We Were

Before 1970, laws on marriage and divorce in California, as in all states, were modeled on age-old legal and religious traditions. Divorce between married persons was permitted but only if one party was at fault, thus providing a legal justification for court action. The law gave family courts the power to determine the post-divorce living patterns for the parties, including financial and child custody arrangements. Divorce trials sometimes resembled criminal prosecutions; they often included evidence from

MONET'S BRIDGE, SEENDY, AGE 15

private investigators hired to spy on one or both of the parties, as well as claims of misconduct made by each parent against the other. Attorneys brought all of their advocacy and adversarial tools to the family court along with the high costs of litigation—both financial and emotional. The party "at fault" was often punished by the court for the actions leading to the divorce. Children, for example, were rarely required by the court to live with the "at-fault" parent.

There were many critics of this approach. They argued that the adversarial process did great damage to families: the strained parental relations caused suffering to children both during and after the divorce, and many family relationships never recovered from the legal proceedings. The critics held that each parent ought to have a continuing relationship with the children and that the adversarial, fault-finding process often destroyed parent-child relationships and made it more difficult for parents to work together for their children after the divorce. Some criticism came from legal scholars, some from attorneys, and some from the litigants themselves. All held that the system had to be changed for the sake of the court system and the families who appeared in it.

Enter Trained Counselors

Before 1980, California had a modest tradition of attempting to support families in distress. The California Conciliation Court Act of 1939 was enacted to provide "conciliation courts" with counseling services in the state. One motivation for the legislation was to encourage parents to work out their differences and preserve marriages, but the most significant result of the conciliation courts was the introduction of trained counselors into the divorce process.

At first, only 16 counties were able to afford such counselors. Those counties' courts immediately recognized the problems divorcing families faced and the harm that the adversarial process inflicted on them. Soon they began to make suggestions to improve the family court system as a whole. Gradually, conciliation courts were established in more counties.

No-Fault Divorce Becomes Law

In 1966 the *Report of the Governor's Commission on the Family* was issued—the product of a panel of judges, family law practitioners, researchers, and experts in family law proceedings. The report recommended significant revisions in California law and resulted in passage of the California Family Law Act of 1970, establishing no-fault divorce in this state. Under that law, parties needed to prove not that one or the other was at fault but only that irreconcilable differences had arisen, making continuation of the marriage impossible. This law was the first step in giving parents more control of their relationships.

Marital dissolutions increased dramatically in the 1970s and 1980s, as did the population of California. Several courts began using the conciliation court counselors in creative ways. In 1973 the Los Angeles, Santa Clara, San Diego, Alameda, and San Francisco County conciliation courts, along with other conciliation courts, began experimenting with family counseling in child custody proceedings. Counselors reported that parents could reach agreements in a great majority of the cases referred to them. These counselors—led by Hugh McIsaac from the Los Angeles Conciliation Court, Jeanne Ames from San Francisco, Murray Bloom from San Diego, Warren Weiss from Santa Clara, Elizabeth O'Neill from Alameda, and many others—believed parents and children would be well served if mediation were a part of every child custody proceeding. Judge Donald King in San Francisco and Judge Christian Markey in Los Angeles found that referring parties to conciliation court before trial resolved many contested cases. The support of these charismatic and respected judicial officers was instrumental in convincing the practicing family law bar to participate constructively in the mediation process.

The no-fault divorce law attracted the interest of researchers, including Judith Wallerstein, Joan Kelly, and Dorothy Huntington of the Center for Families in Transition in Marin County, who focused much of their research on the impacts of marital dissolution on children. Stan Cohen, Jay Folberg, and the Association of Family and Conciliation Courts (AFCC) also were instrumental in providing ideas and support for reforms related to the no-fault divorce law. Professor Robert Mnookin, whose classic article "Bargaining in the Shadow of the Law: The Case of Divorce in the Courts" was published in the April 1979 *Yale Law Journal,* also deserves credit for providing a theoretical underpinning for the mediation process.

Mediation Becomes Mandatory

Experiences in the first counties that used mediation in child custody cases led to a movement to require mediation in all counties. With strong support from the California chapter of the AFCC, as well as from key judges and counselors, legislation was introduced in 1979 to achieve that goal. It took two years, but in 1981 Senate Bill 961 (Sieroty) was passed into law and established mandatory mediation in all child custody matters in California family courts.

The new law required parents to attempt to resolve their differences on issues of child custody or visitation with the assistance of a trained mediator before resorting to litigation. This legislation was a reflection of a growing consensus that families and children would be better served if couples were given an opportunity to resolve their disputes in a mediated setting.

Mandatory mediation was the most significant step in the movement toward family self-determination, or "private ordering," which aimed to

give parents more control of their lives when they separated. The legislation included an increase in filing fees to finance additional mediators and their mandated training.

Uniform Standards Adopted

In 1984 Assembly Bill 2445 (Farr) authorized the creation of a statewide office for research on family court services and identified resources for funding its work. The Statewide Office of Family Court Services, officially established in 1986, was made a unit of the Administrative Office of the Courts (AOC) in 1987; Isolina Ricci, a well-known author, mediator, and researcher, was named its first director. In 1991 the office reported that mediation was in great demand throughout the state: research showed that the yearly number of mediated cases had increased from 49,474 in 1988 to 65,494 in 1991.

Over the years, custody mediation practice has been modified to address oversight of the statewide effort and to improve standards of practice. In 1991 the Judicial Council adopted statewide uniform standards of practice for court-connected child custody mediation. These standards addressed such issues as mediator training, protocols for conducting mediation, and equalizing the power relationship between parties. The standards were adopted as a rule of court (Cal. Rules of Court, rule 5.210) in 2001.

As child custody mediation spread statewide, practitioners and researchers increasingly identified domestic violence as a crucial factor in numerous families' participation in mediation. Many courts began implementing local procedures to address safety concerns. The Judicial Council later adopted a statewide domestic violence protocol for family court services (Cal. Rules of Court, rule 5.215, adopted in 2002).

In 2000 the Statewide Office of Family Court Services and the Judicial Council's Center for Children and the Courts merged to form the Center for Families, Children & the Courts (CFCC), operating as part of the AOC. With more than 400 full-time and contract mediators currently conducting more than 100,000 mediations per year statewide, mediation has become a major part of California's system of family courts.

Client Satisfaction—and Caseloads—High

Mandatory mediation was the right idea from the beginning. It had been practiced in several conciliation courts with excellent results. Evaluations through the years have demonstrated that a high percentage of cases reach settlement without trial, resulting in reduced court workloads; that client satisfaction is high; and that children are well served.

Nevertheless, many family court services offices in the state are underfunded, are understaffed, and do not obtain sufficient resources to do the work the Legislature has asked them to perform. There is a great risk that the energy and enthusiasm that mediators bring to their work may be weakened by the crush of caseloads.

Mediation Expands to Dependency

Mandatory mediation in family court inspired the spread of alternative dispute resolution (ADR) techniques throughout California, where today 23 dependency mediation programs operate in the state's juvenile courts.

The history of juvenile dependency mediation in this state in some ways parallels that of family court custody mediation. At first, two counties—Los Angeles and Orange—experimented with dependency mediation. They initiated the process during the 1980s essentially for the same reasons that family court counselors used it—to cope with overcrowded calendars—and it worked. However, some critics were concerned that mediation in child maltreatment cases would result in unsafe plans for children.

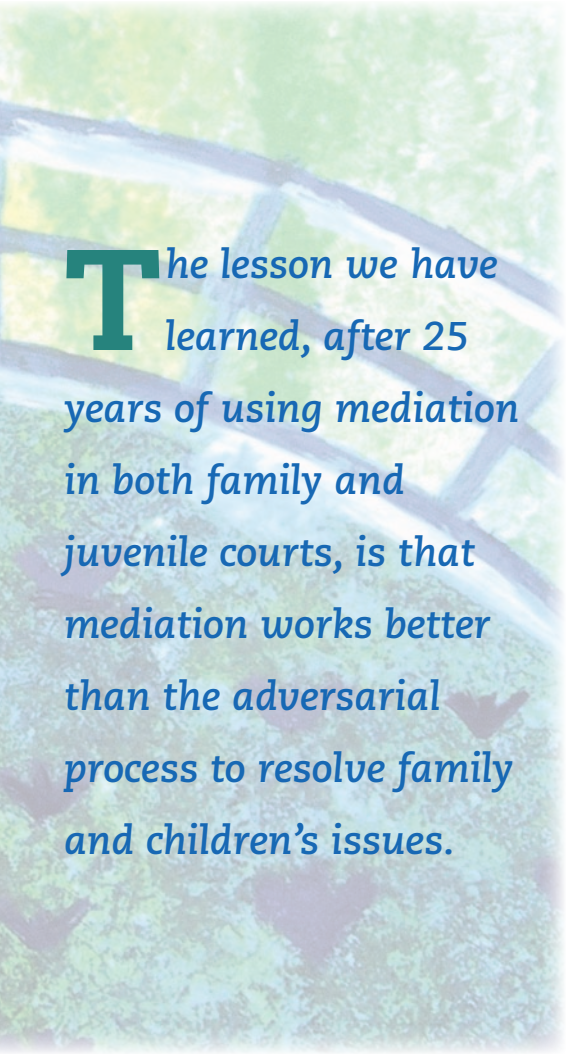
That has not proven to be the case, for several reasons. First, in addition to the mediator, an attorney for the child participates in the mediation process, providing extra protection for the child's safety. Second, in juvenile dependency mediation, the facts of the abuse or neglect are not mediated. All other issues can be subjects of discussion and resolution.

Based on the successes in Los Angeles and Orange Counties, in July 1992 Senate Bill 1420 (Russell) was passed, with language encouraging the creation of dependency mediation in California's juvenile dependency courts.

With more than 400 full-time and contract mediators currently conducting more than 100,000 mediations per year statewide, mediation has become a major part of California's system of family courts.

This legislation authorized several pilot counties to use dependency mediation. In 1996 Senate Bill 1675 (Russell) encouraged all juvenile courts to develop mediation programs. Section 350 of the Welfare and Institutions Code was amended to read:

> Each juvenile court is encouraged to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening. The Legislature finds that mediation of these matters assists the court in resolving conflict, and helps the court to intervene in a constructive manner in those cases where court intervention is necessary.



The lesson we have learned, after 25 years of using mediation in both family and juvenile courts, is that mediation works better than the adversarial process to resolve family and children's issues.

Reduced Hardships for Courts, Kids

Research has confirmed that dependency mediation, throughout its history, has helped families and courts by reducing both the amount of time children spend in foster care and the costs for courts and agencies. For example, in Santa Clara County, where dependency mediation has been practiced for 12 years, 79 percent of referred cases resolve all issues, 12 percent resolve some of the contested issues, and only 9 percent fail to resolve anything.

Moreover, in juvenile dependency court, mediation is not necessarily confined to child custody disputes, as it is in family court. In many programs, such as in Santa Clara County, mediation includes all issues before the juvenile dependency court, including whether the petition is true, what the service plan should be, how visitation should be arranged, what the permanent plan for the child should be, and any other issue that might have to be litigated. Mediation is a problem-solving forum, one that can work out details that are often neglected by the formal court process.

Path Paved for ADR

Following the lead of those who developed child custody mediation rules, the Judicial Council crafted rules of court for dependency mediation. In 2004, standards of practice for court-connected dependency mediation were adopted as rule 1405.5. This rule addressed numerous issues, including the court's responsibility to oversee dependency mediation services; the development of local mediation practices, such as a protocol for cases involving domestic violence; and the qualifications and training requirements for dependency mediators.

Family mediation laid the groundwork for courts to embrace other forms of alternative dispute resolution. Such innovations as family group decision making, collaborative justice, and team decision making are currently being used to resolve family problems. The legal profession has joined the movement away from the adversarial model. Many lawyers are turning to a collaborative practice, dedicating their law practice to keeping families out of court and to working with them to settle disputes without the use of adversarial tactics. These practices have saved families lots of money.

The experience in some juvenile courts is that mediation has had an impact on the local court culture. When attorneys learn that the results of the mediation process are better and longer-lasting than those of a trial, they begin to prefer mediation as a process for resolving cases. This shift has improved attorney-attorney relations. When attorneys working side by side in the dependency mediation process realize that each has good suggestions for a positive outcome, they are much more likely to work cooperatively even when the matter has to go to trial. There is less posturing, less finger pointing, more straightforward presentation of evidence, and an honest exchange of ideas.

A Better Way

There will always be litigation. Some parents will always need a judge to make the final custody orders or other orders relating to their children. The lesson we have learned, after 25 years of using mediation in both family and juvenile courts, is that mediation works better than the adversarial process to resolve family and children's issues. We know the orders that judges make after hearing evidence are not as effective or as long-lasting as mediated agreements. And we know mediation offers our best opportunity to remind parents of their obligations to their children that continue even after they separate. CR

Leonard P. Edwards is a judge of the Superior Court of Santa Clara County. He served in family court from 1982 to 1984 and was president of the California chapter of the Association of Family and Conciliation Courts in 1984.

Promise and Potential for Pro Tems

New rules for the selection, training, and evaluation of temporary judges aim to improve quality.

"A real judge all litigants deserve,
Alas, of those, too few serve
So instead a pro tem you'll get
If need be found, and these rules be met."

By
Robert B. Freedman

With this witty verse as backdrop, the Judicial Council of California on December 2, 2005, adopted a comprehensive set of rules to govern the selection, training, appointment, supervision, and evaluation of court-appointed temporary judges.[1] The reason for this landmark action concerns the significant impact that temporary judges have on our court system. First and foremost, these judges, routinely referred to as "pro tems," serve a critical role in providing access to justice in California. For much of the public coming to court, temporary judges *are* the face of justice.

Most California courts—45—use temporary judges, according to a survey conducted for the Administrative Office of the Courts. The largest courts tend to use them more than the smallest. Some of the largest courts have from 800 to more than 1,000 attorneys available to serve and may use several hundred of them as temporary judges each month. And, as a result of unmet judgeship needs, temporary judges currently hear small claims, traffic, family, juvenile, and other types of cases. But even though courts rely extensively on temporary judges, California's rules of court until now have provided only limited guidance on the use, qualifications, and training of temporary judges, with provisions scattered in different places in the rules. Moreover, many of the previous rules related only to the use of temporary judges in small claims cases and not to the broad range of case types heard in many courts.

Good Timing

The timing of the council's action relates to several key developments. First, a major survey on public trust and confidence in the California courts conducted last year by the National Center for State Courts[2] indicated that procedural fairness is a core public concern. Significantly, the public perceives procedural fairness to be lower in traffic, family, and small claims cases than in other types of cases. These are precisely the areas where court-appointed temporary judges most often serve. Hence, the results of that

survey suggest that an effective, short-term way to improve public trust and confidence in the trial courts would be to enhance the quality of temporary judging.[3]

A second development indicating public concern and interest in improving the quality of temporary judging is last year's enactment of two bills that increase the jurisdictional limits in small claims cases to $7,500 for natural persons, effective January 1, 2006.[4] This new legislation not only increases jurisdictional limits but also imposes new statutory requirements to improve the quality of training of temporary judges in small claims cases. The legislation specifically requires that all temporary judges in small claims proceedings receive certain ethics and substantive training by July 1, 2006.

Experience Required

Even before those developments, the need to improve and ensure the quality of temporary judging in the California courts was identified several years ago as an important issue to be addressed. In connection with trial court unification, the Legislature mandated the Three Track Study, a joint study by the Judicial Council and the California Law Revision Commission to consider the future of the state's three-tiered civil case processing system (composed of separate small claims, limited, and unlimited tracks). As part of this study, the Administrative Office of the Courts hired consultants to survey the three-tiered system, including small claims. Based on their observations, the consultants expressed concerns about the quality of temporary judging in small claims cases.[5]

Members of the Three Track Study Working Group, who reviewed the consultants' work in 2002, agreed that problems with the quality of temporary judging in small claims did exist. These problems affected proposals to increase the jurisdictional limits for small claims cases, and there was public resistance to increasing jurisdictional limits until the quality of judging in small claims cases could be improved. Furthermore, the Three Track Study Working Group concluded that the problems relating to temporary judging transcended the area of small claims. Issues relating to the quality of temporary judging were affecting not just civil cases, but all types of cases in which temporary judges are used.

As a consequence of all this, the rules to govern the selection, training, appointment, supervision, and evaluation of court-appointed temporary judges were developed. These rules will ensure the quality of temporary judging in the trial courts by establishing minimum education and experience requirements. They will provide guidance to temporary judges and the courts on avoiding conflicts and the appearance of impropriety. And the rules will provide direction to the trial courts on administering programs for court-appointed temporary judges.

Rule Highlights

Under one of the most important—and controversial—of the new rules, before appointment as a court-appointed temporary judge, an attorney must have completed a three-hour in-person course on bench conduct, demeanor, and fairness as well as a three-hour ethics course that may be taken by any means approved by the courts.[6] In terms of substantive training, the prospective temporary judge must have completed a three-hour course in each subject area in which he or she will be deciding cases. However, no training on case settlement is required. Also, the substantive law training may be taken by any means approved by the court, including in-person, by broadcast with participation, or online.[7]

Finally, the rules make it clear that courts may offer Minimum Continuing Legal Education (MCLE) credit for the courses that they provide and may approve MCLE courses provided by others as satisfying the substantive training requirements.[8]

The rules also specify the content of training on bench conduct and demeanor, on ethics, and on substantive areas of the law, such as small claims and traffic.[9] The Administrative Office of the Courts' Education Division/Center for Judicial Education and Research will assist courts by developing educational programs and training. The rules provide that attorneys may be appointed only after they have completed the educational requirements, subscribed the oath of office, and certified that they are aware of and will comply with Canon 6 of the Code of Judicial Ethics.[10]

Another key rule requires that all attorneys serving as temporary judges receive continuing education. Every three years, an attorney must complete courses on bench conduct and demeanor, ethics, and a course in each substantive area in which he or she decides cases as a temporary judge.[11]

Courts Have Time

Although the Judicial Council approved the new rules in December, the effective date is July 1, 2006. Furthermore, under the rules, several main provisions—including the new education and training requirements for temporary judges (outside the area of small claims)—will not need to be satisfied until January 1, 2007. This delayed implementation schedule should give all the superior courts sufficient time to prepare for and implement the new rules.

In addition, the Judicial Council directed the working group to return to the council's April meeting to report on a number of specific items and to receive a report from the Supreme Court Advisory Committee on the Code of Judicial Ethics. The issues referred to the advisory committee focus on the issues of disclosure and disqualification and use of temporary judge service in candidacies for public office and promotional or other publicly disseminated material. Canon 6 of the Code of Judicial Ethics already includes provisions for disclosure and disqualification that apply to temporary judges as well as judges and commissioners. The working group's report included recommendations to disqualify attorneys from serving as temporary judges in family law and unlawful detainer proceedings where the attorney holds himself or herself out to the public as

representing only one side in such cases or if the attorney represents one side in 90 percent or more of the cases in which he or she appears.

Support for New Judgeships

In the long run, the best means to ensure procedural fairness in the trial courts is to significantly increase the number of full-time judicial officers. The Temporary Judges Working Group recognizes this and strongly supports legislation to establish more judicial positions. But even if the judgeship legislation is enacted soon, it will provide for additional judges only over a period of years. For this reason, the council's immediate action—to improve the quality of procedural fairness by adopting rules for temporary judges—is an important step to improving public trust and confidence. CR

Robert B. Freedman is a judge of the Superior Court of Alameda County and co-chaired the Temporary Judges Working Group, which drafted the new rules for temporary judges.

Notes

1. Cal. Rules of Court, rules 243.10–15, 17–21.

2. David B. Rottman, Nat. Center for State Courts, *Trust and Confidence in the California Courts: A Survey of the Public and Attorneys,* pt. 1, Findings and Recommendations (2005), pp. 24–30, available at *www.courtinfo.ca.gov/reference/documents/4_37pubtrust1.pdf.*

3. *Id.* at p. 30.

4. Assem. Bill 1459 [Canciamilla], Stats. 2005, ch. 618; Sen. Bill 422 [Simitian], Stats. 2005, ch. 600.

5. Steven Weller et al., Policy Studies, Inc., *Report on the California Three Track Civil Litigation Study* (July 31, 2002), p. 44, available at *www.circ.ca.gov/pub/BKST/BKST-3TrackCivJur.pdf.*

6. Cal. Rules of Court, rule 243.13(c)(1)–(2).

7. *Id.,* rule 243.13(c)(3).

8. Advisory Com. com., foll. rule 243.14.

9. Cal. Rules of Court, rule 243.14.

10. *Id.,* rule 243.15.

11. *Id.*, rule 243.17.

The Rule Drafters

Considerable work by the broad-based Temporary Judges Working Group went into the development of the rules. The working group, appointed in 2004 by William C. Vickrey, Administrative Director of the Courts, and led by Judge Robert B. Freedman and Judge Douglas P. Miller, included Judicial Council members, former presiding judges, representatives from five advisory committees, specialists in judicial ethics, judicial officers who regularly train temporary judges and commissioners, the director of Legal Services Outreach of the State Bar of California, and an attorney from the Department of Consumer Affairs who assists the courts in training temporary judges.

The working group received invaluable assistance in its work from Patrick O'Donnell, a senior attorney with the Administrative Office of the Courts' Office of the General Counsel.

TEMPORARY JUDGES WORKING GROUP

Hon. Robert B. Freedman
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Hon. James R. Lambden
Associate Justice of the Court of Appeal, First Appellate District, Division Two

Hon. Laurie D. Zelon
Associate Justice of the Court of Appeal, Second Appellate District, Division Seven

Hon. Julie M. Conger
Judge of the Superior Court of Alameda County

Hon. Michael T. Garcia
Judge of the Superior Court of Sacramento County

Hon. Frederick Paul Horn
Judge of the Superior Court of Orange County

Hon. Mary Thornton House
Judge of the Superior Court of Los Angeles County

Hon. Curtis E. A. Karnow
Judge of the Superior Court of San Francisco County

Hon. Arnold D. Rosenfield
Judge of the Superior Court of Sonoma County

Hon. David Rothman (Ret.)
Judge of the Superior Court of Los Angeles County

Hon. B. Tam Nomoto Schumann
Judge of the Superior Court of Orange County

Hon. David Sotelo
Judge of the Superior Court of Los Angeles County

Hon. Douglas G. Carnahan
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Hon. Harvey E. Goldfine
Commissioner of the Superior Court of Marin County

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There Is No Terror in Harmless Error

By
Arthur Gilbert

In his opening monologue at last year's Academy Awards, comedian host Chris Rock ridiculed actor Jude Law. He did not get laughs, and he even drew a rebuke later that evening from actor Sean Penn.

Speaking of law, late-night television host Jay Leno, commenting on the recent shooting accident involving Vice-President Dick Cheney, got laughs with this observation: "When people found out Cheney had shot a lawyer, his popularity went up to 92 percent."

It is doubtful Jay Leno feels that way about his own lawyers, but why did one joke work and not the other? Most people like Jude Law, and apparently no one likes lawyers. Even those who would dispute this sweeping statement would agree that lawyers are generally held in disrepute. Lawyer-haters, if pressed to be more specific, are likely to point fingers of revulsion at criminal defense attorneys. They might begrudgingly acknowledge the cunning and shrewdness of lawyers who have managed to get obviously guilty celebrity clients "off," and thus have become celebrities themselves, through clever manipulation of the juries and the legal system in general. This backhanded compliment is more than offset by disapproval of the lawyer's questionable accomplishment, which reflects moral depravity.

Earlier this year, in the annual lecture series honoring the late Professor David Mellinkoff at the UCLA School of Law, Professors Michael Asimow and Richard Weisberg discussed the dilemma of the lawyer who knows his or her client is guilty. By drawing on Mellinkoff's important work *The Conscience of a Lawyer* (St. Paul: West Publishing, 1973), Asimow and Weisberg examine how public culture looks at the legal profession. No longer are we in the halcyon days of *Perry Mason,* in which the criminal defense attorney was the good guy. Asimow points out that in the movie *The Devil's Advocate,* the lawyer is not Santa—he is Satan, the devil himself, played with demonic delight by Al Pacino.

Earlier this year, in the annual lecture series honoring the late Professor David Mellinkoff at the UCLA School of Law, Professors Michael Asimow and Richard Weisberg discussed the dilemma of the lawyer who knows his or her client is guilty.

Polls show that lawyers rank at the bottom of the professional heap, yet 86 percent of lawyers responding to a poll conducted by the magazine *California Lawyer* in 2005 were content with their work, and 57 percent were "extremely or very satisfied with their jobs." (See *California Lawyer*, July 2005.)

And this includes criminal defense attorneys and public defenders, for whom not-guilty verdicts or reversals on appeal are rare.

In *The Conscience of a Lawyer,* Mellinkoff writes about a famous murder case in London in 1840. The defendant, a valet-butler, was charged with the murder of his employer, nobleman Lord William Russell. Renowned criminal defense attorney Charles Phillips defended the case. Midway through the trial, the defendant confessed to Phillips that he had committed the crime. What was Phillips to do? His co-counsel urged him to go on, as did the judge—to whom, remarkably, he disclosed his ethical dilemma. Phillips carried on and vigorously cross-examined a key witness to suggest she was a liar who had been involved in the crime, even though he knew she was telling the truth.

Despite Phillips's efforts, the defendant was found guilty and hanged. The public got wind of the defendant's confession to Phillips and denounced him for improperly defending a person he knew to be guilty. Asimow and Weisberg point to the similarity in the recent case of defendant David Westerfield, convicted in 2002 of murdering a little girl in San Diego. When a plea bargain did not occur, Westerfield's attorney was forced to try the case even though he knew of his client's guilt. There was a public outcry of revulsion over the defense attorney's efforts to

Comedian Chris Rock's joke about Jude Law at the 2005 Academy Awards bombed while late-night TV host Jay Leno's lawyer joke worked.

AP/WORLDWIDE PHOTOS

free his client. Of course, the defense attorney's conduct was professionally ethical, and nothing came of the demands from certain news commentators for his disbarment.

Asimow and Weisberg argue that popular culture condemns the defense attorney who takes an adversarial role when he or she knows the client is guilty. Indeed, the popular view is that an attorney has a moral obligation to ensure that the guilty client is convicted. In the movie *And Justice for All*, the defense attorney, again played by Al Pacino, argues to the jury that his client is, in fact, guilty of rape! Not surprisingly, the movie did not depict the reversal on appeal or the disbarment of the attorney.

A notion not widely supported in the entertainment media is that the defense attorney's role is to force the prosecution to prove its case beyond a reasonable doubt. In maintaining this standard, society achieves a high level of assurance that the innocent will not be convicted, even if that means that on occasion the guilty are not convicted. But in this era of anxiety we need a sense of security, order, and certainty. The public recoils at the thought of an attorney's becoming, in effect, the defendant's accomplice and upsetting society's equilibrium.

I spoke with law professor and philosopher Herbert Morris about the public's troubled mood in regard to the criminal justice system. Professor Morris suggests that our legal system presupposes an order in our society, in which we are free agents. I suppose in such an ordered world (however illusory it may be), if the guilty are not punished, we experience a sense of disorder and helplessness. Woody Allen's recent movie *Match Point* illustrates how unsettling it is to see the guilty escape the legal system's penalties, even though the offender may suffer the enduring anguish of psychological punishment.

I do not believe the public's disenchantment with criminal defense attorneys who represent defendants charged with horrendous crimes has affected the manner in which the attorneys represent their clients. After all, they are not hired or appointed to "lose" the case. They are dedicated professionals who are as committed as ever to putting the prosecution to the test.

I do think *society's need to punish the guilty* has had a more-than-subtle influence on our justice system—but not necessarily to its detriment.

This influence is manifested in the manner in which courts review criminal cases—such as by observing the harmless error doctrine.

Suppose you are reading a novel about foreign intrigue and come across the following sentences: "Swarthy armed errorists surrounded the ambassador's limousine"; "The renegade political faction used error as an instrument of policy." No doubt it would occur to you that the word *error* was itself an error. The word should have been *terror.* But our evaluation of the novel's literary merit would not hinge on the typographical errors. We would characterize these errors as, at best, harmless. We would not tell the author to go back to his word processor and start all over again.

The harmless error doctrine has gained considerable popularity in criminal law during the past few decades. A random perusal of criminal cases in the recent California Reports reveals its ubiquity. Of course, whether error is harmless or harmful depends upon a judge's evaluation of it. The harmless error doctrine posits that certain judicial mistakes occurring during trial, like the typos in our novel, do not necessarily unduly prejudice the defendant and therefore do not require a retrial.

The harmless error doctrine may reflect society's demand that the guilty be punished. Some argue that its prevalence weakens the lawyer's adver-

sarial role. But the adversarial defense model is as strong as ever. Does the harmless error doctrine foster prosecutorial insouciance? Is it a safety net that discourages the prosecution from preparing rigorously for trial and paying assiduous attention to detail? Although guilty verdicts in criminal cases have always greatly outnumbered acquittals and reversals, victory is not a certainty. Today the prosecution is no less prepared and no less vigorous in its pursuit of convictions than in the past.

However popular culture may distort our justice system in portraying it, the goal of punishing the guilty is understandable. It is also legitimate, as long as that goal is pursued in accordance with procedural due process. It is the duty of the courts to ensure that this occurs through carefully reasoned decisions.

Whether harmless error has gained currency from popular notions of justice or not, it is a valid legal principle that, when appropriately applied, promotes confidence in our legal system without sacrificing the rights of the accused.

Our legal system does its best to ensure predictability and certainty. But it cannot be any more perfect than the society in which it operates. Our system of justice is intact notwithstanding popular culture's misapprehensions about it. Harmless error merely acknowledges that a fair trial is not synonymous with a perfect trial. And that may be something with which everyone can agree. CR

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

Kay Farley

How the Deficit Reduction Act Affects State Courts

BY KAY FARLEY

Congress has approved the Deficit Reduction Act (DRA) of 2005 (Sen. 1932, 109th Cong., 1st Sess. (2005)), and President Bush signed the legislation in early 2006 (Pub.L. 109-171 (Feb. 8, 2006) 120 Stat. 4). Overall, the bill contains both positives and negatives for state courts. Here are highlights of the provisions of particular interest to state courts:

Child Support Enforcement

The DRA shifted additional responsibility for funding the title IV-D child support enforcement program to state and local governments. It also incorporated some of the enhancements to the child support enforcement program that were included in the pending legislation reauthorizing the Temporary Assistance for Needy Families (TANF) program.

Federal matching rate. The proposed reduction of the federal matching rate from 66 percent to 50 percent was not included in the legislation. The federal matching rate for laboratory costs incurred in determining paternity is reduced from 90 percent to 66 percent, effective October 1, 2006.

Federal matching for incentive payments. The option for states to use federal incentive dollars that are reinvested in the child support enforcement program as a match for state funds to draw down additional federal funds is eliminated effective October 1, 2007. States that have used this option and are unable to restructure the financing of their programs to use state and local general-fund dollars to replace the incentive payments for matching purposes could experience a significant loss in program revenue. An effort is currently under way to determine the impact of this provision on individual states.

Threshold for passport denials. The threshold for triggering passport denial to individuals owing past-due child support is lowered from $5,000 to $2,500 effective October 1, 2006.

Mandatory fee for services. Child support enforcement agencies will be required to collect an annual mandatory $25 fee for successful child support collections conducted on behalf of families who have never received TANF benefits. The agencies will be required to begin collecting the fees effective October 1, 2006. The first $500 collected will be exempt from the fee. States will have the option of collecting the fee from the custodial parent or the noncustodial parent or of paying the fee as a state government expense.

Mandatory review and adjustments. Child support enforcement agencies will be required to conduct reviews of TANF-related support orders every three years for possible modification of the support order amount. If the agency determines that a change of circumstance has occurred, motions to modify the child support order will be filed. These mandatory reviews will be reinstated effective October 1, 2007.

Medical support from either parent. Child support enforcement agencies are required to seek medical support for children from either the custodial or noncustodial parent or both. The agencies are now also required to enforce medical support against a custodial parent if health-care coverage is available to the custodial parent at a "reasonable" cost. (The legislation does not define *reasonable.*) *Medical support* is defined as including health-care coverage, such as coverage under a health insurance plan (including payment of the costs of premiums, co-payments, and deductibles) and payment of medical expenses incurred on behalf of a child. These requirements are effective October 1, 2005.

Information comparisons with insurance data. The Office of Child Support Enforcement (OCSE) is authorized to compare information concerning individuals owing past-due child support with information maintained by insurers (or their agents) concerning insurance claims, settlements, awards, and payments. This requirement is effective October 1, 2005.

Use of Tax Refund Intercept Program. The Tax Refund Intercept Program was amended to permit interception of federal tax refunds to collect past-due child support on behalf of children who are no longer minors. This provision is effective October 1, 2007.

Tax Refund Intercept Program priorities. The Tax Refund Intercept Program was also amended to raise the priority of all child support debt (TANF and non-TANF) to second highest, after federal tax debts. This provision is effective October 1, 2009.

Child Welfare

The DRA included several of the court recommendations of the Pew Commission on Children in Foster Care and language clarifying that states have discretion to set their own policies related to public access to abuse and neglect court proceedings. The DRA also included some increase in funding while restricting or eliminating the

eligibility of certain expenses for federal funding.

New grant program to strengthen data collection. A new grant program to assist state courts in strengthening data collection and implementing court performance measures was authorized. Mandatory funds of $10 million per year for fiscal years 2006–2010 were appropriated. These funds were added to the Court Improvement Program (CIP). The Chief Justices in the 50 states, the District of Columbia, and Puerto Rico can apply for these funds. As with the original CIP grant, each eligible jurisdiction that applies for the funds will receive a minimum of $85,000 plus a portion of the remaining funds based on the jurisdiction's relative share of the population under age 21. It is unclear how soon states will be able to apply for fiscal year 2006 funds. Information on the application process will be shared as soon as it is available.

New grant program for training. A new grant program to assist state courts in providing training for judges, attorneys, and other legal personnel involved in child protection cases was authorized. Mandatory funds of $10 million per year for fiscal years 2006–2010 were appropriated. These funds were also added to the CIP fund. The Chief Justices in the 50 states, the District of Columbia, and Puerto Rico can apply for these funds. As with the original CIP grant, each eligible jurisdiction that applies for the funds will receive a minimum of $85,000 plus a portion of the remaining funds based on the jurisdiction's relative share of the population under age 21. It is unclear how soon states will be able to apply for fiscal year 2006 funds. Information on the application process will be shared as soon as it is available.

Collaboration between courts and child welfare agencies. States must demonstrate "meaningful and on-going collaboration" among state child welfare agencies, courts, and, where applicable, Indian tribes as a condition of receiving federal child welfare or foster care funding.

Promoting Safe and Stable Families Program. An additional $40 million in mandatory funding was added to the Promoting Safe and Stable Families Program, part of title IV-B. This addition will have no impact on the existing CIP program. The existing CIP program gets a set-aside of $10 million per year of any mandatory funding (regardless of the amount of mandatory funding) and 3.3 percent of any additional discretionary funding.

Public access to abuse and neglect court hearings. The legislation includes language clarifying that states have discretion to set their own policies related to public access to abuse and neglect court proceedings.

Federal matching funds for certain relative placements. Federal matching funds are prohibited for children who are placed with relatives who are not licensed by the state as a foster home. This provision sets aside the Ninth Circuit Court of Appeals' decision in *Rosales v. Thompson* (2003) 321 F.3d 835. Separate from the *Rosales* provision, federal matching funds are also time-limited for casework when children are placed with unlicensed relatives or are transitioning from mental health or detention facilities to foster homes.

Targeted case management. States are prohibited from providing health benefits (targeted case management, or TCM) to foster children if any other third parties are liable to pay for such services.

Temporary Assistance for Needy Families

The DRA included reauthorization for the Temporary Assistance for Needy Families program and some of the proposed amendments to that program.

Reauthorization. The TANF program was reauthorized through fiscal year 2010, at the current level of $16.5 billion a year for basic block grants.

Healthy Marriage and Family Formation Program. A competitive grant program to promote healthy marriages and family formation is funded at $150 million for fiscal years 2006–2010. The grant program purposes include divorce education and reduction programs. Applicants for the funds must document how they will address issues of domestic violence in their proposed programs.

Responsible Fatherhood Program. Fifty million dollars of Healthy Marriage and Family Formation Program funds are reserved to promote responsible fatherhood. Divorce education and reduction programs can also be funded under this competitive grant program. Applicants for the funds must document how they will address issues of domestic violence in their proposed programs.

The complete text of the legislation can be found at *http://thomas.loc.gov.* CR

Kay Farley is executive director of the Government Relations Office for the National Center for State Courts in Washington, D.C.


J. Richard Couzens


Tricia Ann Bigelow

Imposing Fines Not As Easy As It Looks

BY J. RICHARD COUZENS AND TRICIA ANN BIGELOW

There is much for trial judges to consider and remember when wending their way through California's complex scheme of restitution, parole, and probation revocation fines. Penal Code section 1202.4(f) specifies that in any criminal prosecution where a victim suffers economic loss, the defendant will be obligated to make restitution as a condition of his or her sentence. In addition, the court must impose restitution fines that will be deposited in the State Restitution Fund.

The court must impose a restitution fine "commensurate with the seriousness of the offense" of not less than $200 nor more than $10,000 in any felony case and a restitution fine of not less than $100 nor more than $1,000 in any misdemeanor case. (*Id.,* § 1202.4(b)(1).) Imposition of the fine is mandatory unless the court finds "compelling and extraordinary reasons" for not doing so. Inability to pay is not sufficient reason. Any finding of compelling and extraordinary reasons must be stated on the record. (*Id.,* § 1202.4(c).) If the court does find sufficient reason not to impose the fine, the court must order the defendant to "perform specified community service," unless it finds additional compelling and extraordinary reasons not to impose such a requirement. (*Id.,* § 1202.4(n).)

The court is given wide discretion in setting the amount of the restitution fine. Under section 1202.4(b)(2), if state prison is imposed the court may set the restitution fine at $200, multiplied by the number of years imposed, multiplied by the number of felony counts. If the fine is set above $200 for any reason, however, the court must "consider any relevant factors including, but not limited to, the defendant's ability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime." (*Id.,* § 1202.4(d).) The determination of the defendant's ability to pay can include his or her future earning capacity. The defendant has the burden of proving his or her inability to pay the fine. Although the court must *consider* many factors in imposing a fine over the minimum amount, the court is not required to make express *findings* on each of the factors considered in setting the amount of the fine. (*Ibid.*) The maximum fine in a felony case, regardless of the number of counts or victims, is $10,000. (*People v. Blackburn* (1999) 72 Cal.App.4th 1520, 1534.)

In addition to the restitution fine required by section 1202.4(b), the court must impose restitution fines under section 1202.44 if probation is granted, and under section 1202.45 if the sentence includes a period of parole. These fines, imposed in the *same amount* as set by the court under section 1202.4(b), are suspended pending the defendant's satisfactory completion of probation or parole.

The obligation to impose the additional parole revocation fine under section 1202.45 can arise under several different sentencing scenarios. The fine must be imposed if the defendant is sentenced in an original proceeding to state prison. (*People v. Terrell* (1999) 69 Cal.App.4th 1246.) The fine must be imposed at the original sentencing if the defendant is sentenced to state prison but *execution* of the sentence is suspended pending completion of probation. (*People v. Calabrese* (2002) 101 Cal.App.4th 79; *People v. Tye* (2000) 83 Cal.App.4th 1398.) The court is not required to impose the assessment under section 1202.45 at the original sentencing proceeding if the court suspends *imposition* of sentence. (*People v. Han-*

...in any criminal prosecution where a victim suffers economic loss, the defendant will be obligated to make restitution as a condition of his or her sentence.... Imposition of the fine is mandatory unless the court finds "compelling and extraordinary reasons" for not doing so.

nah (1999) 73 Cal.App.4th 270; *Tye, supra,* 83 Cal.App.4th at p. 1398.)

The court is not to impose the assessment if the sentence is life without the possibility of parole. (*People v. Oganesyan* (1999) 70 Cal.App.4th 1178.)

The parole revocation fine must be imposed at the time the defendant is sent to state prison after probation has been revoked where, in the original sentencing proceeding, the court suspended *imposition* of sentence. (*People v. Andrade* (2002) 100 Cal.App.4th 351.) The court may not add a new restitution fine under section 1202.4(b) because the original fine survives revocation of probation. (*People v. Arata* (2004) 118 Cal.App.4th 195.) The court should impose the parole revocation fine only in the same amount as the restitution fine imposed at the time probation was granted.

No reported case has yet addressed whether the court must impose both the 1202.44 parole and 1202.45 probation assessments when the defendant receives probation with execution of a state prison sentence suspended. Most likely the Legislature's intent was for both assessments to be imposed because both the probation and parole processes may be affected by a subsequent violation.

Generally restitution fines imposed under sections 1202.4(b), 1202.44, and 1202.45 are imposed in each case. The rules change, however, when a sentencing proceeding involves multiple cases. If the defendant is sentenced on a *consolidated* case, the court should impose only one set of restitution fines. (*People v. Ferris* (2000) 82 Cal.App.4th 1272.) If the defendant is sentenced on multiple *nonconsolidated* cases in the same proceeding, restitution fines may be imposed in each case, provided that the total of the fines imposed under each statute does not exceed $10,000. (*Ibid.*; *People v. Enos* (2005) 128 Cal.App.4th 1046; *People v. Schoeb* (2005) 132 Cal.App.4th 861.) This rule generally is applied when the cases have been brought through the criminal process together and some form of "package" resolution has been reached.

If the cases are entirely separate, not having been consolidated or negotiated together, the court may impose full, separate assessments. The most common situation of this type is the resentencing process required when a series of state prison sentences is imposed in different sentencing proceedings. The last judge to impose sentence is required to consider each of the restitution fines imposed in the previous proceedings. While there is no discretion to change the amount of the fines imposed in the previous proceedings, the judge has full discretion to set the fines in the last case in which the defendant is being sentenced. CR

J. Richard Couzens is a retired judge of the Superior Court of Placer County. Tricia Ann Bigelow is a judge of the Superior Court of Los Angeles County. They co-author California Three Strikes Sentencing *and frequently teach felony sentencing at programs of the Administrative Office of the Courts' Education Division/Center for Judicial Education and Research.*

Alameda Expands Its Elder Protection Court

Starting in February, all criminal cases involving elder abuse as well as other felonies in which the victim is 70 or older are now heard in the Superior Court of Alameda County's Elder Protection Court.

"This direct calendaring of elder abuse cases will ensure compliance with the statutory priority given to cases with senior victims," says Judge Julie M. Conger, who presides over the elder court. "It improves efficiency and uniformity of resolution and highlights Alameda County's devotion to this important area of the law."

How It Works

After arraignment and appointment of counsel in the originating county courthouse, a felony case involving a senior is transferred to Elder Protection Court for its remaining phases, including:

- Pretrial and preliminary hearings
- Law and motion matters
- Trials
- Plea resolutions
- Sentencing
- Monitoring terms of probation

These cases are heard in Judge Conger's courtroom on Fridays at 9 a.m.

At 11 a.m., she presides over a separate calendar dedicated to seniors requesting civil protection orders.

"We often see abused elders involved in both criminal and civil actions," says Judge Conger. "Now we can hear these cases on one day, at one location, in front of one judge."

Elder Protection Court Helping Hundreds of Seniors

Judge Conger in 2002 spearheaded the Alameda court's original elder protection court—the precursor to the newly expanded court. The original project established a dedicated civil calendar for elder abuse cases, making it easier for victims to navigate the court system, obtain restraining orders, and get help from partner agencies. That project helped more than 400 abused seniors.

National Group to Study Handling of Elder Abuse Cases

Last year, the National Center for State Courts (NCSC) formed a working group to improve the ways in which courts recognize and deal with cases involving elder abuse.

The NCSC recruited judges, court administrators, and other experts from government agencies, the medical field, and institutes on aging. California representatives include Judge Conger; Mary Joy Quinn, director of the probate court in San Francisco; and Bobbie Welling, a supervising attorney with the Administrative Office of the Courts (AOC), Center for Families, Children & the Courts.

The working group plans to release recommendations and a tool kit for courts later this year.

The AOC Center for Families, Children & the Courts will also study and report on effective models for handling cases of elder abuse. A grant from the Archstone Foundation will sponsor focus groups and interviews with judges, court staff members, and abused seniors.

Contacts

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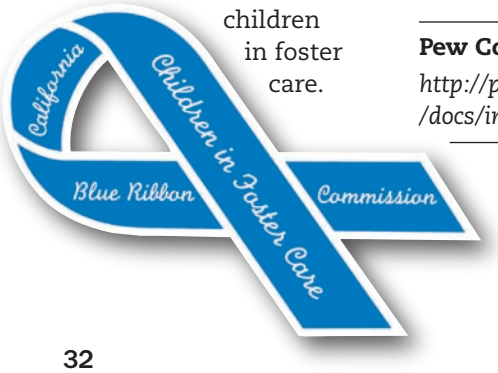
Blue Ribbon Commission on Children in Foster Care

California's new Blue Ribbon Commission on Children in Foster Care met for the first time in March to begin its two-year study on how to secure safe and permanent homes for California's 97,000 foster children, who make up more than 20 percent of the nation's entire foster child population.

The commission will focus on (1) strategies for persuading the federal government to become more flexible and lift restrictions on how money can be spent by the state and (2) improving the ways in which cases are handled in the courts—where often the most critical life decisions for children are made.

The new commission is one outgrowth of a national Pew Commission study that made practical, evidence-based recommendations relating to federal financing and court oversight of child welfare to improve outcomes for children in foster care.



Administrative Director of the Courts William C. Vickrey (second from left) presents a resolution outlining the commission's charge to (l–r) Court of Appeal Justice Richard D. Huffman, Supreme Court Justice Carlos R. Moreno, and Assembly Member Karen Bass.

Appointed by Chief Justice Ronald M. George, the blue ribbon commission is chaired by California Supreme Court Justice Carlos R. Moreno and is made up of judges, legislators, attorneys, and others with broad expertise in the foster care system.

Blue Ribbon Commission on Children in Foster Care Roster

www.courtinfo.ca.gov/pressc enter/newsreleases/NR25-06.pdf

Pew Commission Study

http://pewfostercare.org /docs/index.php?DocID=47

Judicial Branch Tackles Probate Conservatorships

The Judicial Council's Probate Conservatorship Task Force held two public hearings to discuss needed reforms and improvements in California's probate conservatorship system. The hearings, on March 17 in Los Angeles and March 24 in San Francisco, provided an opportunity for the task force to hear the views of members of the public, conservators, courts, the legal community, the law enforcement community, and others on how to improve the handling of probate conservatorship cases in California trial courts.

Discussions focused on increasing court oversight and accountability in permanent conservatorships, improving collaboration with key justice system partners, and finding new approaches to handling conservatorship cases.

Formed by Chief Justice Ronald M. George in January, the 16-member task force is chaired by Administrative Presiding Justice Roger W. Boren of the Court of Appeal, Second Appellate District (Los Angeles).

Hearing Agendas, Archived Audiocasts

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

Task Force Information, Roster

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

Imperial Helps Self-Helpers

At monthly workshops conducted by the Superior Court of Imperial County, self-represented litigants are learning how to fill out forms related to child support, visitation, and marriage dissolution.

"These are the most popular topics," says Diane Altamirano, the court's family law facilitator, who serves as faculty for the workshops. "Imperial County borders Mexico to the south, so I

see a lot of people in sad situations, often caught in cross-border issues. Our goal is to assist each litigant in overcoming literacy, language, and cultural barriers to justice."

Each workshop consists of a 30-minute overview followed by 15-minute individual consultations. The PowerPoint presentation is in both English and Spanish. The court promotes the workshops through its Web site and a sign-up sheet in the clerk's office, as well as by word of mouth.

Contact

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Superior Court of Imperial County

www.imperial.courts.ca.gov

Report Finds Juvenile Dependency Courts Improved, Challenges Ahead

Nearly all juvenile dependents have legal representation throughout the trial court action, but courts are struggling to conform to state and federal guidelines for timeliness.

The report *California Juvenile Dependency Court Improvement Program Reassessment* offers this and other findings from the most comprehensive study of California dependency courts ever undertaken—and the first such study since 1997—and makes recommendations. For example, the study found that few courts have access to meaningful data on dependency cases, and the report recommends standardizing data collection statewide.

The full report was released in December at the Beyond the Bench conference, a multidisciplinary gathering of professionals concerned with young people involved in the court system. The AOC Center for Families, Children & the Courts conducted the study and will work with the courts to implement many of the report's recommendations.

California Juvenile Dependency Court Improvement Program Reassessment

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

Contact

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San Mateo Launches Court for Complex Cases

To improve access and efficiency for its users, the Superior Court of San Mateo County launched a new complex litigation court for high-technology cases, cases involving science, and other complex cases.

Two judges are now assigned to preside over complex cases. Judge Carol L. Mittlesteadt has extensive experience in complex litigation as a judge and attorney, and Judge Steven L. Dylina is trained in science and technology cases.

The complex litigation court was opened in January at the county's central courthouse in San Mateo.

Contact

Presiding Judge George A. Miram, Superior Court of San Mateo County, 650-363-4511

Superior Court of San Mateo County

www.sanmateocourt.org

Supreme Court Takes to Airwaves to Educate Public

The California Supreme Court was on TV in February, part of its ongoing efforts to increase access to the courts and public understanding of the judicial system.

The court's February 14 oral arguments in Sacramento were broadcast live on the California Channel, a cable network frequented by 5.7 million viewers all over the state.

One of the cases had significant popular interest. It involved sexual harassment and First Amendment issues in the workplace related to the production of the *Friends* TV show.

More Appellate Courts Reaching Out

To introduce first-year law students to the appellate court system, the Court of Appeal, Second Appellate District, in March heard oral argument in front of 200 students at the University of Southern California. The court distributed case summaries to the students before the event.

The Third Appellate District in January heard oral argument at Tracy High School in San Joaquin County. Students got to see the session first-hand and then ask questions of the justices, such as "Can a judge allow a jury's decision to stand if he or she knows it is wrong?" or "Considering the cases you've heard in your career, does this

job change how you view people or situations?"

Similar outreach events for students were also held recently by the First and Fourth Appellate Districts.

L.A. Judge Honored for Helping Kids

Judge Michael Nash

Judge Michael Nash, Superior Court of Los Angeles County, was named Judge of the Year by the National Court Appointed Special Advocate (CASA) Association. The association honored Judge Nash for his tireless efforts on behalf of children in the court system.

Judge Nash has served as supervising judge of Los Angeles County's dependency court and presiding judge of the court's juvenile division. Among many accomplishments during his tenure, he has supported the CASA program, making it a core part of the court. He also helped pioneer Adoption Saturdays, which has facilitated the placement of hundreds of foster children into permanent homes.

Judge Nash is a member of the Judicial Council, co-chaired the council's Family and Juvenile Law Advisory Committee, chairs the Juvenile Court Judges' Association of California, and is a member of California's new Blue Ribbon Commission on Children in Foster Care.

Law Librarians Address Important Issues

Law librarians for the Courts of Appeal and the California Judicial Center Library held their annual meeting March 21 at the Court of Appeal, Fifth Appellate District, in Fresno to discuss important issues facing court libraries. Topics discussed were identity theft, online cataloging, disaster preparedness, budget updates with the AOC's Finance Division, technology updates with the AOC's Information Services Division, California regulations on Westlaw, urgency legislation on LexisNexis, and a review of individual services and training that the librarians provide for their courts.

The law librarians are responsible for providing reliable, accurate, and efficient resources in the library collections. The court libraries are much more than a physical collection of books. Online resources are constantly expanding, and the librarians must evaluate these resources. They must be aware of the rapidly changing ways that information is presented. By working together and sharing valuable information, the law librarians can provide an up-to-date, rich resource for California's judicial branch.

Probation Officers Recognize Judge Leonard

Judge Jean Pfeiffer Leonard, Superior Court of Riverside County, was named 2005 Judicial Officer of the Year by the Chief Probation Officers of California. Judge Leonard was honored for her history of providing innovative programs in the areas of criminal justice and family law, including foundational work on Riverside County's adult, juvenile, and family law drug court programs.

Judge Leonard is active in the California Judges Association and serves as chair of the Judicial Council's Collaborative Justice Courts Advisory Committee. She also chairs the Tribal Court Collaboration, which assists River-

Law librarians for the Courts of Appeal and California Judicial Center Library met recently in Fresno.

side County Indian tribes in maintaining a stable tribal court system.

Judicial Milestones

The Governor announced the following judicial appointments.

Jose L. Alva, Superior Court of San Joaquin County

Steven M. Basha, Superior Court of Yolo County

Laura J. Birkmeyer, Superior Court of San Diego County

James A. Boscoe, Superior Court of Tuolumne County

Paul P. Burdick, Superior Court of Santa Cruz County

Suzette Clover, Superior Court of Los Angeles County

Eugenia A. Eyherabide, Superior Court of San Diego County

Tia Fisher, Superior Court of Los Angeles County

Hector Guzman, Superior Court of Los Angeles County

Judge Brad R. Hill, Court of Appeal, Fifth Appellate District

Morris D. Jacobson, Superior Court of Alameda County

Richard S. Kemalyan, Superior Court of Los Angeles County

Peter H. Kirwan, Superior Court of Santa Clara County

Kurt E. Kumli, Superior Court of Santa Clara County

John (Jack) Laettner, Superior Court of Contra Costa County

Thomas T. Lewis, Superior Court of Los Angeles County

Judge Nora M. Manella, Court of Appeal, Second Appellate District

Julie A. McManus, Superior Court of Nevada County

Patricia M. Murphy, Superior Court of Ventura County

Ronald A. Northup, Superior Court of San Joaquin County

Stephen P. Pfahler, Superior Court of Los Angeles County

Diane M. Price, Superior Court of Napa County

Craig Richman, Superior Court of Los Angeles County

Judge James A. Richman, Court of Appeal, First Appellate District

Stephan G. Saleson, Superior Court of San Bernardino County

Teresa M. Snodgrass-Bennett, Superior Court of San Bernardino County

Douglas W. Sortino, Superior Court of Los Angeles County

Judge Michael W. Sweet of the Superior Court of Yolo County to the Superior Court of Sacramento County

Victor L. Wright, Superior Court of Los Angeles County

The following justices and judges departed from the bench.

Zel Canter, Superior Court of Santa Barbara County

Dennis G. Cole, Superior Court of San Bernardino County

Matias R. Contreras, Superior Court of Imperial County

Stephen G. Demetras, Superior Court of San Joaquin County

Merle R. Eaton, Superior Court of Contra Costa County

Thomas P. Hansen, Superior Court of Santa Clara County

J. Gary Hastings, Court of Appeal, Second Appellate District

Peggy Fulton Hora, Superior Court of Alameda County

Charles C. Kobayashi, Superior Court of Sacramento County

Richard G. Kolostian, Sr., Superior Court of Los Angeles County

Thomas O. LaVoy, Superior Court of San Diego County

Frederick Anthony Mandabach, Superior Court of San Bernardino County

William F. Martin, Superior Court of Santa Clara County

Wesley R. Mason III, Superior Court of San Diego County

William A. McKinstry, Superior Court of Alameda County

Peter H. Norell, Superior Court of San Bernardino County

William C. Pate, Superior Court of San Diego County

William G. Polley, Superior Court of Tuolumne County

Roland N. Purnell, Superior Court of Ventura County

Lawrence T. Stevens, Court of Appeal, First Appellate District

The following judges died recently.

Arthur Danner III, Superior Court of Santa Cruz County, died January 28.

Robert J. Sandoval, Superior Court of Los Angeles County, died February 28.

Staff Moves

Benjamin D. Stough is the new executive officer of the Superior Court of Mendocino County.

Lawyers Must Close the Justice Gap

By
Dave Jones

As Chief Justice Ronald George has reminded us, "If the motto 'and justice for all' becomes 'and justice for those who can afford it,' we threaten the very underpinnings of our social contract." Chief Justice George has done much to promote equal access, joined by State Bar leaders who convened the California Commission on Access to Justice, which has reported on the disturbing—and increasing—disparities in our legal system and the daunting obstacles faced by the exploding number of pro se parties, many of whom face language barriers in addition to unawareness of legal rights and court procedures.

The magnitude of the need was underscored recently in a joint hearing of the Assembly Judiciary Committee and the Judicial Council. In testimony from a distinguished group of judges, lawyers, and others, we heard that legal aid providers are currently able to meet only a fraction of the demand for help. In 1996, California failed to meet 75 percent of the legal needs of poor people. Ten years later, we are stuck at the same level—still failing to meet at least 75 to 80 percent of these needs.

Despite the establishment of the state's Equal Access Fund and impressive gains in efficiency and fundraising by legal aid programs, the current "justice gap" is estimated to be at least $350 million, largely because of federal funding cuts and escalating poverty rates. Put another way, there are about 10,000 low-income Californians per legal aid attorney, compared to approximately one civil attorney for every 300 persons in the rest of the population.

Although we lag far behind other states in total funding of legal services for the poor, California is not alone in this dilemma. Other states have responded with a number of innovative measures, including requiring every lawyer to report pro bono service hours and/or financial contributions as well as mandatory lawyer surcharges to support legal aid programs. These steps have reportedly led to dramatic gains in resources. My hope is that it will not be necessary to move to mandatory pro bono hours or surcharges, but as lawyers we can and must do more to live up to our professional responsibilities. I look forward to working with the State Bar to do more to facilitate voluntary contributions from lawyers to legal services for the poor.

The access commission has long urged that the Equal Access Fund meet at least 50 percent of the legal needs of the poor. We are currently more than $150 million short of that modest goal. If every California lawyer contributed only $100 to legal services for the poor (far less than the value of 50 hours of service expected by ABA rule 6.1), we would double the size of the Equal Access Fund this year, even though we would still fall well short of the access commission's goal of meeting even half the need.

State Bar President Jim Heiting has singled out the need for increased funding for equal access as one of the pressing issues facing the profession. President Heiting has also reminded us of the noble calling and great responsibilities of our profession and the high standards of ethics, public service, and problem solving to which we are bound. As he has pointed out, the solemn pledge of "liberty and justice for all" is a work in progress, and we are each integral players in its progression, either forward or back.

As lawyers, we know that access to justice generally requires representation by counsel. As officers of the court, we know that the absence of representation has a negative effect on the functioning of the judicial system. As citizens of California, we know that a viable system for the orderly resolution of disputes is not just a nice aspiration. Whether disputes are brought to the legal system for resolution or decided in less desirable ways depends in part on whether the courts are accessible to all who face legal problems. Nor do we encourage respect for the law if, as a recent Judicial Council survey reported, most Californians believe that low-income people fare worse in court than those of means. As taxpayers, we also know that the resolution of conflicts through the legal system offers financial and economic benefits by reducing the need for many state services.

We have far to go if we are to respect not just the abstract ideal but the practical reality of equal access. Lawyers who do pro bono work and make financial contributions deserve our respect. Unfortunately, too many still sit on the sidelines. Our profession should lead the way by contributing pro bono hours and financial, not just rhetorical, support to the principle of justice for all.

Dave Jones is a state Assembly Member and chair of the Assembly Judiciary Committee.

Nominate the Best!

Nominations will be accepted soon for the 2006 Distinguished Service Awards, to be presented at the Leadership Conference in November. These awards recognize individuals who exemplify the strengths of leadership that have improved the administration of justice statewide.

Nominate candidates for:

Jurist of the Year Award
Judicial Administration Award
Bernard E. Witkin Amicus Curiae Award

You can make a difference by acknowledging a leader who has made a difference!

Left to right: Justice Patricia Bamattre-Manoukian, Judge Frederick Paul Horn, Jody Patel, Karen M. Thorson, and Alba Witkin.

Congratulations to the 2005 Distinguished Service Awards Winners!

Just for Judicial Officers!

A section of the **Serranus Web site** brings together in one place all the resources geared specifically to California justices, judges, commissioners, and referees.

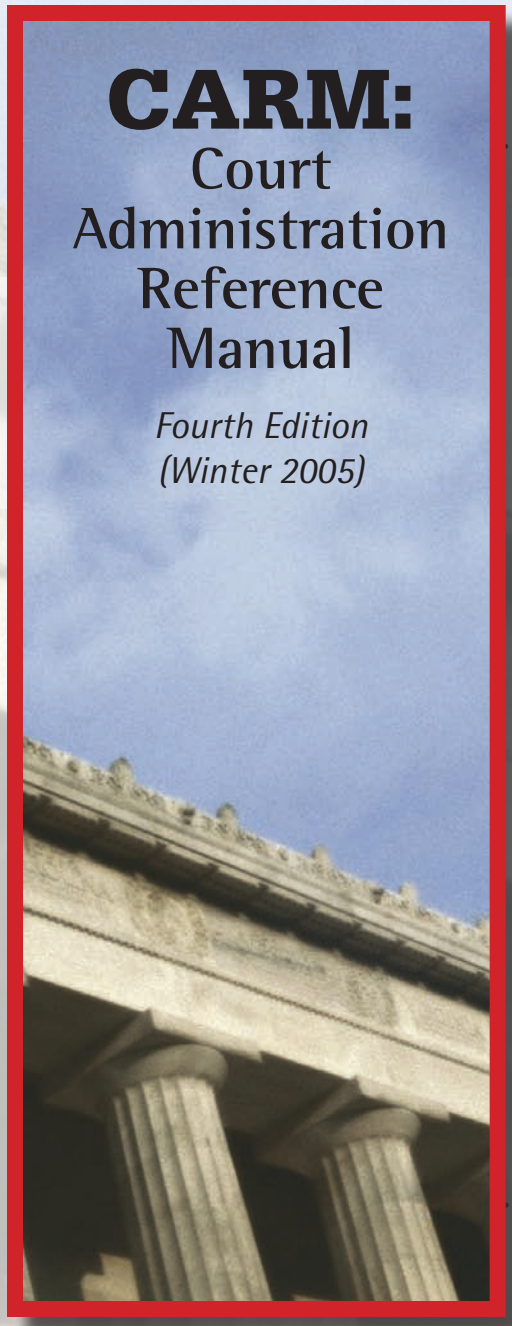
There's information on

- **Pay and benefits**
- **Ethics**
- **Benchbooks**
- **Education**
- **Retirement**
- **Jury instructions**

and more!

Sign up for access to Serranus by going to **http://serranus.courtinfo.ca.gov** and clicking the Apply for an Account link below the login fields.

http://serranus.courtinfo.ca.gov/jj



CARM has been updated!

The most comprehensive guide to administrative duties for presiding judges and executive officers.

Updated for changes to laws effective January 1.

Use CARM to:

- ***Know major administrative duties and responsibilities***
- ***Identify legal authorities and resources***
- ***Contact the right AOC subject-matter experts***

Go to Serranus at
http://serranus.courtinfo.ca.gov/reference/carm
to download CARM.

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