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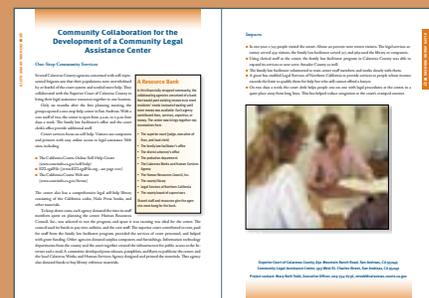
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SUMMER 2006

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This issue of *California Courts Review* marks the start of the second year of publication for our quarterly magazine. I hope you have found the first four issues to be informative, thoughtful, and entertaining.

Yet I want to emphasize that this is *your* magazine—one specifically designed to be by, for, and about California's judicial branch. For that reason, I urge all of you with perspectives on issues facing the branch to submit story suggestions. And if you don't feel qualified to write on an issue yourself, suggest one of your colleagues; they'll be complimented.

Because one of the main goals of this publication is to engender discussion within the judicial branch, we will be a little more provocative than we have been in the past. Our lead article, by Court of Appeal Justice Ignazio J. Ruvolo, presents a distinct perspective on the state of civil litigation in California and poses some large questions for judicial leaders to consider sooner rather than later. As always, we welcome different points of view, expressed either as letters to the editor or as feature articles.

For an entirely different worldview, read Judge Donald E. Shaver's article about his service on the International Criminal Court, the first supernational court created to try *individuals* for alleged war crimes. You'll be interested to learn whom the court turned to for guidance on trying such cases.

And from Los Angeles, Juvenile Court Judge Cynthia Loo offers a very human viewpoint on what it is like to handle cases involving young people and guns.

Finally, also from Los Angeles, Allan Parachini, public information officer for the Superior Court of Los Angeles County, gives us his expert opinion on what it is like for courts to deal with the media in high-profile cases. While not every court will face cases of such magnitude, Parachini's article provides useful advice for any court faced with intense media coverage of a newsworthy case.

I look forward to hearing your thoughts on any or all of these articles.

—Philip Carrizosa
Managing Editor

Letter

How many times have we reminded our children to properly thank those who have given gifts to them? How easily do we forget to do so ourselves?

This is a very belated thank-you to our colleague Judge William Pangman of the Superior Court of Sierra County, for the wonderful gift he has given each of us who need to impose a fine or fee or calculate a penalty assessment. In June, the most recent version of the Sentencing Fines and Fees Assistant will be released. The Assistant allows us to determine total fines and fees, calculate penalty assessments, and add additional assessments. It also assists in converting fines to community service.

Judge Pangman is recognized as the judicial force behind this resource. Judge Pangman devoted hundreds and hundreds of hours to designing the programs and verifying both their accuracy and user-friendliness for the techno-wizards among his colleagues as well as those of us who are not so computer-savvy.

A bit of background is in order. Statewide collection program efforts began in 2004 with the passage of Senate Bill 940 (Escutia) (Stats. 2003, ch. 275), which amended sections 68085 and 77208 of the Government Code and section 1463.010 of the Penal Code. The statute required the Judicial Council to establish a working group including representatives of the court and counties, the executive branch, and the Administrative Office of the Courts. It became immediately clear to the working group that a focused effort was needed to accurately identify current statutes authorizing or requiring fines, fees, penalty assessments, surcharges, and any other financial impositions that had some different label, and to ensure that this information would be available to every bench officer who would need to impose them. Judge Pangman was asked to head this effort as chair of the Standard Fine Schedule Subcommittee. No judicial officer was better suited to undertake this herculean task.

There are no fewer than 2,462 sections and subsections in seven codes that permit or require imposition of a fine, fee, penalty assessment, or surcharge. Some provisions deal with infractions only, some apply only to misdemeanors, some

Continued on page 35



A MESSAGE FROM THE CHIEF

Chief Justice Ronald M. George delivered these remarks at Public Counsel's 2006 William O. Douglas Award Dinner in Beverly Hills on June 8, 2006.

Good evening. Before I begin, I want to take a moment to congratulate Public Counsel on its 35th anniversary and on becoming the largest organization of its type in the world. Public Counsel is truly a shining example of the legal profession's abiding commitment to the cause of justice for all members of our community and of what we can accomplish when we all work together to make "access to justice" not just an aspiration but a reality.

I had the pleasure of participating in Public Counsel's Adoption Saturday Project a few years back. I appointed myself to sit as a judge of the Los Angeles Superior Court for the day, so I could preside over the finalization of the adoption of a child out of the foster-care system and into a loving family. In addition to Public Counsel, the juvenile court and its presiding judge, Michael Nash, and court personnel manage this award-winning program. The program has become an enormous success thanks to the many judges and the hundreds of lawyers, social workers, Department of Children and Family Services staff, and other stakeholders who generously volunteer their time. The Adoption Saturday Project has significantly shortened the time it takes to finalize adoptions and has reduced the backlog of cases that had built up over the years.

I was scheduled to preside over only one adoption. But as I heard the cases and personally experienced the joy of families coming together, exercising my judicial discretion I stayed on the bench and heard 10 cases. Only when I saw Judge Nash—whose courtroom I was oc-

cupying—fidgeting in the corner, waiting to get back to the bench so he could hear some cases himself, did I relinquish the bench. I have never experienced a more joyful day on the bench. The 20 judges handling cases that Saturday took care of more than 400 of the 1,000-case backlog.

That is why I was truly delighted to be asked to present the 2006 Law Firm *Pro Bono* Award. Each year, thousands of lawyers, from more than 100 law firms and corporations, volunteer their time and resources to represent Public Counsel clients. Last year alone, over 3,600 volunteers donated more than 130,000 hours handling pro bono matters for Public Counsel clients.

The scope of the cases handled by Public Counsel and its volunteers is far ranging. These matters include assisting victims of domestic violence, helping homeless children reconnect with mainstream society, transactional assistance to nonprofit organizations, assisting victims of consumer scams, and many other issues. The cases may be very different, but they all share a common ethic: lawyers and other professionals providing critical assistance to the most vulnerable members of our community.

Many of us entered the legal profession because we believed we could truly make a difference. The lawyers who work for—and with—Public Counsel, and the many who assist them, have indeed made an important difference in the lives of tens of thousands of individuals in the community. It is my pleasure tonight to present the 2006 Law Firm *Pro Bono* Award to this year's

distinguished honoree, the law firm of Sonnenschein Nath & Rosenthal.

Sonnenschein's pro bono accomplishments in the past year have been extraordinary. The firm has represented pro bono clients in some of the most complex asylum cases; worked on a wide array of community development projects, including a complex merger of two community-based health clinics; assisted victims of consumer scams; and litigated significant public-interest issues—all with supreme skill and tenacity.

The firm's pro bono commitment extends from its most senior partners to its junior associates and summer clerks. The percentage of professionals participating in pro bono work in Sonnenschein's Los Angeles office is one of the highest of any firm in recent years. In all of their efforts, the firm's volunteers have demonstrated professionalism, an extraordinary willingness to take on the most complex and difficult matters—sometimes under daunting deadlines—and an abiding commitment to making "justice for all" a reality.

During each of the last two years, Sonnenschein attorneys have been awarded Public Counsel's distinguished Advocate of the Year Award for their individual outstanding work on Public Counsel cases.

On behalf of Public Counsel, and most importantly the many vulnerable clients Sonnenschein has helped, please join me in congratulating the firm on its exemplary accomplishments, and the founding managing partner of Sonnenschein's Los Angeles office and a member of Public Counsel's board, Robb Scoular.

The Changing Face



of Civil Litigation

By
Ignazio J. Ruvolo

One Perspective on the Search for Vanishing Trials in California

For decades, population growth in this state has been increasing well beyond the growth of the judicial system. This imbalance has forced California's civil justice system into a new era in the last 20 years. The transformation has been largely in response to the urgent need to reduce chronic court backlogs and to eliminate repeated delays in getting cases to trial. It began at a time when it was common for cases to take five years to get to trial.

Contributing to the thirst for judicial reform have been concurrent structural changes occurring in the legal profession that dramatically increased the cost of traditional litigation. The 1980s began with a recession, which forced law firms to shift from seniority- to merit-based partner compensation systems. Partners and senior associates became "free agents," moving laterally to other firms, where they often received signifi-

cantly higher compensation as well as greater psychic rewards. Lateral moves had tremendous benefits for the acquiring firms, but they also increased costs. This increased expense was exacerbated by higher ratcheting of associate salaries, higher rents, and the capital costs of investing in computer-based technology. As a result, hourly rates broke well into triple dig-

its in just a few years for many firms. Litigation thus became significantly more costly for clients, making settlement, rather than trial, the more prudent choice for many litigants. Also, the 1986 California Civil Discovery Act "modernized" discovery, making procedures more detailed. This vastly increased the frequency and complexity of civil discovery and, thus, the cost and time needed to prepare for trial.

These changes in the legal landscape led to a dramatic rise in the development and use of sophisticated, private alternative dispute resolution (ADR) techniques. The rise of ADR, now principally in the form of mediation, has been generally viewed as a salutary development, and a robust body of literature discusses and confirms its benefits.¹

The judiciary has responded to these decades of change by embracing and encouraging ADR both by joining with private ADR in fashioning court-sponsored programs and by structurally reforming the civil justice system.

over the last several years. This reduction testifies to the success of court-sponsored and private ADR. However, while ADR is a proven success for many cases, there is evidence that a number of systemic failures are preventing courts from fulfilling their responsibility to continue providing traditional public justice.

For example, despite significant reductions in delay and in the volume of most court dockets, in some California counties litigants still face a nagging inability to obtain a firm trial date in the public courts. There have been reports recently of civil courtrooms being shut

of the dispute to the point where litigation is no longer cost-effective, even if the case can be assured a prompt, firm trial date. This cost becomes even more acute if the dispute involves “wasting assets,” where the corpus of the dispute (e.g., community property or estate assets) will be used to pay attorney and other litigation costs.

On the other hand, with increasing frequency, parties with substantial financial resources seem to be using the courts principally as a forum in which to conduct formal discovery, with the view that once this is accomplished, they can then forego the moribund trial option in favor of ADR. The courts have become venues where discovery and dispute management, and not adjudication, are the main goals, or where the trial court is used simply for law and motion, such as summary judgment, rather than for trial.

The prospect of actually going to trial is diminished further by the seeming lack of judicial control over the time that all segments of a trial take, not just voir dire. Trials have become time-inefficient, in and of themselves.⁴

Lastly, some lawyers have commented anecdotally, and with candor, that too often it seems that more senior judges nearing the end of their public judicial careers have been assigned to manage or try complex civil cases regardless of whether those judges have the civil experience or skills needed to do so successfully. Rather than risk the consequences of such a mismatch, counsel instead seek to divert the matter to a private forum where they can choose a neutral better suited, in their judgment, to settle, arbitrate, or even try the dispute.

Therefore, to reclaim cases unjustifiably lost to ADR, courts must be able to offer litigants a prompt, firm trial date, with the promise of a trial that will be time-commensurate with the nature and complexity of the dispute, before a judicial officer with the appropriate training and experience. The solution may also require discovery reform, in which courts take a more proactive role to ensure that discovery is reasonable

Did the architects of civil delay reduction efforts in the early 1990s intend that the judicial branch of government itself would always be in the ADR business, or was the court system simply to be used as a catalyst for the creation of private alternatives to traditional adjudicative processes?

Only recently has some attention been focused on these reforms to evaluate how they have affected the role of the courts and whether the public justice system has been improved by them.

The Vanishing Trial and Its Causes

The transformation broadly discussed above has led to a dramatic shift of disputes away from the courts within a relatively short period of time. This phenomenon has become known as the “vanishing trial” syndrome.² No single factor is generally considered to be responsible for influencing the continuing proliferation of ADR and the concomitant erosion of the courts as a forum for civil trials. Nevertheless, the change in the economics of traditional litigation provides a backdrop against which obstacles impeding the pursuit of traditional litigation paths must be measured.

First, without question, ADR works. Statewide, civil filings have consistently decreased by around 20 percent

down for a time in order to accommodate a backlog of criminal trials.³ The lack of firm trial dates largely results from limited available funding and other court resources needed to meet the increased, population-driven demand for services in some parts of the state.

Faced with the risk of multiple trial dates, many litigants lack the financial resources to seek justice in our state’s courtrooms, or the monetary value of their disputes simply does not justify the cost to litigate. Unless and until the public courts can assure litigants that they will go to trial without the expense, inconvenience, and delay attendant to multiple trial settings, it will be very difficult to entice them to return to the courts. As for smaller disputes that are inappropriate for ADR, courts will continue to force settlements where instead there should be trials.

Another factor contributing to the escalating “vanishing trial” is the hyperbolic emphasis in modern litigation on discovery. In many cases the cost of discovery diminishes the value

in its breadth and scope in relation to the contested issues and the dispute's monetary value. To this end, more and better use of the statutes governing economic litigation for limited civil cases (Code Civ. Proc., § 90 et seq.) would be helpful, as would consideration of a pilot program in which those pursuing cases of unlimited jurisdiction could opt for a truly fast-track trial regime by voluntarily submitting to the statutes governing limited-jurisdiction cases.

The Vanishing Trial's Effects

A problem emerging from this migration of civil cases away from the courts is the eventual effect on *stare decisis*. We are already beginning to see the atrophying of case law development in some substantive areas, such as state antitrust, construction, real estate, and

people, businesses, and government to order their affairs.

The impact on *stare decisis* may, in time, become so severe that the outcome of disputes involving these and other areas of law becomes unpredictable. If so, ADR will no longer be practical for those cases relying on risk-benefit analysis to guide their settlements. Ironically, we may see the day when parties are forced back into the courts in order to reinvigorate the law's development. However, for the middle term at least, the drought in case law development will become more troublesome both for the traditional courts and for ADR.

As noted earlier, because of its proven success in many appropriate cases, ADR, in all its forms at the trial-court level, is now part of the civil dispute resolution culture. Did the architects of civil delay reduction efforts in the early 1990s intend that the judi-

alternatives to traditional adjudicative processes? Surely many cases now actively managed by civil trial judges and sent to court-funded programs have the ability to pay their way in the private ADR system.

If the courts intend to stay in the ADR business for all time, some complain that they are not now competing with private ADR very successfully. One reason for this noncompetitiveness is inadequate funding. The trial courts do not have money for staff resources needed to ensure that court-run programs operate optimally. Also, courts cannot afford to pay for mediation services and must rely on voluntary panels that compete with fee-generating private ADR for the time of neutrals. Some believe that the courts must necessarily impose a level of procedural uniformity for court-sponsored ADR that is inimical to the creativity and flexibility at the heart of successful mediation.

Of perhaps greater concern is the growing view that ADR-related activities by the trial courts are divert-



Some argue that the benefits derived from dedicated complex civil case assignments do not justify the allocation of judicial resources needed to support these "boutique" courts.

ing money and resources away from the judiciary's core role—providing adjudicative processes to litigants. As noted, this harms those disputes better suited for adjudication than for ADR.

Because ADR has truly become part of the legal system's culture, perhaps then the courts can safely leave ADR largely to the private sector. If the judiciary limits its role in ADR, it will have the associated benefit of freeing judicial resources needed to shore up the court's adjudicative services. Case management, as it relates to ADR, might focus on identifying those civil cases that are suited for nontraditional resolution but involve parties who lack

state securities law, where the use of ADR is common. The danger from this is obvious: in time we will eliminate the reliable body of law necessary for

cial branch of government itself would always be in the ADR business, or was the court system simply to be used as a catalyst for the creation of private al-

the financial resources to employ ADR. These are the cases that should be the beneficiaries of court-sponsored ADR.

If public sentiment embraces the notion that the judiciary does not seem to be performing either function—ADR or trials—very well, the courts will face a cataclysmic decline in public confidence in their mission. The judicial system has been rightly perceived as providing a vital social safety net for our communities. Maintaining this public confidence is essential to the survival of the judicial branch.

Case Management

Along with new statutory delay reduction mandates and the emergence of modern ADR, a number of courts have eschewed their long-standing use of master calendaring in favor of a direct calendaring system as a further measure designed to reduce case backlogs and improve the time to disposition. Delay reduction advocates have concluded that the master calendar system has become inefficient and costly. Direct calendaring enables the assigned judicial officer to become familiar with the historical development of the case, thereby allowing more informed case management decisions to be made. It also reduces the per-case court time and resources expended and minimizes the parties' and lawyers' ability to game the system, including reducing the risk of forum shopping. Lastly,

departments remain motivated to use their best efforts to resolve cases.

Indeed, many of these results have been achieved. However, the direct calendaring system has a pernicious side, one not clearly visible until revealed by years of experience with it. Instead of reducing the gaming of the system by parties and lawyers, direct calendaring may have opened up greater opportunities for this to occur. For example, some complain that briefs in law and motion matters, including discovery disputes, have become weapons that some lawyers use more to demonize their opponent before the single assigned judge than to obtain relief. Consequently, the level of vitriol in briefs seems to have increased. To the extent this is occurring, it is contributing to the perceived widespread general decline in lawyer-to-lawyer civility.

However, an even more serious negative product of direct calendaring has arisen from one of the very benefits sought through the use of that system—the assigned judge's investment in the “success” of the case. Perhaps because the agony of civil delay is not easily forgotten, too often in recent years local court administrators have come to measure judicial talent more by “closure rates” and time to disposition than by whether the needs of the cases entrusted to a particular judge have been met and justice achieved. This misdirection has been aggravated by prolific case-management rule mak-



used to evaluate the skills of a judicial officer.

The growth of single-assignment “complex civil” departments in some courts has been fueled by the hope that this will further assist in delay reduction and inure cost savings to courts and litigants alike. It is argued that affording complex civil assignment judges time to focus on the litigation needs of this relatively small universe of cases at the same time relieves other civil departments of the burden of managing these resource-draining behemoths.

On the other hand, there is a counterargument that these complex cases—those involving sophisticated, financially independent individuals or entities represented by the most resourceful and experienced lawyers—are the least in need of institutional management.

The use of complex civil departments appears to pay dividends in terms of increasing case management efficiency, while at the same time re-

The judiciary needs to engage now in a vigorous debate to determine whether the current approach to civil justice is efficacious.

proponents assert that direct calendaring makes individual courts more accountable because their disposition rates and times can be captured statistically and reviewed by court administrators. This accountability may spur judges to “invest” in the success of their calendars (however that is measured) and, thus, may help ensure that

ing that has occurred at the highest levels of statewide judicial administration, sending an inescapable message to judges: process civil cases as quickly as possible to increase the capacity of this overburdened and underfunded branch of government to meet the burgeoning needs of our growing state. This institutional emphasis on expediency potentially perverts the measure

taining in the court system those cases most likely to assist in the development of substantive law over time. But removal of complex cases from ordinary civil case calendars eliminates most of the reasons justifying continued use of direct calendaring systems.

Some argue that the benefits derived from dedicated complex civil case assignments do not justify the allocation of judicial resources needed to support these “boutique” courts. The use of complex civil courts also gives voice to those who, perhaps incorrectly, view them as the prerogative of well-heeled commercial interests and, therefore, criticize the judiciary for providing two tiers of judicial services: one for the wealthy and a lesser one for the impecunious.

This challenge to the use of dedicated complex civil departments might be defused if critics were aware of data collected for the Administrative Office of the Courts (AOC) on the mix of cases served by these depart-

ments during the complex civil pilot program. Although one-quarter of the cases could be fairly characterized as commercial litigation (e.g., securities, antitrust, breach of contract/warranty, and business tort), over one-third (37.4 percent) were complex tort actions, and the remainder could be placed in either category.⁵

If consensus develops that direct calendaring systems have indeed produced unintended negative consequences, then the Judicial Council, perhaps in conjunction with the Civil and Small Claims Advisory Committee and the Education Division/Center for Judicial Education and Research of the AOC, should explore ways to improve the use of case management procedures in order to minimize counterproductive practices. Additionally, the Judicial Council might also consider instituting in select counties a pilot program building on the hybrid models used in San Mateo and Santa Clara Counties, where routine civil cases are assigned to different judges for case management, law and motion, and trial.

Conclusions

The judiciary needs to engage now in a vigorous debate to determine whether the current approach to civil justice is efficacious. This examination should include consideration of (1) whether the judicial system should continue to invest its resources in ADR for matters and parties that have the financial ability to use private ADR; (2) what possible reforms are needed to ensure prompt, and firm, trial dates and cost-efficient pretrial and trial procedures for cases for which ADR has been unsuccessful or is inappropriate; and (3) whether current case management systems, including direct calendaring and complex civil courts, provide benefits that justify the required investment of judicial resources and the perpetuation of these systems without significant change.

If that debate produces consensus that the experience of the last two de-

cedes merits further reform, judges, lawyers, and those involved in judicial administration should begin work, without delay, to implement those changes deemed best designed to restore the courts to a healthier balance between adjudication and settlement of disputes. RR

Ignazio J. Ruvolo is the presiding justice of the Court of Appeal, First Appellate District, Division Four.

Notes

1. Deborah M. Kolb and Judith Williams, *Everyday Negotiation* (San Francisco: Jossey-Bass, 2003); Carrie Menkel-Meadow, ed., *Mediation: Theory, Practice, and Policy* (Ashgate Press, 2001); Robert H. Mnookin, Scott R. Peppet, and Andrew S. Tulumello, *Beyond Winning* (Cambridge, Mass.: Harvard University Press, 2000); Christopher W. Moore, *The Mediation Process: Practical Strategies for Resolving Conflict*, 2d ed. (San Francisco: Jossey-Bass, 1996); Lawrence Susskind, Sarah McKernan, and Jennifer Thomas-Larmer, eds., *The Consensus Building Handbook* (Thousand Oaks, Calif.: Sage Publications, 1999). A recent search on Westlaw’s journal and law review database produced 1,457 articles with “mediation” in the title. (See Ruvolo, *Appellate Mediation—“Settling” the Last Frontier of ADR* (2005) 24 San Diego L. Rev. 177, 179–180, fn. 1.)
2. Marc Galanter, *The Vanishing Trial: An Examination of Trials and Related Matters in Federal and State Courts*, 1 J. Empirical Legal Stud. (2004).
3. “Riverside Halts Civil Trials to Catch Up on Criminal Caseload,” *San Francisco Daily Journal* (Dec. 5, 2005).
4. This should not be read as advocacy for the setting of arbitrary time limits on the arguments of counsel or the presentation of evidence. However, reasoned limits, appropriate to the matter under consideration, would only make public trials more attractive to litigants, witnesses, and juries.
5. National Center for State Courts, *Evaluation of the Centers for Complex Civil Litigation Pilot Program* (2003), pp. 46–47.





From Modesto to The Hague

By
Donald E. Shaver



AP/WORLDWIDE PHOTOS

Thomas Lubanga adjusts his headset (above) at the start of proceedings before the International Criminal Court in The Hague (left).

Thomas Lubanga is sitting patiently and intently.

Dressed professionally in a neat business suit and fashionable blue shirt with expensive tie, he easily could be mistaken for one of the lawyers. You would never suspect that, not too long ago, he was dressed in army fatigues while leading a militia rebel force known as

the *Forces patriotiques pour la libération du Congo*, or “FPLC,” in the Democratic Republic of the Congo. Now in custody in Courtroom #2 before the International Criminal Court (ICC) in The Hague, Netherlands, he is accused of grave war crimes: the kidnapping of hundreds of 15-year-old and younger boys into military service for use as soldiers in attacking civilian populations in the Ituri region of the Congo.

I am a California superior court judge, here, on the first paid sabbatical ever approved by the Judicial Council of California, to assist the International Criminal Court in preparing for its first criminal trial ever.

It didn’t start out that way. It all began one free afternoon with a little daydreaming about what I might want to do when I retire in another four years. I had heard about attorneys and judges who had volunteered to work with the International Criminal Tribunal for the former Yugoslavia, and knew that the ICC was just starting up. After a little Web surfing, I inadvertently stumbled across the “Visiting Professionals

ICC-CPI © DE BEELDREDAKTIE

Programme” for the ICC. It was perfect: long enough to get a good feel for everything, but short enough that I would not have to be retrained entirely upon my return to Modesto. Even better, it would not disrupt my retirement. However, when the sabbatical was approved, no one could have known that shortly before I was supposed to arrive, Lubanga would be turned over by the government of Uganda to the ICC for prosecution.

So events overtook the original modest plans, and now the Judicial Council has a chance to become a part of history and I have been eagerly pressed into service by the court here. Because this is the first ICC case, preparations are in high gear. The case is still with the Pretrial Chamber awaiting the “confirmation hearing” (their counterpart to the preliminary hearing), so the mood around the Trial Chamber, where I work, is slightly reminiscent of packing for a trip two weeks in advance and spending the remaining time trying to think if there is anything you have overlooked. As part of the preparations for the eventual trial, the Trial Chamber has prepared a detailed procedural manual, which they have asked me to review and comment on. In addition, the presiding judge would like to develop a quick reference tool, such as a benchbook, and has asked me to be involved in preparing that as well. When I mentioned that California uses a series of similar reference guides, the California Judges Benchguides, they were quite interested in seeing them as part of the effort to develop their own.

The International Criminal Court, the first permanent global war crimes court to try individuals, is the culmination of a dream dating back nearly 100 years. From as far back as the end of World War I, statesmen have envisioned an independent tribunal that could bring war criminals to justice in a fair and evenhanded manner. It was not until the Nuremberg trials following World War II, at which the crimes of the Nazis were adjudicated, that this vision was realized in any fashion. Attempts to transform the Nuremberg tribunal into

an ongoing permanent court, however, were stymied by the Cold War. In the meantime, crimes against humanity went largely unpunished, with no state or institution capable of holding the perpetrators accountable. In what can only be described as “mob rule” on an international scale, a culture of impunity sprang up.

Then, in 1993, the first real progress in nearly 50 years came about when the International Criminal Tribunal for the former Yugoslavia was born out of the frustration with the efforts to halt “ethnic cleansing” in that troubled area. A year later, the International Criminal Tribunal for Rwanda enjoyed similar success. Both tribunals, though “temporary,” are continuing their important work to this day. More important, they paved the way for the beginning of serious negotiations on an independent, permanent, and ongoing International Criminal Court, capable of investigating and prosecuting the most heinous and infamous of crimes against humanity.

United by little else than a desire to see such a court established, 160 nations set aside petty parochial concerns over sovereignty out of a greater concern for humanity. Delegates and other interested parties, including the American Bar Association and a variety of nongovernmental organizations (NGOs), doggedly persisted for nine long years through numerous commissions, drafts, and negotiations toward the goal of establishing such a court. Finally, in 1998, a grand convention of countries, not too dissimilar to our own Founding Fathers’ constitutional convention of states, came together in Rome to resolve the remaining and most significant issues still dividing the delegates. After five weeks of intense negotiations and compromises, which lasted literally up to the very last minutes of the conference, the “Rome Statute” creating the International Criminal Court was adopted. The nearly century-old dream had become reality.

As I look around the courtroom, I am impressed at what a modern facility it is. The main floor is dominated by

the judges’ bench, which accommodates a panel of three judges. Today’s hearing is a discovery conference, so only one judge is present. Directly in front of and a little lower than the judges’ bench are the judges’ three law clerks at their own bench. At 90-degree angles on either side of the judge are opposing groups of benches, three rows deep, in two sections. On the side closest to the audience is the prosecution section. The deputy senior prosecutor, Ms. Fatou Bensouda, and two senior trial attorneys are seated at the table talking in serious, hushed voices. Behind them are three law clerks, busily occupied. The section next to the clerks is the section for victims’ representatives, which is empty for today’s hearing.

On the other side of the courtroom in the section closest to the public sit the defendant; his attorney, Monsieur Jean Flamme from Belgium; and a paralegal. Behind them is a law clerk from the ICC’s Office of Public Counsel. The section next to the defense is reserved for court administration (the “Registrar”), interns, and other legal officers assigned to the court.

Except for the accused, everybody in the courtroom—the law clerks, interns, lawyers, the judge, even the “Registrar”—is dressed in a traditional black robe with a white, starched bib in front. The judge’s robe is distinguishable by the royal blue panels.

Each station in all the sections has its own computer monitor, with real-time reporting, and laptop. Each section has its own controllable microphone and headset for translations. (The official languages of the court are English and French.) The interpreters have their own “press box” overhead with unobstructed view. The court has set as a priority becoming a totally paperless e-court.

Access to the courtroom is through doors in the back. There is no public access. The public sits in three totally enclosed vertical tiers separated from the courtroom by heavy soundproof glass and accessible only through a separate entry. Although the proceedings



are clearly visible, a 50-inch flat-screen TV monitor in each tier televises the proceedings into the public area from three remotely controlled cameras in the courtroom.

As I watch the spectacle unfold in this electronic wonderland, I find I cannot prevent my mind from wandering back to the last discouraging meeting of our state facilities task force or my own courtroom with duct tape on the carpets.

The hearing gets under way. The prosecutor, Ekkehard Withopf, sounds incredibly like Henry Kissinger. The defense attorney sounds incredibly like every attorney in my county: "Your Honor, I can't *possibly* be ready for the confirmation hearing by the scheduled date. The prosecution hasn't given me *anything* yet, just a few reports, and I will need to hire an investigator who will need to go to the Congo to investigate, which he can't *possibly* do until the hostilities there have ceased..."

Although he is speaking French and I know no French at all, I can tell exactly what he is saying even without the headphones. This may be on a much grander scale, but it is all too familiar to any California judge.

The hearing drags on into the evening without much being resolved other than setting a date to come back. All the participants are acutely aware that the routines and practices they develop at this hearing may well set the standard for all the future cases to come, so all are determined to act carefully and deliberately.

Surprising to most people is the fact that the United States has never joined the ICC. Although the U.S. was heavily involved in the negotiations that led to the Rome Statute and many parts of the statute are reminiscent of American criminal practice and procedure, a last-minute dispute about immunity for U.S. military personnel remains unresolved today, leaving the U.S. one of the most prominent nonsignatories, along with China, Israel, North Korea, Iran, Libya, and others.

The brutal tribal war in Ituri, a volatile district the size of the West African state of Sierra Leone that borders Uganda on the east and Sudan on the north, has left an estimated 50,000 people dead and displaced over 600,000 people. The fighting started in 1999 and still continues. The proceedings against Lubanga are expected to

take at least another two to three years more after I return to the relative calm of Modesto.

The Judicial Council, in approving my sabbatical, says my participation in the visiting professionals program promises to facilitate an exchange of ideas and information that will enrich both the California courts and the ICC.

As for me, the experience has been a once-in-a-lifetime opportunity that I will not soon forget. And who knows? With retirement looming on the horizon, I just might have another chance to get involved. RR

Donald E. Shaver has been a judge with the Superior Court of Stanislaus County for 16 years. When not viewing criminal proceedings in The Hague, he sits as a direct-calendar criminal judge in Modesto handling all levels of cases. He is assigned to the ICC on sabbatical through August 2.

Judges of the International Criminal Court are seen at the start of proceedings against Congolese warlord Thomas Lubanga.



Being Myself in Juvenile Court

**By
Cynthia Loo**

Though the 14-year-old youth was being charged with murder, the boy had a surprised expression on his face when I denied his request to go home. As the boy was led by the bailiff back into lockup, his father left the Compton courtroom weeping. “Next case.”

The expressionless way in which I ruled, my practiced calm, had actually started years before when I was an attorney representing abused children in juvenile dependency matters. On one occasion, while I was watching a sheriff’s deputy pull my hysterical 8-year-old client from the outstretched arms of her sobbing mother, a prosecutor scornfully asked me, “Why are you crying?”

Ashamed, I promised myself I wasn’t going to let that happen again.

Years later, when I was appointed to the juvenile court bench, I consciously sought to model my behavior as contrary to the meek and permissive stereotype of Asian women. I emulated what I thought a judge was supposed to be: strict, intimidating, and authoritative.

It took me years of being on the bench to finally realize that being myself was OK.

Fifteen-year-old Tyrell was charged with resisting a peace officer. Los Angeles Police Department officer Miller testified that Tyrell had refused to answer officers' questions and instead hurled profanities toward them. He testified that Tyrell had reached into his waistband. Thinking, at that point, that the minor was going for a weapon, the officer had drawn his firearm.

The grandmother testified about receiving a phone call from Tyrell, "Mama! Come outside! The police are here!" When she opened the door, Tyrell ran inside and cried, "I didn't do nothing!" He emptied the contents of his pockets onto the floor: a cell phone, a dollar, some change, a condom, gum.

Officer Grace Garcia testified that she asked the grandmother, "Ma'am, is Tyrell still on probation?" The grandmother said he was. Officer Garcia then recounted Tyrell's refusal to submit to the officers' directives and how backup was called. The officers tried to pry his fingers from their grip on the door frame. Finally, five officers subdued him and took him into custody.

I believed each witness.

From the back of the courtroom, the grandmother raised her hand and asked if she could say something else, a request that was met with an objection from the district attorney. "Oh, I just wanted to thank Officer Garcia for the way she tried to help," she said.

I found the charge to be true and proceeded to sentencing. Officer Garcia suggested that Tyrell should move out of Compton. The grandmother said they could not afford to move out of the area. Over the objection of the district attorney, who recommended a long-term camp program, I released Tyrell from juvenile hall. I admonished Tyrell that if he violated house arrest, I was going to sentence him to the camp. Tyrell didn't say anything but nodded his head that he understood.

The matter was continued to a date two months later that was then changed to avoid conflicting with the grandmother's receipt of an award for her volunteer work as a tutor at Tyrell's school.

Three days later, I spoke at a church in south Los Angeles. I warned the parents that even minors in a juvenile delinquency case can obtain "strikes" for future sentence enhancement under California's "three strikes" sentencing law. I cautioned the parents to be careful about

whom their children associated with because of the ease with which youths can be caught up in gang enhancements. I thought of Tyrell as I suggested to the youths in the congregation that, if stopped by law enforcement, one is more likely to be released to parents than juvenile hall if one is respectful.

"Why, if we don't get no respect?" someone in the back of the church yelled. Many people in the congregation nodded in agreement.

Two weeks later, I looked up from the bench to see my bailiff having a heated discussion with an elderly African-American woman. "Deputy," I called out, "is there a problem?" Deputy Bailey said, "Your Honor, she wants to give you something. I told her it's not appropriate." When I realized it was Tyrell's grandmother, I got off the bench and walked to where she was standing by the bailiff's desk.

She told me on most Sunday mornings Tyrell would crawl into her bed and ask, "Mama, are you awake? Can you make me some pancakes?" Or sometimes "Can I borrow some money?"

But the past Sunday, she had awakened to gunfire. She then crawled through the house, calling for her grandchildren. Her eldest grandson found Tyrell's body on the porch, slumped against the front door.

"He's not breathing, Mama!" he cried.

She rushed over. "Open your eyes for me, baby, open your eyes!" she said, shaking Tyrell.

When the ambulance arrived, Tyrell's body was placed roughly on the stretcher. When the paramedics saw her watching, they pushed futilely on Tyrell's chest a few times. There were witnesses to the shooting, but no one had yet come forward.

"I just wanted to give you this," she said, handing me a funeral program. On the back I had been given special thanks.

In the middle of the courtroom, with attorneys, clerks, a bailiff, and a court reporter looking on, we cried.

And I felt no shame in that. ■

Cynthia Loo is a judicial officer with the Superior Court of Los Angeles County. This essay will appear in the summer edition of the ABA's JD Record.



Managing the Media

By
Allan Parachini

Believe it or not, the question is often asked why the Superior Court of Los Angeles County seems to have such an astonishing volume of high-profile cases. And the number of such cases is difficult to understate.

In the first five months of 2006, for example, the Public Information Office received 361 requests for still or television camera coverage in our nearly 600 courtrooms. Our judges granted 156 and denied 112. The remainder involved cases that either were continued or went off calendar.

In the Public Information Office we maintain a Microsoft Excel database to track high-profile matters. Since we are likely to receive media calls about the status of any of these at, literally, any time of the day or night and from anywhere in the world, we devote a great deal of attention to maintaining this database. We define “high-profile cases” as those that precipitate any kind of substantial media interest—inquiries, camera petitions, requests for documents, and the like. As this is written, that database reflects an inventory of 87 cases.

The database forms the answer about why we have so many of these: Look who lives in Los Angeles County. Many are celebrities themselves or associated somehow with celebrities, their cars, their support staff, their producers, directors, and even their publicists.

Most of all, though, they are simply county residents who are as likely as any other population group to drive drunk, abuse drugs, beat their spouses, default on contracts, get involved

in nasty divorces, shoplift expensive clothing, and even, on rare occasions, be accused of killing someone.

Hence the dilemma. It is common in our jurisdiction for an otherwise pedestrian family law matter to attract international media attention, or for a routine Proposition 36 hearing to draw media attention heavy enough that we must, working with our judges and the Los Angeles County Sheriff’s Department, develop an operations plan to ensure the safety of the proceeding.

Our office has a staff of seven. We are, without question, the largest public affairs unit of any state trial-level court in the United States. But since we are Los Angeles, there are occasional days on which so many celebrity cases are on calendar simultaneously that we exhaust our ability to provide PIO staff in the courtroom—even though we can deploy as many as five people at a time. We dispatch personnel any time a bench officer requests such assistance.

In jest, I sometimes tell people that, to us, “high profile” means a proceeding with three or more satellite trucks and two or more media helicopters—like the turnout on the day of the verdict in the shoplifting trial involving actress Winona Ryder.

Allan Parachini talked to the media at the reading of the verdict in the Robert Blake case.



On one day recently, we had two rock stars (including Courtney Love) with drug problems appearing under Proposition 36 and celebrity record producer Phil Spector, accused of killing a nightclub hostess, at the same time *in the same courthouse*. The Spector matter is pending.

On the day of another hearing in that same murder case, *on the same floor* of the courthouse, came an appearance by the defendant in a case involving the nationally televised shooting of an attorney outside our Van Nuys Courthouse. That, in turn, occurred in the midst of a hearing in still another celebrity murder case—this one involving movie and television star Robert Blake. Mr. Blake was later acquitted. An appeal of related civil litigation is pending.

Moreover, one of these cases occurred on the same day that the mayor of Los Angeles—himself a rising national political figure—was on jury service, standing in a courtroom hallway

In jest, I sometimes tell people that, to us, “high profile” means a proceeding with three or more satellite trucks and two or more media helicopters—like the turnout on the day of the verdict in the shoplifting trial involving actress Winona Ryder.

surrounded by reporters, with 75 other citizens of Los Angeles County. The highest profile celebrity jurors are the norm for us, not an exception.

Our operation may defy comparison with that of any other court in the country, but our experience is directly

relevant to nearly any court in California. Any judge in any court, anywhere, can encounter such a case on no notice. If you don’t believe that, call the courts in Santa Barbara, Stanislaus, and Fresno Counties.

Yet our experience suggests that it is a serious mistake to base planning or assumptions about high-profile cases on the most extraordinary matters, such as the O. J. Simpson, Scott Peterson, Kobe Bryant, and Michael Jackson trials. These incidents do *not* offer a reliable planning model for a very large percentage of cases that may actually occur in most jurisdictions. Don’t assume that any high-profile case in your court will be, as some people put it, “another O. J.”

The sheer volume of high-profile matters our judges handle means that cases that might be seen as extraordinary and highly unusual elsewhere are routine in Los Angeles. Following are some issues common to our jurisdiction and, likely, yours.

The media are not the enemy. Although you may find yourself confronting dozens of news vans and hundreds of reporters, if you are a trial-level court, you are most answerable to your local community. Freezing your own local media outlets out of a high-profile case is a bad mistake.

A question you will confront early in any high-profile matter is whether you recommend moving it from a tiny space—in our case, family law courtrooms with fewer than 15 seats—to the

largest courtroom available. At first, the decision may seem obvious: Choose the largest courtroom to maximize the number of media seats you can offer. But a more fundamental question is raised. Do you want to create the precedent and appearance that courtrooms

are nothing more than soundstages? Only the judges of each local court can make such decisions.

The most common solution for issues of limited seating in courtrooms is to instruct the media that coverage will be on a pool basis. The judge can stipulate that a pool arrangement *must* be used for electronic media coverage within the meaning of rule 980 of the California Rules of Court. It is essential for court officials to be familiar with the options available to a judge and to respond to his or her questions about expectations for media interest. Generally, media organizations wishing to cover a proceeding must agree among themselves on which entity will provide pool picture coverage to be shared by all outlets.

Limited seating may also require reporting pools, in which one or two reporters are chosen by consensus of the media outlets present to act as pool fact gatherers. When seating is extremely limited, consider creating reporting pools for newspapers, wire



services, TV outlets, and radio outlets. In today's media environment, you have to take into consideration, as well, a pool for Internet news outlets.

A very high priority for any court confronted with a high-profile case

must be to ensure that court operations are not disrupted for other customers. It is *essential* to remember that, to each person entering a courthouse, the case in which she or he is involved is just as important as, for example, a prominent actress's shoplifting trial in Beverly Hills.

Advance planning for parking will work to your advantage, provided you remember that most news vans cannot fit into parking structures, and trucks engaged in live coverage must be positioned so they can transmit live pictures.

We have found it consistently advantageous to work with whatever law enforcement agency has jurisdiction over parking in the courthouse area and get them to cooperate on selective enforcement, vehicle permitting, and selection of transmission locations for microwave and satellite.

In situations in which the judge prohibits camera coverage, courtroom sketch artists may ask permission to attend. On the one hand, they are there to create images for broadcast. On the other hand, they are fundamentally doing nothing but taking notes. In any situation that could attract courtroom



Actors Robert Blake (page 20) and Winona Ryder (below) and record producer Phil Spector (above) got their day in court.

AP/WORLDWIDE PHOTOS

artists, the status question must be resolved within your court.

As we are swept into the era of the Internet—and, in particular, blogging—an additional challenge will be determining who is a journalist and who is not. Is any blogger who writes about events inside a courtroom a reporter?

A high-profile case is only as important as every other case being heard that day, and it has to stay that way.

Arguably, however, the meaning of “journalist” cannot be construed to exclude them.

Remember that the judge to whom the case is assigned can control media behavior inside the courtroom. In the rest of the courthouse, however, the supervising or presiding judge has media-control authority. You must

be sensitive to judicial discretion and ensure that your bench officers are as fully informed as they wish to be.

One of the most challenging elements of media management in high-profile cases is the demand for documents. In this regard, scanning, e-mail, and the Internet are the court’s

best friends. Maximum use of electronic technology—possibly to include creation of a special Web site for high-profile matters—should be considered in every such case.

Throughout any experience with a high-profile case, it is most important to keep your perspective. Bottom line: Justice requires that all cases be

treated equally. A high-profile case is only as important as every other case being heard that day, and it has to stay that way. Good planning is the best way to ensure that you will be able to remain calm.

Never forget the security implications of any media coverage management plans you make. Don’t leave judges or executive officers out of the loop. Finally, high-profile matters may be settled or continued on no notice.

Nevertheless, it’s wise to plan for every appearance as if it is going to occur and any celebrities involved are going to be present. That means good communication with the courtroom and plain old common sense. **MR**

Allan Parachini is public information officer for the Superior Court of Los Angeles County.



When a Reporter Calls, Don't Hang Up

By
Carol Ivy

We live in a rapidly accelerating age of information overload. *Not* communicating in such an environment is no longer an option.

This is as true for the courts as it is for any public agency. The days of “circling the wagons” when a reporter calls are over.

If the judiciary is to communicate accurately the messages of transparency and accessibility to all, we must understand that the news media is a conduit to our target audiences, most of whom lack much understanding about the way our system of justice works. And if you don't tell them how it works, they will write and broadcast their stories without you.

Bob Egelko, a veteran journalist of 36 years, 22 of those on the legal beat, first for the Associated Press and now for the *San Francisco Chronicle*, puts it this way: “This is a subject on which we all are ignorant—the rules and the procedures, the mechanics of the courts and the law. The public and even the reporters who cover courts find extreme gaps in knowledge. An interview is a golden opportunity to educate the public. Reporters get their story. Everybody benefits.”

Remember, however, that an interview is not a conversation. It can be conversational. But it is a business arrangement and should be approached as such, with preparation. Birds and planes can, in most instances, fly. We can't.

Consider the Three Ps: Prepare, Practice, Perform.

When a reporter calls, ask two questions: “What do you want to talk about? What is your deadline?” Sounds simple, but too many prospective interviewees forget that, as the subject-matter experts, they need to take control and get ready to “define, not defend” what they do.

The *preparation*, whether it is a half hour, a day, or a week, should include a number of tools to assist in communicating a message effectively. The most important is what I call a SOCO (Single, Overriding Communication Objective). It is pronounced (this is how television news scripts read) SOCK-OH! And let's make that semantically incorrect and use the plural form SOCOs, because there should be more than one key message at the ready. If at least one of your SOCOs is used in a reporter's article or broadcast, you've socked one out of the ballpark!

Anticipate questions the reporter might ask. If there is time, ask a staff member or colleague to grill you. That is the *practice*. And then *perform*, with the reporter's deadline in mind.

Lynn Duryee, presiding judge of the Superior Court of Marin County, says, “What is really important is that I always try to call journalists back right away. And before I pick up the phone, I formalize one or two things I want to say. And I try to simplify them. If I don't

reach the journalist, I leave my quote on voicemail and give my e-mail address. I love e-mail because I can pick my words and think about them so I don't shoot from the hip.”

“Be available” is how Stephen Sillman, the Superior Court of Monterey County's presiding judge, approaches media contacts. “After a determination has been made as to what the subject of the questions will be and after you prepare to address those specific issues, be confident and ready to deliver and emphasize your points.”

Consider the Three Ps: Prepare, Practice, Perform.

In fact, the Superior Court of Monterey County has taken an interesting approach. The court recently hosted a meeting with local media representatives, including general managers and news directors, publishers, editors, and reporters. “We want to facilitate a meaningful exchange of ideas and information and develop a relationship of ongoing mutual respect,” explains Lisa Galdos, the court's executive officer. “The meeting was well attended and provided a forum to talk about our respective issues and responsibilities. The court looks forward to continuing these meetings, and, in fact, the next is scheduled for August.”

But reporters covering the courts are not always met with enthusiasm.

Marty Boyer is the owner of Communication Advantage in Sacramento, a company that advises public agencies on short-term crisis and long-term issue management. Boyer worked as a print reporter, covering courts, and then as a provider of information to the media as public affairs officer for Alameda County. “One of the most counterproductive quotes heard too often from court personnel is ‘no comment,’” notes Boyer. “There are so many productive ways to say ‘no comment’ that also would serve the court’s goal to be accessible. For example, should a plea bargain be in process and a reporter gets wind of it, instead of ‘no comment,’ why not ‘While I am not able to respond to details of the case, everyone’s goal here is to see that justice is served.’”

One crusty former court beat reporter who asked not to be identified says, “The courts could save themselves a lot of trouble by remembering that you can satisfy reporters who need a story without compromising your integrity. And then you can get back to your job.”

Never lie. That sounds so simple. For one thing, it is easier to tell the truth, as painful as it sometimes may be. The fact is, a “bad” story, when something has gone wrong, will last a lot longer if you pull up the drawbridge. If it’s out there, they will write the story without you. And then, in news media jargon, the story “has legs.” A well-prepared approach even to a negative story can help manage it and turn an intense “investigative piece” into a one- or two-day report. Watergate was a third-rate burglary. The cover-up was what made headlines.

Be fair. Never give the impression that you are favoring one reporter over another. If you are releasing information, release it to all. I recall covering

as a court beat reporter a high-profile trial presided over by the late Judge Jack Berman of the Superior Court of San Francisco County. The courtroom was packed with media representatives, and everybody was looking for “the scoop.” In calling a recess, Judge Berman announced: “I would like to see Ms. Ivy in my chambers. Now!” I wondered what I had done to provoke his ire. What I discovered after being escorted to chambers by the bailiff was an enthusiastically exercising jurist who “just wanted to show you my new rowing machine.” Needless to say, when court reconvened, all other reporters demanded to know from the judge what I had been told that they did not know. Perception is everything.

There also are many opportunities to reach out to reporters with stories that can educate the public about the courts.

“What we have learned to do,” says Kim Turner, court executive officer for the Superior Court of Marin County, “is be more proactive with the media and hone in on one or two simple messages we hope will be reported on our behalf.” Turner’s most recent contact with the media was a television station looking for a “local angle” after the tragic shooting of Family Court Judge Chuck Weller at the Mills B. Lane Justice Center in Reno. The station was aware that Marin County is close to initiating a new perimeter security screening system at the Hall of Justice. Turner saw the request for an interview as a means of working with the media as a conduit to get messages out to the public about what the changes will mean. She partnered with a Marin County Sheriff’s Department spokesperson. They crafted their messages (SOCOs!), and the story ran on the station that night.

Turner was pleased with the outcome. During the interview, “we conveyed our interest in public safety

and our interest in designing a ‘smart system’ that has very little impact on the public in terms of delays. We are getting a lot of press regarding ‘traveling light’ when you come to the courthouse. The way we have described it is, Bring what you need to make your court appearance and leave the rest of your life at home or in your car.” In addition to the television news report, there have been several print stories on the new system.

A few final tips:

- “Off the record” veers off into dangerous territory. Assume that anything you say as a spokesperson for the courts is “on” the record and will be reported.
- Correct false premises and incorrect information. You are the subject-matter expert.
- Answer questions only within your area of expertise and only for your court.
- Remember: For the most part reporters want the truth, enough information for a story (Who, What, Where, When, maybe Why and How), and some good, concise quotes or soundbites.

And if you are nervous going into an interview, that’s okay. But if you can get those butterflies to fly in formation, that will help. 

Carol Ivy is an award-winning journalist with more than 30 years’ experience, including time covering the courts, law enforcement, and corrections. Ivy now works as a media consultant through her San Francisco company, Up Your Image.



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Mary McQueen

State Courts Respond to Privacy Concerns

BY MARY MCQUEEN

State court and other public records have been identified as an area of vulnerability in identity theft cases. In past congressional sessions, bills that would require state courts to redact or strike out appearances of social security numbers (SSNs) from court records have been introduced.

Meanwhile, many state courts are making progress on their own to protect individual privacy rights while maintaining the American tradition of open courts. Through court rules, state court systems are changing their procedures for viewing and accessing court records as these relate to the appearance of social security numbers. Washington State, for example, is establishing a procedure for “sealing” family court case records containing privileged information such as SSNs and financial information. In effect, Washington is creating two sets of records: a public and a private one. Vermont is placing the burden on parties to expunge or redact SSNs from papers filed with the court. Minnesota is requiring that parties in a divorce case fill out a confidential information sheet that contains SSNs and is kept separate from the official record. South Dakota adopted a rule that protects SSNs and financial account number information by requiring these numbers to be redacted from documents and submitted to the court on confidential information forms.

The Conference of State Court Administrators (COSCA) is also responding to some of the demands placed on our court systems by state legislatures and governors. In 2005, 53 bills dealing

with social security number privacy were signed into law by governors. That’s 17 more than in 2004—an increase of 46 percent. These bills range from simple prohibitions of displays of SSNs on public records to new, expansive criminal and civil statutes that punish wrongdoers and those who traffic in SSNs as a means to steal a person’s identity. Activity in this area has not diminished in the current year. In the ongoing 2006 sessions, state legislatures are considering 176 measures dealing with SSNs and privacy. Again, this number is an increase over the prior year.

At the direction of the leadership of the Conference of Chief Justices (CCJ) and the Conference of State Court Administrators, we established a special subcommittee of the CCJ/COSCA Court Management Committee to explore privacy protection innovations and share them with the Congress and the Bush administration. This subcommittee meets twice a year, at our annual and midyear meetings. The subcommittee has been researching the issue and is responsible for compiling examples of best practices in this area.

Potential Legislation

In the past, Congress has considered various pieces of legislation that would, in some form or another, prohibit the display of a person’s social security number on a public record. Blanket prohibitions like these will place courts in the position of trying to comply with conflicting public policies. Two examples:

- The 1996 federal welfare reform law requires courts to collect SSNs on court orders granting divorces or child support or determining paternity. Some states have enacted laws containing similar requirements for other types of cases.
- SSNs appear in many financial documents, such as tax returns, which are required to be filed in court (e.g., for child-support determinations) or are appended to official court documents such as motions for summary judgment.

COSCA is encouraged by the following language from the report accompanying H.R. 2971 (Rep. No. 108-685, Part 1, p. 21) in the 108th Congress dealing with incidental versus nonincidental appearances of SSNs in public records:

During Social Security Subcommittee hearings on the bill, court and other public records administrators testified they receive numerous documents filed by individuals, businesses, and attorneys that often include SSNs the government did not require to be submitted, and of which they are therefore unaware. They stated redaction of “incidentally” included SSNs would create a serious administrative burden, and it would require significant resources to review each document and redact such incidental SSNs.... *With respect to SSNs submitted in court documents absent the court’s requirement to do so, the individual communicating the SSN in the document, not the court, would be held responsible*

according to Section 108 of the bill.
(Emphasis added.)

In drafting social security legislation, COSCA has asked the House Ways and Means Social Security Subcommittee to expand on the above sentiments in the actual legislative language of any future bill.

Courts will have substantial increased labor costs in staff time to redact or strike the appearance of SSNs in paper records or in microfilm and microfiche if a redaction requirement is imposed.

In the event legislation dealing with redaction is drafted, COSCA has urged a distinction between existing court records/documents and future documents. For example, requiring a court to retroactively redact or expunge old records would be a nightmarish task because of the cost in staff time and the actual compiling of those court records needing redaction or expungement.

Finally, in an effort to make courts and court records more open, many courts are now beginning to make many public records available on the Internet either as text/character documents or as PDF files created by scanning and using imaging software. While the removal of SSNs in text/character documents may be relatively easy in some computer-generated records (XML), other scanned records, such as PDF files, will be harder to change, necessitating more staff and an increase in labor costs.

Conclusion

COSCA recognizes the role of SSNs in the incidence of identity theft cases. The current treatment of SSNs provides

lawbreakers the continued opportunity to exploit the system at the expense of ordinary Americans. The threat of identity theft is real, and court officials want to do their part to eliminate it.

Finding solutions to protect an individual's privacy will be complex and difficult. Many state courts are already taking steps to fashion solutions in response to the problem. In addition to the approaches in Washington, Vermont, Minnesota, and South Dakota, different approaches are under way in other states. COSCA stands ready to work collaboratively and cooperatively to craft solutions to this important issue.

Chair Jim McCrery, of the House Committee on Ways and Means Social Security Subcommittee, has not introduced a bill requiring state courts to redact or strike out appearances of SSNs from court records. He also has not thrown his support behind a bill that would require wholesale SSN redaction. Chair McCrery has indicated that he is still studying this issue and will follow a more deliberative process, and include the state courts, if he does move forward. 

Mary McQueen is president of the National Center for State Courts and has worked with the Administrative Office of the Washington State Courts for 25 years. This column is adapted from testimony on social security numbers and their role in the incidences of identity theft that she delivered before the House Committee on Ways and Means Social Security Subcommittee on March 30, 2006, on behalf of the Conference of State Court Administrators.



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J. Richard Couzens



Tricia Ann Bigelow

Supreme Court Changes Sex Offender Registration Requirement

BY J. RICHARD COUZENS AND TRICIA ANN BIGELOW

Vincent Hofsheier, a 22-year-old Santa Cruz County man, pleaded guilty to orally copulating a 16-year-old girl in violation of Penal Code* section 288a(b)(1). At sentencing, defendant's attorney argued that Hofsheier should not be required to register as a sex offender under Penal Code section 290. As so many have observed, the attorney argued that had the defendant been convicted of unlawful sexual intercourse, there would have been no requirement to register. Even the prosecutor agreed the "law was out of whack. But that's the law." The trial court judge erroneously believed he could later reduce the offense to a misdemeanor, thus relieving the defendant of the lifetime registration requirement.

The defendant appealed, arguing that the mandatory lifetime registration requirement denied him equal protection of the law because a person

The court said that persons convicted of oral copulation of a person under 18 (§ 288a(b)(1)) were similarly situated to persons convicted of unlawful intercourse with a person under 18 (§ 261.5). The court rejected the Attorney General's contention that the difference in registration requirements was based on a legitimate state interest. The court found no evidence to support the argument that the incidence of oral copulation among adolescents is increasing, that adults who commit the crime are more likely to repeat the offense, or that oral copulation often leads to intercourse and thus to teen pregnancies.

The court deleted the mandatory registration requirement for persons convicted of oral copulation under section 288a(b)(1).

Hofsheier offers little guidance on its application to other portions of Penal

The most obvious application of *Hofsheier* is to sodomy or sexual penetration committed with a person under 18 (§§ 286(b)(1) and 289(h)). Both of these crimes apply to consensual encounters, and both have the same victim's age grouping as section 288a(b)(1) offenses. If there is no justification for requiring registration of offenders who commit oral copulation with persons 16 and 17 years old, there appears to be no justification when the crime is sodomy or sexual penetration.

Although less clear, *Hofsheier* probably will apply to oral copulation by a person over 21 with a person under 16 (§ 288a(b)(2)), sodomy by a person over 21 with a person under 16 (§ 286(b)(2)), and sexual penetration by a person over 21 with a person under 16 (§ 289(i)). Mandatory registration is not required for unlawful sexual intercourse committed by a person over 21 with a person under 16.

Hofsheier also may apply on a case-by-case basis to contributing to the delinquency of a minor with lewd conduct (§ 272) and child molesting (§ 647.6). Since the proscribed conduct with children ranging from infancy to 17 years old can range from verbal comments to slight touching to sexual intercourse, the application of the mandatory registration requirements may be fact specific.

Defendants required to register as sex offenders who believe *Hofsheier* may apply to their circumstances have at least two possible means of bringing the matter to a court's attention. Those who have been granted probation where the probation period has not

The defendant appealed, arguing that the mandatory lifetime registration requirement denied him equal protection of the law because a person convicted of unlawful sexual intercourse under similar circumstances would not be subject to mandatory registration.

convicted of unlawful sexual intercourse under similar circumstances would not be subject to mandatory registration. In March, the California Supreme Court, in *People v. Hofsheier* (2006) 37 Cal.4th 1185, agreed with the defendant.

Code section 290. The court expressly held that the case has no application to sexual offenses committed against children under 14 or to crimes committed by force. But clearly the opinion will have implications beyond crimes committed under section 288a(b)(1).

run simply may apply for modification under Penal Code sections 1203.2(b) and 1203.3. The remedy for defendants off probation or who have been sent to prison, whether on or off parole, is to petition for a writ of habeas corpus. Persons on parole or probation have long been entitled to challenge conditions imposed on them because they are considered to be in constructive restraint. (*In re Harincar* (1947) 29 Cal.2d 403; *In re Osslo* (1958) 51 Cal.2d 371.)

While the rule is less clear for persons who are off probation or parole but remain subject to registration, the remedy still appears to be habeas corpus because the defendant remains subject to the social and legal burdens incident to registration. "Although sex offender registration is not considered a form of punishment under the state or federal Constitution . . . , it imposes a 'substantial' and 'onerous' burden . . ." (*Hofsheier, supra*, 37 Cal.4th at p. 1196.)

Even if the defendant is no longer subject to mandatory registration, the court still must determine whether the defendant will be subject to discretionary registration under Penal Code section 290(a)(2)(E). (*Hofsheier, supra*, 37 Cal.4th at pp. 1196-1197.) A defendant convicted of any crime may be subject to registration if the court determines that the defendant "committed the offense as a result of sexual compulsion or for the purposes of sexual gratification" (§ 290(a)(2)(E)). In making that determination the court must state the reasons for such a finding and provide a separate statement of reasons for requiring lifetime registration.

There is little appellate authority to guide the court's exercise of discretion to impose the registration requirement. Undoubtedly the court should consider the circumstances of the offense, the nature of the defendant's performance on probation or parole as it may relate to registration, and the defendant's criminal history. The court also may wish to order a psychological evaluation under Evidence Code section 730. A report generally in the nature of an evaluation under Penal Code section 288.1 will address such issues as any mental characteristics of a sexual offender and his or her dangerousness. The evaluation will help the court determine whether the underlying offense was the result of sexual compulsion that could surface again or simply was a situational offense that will not likely be repeated. 

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 coauthor 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.

Note

*All cites are to the California Penal Code unless otherwise indicated.

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www.legselfhelp.ca.gov



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A CONVERSATION WITH

Dennis Murray ON

Setting Budget Priorities



Dennis E. Murray

In April, the Judicial Council approved three new statewide budget priorities for the trial courts in fiscal year 2006–2007. In setting the priorities, the council followed the recommendations of the Trial Court Budget Working Group and the staff of the Administrative Office of the Courts. Judge Dennis E. Murray, presiding judge of the Superior Court of Tehama County and a member of the working group, explains the new priorities.

What are the three new priorities?

(1) Providing access, fairness, and diversity; (2) staffing and operating funds for new facilities; and (3) administrative services and technology infrastructure.

How does the new “SAL” adjustment assist the local courts in this regard?

The “SAL,” or state appropriations limit, is designed to meet the branch’s fiscal needs based upon identifiable criteria. With the SAL,

year-to-year budget increases reflect actual need caused by such things as workload and inflation. Aside from the obvious benefit of increased funds, the SAL provides the courts with some predictability. Financial and policy decisions can be planned with some assurance of stable funding. Although actual increases in funding are not precisely known until there is a budget, we have some “ballpark” knowledge and some level of assurance that there will be funding for increased costs. This is far superior to the ambiguity we had before the SAL.

How does funding self-help programs fit in with the council’s long-term strategic goal of providing access, fairness, and diversity?

It is clear from the latest public trust and confidence survey that access to the courts is a major issue and that making court proceedings affordable is one of the leading problems in providing access. Within limitations, self-help is a win-win

situation. Through adequately funded and sufficiently available self-help programs, litigants have access to expertise and assistance that make it possible to have a meaningful day in court. Litigants who have access to self-help feel better about the court process and are more inclined to believe that the process is fair. The court benefits by having litigants who make fewer procedural mistakes and consume fewer court resources because of a better understanding of the process.

To what extent will the need for self-help programs expand in local courts in the coming years?

Those of us who work in the trial courts don’t need a statistical analysis to know that the number of self-represented litigants is increasing. As with any other government service, it is important that people have access to the service and be able to use it effectively. It is also important that those services not vary from county to county. Cur-

rently, self-help programs are not uniformly available. I see that changing in the future. Those of us with self-help programs recognize their benefit and effectiveness. I believe that they will eventually be available statewide. It is important, however, that we move away from grant funding. With baseline funding, we will be able to develop more effective permanent programs. For example, one of the difficulties faced now, with grant funding, is retaining staff to operate the program given the lack of a commitment to long-term funding. We do need to bear in mind that the supply of self-help programs will increase the demand. In other words, the more it is available, the more it will be used. We also should be sensitive to the fact that, in many, if not most, cases, a litigant should be represented by an attorney if he or she has the financial means.

Tell us something about the other two priorities. Staffing and operating costs for new facilities

are really just a matter of common sense. New facilities are of limited value if we don't have the staff and money to operate them. It's a problem faced frequently in local government. A county builds a new jail or new library but then lacks the money to adequately fund its operation. By making such funding a priority, it is the hope that we can avoid such a dilemma. It is important to remember that we are only talking about increased costs arising from each new facility. New facilities sometimes result in cost savings, if not overall, at least in certain areas. For example, a properly designed court facility can reduce security costs by requiring less perimeter screening.

The Judicial Council and the Administrative Office of the Courts have aggressively pursued innovative projects in administrative services and technology. Within a few years each court will be on a common fiscal accounting program (CARS, the Court Accounting and Reporting System). Technological services

for human resources will be available through CHRIS (the Courts Human Resources Information System). And we are moving toward a common case management system, CCMS (the California Case Management System). At this pace, the real question may be whether we can find enough acronyms! Seriously, each of these projects promises substantial benefits to the branch. To operate as a single branch of government, commonality in administrative procedures is important. However, built in to each of these programs is the flexibility to apply it to individual courts. In the past, many of these services were provided by the counties. In order for us to fully take advantage of the services being offered, adequate funding is essential.

What is the most important thing to remember about the new priorities?

I don't know that there is a single thing that is most important. We always have to be flexible enough to change our priorities

if need be. We need to recognize that "one size does not fit all." What may be a priority to the branch is not necessarily a priority of individual courts. Given the makeup of our system, there will always be the balancing of what is best branch-wide and what is needed by individual courts. Further, while we don't want to drag our feet, we don't want to make too many changes too quickly. Change in big courts can sometimes be difficult just because of the sheer size of the project and the complications involved. Change in small courts can be difficult because small courts lack the staff and expertise to accomplish the task. Sometimes, what we thought would work doesn't! Finally, the bottom line is money. We need the resources to meet these priorities, which is one of the reasons that the SAL is so important. Barring a budget emergency, we should stay on track. ■



State Breaks Ground on New Appellate Courthouse in Fresno

The Court of Appeal, Fifth Appellate District held a groundbreaking ceremony earlier this year for a new courthouse in Fresno.

The groundbreaking culminates more than

eight years of planning and design. The careful and sensitive use of glass in the three-story, 61,000-square-foot building will permit the public to see inside the courthouse; at the same time, it will allow the building to exceed state energy-efficiency requirements by 17 percent.

The courthouse will consist of a single court-

room; chambers for justices; offices for attorneys, clerks, and administrative staff; a library; conference rooms; and secured surface parking.

The facility will be the last appellate court building to be built by the state's Department of General Services. In accordance with the Trial Court Facilities Act of 2002, the Administrative Office of the Courts will have responsibility for the building's operations and maintenance upon completion.

The facility is scheduled to open in the spring of 2007.

New Court Construction Projects in California

www.courtinfo.ca.gov/programs/occm/projects.htm

Courthouses Continue Transfer to State

In addition to new courthouse design and construction, the Trial Court

Facilities Act of 2002 charges the Administrative Office of the Courts with overseeing the transfer of responsibility for California's more than 450 current court facilities from the counties to the state. As of June 1, 2006, the following court facilities have transferred:

Contra Costa County: Pittsburg-Delta Courthouse

Mono County: Mammoth Lakes Courthouse

Plumas County: Portola Courthouse

Riverside County: Larson Justice Center and Moreno Valley Courthouse

San Joaquin County: Lodi Department 2 Courthouse

Source: Administrative Office of the Courts, Office of Court Construction and Management



Historic Courthouse Makes History in Mariposa County

A special signing ceremony on June 27 celebrated an agreement with Mariposa County regarding its courthouse, making it the first county in California to satisfy all the provisions of the Trial Court Facilities Act of 2002. The facilities act calls for the transfer of court facilities from counties to the state.

Although the agreement calls for the county to retain ownership of the historic building, the court can use the facility until a new courthouse is constructed. The state will have responsibility for any future court facilities built in the county.

Chief Justice Honored by Judicature Society

The American Judicature Society has named Chief Justice Ronald M. George the recipient of its third annual Dwight D. Opperman Award for Judicial Excellence.

Chief Justice George was recognized for outstanding leadership over the past decade, during which he has led several reform efforts to reduce



The Mariposa Courthouse, built in 1854, is the oldest courthouse in California, as well as the oldest continuously operating courthouse west of the Rocky Mountains. With two courtrooms and 3,119 square feet of usable space, the courthouse was constructed with a slate rock foundation and lumber from nearby pine forests.

chronic underfunding of the courts and improve the courts' ability to deliver services to the public. Those efforts include working to achieve the merger of municipal and superior courts into a single trial court level, the shift in responsibility for funding the trial courts from the counties to the state, and the transfer of responsibility for California's 451 courthouses from the counties to the state.

The American Judicature Society created the Opperman Award to honor a sitting state judge with a career of distinguished service.

Chief Receives Praise From L.A. Law Center

Chief Justice George was also honored recently by the Inner City Law Center in Los Angeles. The Chief Justice, who received the Humanitarian Award at the center's sixth annual awards luncheon in May, was recognized for his efforts to increase access to justice.

Bar Association Honors Supreme Court Justice Kennard

California Supreme Court Justice Joyce L. Kennard



Associate Justice Joyce L. Kennard

received the lifetime achievement award from the Japanese American Bar Association of Greater

Los Angeles at its 30th-anniversary event May 5.

Appointed to the Supreme Court in 1989, Justice Kennard is the first individual of Asian descent and the second woman to sit on California's highest court. Born in West Java, Indonesia, Justice Kennard has received numerous awards and recognition

for her commitment to the legal profession and the Asian-Pacific Islander community.

Orange County Judge Recognized by Women Lawyers

Judge Wendy S. Lindley, Superior Court of Orange County, was honored with the Joan Dempsey Klein Distinguished Jurist award by California Women Lawyers.

Appointed to the bench in 1994, Judge Lindley presides over a calendar of drug-related felonies. But she was singled out for her work with her county's collaborative courts. Judge Lindley handles cases in drug court, homeless court, mental health court, and co-occurring disorders court, in which defendants have a history of mental illness and drug addiction.

Inyo Judge Honored by Juvenile Court Judges

Presiding Judge Dean Stout, Superior Court of Inyo County, was named 2006 Wilmont Sweeney Juvenile Court Judge of

the Year by the Juvenile Court Judges of California.

Judge Stout was recognized for his commitment to improving outcomes for children and families in the juvenile court and his leadership in state-wide efforts to implement best practices. Appointed to the bench in 1997, Judge Stout was recently appointed to the California Blue Ribbon Commission on Children in Foster Care, a multidisciplinary body that will provide leadership and recommendations to improve California's foster-care system.

Chief Justice Names New Judicial Council Members

Chief Justice Ronald M. George in May announced the appointment of seven new members to the Judicial Council, the constitutionally mandated policymaking body of the California courts.

The appointees are Presiding Judge Thomas M. Maddock, Superior Court of Contra Costa County; Judge Peter Paul Espinoza, Superior Court of Los Angeles County; Judge Terry B. Friedman, Superior Court of Los Angeles County; Judge Jamie A. Jacobs-May, Superior Court of Santa Clara County; Judge Carolyn B. Kuhl, Superior Court

of Los Angeles County; Judge James Michael Welch, Superior Court of San Bernardino County; and Michael M. Roddy, Executive Officer, Superior Court of San Diego County.

The council consists of the Chief Justice, 14 judicial members appointed by the Chief Justice, 4 attorney members appointed by the State Bar Board of Governors, 1 member from each house of the Legislature, and 7 advisory members.

Most of the new appointees will begin their terms on September 15.

Biographical Information on New Members

www.courtinfo.ca.gov/presscenter/newsreleases/NR46-06.PDF

Judicial Council, Membership, Meeting Information

www.courtinfo.ca.gov/jc/

Milestones

The Governor announced the following judicial appointments.

Judge Edward P. Allard III, Superior Court of San Diego County

Judge Kathleen M. Banke, Superior Court of Alameda County

Judge Steven D. Blades, Superior Court of Los Angeles County

Judge Stanley Blumentfeld, Superior Court of Los Angeles County

Judge Charles Chung, Superior Court of Los Angeles County

Judge Jac A. Crawford, Superior Court of San Luis Obispo County

Judge Juan Carlos Dominguez, Superior Court of Los Angeles County

Judge David P. Downing, Superior Court of Riverside County

Judge Lori A. Fournier, Superior Court of Los Angeles County

Judge Richard M. Goul, Superior Court of Los Angeles County

Judge Denine J. Guy, Superior Court of Santa Cruz County

Judge Arlan L. Harrell, Superior Court of Fresno County

Judge Ray G. Jurado, Superior Court of Los Angeles County

Justice Stephen J. Kane, Court of Appeal, Fifth Appellate District

Judge Sam Lavorato, Superior Court of Monterey County

Judge William D. Lehman, Superior Court of Imperial County

Judge Anne-Christine Massullo, Superior Court of San Francisco County

Judge Darrel S. Mavis, Superior Court of Los Angeles County

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

Judge Kevin R. Murphy, Superior Court of Alameda County

Judge William D. Palmer, Superior Court of Kern County

Judge William Jefferson Powell IV, Superior Court of San Bernardino County

Judge Jeffrey Prevost, Superior Court of Riverside County

Judge Hector E. Ramon, Superior Court of Santa Clara County

Judge Shawna M. Schwarz, Superior Court of Santa Clara County

Judge Rodney G. Stone, Superior Court of Napa County

Justice Steven C. Suzukawa, Court of Appeal, Second Appellate District, Division Four

Judge D. Tyler Tharpe, Superior Court of Fresno County

Judge Mary Lou Villar, Superior Court of Los Angeles County

Judge Arthur A. Wick, Superior Court of Sonoma County

The following justices and judges departed from the bench.

Judge Jacob Adajian, Superior Court of Los Angeles County

Judge Richard Bennett,
Superior Court of Napa
County

Judge Gordon R. Burkhart, Superior Court
of Riverside County

Justice Daniel A. Curry,
Court of Appeal, Second
Appellate District

Justice Nick J. Dibiaso,
Court of Appeal, Fifth Ap-
pellate District

Judge Douglas A. Fettel,
Superior Court of San
Bernardino County

Judge Paul G. Flynn,
Superior Court of Los
Angeles County

**Judge Raymond J. Gior-
dano**, Superior Court of
Sonoma County

Judge T. K. Herman,
Superior Court of Los
Angeles County

**Judge Douglas George
Hilton**, Superior Court of
San Luis Obispo County

Judge Peggy Fulton Hora,
Superior Court of Alam-
eda County

Judge Thomas E. Kelly,
Superior Court of Santa
Cruz County

Judge Michael E. Knight,
Superior Court of Los
Angeles County

Judge Joe O. Littlejohn,
Superior Court of San
Diego County

**Judge Paula Adele Ma-
brey**, Superior Court of
Los Angeles County

Judge Robert E. McDaniel,
Superior Court of Kern
County

Judge Patrick J. Morris,
Superior Court of San
Bernardino County

Judge Hugh F. Mullin III,
Superior Court of Santa
Clara County

Judge H. Dennis Myers,
Superior Court of River-
side County

Judge Charles G. Rubin,
Superior Court of Los
Angeles County

Judge John H. Sandoz,
Superior Court of Los
Angeles County

Judge James L. Warren,
Superior Court of San
Francisco County

The following judges died
recently.

Judge Jean Matusinka,
Superior Court of Los
Angeles County, died
March 27

Judge Roberta McPeters,
Superior Court of San
Bernardino County, died
May 18

Staff Moves

Dennis B. Jones is the
new executive officer
of the Superior Court of
Sacramento County.

Kim Turner is the new
executive officer of the
Superior Court of Marin
County.

Mary Maloney Roberts is
the new General Counsel
to the Judicial Council
and the California courts.

Letter

Continued from page 4

to felonies, some to all three. Some provisions set a single amount for a fine or fee; some provide a permissible range. Some provisions are docket or case based; some are count-specific; some may be stayed or waived; some may not; some may be converted to community service or jail time; some may not; some are applicable statewide; some must be locally authorized, and the local authorization may be either or both the board of supervisors and the local superior court; the failure to pay some impositions may be the basis for a probation violation; some may not. The complexity of the substance of the law is matched by the complexity of variability in its accurate application.

Through his leadership and dogged perseverance and selfless dedication to every aspect of the project, Judge Pangman has given us a tool that, if it does not make the calculation simple, at least makes it doable with comparative efficiency. The Sentencing Fines and Fees Assistant can be used by bench officers in several ways. The program can be installed on a judicial officer's chambers computer and used like any other online legal research tool. The program can be installed on a judicial officer's or clerk's courtroom computer and accessed for a specific case in the courtroom. The judicial officer or clerk can print out copies of "violation summaries" for the most common offenses adjudicated in a given courtroom and have them available for reference or for distribution to counsel and defendants.

The Assistant is available on Serranus at <http://serranus.courtinfo.ca.gov/programs/collections>. If you download it and use it for even the occasional case in which you need to consider imposing a fine, fee, penalty assessment, or surcharge, you will also want to thank Judge Pangman each time you do!

*Alice Vilardi
Judge of the Superior Court
of Alameda County*

Abiding Public Critics

By
James D. Ward

What is this concept of judicial independence we hear so much about? Judicial independence is simply a condition in which judges decide issues before them according to the evidence and the law—free of improper outside influence.

Fortunately, most judicial decisions are routine and do not prompt issues of judicial independence. While many cases are close on the facts or the law and are difficult to decide, no one but the parties in dispute cares about the result.

Only a small percentage of the cases raise the specter of outside pressure. And even when it exists, there is no certainty the pressure influenced the judge's decision. Do we accept the accusation that the judge knuckled under to pressure, or do we realize that those complaining simply disagree with a decision properly reached?

If pressure exists, what is its source? Federal judges' lifetime tenure largely insulates them from outside pressure. In the state judiciary, California has an excellent system of elections, balanced between the lifetime-appointment process and the frequent partisan elections found elsewhere.

Although appointed by politicians, state judges run for election as independents, and they are precluded from participating in the political process. We have no "telephone justice" here—the situation in the communist world when, after hearing the evidence in a case, a judge phones the local party boss to ask how the case should be decided.

While we have no commissars dictating to judges, we do have a potent force often brought to bear—pressure from special-interest groups, sometimes erroneously labeled public opinion.

In our adversarial system of justice, it's appropriate for the parties to a dispute to try through all legal means to persuade the judge to rule in their favor. The appropriateness of expressions

While the pressure from the electorate does present a problem to judges, even that pressure is not as great as may be thought. Appellate justices see from history that, despite retention elections, their appointments are virtually for life.

Trial judges are vulnerable to attack in elections because of unpopular decisions, but that is just part of our

...when does the appropriate expression of public concern or criticism become an inappropriate attack threatening judicial independence?

of opinion by groups outside the court regarding decisions made in court is another matter.

This is a dilemma of a free society. People have opinions as to what transpires in courts, and they are entitled to voice those opinions. Opponents of drunken drivers, drugs, handguns and the like must be free to express their opinions on how judges handle cases. But the question is, when does the appropriate expression of public concern or criticism become an inappropriate attack threatening judicial independence?

Does the right of expression include mob action on the courthouse steps, calculated to frighten judges into complying with the mob's point of view? Of course not. And yet the dissonant voices of pressure groups often sound like the mob, particularly to the judge facing an election with a large mortgage and two kids in college.

democratic process. Our system was developed with judges answerable to the electorate; it's difficult to dispute the wisdom of that approach.

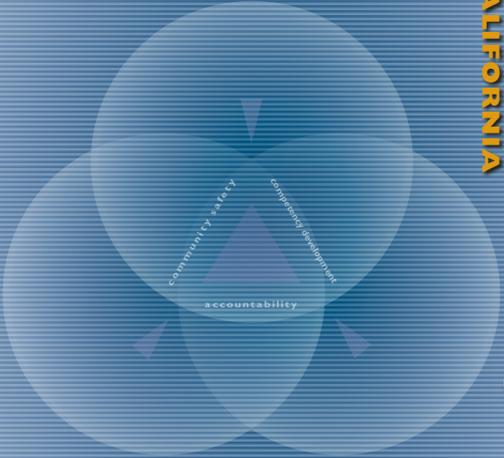
In the end, judges and society simply have to live with the problem of balancing between the vital principle of judicial independence and the right of the public to criticize. If the criticism is responsible and if judges apply time-tested rules of decision-making, the proper balance will be struck. ■

James D. Ward is a former associate justice of the Court of Appeal, Fourth Appellate District, Division Two and a former judge of the Superior Court of Riverside County.

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BALANCED AND RESTORATIVE JUSTICE

AN INFORMATION MANUAL FOR CALIFORNIA



ADMINISTRATIVE OFFICE OF THE COURTS
CENTER FOR FAMILIES, CHILDREN & THE COURTS

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This manual, issued by the AOC's Center for Families, Children & the Courts, catalogs balanced and restorative justice practices and model programs being used in California and around the country. An invaluable resource for the courts, it provides contact information for practitioners and descriptions of practices being followed in local communities and ideas about collaborative partnerships that can help youth.

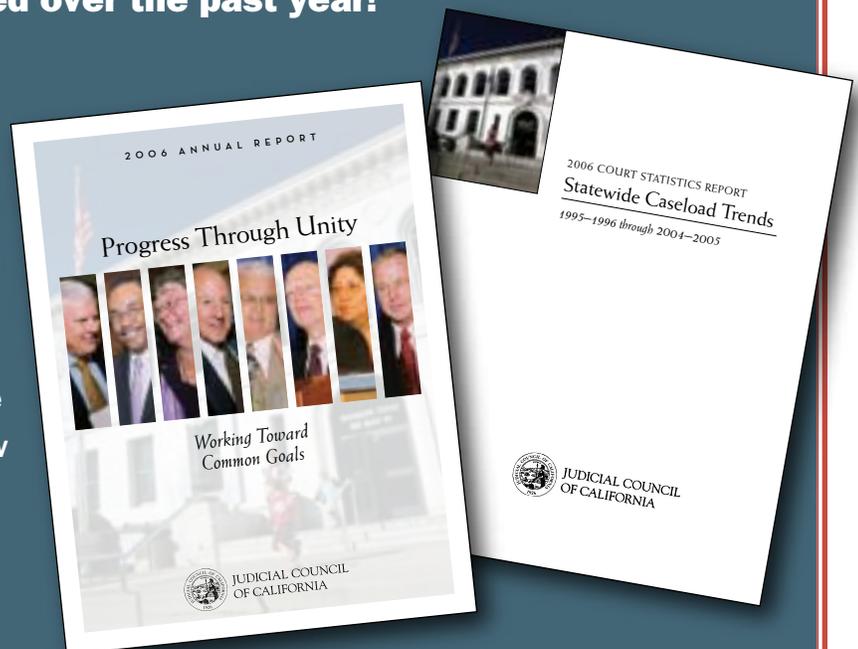
The manual will be distributed to juvenile court presiding judges and court executive officers and is also available on request. To obtain a copy of the manual, please contact CFCC by phone at 415-865-7739 or by e-mail at cfcc@jud.ca.gov, or see www.courtinfo.ca.gov/programs/ccjp/.

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