California Courts Review

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A FORUM FOR THE STATE JUDICIAL BRANCH

SUMMER 2005

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CALIFORNIA COURTS REVIEW • SUMMER 2005

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California Courts Review

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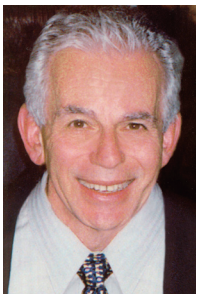

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California Courts Review

SUMMER 2005

California Courts Review is published quarterly by the Judicial Council of California, Administrative Office of the Courts. We welcome ideas and suggestions for articles about California's judicial branch.

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Welcome to the inaugural issue of California Courts Review, the quarterly magazine for and about California's judicial branch.

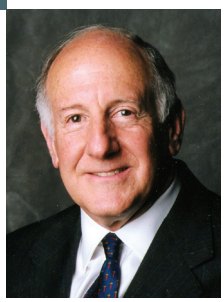
CCR reports on branchwide initiatives and issues facing our state courts, features court people and programs, serves as a forum for court leaders and branch stakeholders, and celebrates court achievements. The magazine was conceived by court leaders as one element of a branchwide communications infrastructure. It serves readers within the state judicial branch as well as law and justice partners.

With our first issue, we offer an insightful article by McGeorge School of Law Professor J. Clark Kelso on the need to update the state Constitution to match the new reality of independent governance.

Ron Overholt, Chief Deputy Director of the Administrative Office of the Courts, recounts the transformation of the state court system that he's witnessed in his 26-years-plus career—especially the monumental structural changes of the last decade. Judge Bradford L. Andrews vividly describes the horrendous conditions in the Long Beach courthouse. Finally, Malcolm Franklin, our new expert on emergency preparedness, tells us about the steps being taken to protect the courts and their people from the unthinkable, no matter its form.

California has long been a place of inspiration and innovation. We hope to continue that tradition in CCR. We invite you to share in shaping the largest court system in the nation through your own contributions in the form of articles, commentaries, or letters.

—Philip Carrizosa
Managing Editor



Ronald M. George
Chief Justice of California

State of the Judiciary

Chief Justice Ronald M. George made these remarks as part of his State of the Judiciary address to the California Legislature on March 15, 2005.

Ensuring a strong nonpartisan judicial branch is a goal that transcends party politics. In fact, it is and must be a core value for anyone dedicated to preserving our democratic system of government and the rule of law. . . .

[In February], at the urging of Senators Ackerman and Dunn, I convened a meeting to discuss potential changes to article VI, the judicial article of our state Constitution. The aim of these modifications is to provide greater stability, accountability, and protection of access to justice for all Californians. Under the senators' guidance, we developed a draft that was presented for discussion purposes at this meeting attended by judicial and bar leaders, legislators (including Senators Dunn and Ackerman, as well as Assembly Member Dave Jones, Chair of the Assembly Judiciary Committee), legislative staff, and Peter Siggins, the Governor's legal affairs secretary.

Article VI has been the subject of frequent study and debate during the last half century—sometimes resulting in change, sometimes not, but each time reflecting the sense that improvements to the article would enable our branch to better perform its responsibilities and provide additional accountability to our sister branches of government and to the public.

The changes undergone by our branch over the past decade have allowed us to manage the cyclical uncertainty of budget fluctuations with greater assurance. However, we never have lost sight of the circumstance that our branch's ability to operate remains fragile and that we must avail ourselves of every opportunity to provide more stable protection for the public's access to its courts.

Thus, we are exploring the possibility of a constitutional amendment to preserve the beneficial changes that already have been made and to incorporate others. Working together, we hope to create a proposal that will further the mutual goal, shared by all three branches, of ensuring fair and accessible justice for future generations of Californians.

The draft amendment presented at the recent meeting included a wide range of ideas gathered from several sources—Senators Dunn and Ackerman; previous studies of the judicial article; the Judicial Council and its committees, especially the Presiding Judges Committee; the State Bar; and various practices followed in other states. Let me describe some of the key features of this draft.

Under legislation enacted last year, the State Appropriations Limit (or SAL), employed in determining increases in the Legislature's own budget, is now used to calculate increases in the trial court base budget. By placing in the Constitution this methodology of calculating base budget increases year to year, the stability of the judicial branch's funding—and its accountability—would be more firmly established. Additional budget increases would have to be justified by the judicial branch before consideration and action by the Legislature and the Governor.

The need for new judgeships would be evaluated under a standardized procedure, with necessary funding for new positions added to the branch's base budget. This provision would allow for the orderly addition of judgeships as required to meet current documented needs. . . .

We also are exploring the possibility of having judicial salaries set by a judicial salary commission modeled on the constitutional provision governing the neutral commission that now sets the salaries of California's constitutional officers other than judges. Seven members of the proposed new commission would be appointed by the Governor and the Legislature, and two State Bar members by the Chief Justice.

The terms for trial judges would be set at 10 years, increased from the present 6-year terms, and judicial elections would be timed to provide voters with a sufficient record of service upon which to evaluate trial and appellate judges. Our aim in this regard is to keep judicial elections from becoming the focus of partisan attacks that can—and in some other states do—undermine the court system, while preserving accountability to the public.

The authority of the Judicial Council to set policy in administrative matters of statewide concern would be clarified under these proposals, and its membership would be expanded. The council's goal of having its membership reflect the diversity of our state—a goal presently achieved through rules adopted by the council—would be set forth in the constitutional provision. Senators Dunn and Ackerman also have suggested that the two legislative members of the council be made nonvoting participants—balancing the constitutionally required separation of powers among the three branches with the value of legislative contributions to the work of the Judicial Council.

The current Judicial Council selection process emphasizes the importance of having council membership include individuals from varied backgrounds who bring to the council their experience in court administration and policy development. California's courts serve huge urban areas and tiny rural counties, and places with large minority populations. In some courts, complex business and other litigation is a daily affair. In many smaller courts, judges sit on a wide range of cases; in larger courts, judges handle calendars dedicated exclusively to family law matters, criminal law, civil trials, probate, or other specialized areas of the law.

The proposals would provide for nominations by trial court presiding judges for some of the positions on the Judicial Council. The balance of appointments to the council would be made from nominations generated statewide.

When new members of the council are appointed, it is stressed that they are to bring their diverse experience and expertise to bear on the broad problems of improving the administration of justice statewide, and that their role on that body is not to represent a particular court or region or subset of the branch, but to further the interest of the judicial branch as a whole in providing fair and accessible justice. The only constituency of council members is the public at large, whose views are regularly solicited by the council and its advisory committees and task forces, made up of hundreds of judges and court commissioners and staff, as well as representatives from the bar and other interested groups. The community outreach engaged in by the courts—including not only the trial courts, but the California Supreme Court and the Courts of Appeal—on both a state and local level, offers a further opportunity for public input into the courts' planning process and operations.

The meeting on article VI held [in February] provided invaluable suggestions and information, and we anticipate that, working with Senators Dunn and Ackerman, the leadership of the Senate and the Assembly, and the Governor's Office, we shall continue to refine the drafts to determine which of the proposals to advance in arriving at a proposed constitutional amendment for your consideration. This is still a work in progress. I already have had the opportunity to speak personally with many of you about our efforts. Your ideas, comments, and responses will be very valuable to us as we pursue this unique opportunity to ensure a stable and accessible justice system for future generations of Californians. . . .

Why Article VI Needs Work

By
J. Clark Kelso

California's judicial branch has never been stronger or more vibrant. Thanks to a decade and a half of sustained leadership, planning, and implementation—along with a heavy dose of practical flexibility—the branch has successfully weathered a striking series of fundamental organizational changes, including unifying the trial courts, securing state funding for the trial courts, implementing technology reforms, gaining control over facilities, and adopting court employee legislation.

These changes have fundamentally realigned the axes of governance within the branch, raising the question of whether the provisions in article VI of the California Constitution still provide the most appropriate governance structure for what really is a re-created judicial branch.

In addition, threats to judicial neutrality and independence have become commonplace on the political scene. And we know that the long-term future of state budgets is anything but stable.

In light of these changed and changing circumstances, Senators Joseph Dunn and Dick Ackerman have signaled their interest in engaging in a serious statewide dialogue about the adequacy or inadequacy of article VI.

A review of major trends affecting judicial administration over the last 25 years provides a context for that dialogue and suggests a need for some changes to ensure equal access to justice, provide for appropriate accountability for judicial administration, and promote judicial neutrality and independence.

Achieving Equal Access

Equal access to justice is a worthy goal and aspiration. But making equal access to justice a reality requires sound decision making about the key resources available to the courts. This means, at a minimum, decisions about court budgets, the numbers of judgeships and associated staff, and court facilities. There is room for improvement on each of these elements.

Court budgets

The adoption of state trial court funding is certainly the most far-reaching change in judicial administration in the last 25 years. What was a bifurcated system of funding—largely local funding along with some state funding for trial courts—has become unified, with essentially all new funding for the judicial branch now provided by the state.

The transition from local to state funding for the trial courts was slow, marked by fits and starts, and unsettling. Although the state declared its intention to move toward state funding in the early 1990s, the time (and the money) never seemed right to cut over to the new system. It wasn't until the end of the decade that the shift occurred in earnest and for good.

There remains some instability in the new funding structure. The Judicial Council and court leaders are continually developing their relationship with the Governor's Office, the Department of Finance, and the Legislature, and the Judicial Council is still tinkering a bit with the process for allocating funds within the judicial branch. There is now a statutory formula linking the court's baseline budget to increases in the state appropriations limit, and that adds a welcome measure of stability.

All in all, the courts have done fairly well in the move to state funding. There appears to be greater equity in funding across the state, and the courts have done comparatively well in negotiating their fair share of the state budget. This, no doubt, is due in very large part to the enormous respect and credibility that Chief Justice Ronald M. George has enjoyed with Governors Wilson, Davis, and Schwarzenegger and with legislative leaders.

But there are some dark clouds on the horizon. First, a stable funding system cannot be premised on the persuasiveness of one person. In the long run, institutional and structural protections produce greater stability.

Second, the short- and long-term prospects for the state's overall budget are rather bleak. Spending for much of the General Fund budget is set by formulas that, based on population and revenue projections, will account for ever-increasing portions of the overall budget. Spending on education and health care will continue to rise and take more and more of the budget.

Don't look for solutions to this problem on the revenue side of the equation. While increased revenues—not something that is at all likely, given Governor Schwarzenegger's solid opposition to taxes—might address our short-term budget problem, the long-term problem is much bigger and much more threatening to any program that does *not* have its funding protected in some way or another. The current statutory formula for the courts will not protect judicial budgets when the crisis hits. In a particularly bad budget year, statutory protections can be done away with in a trailer bill to the budget.

We all should be worried about how equal access to justice will be guaranteed over the long haul if the judicial system's budget is left to the whims of those involved in the annual process in Sacramento.

Within the context of the courts' budgets, access to courts is most critically affected by the number of authorized judicial officers and by convenient access to modern court facilities. In both of these areas, the judicial branch may still be too dependent on the other branches.

Judgeships and associated staff positions

Establishing judgeships should be a process dependent mostly on caseload growth. Unfortunately, for too many years the process has been more political than rational. Instead of steady and stable resource growth, courts experience boom-and-bust cycles, and access to the courts suffers as a result.

Court facilities

Court facilities are just as important to equal access as appropriate numbers of judges and staff. Although responsibility for court facilities is being transferred by statute to the Judicial Council, the location and quality of government buildings involves an intensely political calculus that will continue to attract legislative interest and involvement.

In summary, equal access to justice will be better protected by removing some of these foundational elements from the political world in Sacramento. Solutions under consideration include the following:

- Add language to article VI that increases baseline funding on the basis of increases in the state appropriations limit, with other funding being discretionary.
- Add language to article VI making it clear that it is the Judicial Council that has authority to create, manage, and dispose of court facilities.

Recognizing the Judicial Council's Role

The judiciary has a very different structure now compared to 25 years ago, and issues of statewide governance have gained prominence. Twenty-five years ago we had some 200 trial courts, each governed independently of the others and having a decidedly local focus. The combination of trial court unification and state funding of the courts has changed all of that.

The unification of the trial courts was a 10-year project. Picking up on a Judicial Council recommendation from the 1960s, then-Senator Bill Lockyer authored the key constitutional amendment that authorized unification of municipal and superior courts county by county. Within a few years of its passage, all the counties had unified their courts. The state went from more than 200 trial courts to 58 superior courts.

At the same time, as noted above, the trial courts saw their funding change from local to state. Combined with the reduction in the number of trial courts, this shift had the predictable consequence of changing the primary locus of governance from the relationship between a local trial court and its county board of supervisors to the relationship between trial courts and the state, particularly the Judicial Council.

The Judicial Council's more central role in governing the judiciary suggests the need for a review and reconsideration of the membership of the council and its constitutionally assigned role.

Under current law, the council is empowered to "survey judicial business and make recommendations to the courts; make recommendations annually to the Governor and Legislature; adopt rules for court administration, practice, and procedure; and perform other functions prescribed by statute." This language was drafted at a time when the Judicial Council did not have the broad responsibilities it now has over the allocation of trial court resources.

The residual clause—"other functions prescribed by statute"—now encompasses a wide range of important matters, from budgets to buildings, and in these matters the council is clearly the policymaking body for the judicial branch. The residual tail is now wagging the dog. Separation of powers and the independence of the branch would be strengthened if these fundamental responsibilities for court resources were recognized in the state Constitution instead of being merely creatures of state statutes.

As for the council's membership, there is room for improvement. As the council's responsibility for trial court resources has increased, concern has arisen that the courts are not adequately represented on the council. Presently, the 21 voting members of the council include 15 judges and 6 nonjudges. Ten of the judicial members are superior court judges, and all of the judges are appointed by the Chief Justice under procedures established by the Judicial Council.

To increase superior court representation, one or more superior court judges could be added to the council. Some consideration should be given to whether the future nomination and selection process for some of the superior court judges could include more direct input from the courts.

Representation on the council by court executives also is an issue. Although there are two nonvoting court executives who serve on the council, these two positions may not adequately reflect the diversity of courts around the state. Modern court administration is utterly dependent on the expertise and long-term stability of court executives. The council's decision making might well be improved by the addition of a third court executive.

The existence of two voting legislators on the council is another legitimate issue for discussion. When the council's role was limited to collecting information for the Legislature and advising and making recommendations for judicial reform, participation by legislative members in the council's deliberations may have been appropriate. But now that the council has been converted to the primary policymaking body for the courts, with broad responsibility for resource allocation, separation of powers suggests the need for reconsideration of direct legislative participation in council decision making.

In summary, accountability for the fair and effective administration of justice would be strengthened by a few changes to the council's structure and function. Solutions under active consideration include the following:

- Add to the council a superior court judge with a three-year term.
- Add two superior court judges with one-year terms.

- Increase the number of court executives on the council from two to three.
- Convert the two voting legislator positions to nonvoting advisory positions.
- Provide that the trial court presiding judges will give the Chief Justice the names of three nominees for each of the three or four trial court seats on the council, and the Chief Justice will then appoint one of the three nominees.
- Add language to article VI to make it clear that the council is empowered to (1) establish policies to promote access and administration of justice, (2) establish fiscal and budget procedures, (3) allocate funds, and (4) provide information on expenditures to the Legislature and Governor.

Protecting Neutrality and Independence

Compared with 25 years ago, this is a dangerous time to be a judge. The politicization of the judiciary is upon us, and we are in danger of losing the branch as we have known it.

At the state level, over the last 20 years we have witnessed a rise in electoral challenges to judges, with elections increasingly having the hallmarks of a political contest. This trend is national in scope.

Judicial elections are becoming increasingly partisan, bitter, and political. Although historically there has been a tradition of treating them differently from other elections—a tradition supported in some states by ethics rules or other laws that made judicial elections less partisan—those traditions are bowing to political ambition. In addition, the prophylactic laws and rules designed to make judicial elections less partisan have been largely swept away by the free-speech guarantees of the First Amendment.

Federal judges do not stand for election, but we see the same attacks on their neutrality and independence. The federal judicial nomination process is crumbling under the pressure of politics. Most recently, we have seen some leaders in Congress issuing petulant and irresponsible calls to impeach the judges involved in the Terri Schiavo case. These same leaders have lashed out at certain members of the Supreme Court of the United States on essentially specious grounds.

We all should be worried about how judicial neutrality and independence will be guaranteed in the face of increasingly political and divisive attacks on the judiciary and within judicial elections.

In summary, neutrality and independence would be strengthened by some changes to the judicial selection and election process and to the process by which judicial compensation is determined. Following are some of the solutions under consideration.

- Increase the term of superior court judges to 10 years. The current term for a trial court judge is 6 years. This means a superior court judge may stand for election four times during a 20-year career. Extending the term of a superior court judge to 8 or 10 years would reduce that exposure without taking away from the electorate the opportunity to weigh in on judicial officers.
- Create an incentive for governors to fill a vacancy early rather than late, which would give an appointee time to build a record before his or her first election.
- Add language to article VI to establish a judicial salary commission to set or recommend judicial salaries. Many factors influence lawyers to seek appointment to the bench, and judicial salaries are only one piece of the puzzle. But it is an important piece, and, given the increased politicization of the judicial election process, a more objective, more independent, and less political process for setting salaries could, in the long run, ameliorate some of the increasingly negative aspects of choosing a judicial career.

Conclusion

The last 15 years have been a golden age of judicial administration in California. Very little in the judicial branch has gone without analysis, reconsideration, and, in many cases, reform. It is time now to reflect on all of those changes and on the challenges facing us in the 21st century, and to consider amending and aligning the constitutional provisions in article VI with the broad vision and goals the judicial branch has set for itself. CR

J. Clark Kelso is a professor of law and director of the Capital Center for Government Law and Policy at the University of the Pacific McGeorge School of Law.

Proposed Amendments

For the latest version of proposed revisions to article VI, check the California Courts Web site at *www.courtinfo.ca.gov/reference/article_vi.htm*.

That Web page provides a history of article VI, a summary of topics discussed at the February Educational Workshop, the current text of article VI, draft amendments, and revised draft amendments, as well as a video of State Senators Dick Ackerman and Joseph Dunn welcoming participants to the February workshop and discussing the need for amendments to the judicial article.

OUT OF ORDER:
A Report From One of the State's Worst Courthouses

By
Judge Bradford L. Andrews

A recent front-page article in the *Long Beach Press-Telegram* described the Long Beach courthouse as "antiquated, overcrowded, seismically unsound, and grossly out of touch with the Americans With Disabilities Act." More ominously, an article with the headline "Killer Courthouse" related the death of a juror who suffered a heart attack in the court building's sixth-floor cafeteria. Although paramedics arrived at the building within three minutes of the 9-1-1 call, the difficulty of transport inside the building kept them from reaching their patient for seven more minutes. The dilapidated condition of the courthouse, built in 1960, is a daily topic of discussion among employees, jurors, witnesses, parties, and attorneys.

What is it about the Long Beach courthouse that makes it such a civic embarrassment?

Approaching the courthouse, you notice that heat-reflective screens are missing from random windows. The sidewalk in front of the entry is uneven. (Within the past month, an elderly woman fell and was injured when she tripped over an uplifted cement slab in the sidewalk.) Frequently, long lines of jurors, witnesses, and litigants stand in front of the building, waiting up to an hour just to get in the front door and pass through the too-often-inoperable security screening machines. Planters and waste containers outside the building serve as urinals for the ever-present homeless population.

Once inside, you wait in a crowded lobby for a public elevator. There are three public elevators; not infrequently, only two of the three are working. As I write this article, in fact, none of the public elevators is working.

A unique feature of the Long Beach courthouse is that, even when the public elevators are operational, they go only to the fifth floor of the six-story building. Unfortunately, the jury assembly room is on the sixth floor, as are the cafeteria and the public defender's office. The only way for jurors to get to the sixth floor is to ride the escalator. That poses problems for the disabled. Those who cannot use the escalator are individually escorted to the sixth floor by a security officer, using the judges' elevator. (Don't let anyone tell you the judges' elevator doesn't go all the way up!) At present, however, the judges' elevator also is undergoing repairs, and it will be inoperable for several more months. The jail security elevator also goes to the sixth floor—for some inexplicable reason, inasmuch as no custodies are ever transported to that floor—but that elevator is not available to the public. The fact that the judges' elevator is inoperable approximately 30 percent of the time only complicates matters. On numerous occasions—like today, when none of the public or security elevators is functioning—this public courthouse is completely inaccessible to the disabled.

In-custody juvenile criminal defendants are regularly taken to courtrooms through this public hallway on the fifth floor, often passing by family members, witnesses, and rival gang members.

BOB ZAMALIN

Even for able-bodied people, using the building's escalators is not a viable option, because on most days only 3 or 4 of the 12 escalators are functioning. On the best days, half function. It has been that way for 15 years. Even when you are fortunate enough to find an operable escalator, there is a constant danger that it will stop suddenly. When jurors leave the jury assembly room to report to a courtroom, they are warned not to all get on the escalator at the same time, for fear the load will cause the escalator to stop suddenly, throwing them in a heap at the bottom. At this writing, the public, court staff, and judges may take an escalator as far up as the second floor; above that the escalators are under repair, so everyone must climb the stairs.

Things don't improve inside the courtrooms. In many of them, chunks of acoustic material have fallen from the ceiling, leaving holes or, in some cases, obvious evidence of repair. The part of the acoustic ceiling that remains is black with mold. Look down, and you will see torn carpeting repaired with duct tape or not repaired at all.

One of the several nonworking escalators that everyone must walk up in the Long Beach courthouse.

BOB ZAMALIN

Rats Infest Courtrooms

Recently, rat traps have become a feature in many courtrooms. The current record for rodent catches is eight rats in a two-week period. The only reason the court personnel didn't catch more is that they tired of finding lifeless rats every work morning and stopped putting out the traps.

In another courtroom, one of the employees resorted to self-help and brought rat poison from home. Apparently it was effective, because the rat crawled somewhere inaccessible under the judge's bench and died. The courtroom had to be deodorized four times a day for two weeks until the stench went away.

On one occasion, a judge arrived at work to find a live rat stuck in a glue trap on the floor in front of the bench. The building maintenance staff was notified, but they did not arrive in time to remove the rat before the first calendar call. At approximately 9:00 a.m., while a plea was being taken from a defendant, the maintenance man walked into the well area in front of the bench, put the glued rat into a plastic bag in full view of the public, sprayed the courtroom with deodorizer, and then departed. Without missing a beat, the judge sentenced the defendant and the next case was called.

Rats are not the court's only friends. Not infrequently, a clerk or someone in the audience announces that a cockroach has made an appearance.

Judges' chambers are normally places of refuge from busy courtrooms. In Long Beach, the judges hear a constant sound like distant drumbeats as inmates soothe themselves by drumming on the metal parts of the holding cells on the floors immediately above and below chambers. The rhythm is interrupted by the occasional opening and closing of cell doors as inmates are taken to courtrooms. On some occasions the inmates become so enthusiastic in their music-making that the sound can be heard in the courtrooms. It's a real showstopper during a jury trial.

The sound of drumming is not the only intrusion into chambers from the holding cells. On occasion, an inmate tries to flush his uniform down a toilet, inevitably causing an overflow of the plumbing, and the wastewater comes through the ceiling of the judge's chambers below. The judge and staff have learned to keep their valuables and coffee pots covered at all times.

Water pours into the building from other sources. Even a moderate rain causes everyone to grab their trusty buckets. The head deputy district attorney proudly announced he had replaced his old buckets with new, plastic ones this year. What makes his announcement remarkable is the fact that his office is on the third floor of a six-story building.

After every rain you can see hundreds of files spread out on pallets in the hallways to dry. A recent two-inch-deep puddle in the basement was caused by rainwater entering through a gap between the old and new portions of the building. With each earthquake the gap grows wider. It is now about six inches wide. When the buildings were first built, they were only about an inch apart.

Two seismic surveys have led inspectors to the same conclusion: the building is seismically unsafe. A retrofit is proposed, but even it probably will not save the building from demolition if there is a moderate (4.5 Richter) earthquake on a nearby fault.

Disrepair Breeds Disrespect

When a courthouse is left in such a state of disrepair, it implies that those in authority have no respect for the court and that the work of the court is unimportant. If the authorities lack respect for the court, why should the public respect the court or have any faith in our

system of justice? Public disrespect for the building, in fact, is evidenced by the ubiquitous graffiti in hallways, on furniture, in restrooms, and in other areas accessible to the public.

As this article is being published, Los Angeles County Supervisor Don Knabe has allocated money to refurbish the security elevators and escalators, and for that the court is grateful. Progress is slow because the needed parts are obsolete and must be custom-made. The work of seismically retrofitting the building is scheduled to commence later this year. However, this work will not add a square inch of space; it will not repair the graffiti; it will not repair the courtroom ceilings and floors; it will not rid the building of rats and roaches; and it won't stop the leaks.

Someday the citizens of the South District would like to see a headline in the *Long Beach Press-Telegram* that reads "Long Beach Opens New Courthouse." We're working on it. CR

Superior Court of Los Angeles County Judge Bradford L. Andrews is the presiding judge of the Long Beach courthouse.

Relief for Ailing Courthouses Is on the Way

Today, many of California's court buildings need significant repairs, renovations, or replacements to ensure the safety and security of court users, greater efficiency of court operations, and equal access for all.

In 2001 the state Task Force on Court Facilities identified critical physical and functional deficiencies in court buildings statewide. Among the task force's findings:

- Due to a lack of courtroom space, more than 23 court facilities are in trailers.
- Twenty-five percent of courtrooms have no space for a jury box.
- Forty-one percent of court facilities have no way to bring in-custody defendants to courtrooms without the use of public hallways where the defendants pass by witnesses, potential jurors, victims, and other court users.
- Sixty-eight percent of court buildings lack up-to-date fire and life safety systems (which include sprinklers, proper exits, and emergency lighting).
- Seventy-eight percent lack adequate access for persons with disabilities.

The task force recommended a capital construction plan to renovate or improve existing facilities and build replacement facilities to correct these problems.

The Trial Court Facilities Act of 2002 shifted responsibility for California's courthouses from the counties to the state, under the governance of the Judicial Council. In 2004 the Judicial Council approved the first *Trial Court Five-Year Capital Outlay Plan,* which used a systematic methodology to rank all necessary court facility improvements statewide. The plan includes urgently needed improvements to court buildings in all 58 California counties.

Significant financing is necessary to implement this plan. The Judicial Council has sponsored the placement of a bond measure for court facilities on the 2006 ballot. If approved by the Legislature, California voters will be asked to approve the bond measure to provide funding for these projects.

What a Difference a Decade Makes

California's Revolution in Court Administration

By
Ronald G. Overholt

Imagine that you manage a complex organization providing critical services to a diverse client base. Another entity, directed by an elected official, allocates your budget, hires your staff, selects your information systems, and maintains your facilities—in fact, controls the entire operation for which you are responsible.

This was the court environment when I joined our judicial system in the late 1970s, as a mental health counselor in the San Diego Superior Court. At the time, no one could have foreseen the breathtaking structural transformations that California's state court system was about to undergo, most of them just within the past decade. Starting with trial court delay reduction, the changes came unbelievably quickly—trial court coordination, state funding of the trial courts, unification of the superior and municipal courts into a single trial court, and, most recently, state responsibility for court facilities.

Many of the changes I witnessed were the result of the emergence of the profession of judicial administration. The first Administrative Director of the Courts in California was created by constitutional amendment in 1960 and with it the Administrative Office of the Courts (AOC) was born. Our current director, William C. Vickrey, is only the fourth person to hold that office in our state's history. The first court executive officer position in the country was created shortly after that in the Los Angeles Superior Court.

Court Executives' Role Limited

Compared with the challenges and demands of today's court executives, the roles of executive officers of the 1960s and 1970s seem limited, almost quaint, by comparison. The primary role of an executive officer was that of jury commissioner and secretary to the judges. Judges hired the court reporters in many courts, but virtually all other staff worked for and were hired by an independently elected county clerk. The county clerk hired all courtroom clerks, clerk's office staff, and supervisory staff. The county clerk also maintained court files and all the early technology dealing with dockets and electronic

One of the dramatic moments came in January 2000, when approximately 170 Los Angeles Municipal Court judges were sworn in as superior court judges, marking the unification of the Los Angeles County trial courts and the creation of the largest trial court in the nation.

AP/WORLDWIDE PHOTOS

data. Judges had no authority over the county clerk, which created frustration and, in many instances, poor service.

This situation began to change fundamentally in the late 1980s when superior courts began to transfer the clerk of the court function from the county clerk to the court executive officer, who was an employee of the judges. The authority of the courts to transfer this authority was challenged by the county clerks, but the California Supreme Court upheld the superior courts' authority to do so in the case of *Zumwalt v. Superior Court* (1989) 49 Cal.3d 167, brought by the San Diego County clerk. This was a very contentious time for the courts and the clerks' offices. Clerk staff were concerned as they moved from the authority of county civil service commissions into personnel systems established by the courts.

Despite the movement of the clerk function to the court, the county board of supervisors continued to determine how many employees a court could have because the county controlled the court's funding. The board also determined the salaries and benefits of all court employees except the executive officer, whose salary was set by the judges. County departments provided the entire infrastructure for operating the court, including personnel, technology, telecommunications, facilities, and payroll. Courts had virtually no authority, control, or responsibility for these functions.

Following the transfer of clerk responsibilities, court executive offices began to grow, particularly in the urban courts. Courts began to assume more responsibility for their business functions. However, courts continued to be isolated from each other as there was very little activity within the judicial branch.

Trial Court Delay Reduction Arrives

That situation changed completely in 1986 with the trial court delay reduction program, one of the first statewide initiatives with oversight and coordination by the Judicial Council and AOC.

I was the calendar coordinator for the San Diego Superior Court when the civil delay reduction program was instituted by the AOC. The AOC provided oversight to programs and contracted with the National Center for State Courts to work with the nine largest superior courts as a consultant to try to reduce civil delay.

As in other urban courts, it was taking five years to get a civil case to trial in San Diego County. The lawyers were in control of the cases. The court had no involvement with moving a case toward trial until the attorneys filed an "at-issue memo."

The delay reduction program provided deadlines by which certain tasks needed to be completed or there would be consequences. It was a turning point for courts to take control of and manage their business functions and calendars, rather than leaving the business aspects to the other branches of government and calendar control to the attorneys in civil cases.

This again was a quarrelsome time as local courts struggled to establish rules and procedures that reflected local legal cultures while the Judicial Council and statewide legislation provided overall oversight. This was the courts' first experience with the "statewide uniformity versus local legal culture" debate, which has occurred on many initiatives during the evolution of our branch. The local courts were fiercely independent—they felt that what worked for other courts would not work for them.

As time went by, however, all of the different local rules and procedures—and even specific rules in individual courtrooms called "local-local" rules—caused attorneys to complain that it was impossible to comply with all of them. As with many of the reforms that would follow, efforts were made to provide some level of uniformity around the state while allowing courts room to manage in a way that best meets the needs of their communities. Delay reduction was, of course, very successful. The five-year wait for trial dissipated and civil calendars became current.

The Battle Over Court Funding

Courts continued to evolve into a truly separate branch of government throughout the 1990s. In the early 1990s, the state transferred local property tax revenue from the counties to the state to help ease huge deficits in the state budget. This resulted in serious budget problems for the

counties, which were passed on to the courts. The state reduced its funding to the courts rather than increasing the funding.

Courts threatened to sue their counties to maintain core services and actually did so in some instances. The Orange County Superior Court filed claims against the county under a Government Code section. In Alameda County, where I began work in 1988 as the assistant executive officer and became court executive officer in 1991, we retained a law firm to assist us to require the county to provide adequate, necessary funding. Courts all across the state were experiencing the same problem.

Early efforts to provide state funding had been made, but with limited success. Budget problems at the state and local levels resulted in the state failing to fulfill its responsibility for increased funding. Under trial court funding legislation adopted by the Legislature in 1991, the state was to assume funding of the courts over a period of time, ultimately assuming 70 percent of the courts' funding needs. This split responsibility between the counties and state resulted in a system in which neither entity assumed ultimate responsibility. Since the counties and the state were now feuding over the property tax shift and dealing with severe budget shortfalls, courts were caught in the crossfire as both the counties and the state attempted to disassociate themselves from responsibility for the courts.

Efficiency Through Coordination

Courts were attempting to manage their limited resources as effectively as possible. Trial court coordination emerged in 1995 with the adoption of rule 991 of the California Rules of Court, which provided for municipal and superior courts in each county to coordinate their business efforts. This was a precursor to administrative consolidation of municipal and superior courts and ultimately trial court unification.

It was a period of sometimes very heated debate within the court system. Some judges and court administrators argued that local autonomy and control resulted in better service at the local level. Others argued that the duplication of services at different court levels and locations throughout the counties and state resulted in redundant and unequal systems, especially during difficult budget times.

Debates continued during this same period over what the source of funding should be for the trial courts. Some judges and court administrators argued that funding should remain at the local level to ensure autonomy and control. Others argued that the counties would not be able to provide adequate funding for the courts as the state continued to take revenue from them and that the counties had higher-priority services.

In Alameda County, we struggled with the dwindling budgets and lack of resources. I knew that through sharing administrative resources we could better serve the public in those bad times. We had six municipal courts in the county, including one that had only one judge and was just a couple of miles from Oakland, where the majority of the other judges were located. Judges and administrators fought to maintain their independence. Surprisingly, the Berkeley-Albany Municipal Court, situated in one of the most independent communities in the country, was the first to adopt administrative consolidation with the superior court. This relationship was very positive, worked very well for both courts, and served as a model for the other courts in the county, which ultimately agreed to consolidate.

Similar activity was occurring around the state. Presiding judges and court executive officers were actively involved in Judicial Council committees to guide the process, which ultimately resulted in trial court unification in 1998.

Moving Toward Unification and State Funding

Governor Pete Wilson's appointment of Chief Justice Ronald M. George in 1996 was another turning point for the California courts. Widely regarded as one of the best administrators among national court leaders, Chief Justice George, accompanied by Administrative Director William C. Vickrey, visited courts in all of California's 58

Milestones

1986
Trial Court Delay Reduction Act mandates case-processing delay reduction efforts in superior courts.

1997
Trial Court Funding Act consolidates all court funding at the state level, giving the Legislature authority to make appropriations and the Judicial Council responsibility to allocate funds to state courts.

1998
Proposition 220 allows for unification of counties' superior and municipal courts. All 58 courts vote to unify by February 2001.

2000
Trial Court Employment Protection and Governance Act makes court personnel "trial court employees" and no longer employees of the county.

2002
Trial Court Facilities Act transfers responsibility for trial court facilities from the counties to the state under the governance of the Judicial Council.

counties during his first year as Chief Justice. They found a vast disparity in court resources, funding, personnel, technology, the number of judges, and facilities from county to county.

As the Chief Justice noted in his first State of the Judiciary address: "Access to justice—and the quality of justice—often differs significantly from court to court and county to county. Because of these fiscal constraints, the judicial branch is unable to hold its own segments accountable, nor can the judiciary as a whole itself be held accountable, for the quality of the administration of justice in this state—even though this rightfully is a matter of statewide concern."

The push toward stable funding and the efficient use of our limited resources took the form of state trial court funding and unification of the trial courts. The overarching goal of state funding and trial court unification was to provide fair and accessible justice for all Californians, regardless of what county one lives in, and to strengthen the judiciary as a separate and equal branch of government.

Soon after the unification of the trial courts and the shift to state funding, Chief Justice George indicated that those two initiatives were the two most significant structural changes to the trial courts in the past 100 years. Both changes took effect during 1998, setting off dramatic changes in the way courts conduct their business, changes that continue to be addressed today.

Around 1950 there were 767 distinct, individual, court systems in California, such as police courts, justice courts, probate courts, superior courts, and the like. Before the constitutional amendment for unification in 1998, there were 220 distinct municipal and superior courts. Today there are 58 superior courts in California, one in each county.

Following the unification of the seven courts in Alameda County and the shift to state funding, I had the opportunity to join the AOC as the Chief Deputy Director in 2000. I felt it was a great opportunity to join the statewide leadership team that would strengthen the courts as an equal branch of government in the new millennium and help establish the infrastructure to support it.

Legislation for state trial court funding established a system of statewide policies and decentralized management of the courts. The Judicial Council adopts broad policy objectives for the branch, while local courts have more autonomy to manage their resources than they did in a county-funded system. Court employees became employees of the local court rather than employees of the county. The courts have authority to set salaries, add or reduce staff, negotiate contracts, and adopt personnel policies and rules appropriate for that court.

Legislation for state trial court funding established a system of statewide policies and decentralized management of the courts.

The courts, in conjunction with the AOC, are developing a statewide infrastructure to ensure that they have the administrative tools needed to conduct business in areas previously provided by the counties. These include a statewide accounting system that will provide for uniform management reporting and improve our ability to justify funding needs at the state level. The courts and the AOC established a statewide court workers' compensation program that has greatly improved controls over rising costs in that area. Courts have reduced the costs of litigation with the shift from county programs to the AOC's Office of the General Counsel litigation management program. Development of a statewide case-management system will replace the dozens of outdated systems in existence.

Now, with passage and implementation of the Trial Court Facilities Act of 2002, authored by state Senator Martha Escutia and sponsored by the Judicial Council and the California State Association of Counties, the judiciary is beginning to have authority over its facilities. A measure to place a court facilities bond measure before the voters is now moving through the Legislature. Passage of this bond measure would allow the branch to finally address our seriously neglected court facilities.

Such innovations and structural changes will continue as the judicial branch becomes truly co-equal to the legislative and executive branches. Proposed amendments to article VI, the judicial article of the California Constitution, are designed to strengthen the independence and accountability of the branch by ensuring a system free of political influence and to provide appropriate accountability to the public we serve. Proposed amendments will be considered by the judiciary and the Legislature and, if approved, will be placed before the voters in an upcoming election.

California's judicial branch is the largest court system in the country and possibly the world. Many look to the California courts and judiciary as a model of a modern court system. It is due to the leadership and vision of the Chief Justice, trial court presiding judges, court executive officers, Administrative Director of the Courts, members of the Judicial Council, and dedicated staff of the AOC and trial courts that all of this has been accomplished. The improvements to our system have served as a model for state court systems across the country as other states move toward state-funded and unified trial courts.

I look forward to the continued development of our branch and the results of these efforts, which will benefit all Californians. CR

Ronald G. Overholt has been Chief Deputy Director of the Administrative Office of the Courts since 2000.

Disaster Preparedness

Thinking About the Unthinkable

By
Malcolm Franklin

In the last few months I have met with many court officials, sheriffs' departments, committees, and associations to discuss issues of security and safety in the courts. Although court transfers and construction projects will solve many of the longer-term issues around the state, safety and security will continue to be day-to-day challenges for our courts. Presiding judges and court executive officers have addressed issues related to visitor screening, after-hours security, and internal response to incidents inside court buildings. The transfer and transport of inmates and the security risks involved with moving court personnel, inmates, jurors, and witnesses around the courts are major challenges we must face in the future.

Although court transfers and construction projects will solve many of the longer-term issues around the state, safety and security will continue to be day-to-day challenges for our courts.

Of particular concern is the number of threats made annually against judges and other personnel. These range from unwanted communications to threats of violence. We have identified the need to share much of this information between the courts and law enforcement agencies. We need to develop a system for consistent reporting, data processing, and data sharing.

While court security issues have always been a concern for many court leaders and the law enforcement community, the recent structural changes in the California court system—most notably the implementation of the Trial Court Facilities Act—have required a more unified approach to emergency response, planning, and security. The AOC created the Emergency Response and Security (ERS) Unit to assist courts in this effort. The unit will soon have three personnel: the senior manager of the unit (me), ERS Emergency Coordinator Jennifer Buzick, and a security manager.

Among the programs that will receive immediate attention are (1) emergency planning, direction, and control and (2) security, including personal security of judicial officers.

Building an Emergency Plan

A comprehensive emergency plan has two main components: a continuity-of-operations plan (COOP) and a broader set of policies and procedures that addresses security, analysis of natural and manmade hazards, and resource management. The COOP Functional Work Group, led by Justice James A. Ardaiz and assisted by a consultant, drafted a COOP for the California courts in 2002, with funds from a grant provided by the U.S. Department of Homeland Security.

Wildfires in San Diego County during October 2003 not only destroyed homes but also forced closure of the courthouses in Big Bear and Twin Peaks and necessitated an emergency order by Chief Justice Ronald M. George.

AP/WORLDWIDE PHOTOS

Since the advent of court transfers and new state-owned construction projects, the comprehensive plan must incorporate the new Federal National Response Plan, an all-hazards approach developed by the Homeland Security Department, as well as follow presidential directives requiring local, state, and federal agencies to comply with the closely related National Incident Management System (NIMS) by the end of 2005. That system provides a consistent, nationwide template to enable all government, private-sector, and nongovernmental organizations to work together during domestic incidents. These developments prompted the ERS Unit to re-evaluate the draft continuity-of-operations plan in collaboration with members of the COOP Functional Work Group.

Additional planning areas under consideration include:

- Security for special events and high-profile cases
- Current threats from natural hazards
- Specific threats to courts or personnel
- Storage and protection of vital records
- New and retrofit construction projects
- Branchwide facilities emergency planning.

Longer-term programs likely will be regionally focused, in accordance with the existing administrative support structure (the Bay Area/Northern Coastal Region, Northern/Central Region, and Southern Region), to best serve local court operations. We anticipate providing support for courts in the areas of emergency planning, security/fire system checks and drills, local special event planning, and response to major emergencies, perhaps though a network of designated emergency response managers.

Analyzing Security Inside and Out

Security issues fall into three broad categories: courthouse security, courtroom security, and personal security. These are still being analyzed through a series of in-depth court visits to rural, suburban, and urban areas through July of this year. At the conclusion of these visits, further recommendations will be made to court management on the basis of priorities for system integration as well as consistent approaches to security contracts, screening, and perimeter security.

Courthouse security

Courthouse security encompasses not only the design, retrofit, and seismic issues related to new construction, but a number of day-to-day security challenges that are sometimes overlooked but are very real.

While we all hear about entrance screening, security starts long before an individual reaches the entrance and continues long after. Some of the security challenges are:

- Parking areas for judicial staff
- Customer/court user queues on the sidewalks and streets
- Parking access for the public
- General lighting
- Cameras
- Eliminating unauthorized access to the building through windows, underground parking, and alleys.

A largely overlooked issue in overall courthouse security is the control of public hallways and areas of common use.

Some major areas that must be addressed as soon as possible in many courts are:

- Holding areas for inmates
- Transport of inmates through and around courthouses
- Access to courts for judicial employees and judges that does not require them to mingle with jurors, the public, and other court visitors.

An additional area that will be reviewed is the increase in security issues in the family court arena. This is causing concerns for judges and security staff alike.

Courtroom security

Courtroom security encompasses important issues beyond the duties of bailiffs, such as concerns related to contracts with security suppliers. We need to review best practices in contracts and policies on *when* court attendants or private security personnel are used inside courtrooms. We need to review issues related to courtroom design, sightlines, access for the public, bailiff location, and routes for entry and exit of jurors and inmates.

Other design issues, such as those of multiple-use courts, must be considered.

Personal security

The personal safety of judicial officers and court employees has become a major concern across the country. We are reviewing several cases of credible threats to judges at this time. Issues include safety in the courtroom itself, security for judges and staff as they approach work, where they park, and how they enter the buildings. Also being considered are security of chambers, after-hours escort recommendations, and home inspections after threats are made.

Sharing of information among the courts must also be a priority. Not all threats are against individuals; some are against the court or state system. This information may be vital in neighboring jurisdictions. Good and timely intelligence is essential. We must develop a system of reporting incidents, and sharing and storing data, to be fully effective.

These are the high-priority programs that are under way to address the challenges faced by the California court system, now and in the future. The primary goal of the ERS Unit is to ensure the safety of all court and AOC employees. Progress toward that goal will include a comprehensive and consistent approach to emergency planning, not only in continuity of operations but in direction and control. The plan must address security in several areas, including consistent funding based on security standards, design and construction standards for courthouses, perimeter screening, and movement of inmates. Finally, we want to ensure a consistent approach to the security of the people who use court buildings by analyzing threats, sharing data, and developing a comprehensive incident reporting system in California.

Malcolm Franklin is the senior manager of the Emergency Response and Security Unit of the Administrative Office of the Courts.

The Truth About the Terri Schiavo Case

In right-to-die cases, the media distorted the reality and fed attacks on the judiciary.

By
Presiding Justice
Arthur Gilbert

Plaintiff Thomas Donaldson wishes to die in order to live." This is the opening sentence of *Donaldson v. Lungren* (1992) 2 Cal.App.4th 1614, a case I wrote when Cal.App.4th was a mere two months old. Donaldson suffered from a brain tumor that medical experts said was inoperable and growing. Ultimately it would put him in a vegetative state and then kill him. In light of this tragic news, Donaldson wished to end his life and have his body cryogenically preserved. For how long? Only long enough for a cure for his disease to be found. Then his body would be brought back to life. Donaldson, you see, was an optimist. But, to people philosophically opposed to taking one's life—or even hastening its end with a nudge—no matter what the circumstances, Donaldson was a pessimist.

Rather than engage in a meaningless debate, Donaldson countered that he was not truly ending his life but only suspending it for awhile. However far-fetched his plan may have seemed, this was a choice he wished to make.

So why was Donaldson in court? Unlike Terri Schiavo, the brain-damaged Florida woman who could not act on her own behalf, could not Donaldson simply act on his wishes? Not if his experiment was to be a success. Like

AP/WORLDWIDE PHOTOS

Media coverage of the Terri Schiavo case reached its peak on March 31, the day she died.

the tango, this dance of death required two players. Donaldson would administer a lethal dose of drugs to himself, but a cryogenic lab employee would have to assist him in bringing about his hoped-for temporary demise, keeping the time between death and the "cryonic suspension process" as short as possible. Donaldson therefore asserted a constitutional right to an assisted suicide.

Rather than engage in a meaningless debate, Donaldson countered that he was not truly ending his life but only suspending it for awhile.

Significant obstacles stood in the way. Government Code section 2749 requires a coroner's inquiry into any suicide or homicide. Such an inquiry typically requires the coroner to take custody of the remains and perform an autopsy. Needless to say, this would have subverted the cryonic process and ensured the permanence of Donaldson's death. And the district attorney just might be inclined to prosecute the cryonic lab employees for murder.

Donaldson therefore argued he had a constitutional right to an injunction restraining the coroner and district attorney from performing their statutory duties. But Civil Code section 3423 and Code of Civil Procedure section 526 prohibit such injunctions. The trial court ruled that Donaldson had not stated a cause of action, and dismissed his action for declaratory and injunctive relief. We at the Fourth District affirmed. We concluded there was no constitutional right to an assisted suicide. However sympathetic we were to Donaldson's plight, we could not ignore the state's obligation to perform official acts that the law requires them to perform. The legal and philosophical dilemmas posed by Donaldson's wishes called for legislative rather than judicial resolution. In short, the separation-of-powers principle was a significant factor in denying Donaldson relief.

I was told that, after our opinion issued, Donaldson appeared on numerous television and talk radio shows. Viewers and listeners weighed in on whether or not the court should have granted him relief. Our decision was praised by some and reviled by others. (So what else is new?) But the media focused their attention on what people thought about Donaldson's choice to die. Separation of powers, the rationale for our decision, was not even mentioned. That's not surprising; an abstract constitutional principle is not as emotionally compelling as a concrete example of a life-or-death decision.

There are similarities between the Terri Schiavo case and the Donaldson case. Both were state court matters, both involved questions about life and death, and both concerned the issue of separation of powers, though in the Schiavo case, the issue arose postjudgment. In *In re Guardianship of Schiavo* (Fla.Cir.Ct. Pinellas Cty., 2002, No. 90-2908-GD-003), a Florida state trial judge heard testimony concerning whether Terri Schiavo wished to be kept alive by artificial means. The court also heard expert medical testimony concerning whether she possessed any cognitive powers and whether there was any likelihood of recovery.

On substantial evidence the court concluded the answer to all these questions was no. It is not surprising that numerous appellate courts in both the state and federal systems refused to hear the matter. The standards of appellate review mandate deference to the trial court's findings. It is rare that trial court decisions are reversed because of insufficient evidence. It is seldom possible to make informed decisions about substantial evidence on the basis of a transcript.

That is not to say that we do not or cannot make valid assessments from the written page. We can draw a multitude of impressions about, say, Madame Bovary or Anna Karenina. We can try to do the same with the unadorned and seemingly prosaic transcribed testimony of, for instance, a witness in a marital dissolution action. But it was the trial judge, observing the witness respond to questions under direct and cross-examination, who was in the best position to make an informed judgment on credibility. The judge then had to render a judgment in accordance with the applicable substantive and procedural law, the rules governing evidence, and the burden of proof.

In light of this distorted media presentation, it is no wonder that those who have strong philosophical beliefs about the "sanctity of life" and no memory of high school civics lashed out at the courts.

As in the Donaldson case, much of the commercial media paid scant attention to the legal issues in the Schiavo case. Instead, they focused attention on the question of whether Ms. Schiavo's feeding tube should be left in or removed, with little or no reference to the law or the trial and

appellate court's functions and obligations. Further skewing the issue, television newscasts showed ad nauseam the video recording of Ms. Schiavo blinking and apparently smiling—enforcing the impression that she was conscious and interacting with people around her. As it turned out, the autopsy conducted months later revealed that Ms. Schiavo's brain had decreased to half its normal size and that she was in a permanent vegetative state.

In light of this distorted media presentation, it is no wonder that those who have strong philosophical beliefs about the "sanctity of life" and no memory of high school civics lashed out at the courts. Critics of the trial court decision complained that the Florida trial judge did not follow the law. But that was precisely what he did do. For all we know, the trial judge may have wished to keep Terri Schiavo alive no matter what her condition. But he was compelled to reach his decision based on the evidence and the law. Indeed, if the trial judge had thought his personal beliefs would hamper his ability to objectively view the evidence, he would have been required to recuse himself. It was the consequence of his following the law that produced a result that critics found so unacceptable.

Ironically, these critics essentially excoriated the trial and appellate judges for not being "activists." They wished for a ruling that would have kept Terri Schiavo alive without regard for her wishes or the law. This, in turn, prompted Congress to enact a "Terri Schiavo law" giving federal courts the opportunity to again hear a case that was strictly a state matter and had been concluded. In doing that, the legislative branch displayed contempt for the separation-of-powers principle we respected in the Donaldson case. When the federal courts refused to again hear the case, some congressional leaders spoke of "a judiciary out of control" and threatened to impeach the judges or abolish some trial and appellate courts.

Of course, responsible members of the media have spoken out about this unwarranted attack on the judiciary. But a skewed presentation of the case by many segments of the media has given momentum to the offensive by certain elected representatives. We have a responsibility, indeed an obligation, to educate the public about how the courts function and how the separation of powers keeps our distinct branches of government in homeostasis. The strength of our democracy derives from the sensitivity of each branch to the legitimate powers of the other two.

Attempts to weaken the judiciary, therefore, are not just the parochial concern of judges. They should be the concern of all citizens who value our form of government. As we strive to promote democracy around the world, we must not let others weaken it here at home.

The courts involved in the Schiavo case were neither arrogant nor out of control. They were simply applying the law to carry out the wishes of Terri Schiavo. Whatever our beliefs about life, death, and personal choice, all would agree that the Terri Schiavo case was heart-wrenching and profoundly affecting. The case also taught us that we must educate the public in order to counter simplistic media coverage that distorts issues of profound importance. The future of our democracy may well depend on it. JR

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

A CONVERSATION WITH

Justice Richard D. Aldrich ON

New Standards in Court Security

Justice Richard D. Aldrich

In April, the Judicial Council approved new standards and a methodology for the funding of trial court security. Justice Richard D. Aldrich of the Court of Appeal, Second Appellate District, Division Three, who served on the council from 1998 to 2002, chaired the Working Group on Court Security that developed the recommendations. He explains the standards and the changes in funding for court security in this interview.

What are the most important elements of the new standards?

The standards are based on an extensive analysis of the level and type of security services existing in our trial courts, looking at the best practices and most cost-effective means of providing those services, to arrive at a recommended level of funding to ensure that all courts have resources available to provide an adequate, necessary, and appropriate level of security. The analysis took into account the various factors that impact court security, such as the number of judges, the number of court locations, and workload. The standards are *recommended* funding levels; the specific application of the funds is left to the discretion of the local court and sheriff to negotiate based on their needs.

How will these standards help courts control their security costs?

The standards incorporate the best practices and cost-effective methods of providing security services that have been implemented by courts and sheriffs in recent years. They provide a transparent and easily understandable means for courts and sheriffs to determine the level of funding that may be provided by the state and to develop their local security plans accordingly.

Why are courts divided into clusters of varying sizes?

Our experience and empirical information led to a view that courts of different sizes require different levels of security staffing per judicial officer and that there is a relationship between court size and security needs. We created a funding model that applied the same staffing standards to courts of similar size. For example, based on a review of court size and filing data, we found that courts with 40 to 50 judges generally have a larger and more complex workload (for example, high-volume calendars in criminal and family law) than courts with 2 to 4 judges do. Because of more filings and more volatile, high-volume calendars, the larger courts often require more security staff in the courtroom and for prisoner transport. They require funding for more security staff per judicial position.

When will these standards take effect?

Beginning in fiscal year 2004–2005, trial court security budgets that are above the level produced under the approved methodology will be reduced to the standards. Officials in the California Department of Finance have indicated that they would support a baseline adjustment for court security in the fiscal year 2006–2007 budget process. They have further indicated that they would not support any augmentations to security above the percentage change in the state appropriations limit (SAL) after the baseline adjustment is received. Therefore, the Administrative Office of the Courts intends to submit a budget change proposal this fall that would fund all courts at the proposed standards, fully fund all costs required by Senate Bill 1396, and establish and fund perimeter security, where it can logistically be accommodated, in court locations where it currently does not exist.

May courts apply for relief from the reductions?

The Judicial Council has established a $4 million fund to provide one-time relief to courts from the implementation of the security reduction. The only courts eligible to apply for these funds are those that suffered an adverse ongoing reduction to their security plan for fiscal year 2004–2005. The purpose of this relief funding is to provide courts with sufficient time to implement operational changes that will allow them to keep their court security spending at the standards over the long term.

What happens next in the process?

Now that the standards have been approved by the Judicial Council, our next step is acquiring the funding necessary to implement the standards and ensure that the trial courts are appropriately funded for court security. We will move ahead with our budget change proposal in fiscal year 2006–2007 to fully fund the standards, provide perimeter screening where requested, and fully fund additional security costs mandated in SB 1396. We will review our progress with the Working Group on Court Security during the next fiscal year. We are working with courts that were above the standards and are slated for a reduction in their security budgets to assess the impact of the reductions, assess their security practices, and find ways to provide security at a lower cost. To ensure that the standards are based on accurate information and to assist in allocating additional SAL monies that may be distributed to the trial courts, we are collecting additional court security budget information for fiscal years 2004–2005 and 2005–2006.

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

The standards represent a significant first step in working toward a statewide funding process for court security that will improve existing security in many courts and ensure that all courts have sufficient funds to provide adequate and appropriate security for judges, court employees, and the public. California is the first state to attempt such an effort, but many other states are moving in this direction. The standards enable us to articulate a comprehensive, measurable, statewide approach to security funding that more clearly and persuasively argues for the state funds needed to fully implement our security objectives. CR

Judge J. Richard Couzens (Ret.)

Judge Tricia Ann Bigelow

Blakely Inapplicable to California

BY JUDGE J. RICHARD COUZENS (RET.) AND JUDGE TRICIA ANN BIGELOW

The Supreme Court of the United States, in *Apprendi v. New Jersey* (2000) 530 U.S. 466, determined that "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." (*Id.* at p. 490.) In *Blakely v. Washington* (2004) 124 S.Ct. 2531, the Supreme Court defined the "statutory maximum" to mean "the maximum sentence a judge may impose solely on the basis of the facts reflected in the jury verdict or admitted by the defendant." *Blakely* called into question the ability of California courts to impose aggravated prison terms under our current sentencing rules and procedures.

The California Supreme Court, in a six to one decision, determined on June 20 that *Blakely* does not apply to the selection of factors to impose the upper term of a determinate sentence nor to the decision to impose a consecutive sentence. (*People v. Black* (2005) 2005 DJDAR 7308.) The court briefly reviewed the history of the determinate sentencing law, observing that the law was enacted to reduce disparate sentences. The Legislature sought uniformity of sentences with terms fixed by the Legislature in proportion to the crime but granted the court specific sentencing discretion within a limited range of terms.

The California Supreme Court found that although *Apprendi* required a jury determination of sentence enhancements, the federal high court also acknowledged the historical right of judges to exercise sentencing discretion. "[T]he opinion in *Apprendi* . . . observed that 'nothing in this history suggests that it is impermissible for judges to exercise discretion—taking into consideration various factors relating both to offense and offender—in imposing a judgment *within the range* prescribed by statute.' [Citations.] Thus *Apprendi* acknowledged that a judge may make factual findings related to the sentencing factors considered by the judge in exercising sentencing discretion within the prescribed statutory range." (Emphasis in original.) Even *Blakely* "acknowledged that not all judicial factfinding in sentencing is impermissible. The court explicitly recognized the legitimate role of 'judicial factfinding' in determinate sentencing, in which the judge may 'implicitly rule on those facts he deems important to the exercise of his sentencing discretion.' [Citation.]"

The court found additional guidance from *United States v. Booker* (2005) 125 S.Ct. 738, which addressed the application of *Blakely* to the federal sentencing guidelines. *Black* observed that *Booker* struck down the guidelines because they were mandatory. *Booker* "acknowledged that if the guidelines had been 'merely advisory provisions that recommended, rather than required, the selection of particular sentences in response to the different sets of facts, their use would not violate the Sixth Amendment. *We have never doubted the authority of a judge to exercise broad discretion in imposing a sentence within a statutory range.*'" (Emphasis in original.)

"*Blakely* and *Booker* established a constitutionally significant distinction between a sentencing scheme that permits judges to engage in the type of judicial factfinding typically and traditionally involved in the exercise of judicial discretion employed in selecting a sentence from within the range prescribed for an offense, and a sentencing scheme that assigns to judges the type of factfinding role traditionally exercised by juries in determining the existence or nonexistence of elements of an offense." The decision to impose an upper term sentence fits the former role, not the latter. *Black* concedes that the language of Penal Code section 1170(b) suggests there may be judicial factfinding beyond the elements of the crime proven to a jury. In the context of sentencing decisions, however, the distinction is one of form, not substance. "[I]n operation and effect, the provisions of the California determinate sentencing law simply authorize a sentencing court to engage in the type of factfinding that traditionally has been incident to the judge's selection of an appropriate sentence within a statutorily prescribed sentencing range."

The court concluded "that, even though section 1170, subdivision (b) can be characterized as establishing the middle term sentence as a presumptive sentence, the upper term is the 'statutory maximum' for purposes of Sixth Amendment analysis. The jury's verdict of guilty on an offense authorizes the judge to sentence a defendant to any of the three terms specified by statute as the potential punishments for that offense, as long

as the judge exercises his or her discretion in a reasonable manner that is consistent with the requirements and guidelines contained in statutes and court rules. The judicial factfinding that occurs during that selection process is the same type of judicial factfinding that traditionally has been part of the sentencing process." The court found the level of discretion given to California judges in selecting the proper term from a sentencing triad is comparable to the sentencing discretion given federal judges after *Booker*.

The reasoning that compelled the court's conclusions regarding the imposition of the upper term also applies to the imposition of consecutive sentences. The jury's verdict sets the maximum punishment for each offense; the decision as to how the sentences are to be served traditionally has been the province of the judge. The court also determined that the decision whether to stay a term under Penal Code section 654 is analogous to the decision whether to impose a consecutive sentence.

While there are a few lingering issues regarding the application of *Blakely* to California sentencing decisions, *Black* effectively signals the end of any significant impact of the U.S. Supreme Court decision in this state. CR

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

Richard Van Duizend

State Standards vs. International Trade

BY RICHARD VAN DUIZEND

In July 2004, the Conference of Chief Justices approved a resolution urging

> [t]he United States Trade Representative (USTR) to negotiate, and the United States Congress to approve, provisions in trade agreements that recognize and support the sovereignty of state judicial systems and the enforcement and finality of state court judgments; and to clarify that under existing trade agreements, foreign investors shall enjoy no greater substantive and procedural rights than U.S. citizens and businesses.

Why are the leaders of the state court systems around the country concerned about free trade agreements? While most of these agreements, if completed and ratified or approved, will have little impact on the state courts, a few could undermine or limit the jurisdiction and authority of state judicial systems and the finality of state court judgments.

For example, the USTR has been negotiating bilateral and multilateral free trade agreements to encourage trade, promote economic development, and protect foreign investment. The best known is the North America Free Trade Agreement (NAFTA), entered into by the United States, Canada, and Mexico. Other agreements with Australia, Chile, Morocco, and Singapore have been signed and approved, and agreements have been or are being negotiated with Bahrain, the nations of Central America, the Dominican Republic, Jordan, the South African Economic Union, Thailand, and each nation in the Western Hemisphere other than Cuba.

From the courts' perspective, the chief concern about these agreements is the so-called "investor-state" provision governing disputes between a foreign investor—i.e., a company that has constructed a factory or developed a mine, an oil field, or large-scale agriculture in a different country—and the government of the host nation. The current provision being used as a model by the USTR provides foreign investors with a private right of action, rather than requiring that investment disputes be decided by national governments. It enables investors to challenge, before an ad hoc international arbitration tribunal, governmental actions that they believe significantly reduce the value of their investments.

Governmental actions, for these purposes, include court rulings such as the Massachusetts Supreme Judicial Court decision in the *Mondev* case and the Mississippi Supreme Court order in the *Loewen* litigation. Although the challenges to these state court decisions ultimately were rejected in *Mondev International Ltd. v. United States of America,* ICSID Case No. ARB(AF)/99/2 (October 11, 2002), and *The Loewen Group, Inc. and Raymond L. Loewen v. United States,* ICSID Case No. ARB(AF)/98/3 (June 26, 2003), the international tribunals have ruled that they are authorized under NAFTA to determine

whether a court's procedures and decisions are consistent with international standards. These standards are not fully and clearly developed, and while much of the language is similar to U.S. constitutional provisions, it is not identical. Thus, it is possible that a process or standard that passes constitutional muster could be found by some ad hoc panel to have violated customary international law. Technically, a tribunal cannot overturn a court's decision, but it can impose substantial monetary sanctions on the U.S. government if a court decision or process is found to violate the principles of customary international law. Thus far, the United States has not lost an arbitration, but when it does, whether the federal government would then seek reimbursement in some form from a state remains to be seen.

Another example is the General Agreement on Trade in Services (GATS), a side agreement of the World Trade Organization (WTO) that seeks to facilitate the trade in services, including legal services. American lawyers are pressing to be allowed to provide advice on American and international law in other countries. Similarly, lawyers from other countries, particularly from the European Union, wish to provide legal services in the United States. The signers of GATS have agreed to allow such services in their countries. Under GATS, California, along with about half the states, has adopted a rule permitting practice by "foreign legal consultants"—lawyers from other countries who may advise clients in the state on their countries' laws or on international law but not on U.S. federal or state law.

The concern raised about GATS is not with these rules themselves. It comes about because the USTR has listed these rules as trade concessions in the current round of negotiations. Thus, if a state supreme court later decides to narrow the scope of that state's rule or even eliminate it because of abuses that have harmed the public, and a GATS signatory nation believes its lawyers are being harmed by the rule change, it can challenge that change through the WTO.

The USTR rightly points out that such a challenge is unlikely and that, if it occurs and is successful, the United States can appeal. Even if that appeal is lost, the challenging nation may decide not to impose retaliatory measures or, if it does impose such measures, the United States may ignore them or be able to negotiate some compensatory trade concession in another area. Ultimately, however, if all else fails, the federal government can go to U.S. District Court seeking to have the state's rule amendment or repeal declared null and void because it violates U.S. commitments under GATS.

Although such a declaratory judgment may be a remote contingency, lawyers are trained to guard against such contingencies in everyday practice. That is why the assembled Chief Justices were concerned enough to pass a resolution asking for an explicit affirmation of their courts' sovereignty. CR

Richard Van Duizend is a principal court management consultant with the National Center for State Courts and has served as the director of its International Program Division.

Appellate Courts Celebrate 100 Years of Justice

Annette Abbott Adams (1877–1956) not only was the first woman to serve as a U.S. attorney and as an assistant U.S. attorney general, but was the first female appellate court justice in California. Judicial and appellate court leaders are honoring this pioneer and many others this year as they celebrate the 100th anniversary of the California Courts of Appeal.

A centennial dinner on April 10 featured remarks by keynote speaker Robert J. Grey, Jr., president of the American Bar Association, as well as Chief Justice Ronald M. George and State Bar President John K. Van de Kamp. Debuting at the dinner was a commemorative video that includes an interview with the late Justice Robert K. Puglia, who served a record 24 years as presiding justice of the Third Appellate District.

Other Commemorative Events and Materials

The historic anniversary was also noted by:

- A special court session on April 11, featuring Chief Justice George and the six administrative presiding justices commenting on the significance of the Courts of Appeal
- A booklet documenting the history and significant cases of the appellate courts
- Indoor and outdoor banners
- Exhibits of historic documents and artifacts
- Local celebrations of the justices and significant events in each appellate district.

Anniversary Information

www.courtinfo.ca.gov /courts/courtsofappeal/

Street-pole banners outside the Earl Warren Building in San Francisco announce the Courts of Appeal centennial celebration.

Supreme Court Televises Arguments in High-Profile Cases

The California Supreme Court went to the airwaves this spring in an effort to promote public access and understanding of the court system.

The California Channel on April 6 and 7 broadcast live coverage of the California Supreme Court's oral argument involving the constitutionality of the structure of the California Coastal Commission and the effect of the U.S. Supreme Court's recent rulings on state sentencing laws.

The network also broadcast the court's May 24 oral argument in three cases involving the parental rights of same-sex partners—*Elisa B. v. Superior Court (Emily B. et al., Real Parties in Interest)*, S125912; *K.M. v. E.G.*, S125643; and *Kristine H. v. Lisa R.*, S126945.

Both oral argument sessions were also audiocast and archived on the California Courts Web site.

Archived Audiocasts of Supreme Court Oral Arguments

www.courtinfo.ca.gov /courts/supreme/

Automobile Club "Drives" Members to Courts' Traffic Web Sites

Visitors to the Automobile Club of Southern California Web site can learn how to deal with traffic matters online instead of traveling to courthouses in Los Angeles, Orange, Riverside, San Bernardino, and Ventura Counties.

Starting this year, the automobile club began offering links from its Web site to the traffic Web sites of the superior courts in these five Southern California counties. The courts' traffic Web sites offer many services, including instructions for paying tickets online and by phone as well as information on traffic school, court appearances, appeals, and night court.

"This is a classic win-win project," says Presiding Judge William A. MacLaughlin of the Superior Court of Los Angeles County. "There are minimal funds budgeted for court marketing programs, and working with the automobile club is an inspired way to inform millions of potential customers about the court's online traffic services."

Automobile Club Links to Court Traffic Sites

www.aaa-calif.com/auto/ safety/citations.asp

Scholar Selected for Advanced Education Program

Richard A. Rawson, Adjunct Professor and Associate Director of the Integrated Substance Abuse Programs at the University of California at Los Angeles, will be the scholar-in-residence at the fall 2005 Continuing Judicial Studies Program (CJSP). The author of two books and over 125 professional papers, Dr. Rawson has conducted over 1,000 workshops and has worked with the U.S. State Department on large substance abuse research and treatment projects, exporting U.S. technology and addiction science to Mexico, Thailand, Israel, Egypt, and the Palestinian Authority.


Richard A. Rawson

The idea behind the scholar-in-residence program is to provide California judges with an opportunity to talk and share with a distinguished scholar in a field relevant to judicial work. Dr. Rawson will speak at a plenary session, participate in a "conversation with the scholar" session, teach a one-day course, and possibly participate in some of the other CJSP courses.

The nationally recognized judicial studies program, offered by the Administrative Office of the Courts (AOC), Education Division/Center for Judicial Education and Research (CJER), is designed to meet the advanced educational needs of experienced judicial officers. Intensive, one-week courses focus on major judicial assignments, such as family, criminal, and civil law, as well as judicial skills and jurisprudence. Created in 1981, CJSP is the first "graduate-level" program of its kind in the United States.

Ventura Court Gives Jurors Wireless Web Access

Prospective jurors with laptop computers now have wireless Internet access in the jury assembly room at the Superior Court of Ventura County's main courthouse. Twenty users can be online simultaneously in the room.

For security purposes, all wireless transmissions are encrypted, signal range is limited to the jury assembly room, and connections automatically expire after eight hours. Jury services staff provide a security key and instructions on connecting to the network.

Traditional Internet access and other conveniences are available in the court's Juror Business Center, opened in December 2000. The business center has individual workstations, telephones, and photocopy and fax machines.

Online Court Facility Management Debuts

The pilot phase of a new online tool for facility management debuted in April in preparation for building transfers in the Superior Courts of Mariposa, Riverside, San Joaquin, and Solano Counties.

Facility at Your Fingertips

Computer Aided Facilities Management (CAFM) is a Web-based system for handling data, documentation, and processes related to the design, construction, operation, and maintenance of court facilities. The system—administered by the Administrative Office of the Courts, Office of Court Construction and Management (OCCM)—allows court facilities personnel, AOC staff, and authorized third-party contractors to share real-time information about court buildings.

CAFM can:

- Track reported facility problems
- Flag important dates, such as rent payment deadlines
- Provide operational guidelines
- Record maintenance performed or work scheduled
- Archive documents, such as leases and contracts, related to real estate management.

How Will CAFM Work?

CAFM will be implemented in facilities after they are transferred to the state. Eventually it will become a statewide, centralized information hub for all transferred court buildings. By standardizing facilities management across California, CAFM will ensure that problems reported by courts are solved consistently and promptly.

Contact

AOC Office of Court Construction and Management, 415-865-4392, OCCM@jud.ca.gov

Court Facilities Information

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

Fellows Assist the Courts and Help Themselves

Since their assignments began in October, judicial fellows have helped organize a statewide technology conference, prepared appellate courts for a new statewide case management system, worked extensively on the Bench-Bar Speakers Bureau, written and received a grant for an alternative dispute resolution program, and participated in training for mediation officers.

The Judicial Council and the Center for California Studies of California State University at Sacramento (CSUS) created the Judicial Administration Fellowship Program to develop judicial leaders and court professionals through temporary positions with the Supreme Court, the superior and appellate courts, and the Administrative Office of the Courts. Fellows are assigned a variety of duties, such as policy analysis, legal research, legislative advocacy, and community outreach.

Each fellowship position combines a full-time professional field assignment with graduate work in public policy administration at CSUS.

The 2004–2005 judicial administration fellows are (from left to right): Bethel Cope-Vega, Superior Court of Los Angeles County; James Murray, Supreme Court of California; Solmaz Sharifi, Court of Appeal, Second Appellate District; Shaun Young, AOC Office of Governmental Affairs; Dawn Marie McIntosh, Superior Court of Stanislaus County; Christina Medina, AOC Center for Families, Children & the Courts; Louis Dezseran, Superior Court of Yolo County; Ashianna Esmail, Superior Court of San Francisco County; Patricia Tudosa, Superior Court of Alameda County; and Andrea Logue, AOC Information Services Division.

Appointments

The California Supreme Court in March appointed **Justice Judith D. McConnell,** administrative presiding justice of the Court of Appeal, Fourth Appellate District, as a new judicial member of the Commission on Judicial Performance. She succeeds Justice Vance W. Raye of the Court of Appeal, Third Appellate District, who completed his term.

A San Diego County trial court judge for 23 years, Justice McConnell was appointed an associate justice of the Court of Appeal in 2001 and was elevated to presiding justice in 2003. The same year, Chief Justice Ronald M. George appointed her administrative presiding justice of the Fourth Appellate District.

The Judicial Council appointed **Judge Rebecca S. Riley** of the Superior Court of Ventura County as the judicial representative on the California Council for Interstate Adult Offender Supervision. Judge Riley will assist the council in updating the rules and regulations for interstate supervision of adult parolees and probationers who cross state lines.

Appointed to the Ventura County bench in 1995, Judge Riley is a former district attorney and has served as a member of the criminal law and procedure committee of the California Judges Association and the criminal law education committee of the AOC Center for Judicial Education and Research.

The Administrative Office of the Courts appointed **Judge Roger K. Warren** as its scholar-in-residence. The Scholar-in-Residence Program was established five years ago to allow recognized experts to work with the AOC to improve the administration of justice in California.

Judge Warren's primary focus will be to strengthen the sharing of knowledge and expertise in the areas of research, education, Judicial Council advisory committees, and the Judicial Administration Library. Before his appointment, he served as president and chief executive officer of the National Center for State Courts (1996–2004), and before that he was a trial court judge for 20 years in Sacramento County. CR

The Judiciary Under Attack

This commentary is excerpted from remarks made by Judge James M. Mize to the Judicial Council on April 14. He is president of the California Judges Association (CJA) and a judge of the Superior Court of Sacramento County.

By
Judge James M. Mize

This year, California judges, the State Bar, and all responsible citizens must respond to a crisis which could affect access to justice in a way that we have not discussed today. The threatened recall of a Sacramento superior court judge could create for our successor judges a system that would be profoundly different from that with which we were blessed when we took office.

Last September, Judge Loren McMaster, a learned and distinguished Sacramento judicial colleague, upheld the constitutionality of two legislative proposals. Within 24 hours of his decision, a special interest group was calling for his recall for that single decision.

But even more importantly, the group said that the purpose of the recall was not merely to remove the offending judge but to send a message to ANY reviewing court that the same fate would befall them if they upheld his ruling. This special interest group did not want a decision based upon law and fact but upon the political beliefs of that particular interest group.

[I]f this dangerous idea catches fire, the conflagration could incinerate our entire justice system. The [Administrative Office of the Courts] could close its doors, particularly [the Center for Judicial Education and Research], for there would be no need for law books, for silly things like statutes, cases, and best practices. No, all we would have to do would be to invest our budget in private polling to determine the current directions of the political wind.

The AOC could simply run surveys of the interested interest groups that have the power or the money to buy a recall. Of course, it would no longer be law or a judicial system. At best, it would be another legislative body buffeted by the vagaries of passing political whims.

After the political interest groups remove all the learned judges who decide cases based upon the law, the facts, and the Constitution, the only remaining judges would simply be bellwethers of the latest political fashion. With apologies to legal guru Bernie Witkin, a judicial system comprising such compromised judges "won't be worth saving."

After the political interest groups remove all the learned judges who decide cases based upon the law, the facts, and the Constitution, the only remaining judges would simply be bellwethers of the latest political fashion.

And just when we thought the recall against Judge McMaster was the nadir of challenges to the judiciary, certain federal politicians commenced a perilous attack on the entire national third branch of government.... [On] April 4, in a Senate floor speech in which he criticized a recent Supreme Court ruling on the death penalty, Senator John Cornyn of Texas seemed to be excusing recent incidents of violence against judges and court personnel.

> I don't know if there is a cause-and-effect connection, but we have seen some recent episodes of courthouse violence in this country. Certainly nothing new, but we seem to have run through a spate of courthouse violence recently that's been on the news and I wonder whether there may be some connection between the perception in some quarters on some occasions where judges are making political decisions yet are unaccountable to the public, that it builds up and builds up and builds up to the point where some people engage in—engage in violence. Certainly without any justification, but a concern that I have.

It is remarkable that Senator Cornyn was a judge and member of the Texas Supreme Court for 13 years. It is even more remarkable that Senator Cornyn did not seem to recognize any connection between this alleged public dissatisfaction and his own inflammatory comments.

Earlier that week, House Majority Leader Tom DeLay threatened federal and state judges who had ruled in the [Terri] Schiavo case, saying, "The time will come for the men responsible for this to answer for their behavior."

On April 8, conservative leaders met in Washington for a conference entitled "Remedies to Judicial Tyranny" and decided that [U.S. Supreme Court] Justice Anthony M. Kennedy, a [President] Ronald Reagan appointee, should be impeached.

Lawyer-author Edwin Vieira told the gathering that Kennedy should be impeached because his philosophy "upholds Marxist, Leninist, satanic principles drawn from foreign law." Vieira then issued an inadequately veiled threat to Kennedy by citing Joseph Stalin. Vieira said, "He [Stalin] had a slogan, and it worked very well for him, whenever he ran into difficulty: 'no man, no problem.'"

Help for People Who Are Representing Themselves

Self-represented litigants can find all the information and forms they need at the California Courts Online Self-Help Center.

The Web site contains more than 800 pages designed specifically to help individuals who don't have an attorney navigate the court system, with information about finding free and low-cost legal assistance, bringing a lawsuit, filling out court forms, and locating additional resources and information.

The site offers information about specific topics, including

- Family law
- Domestic violence
- Juvenile law
- Guardianship
- Elder law
- Landlord-tenant issues
- Name changes
- Small claims
- Traffic

And don't forget that the Web site is available in Spanish!

www.courtinfo.ca.gov/self-help

California Courts Online Self-Help Center

The full Stalin quote . . . is "Death solves all problems: no man, no problem."

. . . What can we do? For one, we must take every opportunity we can to educate our communities on the nature of the third branch of government, which can raise neither monies nor armies. We must remind folks of the unique status of the courts and how they supply the checks that maintain the delicate balance between the current political view of the people and the system of laws, which was established by that same people to measure all new legislative efforts.

Is there anything else we can do about it? We can and we must.

In the case of the Sacramento judge, within days of the announcement of the recall CJA published a press release deploring the tactics of recalls used as a threat to assure political correctness. Within days, I penned a column in the Los Angeles and San Francisco *Daily Journal*s decrying the threat and calling for support for our fragile justice system. Within days, CJA's Response to Criticism Committee in Sacramento prepared an analysis and plan of attack in the event a formal recall actually commenced. Local bar groups were notified, and prominent lawyers were prepared to speak out boldly if and when necessary. Since that first week, I have had the privilege of contributing over a score of similar exhortation speeches and articles.

Finally, the association has now prepared a series of PowerPoint slides and accompanying users' manual to be distributed to judges and lawyers to assist them in making presentations to community groups. The thread through all these efforts is education.

As long as we have a naïve electorate, there will be concomitant, civics-challenged demagogues who will attempt to manipulate the voters to remove all obstacles in their way to a tyranny of the majority, or at least a tyranny of the most powerful, the most vocal, or the most thoughtlessly reckless. Thomas Jefferson did not believe our country would be preserved by an electorate; he believed our freedoms would be defended by an *educated* electorate.

Our schools start this process, but obviously they cannot do it all. It seems that our adult citizens need a refresher course in basic civics to assist them to grasp the intent and the beauty of a government system of checks and balances with an independent judiciary supported by the conscious choice of our citizens.

Today, I call upon this Judicial Council to institute a new and innovative program of adult civics instruction in this state. I ask this council to commit the resources necessary to defend the judicial system with the strongest weapon at our disposal—education. I call upon the resources of the Administrative Office of the Courts to follow CJA's lead and to develop teaching tools using all the latest technologies from simple videotapes to online courses. If the AOC can provide the technical know-how, CJA will provide the foot soldiers to take this message to the people.

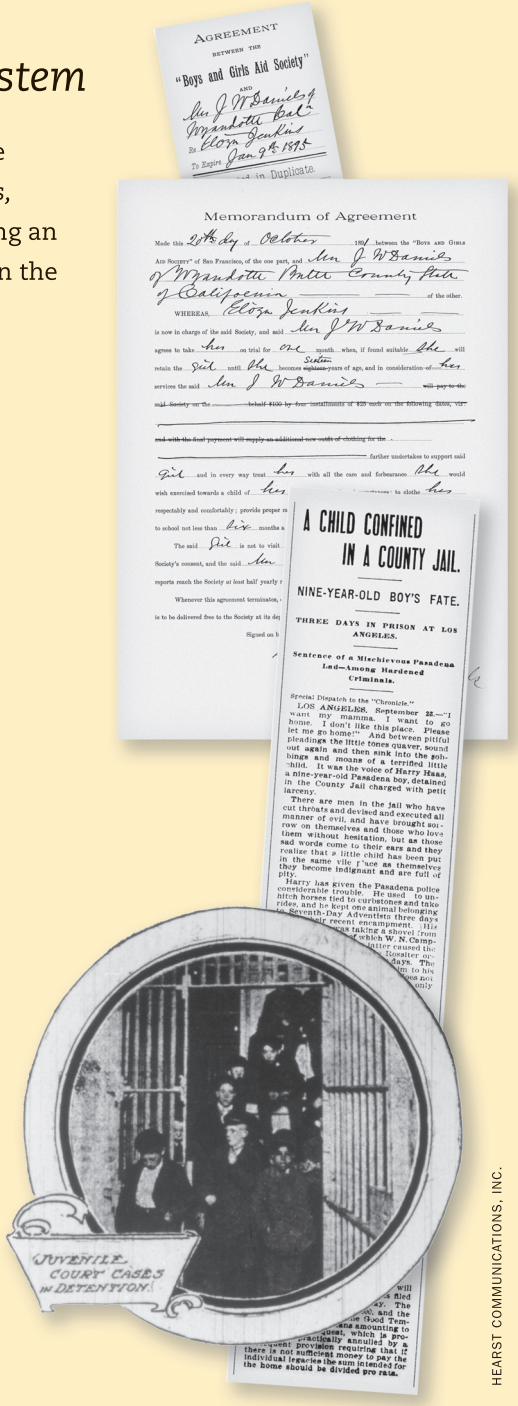
If not us—who is going to do it for us? If not now, how long before it will be too late?

While we have men and women fighting a real flesh and bullets war in a foreign country, I normally avoid the application of war jargon to persuade. Often, such abuse of vocabulary demeans the life-and-death risks our soldiers take daily. Nevertheless, in this case I make a conscious exception. For if we cannot stem the threatened destruction of the judicial system in this country, then with all the sacrifices our military is making throughout the world, there would be nothing left here for them to save. CR

Celebrating five years

of working on behalf of children and families with the California court system

The Center for Families, Children & the Courts is pleased to release Volume 5 of the *Journal of the Center for Families, Children & the Courts*, focused on trends and developments in the juvenile court, including an article co-authored by CFCC's director, Diane Nunn, on highlights in the history of California's juvenile court from 1850 to 1961.



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HEARST COMMUNICATIONS, INC.

Volume 6, coming later this year, will focus on domestic violence.

To obtain a copy or be placed on the subscription list of the journal, please call 415-865-7739 or e-mail cfcc@jud.ca.gov. The journal is also available on the California Courts Web site at *www.courtinfo.ca.gov/programs/cfcc/resources/publications/journal*.

ADMINISTRATIVE OFFICE OF THE COURTS

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THREE ORGANIZATIONS · ONE LOCATION · STRENGTHENING THE JUDICIAL BRANCH

Statewide Judicial Branch Conference and Annual Meetings September 2005 San Diego

Join us as leaders of the Judicial Council, the State Bar of California, and the California Judges Association meet in one location for the first time!

The first Statewide Judicial Branch Conference will be sponsored by the Judicial Council while the State Bar and California Judges Association host their annual meetings. Key themes for each of the organizations will be the independence of the judicial branch, public trust and confidence, and improving access.

The five-day event opens with a plenary session to unveil the results of the 2005 Public Trust and Confidence Survey and explore its implications for the judicial branch.

Register now
www2.courtinfo.ca.gov/cjer/index.htm

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