



The Capitol Connection

ADMINISTRATIVE OFFICE OF THE COURTS • OFFICE OF GOVERNMENTAL AFFAIRS

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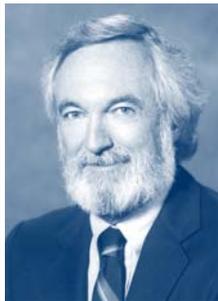
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Legislative Calendar

August 20
Last day to amend bills on the Floor

August 31
Last day for each house to pass bills –Final recess begins on adjournment

GOVERNOR ANNOUNCES JUDICIAL APPOINTMENTS ADVISOR; APPOINTS JUDGES TO ALPINE AND YUBA COURTS



Ending speculation that he may not appoint a judicial appointments secretary, Governor Arnold Schwarzenegger announced the appointment of John Davies as judicial appointments advisor on July 16. Davies, a Republican from San Diego, will work collaboratively with the

Governor's Chief of Staff Pat Clarey and Legal Affairs Secretary Peter Siggins to establish the judicial appointment process and screen judicial appointment candidates.

Citing Davies' knowledge and experience in the legal profession, Governor Schwarzenegger referred to him as "an invaluable asset" to his administration. No stranger to Sacramento political circles, Davies served

as the judicial appointments secretary to Governor Pete Wilson from 1995 to 1999, and twice as chairman of the California Judicial Qualification Committee between 1983 and 1992 under then-Senators Pete Wilson and John Seymour. Since 1993, Davies has been of counsel in the San Diego-based law firm of Allen, Matkins, Leck, Gamble and Mallory. Davies began his legal career of more than 40 years as a research attorney for Justice Roger J. Traynor of the California Supreme Court.

"... he doesn't have any agenda except good service to the governor."

– Chief Justice George

Chief Justice Ronald George was among those expressing confidence in Davies' ability to impartially select qualified candidates to fill vacant judgeships throughout the state. "He's very energetic, very

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2004 JUDICIAL BRANCH BUDGET ADOPTED

On July 31, 2004, Governor Schwarzenegger signed the Budget Act of 2004 (SB 1113, Stats. 2004, ch. 208).

The budget includes new funding for the trial courts to cover retirement, salaries, and other benefits costs for court employees (\$23 million, \$11.5 million, and \$9.5 million respectively); security costs (\$29 million); judges salaries costs related to an increase approved in 2003 (\$8 million); county charges (\$1.5 million); and court interpreter workload growth, cost of homicide trials, and cost of prisoner hearings (\$2.9 million). The budget also includes \$75 million in reductions, \$20 million of which is ongoing.

The budget provides \$3 million in new funding for the Supreme Court, Courts of Appeal, and the Administrative Of-

fice of the Courts, including increased salary costs and increased security costs. The budget also includes reductions of \$8.5 million, with \$3 million ongoing.

A separate bill that accompanies the 2004 Budget Act, SB 1102, contains numerous provisions related to the judicial branch. SB 1102 extends the sunset of the court security fee, improves the budgeting process for the courts, eliminates juror pay for government employees for a savings to the courts of \$2.3 million, restricts the purchase of electronic reporting equipment and requires a report to the Legislature regarding expenditures on that equipment, and places court employee unfair labor practice charges under the jurisdiction of the Public Employee Relations Board. ■

UNIFORM FEE PROPOSAL IN PROCESS

Work on a uniform civil fee legislative proposal will continue through the fall, with a bill proposal anticipated for introduction early in the 2005 legislative session. In the April edition of *The Capitol Connection*, we reported on the recommendations of the Court Fees Working Group, which call for a uniform civil filing fee that will streamline the filing fee structure by rolling in the state surcharges, miscellaneous fees, and add-ons. The benefits of this proposal include a vastly simpler, more predictable fee structure that will be easy to administer, well understood by practitioners, and fair to civil litigants across the state.

The recommendations of the Court Fees Working Group came after several months of data collection and a comprehensive analysis of civil fees, including the amounts charged and a review of the complex distributions of civil fees. The uniform civil fee proposal also suggests a three-year moratorium on fee increases, except for possible action regarding law library funding.

The Court Fees Working Group, with representation from

diverse areas of civil practice, made unanimous recommendations for a uniform fee structure. The State Bar, the Consumer Attorneys of California, and the California Defense Counsel all support the proposal to implement a uniform fee structure. There are some outstanding issues related to the implementation of the uniform civil fee structure that need to be resolved with the counties and the county law libraries. Counties and county law libraries are particularly concerned about maintaining county authority for programs that are supported through filing fees, and ensuring that there is a reliable method to provide for necessary increases in the future.

During the fall, interested and affected parties, including representatives of the courts, the civil bar, the counties, county law libraries, the State Controller's Office, and others, will continue discussions to resolve the outstanding issues. The efforts in the fall will be focused on completing a proposal that can be implemented no later than July 2005. ■

JUDICIAL APPOINTMENTS ADVISOR JOHN DAVIES

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thoughtful and also has the capability of holding his cards close to his vest - and he doesn't have any agenda except good service to the governor," Chief Justice George told the *Los Angeles Daily Journal*.

Because his position did not require Senate confirmation, Davies' appointment took effect immediately. At the time of his appointment, there were over 35 vacant judgeships.

The following week, the Governor announced the appointment of two judges to courts in Alpine and Yuba Counties. Debra L. Givens was appointed to the Superior Court of Yuba County seat vacated by the retirement of Judge Thomas F. Mathews. Richard K. Specchio was appointed to the Superior Court of Alpine County seat vacated by retired Judge Harold Bradford. Both judges were elected in March 2004, but the Governor's appointments allow them to immediately take their positions on the bench. ■

LEGISLATURE PREPARES FOR END OF SESSION

With the battle for a state budget now behind them, legislators can refocus their attention on the crush of bills they must consider before the end of the session on August 31st.

Friday, August 13th, is the last day that fiscal committees can meet and report bills to the floor for action. Between August 16th and August 31, the Assembly and Senate will only hold floor sessions to debate bills that have survived the policy and fiscal committee process before passing them along to the Governor's desk. This year, that number could be several hundred.

The Governor will then have until September 30th to sign or veto bills that the Legislature has passed September 1st. The Office of Governmental Affairs will issue a special supplement to Court News later this fall that summarizes new legislation affecting the courts.

For more news about court-related legislation, visit *The Capitol Connection* newsletter on the California Courts Web site at www.courtinfo.ca.gov. ■

DOMESTIC VIOLENCE FEE AUDIT YIELDS VALUABLE INFORMATION AND SPARKS NEW INITIATIVES



In spring 2003, Assembly Member Rebecca Cohn (D-Saratoga), then-chair of the Joint Legislative Audit Committee, requested that the Bureau of State Audits (BSA) investigate the imposition and collection of fees from defendants placed on probation for domestic violence offenses. It was agreed that

instead of the BSA, the audit would be performed by the Internal Audit Unit of the Administrative Office of the Courts.

The fees in question are required to be levied pursuant to Penal Code section 1203.097(a)(5), which requires that defendants make a minimum payment of \$400, unless the court, after a hearing on the record, determines that defendant does not have the ability to pay that amount. Two-thirds of the \$400 fee goes to a county fund that supports domestic violence programs, including shelters for the victims of domestic violence. The other third is split between two state funds, one of which supports the costs of the Domestic Violence Restraining Order System, while the other funds training and education relating to domestic violence. Assembly Member Cohn was very concerned about declining funds for shelters and other services for victims of domestic violence, and wanted to ensure that the fees required under section 1203.097 were being imposed, collected, and distributed to the shelters as required by law. As Assembly Member Cohn explains: "As chair of the Assembly Select Committee on Domestic Violence, I held a public hearing on shelter funding. The audit request was a result of concerns raised about the lack of stable funding for the shelters. There was sufficient evidence to suggest widespread disparities amongst counties regarding assessing and collecting batterer's fees."

The Internal Audit Unit embarked upon its efforts in 2003, and issued its final report in March of 2004. Its examination consisted of a survey distributed to all the courts regarding their practices concerning domestic violence fees, as well as a direct audit of several courts using a representative sample of cases where probation was ordered on a domestic violence crime.

The final report documented a number of areas where improvement was necessary both in terms of imposition of

the correct fees at the time probation is ordered, as well as collection practices to ensure that the amounts imposed are collected. In response to those findings, the report included an array of recommendations to ameliorate those issues, many of which are currently being implemented.

The findings and recommendations in the domestic violence fee audit report requested by Assembly Member Cohn have generated a range of new activities that will help ensure that significant improvements will be made statewide in the imposition and collection of domestic violence fees, so that the vital services that those funds support will receive their fair share. Assembly Member Cohn summarized her thoughts about the results of the audit in this way: "I am dedicated to improving the lives of domestic violence victims and eliminating violence in our families. I am pleased that the audit results produced tangible recommendations that are being taken seriously so that when victims turn to the courts for help, resources will be available."

One key result of the audit has been the incorporation of domestic violence fees into the ongoing audit testing that occurs in each court. As a result, the 18 to 25 courts that are audited on an annual basis—either by the AOC's audit unit, or an outside firm—will each obtain findings and, where appropriate, recommendations relating to imposition and collection of domestic violence fees and fines. This initiative will ensure that any problems in this area can be identified quickly and solutions can be implemented expeditiously.

In addition, several education efforts on this issue have been undertaken by the Judicial Council and the AOC. The most direct response will be a workshop at the upcoming Family Violence and the Courts conference in September that will be dedicated to the findings and recommendations in the audit report, as well as information on best practices for imposition and collection of domestic violence fines and fees.

Finally, a number of the recommendations that have emerged from the collaborative court-county working group that



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REVIEW PANEL, STATE AUDITOR RELEASE REPORTS ON CALIFORNIA'S CORRECTIONAL SYSTEM

An Independent Review Panel (IRP) formed by Governor Arnold Schwarzenegger called for a complete overhaul of California's correctional system in a detailed report, "Reforming Corrections," released on June 30.

Over a four-month span this spring, the 40-member panel, headed by former Governor George Deukmejian, held workshops and forums, conducted interviews, and studied published information on the youth and adult correctional system. The panel's findings are summarized in the report along with 239 specific recommendations to address what it terms "a multitude of problems," including out-of-control costs, excessive recidivism, abuse of inmates, a failed employee disciplinary system, and lack of authority and oversight at the highest levels of the Youth and Adult Correctional Agency.



Former Governor
George Deukmejian

Citing structural problems as the core of the correctional system's troubles, the panel proposes a reorganization of the Youth and Adult Correctional Agency – creating a new Department of Correctional Services led by a Civilian Corrections Commission whose members are appointed by the Governor. The Secretary of the Department of Correctional Services would serve as the Department's chief executive officer and would have "full authority to administer the affairs of the department," centralizing control over budget, internal affairs, personnel and training, risk management, research and planning, information technology, health care, and labor relations.

Additional IRP recommendations place a high priority on accomplishing the following reforms:

- Reform the department's culture and eliminate the "code of silence"
- Centralize employee investigations and discipline functions
- Standardize existing use-of-force policies and investigative procedures

The panel recommends a number of improvements in the area of youth corrections, as well. Among the priorities are:

- Improving education programs in California Youth Authority institutions, including developing program guidelines designed to enforce school attendance;

- Improving counseling and treatment services for wards;
- Creating a more effective partnership with county probation and court services to enable wards released from California Youth Authority institutions to be better served in their local communities. This recommendation includes granting committing courts sole authority and final review for revoking parole or probation or for extending length of stay at the California Youth Authority for wards in lower-level offense categories.

Deukmejian indicated that the panel intends to discuss the report's detailed findings and recommendations with the executive and legislative branches. To view the report online, go to <http://www.report.cpr.ca.gov/corr/index.htm>.

State Audit Findings on Inmate Health Care

Echoing the findings of the IRP on health care management, a July 2004 report issued by the Bureau of State Audits (BSA) found that the California Department of Corrections's policies on contracting for medical services is responsible for the growth in inmate health care costs.

In the report, commissioned by the Joint Legislative Audit Committee, State Auditor Elaine Howle states that Correction's payments to hospitals have grown at an average rate of 21 percent per fiscal year from fiscal years 1998-99 through 2002-03, contrasted to the consumer price index for hospital services which averaged less than 8 percent annual growth during that same period. Further, the audit found that Corrections paid some hospitals amounts that were from two to eight times the amounts Medicare would have paid the same hospitals for the same inpatient services. Outpatient payments were found to average two and one-half times the amount Medicare would have paid for the same services.

Corrections agreed to incorporate the audit's recommendations in future management decisions on inmate health care.

The BSA report, "California Department of Corrections: More Expensive Hospital Services and Greater Use of Hospital Facilities Have Driven the Rapid Rise in Contract Payments for Inpatient and Outpatient Care," can be viewed at <http://www.bsa.ca.gov/bsa/summaries/2003-125.html>. ■

COUNTY LAW LIBRARIES FOCUS OF COUNCIL TASK FORCE

OGA WORKS WITH TASK FORCES ON FUNDING EFFORT (PART II)

Over the last several issues, The Capitol Connection has reported on the proposal by the Court Fees Working Group to establish a uniform civil fee structure. Two additional task forces charged with evaluating current fee issues and making recommendations for reform have also been making progress in recent months: The Collaborative Court-County Working Group on Enhanced Collections and the Judicial Council Task Force on County Law Libraries. Last month, The Capitol Connection featured recent developments by the working group on enhanced collections (CC, June 2004). This month, we'll focus on stable funding efforts for law libraries. ■

The Judicial Council of California Task Force on County Law Libraries was established in January of this year, pursuant to AB 1095 (Corbett, Stats. 2003, ch. 394). The task force's mission is to study the operations, facility improvements, and expansion of California county law libraries and to identify stable sources of funding to meet law library needs. The group, chaired by Sacramento County Superior Court Judge Michael T. Garcia, held its first meeting on March 5, 2004.

The nine-member task force is composed of three representatives of the counties, selected by California State Association of Counties; three county law library administrators, named by the Council of California County Law Librarians; and three representatives from the judicial branch, selected by the Administrative Director of the Courts, William C. Vickrey, who also appointed the group's chair. The task force is required to submit its report and recommendations to the Judicial Council and the Legislature by January 1, 2005.

The principle work of the task force is being performed by two of its subcommittees. One of the subcommittees is formulating standards for county law library collections, and the other is developing standards for county law library facilities and identifying their operational needs. The task force is collecting information on the types of individuals who use law libraries, including attorney and non-attorney patrons, as well as the qualifications of law library staff, the nature of the collections, and alternative funding sources. The next meeting of the task force is currently scheduled for September 3, 2004.

The Office of Governmental Affairs is working with the task force on county law libraries, as well as the Court Fee Working Group and the task force on collections, as their proposals and recommendations are developed and move through the Legislature.

For more information on the law library task force, contact Dan Pone in the Office of Governmental Affairs at (916) 323-3121. ■

DOMESTIC VIOLENCE FEE AUDIT

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was assembled pursuant to SB 940 (Escutia, Stats. 2003, ch. 275) will help to improve the imposition and collection of the fees required of domestic violence offenders. First, the working group has developed a series of tools to assist the courts in automating the process of imposing fines and fees to ensure that they assess the correct amounts and have the information they need readily available.

In addition, the collections working group is sponsoring a series of workshops around the state to provide training to judicial officers, court staff, and county personnel involved in the collections process on the various mandatory and discretionary fines and fees, as well as "best practices" in collections. These sessions are intended to increase aware-

ness of the range of fines and fees that are required (including domestic violence fees), and to jump-start courts and counties in their efforts to improve collections.

Because the domestic violence fee audit and the working group's activities were taking place simultaneously, both with the involvement of AOC Finance Division staff, it has been much easier to incorporate the recommendations in the domestic violence fee audit report into the systemic changes that are being proposed by the working group.

For more information on the domestic violence fee audit, contact Tracy Kenny in the Office of Governmental Affairs at (916) 323-3121. ■

LEGISLATIVE REVIEW

The following is an update of the second year of the 2003-2004 legislative session on selected bills of interest to the courts.

COURT OPERATIONS

AB 3079 (Judiciary Committee), as amended July 15, 2004. Court operations

Authorizes the compensation of retired subordinate judicial officers sitting on assignment in a manner analogous to retired judges. Authorizes the extension of temporary restraining orders set to expire if a court emergency prevents a hearing. Eliminates appellate filing fees in specified mental health and juvenile cases. Provides Court Appointed Special Advocates with access to a social worker's complete report to the court. Clarifies the scope of a Rule of Court concerning attorney contact information in dependency cases. Corrects obsolete statutory references.

Status: Assembly Concurrence

JC Position: Co-sponsor (with the California Judges Association)

SB 246 (Escutia), as amended June 24, 2004. Courts: fines and penalties: collection

Permits acceptance of debit cards and electronic payments for specified payments. Expands the types of debts eligible for a comprehensive collection program and adds three components to the requirements of a program. Authorizes the courts, in addition to counties, to refer court-ordered debt to the Franchise Tax Board. Removes the sunset of the Franchise Tax Board's Court-Ordered Debt Collection program.

Status: Senate Floor—Third Reading

JC Position: Sponsor

SB 749 (Escutia), as amended June 7, 2004. Trial Court Facilities Act clean-up

Among other things, amends the process for calculating utilities costs. Establishes the Architecture Revolving Fund. Extends timeline for the Judicial Council to adopt a rule of court concerning appeals of specified placement decisions in dependency proceedings.

Status: Senate Floor—Third Reading

JC Position: Sponsor

CRIMINAL

AB 2019 (Steinberg), as amended August 9, 2004. Mentally competent minors

Authorizes a court to order that a minor who is alleged to come within the jurisdiction of the court as a status offender or delinquent minor and who may have a serious mental or emotional disturbance or a developmental disability be referred for evaluation of the disturbance or disability.

Specifies procedures for the disposition of a minor who is adjudicated a ward of the juvenile court and who is determined to have a serious mental or emotional disturbance or a developmental disability. Requires the Judicial Council to provide to judicial officers and other public officers and entities, to the extent resources are available, education on mental health and development disability issues affecting juveniles in delinquent proceedings.

Status: Senate Appropriations Committee

SB 1223 (Kuehl), as May 24, 2004. Criminal law: juveniles

Gives sentencing courts the discretion to review and reduce, suspend, or reduce and suspend the sentence of a minor who was prosecuted as an adult, after the person has served 10 years of his or her sentence or has reached the age of 25. *Also permits a 2nd review only in the event of a substantial change in circumstance.*

Status: Assembly Appropriations Committee (suspense)

SB 1287 (Kuehl), as amended August 4, 2004. Prisoners: incarcerated parents

Requires the court to advise a defendant at arraignment that if the defendant is a custodial parent, conviction may have consequences for the defendant's parental rights.

Status: Assembly Appropriations Committee

JC Position: Neutral as amended

SB 1744 (Dunn), as amended June 29, 2004. Bail reform

Enacts numerous reforms to the bail system. Among other things, the bill specifies that when a forfeited bond is not paid within the permitted timeframe and a summary judgment is entered against the bondsman by the court, the amount of the summary judgment issued is due and payable within 30 days of the judgment. On appeal of the summary judgment, this bill requires the full amount of the summary judgment to be deposited with and placed in escrow by the superior court, to be returned within 30 days of the reversal of that judgment, with any interest retained by the court. Also requires the clerk of the court to file a notice of a surety's failure to pay a summary judgment with the Department of Insurance within 30 days following the entry of notice of summary judgment.

Status: Assembly Floor—Third Reading

JC Position: Neutral, but amend.

FAMILY

AB 129 (Cohn), as amended June 22, 2004. Juvenile court: dual status children

Authorizes any county to create a protocol that would permit a minor who meets specified criteria to be designated as both a dependent child and a ward of the juvenile court. Requires

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LEGISLATIVE REVIEW

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that only one agency serve the child at any given time during the case. Requires the Judicial Council to evaluate the results of implementing the protocol, and to report its findings to the Legislature.

Status: Assembly Concurrence

JC Position: Sponsor

AB 252 (Jackson), as amended June 22, 2004. Paternity judgments

Provides that specified judgments or orders establishing paternity may be set aside by the court, upon motion by a party, if genetic testing indicates that the previously established father of a child is not the biological father of the child, and other specified conditions are met.

Status: Senate Appropriations Committee (suspense)

AB 2148 (Diaz), as amended July 2, 2004. Family law proceedings

Establishes new structure for ordering a party to pay the costs of the other party's legal costs in specified family law proceedings. Authorizes the court to make spousal support orders under the Domestic Violence Protection Act (DVPA). Requires the court when determining whether to make custody, visitation, or support orders under the DVPA to consider whether failure to make the order will affect the safety of the petitioner.

Status: Senate Floor—Third Reading

JC Position: Oppose

AB 2228 (Garcia), as amended June 29, 2004. Child custody investigations: release of information

Requires family, juvenile, and probate courts in child custody, welfare, and guardianship proceedings, to share upon request, all available information the court deems necessary to make a determination regarding the best interest of a child, as specified. Authorizes the release of juvenile court file information to probate investigators and court appointed child custody evaluators.

Status: Assembly Concurrence

JC position: Support

SB 730 (Burton), as amended August 9, 2004. Child custody

Requires a noncustodial parent seeking to change custody of a child in response to the custodial parent's plan to relocate to show that the child will suffer detriment as a result of the move and that there has been a substantial showing of a significant change of circumstances, other than the relocation itself. The court can only order a change of circumstances if the detriment resulting from the relocation substantially outweighs the detriment caused by changing the custodial

arrangement. Applies this standard to temporary, contingent, and permanent orders of custody, as well as de facto arrangements.

Status: Assembly Judiciary Committee

JC Position: Oppose

JURIES

SB 1673 (Romero), as amended April 12, 2004. Grand juries: selection

Provides that if a judge rejects a person from serving on one of the grand juries described above, the judge shall issue a written explanation of the reasons for the rejection, as specified. Deletes the provisions of law giving a judge the authority not to select names from the list prepared by the jury commissioner.

Status: Senate Judiciary Committee

JUVENILE DELINQUENCY

SB 1151 (Kuehl), as amended March 16, 2004. Juvenile crime

Adds to the factors to be considered by the juvenile court in a fitness hearing the actual alleged behavior of the minor, the minor's degree of involvement in the crime, the level of harm actually caused by the minor, and any other matter that may affect the circumstances and gravity of the offenses.

Status: Assembly Floor—Third Reading

JC Position: Support

TRAFFIC

SB 1269 (Morrow), as amended June 16, 2004. Traffic violators: Judicial Council report

Requires the Judicial Council, by June 1, 2005, to collect information and compile a report on how courts work with traffic violator schools, home study programs and Court Assistance Programs (CAPs), and the fees charged by the CAPs. Also requires the Judicial Council, by June 1, 2005, to recommend approaches to setting a fiscal policy for CAP fees charged to traffic violators who attend traffic schools.

Status: Assembly Appropriations Committee (suspense)

AB 3049 (Assembly Transportation Comm.), as amended April 21, 2004. Commercial vehicle safety

Specifies that a court may not order or permit a commercial driver's license holder to complete traffic violator school in lieu of adjudicating any traffic offense. Similarly, specifies that a court may not order or permit a person, regardless of driver's license class or seriousness of the offense, to complete traffic violator school in lieu of adjudicating any traffic violation that occurred in a commercial motor vehicle.

Status: Senate Appropriations Committee (suspense)

JC Position: Oppose ■

RIPPED FROM THE HEADLINES



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

"\$2M Returns To State From Murder Cases" *Modesto Bee* (July 1, 2004)

More than \$2 million has been returned to the state from counties that dipped too far into a murder-trial subsidy fund.

An additional \$13 million could be on the way, but Calaveras County, which apparently overcharged the state in the Charles Ng case, has asked if it can pay back the money in installments.

Following a Bee investigation, state Controller Steve Westly set a June 30 deadline for counties to return any extra payments they received for expensive murder trials.

The Bee found that the trial-subsidy fund has been raided for decades by counties that do not have to show much justification for their bills.

"It's been on autopilot for 20 to 30 years," said Westly in a recent interview. "It fell through the cracks and we're fixing it."

"Capitol Insiders Keep Close Watch On Senate Leadership Duel" *Sacramento Bee* (July 12, 2004)

The preoccupation for many Capitol insiders these days is not resolving the state budget stalemate but handicapping the increasingly nasty duel between two Democratic state senators for the Senate's top position - and with good reason.

Whoever succeeds termed-out John Burton as president pro tem will play a central role in shaping policy in the Democratic-controlled Legislature, since one of the unintended consequences of legislative term limits has been a shift of internal Capitol power from the long-dominant Assembly to the Senate. As 1,000-plus lobbyists work the Capitol on behalf of special interest groups, they consider Burton's attitude, if he has one, to be the most important single factor in a bill's fate.

Burton, the mercurial leader of the Senate for the past six years, has not overtly indicated whether he favors Sen. Don Perata, D-Oakland, or Sen. Martha Escutia, D-Whittier, the two leading candidates for the job. Ideologically, Burton may be closer to Escutia, but Perata's election would also bolster the San Francisco Bay Area's clout - no small factor. The Legislature's unspoken practice has been to divide its top two leadership positions between the state's two major metropolitan areas, and the speakership appears to be in the more or less permanent hands of Southern California politicians.

Gender and ethnicity are two other factors. Escutia wants to become the first woman and the first Latino to hold the pro

tem position, while Perata represents the Democrats' shrinking white male minority. But Escutia, the more abrasive of the two, doesn't have universal support from either women or Latinos in the Senate, and influential unions appeared to be divided. As the senator-by-senator politicking intensifies - aimed at nailing down a majority of the 25 Democratic senators through persuasion, promises and threats - the gloves are coming off.

Underlying the contest is the eternal conflict between business interests and their foes, especially personal injury attorneys, environmentalists and consumer advocates. There's little doubt that the business interests are rooting for Perata while the others favor Escutia and that the contending factions are doing whatever they can to win - including full-blown "opposition research" on the rivals and media leaks.

"Gov. Plans Attack On Lawmakers' Power" *Los Angeles Times* (July 28, 2004)

Gov. Arnold Schwarzenegger is preparing an assault on the institutional power of California legislators after a month of contorted state budget negotiations in which his clout was questioned and his ideas were rejected.

The Republican governor may call a special election next year asking voters to, among other things, convert the Legislature to part-time status, strip legislators of their power to draw their own districts and restrict campaign contributions, his spokesman said Tuesday.

Schwarzenegger spokesman Rob Stutzman said this month's contentious budget negotiations hardened the governor's resolve to move forward with all or part of this plan, although a final decision has not been made. Stutzman compared the governor to a global superpower much like the U.S. - compassionate and benevolent at times - but "if you cross it, it's fierce."

Schwarzenegger's intentions are often difficult to gauge - he occasionally mixes threats with flattery and is well known for trying to get a psychological advantage over his adversaries. His new resolve to restructure the Legislature may be leverage he can use in exchange for cooperation on other issues, such as his plan to revise the state's bureaucracies.

During budget talks this month with Assembly Speaker Fabian Nuñez - a former boxer and Los Angeles labor activist serving his first term in elective office - the governor made it clear that he felt Nuñez was challenging him. Schwarzenegger's attitude was that he would "teach this punk a lesson," according to a person familiar with the conversations.

Senate President Pro Tem John Burton (D-San Francisco), who has a far friendlier relationship with the governor than Nuñez does, said Tuesday that he already told Schwarzenegger that any

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RIPPED FROM THE HEADLINES

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attempt to make a part-time Legislature or dilute its power to draw legislative districts would fail and only make lawmakers angrier.

“State Can Collect Punitives Only If Lawyers Act Fast” *The Recorder* (July 29, 2004)

Tucked into the state budget package headed for approval by legislators late Wednesday is legislation that would divert 75 percent of punitive damage awards to the state.

But lawyers question whether the plan, as revised in talks earlier this week, will net the \$450 million estimated in the budget. Some question whether the plan will produce any revenue at all.

A sunset clause inserted into the legislation means the state could only collect on judgments in suits that are filed after the budget is OK'd and are finally adjudicated ~ meaning appeals are exhausted ~ before June 2006.

Tort reform advocate John Sullivan said the deal is better than nothing.

One thing that isn't there is the one-judgment-per-defendant piece of Gov. Arnold Schwarzenegger's plan. That part of it was especially offensive to plaintiffs attorneys. The revised legislation also allows for attorneys fees to come from the state's 75 percent of punitive damage awards, rather than coming just from the plaintiff's 25 percent.

In a press release, CAOC President James Sturdevant and President-elect Sharon Arkin described the plan as evidence that the governor and the Legislature “publicly recognized and embraced the valuable function punitive damages play in punishing and deterring malicious or despicable corporate conduct.”

“State Pushes Problems Into Future” *Los Angeles Times* (August 1, 2004)

Across the nation, lawmakers raise taxes or cut programs to resolve budget shortfalls. But in California, big-time borrowing is the answer.



Virtually every state facing a major budget shortfall this year has made painful policy choices. Except California.

A year ago, amid the lingering effects of economic recession, state governments across the country were coping with deficits, shortfalls and financial angst of all kinds. But now, as other states are making their way back into the black, California continues to push its problems into the future with borrowing.

Corina Eckl, a state budget expert for the National Conference of State Legislatures, said no other state budget relied on as

much borrowing as California's.

"When you look at the numbers, California stands alone. We are not seeing widespread pushing forward of budget problems," she said. "Most states are trying to resolve them in their entirety in fiscal 2005."

The \$105.4-billion spending plan signed into law Saturday by Gov. Arnold Schwarzenegger includes a budget shortfall now expected to total as much as \$17 billion over the next two years.

"Other states are going to be laughing at us for the way we have handled things," said Michael Bazardich, a senior economist with the UCLA Anderson Forecast. "It's worrisome."

The budget Schwarzenegger signed is balanced with at least \$15.6 billion of borrowing.

“Ex-Boxer Nuñez Stood Toe-To-Toe With Governor” *Los Angeles Times* (August 1, 2004)

Last week, Assembly Speaker Fabian Nuñez caused some jaws to drop in the Horseshoe — the semicircle of offices occupied by Gov. Arnold Schwarzenegger and his acolytes — when he publicly chastised the governor for being a "bully" and, speaking about the issue of state budget negotiations, said the governor "didn't know how to deal with the crisis."

The governor has ridiculed the Legislature in public forums but has refrained from mentioning Nuñez personally — although sources close to Schwarzenegger said he was livid at the speaker's questioning of his leadership.

The conflict may not be their last: Both men entered elective politics at about the same time, and they will probably be bound together as respective leaders until Nuñez leaves office in 2008, assuming Schwarzenegger is reelected in two years and Nuñez is not deposed by the vagaries of Assembly politics.

Nuñez now says his criticism of Schwarzenegger, in comments to *The Times*, were made when he was "feeling emotional." But the 37-year-old first-term lawmaker isn't backing off. He thinks the way the Republican governor belittled the Legislature, calling lawmakers "girlie men" and children who needed a time out or risked being "terminated" at the polls, needed to be addressed.

"My message to the governor is, look, I'm going to treat him with respect but the Democrats are going to be respected," Nuñez said. ■

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CALIFORNIA SENTENCING RULES IN QUESTION

The United States Supreme Court recently decided that the Sixth Amendment right to a jury trial requires that any aggravating fact used to increase a defendant's sentence must be found by a jury, not a judge. (*Blakely v. Washington* (2004) 124 S. Ct. 2531.) The ruling applied to Washington's state sentencing guidelines. In the wake of this significant decision, courts, attorneys, scholars, and legislators are grappling with the potential effects of the case.

Because of the uncertainty created in California by the *Blakely* case, the Office of General Counsel distributed to all Presiding Judges two memoranda prepared about *Blakely*. The first is by Judges Richard Couzens and Tricia Bigelow; the second is from the Planning and Research Unit of the Superior Court of California, County of Los Angeles. These memoranda can be found on the California Courts Web site www.courtinfo.ca.gov.

The decision raises a number of questions about California's statutory sentencing scheme, including, for example: Does *Blakely* apply in California? What is *Blakely's* effective date, and does it apply retroactively? Does California law require amendments to implement *Blakely*?

To begin consideration of potential legislative issues, the Office of Governmental Affairs convened a meeting with representatives of the defense bar, the California District Attorneys Association and the Attorney General's office. Participants agreed that while *Blakely* could have significant implications for California's existing sentencing law, it was too early to know what kind of legislative response was appropriate or necessary. The group agreed that no legislative changes should be sought until the federal and state courts have had an opportunity to rule on various issues. There are no plans to introduce legislation before the session ends on August 31.



Chief Justice
Ronald M. George

In a case already before it, the California Supreme Court asked parties to brief whether *Blakely* "precludes a trial court from making the required findings on aggravating factors for an upper term sentence," and "if so, what standard of review applies, and was the error in this case prejudicial?" (*People v. Towne*, review granted June 18, 2004, S125677.)

Finally, the United States Supreme Court recently agreed to rule on the constitutionality of the federal sentencing guidelines post-*Blakely*. If the Court decides that the federal guidelines are unconstitutional, it could undercut the entire guideline system passed by Congress in 1984 intended to make federal sentencing more uniform. These guidelines operate by establishing punishment ranges for specific crimes. Although judges must generally adhere to these ranges, the guidelines empower them to increase sentences if aggravating factors are found. ■

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