



# THE CAPITOL CONNECTION

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## LEGISLATIVE CALENDAR

Last Day for Policy Committees to Meet Prior to June 9  
 May 23

Last Day for Fiscal Committees to Meet prior to June 9  
 May 30

## EXCLUSIVE:

## INTERVIEW WITH SENATOR JOSEPH DUNN



Sen. Joseph Dunn (D-Garden Grove) was elected to represent Senate District 34 in 1998 and was re-elected in 2002. Noted for his work on behalf of consumers as chair of the Senate Select Committee to Investigate Price Manipulation in the Wholesale Energy Market, he is also chair of the Senate Budget Subcommittee No. 4, which includes the budget of the judicial branch.

A former trial lawyer, Sen. Dunn recently met with *The Capitol Connection* and shared his thoughts on the budget, the judiciary, and his candidacy for Attorney General in 2006.

**Capitol Connection:** How did your background as a trial lawyer prepare you for your service as a senator?

**Dunn:** I don't think there could be any better training ground for life in the Legislature than experience as a trial lawyer. The reason for that is very fundamental: trial lawyers know that in the courtroom you battle issues out and that's what the process is all about. Very few experienced trial lawyers take those courtroom battles outside the courtroom and translate it into a personal dispute. We understand the role we play as advocates in the courtroom. That is one of the missing components in

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## UPDATE: UNFAIR COMPETITION LAW

As reported in previous issues of *The Capitol Connection*, issues surrounding the potential for abuse of Business and Professions Code section 17200, California's Unfair Competition Law (UCL), are being addressed by the Legislature, the Attorney General, and the State Bar. In addition, there have been a number of court rulings that have affected the UCL in general and a specific law firm's use of it in particular.

On February 26, Attorney General Bill Lockyer filed a lawsuit against the Trevor Law Group, a Beverly Hills firm that has been at the center of the recent UCL controversy. The firm's attorneys are accused of using the UCL to file thousands of lawsuits against small, often minority-owned businesses for violations of minor administrative regulations and then pressuring the businesses to settle. The firm's tactics have been described as extortionate.

The Trevor attorneys responded by claiming that the AG's

action is a Strategic Lawsuit Against Public Participation, or SLAPP. They claim in a motion that the lawsuit is intended to punish the attorneys for petitioning the government, through the courts, for the redress of grievances.

The State Bar has completed its investigation of the Trevor attorneys and has begun proceedings to suspend their licenses. According to the State Bar's counsel, the attorneys have committed acts of malicious prosecution, moral turpitude, and numerous ethical violations. The Bar filed its petition seeking suspension on March 16 and April 17; a hearing on the petition was held in Los Angeles.

According to the counsel for the Trevor attorneys, the firm was appropriately using the UCL to protect consumers and like most civil litigation, settlements were sought to resolve the cases quickly and fairly.

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## SENATOR DUNN

*(Continued from page 1)*

political life, particularly nowadays, and it is getting worse every year. More and more elected public servants believe that the political process is all about one side winning and the other side losing. But this reduces public policy debate to a personal attack, person to person or party to party. Republicans will say every thing Democrats do is evil. The Democrats make the same charge against Republicans. They fail to understand that public debate generates the best public policy decisions. The same theory applies in the courtroom. The reason you have tough adversaries in the courtroom is that the adversarial process will produce the truth. It's not winning and losing, as some lawyers unfortunately believe. It is simply tough advocating for purposes of deriving the truth. That is the fundamental reason I think the experience of a trial lawyer is the best training ground for service in the legislative process.

I also believe that experience as a trial lawyer helps because every trial tends to touch upon a different area. One may be about engineering, one about medicine, one about accounting, and one about economics. A trial lawyer must learn about many areas and must learn them quickly. That same approach applies in politics.

**CC:** When you became the chair of Senate Budget Subcommittee No. 4 this year, you successfully requested that the subcommittee's jurisdiction include the judiciary budgets. Why?

**Dunn:** First and foremost, I want to extend a thank you to Senator Byron Sher who had this in his budget subcommittee for many years and did a great job in overseeing the budget process as it relates to the judicial system. He and I see eye-to-eye in most everything relating to the judicial process. I requested it because I wanted to have a strong hand in the evolution from county courts to a statewide system. That evolution has been missed by virtually every legal practitioner in the state of California and by many sitting judges, although I think the bench is much more in tune to this evolution and all of its implications – good, bad, and indifferent – than the average practitioner. I believe it's time for us collectively to educate the legal community on this evolutionary process and

the budgetary decisions that it entails.

The other reason I requested it is I have an increasing concern that the political process does not recognize the judiciary as a separate and equal branch of government. My concern is that the fundamental principle of our democracy – three separate and equal branches of government – is subservient in some peoples' minds to the budgetary process. The very fundamental survival of our democracy depends upon a judiciary that is treated as a separate branch of government and is fully funded in good times and in bad. So, in hopes of exercising more of a voice in defense of a fully funded judiciary, I wanted to have the jurisdictional responsibility over the judiciary as it relates to the state's budget.

**CC:** You assumed chairmanship of the subcommittee in the midst of the state's worst budget crisis. How has that affected the way your subcommittee addresses its work?

**Dunn:** The budget crisis certainly has complicated the work of all the budget subcommittees. We all wish that we were dealing with good economic times and were able to fund everybody's wish list within the judicial process. But that's not reality. So, while it is complicated, I will not compromise on

my oft-stated public position that the judiciary is not a luxury to be funded only in good times. It must be funded not just adequately but fully to serve its critical role in our democracy. My long-term goal is that we in the political process, in partnership with the judicial branch of government, work quickly to find independent funding sources for the judicial branch so it is not tied to the volatility of the year-to-year budget process. I say that not only because I come out of the legal arena and have a special place in my heart for the judicial branch but, more importantly, because I have a long-term concern that the more politicians – myself included – have a hand in crafting the year-to-year budget for the judicial branch, the more the judicial branch's independence is threatened.

**CC:** The recent decennial redistricting resulted in almost every legislative seat being decided in party primaries

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***“The judiciary is not a luxury to be funded only in good times. It must be funded not just adequately but fully to serve its critical role in our democracy”***

## SENATOR DUNN

*(Continued from page 2)*

rather than in the general election. Many people have observed that this means that party caucuses are more extreme. How has this affected interparty negotiations on the state budget?

**Dunn:** Let me respond by making two points: There is no question that redistricting has caused both caucuses to drift to their extreme. Democrats to the left; Republicans to the right. However, I don't believe that this is the major reason for the drift. I believe the major reason is term limits. The state is having to rely on inexperienced individuals to make very difficult public policy decisions. So the drift is compounded by redistricting, but the most fundamental cause I believe is term limits and the lack of experience - not just political experience but life experience - of the members of the Legislature.

How does the drift, whatever its causes, impact negotiations between the respective parties? It is virtually deadly. The more each party drifts to its extreme, the more the collective view of both parties is that this is not a public policy debate but a war between two ideologies in which one must win and one must lose. It complicates the negotiation process as both parties drift to their extreme. The challenge is how to reverse that. There's no single answer, but we must recruit highly talented individuals into the public policy arena. There are serious downsides to this profession. Campaigning, for example, is no longer a debate about public policy issues but about who is a lower form of human life. As a result we're losing the benefits of public policy debates. We must figure out the answer and return the political process and the profession of politics to a higher standard and therefore higher purpose.

**CC:** How do you foresee a budget resolution happening?

**Dunn:** It would be nice if everyone could set aside the partisan politics and simply sit down and say, "What is in the best interest of Californians who live and work in our great state?" I'm not that pollyannaish to think that day will come any time soon. We have adopted a collective sense of denial. We know we will ultimately have to make tough decisions, but we postpone those tough decisions until we absolutely, positively have to make them.

One of my concerns is that there isn't general recognition of a bit of wisdom that a senior member pointed out to me when I first arrived in Sacramento. Senator John Burton told me that the truly successful public servant recognizes early in his or her career that politics is not about picking

between right and wrong options - it's about picking between multiple correct options. As applied to our budget crisis today, the debate has been the Republicans saying they can't accept any tax increases because of their detrimental effect on the economy and the Democrats saying that there is only a certain amount of cuts we can make before we impact real lives. Both sides are right. My hope is ultimately there will be a sufficient mass of politicians who understand that there is no win-lose proposition here and that pragmatic minds prevail to come up with a middle of the road approach addressing everybody's concerns.

**CC:** What other factors do you think might hasten a budget resolution?

**Dunn:** I think the only other incentive that will force the decision earlier rather than later comes from outside the political process. It comes from the financial markets. For the long-term financial stability of California, we need access to the financial markets. If the financial markets say to us "if you don't do certain things, California will have limited, if any, access to the financial markets," that may help us realize we have to make those tough decisions.

**CC:** In the past you have carried Judicial Council-sponsored legislation relating to electronic filing and court security. This session you are working with Senator Martha Escutia in support of SB 655, which would put a court facilities bond measure on the 2004 statewide ballot. What other issues affecting the courts are important to you?

**Dunn:** Almost any issue that affects the courts is important to me. I think Senator Escutia's court facilities bond measure is a critical move. I don't think there's much disagreement with it. We simply must convince the average Californian who has little exposure to the judicial branch that court facilities should rank high on the priority scale. I would like to see the courts have their own bonding authority so that when there are capital needs, there is the ability to address them with a variety of options. I will continue to work very closely with the Judicial Council, the AOC, and all the various stakeholders in the judicial process to move forward as much as we can in a team effort to improve the efficient and effective operation of the courts while preserving the independence of the judicial branch.

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## LEGISLATIVE REVIEW

May 2 was the last day for policy committees to hear and report fiscal bills to the fiscal committees of the house in which the bills were introduced. The next deadline in the legislative process is May 9, the last day for policy committees to hear and report non-fiscal bills to the floor. Committees have been holding hearings to meet these deadlines. Meanwhile, the Judicial Council, through its Policy Coordination and Liaison Committee, has been taking positions on a number of bills. Here is an update on bills of interest to the courts and the council's position, if applicable.

### COURT ADMINISTRATION

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

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

**Status:** Assembly Appropriations Committee

**JC Position:** Oppose unless amended

#### **AB 1641 (Keene), as amended April 24, 2003. Emergency Powers**

Clarifies the authority of the Superior Courts and gives the Chief Justice additional flexibility to take necessary actions in a state of judicial emergency.

**Status:** Assembly Judiciary Committee

**JC Position:** Sponsor

#### **SB 254 (Dunn), as amended April 21, 2003. Trial courts: court attendants**

Restricts the use of court attendants.

**Status:** Senate Rules

**JC Position:** Oppose unless amended

#### **SB 655 (Escutia), as amended April 21, 2003. California Court Facilities Construction & Renovation Bond Act of 2004**

Authorizes the issuance, pursuant to the State General Obligation Bond Law, of up to \$4,146,000,000 in bonds, the proceeds of which would be deposited in the State Court Facilities Construction Fund for the purposes specified in existing law.

**Status:** Senate Appropriations Committee

**JC Position:** Sponsor

#### **SB 818 (Escutia), as introduced. Trial Court Interpreter Employment and Labor Relations Act: Clean Up**

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

**Status:** Senate Judiciary Committee

**JC Position:** Co-Sponsor

### CIVIL

#### **AB 102 (Pacheco), as introduced. Unfair competition law**

Places a number of restrictions on a private party wishing to bring an action under the Unfair Competition Law (UCL), including a requirement that the plaintiff suffer a distinct and palpable injury.

**Status:** Assembly Judiciary Committee

#### **AB 599 (Dutton), as introduced. Unfair competition: private enforcement**

Requires that the business practices targeted by lawsuits brought under the Unfair Competition Law be both unlawful and unfair and that the plaintiff have a good faith belief that each named defendant had engaged in the alleged misconduct. AB 599 would also require the approval of the court prior to dismissal or compromise of an action.

**Status:** Assembly Judiciary Committee

#### **AB 754 (Bogh), as introduced. Unfair competition**

Requires that the alleged misconduct of businesses be a practice rather than an act and would define a "practice" as a pattern of conduct.

**Status:** Assembly Judiciary Committee

#### **AB 1712 (Assembly Judiciary Committee), as amended April 10, 2003. Civil omnibus**

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

**Status:** Assembly Appropriations Committee

**JC Position:** Sponsor

#### **SB 122 (Escutia), as introduced. Unfair competition: private enforcement actions**

Requires a plaintiff suing under the UCL to notify the district attorney of the action and to file proof of service of the notification with the court.

**Status:** Senate Judiciary Committee

#### **SB 889 (Johnson), as introduced. Unfair competition**

Prohibits the filing of actions against businesses having fewer than 50 employees unless the person bringing the action has sustained a distinct and palpable harm as result of the unfair act or practice that is the subject of the action.

**Status:** Senate Judiciary Committee

### CRIMINAL LAW

#### **AB 20 (Lieber), as amended April 10, 2003. Victims of crime: developmentally disabled victims**

Adds provisions to the Penal Code, Evidence Code, and Welfare and Institutions Code to protect the rights of developmentally disabled persons and other dependent persons and elderly persons in court, and are given the rights afforded to minors in the same situations.

**Status:** Assembly Appropriations Committee

#### **AB 74 (Mountjoy), as amended February 19, 2003. Police vehicle pursuit: punishment.**

Makes it a felony rather than a misdemeanor to intentionally evade, willfully flee, or otherwise attempt to evade a pursuing peace officer's vehicle if the peace officer vehicle is operated by a peace officer, distinctly marked, operating a siren, and operating flashing lights.

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# LEGISLATIVE REVIEW

(Continued from page 4)

**Status:** Failed passage in Assembly Public Safety Committee

**AB 101 (LaSuer), as amended February 18, 2003. Restitution.**

Reorganizes and rewrites restitution provisions by deleting various disparate provisions and enacting a more comprehensive provision concerning restitution.

**Status:** Assembly Floor

**AB 135 (Reyes), as amended March 3, 2003. Homicide victims**

Makes it a felony to steal, take, or move the body of any person who has been the victim of a homicide into another country, state, or county, or into another part of the same county with the intent to conceal the body from law enforcement, or to prevent or obstruct the investigation or prosecution of any crime related to the homicide

**Status:** Assembly Appropriations Committee

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

Provides that good cause for a continuance in a homicide or forcible sex crime case includes, but is not limited to, the temporary unavailability of requested forensic DNA analysis results and reports, when the DNA evidence at issue is pending analysis at a laboratory at the time a motion for continuance is made.

**Status:** Senate Public Safety Committee

**JC Position:** Oppose

**AB 865 (Matthews), as introduced. Criminal procedure: jury instructions**

Requires the court to instruct the jury, after the jury has been sworn and before the people's opening address, that the integrity of a trial requires that jurors conduct themselves as required by the court's instructions, and that accordingly, if any juror refuses to deliberate, or expresses an intention to disregard the law or to decide the case based on penalty, punishment, or any other improper basis, the other jurors shall immediately advise the court of that fact.

**Status:** Assembly Public Safety Committee

**JC Position:** No position

**AB 1273 (Nakanishi), as introduced. Criminal procedure: continuances**

Specifies that, for purposes of finding of good cause to continue any criminal hearing, the good cause requirement shall not apply to a prosecution or defense motion to continue a felony trial to a date not more than 60 days from the date of the defendant's arraignment on the information, or to a date not more than 10 days after a trial date set more than 60 days after that arraignment, as permitted with a defendant's consent or a prior finding of good cause. States that this exception to the requirement of a finding of good cause is intended to codify existing case law.

**Status:** Assembly Public Safety Committee

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

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

**Status:** Assembly Appropriations Committee

**JC Position:** Sponsor

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

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

**Status:** Senate Appropriations Committee

**SB 58 (Johnson), as amended April 30, 2003. Police reports: confidentiality**

Requires the court to keep confidential a police report, arrest report, or investigative report, and any item attached to it, submitted to the court by a prosecutor in support of a criminal complaint, indictment, or information, or by a prosecutor or law enforcement officer in support of a search warrant or an arrest warrant. Permits the filing of a motion requesting access to such reports, after the clerk of the court redacts all personal identifying information.

**Status:** Senate Public Safety Committee

**SB 222 (Margett), as amended April 28, 2003. Juveniles: detention**

Permits the court to commit any person adjudged to be a ward of the court who is 18 years of age or older to a county jail for a period not to exceed one year, upon the informed consent of the ward, the district attorney, and the court, and upon specified findings of the court.

**Status:** Senate Public Safety Committee

**SB 638 (Burton), as amended April 30, 2003. Criminal procedure: verdict form**

Provides that the general verdict upon a plea of not guilty is "guilty" or "not proven." Provides that a defendant shall not be tried again for any offense for which a general verdict of "not proven" is rendered and that a general verdict of "not proven" shall have the same effect as an acquittal for purposes of double jeopardy.

**Status:** Senate Public Safety Committee

**SB 718 (Dunn), as introduced. Criminal procedure**

Requires a motion by a defendant in a criminal case to return property or suppress evidence to precisely identify the law enforcement or other governmental conduct that is challenged by the motion. Limits the evidentiary hearing concerning a motion alleging unlawful search or seizure to the law enforcement or other governmental conduct that has been precisely identified in the defendant's motion.

**Status:** Senate Public Safety Committee

**JC Position:** Support if amended

**SB 877 (Hollingsworth), as introduced. Criminal procedure: discovery**

Provides that in cases in which the court orders the prosecution to provide copies of child pornography evidence to the defense, the

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# LEGISLATIVE REVIEW

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

**Status:** Senate Public Safety Committee

**JC Position:** Oppose unless amended

## DOMESTIC VIOLENCE

**AB 29 (Reyes), as amended March 24, 2003. Protective orders: copies to other parents.**

When petitioning the court for a protective order, requires any person who has custody of a minor, and who claims in the petition abuse or history of abuse against the minor or any other minor in the household to serve a copy of the order by mail, to 1) the other parent of the minor, unless the respondent; and 2) if the respondent has any minor child unrelated to the petitioner, the other parent of that minor. The petitioner must file proof of service within seven days after the hearing of this order.

**Status:** Assembly Judiciary Committee

## FAMILY LAW

**AB 111 (Corbett), as amended April 3, 2003. Child custody: emotional abuse.**

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

**Status:** Assembly Floor

**AB 1108 (Bermudez), as amended April 28, 2003. Child custody: drug testing**

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

**Status:** Assembly Judiciary Committee

**SB 265 (Kuehl), as amended April 21, 2003. Child custody: domestic violence**

Changes the operation of the rebuttable presumption against custody

to a person who has perpetrated domestic violence. Requires the court to consider which party is the "dominant aggressor."

**Status:** Senate Judiciary Committee

## JUDICIAL SERVICE

**AB 67 (Negrete McLeod), as amended April 10, 2003. Judges retirement**

Among other things, this urgency bill makes changes to judges' retirement. Allows members of Judges Retirement System II (JRS II) who have withdrawn accumulated contributions from this system to redeposit those contributions. Allows a surviving spouse of a judge who dies in office to receive payments to which he or she may be entitled under the Extended Service Incentive Program. Also, provides that a judge who is retired for disability may not receive a retirement allowance while he or she engages in work involving duties substantially similar to those that the judge was unable to perform due to their disability.

**Status:** Senate Floor

## JURIES

**AB 1180 (Harman), as amended April 9, 2003. Sanctioning of jurors**

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

**Status:** Assembly Appropriations Committee

**JC Position:** Sponsor

## JUVENILE

**SB 59 (Escutia), as amended April 8, 2003. Dependent children: appeals**

The bill's intent is to provide for expedited appellate review of disputed placement orders in juvenile dependency cases. The bill would establish a writ process for appellate review.

**Status:** Senate Floor

**JC Position:** No position

## TRAFFIC

**SB 408 (Torlakson), as amended April 21, 2003. DUI: sanctions**

Among other things, consolidates driver's license suspension, restriction, and revocation functions for DUI arrests and convictions under the Department of Motor Vehicles.

**Status:** Senate Appropriations

## News from the AOC

In addition to *The Capitol Connection*, the Administrative Office of the Courts publishes several newsletters reporting on various aspects of court business. Visit these online on the California Courts Web site at [www.courtinfo.ca.gov](http://www.courtinfo.ca.gov). To subscribe to these newsletters, contact [PUBINFO@jud.ca.gov](mailto:PUBINFO@jud.ca.gov).

**CFCC Update:** Reports on developments in juvenile and family law, including innovative programs, case law summaries from the AOC's Center for Families, Children and the Courts; grants and resources, and updates on legislation and rules and forms. Published three times a year. See [www.courtinfo.ca.gov/programs/cfcc/resources/publications/newsletter.htm](http://www.courtinfo.ca.gov/programs/cfcc/resources/publications/newsletter.htm).

**Court News:** Award-winning bimonthly newsmagazine for court leaders reporting on developments in court administration statewide. Indexed from 2000 at [www.courtinfo.ca.gov/courtnews](http://www.courtinfo.ca.gov/courtnews).

## AGREEMENT REACHED ON YOUTHFUL OFFENDER PAROLE BOARD

Governor Gray Davis signed SB 459 (Burton) last month, ending a six month impasse over the role of the state's Youthful Offender Parole Board that resulted in the temporary loss of a half year of the Board's funding. The Youthful Offender Parole Board is the paroling authority for juveniles committed by the courts to the California Youth Authority.

Last year, Senate President Pro Tempore John Burton introduced legislation that would have eliminated the Youthful Offender Parole Board, arguing that it "has been ineffectual and out of touch for some time." As passed by the Legislature and presented to the Governor in the Fall of 2002, SB 1793 would have left the Board intact, but transferred much of its authority to other entities, including the juvenile courts. In addition, Senator Burton had one-half of the Board's annual funding cut from the state budget.

Senator Burton attempted to make SB 1793 more acceptable to the Governor than it might otherwise have been by including an appropriation for one-half of the Youthful Offender Parole Board's fiscal year funding. Nonetheless, the Governor vetoed SB 1793, expressing concern that

transferring parole decisions from a state board to local juvenile courts could result in disparate treatment of juveniles who committed similar offenses in different counties. The Governor's veto left the Board unfunded for the second half of fiscal year 2002-03, and the Board ran out of money in early March.

SB 459 was the legislative vehicle for the agreement the Governor and Senator Burton reached in March 2003. Full funding of the Board's activities was reinstated through an appropriation in the bill.

The bill merges the Youthful Offender Parole Board into the California Youth Authority and calls the new entity the Youth Authority Board. The bill expands the juvenile court's role by requiring the new board to notify the court and the probation department of parole consideration dates, and provide information to the court and the probation department regarding treatment plans and annual progress reports for the ward. Also, the bill prohibits a minor being held in physical confinement for a period of time in excess of the maximum term of physical confinement set by the court.

## 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*.

### "Jerks Need Not Apply" *The Recorder* (April 4, 2003)

A no-nonsense Commission on Judicial Performance appears to be sending a clear message to judges: You can't be a toxic person and remain on the bench.

In recent cases, the CJP has investigated the behavior of judges who are apparently so caught up in the trappings of power that they've abandoned the restraints of integrity. All were accused of petty acts of personal indiscretion, but the CJP is showing judges that they can't do whatever they feel like anymore -- and that's a very good thing.

Perhaps the most striking example of the CJP's aggressive new stance on bad behavior came in February when Contra Costa County Superior Court Judge Bruce Van Voorhis became the first judge in California to lose his gavel over his demeanor alone.

Van Voorhis' attorney, James Murphy of Murphy, Pearson, Bradley & Feeney, tried to downplay the judge's bad reputation

on the bench. "So he is perceived as a jerk," Murphy said. "Is he subject to removal because he is perceived as a jerk?"

Well, yes.

It looks like time is running out for shady, arrogant judges who slide over the boundaries of illegal activity -- or who are just downright awful human beings. Judges aren't demigods; they're public servants who are accorded, for the most part, a great deal of respect from the public. The CJP is making sure they earn it.

### "Court Workers May Face Furloughs To Cut Costs" *Los Angeles Times* (April 4, 2003)

Judges are planning to shut down Los Angeles County courts for as many as eight days over the next three months and send workers home without pay to reduce an \$8.2-million budget deficit, officials and Thursday.

Union officials quickly rejected a suggestion by judges that would keep open the county's 59 court facilities if employees were allowed to work without pay in exchange for accrued vacation time.

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# RIPPED FROM THE HEADLINES

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“Our people refuse to come to work for free,” said Damian Tryon of the American Federation of State, County and Municipal Employees, AFL-CIO. The union will explore all options to avoid a furlough, he said.

Union officials, who represent 82% of the court’s 5,200 employees, urged the court to consider other options including voluntary work furloughs. The union suggested the court could save money by ending its practice of paying professional dues for judges and by reducing the number of administrators.

Court Executive officer Jack Clarke and the court’s 130 court commissioners also would escape the furloughs. “I’m exempt because I’m a department head,” Clarke said.

**“Supreme Court Takes On Coastal Case”** *Daily Journal* (April 10, 2003)

The California Supreme Court dove headlong into the surf of the California Coastal Commission controversy Wednesday, granting the state’s petition for review and asking lawyers to brief issues beyond what either side expected.

In December, a panel of the 3rd District Court of Appeal in Sacramento ruled that the commission’s makeup violates the separation-of-powers doctrine because eight of its 12 commissioners were appointed by the state legislature and could be fired at will. That is an impermissible intrusion into executive branch authority, the appeal court held.

With the commission and its numerous orders protecting California’s coast in jeopardy, the legislature and Gov. Gray Davis moved quickly to remedy the situation. In February, Davis signed a law that gives the commissioners fixed four-year terms, so they can’t be removed by lawmakers who disagree with their decisions.

Whether that law resolved the constitutional issue, and whether the state Supreme Court would take up the case, were questions that remained unanswered.

But Wednesday, the high court unanimously agreed to review the case. It asked lawyers to brief the separation-of-powers issue. In addition, the justices wanted to know what effect the new law would have on the matter.

They also asked for legal arguments on a bigger question: What effect would the appeal court’s ruling have on the thousands of decisions made by the coastal commission in the three decades since it was founded? Would the permitting decisions stand, or would they be declared invalid?

**“Budget Deficit Raises Tensions At Local Courts”** *Los Angeles Business Journal* (April 21, 2003)

L.A. Superior Court has become a place of bickering and anxiety — and none of it involves an actual trial.

The decision to furlough employees for budgetary reasons — followed four days later by an announcement that they would not be furloughed — is among the signs of an already overloaded institution that must come to grips with an unprecedented

budget shortfall.

The acrimony (between the employees’ unions and the court) came to a head after L.A. Superior Court, looking to cut \$8.2 million from its current fiscal year budget, announced on April 3 that it would furlough all employees for up to eight days beginning this month. The budget cuts were part of a state directive for courts to cut an additional 1.3 percent from their budgets for fiscal year 2002-2003, which ends June 30.

Union leaders, legislators and consumer attorneys objected to the decision and appealed to the Judicial Council of California’s Administrative Office of the Courts — the entity that administers California’s courts.

On April 7, the AOC convinced L.A. Superior Court administrators to scrap furlough plans and go back to the drawing board.

“There’s certainly a difference of opinion, a conflict, between the overall goal I repeated and the initial action taken by the L.A. Superior Court,” said Ronald George, California Chief Justice and chairman of the Judicial Council. George said last month that closing the courthouses should be a last resort for administrators facing budget cuts.

**“Ballot measure would allow easier passage for spending plan”** *San Francisco Chronicle* (April 27, 2003)

As lawmakers buckle down for the hardest work on the budget, a coalition is moving forward with an effort to radically change the number of votes needed to approve the state’s annual spending plan.

A ballot measure that may begin circulating next month would put more pressure on lawmakers to end the cycle of late budgets, supporters hope.

California is one of just three states that requires a two-thirds majority to pass a budget. The measure would lower the threshold to 55 percent, which in the current environment would allow Democrats to pass a budget without Republican help.

If the initiative garners enough signatures and is approved by voters in the March election, it could be in place for Democrats to control next year’s budget process, a prospect that some say takes the urgency out of dealing with tough issues this year.

Republicans warn that could lead the state down a path of fiscal neglect.

**“State, county on collision course”** *Pasadena Star News* (April 27, 2003)

Even as the state faces a \$35 billion deficit and may cut funding to cities and counties, state legislators have 363 bills under consideration that would burden local government with millions of dollars in new costs.

“(There is) a long list of special-interest bills working their

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# RIPPED FROM THE HEADLINES

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way through Legislature,” Los Angeles County Supervisor Zev Yaroslavsky said. “Some will succeed and some will fail, but all it takes is for one or two to succeed and they can cost a county like this tens of millions of dollars.”

The California State Association of Counties is now tracking 363 bills in the Legislature that would add costs to cities and counties without increasing revenues to pay for the added expenses.

“We have the strongest objections to unfunded mandates,” said Steve Szalay, executive director of CSAC. “Obviously, during a time of budget crisis, it’s double onerous.”

Furthermore, for the last two years, Gov. Gray Davis has postponed \$800 million in reimbursements to cities and counties.

**“Signs Hint at Budget Deal”** *Los Angeles Times* (April 28, 2003)

Even after a \$6-billion state budget deal seemed to go up in smoke last week and a top GOP lawmaker suggested that it might take a government shutdown to break the gridlock, there are signs that the Legislature is close to making significant progress toward resolving the state’s financial crisis.

In a major concession, Wesson’s Democratic caucus had reluctantly embraced what they considered a significant compromise, because it included cuts to health and education programs that they hold dear. But only two hours after the proposal was unveiled, Republicans rejected it, saying the cuts were still not deep enough.

By late in the week, however, many Republicans were admitting privately that they would probably vote for some variation of the proposal this week

It isn’t just more cuts that Republicans are looking for. They also seek to drive home the point that they expect better treatment from their Democratic colleagues. They complain that their minority status has resulted in their getting slighted repeatedly. They offer a laundry list of complaints, from seeing their bills languish in committee to watching budget deals being brokered without them.

For example, Wesson unveiled his proposal to the Capitol press corps and described it as a compromise that Republicans were likely to be “comfortable” with — before he had shared it with Republicans.

**If budget’s late, workers may pay. Court says hourly state employees could get only minimum wage** *San Francisco Chronicle* (May 2, 2003)

The state Supreme Court raised the specter Thursday of tens of thousands of state employees working for minimum wages during a prolonged budget impasse this summer — but the state’s paymaster moved quickly to dispel the threat.

In a unanimous ruling, the court said state workers who are paid by the hour, and don’t work overtime in a particular pay period, are entitled only to the minimum wage — \$5.15 an hour under

federal law — if the state enters a new fiscal year July 1 without a budget.

Lawmakers have missed the budget deadline in 15 of the last 25 years and appear almost certain to miss it again this year. With a projected deficit of over \$30 billion, Democrats and Republicans are at loggerheads over tax increases and spending cuts. Last year’s state budget was not signed until Sept. 5.

Although the employees would be paid in full retroactively once a budget passed, the ruling raises the possibility that they would have to live on drastically reduced income for weeks or even months — increasing the stakes of the budget negotiations, and the pressure on both sides of the legislative aisle to reach a compromise.

But Controller Steve Westly, a Democrat who signs paychecks for the state’s nearly 300,000 employees, contended that the decision leaves him with the authority to decide how much to pay them. Westly had argued before the court that because decisions on overtime can’t be made in advance, he would have to pay all workers in full or risk violating federal law; the justices said Thursday they were “somewhat skeptical” of the argument but did not resolve it, leaving an opening that Westly seized.

**“Bills meant to cut deficit go to Davis”** *The Sacramento Bee* (May 2, 2003)

The Legislature on Thursday sent Gov. Gray Davis a stack of bills to chip away at the state’s budget shortfall by borrowing to pay pension obligations, cutting health benefits for the poor and dipping into a teachers retirement fund.

But the measures attack only a small piece of the deficit, and leaders intensified warnings Thursday that the shortfall will widen by billions of dollars when Davis announces his budget revisions in 12 days.

Assembly Speaker Herb Wesson, DCulver City, said the budget deficit that Davis once estimated at \$34.6 billion could grow by \$2 billion or more when the governor announces the results of April tax filings. The half-dozen bills approved Thursday will erase about \$3.7 billion from the deficit.

Davis likely will sign the bills Monday, the last possible day to sell pension obligation bonds to free up \$1.85 billion from the general fund, the state’s main bank account.

State Treasurer Phil Angelides had warned that \$656 million in savings would be lost if the Legislature did not approve the pension bonds by Monday.

Legislative Republicans reluctantly agreed to the bond deal after Democrats agreed to vote for a variety of budget cuts and other money-saving measures.

“It shows that the two parties can, in isolated incidences, work together,” said Senate President Pro Tem John Burton, a San Francisco Democrat.



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## SENATOR DUNN

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**CC:** You are term-limited in 2006 and have announced that you will be running for Attorney General. If you become Attorney General, what would you want to accomplish?

**Dunn:** I see the Attorney General's race as a four-year campaign and look forward to a competitive primary in early 2006 and to a competitive general election. This position attracts many highly talented individuals and the race will be competitive at both levels.

What would I do if the voters elect me as the next Attorney General? I think the best way to describe it is to carry on the great work done by Bill Lockyer. Bill made a fundamental change in the operation of the Attorney General's Office to ensure Californians that it is not just a criminal law enforcement office, which of course it is, but that it also has a civil side that was often neglected by some of Bill's predecessors. He has really made great strides to show that he serves both aspects of the office. He has also done a tremendous job in reaching out to law enforcement, whether it is the CHP, sheriffs, or local law enforcement personnel, to try to create more of a team atmosphere. My intentions are to carry on much of his work to make the Attorney General's office not just a political office for somebody who is moving on to other offices, but to make it a real live office that serves all its functions as a criminal law enforcement agency and as the "people's lawyer." It is an extremely important job in and of itself and shouldn't be used merely as a stepping stone. Although Bill is making that step, he really has done a great job and I will do the same thing. If that were the be-all and end-all of my political career, I would be very happy and very satisfied.

## UNFAIR COMPETITION LAW

*(Continued from page 1)*

While Los Angeles County District Attorney Steve Cooley has declined to file criminal charges against members of the Trevor Law Group, the attorneys may be the subject of a federal grand jury investigation. *The Daily Journal* has reported that several sources have indicated that federal prosecutors in Sacramento are investigating the Trevor Law Group for possible mail-fraud violations.

The Trevor Law Group's conduct was the subject of a joint hearing of the Judiciary Committees of the Senate and the Assembly. Currently, a number of bills are pending that seek to amend the UCL to protect businesses from the kind of aggressive tactics attributed to that firm (See the Legislative Review for more information on these measures).

Meanwhile, there have been a number of appellate decisions that address the application of the UCL. In *Korea Supply v. Lockheed Martin Corp.*, 2003 DJDAR 2291, the California Supreme Court held that disgorgement of profits is not a remedy available in individual actions brought under the UCL, since it would expose a defendant to the same remedy in successive actions brought by different plaintiffs. This decision may affect the ability of unscrupulous attorneys to threaten disgorgement as a way of leveraging settlements. In *Searle v. Wyndham International*, (2003) 102 Cal.App.4<sup>th</sup> 1327, the Fourth District Court of Appeal dismissed a case on the basis that the business practices attributed to the defendant were neither unfair nor fraudulent without the need of pre-trial discovery.