



# THE CAPITOL CONNECTION

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## LEGISLATIVE CALENDAR

January 1 New Legislation Takes Effect
January 5 Legislature Reconvenes

## ROUNDTABLE: UNFAIR COMPETITION LAW REFORM

As reported in previous issues of *The Capitol Connection*, the Legislature was the scene of a high profile battle over proposed reforms to Business and Professions Code section 17200, California's Unfair Competition Law, which allows plaintiffs to sue businesses for unfair or illegal practices in the public interest without a showing of harm. *The Capitol Connection* recently asked some of those involved in the response to well-publicized abuses to talk more about this issue. They are Attorney General Bill Lockyer, Bruce Brusavich, President of Consumer Attorneys of California, John Sullivan, President of the Civil Justice Association of California, and Robert Fellmeth, a professor of public interest law at the University of San Diego.

**Capitol Connection: Is there still a problem with California's Unfair Competition Law (B&P Code sec. 17200)? If so, please define the problem.**

**Lockyer:** Before discussing what's wrong with the statute, I think it's important to talk about what's right with it. 17200 probably is the single most important consumer protection law in the state. Through the years, it has served as a bulwark to safeguard consumers, businesses and the market. It has provided remedies for harmful products, deceptive advertising, environmental pollution, predatory and anti-competitive business practices, price gouging and more. My office has used it against the energy companies who ripped off Cali-

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## JUDICIAL COUNCIL SPONSORED LEGISLATION

The Judicial Council sent eight sponsored bills to the Governor in 2003 and all eight have been signed into law. These bills include measures to authorize monetary sanctions against prospective jurors who fail to appear for service and a bill to improve the collection of court-ordered fees, fines and other assessments. Other council-sponsored bills will improve procedures authorizing the Chief Justice to issue orders during an emergency, and make technical changes to last year's legislation regarding court facilities and court interpreters.

The one council-sponsored bill that did not make it to the governor's desk is AB 1306. The fate of this bill has nothing to do with its content. Instead, the bill was caught up in a partisan dispute in the Assembly over the final budget deal.

As reported before, AB 1306 pertains to the transfer of jurisdiction in Proposition 36 cases. This would allow for more

effective court supervision of Proposition 36 defendants.

However, because the bill amends a statute created by voter initiative, it must pass each house of the Legislature with a two-thirds vote. This did not initially appear to be a problem as the bill passed the Assembly and the Senate without a single "no" vote.

But when the bill came back to the Assembly for a vote on minor amendments made in the Senate, Assembly Republicans had decided to protest what they felt was the failure of Democrats to honor an agreement struck during budget negotiations. Assembly Republicans were withholding their votes on any bill requiring a two-thirds majority. Since at least some Republican votes are needed to reach the two-thirds majority, this decision

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## UCL ROUNDTABLE

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fornia and predatory lenders who ripped off vulnerable consumers. Private parties have used the law appropriately to supplement the efforts of public prosecutors with limited resources. So, 17200 is a law that performs a vital function in California, and performs it well.

Now, are there problems with the statute? Yes. No law is perfect, either in its language or its implementation. But I think the main problem with 17200 is not how it's crafted, but how it has been abused by a small number of lawyers. These racketeers have violated the law and professional standards to extort settlements from small businesses, many owned by ethnic minorities. We're fighting to stop them, obtain restitution for their victims, and prevent future abuses.

**Brusavich:** The problems caused beginning in April, 2002 by the Trevor Law Group and similar firms who misused 17200 have been largely addressed. Facing disbarment, the three Trevor Law Group attorneys resigned from the State Bar of California in July, 2003. In addition, the group still faces a pending civil lawsuit by Attorney General Lockyer and possible criminal indictments by a federal grand jury. On March 28, 2003, Los Angeles Superior Court Judge West dismissed the consolidated Trevor cases and allowed sanctions to the defendants against the Trevor Group. The Court issued strong words of warning to the Trevor lawyers, and defendant small businesses are now giving the court information on costs, which they should recover.

**Fellmeth:** There is a problem with 17200. The statute allows "any person" to represent his interests or the "interests of the general public." Hence, any person may serve as a private attorney general. The statute is relatively shallow in its remedies and allowing such license for court redress for market abuses has some advantages. However, the breadth of the statute is extraordinary - extending to any "unfair" or "unlawful" act in competition, and it is an extraordinarily liberal grant of standing - without precedent in other states. It allows avoidance of the many barriers to class action process - the class representative (private AG) need not be in the class or have "claims typical of the class," or prove adequacy as a representative, and the common pitfalls of lack of commonality, unmanageability, and alternative "superior" remedies successfully foreclosing many class actions do not here apply. Now, the nature of this statute and its purposes and confinement to equitable remedy may justify many of these evasions of class action

process - but not all of them. Any action that is brought is capable of achieving finality. That is why we have a judiciary.

The statute needs the "adequacy of representation" element to inhibit conflicts of interest in representing the public - most important - required notice (by inexpensive AG internet site), required hearing and opportunity to object by anyone and with court review of the judgment/settlement, including fees. This simple fix sacrifices no meritorious case, but precludes the Trevor and many other abuses, and gives this litigation proper finality. Then we restore possible disgorgement, which should always be a part of equitable restitution for many reasons.

**Sullivan:** There is still an enormous problem with California's Unfair Competition Law. Lawyers continue to routinely add B&P 17200 claims to civil actions in order to leverage greater settlements. Lawyers continue to send "settle or sue" letters. For example, one lawyer in South San Francisco continues to file a more sophisticated and polished "Trevor-type" settlement demand letter or he threatens to file a 17200 action. The demand letters continue to be for technical violations of the law. And still other lawyers file a 17200 lawsuit and name dozens or hundreds of defendants in one action. This happened recently when three lawyers sued more than 100 businesses at Universal Studios City Walk alleging labor code violations when job applicants were asked if they had a criminal record.

**Brusavich:** CAOC believes that the widely reported abuses, mostly engaged in by a few despicable lawyers, have been addressed. However, in order to ensure that any potential future abuse would be eliminated, CAOC, along with the AFL-CIO, worked diligently on a package of bills (SB 122 - Escutia and AB 95 - Corbett) designed to eliminate any future potential abuse of 17200.

**Lockyer:** The law probably could benefit from some changes - not ones proposed by some critics that would undermine its effectiveness, but finely-tuned revisions that would target the abuses and abusers.

**CC: What happened on 17200 this year in the Legislature?**

**Lockyer:** I'll leave it to the principal antagonists in this debate to discuss the developments in the Legislature.

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## UCL ROUNDTABLE

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**Sullivan:** Assemblyman Lou Correa began the year with a town hall meeting to examine the problem which by then had been termed "shakedown lawsuits" against small businesses. There was standing room only attendance and unprecedented attention by the news media. Auto shop owners, restaurateurs, mortgage brokers, nail salon owners, and travel agents told personal stories of being shakedown lawsuit victims. All of them asked the Legislature for help.

The Judiciary committees held an unusual joint hearing a few days later in the Capitol to hear similar testimony and to hear the Attorney General state that their are "thousands and thousands" of 17200 lawsuits being filed and that his office would not be capable of handling even a simple notice of lawsuit.

In response to these hearings, 11 proposals were introduced to fix the documented problems and all but the plaintiffs' bar's proposals were stopped in their respective plaintiff's friendly Judiciary committees.

**Fellmeth:** Of the bills introduced, the best was AB 69 (Correa). Other proposals were triggered primarily by the Trevor law group abuses, and two were brought by the Consumer Attorneys of California. Others were introduced by Republicans with the apparent purpose of limiting the statute on a broader scale. However, all bills failed.

**Brusavich:** This year was a 17200 roller coaster. Tort reform groups, bolstered by their new found poster child of 17200 abuse (the Trevor Law Group), pushed 7 different bills that would have largely eliminated 17200 cases. Most of the bills were repeats of bills that had been defeated repeatedly during the past eight years. Fortunately, those bills were all defeated, and the two bills that proceeded, SB 122 and AB 95, provided meaningful reform while maintaining the integrity of 17200. SB 122 and AB 95, collectively, would (1) require Court review of settlements and attorney's fees at the option of any party or potential party to a UCL action; (2) require that copies of any UCL complaint be submitted to the State Bar of California; (3) prohibit the joining of multiple defendants in one UCL lawsuit; (4) allow the court to prohibit a "double recovery" in UCL actions by specifically allowing parties to present information about prior actions against the same defendant and allow a set off against claims in a later action against the same defendant; (5) require mandatory notice to defendants, or potential defendants, in UCL lawsuits of their new legal rights under these bills; and, (6) impose a new

attorney ethics provision authorizing State Bar discipline for lawyers violating the new provisions.

**Sullivan:** The plaintiffs' lawyer's proposal included minor, ineffectual changes (such as sending an intimidating UCL notice to defendant and a copy of the complaint to the state bar) addressing the shakedown lawsuit problem. By adding "disgorgement" as a 17200 remedy, the bills' sponsors attracted broad business opposition by *increasing* the threat of 17200 litigation. Some suggested this was a poison pill self-administered by the lawyers who wanted no change to the law if it could not be tipped more in their favor.

**Brusavich:** CAOC strongly believes that 17200 must not be misused by Trevor-type lawyers, but we also have a duty to see that those seeking relief under 17200 have appropriate remedies designed to effectuate 17200's goal: preventing and remedying illegal, unfair or fraudulent acts or business practices. Therefore, SB122 also included a provision authorizing the disgorgement of ill-gotten gains, giving the courts the explicit statutory language they need after recent California Supreme Court decisions.

We believe that this provision would have enabled the courts to utilize the disgorgement provisions that had always been understood to be a part of 17200 and provide the necessary language to accomplish this, as described in *Kraus*. However, at the end of the legislative session, the disgorgement provision was deleted from the bill.

**Sullivan:** And then the remainder of the bill was voted down as an inadequate response to the 17200 private lawyer problem.

**CC: Why did things happen the way they did in the Legislature this year?**

**Fellmeth:** The Consumer Attorneys were unwilling to adopt meaningful reforms. Instead, they proposed a number of elements that are substantially current law and are limited to Trevor situations. Their measure also would reverse *Korea* and restore disgorgement as a remedy, setting up a "if you want your disgorgement back, give in on the elements allowing its abuse." At the last minute, they finally agreed to some reform, including notice and court review – but only if disgorgement is sought.

**Brusavich:** First, the defeated bills, which would have gut-

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## UCL ROUNDTABLE

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ted 17200 actions, did not proceed because most legislators, while horrified at the Trevor-type abuse, also clearly understood that the extreme tort reform 17200 proposals (which imposed standing or harm requirements, limited 17200 actions to the Attorney General or District Attorney, etc.) were anti-consumer. Legislators heard from groups such as Consumers Union, the Sierra Club, the Consumer Federation of California, AARP and others and most understood why this statute is so important to protect consumers and the environment. While disappointed that SB 122 and AB 95, both with and without the disgorgement provision, failed passage, CAOC is pleased that 17200 remains intact. SB 122 and AB 95 are eligible for consideration next year.

**Sullivan:** No change occurred in the Legislature this year due to the opposition by the plaintiffs' lawyers to any substantive reform.

### **CC: What happened outside the Legislature this year?**

**Lockyer:** My office, as well as the State Bar, aggressively fought the abuses that created so much furor and calls for reform. At my suggestion, the State Bar initiated an investigation into the practices of the Trevor Law Group. The Bar's work ultimately forced these lawyers to resign from the profession. Meanwhile, my office launched its own investigation, not only of Trevor, but four other firms. We have given two of the firms – Trevor and Brar & Gamulin – a taste of their own medicine by filing 17200 lawsuits against them. We're seeking restitution for victims and civil penalties in each case of at least \$1 million. Our investigation of the other firms continues. We believe these enforcement actions will go a long way toward deterring future abuse of 17200.

**Sullivan:** There continues to be a proliferation of 17200 cases being examined by courts of appeal and the California Supreme Court. This year, the Supreme Court decided *Korea Supply Co. v. Lockheed Martin Corp.*, holding that "disgorgement of money obtained through an unfair business practice is available in a representative action only to the extent it constitutes restitution." The most notable 17200 decision was the U.S. Supreme Court's decision that a writ to hear the *Nike v. Kasky*, a 17200/free speech case, was improvidently granted. This sent the case back to California trial courts, but Nike then settled the case, postponing indefinitely the possibility of appellate guidance on this front.

### **CC: What will happen next in the Legislature?**

**Lockyer:** I'm a great believer that legislative action should be based as much as possible on empirical evidence. It's no different here. There is not a lot of good data to help us identify and fully understand the problems that may exist with 17200 and how it is used. I think it's important that the Legislature work with the courts, the State Bar, scholars and others to gather that data before making decisions on how to fix 17200.

**Fellmeth:** Probably nothing. This is what is wrong with Sacramento in a nutshell. You have Republicans unduly influenced by business and Democrats by labor (and some by trial lawyers) and each can block meritorious laws that disadvantage them.

**Brusavich:** It is uncertain what will happen next year in the Legislature. According to most legislators whose districts were impacted by the Trevor suits, the cases have either been settled, dismissed or, due to the resignation of the lawyers, otherwise resolved. CAOC has no current plans to introduce new legislation in this area. We fully expect the tort reform groups, led by the tobacco, insurance, HMO, and oil industries, sponsored by the Civil Justice Association of California, to push for negative 17200 changes. It is unclear whether Governor-elect Schwarzenegger will focus in this area, given his other challenges. As always, CAOC remains committed to working with any interested party to address ways to improve the law and the ability of consumers and businesses to protect themselves against illegal, unfair or fraudulent business acts or practices.

**Sullivan:** Legislators from both sides of the aisle have contacted CJAC and asked for help drafting language to reform the UCL in order for the Legislature to introduce the bill early next year. If it's business as usual, nothing will happen.

### **CC: How about in other forums?**

**Lockyer:** As far as my office is concerned, we will continue to pursue our investigation of 17200 abuses by law firms and to press our claims in the actions we have filed. I think the most effective way to combat and prevent abuses of the statute is to let the charlatans know that law enforcement is on the beat and vigilant.

**Fellmeth:** The auto dealerships (one Trevor victim) have

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## SPONSORED LEGISLATION

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effectively ended the progress of a number of bills, including AB 1306. AB 1306 is still eligible to be taken up when the legislature re-convenes in January.

Here are summaries of the council's other sponsored or co-sponsored bills, all of which have been signed into law:

**AB 1095 (Corbett), as amended July 8, 2003. County law libraries**

Requires the Judicial Council to establish a task force on county law libraries, to identify and make recommendations regarding funding of their operations, facilities improvements and expansion.

**AB 1180 (Harman), as amended July 2, 2003. Sanctioning of jurors for failure to appear**

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.

**AB 1641 (Keene), as amended July 16, 2003. Emergency powers**

Gives the Chief Justice additional flexibility to take necessary actions in a state of judicial emergency.

**AB 1710 (Assembly Judiciary Committee), as amended July 15, 2003, Court operations**

Includes substantive and technical changes pertaining to court operations: makes technical and clarifying amendments in the areas of family and juvenile law; allows Court Appointed Special Advocate programs to seek criminal background information on prospective volunteers directly from the Department of Justice, instead of working through the court; clarifies that the 10 percent surcharge does not apply to fees that were incorrectly listed in the 2002 budget trailer bill AB 3000; provides that the 20 percent surcharge established in the 2002 budget trailer bill AB 3000 is not remitted to the county as part of the traffic violator school fee but instead is remitted to the state General Fund; allows the jury instruction royalties to be deposited in the Trial Court Improvement Fund to fund continued improvement of the jury system.

**AB 1712 (Assembly Judiciary Committee), as amended July 22, 2003. Civil omnibus**

Conforms various statutory provisions of law to the aboli-

tion of municipal courts and their unification within the superior courts. Makes other technical and clarifying changes with respect to judicial arbitration proceedings, jury lists, service of process, small claims court, and witness fees.

**SB 256 (Escutia), as amended September 8, 2003, Trial Court Facilities Act: clean up, courthouse construction funds, Trial Court employees**

Makes miscellaneous changes related to the Trial Court Facilities Act of 2002, and makes other technical, cleanup changes. Clarifies the responsibility of the Judicial Council with respect to construction and acquisition of court facilities. Amends the methodology for calculating the inflation figures in the County Facilities Payment. Clarifies the applicability of the court facility surcharge on filing fees. Also includes the following provisions not sponsored by the Judicial Council: Requires the Administrative Director of the Courts to approve expenditures from Local Courthouse Construction Funds. Repeals an obsolete provision related to Fresno county employee classifications. Clarifies the length of time a trial court can employ temporary employees. Establishes a process for the transfer of employment of county employees providing janitorial or maintenance services from the county to the court.

**SB 818 (Escutia), as amended June 17, 2003. Trial Court Interpreter Employment and Labor Relations Act: Clean Up**

Revises a number of the implementation dates and 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.

**SB 940 (Escutia), as amended July 10, 2003, Enhanced Collection of Court-Ordered Penalties**

Requires the Judicial Council to adopt guidelines for a comprehensive collection program, establish a collaborative court-county working group on collections, and report on the effectiveness of collection programs. Authorizes the Judicial Council to establish a program providing for the suspension and nonrenewal of business and professional licenses and an amnesty program involving the collection of outstanding fees, fines, penalties, and assessments.

## IN THEIR OWN WORDS

Once again, *The Capitol Connection* has collected quotes about the gubernatorial recall from public figures as reported in various publications.

**Bruce Cain, director of the UC Berkeley Institute of Governmental studies:**

"Gray Davis' personal style as a politician has become widely known in a way it wasn't widely known in 1998 – the loner characteristics, the obsession with money, the compulsiveness, the taking credit for it all. Part of it [the recall] is a rejection of his personal style."

*Contra Costa Times* (September 25, 2003)

**Jack Pitney, professor of government at Claremont McKenna College and former deputy director of research at the Republican National Committee:**

"McClintock was the class nerd and Schwarzenegger was the class jock with the smart mouth. And usually it's the class jock with the smart mouth that wins the election. And I say that having been the class nerd."

*San Diego Union Tribune* (September 25, 2003)

**Garry South, chief political strategist for Davis:**

"He is essentially a loner, not at all gregarious and not a natural politician. But working with a term-limited state legislature, the most sociable governor in the world could not have overcome the amateurism or the relentless search for the next job opening. He could have been rubbing elbows past midnight every night down at Frank Fat's [a Sacramento watering hole] and it wouldn't have made any difference."

*Washington Post* (September 28, 2003)

**Richie Ross, campaign consultant for Cruz Bustamante:**

Re: the Davis camp's concerns that Bustamante might damage himself by staying in the race: "How thoughtful."

*San Francisco Chronicle* (October 1, 2003)

**John Burton, Senate President Pro Tem:**

"He isn't being elected king, he's being elected governor, which is only one-third of the government. It's called checks and balances. Hopefully we'll find enough common ground to get the state out of this mess."

*San Jose Mercury News* (October 2, 2003)

**Bruce Brusavich, president of Consumer Attorneys of California:**

"Lawyers can expect more lawyer bashing a la [President]

George W. Bush, and there would be tort reform legislation introduced that we would have to oppose, and vetos of anything pro consumer in the civil justice area." I also anticipate "Wilson-type appointees – old, white men and former prosecutors" with a political party change. "Clearly we won't see the type of diversity we'll see with Davis in either the field of practice, ethnicity or color, which is unfortunate."

*Daily Journal* (October 8, 2003)

**John Sullivan, president of the Civil Justice Association of California:**

"Looking at the historical example of Govs. George Deukmejian and Pete Wilson, the personal-injury lawyers' self-interest legislation gets vetoes [with a Republican governor.] The game of last-minute jams [of bills through the Legislature] aimed at their pocket books would not be possible, I think."

*Daily Journal* (October 8, 2003)

**Herb Wesson, Assembly Speaker:**

"The electorate has spoken and we have a new governor-elect. Now, Californians do not want gridlock. They want us to act – without partisan rancor – on the issues that matter most to them."

*San Jose Mercury News* (October 8, 2003)

**Senator Richard Alarcon, Senate Democratic whip:**

"Our first sentiment is curiosity. We're curious as to how he's [Gov-elect Schwarzenegger] going to maintain public safety, environmental protection, public education and other needs without new revenue."

*Los Angeles Daily News* (October 8, 2003)

**Larry Sabato, political-science professor at the University of Virginia:**

"You have to have a really unpopular incumbent for this to work. There just aren't that many Gray Davises out there. It's a mystery to the rest of the country how he got elected five times"

*San Jose Mercury News* (October 9, 2003)

**Senator Sheila Kuehl:**

"He can huff and puff, but he's not going to be able to blow the Legislative house down. He's not going to be able

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## IN THEIR OWN WORDS

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to solve all of the state's problems in 120 minutes like he does in his movies."

*San Francisco Chronicle* (October 9, 2003)

**Jack Pitney, professor of government at Claremont McKenna College:**

"For the time being, this gives a great boost to the moderate wing of the party, and it shows tactical voting can work. But these tensions have been present in the Republican Party for a long time, and they're not going to go away just because Schwarzenegger was elected."

*San Francisco Chronicle* (October 9, 2003)

**George "Duf" Sundheim, state Republican chair:**

"You have a party that understands that ideals are the bedrock of any party, but there are other considerations. What we've shown by this election is somebody who doesn't measure up 100 percent on the litmus test not only can win an election but can be accepted by the party."

*San Jose Mercury News* (October 9, 2003)

**Bill Lockyer, Attorney General:**

"We'll have to see what policy changes occur to know when it's appropriate to work together and when you want to be critical. I don't start by assuming that we should be critical."

*Los Angeles Times* (October 9, 2003)

**Assembly Member Jenny Oropeza:**

Schwarzenegger's greatest challenge "will be getting his own party to the table with a reasonable, rational approach to solving this [fiscal] crisis."

*Oakland Tribune* (October 9, 2003)

**Sue North, spokeswoman for Senator John Vasconcellos:**

"When Arnold first announced that he was going to run, John said to me, 'I wonder how he'd feel if I announced to

him that I was going to direct his next movie.' How do people think that they can simply move into a situation like this with absolutely no experience and no knowledge of what's going on?"

*Oakland Tribune* (October 9, 2003)

**Frank Luntz, GOP pollster:**

"What defines 'qualified' to the media is different than to the public. The media has a completely different evaluation of whether or not Arnold is qualified. The public is looking at character traits and the media is looking for facts and figures."

*Los Angeles Times* (October 10, 2003)

**Governor Gray Davis:**

"Nobody has the right to be governor. You have an opportunity to run and ask people to put their trust in you for a finite period of time. And people either respond to that request or they don't. They can change their mind and withdraw their permission after they've once given it. That's the nature of democracy in California. I knew that going in. And I know that going out."

*Los Angeles Times* (October 10, 2003)

**Mark Chapin Johnson, major Republican donor who backs moderates:**

"This party for several election cycles has been bent on self-destruction. Sanity is starting to prevail."

*Los Angeles Times* (October 13, 2003)

**Jim Knox, California Common Cause Director:**

"The only viable candidates in today's system are those who are independently wealthy, or those who are willing to take huge contributions from groups they would influence as governor. This was a continuation of a pattern that's been in effect for quite some time."

*Contra Costa Times* (October 15, 2003)

### 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 [PU-BINFO@jud.ca.gov](mailto:PU-BINFO@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).

## 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.

**"Alarm Greets Prop. 13 Tax Case"** *Los Angeles Times* (September 26, 2003)

Municipal and school budgets throughout California would collapse if an Orange County property tax lawsuit prevails on appeal in December and expands statewide, warn government officials aiming to fight the ruling.

The state Department of Finance pegged the cost of losing the case at \$10 billion – some \$4.7 billion coming from counties and cities, and \$5.3 billion from state government reimbursing schools for their lost revenue.

Some state officials are skeptical that the ruling will be upheld. But if it is, property owners would score a financial windfall unseen since 1978's passage of Proposition 13, the state's historic tax-rollback measure – which is central to the ruling.

The 2001 ruling, by Orange County Superior Court Judge John M. Watson, declared unconstitutional a practice used by assessors statewide to increase property values greater than the 2%-a-year cap imposed by Proposition 13.

For government budget crunchers, the prospect of such a legal setback couldn't come at a worse time. State officials this summer cobbled over most of a \$38-billion budget gap through spending cuts, borrowing and one-time money shifts. The state faces an \$8-billion shortfall if current trends continue.

**"Appeal Court Cuts The Cigarette In Two For Tobacco Litigants"** *Daily Journal* (September 29, 2003)

At first blush, last week's state appellate court ruling slashing a punitive damages award against Philip Morris down to \$9 million in a smoker's lawsuit looks like a victory for Big Tobacco.

The 60-page opinion from San Francisco's 1st District Court of Appeal, marking the second cut to a 1999 jury verdict that started at \$50 million, bodes well for the nation's largest cigarette maker's challenges to two other multi-million dollar judgments currently on appeal in Los Angeles.

But if it stands, plaintiffs attorneys say, the decision may cost tobacco companies a lot more in the long run because it creates a new precedent laying out a virtual roadmap for smokers to win high-stakes fraud and product liability claims.

The court's opinion is the first published precedent applying to tobacco litigation this spring's landmark decision by the U.S. Supreme Court setting limits on punitive damages. That

holding says courts must have extraordinary reasons for allowing punitive damages to run more than nine times higher than compensatory damages.

But it's also the first precedent in California – and one of the first anywhere – to reject all the major defenses thrown up by tobacco companies against smokers who allege they were lured into cancer-causing habits as teenagers.

**"Wesson Plans To Step Down"** *Sacramento Bee* (September 30, 2003)

Assembly Speaker Herb Wesson Jr. announced Monday that he plans to step down from his leadership post after the state's primary election next March.

For months, several Democrats have been jockeying to replace Wesson, a Culver City Democrat who had indicated to colleagues months ago that he wanted to retain the speakership as long as possible.

Wesson's announcement Monday to the Assembly Democratic Caucus is likely to intensify the efforts of would-be successors Jenny Oropeza of Long Beach, Joe Nation of San Rafael, and Dario Frommer and Fabian Nunez, both of Los Angeles.

**"Assembly Vote Extends Megan's Law"** *Los Angeles Times* (September 30, 2003)

Called back to finish what they failed to accomplish during the regular session two weeks ago, the Assembly on Monday extended Megan's Law, which gives Californians access to information about convicted sex offenders.

The same bill that died Sept. 13 in the final hours of the legislative session for lack of three Republican votes cleared the Assembly 78 to 0. Without the Assembly's approval, the law would have expired in January.

The bill, AB 1313, would preserve until 2007 the public's right to use the telephone or police station computers to tap into the state's database that lists more than 80,000 people convicted of sex crimes. By allowing colleges to disseminate information about sex offenders living and working on campus, the bill also preserves \$5.1 million in federal money for California.

The Assembly came together in a rare show of unity, but the partisan politics that recently had killed the bill resurfaced Monday. Democrats criticized Republicans for failing to pass the bill two weeks ago because of a political grudge. Republicans accused Democrats of hindering public access by failing to agree to put the sex-offender data on the Internet, as most other states do.

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## RIPPED FROM THE HEADLINES

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**"Pillars Of State Budget Look Shaky"** *Los Angeles Times* (October 2, 2003)

The budget agreement that California lawmakers adopted two months ago while struggling to plug a \$38.2-billion shortfall is beginning to unravel.

About \$1.2 billion that budget makers were counting on from American Indian gambling taxes and state work force reductions has so far failed to materialize. An additional \$2 billion in borrowing has been blocked by a judge. And legal experts say the linchpin of the entire budget – a \$10.7-billion bond sale – could, for the same reasons, go down in court.

State officials say they are confident they will win the lawsuits, but bond analysts and others are less sure. If the state does lose, the governor could be embroiled in a fiscal crisis as severe as last year's and be forced to find other ways to raise revenue or lower expenses.

State Finance Director Steve Peace said the concerns are overblown. He argued that the blocking last week of what he called a relatively minor bond sale by a Sacramento County court – which set off much of the anxiety about other anticipated revenue streams – is not a sign that the budget is falling apart.

**"Recall Man Now Plots Another Jolt"** *Washington Times* (October 13, 2003)

Ted Costa, the anti-tax activist who originated the campaign to recall California Gov. Gray Davis, is already planning to go back to the ballot box with another reform measure.

The proposal would allow state legislators to submit redistricting maps for review by a court or nonpartisan panel. The panel would be required to choose the plan that keeps cities, counties and communities together with the fewest fragments.

Rep. Devin Nunes, the California Republican, who is heading up the effort with Mr. Costa stated that incumbent security is "worse than ever now because of the bipartisan gerrymander. Both sides sold out to protect seats, and in my opinion, that's not fair to the people."

The initiative, now in the drafting stage, is slated to be made public within the next few weeks. If enough signatures are gathered, the measure would appear on the November 2004 ballot.

Organizers expect a flood of opposition from some lawmakers and politicians, but they're counting on one powerful ally. Governor Arnold Schwarzenegger criticized the current redistricting process during his campaign, saying districts should be "drawn for the benefit of the voters, not politicians."

"Politicians should not control the pen to draw districts that

shield themselves against competition," Mr. Schwarzenegger said in a position paper.

**"Vote Early, Vote Often – But Vote On Everything?"** *Sacramento Bee* (October 15, 2003)

If anyone believes that the recall of Gov. Gray Davis and the election of Arnold Schwarzenegger marked some kind of pinnacle in California's hyperdemocracy, let him think again.

Some two dozen initiatives and referendums are already in circulation; signatures for another initiative, aimed at the March 2004 ballot, have already been submitted and several more are being reviewed at the attorney general's office prior to circulation.

Among them are measures permanently abolishing the car tax, overturning the controversial law granting illegal aliens the right to obtain California driver's licenses, repealing the state's new domestic partners law and blocking SB2, the bill that requires all but small employers either to provide health care for their workers or to pay into a state fund that will provide health care coverage.

More important, there's a good chance that if the Legislature drags its feet on Schwarzenegger's reform program, he'll become the ringmaster for a wave of ballot measures all his own: a new measure imposing spending limits on the state budget and one shifting control of the decennial redistricting of Assembly, Senate and congressional seats from the Legislature to some kind of independent commission.

Also pending is the Voters Choice Open Primary Act, which would create a single primary in which members of all parties would run and where, if no candidate gets a majority, the two leading finishers would face off in the general election, even if both are from the same party. That, in the view of its sponsors would check the tendency of the parties to nominate candidates at the political extremes and bring more centrists to the ballot.

The accumulating effects of 25 years of initiatives – from the tax limitations of Proposition 13 in 1978, to Proposition 98, the school spending formula passed in 1988, to term limits (1990), to the latter-day ballot-box budgeting that mandates spending on everything from parklands to roads to after-school day care – have so hamstrung both state and local governments that elected legislators, county supervisors and school board members have become the handmaidens, not the leaders, of policymaking in California.



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## UCL ROUNDTABLE

*(Continued from page 4)*

organized an initiative campaign. Reportedly, it will require a plaintiff to show "demonstrated harm" to bring suit -not a fruitful criteria, since many unfair competition schemes involve future harm (e.g. to the environment, tobacco targeting of children, etc.). And there is nothing wrong with having multiple strands to reach our passive courts.

**Sullivan:** The Civil Justice Association of California began exploring an initiative solution more than a year ago. Now a broad coalition of businesses of all kinds and sizes is closing in on a decision whether to sponsor a measure on the November 2004 ballot to curb private attorney excesses under 17200. Governorelect Arnold Schwarzenegger supports 17200 reform, and it is likely he will support an initiative solution if the Legislature again does nothing in the early months of 2004.

**Brusavich:** If an initiative is filed, we can expect to see consumer groups and others consider counter-initiatives and other proposals. Fortunately, the electorate has not been supportive of recent initiatives backed by tobacco, insurers and similar interests, and we would work with all interested parties and organizations to ensure that these initiatives face defeat.

## ATKINS BILL SIGNED INTO LAW

Governor Davis has signed SB 3 (Burton), codifying California's response to the United States Supreme Court's holding in *Atkins v. Virginia*, which prohibits the execution of mentally retarded defendants. The bill defines mental retardation as "the condition of significantly sub average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18." The bill provides that the issue of mental retardation will be determined by a jury after the guilt phase unless the defendant personally waives the right to a jury on the issue. If the defendant waives the right to have a jury determine mental retardation, the court shall make the determination at a hearing prior to the adjudication of guilt.