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The Recorder

January 27, 1998, Tuesday

SECTION: COURT WATCH; PG. 4

HEADLINE: TWO NEW NAMES IN THE HUNT FOR S.F. JUDGESHIP

BYLINE: Kate Rix

BODY:
Gov. Pete Wilson may be in no rush to fill a recently vacated seat on San Francisco's municipal court, but that hasn't stopped hopefuls from lining up for the job.

Two names -- one old and one new -- have recently been circulated for comment by the Judicial Nominees Evaluation Commission. The new one is Frank McGuire, a research attorney for California Supreme Court Justice **Janice Rogers Brown.** The other is S.F. Assistant District Attorney Gale Leung, who has been mentioned as a possible judicial nominee in the past.

Lawyers close to the appointment process said Leung and McGuire have recently gone before the JNE Commission and are among a few attorneys being talked about for the post.

Leung could not be reached Monday.

McGuire, 36, would not comment on whether he put in his own name to the commission or, as is sometimes the case, has been encouraged by others to do so. But making a judicial bid would be right in character for the civil litigator.

First District Court of Appeal Justice Robert Dossee, for whom McGuire worked as a research attorney for five years, says he remembers McGuire expressing interest in being a judge.

"Frank seemed to have a huge appetite for learning the law and working with it," Dossee said. "He was extremely bright and hard-working -- a wonderful example of what we should want to have on the bench."

McGuire, a registered Republican, graduated from Stanford Law School in 1986. While in school he worked as an extern for U.S. District Judge Marilyn Hall Patel and upon graduation went to work as a law clerk to Ninth Circuit U.S. Court of Appeals Judge Cynthia Holcomb Hall.

From 1987 to 1991, he worked as an associate in Morrison & Foerster's litigation department, then took a research attorney position for state appellate court Justices Dossee and John Benson, who has since retired.

He started working for Justice Brown in 1996.

Two other attorneys who reportedly went through the JNE review process earlier are Assistant District Attorney Cynthia Ming-Mei Lee, who tries cases in the office's juvenile unit, and former Assistant DA James Costello.

S.F. Municipal Court Judge Diane Wick was elevated earlier this month to fill retired Superior Court Judge Raymond Arata Jr.'s seat, but the governor's office has indicated it is in no hurry to name her replacement.

LOAD-DATE: January 27, 1998

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January 23, 1998, Friday

SECTION: Pg. 3

LENGTH: 666 words

HEADLINE: Election Team Headed by Deukmejian to Campaign for Retention of George

BYLINE: By ROBERT GREENE, Staff Writer

BODY: A team of high-profile Republicans led by former governor George Deukmejian will mount a campaign to retain California Chief Justice Ronald M. George in the November general election, George's campaign consultant reported yesterday.

The chief justice, whose retention has drawn has drawn opposition from right-to-life activists because of his authorship of a key abortion rights decision last year, has hired Sacramento-based McNally, Temple Associates for campaign advice and long-time Republican fundraiser Joyce Valdez of Los Angeles as finance director.

Former Gov. George Deukmejian, who appointed George to this district's Court of Appeal in 1987, will serve as honorary chairman of the committee, McNally, Temple said in a statement. George also retained the Sacramento law firm of Bell, McAndrews & Hiltachk as campaign treasurer.

As if to underscore the role of the 4-3 majority opinion George wrote in August holding that the state's parental-consent law for minors' abortions was unconstitutional, the announcement about the campaign committee came on the 25th anniversary of the U.S. Supreme Court's ruling in Roe v. Wade.

McNally, Temple spokesman Peter DeMarco said the timing was coincidental. George filed a statement indicating his intention to run yesterday, and the announcement followed, DeMarco said.

The move is the first concrete step the chief justice has taken toward engaging directly in the race to retain his seat on the high court, although he signaled his intentions more than a month ago during a speech in Los Angeles.

At a Dec. 1 Town Hall Los Angeles meeting, George told his audience the quality of justice depended on the willingness and ability of judges to render impartial decisions, even on controversial issues.

"The independence of the judicial branch...cannot be taken for granted by anyone," the chief justice said at the public affairs forum.

That statement came three months after publication of Field Poll results showing George may be in trouble in the election because of his August opinion which struck down a never-enforced law required parental or judicial consent for minors to have abortions.

The bill was signed into law by Deukmejian in 1987.

Field Poll director Mark DiCamillo said in September that the ruling could become a divisive issue and could put George's confirmation in jeopardy. At the time, George said he had given no thought to

the retention election.

DeMarco said the chief justice's campaign would be run independently of those of the other justices up for retention this yearMing Chin, **Janice Rogers Brown** and Stanley Mosk. Brown and Mosk both dissented in the abortion case, but Chin joined George, and was targeted along with him by the California ProLife Council.

Los Angeles-based consultant Joseph Cerrell of Cerrell Associates Inc. praised the quality of George's team. He called McNally, Temple principal Ray McNally "one of the best political consultants in the state" and declared that Valdez "knows where every body is buried when it comes time to raise money."

But he noted that all of them, including the chief justice, belong to a single party.

"You announce four our of four Republicans, and you yourself are a Republican," Cerrell remarked. "This is a Democratic state."

"I'll say this for [George]," Cerrell added. "It certainly shows he is not a political animal."

There has been no organized campaign to oust a Supreme Court judge in California since 1986, when Chief Justice Rose Bird, Cruz Reynoso and Joseph Grodin were defeated. Mosk was also targeted in the campaign, which focused on overturned death sentences, but he emerged victorious.

Deukmejian, governor from 1983 to 1991, now practices law in Los Angeles.

In a statement, the former governor said George "has achieved an outstanding record of public service for the past 32 years. He has provided effective judicial leadership. I'm honored to help him and believe very strongly that he should be retained."

LOAD-DATE: February 5, 1998

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Sacramento Bee

January 23, 1998, METRO FINAL

SECTION: MAIN NEWS; Pg. A6

LENGTH: 387 words

HEADLINE: DEUKMEJIAN BACKS CHIEF JUSTICE ON BALLOT

BYLINE: Claire Cooper, Bee Legal Affairs Writer

BODY:

Former Gov. George Deukmejian will be honorary chairman of a campaign to support California Chief Justice Ronald M. George in his bid to win approval by the state's voters in November.

George and three other state Supreme Court justices -- Ming W. Chin, Stanley Mosk and **Janice Rogers Brown** -- will be on the general election ballot for "yes" or "no" confirmation votes.

Last summer, opponents of abortion rights announced they would campaign to defeat George and Chin for overturning a statute requiring minors who want abortions to get parental consent. Mosk and Brown dissented from that opinion, which was written by George.

Justices Joyce Kennard and Kathryn Mickel Werdegar, who were in the majority, will not be on the ballot.

Support for George from Deukmejian, who signed the parental consent statute into law in 1987, could blunt the campaign to defeat him.

Janet Carroll of the California Pro-Life Council said the endorsement of the Republican ex-governor could help line up some Republican votes for George, but she predicted that both Republicans and Democrats would remain divided over confirming him.

Deukmejian did not address the abortion controversy in a prepared statement that quoted him as saying, "Chief Justice Ron George has achieved an outstanding record of public service for the past 32 years. He has provided effective judicial leadership. I'm honored to help him and believe very strongly that he should be retained."

The announcement said George had formed a campaign committee, with the Sacramento law firm of Bell, McAndrews and Hiltachk serving as treasurer. Sacramento-based McNally Temple Associates were designated lead consultants. The finance chairman is Joyce Valdez of Los Angeles.

Chin said he is "seriously considering" forming his own campaign committee and will decide by the end of January.

Deukmejian appointed George to the state Court of Appeal in 1987. Gov. Pete Wilson put him on the Supreme Court in 1991 and appointed him chief justice in 1996. Previously, he was named to the Los Angeles Municipal Court by former Gov. Ronald Reagan and the Superior Court by former Gov. Jerry Brown.

Chin also was appointed to the Supreme Court by Wilson and to the Court of Appeal by Deukmejian, who had appointed him to Alameda County Superior Court.

LOAD-DATE: January 24, 1998

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The Recorder

View Related Topics

January 16, 1998, Friday

SECTION: IN BRIEF

BYLINE: Greg Mitchell

BODY:
The California Supreme Court agreed Wednesday to tackle a takings case brought against San Francisco by the owners of a building who were denied permission to convert residence units into higher-rent hotel rooms.

Claude and Micheline Lambert claim that city officials took their property without just compensation when planners rebuffed their efforts to change the status of 31 rooms at the 58-room Cornell Hotel.

Under the city's hotel conversion law, passed in 1979, units occupied by residents at the time the law was passed can't be rented to tourists without obtaining the city's permission.

The Lamberts say that city officials improperly tried to extract a $600,000 payment, to offset the loss of scarce city housing, as a condition for obtaining the city's approval.

In September, a divided First District Court of Appeal panel concluded that there was no reason to apply a "heightened scrutiny" standard in reviewing the city's action, because "neither a property right nor money was in fact taken."

Presiding Justice Gary Strankman dissented, saying it was clear from the record that the city did in fact seek a mitigation fee and then withheld approval when the Lamberts didn't offer enough money.

Under the California Supreme Court's 1996 decision in _Ehrlich v. City of Culver City_, 12 Cal.4th.854, the "heightened scrutiny" standard under U.S. Supreme Court takings analysis must be met whenever the government requires an individual landowner to pay money in exchange for a use permit.

Chief Justice Ronald George and Justices Joyce Kennard, Marvin Baxter, Ming Chin and **Janice Rogers Brown** voted to review _Lambert v. City and County of San Francisco_, S065446. Court Strikes Capital Voir Dire Holding By Kate Rix

A 1990 victims' rights initiative eclipses a requirement for sequestered _voir dire_ in death penalty cases, a Sixth District Court of Appeal panel ruled Thursday.

The ruling gives trial judges discretion to hold the interviews either en masse or one on one, in contrast to a 1980 California Supreme Court holding that bound judges to screening jurors outside the presence of the jury pool.

In _Covarrubias v. Superior Court of Monterey County_, H016554, Justice Franklin Elia wrote that Proposition 115, 1990's Crime Victims Justice Reform Initiative, was intended to overrule _Hovey v. Superior Court_, 28 Cal.3d 1 (1980). Justices William Wunderlich and Nathan Mihara concurred.

Overruling _Hovey_ "would be consistent with Prop 115's general focus," Elia wrote, "by eliminating the potentially time-consuming requirement of individual sequestered _voir dire_."

Daniel Covarrubias, on trial facing multiple murder charges, requested individual _voir dire_ at the outset of his trial two years ago. Covarrubias had the support of Monterey County prosecutors. But Municipal Court Judge Robert Moody denied the motion, saying sequestered interviews were " effectively overruled" by Prop 115.

The appellate panel disagreed and remanded the case for reconsideration.

The measure allows judges to choose en masse interviews "where practicable," and does not rule out other procedures, said the panel.

"If the electorate had intended to maintain _Hovey_'s requirement," Elia wrote, "we believe the measure would say so in terms more compelling than the current phraseology." The full text of the opinion will be published in Tuesday's California Daily Opinion Service. Gibson Gets New Address in Palo Alto By Jun Shen

Gibson, Dunn & Crutcher almost doubled its office size in Palo Alto, relocating to a new 22,000-square-foot office space at the Stanford Research Park last month.

The Palo Alto office "was bursting at the seams" before the move to 1530 Page Mill Rd. in mid-December, said Joel Sanders, managing partner in the firm's San Francisco office.

"We did not have enough space to accommodate growth," he said, adding that in the past six months the Palo Alto office has added nine attorneys -- including two partners transferred from San Francisco -- to catch up with the growing practices in employment, corporate securities, litigation and intellectual property. Gibson's Palo Alto office now has a total of 16 lawyers, including six partners. The firm's headquarters is in Los Angeles.

With commercial real estate vacancy rates running as low as 1 percent in the Silicon Valley, Sanders said "we were very fortunate to find the new space." He said the firm began searching for a new office space about six months ago. Gibson had moved to 525 University Ave. in Palo Alto from Menlo Park about a year and a half ago.

Sanders said the Palo Alto office has doubled its number of attorneys since it opened in 1996. The office's revenue growth has matched its growth in staffing, he added.

Sanders said he expects the Palo Alto office to maintain "double-digit" growth in both staffing and business. The firm is currently looking to add three to five more attorneys to the office.

LOAD-DATE: January 19, 1998

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View Related Topics

January 6, 1998, Tuesday

SECTION: NEWS SECTION; PG. 1

HEADLINE: GOOD FAITH ENOUGH FOR FIRING, COURT RULES

BYLINE: Jenna Ward

BODY:
In a decision with major implications for employment law in California, the state Supreme Court ruled Monday that employers can fire employees based on a mere good faith belief that misconduct occurred.

Whether or not the worker is actually guilty as charged is no longer a question for a jury to decide, said the 6-1 court in _Cotran v. Rollins Hudig Hall International Inc._, 98 C.D.O.S. 58. Instead, juries need only determine if the employer acted with a "fair and honest cause regulated by good faith" and adequately investigated the charges.

Referred to by many lawyers in the field as the employment case of the year, the court surprised some with the breadth of its decision. Rather than limit the good faith standard to discrimination and harassment cases, in which an employer often has an affirmative duty to take action, the ruling seems to apply equally to all wrongful discharge claims.

"This is one for the employers," said Orrick, Herrington & Sutcliffe's Thomas Klein, whose firm wrote an _amicus curiae_ brief in the case. "But had it gone the other way, it really would have been radical."

The dispute began in 1993 when insurance company vice president Ralph Cotran was fired after two women accused him of sexual harassment.

Cotran denied the charges and sued his employer for wrongful termination. A Los Angeles Superior Court jury agreed and awarded him $1.78 million in damages.

In 1996 the Second District Court of Appeal, led by Justice Miriam Vogel, overturned the decision. Vogel acknowledged her opinion was in direct conflict with a 1989 Second District ruling, _Wilkerson v. Wells Fargo Bank_, 212 Cal.App.3d. 1217.

Wilkerson, which required that employers produce solid proof of wrongdoing, was disapproved by the high court Monday as too intrusive.

"If an employer is required to have in hand a signed confession or an eyewitness account of the alleged misconduct before it can act, the workplace will be transformed into an adjudicatory arena and effective decision-making will be thwarted," wrote Justice **Janice Rogers Brown.** Chief Justice Ronald George and Justices Marvin Baxter, Kathryn Mickle Werdegar and Ming Chin concurred.

Brown said that although employees may not be dismissed arbitrarily, "asking a civil jury to reexamine in all its factual detail the triggering cause of the decision to dismiss -- including the retrospective accuracy of the employer's comprehension of that event -- months or even years later, in a context distant from the imperatives of the workplace, is at odds with an axiom underlying the jurisprudence of wrongful termination."

In trying to balance the employer's interest in organizational efficiency and the employee's interest in continued employment, Brown emphasized that the ruling was grounded in California employment case law, particularly _Pugh v. See's Candies Inc._, 116 Cal.App.3d 311 (1981), and _Scott v. Pacific Gas & Electric Co._, 11 Cal.4th 454 (1995). She also looked to decisions from Oregon, Washington, Nevada and New Mexico that arrived at essentially the same conclusions.

"These courts have both adopted the contract model of just cause analysis and conjoined with it a requirement that the employer adhere to -- and juries apply -- an 'objective' good faith standard in deciding whether just cause exists to terminate employment," wrote Brown.

Brown's opinion did add a requirement, that employers conduct an "adequate" investigation before dismissing employees for misconduct. But, she continued, "It would be imprudent to specify in detail the essentials of an adequate investigation," leaving the matter to case-by-case jurisprudence.

Before Rollins Hudig Hall fired Cotran, the company interviewed 21 people. When Cotran was questioned about the harassment, he denied wrongdoing but did not claim, as he did at trial, that he had had consensual relationships with both women.

To San Mateo practitioner William Quackenbush, who argued on behalf of Cotran before the Supreme Court, the investigation provision is scant comfort.

"It's a pretty bleak day for California employees," he said. Employers, he continued, will be able to "paper their files and go through the motions of a reasonable investigation," then watch the cases disappear at summary judgment.

But Shand Stephens, corporate counsel for Rollins Hudig Hall, responded that the decision is good for employees as well. If the court had gone the other way, he said, it would have been nearly impossible to fire someone for sexual harassment because the misconduct would be too hard to prove.

"It is inappropriate to require employers to think through what evidence would be admissible in a court of law three years from now," he said. " Employers have been made the enforcers" of laws against sexual harassment, he said. "This decision makes it reasonable to enforce those laws."

Justice Stanley Mosk wrote a separate concurring opinion, noting that employers and employees are free to make contracts defining "good cause" more explicitly, and that the majority opinion does not apply to good cause in collective bargaining agreements.

The lone dissent came from Justice Joyce Kennard, who emphasized the hardship suffered by terminated employees. "Good cause," she wrote, "should be interpreted to permit the employer to discharge an employee for specific acts of misconduct only if the employee actually committed those acts."

But she also recognized that "the results may be a judgment imposing crushing monetary damages on an employer who acted reasonably and in good faith."

Her solution would be to limit the damages an employee could recover in such a situation to back pay.

LOAD-DATE: January 6, 1998

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Sacramento Bee

January 6, 1998, METRO FINAL

SECTION: MAIN NEWS; Pg. A1

LENGTH: 638 words

HEADLINE: BOY SCOUTS FIND SYMPATHETIC EARS AT HEARING IN BIAS CASE

BYLINE: Claire Cooper, Bee Legal Affairs Writer

DATELINE: LOS ANGELES

BODY:

A Boy Scouts policy not to admit homosexuals or boys who don't believe in God was the focus of a two-hour hearing Monday by the California Supreme Court, which must decide whether the group is illegally discriminating.

During the oral arguments, six of the seven justices -- all except Justice **Janice Rogers Brown** -- participated actively. Most of their questions and comments seemed to support the Scouts' legal position.

A central issue is whether the Scouts are covered by the state's ban on discrimination by "business establishments."

Even if covered by the state law, the justices indicated that the Scouts could have an even stronger legal right -- under the First Amendment -- to restrict membership in order to convey a pro-religious, anti-gay message.

A ruling is due within 90 days.

The case arose after twins Michael and William Randall of Anaheim disclosed at a meeting of their Cub Scout den seven years ago that they did not believe in God.

The Orange County Boy Scouts Council tried to expel them, but has been blocked from doing so by a series of lower court orders in the boys' favor.

Now 16 and on the verge of becoming Eagle Scouts, the Randalls sat quietly in the audience Monday as their case was argued by their lawyer-father, James Randall, backed by American Civil Liberties Union lawyer Taylor Flynn.

Scouting is a thriving business enterprise, with millions of dollars in sales annually of uniforms, camping gear and other paraphernalia, James Randall argued. As such, he said, it must obey the Unruh Civil Rights Act, which bars bias based on race, religion, sex and other factors.

Chief Justice Ronald George said the civil rights law is meant to control only "public accommodations."

In the Scouts, by contrast, he said, "We are talking about attendance at people's homes."

George said business is merely incidental to the main activity of Scouting -- teaching values.

That difference would distinguish the Boy Scouts from groups such as a golf and country club that was forced to stop discriminating -- in that case, against female members -- as the result of a state Supreme Court opinion written by George in 1995.

Also in the audience at the Supreme Court hearing were Timothy Curran, who was barred from becoming an adult Scout member in Berkeley after he disclosed he was gay, and Katrina Yeaw, a teenage girl who wants to become a Boy Scout in Rocklin. Both have lost in the lower courts.

Curran's appeal was heard Monday, along with the Randall case. Yeaw's has been put on hold by the Supreme Court until the other two are decided.

ACLU lawyer Jon Davidson argued on Curran's behalf that homosexuality does not conflict with scouting.

The Scouts' lawyer, George Davidson, disagreed: "Scouting teaches a conservative sexual morality" that implicitly rejects homosexuality, he said.

The two lawyers aren't related.

Justice Joyce Kennard, normally one of the court's most liberal members, aggressively supported the Scouts' right to pursue their chosen message, be it anti-gay or pro-religious. She repeatedly cited a 1995 U.S. Supreme Court decision, which permitted a gay group's exclusion from Boston's St. Patrick's Day parade.

"Whether one likes or doesn't like what the message is, we still have to apply the law as it was applied by the high court in recent cases," she said.

Jon Davidson said the Boston case should not control the outcome of Curran's appeal.

"Mr. Curran did not ask to march with a banner" but only to practice homosexuality privately, he said.

Justice Kathryn Mickle Werdegar also actively questioned the lawyers. She persistently quizzed them about whether the court could bar the Scouts from discriminating in their business operations without interfering with their more central activities, such as camping.

LOAD-DATE: January 7, 1998

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View Related Topics

JANUARY 6, 1998, TUESDAY, FINAL EDITION

SECTION: NEWS; Pg. A20

LENGTH: 427 words

HEADLINE: It's Easier to Fire Sex Harassers
Conclusive proof not needed, court rules

BYLINE: Ilana DeBare, Chronicle Staff Writer

DATELINE: San Francisco

BODY:
The state Supreme Court made it easier yesterday for employers to fire workers for sexual harassment and other kinds of misconduct.

In a 6-to-1 ruling, the court said that companies do not need hard proof that workers actually committed an act of misconduct.

Instead, companies need only make a reasonable investigation and believe in good faith that the worker is guilty.

Thus, a jury hearing a wrongful-termination lawsuit will not be asked to decide whether the accusations are true, only that an employer had an objective reason to believe accusations against an employee and then conducted a reasonable investigation.

"This means that employers can fire sexual harassers with less worry that they're going to get sued by them,'" said Alan Exelrod, a San Francisco attorney who represents employees.

"It will make employers less gun-shy about terminating people when they have a reasonable belief that misconduct occurred," agreed Richard Curiale, an employers' attorney with a San Francisco law firm.

The ruling brings California in line with most other states.

It overturned $ 1.78 million in damages that had been awarded to a Southern California insurance executive who was fired after his company concluded that he had sexually harassed two female employees.

The executive, Ralph Cotran, sued the company -- Rollins Hudig Hall International, which today is part of Chicago-based Aon Risk Services. In his lawsuit, Cotran denied harassing the women and said they had voluntarily taken part in affairs with him.

A Superior Court jury initially ruled for Cotran, saying that no harassment occurred.

But the Supreme Court yesterday reversed that ruling and said the company's investigation -- which included interviews with 21 people -- was thorough enough to justify his firing.

"If an employer is required to have in hand a signed confession or an eyewitness account of the

alleged misconduct before it can act, . . . effective decision-making will be thwarted," wrote Justice **Janice Rogers Brown.**

Management lawyers hailed the decision, saying it was good news both for employers and for victims of sexual harassment.

Meanwhile, some plaintiffs' lawyers also praised the decision, saying it might expand some rights of workers accused of misconduct. For instance, the ruling said that companies must give employees a "fair opportunity to respond" to charges against them. "It appears to import 'fair opportunity to respond' into the workplace, and that helps employees," Exelrod said.

LOAD-DATE: January 6, 1998

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The Recorder

January 5, 1998, Monday

SECTION: NEWS SECTION; PG. 1

HEADLINE: A HARSH SPOTLIGHT ON SUPREME COURT

BYLINE: Greg Mitchell

BODY:
The justices of the California Supreme Court stepped out of the shadows and into the spotlight in 1997, and with four of them expected to face the voters in 1998, the glare won't begin to fade anytime soon.

While the court brought outside attention on itself with its machinations in a politically sensitive abortion case, the court's two newest members, Justices Ming Chin and **Janice Rogers Brown** built a reputation for hard work -- and, in Brown's case, for hard words.

It was a good year for most plaintiffs, unless they were suing the government, in which case they usually lost. Insurers, meanwhile, got a mixed bag in the year's two big insurance cases.

Some statistical snapshots:

-- The seven justices handed down 93 majority opinions in 1997, a huge leap in productivity from last year, when they published just 73 decisions. Even so, the court is still behind the pace set by the Malcolm Lucas court, which averaged 105 opinions a year.

-- On the civil side, plaintiffs prevailed in nine of 16 tort cases. The court was particularly friendly to plaintiffs in employment cases, continuing a trend of the last few years.

-- The court retained its conservative outlook on crime, siding with prosecutors in 32 of 42 cases. But among the 10 cases won by defendants were three death penalty reversals.

-- In his first full year on the court, Chin produced the most majority opinions, 18, as well as the most by a unanimous vote, eight. But Justice Stanley Mosk had his say in the most cases overall, having issued a majority, dissent or separate concurrence in just about half the matters decided by the court this year.

-- Justice Joyce Kennard, who authored just three majority opinions in 1996, tripled her production this year with nine. That left Justice Marvin Baxter in last place, with eight majority opinions.

-- In yet another sign of the court's moderate direction under Chief Justice Ronald George, the conservative Baxter spent more of his time this year wearing the dissent cap, producing 16 -- the same number as the liberal Mosk. Brown had the most dissents, with 17.

-- George, meanwhile, provided the crucial fourth vote in several of the court's most controversial cases, and chose to write for the majority both times the court took a stab at figuring the breadth of California's constitutional right to privacy. Remarkably, George hasn't dissented in a single case since he was appointed chief justice more than a year and a half ago.

BACK IN THE SPOTLIGHT

Since voters enraged by death penalty reversals tossed Rose Bird and two colleagues off the bench in

1986, the court has seemed to shy away from controversy. Indeed, under Chief Justice Malcolm Lucas, the court avoided taking up any abortion-related issues until 1994, and would go years at a time without ruling for the defense on a death penalty appeal. The court developed a reputation for quietly conservative rulings, and Mosk was known primarily for his dissents.

All that changed after five members of the court, including the two newest ones, agreed to revisit a decision, released in the waning days of the Lucas court, that upheld a state law requiring minors to obtain either parental or judicial consent before getting an abortion.

The quiet times ended with a bang when a new majority ruled that the consent requirement ran afoul of the right to privacy that minors have under the state's constitution. Anti-abortion groups promptly announced plans to remove Chin and George, who wrote the majority opinion. Kennard and Justice Kathryn Mickle Werdegar sided with George too, but they don't have to face the voters this year.

The court also took up the highly publicized case of Ellie Nesler, the vigilante who in open court shot and killed the man accused of molesting her young son.

Four justices, again led by George, concluded that a juror's misconduct had compromised the verdict against Nesler. The attorney general's office then elected to release the Tuolomne County woman instead of retrying the case.

With Nesler already having served most of her sentence, some court observers were puzzled by the justices' decision to review the unpublished appellate opinion in Nesler's case.

If the decision had anything to do with press attention or public sympathies, that's probably a good thing, says McGeorge School of Law professor J. Clark Kelso.

Because the public's perception of the judicial system is based not on statistics or even experience but on O.J. Simpson, Ellie Nesler, and a few other cases in the public eye, "it may be appropriate for the court to make sure that those cases are handled properly," reasoned Kelso, a careful court watcher.

THE DECISIONS

Even before the August abortion ruling, conservative court watchers had begun grumbling about the court's shift to what some of them described as liberalism. In fact, the court produced both liberal and conservative rulings, with the bulk falling somewhere in between.

Perhaps the most liberal ruling won by plaintiffs was the 4-3 decision in _Alcarez v. Vece_, 14 Cal.4th 1149, in which George held that a property owner could be liable for a dangerous condition on a nearby strip of land if it was under the landowner's control.

And lawyers who bring medical malpractice claims cheered the court's 6-1 ruling in _Engalla v. Permanente Medical Group_, 15 Cal.4th 951. While Mosk's majority opinion restated the court's approval of mandatory arbitration, it said the Kaiser HMO should have to stand trial on claims it tilted the playing field with tactics meant to delay the proceedings until the plaintiff died.

Plaintiffs didn't fare as well in cases brought against governmental agencies. The justices wrapped a protective arm around the public piggy bank by refusing to assist plaintiffs who said they were victimized by police (_Asgari v. City of Los Angeles_, 15 Cal.4th 744), flood control agencies (_Bunch v. Coachella Valley Water District_, 15 Cal.4th 432), city planners (_Bickel v. City of Piedmont_, 97 C.D.O.S. 8767), rent control boards (_Kavanau v. Santa Monica Rent Control Board_, 16 Cal.4th 761), and tax authorities (_Sinclair Paint Co. v. State Board of Equalization_, 15 Cal.4th 866).

The government did lose in the employment arena, though, where the centrist court showed a more consistently liberal streak. In _Professional Engineers v. Dept. of Transportation_, 15 Cal.4th 543, for example, the justices trashed Gov. Pete Wilson's plans to privatize some Caltrans jobs.

The court also ruled that school districts must offer athletic coaching positions to qualified teachers before considering outside candidates. Werdegar's majority opinion made it clear she wasn't too impressed with the " ultimate worst case scenario" offered by school officials in _California Teachers Assn. v. Governing Board of Rialto Unified School District_, 14 Cal. 4th 627, that a kindergarten teacher (read: woman) might end up coaching a high school football team.

The plaintiff's employment bar won three other big victories in 1997: In _Mullins v. Rockwell International_, 15 Cal.4th 731, the court found that the statute of limitations for wrongful termination doesn't start running until the employee is actually terminated.

In _Stevenson v. Superior Court_, 16 Cal.4th 880, the court expanded the remedies available to workers facing age discrimination.

And the court put employers between a rock and a hard place with _Randi W. v. Muroc Joint Unified School District_, 14 Cal.4th 1066. In that case, Chin reasoned that school officials who penned a glowing letter of recommendation for an outgoing administrator could be held liable for failing to mention also that he had been accused of child molestation. Left for employers to decide is whether to risk saying anything at all about former employees.

The hot streak for plaintiffs employment lawyers was expected to end today, however, when the court issues a widely anticipated sexual harassment ruling.

But tort plaintiffs suffered their share of losses this year as well. In _Kentucky Fried Chicken v. Superior Court_, 14 Cal.4th 814, perhaps the court's most conservative ruling, four justices said a fast food restaurant wasn't obliged to quickly comply with the demands of an armed robber in order to protect customers from harm. Baxter figured saddling the Colonel with such a duty would just encourage criminal behavior.

Insurers got a mixed bag. Mosk handed insurers a win in _Buss v. Superior Court_, 16 Cal.4th 35, concluding that insurers can recover the costs of defending claims that weren't potentially covered under an insurance policy. The decision prompted complaints from the policyholder bar that the court was ignoring specific policy language.

Several months later Mosk wrote for the majority in another insurance case, this time siding with the policyholder in _Aerojet-General v. Transport Indemnity Company_, 97 C.D.O.S. 9704. This time Chin, something of an insurance guru when at the court of appeal, echoed the complaint in a dissenting opinion, accusing the majority of "ignor ing the language of the specific insurance policies that Aerojet purchased."

On the criminal side, the court spent more time fine tuning the Three Strikes law, with a George-led majority deciding in _People v. Fuhrman_, 16 Cal.4th 930, that it wasn't necessary, and would be too expensive, to remand cases for resentencing when nothing in the record suggested the trial court misunderstood its discretion to strike prior convictions. That prompted Werdegar to complain that the majority was more concerned with the bottom line than with the lives in the balance.

But criminal defenders did win three death penalty reversals in the 13 cases decided by the court. "That's a significant number," said Kelso.

Kennard authored two of the reversals, while the third was released _per curiam_, or by the court as a whole.

ALL HAIL THE CHIEF?

As Chief Justice George prepares to face the voters next November, he can reflect on what was, despite a few notable stumbles and one big splash, a heady year.

George won two huge legislative victories, including what he hopes will be a permanent source of stable trial court funding. Under the long-sought plan, courts in each of California's 58 counties will no longer be subject to the vagaries of county budgeting decisions, but instead will share in state funds allocated by the Legislature and through the increasingly powerful Judicial Council, which George heads.

The chief justice won another Sacramento success when the Legislature approved a plan to speed capital appeals. Many prisoners on death row have no lawyer to move their cases forward, in part because the court has been unable to retain qualified lawyers to represent them. George not only pushed through a raise for appointed counsel, but also got the Legislature to fund a new state office that will coordinate capital appeals and try to take a big bite out of the huge backlog of death cases awaiting briefing.

Not everything went perfectly for George. Just days after completing a year- long tour of courts in the state's 58 counties, he broke his hip waterskiing. Meanwhile, some state judges surfaced with complaints about George's lukewarm support for proposed judicial pay hikes, and still others carped about what they see as the Judicial Council's ongoing power grab.

Meanwhile, although George is always in the majority, the court still can't reach any sort of consensus on some issues, like assumption of the risk.

The justices dealt with this particular can of worms twice this year, and ended up with nine separate opinions. /In _Parsons v. Crown Disposal Co._, 15 Cal.4th 456, the court held that an injured horseback rider could not sue the owner of the garbage truck that spooked the horse.

And in _Cheong v. Antablin_, 97 C.D.O.S. 8851, the majority could only agree that a Placer County ordinance did not give an injured skier a cause of action against a friend who had collided with him.

Missing from both opinions was clear guidance on how to handle future conflicts involving sports-related injuries.

The justices who have muddied the waters with their different approaches " need to bury the hatchet," said Kelso. "_Any_ rule is better than what we currently have."

In five cases, the justices failed altogether to fashion a four-member majority. And when the justices can't come to some sort of consensus, lower courts take that as a license to blaze their own trail.

For example, in 1995 the court produced three opinions in a case testing whether the state constitution guaranteed a direct right of appeal. None of the three opinions garnered a fourth signature.

So when a similar question arose before the Second District Court of Appeal this year in _Leone v. Division of Medical Quality_, 97 C.D.O.S. 7635, Justice Charles Vogel felt free to ignore the court's guidance. Because the holding of _Powers v. City of Richmond_, 10 Cal.4th 85, "is only found in a three-justice plurality opinion," wrote Vogel, "it is not binding on this court."

The result is more work for the high court: Two weeks ago, the justices agreed to revisit the issue by reviewing Vogel's decision in _Leone_.

The court's handling of another petition for review left court observers scratching their heads. Although five members of the court had a problem with a court of appeal decision permitting employers to fire higher-paid older workers in order to save money, the five couldn't agree on what to do with the case. Three justices voted to depublish, while two others voted to grant review. George suggested during a December meeting of reporters that sometimes the court doesn't take worthy cases because the lawyers haven't properly framed the issue. Whatever the reason, _Marks v. Loral Corp._, 57 Cal.App.4th 30, remains on the books.

WRITE FROM THE HEART

The year was one of productivity and passion for the court's newest member, Justice **Janice Rogers Brown,** who put together an impressive number of majority opinions, 14, to go along with some sharply worded dissents.

Indeed, Brown has emerged as the pugnacious, literate and -- at times -- scornful and self-righteous conservative voice of the court.

"You can tell it's writing coming from her heart," observed Kelso. "In that sense, it's powerful writing."

In the abortion case, for instance, Brown blasted the majority as " philosopher kings" bent on replacing the will of the people with their own view of the world.

And in a literary put-down fast becoming a telltale sign of a Brown opinion, the justice ridiculed the majority's privacy analysis, saying "Only Lewis Carroll could countenance this sleight of hand."

Brown's style, notes Kelso, "makes for interesting reading."

Brown may have hit a rhetorical high note early this year in the drug testing case, _Loder v. City of Glendale_, 14 Cal.4th 846. A splintered court -- five opinions --upheld drug testing for municipal job applicants, but said those already hired couldn't be tested when seeking promotions.

Brown disagreed with the latter holding, saying a good job sometimes required sacrifice: "Sometimes beauty is fierce; love is tough; and freedom is painful. "

In another dissent, Brown praised the majority's "quixotic desire to do good. . . . Indeed, the majority's zeal is more than a little endearing. There is one problem with this approach," continued Brown. "We are a court."

While Brown has won the respect of many at the court for her intelligence, hard work, and humor, some wish she'd tone it down a bit, especially with an election coming up.

The potential effect at the ballot box didn't stop Brown from lashing out at " judge-militants" during a December appearance before Los Angeles conservatives. Brown told the audience she has become the "lone dissenter" on the court and bemoaned "the conceit of judges who shrug off the constitution like a worn suit and never let tradition stand in the way of a desired result. "

Brown, who recently moved out of the East Bay apartment she'd been renting and resumed commuting from her Sacramento home, didn't say whether she was referring to the much-maligned federal bench, her own colleagues, or both. But it's hard to imagine many voters drawing a distinction between the two.

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LOAD-DATE: January 5, 1998

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ABA Journal

January, 1998

84 A.B.A.J. 64

LENGTH: 2567 words

SECTION: Criminal Justice

TITLE: GANG: **BUSTERS: Prosecutors are turning to powerful federal statutes and some handy local ordinances to stop criminal gangs in their tracks.**

AUTHOR: John Gibeaut

John Gibeaut is a reporter for the ABA Journal.

TEXT:

To federal prosecutors, the case against Darryl "Pops" Johnson boiled down to his coldly calculated business decisions.

As a high-ranking member of Chicago's Black Gangster Disciple Nation street gang, Johnson made a business decision when he ordered the May 7, 1995, murder of Darryl "Blunt" Johnson, said Assistant U.S. Attorney Matthew C. Crowl to a jury in early November. Likewise, Crowl said, Johnson made a business decision when he ordered the murder a month later of Charles "Jello" Banks, who was gunned down on the same South Side street corner where Blunt Johnson was killed.

Pops Johnson suspected that Blunt Johnson, who was not related to the defendant, and Banks had become federal informants against the gang's crack cocaine-dealing operation after they had been arrested on drug charges themselves.

It turned out that Pops Johnson's suspicions were right. Just before Banks was slain, his information enabled authorities to get a court order to tap Pops Johnson's telephone. Prosecutors said Blunt Johnson also had tried to strike a deal with the government but was killed first.

The trial was the fourth in a series of cases arising from the government's investigation of the Gangster Disciples, believed to be the nation's largest and best organized street gang, with as many as 30,000 members. The gang's leader, convicted murderer Larry Hoover, 47, already had been nailed by a federal jury in May for running the Gangster Disciples' $ 100 million-a-year drug enterprise from an Illinois prison, where he had been serving two life sentences since 1973.

In Pops Johnson's case, the jury in U.S. District Court took just four hours to convict him of 39 charges, including four counts of ordering the murders, along with conspiring to sell drugs and operating a continuing criminal enterprise. The jury took another two days to tell Judge Suzanne B. Conlon to sentence the 34-year-old Johnson to death by lethal injection.

Thus ended another battle in the ever-expanding state and federal war against street gangs. As in other legal skirmishes around the nation, the Gangster Disciples prosecution used broad-based statutes, informants and conspiracy evidence to attack one of any gang's most vulnerable spots: the loyalty of its members.

Federal and state prosecutors are employing those tools and experimenting with new ones as they

fight to wrest communities from the grasp of increasingly more violent and more populous street gangs. Law enforcement officials are especially busy in the Chicago area and in Southern California, far and away the nation's most active gang regions, according to U.S. Department of Justice figures.

There and elsewhere, today's sophisticated gangs no longer evoke the image of cigarette-smoking, hubcap-stealing hoodlums hanging out on street corners. Gangs aren't kid stuff.

"People assume that gangs mean teen-agers and juveniles," says FBI agent Kenneth E. New, chief of the bureau's Safe Streets/Gangs Unit, which runs 40 multi-agency gang enforcement task forces throughout the nation. "But that's just not true. When you have a Black Gangster Disciple Nation, the leaders are all adults. Hoover's no spring chicken."

As the gangs become more refined, so, too, have law enforcement tools for dealing with them. At the federal level, the Racketeer Influenced and Corrupt Organization Act and related conspiracy statutes have become the preferred weapons for removing gang leaders from the streets.

Originally designed for traditional mobsters and white-collar crooks, RICO is ideally suited for street gangs, says the 1970 statute's author, Notre Dame University law Professor G. Robert Blakey.

"They're in the process of growing into Mafias," says Blakey, formerly a lawyer for the Justice Department's Organized Crime and Racketeering Section. "The Mafia started out as a street gang."

In California, which dwarfs the rest of the nation in gang activity, state prosecutors and municipal attorneys have succeeded in using public nuisance laws to obtain injunctions that prevent targeted gang members from congregating in public.

"It is my belief that it should be used everywhere," says Michael Genelin, head of the Los Angeles County District Attorney's Hard-Core Gang Division. "It's the strongest new weapon we have against gangs."

In Illinois, however, the state supreme court recently dealt gang enforcement efforts a setback when it declared unconstitutional a Chicago anti-gang loitering ordinance with similar goals. City attorneys plan to take the case to the U.S. Supreme Court.

Netting the Big Fish

But it may be on the federal front where prosecutors are scoring their most significant victories. Since the early 1990s, the Justice Department has steadily turned up the heat on street gangs with charges brought under RICO and similar statutes.

"In the last two or three years we're seeing more gang cases prosecuted this way, and we are emphasizing that in our training," says Bruce Delaplaine, deputy chief of the Justice Department's Terrorism and Violent Crime Section.

Federal prosecutors have secured indictments and won convictions against street gang leaders from Shreveport, La., to Providence, R.I. In New York City, prosecutors estimate that they have successfully used RICO and similar federal statutes in recent years against some 200 defendants involved in 300 murders. In Chicago, federal charges came down against nearly 200 reputed gang leaders from 1995 to 1997.

With that strategy, the government rarely loses. Prosecutors in Chicago could recall only one recent acquittal in a gang case.

Punishment is swift and severe, usually with mandatory life sentences going to those convicted of the most serious charges. Federal prosecutors also make defendants toe a hard line when it comes to plea bargaining, requiring testimony against other gang members in exchange for leniency.

Unlike state authorities, the federal government has sizable resources to protect and relocate witnesses. Federal prosecution also enables the government to scatter convicted gang leaders in prisons throughout the country, so they don't become concentrated and take control of state prison systems.

When a defendant is charged by federal prosecutors with participating in a conspiracy, mountains of evidence come before a jury that usually would be barred as overly prejudicial or irrelevant in a state court trial. That's because the government, besides proving underlying or predicate charges, also must prove that the conspiracy existed and that the defendant participated in it.

Thus, a federal jury likely will hear about a series of murders or other crimes linked to the conspiracy. On the flip side, if Gangster Disciple member Pops Johnson had been charged in state court, he probably would have been tried separately for each murder, and jurors in each case would not have been told about the other.

"I think it certainly makes a more attractive case in the jury's eyes that these are really bad people who need to be prosecuted to the fullest extent of the law," Delaplaine says. "If you were just trying a homicide case, you typically would not be able to get in the evidence that these people are part of an organization."

Use of broad-based charges also enables federal prosecutors to boost the credibility of their chief witnesses, typically informants, also known as "flippers," who testify against gang leaders in exchange for sentence reductions in their own cases. The rationale is simple enough: An informant who may have participated in several murders and drug deals does not look so bad when testifying against the larger organization.

Still, prosecutors say, it is crucial to keep informants honest through other witnesses, such as ordinary citizens and police officers. Wiretaps also play a key role in bolstering informants' credibility because defendants often hang themselves with their own words.

Tables Almost Turned

Jack Hynes, supervisor of the Cook County State's Attorney's Gang Prosecution Unit in Chicago, recalls how members of the city's El Rukn gang nearly succeeded in sabotaging the federal cases against them with allegations that some cooperating witnesses received drugs and intimate visits with their girlfriends while they were jailed.

The Justice Department fired the lead prosecutor, William Hogan Jr., in 1995 for failing to disclose two witnesses' positive drug tests to defense lawyers. Dozens of the 65 defendants charged in the case won new trials or negotiated lenient sentences the second time around.

"I think the lessons that were learned in the El Rukn case can be learned across the country," says Hynes, whose office works with the U.S. attorney in addition to prosecuting gang members in state court. "A flipper is not your friend. You keep them at arm's length. You substantiate what they say, and you document what you give them."

The government evidently had learned that lesson by the time it began prosecuting the Gangster Disciples.

As a result, defense lawyers often are left with little to go on. Sometimes all they can do is argue that the government is overreaching to snare relatively minor players while in search of the big fish. Chicago lawyer Frank Lipuma, for one, says his client, Kevin Williams,is one of the hapless underlings snagged in the Gangster Disciple dragnet, and he now faces a life sentence for his conviction.

"These penalties apply to everyone, from the guy who's putting all the money in his pockets, right down to the guy who's just making a few bucks," says Lipuma, himself a former federal prosecutor.

"It's frustrating when you have to defend against evidence that has no relevance against your client when the government dumps all this in under a conspiracy."

In the Pops Johnson trial, defense lawyer Cynthia Giachetti effectively conceded all but the murder charges, using her closing argument to attack as liars the four former gang members who testified against her client.

Assistant U.S. Attorney Ronald S. Safer was quick to retort. "Who else do you expect to come in here and testify about these crimes?" Safer asked jurors. "Conspiracies hatched in hell do not have angels as witnesses."

Getting a Few Minnows

In California, gangs typically are not as sophisticated as the Gangster Disciples. "Chicago gangs are set up like organized crime; L.A. gangs are disorganized crime," says Los Angeles gang prosecutor Genelin.

But authorities say California gangs are no less dangerous to the public. In Los Angeles and other communities, authorities believe they have found the perfect tool for dealing with gangs that more closely resemble groups of street punks than La Cosa Nostra.

For nearly a decade, they have been dabbling with public nuisance laws to get civil injunctions forbidding gang members from associating in public and from engaging in other legal activities, such as carrying pagers and cellular phones, which police say are tools of the drug trade.

The California Supreme Court dealt gangs a blow last year when it rejected a First Amendment challenge to an injunction barring 38 reputed gang members from hanging out in a four-block area of San Jose's Rocksprings neighborhood. Calling the area an "urban war zone" and describing its residents as "prisoners in their own homes," Justice **Janice Rogers Brown** concluded that something had to give.

"To hold that the liberty of the peaceful, industrious residents of Rocksprings must be forfeited to preserve the illusion of freedom for those whose ill conduct is deleterious to the community as a whole is to ignore half the political promise of the Constitution and the whole of its sense," Brown wrote. *People ex rel. Gallo v. Acuna,* 929 P.2d 596.

With about a dozen gang injunctions already in place in various areas, officials in Los Angeles obtained the boldest one yet last summer against 50 members of the 18th Street Gang in the largely crime-ridden and impoverished Pico-Union district.

The square-mile area west of downtown is home to 28,000 people, many of them Latin American immigrants. Police reported a 31 percent reduction in serious crime during September and October, the first two months the injunction was in force.

"It's an enormous drop," Genelin says. "It's one of the toughest areas of the city. It's right in the heart of 18th Street, and the 18th Street Gang is our biggest, baddest street gang.

"A gang can't be a gang if it can't associate in public," he says.

Because an injunction is a civil proceeding, defendants do not have a right to a government-paid lawyer. But the American Civil Liberties Union has challenged the tactic, claiming in part that it unfairly focuses on minorities.

In addition, says Ramona Ripston, ACLU of Southern California executive director, injunctions don't work and serve only to placate the public. An ACLU analysis of police statistics for another injunction issued in 1993 in the San Fernando Valley showed that crime increased just outside the injunction area, suggesting that gangs merely shifted their activities.

"All it does is move gangs around," Ripston says. "It really doesn't do anything to solve the underlying problem of gangs."

The Illinois Supreme Court in October also took a dim view of a 1992 Chicago city ordinance that allowed police to order that an individual move along if that person is "reasonably believed to be a criminal street gang member loitering in any public place" with at least one other person.

The state supreme court unanimously called the ordinance vague and arbitrary and thus unconstitutional. The justices noted that many of the activities the city hoped to deter through the ordinance already are crimes.

"However, the city cannot empower the police to sweep undesirable persons from the public streets through vague and arbitrary criminal ordinances," wrote Justice John L. Nickels. *City of Chicago v. Morales* 1997 WL 638789.

Deputy Corporation Counsel Larry Rosenthal says the city has received dozens of calls from other municipalities interested in enacting similar ordinances. He says he expects a broad coalition of government organizations will support Chicago in asking the U.S. Supreme Court to hear the case.

"One of the centerpieces in that petition is going to be how important it is to develop proactive approaches to dealing with gangs," says Rosenthal. "Removing a visibly lawless element from the street is very important."

Regardless of the methods used to take them off the streets and despite complaints from criminal defense lawyers and civil libertarians, state and federal law probably will continue to get tougher on street gangs. That's just too bad for the gangs, says RICO author Blakey.

"No one should shed a tear," Blakey says. "They'll kill anybody. The Mafia is more discreet."

Where the Gangs Are
Top 10 cities and counties by number of gang members

Area	Gang Members
Los Angeles County	60,000
Los Angeles (city)	58,197
Chicago	33,000
Santa Ana, Calif.	11,000
Cleveland	10,000
Long Beach, Calif.	10,000
San Antonio, Texas	7,000
Gary, Ind.	7,000
Bernalillo County, N.M.	7,000
East St. Louis, Ill.	6,500

Source: 1995 National Youth Gang Survey, U.S. Justice Department Office of Juvenile Justice and Delinquency Prevention.

GRAPHIC: Picture 1, **Los Angeles prosecutor** MICHAEL GENELIN **, with Det. John Sena, Dep. City Atty. Nicole Berchon and Dep. D.A. Lisa Fox in front of gang graffiti.** ABAJ/JIM CACCAVO; Picture 2, RAMONA RIPSTON: Gang injunctions don't work and serve only to placate the public. ABAJ/JIM CACCAVO

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View Related Topics

December 31, 1997, Wednesday

SECTION: Pg. 8

LENGTH: 13030 words

HEADLINE: (1997 IN REVIEW) Wilson Vetoes State Bar Dues Bill...California Supreme Court Strikes Down Statute Requiring Parental Consent for Minors to Have Abortions...Adelman Takes Over as State Bar PresidentJanuary

BODY: 2Jail employees who were secretly videotaped in an office to which inmates had no unsupervised access had no valid Fourth Amendment claim since their expectation of privacy in the jail complex was "unreasonable," the Third District Court of Appeal held. The case arose after a camera was placed in an office to investigate incidents of inmates' money missing from the booking department of the jail.

5Clerk's minutes are sufficient to establish a waiver of rights by a defendant, where the reporter's transcript was incomplete and does not reflect an assertion of the right involved, the First District Court of Appeal ruled.

6A city may require all applicants for new employment to take drug tests, but may not extend the requirement to current employees seeking promotions to non-sensitive positions, the state Supreme Court ruled. Chief Justice Ronald George wrote that such testing is permissible under the Fourth Amendment....A business is not liable for injuries suffered by a patron as a result of an employee's refusal to comply with a robber's demands, the state Supreme Court held.

7Intimidation of a possible crime victim in the presence of an investigating peace officer constitutes the crime of resisting, delaying or obstructing the officer in the performance of his or her duties, the Court of Appeal held....Citing the Supreme Court's loosening of restrictions on scientific evidence, a federal appeals court lifted its ban on polygraph evidence and said individual federal judges must decide whether juries can hear results of lie-detector tests. The judge is now supposed to consider, but is no longer bound by, general scientific acceptance of a particular technique or theory....Gov. Pete Wilson's suit seeking $ 2.4 billion from the federal government for the costs of illegal immigration was rejected by the Ninth U.S. Circuit Court of Appeals, which said the dispute was political, not legal. Wilson accused the Clinton administration of failing to control the nation's borders and leaving the states with the bill.

9Defendants facing increased sentences because of their record, a common occurrence under California's three-strikes law, cannot challenge a past conviction on the grounds of bad legal advice, the State Supreme Court ruled+.A federal judge dismissed a libel lawsuit filed by O.J. Simpson house guest Kato Kaelin against a tabloid that printed a story saying police believed Kaelin killed Simpson's ex-wife and her friend.

10Materiality isn't an element of the crime of offering a false or forged instrument for recordation, the First District Court of Appeal ruled. Div. Two affirmed the conviction of Jeffrey J. Feinberg, a former Burlingame art dealer, for recording a meritless mechanics' lien on a home owned by then-Assemblywoman Jackie Speier, D-South San Francisco, and her late husband, Dr. Steven Sierra.

13The Administrative Office of the Courts said the 58 superior courts had been directed by the Judicial Council not to spend any of their soon-to-be-distributed state funds on non-stenographic

court reporting in light of a court decision saying the use of electronic reporting to produce official records violated state law.

14Chief Justice Ronald George assigned seven retired judges to assist the Los Angeles Superior Court with three-strikes cases. Judges Jacqueline Weisberg, Kimball Walker, Donald Rudloff, Martin Suits, John Lynch, Byron McMillan and John Burnett were assigned to clear up the excessive backlog as a result of an appropriation of $ 3.5 million in last year's state budget earmarked for courts with large numbers of three-strikes cases.

16Ex-Los Angeles City Councilman Art Snyder was sentenced to probation and six months in county jail for campaign funding crimes.

17Federal prosecutors' charging of greatly disproportionate numbers of minority street gang members with crack cocaine offenses does not amount to selective prosecution, the Ninth U.S. Circuit Court of Appeals held.

18Veteran lawyer Arthur Manella, co-founder of Irell & Manella and father of U.S. Attorney Nora Manella, died in Los Angeles at age 79.

21The Ninth U.S. Circuit Court of Appeals held that a district judge may decline to approve an agreement between attorneys regarding the allocation of common-fund fees if it finds that the division does not accurately reflect the amount of work done by the various lawyers.

24Los Angeles Superior Court Judge Alexander Williams was publicly admonished by the Commission on Judicial Performance. The commission found that Williams had "used profanity, made a vulgar gesture and threatened retaliation toward counsel" during a hallway confrontation during a break in a pretrial settlement conference.

28School authorities who recommend a former employee for a job at another school may be liable to a child molested by the worker if they knew or reasonably suspected prior acts of molestation and did not disclose them, the California Supreme Court ruled. The former employer owed a duty to both prospective employers and third persons not to misrepresent facts in describing the qualifications and character of a former employee, if making these misrepresentations would present a substantial foreseeable risk of physical injury to someone, the court said.

29A sincerely held belief in the use of marijuana as a sacrament is not a defense to charges of transporting a large quantity of the drug and possessing it with the intent to sell, the Fourth District Court of Appeal ruled. The court found that possession and transportation of the drug was not protected by the First Amendment or the federal Religious Freedom Restoration Act. Prohibiting the transporting and sale or marijuana did not, the court held, substantially burden the defendant's exercise of religion, which is the test set forth under RFRA.

31Alleged gang members can be prohibited by court order from meeting in a neighborhood or "annoying" residents, the California Supreme Court ruled. The decision reversed an appellate court ruling which found the injunction was too overinclusive and the terms such as "annoying" were unconstitutionally vague. Justice **Janice Rogers Brown** wrote that gang members had "no constitutionally protected or even lawful goals" being present in a neighborhood and could legally be prohibited from meeting.

February

3Gibson, Dunn & Crutcher partner Robert C. Bonner was elected chairman of the Commission on Judicial Performance. Bonner is the first non-jurist to chair the panel in its 36-year history....An ex-convict surrendered to police to face charges he masterminded a series of bombings to thwart a Solano County drug trial that could have put him behind bars for 25 years to life.

5Two former San Diego Superior Court judges and an award-winning lawyer convicted in a

corruption scandal were sentenced to the minimum prison time allowed by federal sentencing guidelines. Former judge James Malkus was sentenced to 33 months in prison, while former judge G. Dennis Adams and attorney Patrick Frega were sentenced to 41 months each and will remain on probation for two years.

10Los Angeles Superior Court Judge Joyce Karlin, who survived a recall effort by citizens angered with the lenient sentence she gave the killer of black teenager Latasha Harlins, announced her resignation from the court to spend time with her "young family."

11Los Angeles Superior Court Judge H. Randolph Moore Jr announced his retirement. Moore served as a law professor at USC and now-defunct Valley University College of Law.

13Punitive damages may be recovered from the estate of a defendant who dies after trial, even if the case is still on appeal at the time of the defendant's death, the Fourth District Court of Appeal ruled.

17Whitewater special prosecutor Kenneth W. Starr was named dean of Pepperdine University School of Law. Starr will also serve as founding dean of Pepperdine's School of Public Policy.

18The U.S. Supreme Court ruled that states may enforce their own prevailing-wage laws, which set trade-by-trade minimum compensation for workers on state construction projects. The court, by a unanimous vote, said such a California law is not pre-empted by a federal benefit protecting law....A suit charging the San Francisco Chronicle and one of its reporters with defaming the subject of a state auditor's investigation is barred by both the reporters' privilege and the anti-SLAPP statute, the First District Court of Appeal ruled.

20Helen I. Bendix, senior vice president and general counsel for community television station KCET, was named to the Los Angeles Municipal Court by Gov. Pete Wilson. Bendix, 44, succeeded Judge Robert Swasey, who retired last year.

21Los Angeles Superior Court John H. Major announced his retirement from the bench after 27 years....Whitewater prosecutor Kenneth Starr announced that he will delay taking over as dean of Pepperdine University School of Law until completion of the Whitewater investigation.

25Los Angeles Superior Court Judge Richard Neal was nominated by Gov. Pete Wilson to fill a newly created seat on Div. Seven of this district's Court of Appeal. The governor also named Randolph Rogers, a Lancaster sole practitioner and husband of Antelope Municipal Court Judge Pamela Rogers to the court on which his wife sits....The Court of Appeal held that an appellate court opinion is admissible to explain other evidence tending to prove that a prior conviction was for a serious or violent felony under the three-strikes law.

26The Court of Appeal held that for a criminal defendant to recover damages for the alleged malpractice of defense counsel, he or she must prove innocence of the crime by preponderance of the evidence.

27In a rare reversal of a death sentence, the state Supreme Court held that the judge in a decade-old Los Angeles Superior Court murder trial committed prejudicial error by failing to instruct that a death penalty verdict requires a finding that the killing was intentional.

28Los Angeles Municipal Court Judge Ernest L. Aubry, who once declared California's then-total ban on cameras in the courtroom unconstitutional, died of cancer at age 57+.The doctrine of "unclean hands" doesn't bar an employee who joins in the illegal activities of an employer from suing for wrongful termination, the Fourth District Court of Appeal ruled.

March

3The state must reimburse counties for the cost of providing health care to indigent adults, the state Supreme Court ruled+.Los Angeles Municipal Court Judge Thomas L. Willhite Jr., Citrus Municipal

Court Judge Dan T. Oki, and Long Beach Municipal Court Judge William T. Garner were elevated to the Los Angeles Superior Court by Gov. Pete Wilson. Willhite succeeded Judge Douglas McKee, who died Nov. 21 of last year, Oki filled the seat of Judge Robert La Font, who retired Feb. 3. Garner replaced Judge George Trammell III, who resigned Jan. 10 amid allegations that he had an affair with the wife of a defendant in his court.

4Los Angeles Municipal Court Judge Peter D. Lichtman was elevated to the Los Angeles Superior Court by Gov. Pete Wilson, who also named Deputy Attorney General Carol Rehm Jr., Ramona See, and Assistant U.S. Attorney Ronni B. MacLaren to the Los Angeles Municipal Court. Lichtman succeeded Judge Jack Tso, who retired Jan. 6. Rehm replaced Judge Karl Jaeger; See, a law clerk to U.S. District Judge Dickran Tevrizian, filled the seat of Judge Maureen Duffy-Lewis; and McLaren replaced Judge Michael Luros. Jaeger, Luros, and Duffy-Lewis were elected to the Superior Court.

6Chief Justice Ronald George drew a standing ovation from members of Bay Area Lawyers for Freedom when he became the first chief justice to address a gay attorneys group in more than a decade.

11Gov. Pete Wilson named Gibson, Dunn & Crutcher staff attorney Randy Rhodes and Assistant U.S. Attorney Debra W. Yang to the Los Angeles Municipal Court, replacing newly elevated Judges Thomas Willhite and Peter Lichtman.

12Gov. Pete Wilson named George Genesta, a Downey sole practitioner, to replace East Los Angeles Municipal Court Judge Gilbert Rudy Ruiz, who retired in October of last year. The governor also tapped Dale S. Fischer, a litigator at Heller, Ehrman, White & McAuliffe, to succeed Judge Fred Wapner, who was elected without opposition to the Los Angeles Superior Court last year....Payments to support an elderly parent cannot be deducted from income in calculating child support, the Fourth District Court of Appeal ruled, at least in the absence of evidence the payor would be unable to support both.

13The First District Court of Appeal ruled that law establishing minimum continuing legal education requirements for California lawyers is unconstitutional because it irrationally exempts legislators, state officials, retired judges, full-time law professors and state employees+.Gov. Pete Wilson nominated Los Angeles Superior Court Judge Elizabeth Baron, 54, to the Court of Appeal for this district, Div. Four, to fill a vacancy created in January when Justice Charles Vogel was elevated to presiding justice.

17Gov. Pete Wilson named Los Angeles Superior Court Commissioner Karen Nudell to the Los Angeles Municipal Court.

19Persons seeking to reduce protections available to plants and animals can sue regulators under the Endangered Species Act, the Supreme Court ruled unanimously, overturning a contrary ruling of the Ninth U.S. Circuit Court of Appeals.

24An insurance carrier is liable for the full amount of a default judgment if it breaches its duty to defend, regardless of an eventual finding in the insurer's favor on the issue of coverage, this district's Court of Appeal ruled.

25A district attorney cannot refuse to commence prosecution of a grand jury accusation seeking removal of a local public official, the Third District Court of Appeal ruled. The discretion given district attorneys as to whether to proceed in criminal cases doesn't apply to the removal procedure established by the Government Code, Presiding Justice Robert K. Puglia wrote for the panel+.An airline had a duty to look for other suitable job opportunities within its own structure before placing an AIDS-stricken pilot on disability, the Court of Appeal for this district ruled.

31The California child support guidelines apply to disabled adult children who can't work, even if income from a trust set up by the custodial parent prevents the child from becoming a public charge, the Court of Appeal ruled.

April

1Los Angeles Superior Court Judge Roosevelt Dorn won a landslide election as mayor of Inglewood. The 61-year-old Dorn, a judge since 1979, received 62 percent of the total vote, swamping three opponents+.Gov. Pete Wilson elevated Los Angeles Municipal Court Judge Ann Kough to the Los Angeles Superior Court. She succeeded Judge H. Randolph Moore, who retired.

4Boilerplate objections at trial by defense counsel to his client's sentence can't be used to preserve issues of claimed error on appeal, the First District Court of Appeal ruled. Rather, "defendant's objections regarding claimed sentencing mistakes must be sufficiently specific and meaningful to allow the trial court to correct the error," Justice Herbert Walker wrote.

8Proposition 209, the voter-approved ban on race and gender preference in affirmative action, is a valid law promoting equality rather than discrimination, the Ninth U.S. Circuit Court of Appeals ruled....A trial court has jurisdiction to order a sex offender to submit to an AIDS test after the offender has begun his prison term, the First District Court of Appeal ruled.

9Los Angeles Municipal Court Judge Marvin Lager was elevated to the Los Angeles Superior Court.

13Los Angeles Municipal Court Judge Michelle R. Rosenblatt was elevated to the Los Angeles Superior Court by the governor....The Court of Appeal held that close relatives of a wrongful death victim need not view the fatal event in order to obtain damages for negligent infliction of emotional distress.

14Gibson, Dunn & Crutcher partner Rex Heinke was nominated vice-president of the 23,000 member Los Angeles County Bar Association+.A state must accommodate a Jewish prisoner's desire to comply with religious dietary law, the Ninth U.S. Circuit Court of Appeals held. The court found that the state's interest in managing the inmate population is not sufficient to deny a prisoner of religious freedom when reasonable accommodation is possible+.An agent involved in a real estate transaction in a planned development has no duty to inquire as to the existence of construction defects in the common areas or the pendency of related litigation, the Fourth District Court of Appeal ruled. The opinion was certified for publication May 10.

16Los Angeles Superior Court Judge Richard Neal was confirmed to the Court of Appeal....Monterey Municipal Court Judge Jose Angel Valasquez was censured by the Commission on Judicial Performance for willful misconduct in office and conduct prejudicial to the administration of justice.

17A petition for writ of habeas corpus, rather than an appeal, is generally the appropriate means of claiming that trial counsel's failure to bring a suppression motion constituted ineffective assistance, the state Supreme Court unanimously held.

20A statute which allows the prosecution and defense to veto the designation of a retired judge to hear a criminal case is an unconstitutional intrusion on the assignment power of the chief justice, the Court of Appeal for this district held.

22Los Angeles Municipal Court Judge Roy Ferkich retired....The Commission on Judicial Performance announced its investigation of retired Los Angeles Superior Court Judge George Trammell III for possible misconduct. The investigation was spurred by allegations of a witness that the judge coerced her to have sex by promising leniency for her husband.

23Term limits for California lawmakers, approved by the voters in 1990 by Proposition 140, were ruled unconstitutional by U.S. District Judge Claudia Wilken.

24Collateral estoppel cannot be asserted for an award in arbitration, the Court of Appeal held....Gov. Pete Wilson named Los Angeles Deputy District Attorney Patrick Couwenberg to the Los Angeles Superior Court.

25Gov. Pete Wilson named Los Angeles Deputy Public Defender Mark G. Nelson to the Citrus Municipal Court....Prominent criminal defense attorney Paul Caruso announced his retirement from the full time practice of law.

30Police owed a woman whose children were held hostage at gunpoint by her ex-husband a duty of reasonable care when they took control of the situation, the First District Court of Appeal ruled....Failing to make certain a passenger is wearing a seatbelt is a breach of legal duty that may elevate a drunk driving offense to a felony if the passenger is injured, the Sixth District Court of Appeal held.

May

2The Ninth U.S. Circuit Court of Appeals upheld Tailhook whistleblower Paula Coughlin's multimillion-dollar damage award against Hilton Hotels Corp. for a breakdown in security at the 1991 Navy aviators' convention. The court supported a jury's verdict that the Las Vegas Hilton acted with conscious disregard for safety standards by not providing adequate security, despite knowing that the Tailhook groups was "boisterous."

5An award of damages for emotional distress survives the plaintiff's death after trial, the state Supreme Court ruled.... An arbitration requirement covering legal malpractice claims in an initial retainer agreement isn't subject to stricter scrutiny than other provisions of a contract between attorney and client, this district's Court of Appeal ruled.

7Southeast Municipal Court Judge Peter P. Espinoza was elevated to the Los Angeles Superior Court by Gov. Pete Wilson, succeeding Judge Roosevelt Dorn, who retired following his election as mayor of Inglewood....Evidence of "substantial economic loss" isn't required to recover emotional-distress damages in an insurance bad-faith case, the First District Court of Appeal held.

8A trash collector owed no duty of care to guard against frightening a horse that threw its rider when it was spooked by the trash truck's noise, the California Supreme Court ruled in a 5-2 decision. Chief Justice Ronald George, writing for the majority, noted that where no relationship exists between the plaintiff and the defendant, and there is no policy reason for imposing a duty on the defendant to avoid increasing the risk of harm to the plaintiff over that posed by the activity in which the plaintiff happens to be engaged, the defendant has no duty.

12Los Angeles attorney George O. West, a civic activist and former president of the Italian American Lawyers Association died at age 77.

13Gov. Pete Wilson named four local attorneys to the Los Angeles Municipal Court. Encino sole practitioner Michael Solner succeeded Judge Marvin Lager, Deputy District Attorney Elizabeth A. Lippit succeeded Judge Michelle Rosenblatt; and Assistant U.S. Attorney Spurgeon Smith filled the seat of Judge Ann Kough, all of whom were previously elevated to the Superior Court. Elizabeth A. White, a partner in Valensi, Rose, & Magaram, replaced Judge Roy Ferkich, who retired.

14The Indian Child Welfare Act doesn't preempt state courts from applying the "de facto parent" doctrine to cases where a non-Indian seeks custody of an Indian child over tribal objection, the First District Court of Appeal ruled.

15Recent enactments by the state Legislature didn't justify vacating a prior injunction barring the California Department of Transportation from privately contracting for engineering and inspection services, the California Supreme Court ruled....A golfer's suit against another player for injuries resulting from an errant shot is barred by the primary-assumption-of-risk doctrine, because the risk is inherent in the sport, the First District Court of Appeal ruled....Approval of a medical device by the federal Food and Drug Administration doesn't bar a products liability suit under California law, the Third District Court of Appeal ruled.... An injunction barring named protesters from picketing a clinic where abortions were performed didn't apply to others conducting similar activities unless they

acted "in concert" with the enjoined parties, the First District Court of Appeal ruled.

19A capital defendant must object to the trial court's excusal of a juror for cause to preserve the issue for appeal, regardless of the basis for the challenge, the state Supreme Court ruled. The decision broadened the rule of waiver on juror excusal....The Court of Appeal held that the three-strikes law does not supersede the state's earlier habitual offender statute, so a sentence imposed under the former may be increased by application of the latter.

20A commissioner properly exercised her discretion in committing an admitted misdemeanant to juvenile hall for 15 weekends unless and until he identified two confederates who escaped police, the First District Court of Appeal ruled....Police officers did not need a warrant to enter a motel room and arrest two burglars traced through an electronic beeper the victim placed inside a money bag before it was stolen, the Third District Court of Appeal ruled.

21A statute allowing a rape victim to be identified by a pseudonym at trial doesn't violate the defendant's right to due process, the Court of Appeal ruled.

22A probation violator is subject to the mandatory consecutive-sentencing provision of the three-strikes law upon revocation, even if the original offense occurred before the law was enacted, the state Supreme Court ruled.

26An adopted child generally lacks standing to sue for the wrongful death of a natural parent, the Fourth District Court of Appeal held. The decision upheld the traditional rule that adoption severs the familial bond as a matter of law.

28Riverside Superior Court Judge Barton Gaut was confirmed and sworn in as a justice of the First District Court of Appeal, Div. Two.

29An Orange Superior Court judge granted former Black Panther Elmer "Geronimo" Pratt a new trial after 27 years in prison for a murder he denied committing.

30A commercial parking garage owes its patrons a duty to take reasonable precautions to protect them from criminal acts of third persons, the Court of Appeal for this district ruled.

June

2The State Bar of California announced that lawyers won't be penalized for failing to complete MCLE courses while the Supreme Court considers the State Bar's appeal of a decision finding the requirements unconstitutional.

3The Boy Scouts of America isn't a business establishment within the meaning of the Unruh Civil Rights Act and may lawfully exclude females from membership, the Third District Court of Appeal held....Gov. Pete Wilson's attempt to cut wages on public works contracts in California was ruled illegal by Sacramento Superior Court Judge Cecily Bond.

4A statute requiring lifetime revocation of the driver's license of anyone convicted of assault with a motor vehicle applies to a minor tried in juvenile court, the Fourth District Court of Appeal ruled.

5The state statute authorizing a judge to strike a "strategic lawsuit against public participation," or SLAPP, and assess attorney fees against the plaintiff, applies to a suit by a candidate for union office who claimed to be defamed by a leaflet which the trial judge found to contain truthful, privileged, and non-malicious statements, this district's Court of Appeal ruled.

9A Progressive-era provision of the state Constitution decreeing that an officeholder forfeits his or her position upon accepting a "pass or discount" from a transportation company doesn't apply to participation in an airline frequent-flyer program, Attorney General Dan Lungren opined, since the benefit is made available to the public generally.

10A tenant may sue her landlord for sexual harassment under the California Fair Employment and Housing Act, the Fourth District Court of Appeal held....A book whose publisher says it was authored by space aliens before being compiled and transcribed by human beings is entitled to copyright protection, the Ninth U.S. Circuit Court of Appeals ruled.

11The constitutional right to trial by jury isn't violated when jurors in a civil case reach the required three-fourths verdict on an initial vote without discussing the evidence, the Fourth District Court of Appeal ruled....A defendant against whom charges are dismissed following a successful suppression motion is entitled to have a subsequent suppression motion heard by the same judge if charges are re-filed, this district's Court of Appeal ruled.

12The Senate Judiciary Committee, by a vote of 13-5, approved former State Bar President Margaret Morrow's nomination to be a U.S. district judge for the Central District of California.

17Three lawyersincluding a state assemblyman and a former state senatorsued the State Bar, claiming it violated their First and Fourteenth Amendment rights by taking legislative positions....The Court of Appeal for this district summarily rejected a petition for habeas corpus brought by Sirhan B. Sirhan, seeking to set aside his conviction for the murder of U.S. Sen. Robert F. Kennedy. "[T]here is no basis for doubting the correctness of the verdict" finding Sirhan guilty of first degree murder in the 1968 assassination, Presiding Justice Paul Turner and Justices Margaret Grignon and Orville Armstrong of Div. Five wrote in an unpublished order.

18A dependency court isn't bound by any statutory minimum age in deciding whether to require a statement of a minor's wishes regarding a potential adoption, this district's Court of Appeal ruled.... A criminal defense attorney who uses an adverse witness' mental health records without prior court approval may be liable for violation of the state Constitution's privacy clause, the Court of Appeal for this district ruled for the second time.

22Ruling in a dispute over Fred Astaire film clips, the Ninth U.S. Circuit Court of Appeals broadened the right of filmmakers to use footage of dead celebrities in promotions. While still forbidding the use of celebrity clips to promote commercial products, the court said they may be used to promote films and similar materials....The Fourth District Court of Appeal's Div. Three held its first oral argument calendar by teleconference, apparently becoming the first appellate court in the state to do so.

24Los Angeles Superior Court Judges Hiroshi Fujisaki, Gordon Ringer, and Robert W. Thomas announced that they would retire.

25An employee's bonus and overtime payments may count as income in calculating child support obligations, even if they are irregular, the Third District Court of Appeal found....A Laguna Beach attorney filed suit against Los Angeles Deputy District Attorney Marcia Clark over her use of a crime scene photo in her book "Without a Doubt."

29U.S. District Judge W. James Ware, who upheld the federal "motor voter" law against a challenge by Gov. Pete Wilson, was nominated by President Bill Clinton to the Ninth U.S. Circuit Court of Appeals....A spokesperson for the State Bar of California denied insinuations of Board of Governors candidate Ronald R. Silverton that disciplinary charges were filed to hamper his candidacy.

30The Third District Court of Appeal ruled that a defendant could not invoke the exclusionary rule to bar a co-defendant from introducing illegally seized evidence....A statute of limitations is tolled if the courthouse is closed due to natural disaster on the last day for filing, but only if no alternative filing location is open, the Court of Appeal for this district ruled.... A health care provider that willfully fails to adhere to anti-delay provisions of its standard malpractice arbitration agreement may be forced to litigate the underlying dispute and may be liable for damages for fraud, the state Supreme Court ruled in a suit against the Kaiser health maintenance organization.

July

2A school district isn't liable for injuries sustained by students on voluntary field trips, the First District Court of Appeal ruled....The Glendale law firm of Hagenbaugh & Murphy was ordered by this district's Court of Appeal to pay $ 4,000 for frivilously filing an untimely petition. The amount represented "compensation to the taxpayers for the court's time and resources," Justice Norman Epstein explained in an unpublished opinion....Gov. Pete Wilson signed legislation which limits judges' ability to reduce bail in cases involving serious felonies....The Assembly Judiciary Committee approved a measure to rename the State Law Library in honor of the late legal scholar Bernard Witkin.

6The state Supreme Court held that a three-strikes defendant can be punished for a past juvenile conviction, at age 16 or 17, in the same way as an adult. The court interpreted the three-strikes law as allowing for serious or violent felonies tried in juvenile court in non-jury trials as "strikes."

7A criminal defendant has no constitutional right to discover the alleged victim's mental health records prior to trial, the state Supreme Court ruled.

9The Court of Appeal for this district upheld a City of Los Angeles ordinance allowing zoning officials to place operating restrictions on a business, such as a sex shop, which becomes a public nuisance or spawns activity which disturbs public order.... Los Angeles City Attorney James K. Hahn said the city's Planning Commission couldn't participate in the approval process for the $ 200 million downtown sports arena project because of a conflict of interest. Commissioner Gerald Chaleff had recently joined a law firm that acted as bond counsel for outstanding Convention Center bonds impacted by the project.

10A defendant who pleads no contest after being denied the right to represent himself may appeal the resulting conviction, the Third District Court of Appeal ruled.... Gov. Pete Wilson named personal injury and medical malpractice attorney Richard B. Wolfe to the Los Angeles Superior Court, succeeding Judge Gordon Ringer, who retired four days earlier.

13A Senate Appropriations Committee panel voted to divide the San Francisco-based Ninth U.S. Circuit Court of Appeals under a reorganization that could leave California with its own federal appellate court. Gov. Pete Wilson opposed any split, calling the plan "judicial gerrymandering."...Senior U.S. District Court Judge David Kenyon of the Central Distinct of California announced his retirement.

14The Court of Appeal for this district reinstated a palimony suit by the ex-lover of famed trial lawyer Johnnie L. Cochran Jr, holding that the failure to provide support, not the ending of the relationship, triggers the time in which to sue.... South Bay Municipal Court Judge James R. Brandlin was elevated to the Los Angeles Superior Court by Gov. Pete Wilson, who also appointed Santa Anita Municipal Court Commissioner Carol W. Elswick to the Citrus Municipal Court. Brandlin succeeded Judge Hiroshi Fujisaki, who retired a week earlier, while Elswick filled a newly created position.

15The prevailing plaintiff in a suit for conversion may recover damages for emotional distress, the Fourth District Court of Appeal ruled.

16A crime victim who discharges a debt in bankruptcy is still entitled to restitution where the debt was created by a criminal act, the Fourth District Court of Appeal ruled.... The state Supreme Court let stand a ruling requiring Los Angeles County to repay 90,000 welfare recipients $ 73 a month that it illegally withheld from their benefits for two years.

17A school official didn't violate the civil rights of a student who was detained, during school hours, for two hours during which she and other students were searched for evidence that they had been smoking near the school, the Ninth U.S. Circuit Court of Appeals ruled.

21An injured employee's right to payment of reasonable litigation expenses and attorney fees before

having workers' compensation benefits deducted from a recovery against a third person isn't lost because the worker unsuccessfully sought to improve on an arbitration award in a trial de novo, the state Supreme Court ruled unanimously....Orange Superior Court Judge Frank Fasel dismissed kidnapping and robbery convictions of a Rowland Hights man and his babysitter as the result of allegations that another since-retired jurist, George Trammell III, acted improperly because he was in love with the wife of the defendant.

22The terms of a statutory appeal bondincluding restrictions on the right of personal sureties to rescindare governed by statue and may not be varied by additional language, the First District Court of Appeal held....Testimony offered under an exception to the rape shield law cannot be excluded solely because the witness does not appear credible, the First District Court of Appeal ruled.

24Retired Supreme Court Justice William J. Brennan died at the age of 91....Ninth U.S. Circuit Court of Appeals Senior Judge William Norris announced that he would leave the court to join the Los Angeles firm of Folter, Levin & Kahn.

25The educational benefits of allowing the student senate at the University of California, Berkeley to adopt political resolutions outweigh burdens on the speech and associational rights of dissenting students, the First District Court of Appeal ruled.

26San Diego attorney Marc Adelman was elected president of the State Bar of California, defeating Alameda Assistant Public Defender Pauline Weaver, after the only public member in the contest, television editorial director Peter Kaye, told the Board of Governors the organization should continue to be led by a lawyer and endorsed Adelman....The Board of Governors rejected a recommendation by the committee which it appointed to review the Commission on Judicial Nominees Evaluation, which would have allowed the governor's appointments secretary to observe meetings and deliberations of the commission. It instead agreed "in principle" to allow the governor to send a representative to a review panel that considers candidates' appeals from JNE Commission ratings.

28The Court of Appeal for this district, for the second time, upheld a multi-million dollar race discrimination award against Hughes Aircraft Co., overturning Los Angeles Superior Court Judge Malcolm Mackey's order granting the company a judgment notwithstanding the verdict. The case had been remanded by the state Supreme Court with directions to consider the effect of two high court decisions from the 1970s dealing with the scope of judicial discretion to grant a new trial, but the lower panel found the cases inapposite.... South Bay Municipal Court Judge Benjamin Aranda III, First District Court of Appeal Justice Carol Corrigan, and San Diego Municipal Court Presiding Judge Michael B. Orfield were named to the California Judicial Council by Chief Justice Ronald George. The chief justice also re-appointed Los Angeles Municipal Court Commissioner Nori Anne Walla as a non-voting advisory member.

29Timothy McOsker, a leading expert in municipal law, was named City Attorney James Hahn's chief deputy.

30A retired peace officer isn't entitled to a full evidentiary hearing before being denied permission to carry a concealed firearm, the Third District Court of Appeal ruled, upholding a statute which allows a three-member board to rule on such requests following an informal hearing.

31The Fish and Game Commission can't remove a species from a list established under the California Endangered Species Act without evaluating adverse impacts on the environment and responding to public comment, the state Supreme Court held in a 5-2 decision+.Imposition of a three, four, or five-year enhancement is mandatory when a defendant convicted of armed assault personally used a firearm during commission of the crime, the high court held in a 6-1 ruling.

August

1A challenge to a referendum in which voters in the East Bay city of Albany narrowly approved a gaming cardroom at Golden Gate Fields racetrack was revived by the First District Court of Appeal.

Justice Douglas Swager, writing for Div. One, said the city violated state law by phrasing the referendum question in a manner which parroted arguments in favor of the cardroom while ignoring the opposing position+.The state Supreme Court upheld the death sentence of Barry Glenn Williams, a Los Angeles man convicted of fatally shooting an alleged member of a rival gang nine months after committing another gang related murder+.Third District Court of Appeal Justice Keith Sparks retired.

5The California Supreme Court, in a 4-3 decision, struck down a statute requiring unemancipated minors to obtain the consent of a parent or judge before getting an abortion as violative of the state Constitution's privacy guarantee. The court previously upheld the law in a 4-3 decision, but granted rehearing after two members of the majority, then-Chief Justice Malcolm Lucas and then-Justice Armand Arabian, retired....The Commission on Judicial Appointments confirmed the appointment of Fresno Superior Court Judge Herbert I. Levy to the Fifth District Court of Appeal+.Margaret Ann Nagle, a partner in Stroock & Stroock & Lavan; Ralph Allan Zarefsky, a partner in Baker & Hostetler; and Ann I. Jones, director of the Los Angeles office of the Federal Trade Commission, were named magistrate judges of the U.S. District Court for the Central District of California+.A Ventura Superior Court judge didn't abuse his discretion when he ordered a murder defendant to wear an electric restraining belt capable of delivering a 50,000-volt shock during trial, this district's Court of Appeal ruled. Writing for Div. Six, Justice Kenneth T. Yegan said concluded that the invisibility of the device to the jury, combined with Anthony Garcia's history of violence and the potential for violence in the courtroom, justified the use of the belt.

6Diane Yu, the general counsel of the State Bar since 1987, announced that she would leave her post to accept a high-level position in the Monsanto Company's legal division+.Gov. Pete Wilson named Downey attorney Brian Gasdia to the Downey Municipal Court, succeeding Robert Drees, who retired.

7The contents of an unsworn police report may be enough to sustain the Department of Motor Vehicles' burden of proof in an administrative review of a driver's license suspension pending prosecution for drunk driving, the California Supreme Court ruled unanimously+.The high court ruled unanimously that a statute which grants limited immunity to licensees of long-term health care facilities when their actions are reasonable doesn't relieve the licensees of vicarious liability for the unreasonable actions of their employees+.A ruling by this district's Court of Appeal that it would be an abuse of discretion to strike the prior convictions of a three-strikes defendant didn't bar the sentencing judge from doing just that on a subsequent petition for habeas corpus, the appellate court ruled. The opinion was certified for publication Sept. 4.

11Orange Superior Court Judge Ronald C. Kline, sitting on assignment as a Los Angeles Superior Court judge, overruled the Los Angeles Superior Court's demurrer to a complaint by former Commissioner Antoinette Liewen. Liewen is suing the court for allegedly terminating her due to a disability.

12Gov. Pete Wilson signed SB 1296, by Senate President Pro Tem Bill Lockyer, D-Hayward, strengthening the state law curbing "strategic lawsuits against public participation" or SLAPPs.

14A litigant's cause of action may not be dismissed for failure to comply with local fast-track rules where the rules placed the responsibility for compliance on counsel, the California Supreme Court ruled unanimously+.A former employee of a roof-repairing contractor wasn't entitled to take his collection of customer business cards for the purpose of soliciting business for his new roofing company, the First District Court of Appeal held.

15Proposition 215, the initiative permitting "compassionate" use of marijuana, provides a defense to the a charge of transporting the drug in some cases, the First District Court of Appeal ruled. Justice Paul Haerle, writing for Div. One, said the amount and method of transportation must be "reasonably related to the patient's current medical needs."

16A Ninth U.S. Circuit Court of Appeals task force, in a paper presented at the annual circuit judicial

conference, said there was little racial bias in the circuit's federal courts, although a number of court employees reported hearing disparaging remarks at work and minorities appeared to be concentrated in middle- and lower-level jobs.

18A divided panel of the Ninth U.S. Circuit Court of Appeals ruled that California does not qualify for a drastic speedup of federal death penalty habeas corpus proceedings because the state's system of appointing lawyers for those cases failed to meet standards established by a 1996 law+.Gov. Pete Wilson, exercising his line-item veto authority, deleted from the state budget a provision which would have limited fees of most outside counsel to $ 125 per hour.

19The State Bar of California named Steven A. Nissen, a Los Angeles attorney and longtime executive director of the pro bono law office Public Counsel, as its new executive director, succeeding the retiring Herbert Rosenthal+.Testimony based on repressed memory, recalled only under the influence of the barbiturate sodium amytal , lacks general scientific acceptance as to its reliability and is thus inadmissible, this district's Court of Appeal ruled.

20A veteran prosecutor blasted District Attorney Gil Garcetti, claiming her removal from the case of suspected serial killer Glen Rogers was a "pay-back" for her efforts to persuade Los Angeles City Attorney James Hahn to run against her boss last year. Deputy District Attorney Lea P. D'Agostino made the charge at a Criminal Courts Building press conference at which she was flanked by her attorney, Gloria Allred, and the mother of a woman allegedly killed by Rogers in Van Nuys+.A lawyer fired by a city attorney's office after accusing her superiors of corruption and suing the city is not entitled to reinstatement because her accusations are so serious that her presence would be disruptive, the Ninth U.S. Circuit Court of Appeals ruled.

21Deputy Attorney General Clara Slifkin was elected to the State Bar Board of Governors from Los Angeles County's District Seven. Also elected to three-year terms on the board were Valerie Ann Miller of Chico, Palmer B. Madden of Walnut Creek, Paul S. Hokokian of Fresno and Thomas J. Warwick Jr. of San Diego+.Gov. Pete Wilson named Philip Gutierrez, a partner in the Los Angeles firm of Cotkin& Collins, to the Whittier Municipal Court. Gutierrez, who practiced in the fields of business litigation, insurance bad faith and coverage, and professional liability out of the firm's Santa Ana office, succeeded Judge Abner Fritz, who retired in June.

22A train operator didn't owe a duty to a drunken passenger to take measures to prevent the passenger from injury after he disembarked, a divided panel of the First District Court of Appeal ruled+.The Judicial Council voted to initiate a process of penalizing trial courts that have not fully coordinated their operations by withholding money and new judgeships. But after a 90-minute debate on semantics and politics, the council decided that the penalties should not be referred to as "sanctions."

25Overturning a 1902 state high court ruling, the California Supreme Court ruled that an agency condemning part of a property owner's land may offset the value of benefits which accrue to the community generally, as well as to the remainder of the parcel alone, against severance damages.

26A landlord is not entitled to recover losses under an invalid rent control regulation through an action for damages if an adjustment of future rents will make the property owner whole, the California Supreme Court ruled. In a 5-2 decision, the justices affirmed the dismissal of Earl W. Kavanau's suit, in which he accused the City of Santa Monica of "stealing" when it enforced a regulation limiting rent increases to 12 percent per year+.Changes in the rules governing admissibility of evidence at preliminary hearings, made by Proposition 115, do not render testimony given at such hearings inadmissible at trial when offered under the prior-testimony exception to the hearsay rule, the Fourth District Court of Appeal ruled+.Dave Stirling, chief deputy attorney general for seven years, announced he would run for state attorney general next year.

27A worker fired due to age by an employer with five or more employees has a common-law claim for wrongful termination in violation of public policy, the California Supreme Court ruled in a 6-1 decision....Public policy bars a man from recovering damages from his ex-wife for emotional distress resulting from her effort to destroy his relationship with their child by disclosing during divorce

proceedings that he was not the biological father, this district's Court of Appeal ruled....Similarities between a plaintiff's name and appearance as a youth and the name and appearance of a character in a fictional motion picture didn't constitute defamation or invasion of privacy, this district's Court of Appeal ruled+.A prosecutor who fails to prove a defendant's previous conviction, or "strike," at a first trial may try again, the state Supreme court ruled.

28The state Supreme Court limited the scope of its June 1996 ruling that judges have discretion to strike prior-conviction allegations under the three-strikes law, holding in a 4-3 decision that a defendant is not automatically entitled to re-sentencing in a case where the judge was silent as to whether the allegation would have been stricken if the judge believed that option available.

29There was no basis for the appointment of a special probate administrator in California to commence a claim against the estate of Ferdinand Marcos, the former president of the Republic of the Philippines, this district's Court of Appeal ruled.

31Ninth U.S. Circuit Court of Appeals Judge Cynthia Holcomb Hall took senior status.

September

2Former Los Angeles City Ethics Commission chief Benjamin Bycel took over as president of the University of West Los Angeles, an Inglewood-based school offering legal education and paralegal instruction. He succeeded retired Presiding Justice Bernard Jefferson of this district's Court of Appeal, who became president emeritus.

3A state law setting goals for the hiring of minority and female contractors was held unconstitutional, the Ninth U.S. Circuit Court of Appeals ruled....A former Peruvian street vendor, who claimed that if he returned to his homeland he would be killed by Maoist guerrillas because of his efforts as president of a vendors cooperative, is not entitled to political asylum, the Ninth U.S. Circuit Court of Appeals ruled. Ernesto Antonio Vera-Valera's dispute with the Sendero Luminoso, or Shining Path, was economic, not political, Judge Mary Schroeder concluded for a divided panel....The Lake Elsinore Unified School District violated the free-speech rights of an employee suspended for sending anonymous faxes to bidders on a construction contract accusing officials involved in the selection process of a conflict of interest, the Fourth District Court of Appeal ruled....The litigation privilege bars a tort action by one attorney against another for a communication during a judicial proceeding which allegedly violated the Rules of Professional Conduct, this district's Court of Appeal ruled. Div. Seven, in an unpublished opinion by Justice Earl Johnson Jr., rejected Reg Fudge Jr.'s suit against Stuart Fest for defamation and intentional and negligent infliction of emotional distress in connection with Fest's claim that Fudge was hiding assets from Fest's client, who won a judgment for damages based on claims Fudge molested her as a child.

5The Ninth U.S. Circuit Court of Appeals upheld the military's "don't ask, don't tell" policy, saying two service members who publicly declared their homosexuality were properly discharged+.Los Angeles Senior Assistant City Attorney Cheryl Ward brought a tort claim against the City of Pasadena, claiming that it violated her privacy by leaking information regarding past bankruptcy filings prior to withdrawing its offer to appoint her as city attorney.

7The State Bar Board of Governors amended Rule 662 of the association's Rules of Procedure to permit permanent disbarment of attorneys who commit serious ethical violations.

9A failed gambler who sues a card club for failing to prevent cheating cannot recover in the absence of proof that the alleged chicanery caused the player's losses, the Court of Appeal for this district ruled.

11Los Angeles Superior Court Assistant Presiding Judge Victor Chavez was named by the Metropolitan News-Enterprise as 1997 "Person of the Year."

12The State Bar Conference of Delegates gave overwhelming approval to a resolution calling for a

return to arbitrators of the same immunity from civil liability enjoyed by judicial officers. The conference also approved a resolution sponsored by the Beverly Hills Bar Association to grant arbitrators judicial immunity when they are acting in court-supervised proceedings.

13State lawmakers approved a plan calling for the state to gradually assume a larger percentage of the trial courts' costs. Los Angeles County is projected to save $ 91.3 million and may receive seven new judges, spokespersons for Gov. Pete Wilson and the Legislature said.

14Los Angeles Superior Court Judge Diane Wayne retired.

15A businessman who was threatened by Peru's Maoist guerrillas after he refused their extortion demands cannot be deported, the Ninth U.S. Circuit Court of Appeals ruled. Evidence showed that the business was economically viable and that the extortion was based on politics, not economics, Judge Mary Schroeder said.

16A city may establish public safety requirements governing the sale of firearms, beyond those specified by state law, as part of local zoning regulation, the First District Court of Appeal ruled.

19A rapist who was committed to a mental institution on a year-to-year basis was denied due process by a judge who continued the commitment after the San Joaquin District Attorney's Office failed to timely file a petition to extend it, the Third District Court of Appeal ruled+.Home Depot, the nation's largest home improvement chain, agreed to pay $ 65 million to female employees and job applicants in 10 Western states to settle a sex discrimination suit.

21On the eighth day of a of a rolling sick-out, Los Angeles Superior Court Judge Ricardo Torres ruled that Sheriff Sherman Block could summarily discipline deputies for calling in sick without medical verification.

23A federal judge in Sacramento dismissed a suit by Assemblyman Bill Morrow, R-Oceanside, former state Sen. Barry Keene and former San Diego City Councilman J. Bruce Henderson, seeking to enjoin the State Bar from lobbying. U.S. District Judge Garland E. Burrell Jr. of the Eastern District of California said the plaintiffs failed to show the organization's support for a bill to lift the cap on medical malpractice awards compelled lawyers to "speak" against their beliefs.

25A University of California employee who claims he was fired for complaining about his superior's unsound business practices, but who didn't meet the requirements for suing under the governmental whistleblower's statute, may pursue a common-law wrongful termination claim, this district's Court of Appeal ruled.

26Legislation permitting expert testimony on the issue of battered women's syndrome doesn't abrogate prior law prohibiting the use of experts to prove whether a criminal defendant had the mental state requisite to the commission of the charged crime, the Fifth District Court of Appeal ruled.

29South Gate City Treasurer Albert Robles may have an irreconcilable conflict of interest in serving on the Central Basin Municipal Water District's Board of Directors, Attorney General Dan Lungren opined in granting a private citizen leave to sue in quo warranto.

30Solicitation to possess a controlled substance isn't a deportable offense when an alien is convicted under a general solicitation statute, the Ninth U.S. Circuit Court of Appeals ruled on rehearing. The panel had reached the opposite conclusion seven months earlier....Gov. Pete Wilson announced that he had signed legislation to commission a study on the implications of eliminating the retirement penalty on judges who work past the age of 70.

October

1A Los Angeles Airport Police lieutenant violated an officer's rights by questioning him about an

unauthorized trip to a doughnut shop without informing him he was under disciplinary investigation for having allegedly failed to stop and render aid at the scene of a fatal traffic accident he passed on the way, the Court of Appeal for this district ruled+.The Commission on Judicial Performance publicly admonished Long Beach Municipal Court Judge Elvira Austin for using the authority of her office to get a friend released from jail.

2Los Angeles Superior Court Judge Judith Chirlin suffered a heart attack in Sofia, Bulgaria, while visiting the Eastern European nation as part of an educational program for Bulgarian judges+.More than 400 court reporters walked off the job after rejecting the court's proposed pay package+.This district's Court of Appeal upheld murder and kidnapping convictions in the 1983 "Cotton Club" murder case. Cocaine supplier Karen DeLayne Greenberger and three accomplices she hired were found guilty of kidnapping and killing Roy Radin for stealing drugs from Greenberger and for cutting her out of a deal to help Robert Evans produce the movie about a legendary Harlem jazz club. In a 152-page opinion by Los Angeles Superior Court Judge Stanley Weisberg, sitting on Div. Four on assignment, the court ruled that a criminal defendant's declarations against interest may be received in a joint trial without depriving the co-defendants' of their Sixth Amendment right to confront the witnesses against them.

3Striking court reporters in Los Angeles County returned to work.

6The U.S. Supreme Court denied bids by California and Arizona for review of Ninth U.S. Circuit Court of Appeals rulings that states must seek reimbursement for the cost of providing services to illegal aliens through the political process, rather than the courts+.The high court let stand the California Supreme Court's ruling allowing across-the-board drug testing of applicants for municipal employment.

7A divided Ninth U.S. Circuit Court of Appeals panel struck down Proposition 140, the term limits initiative, saying it violated due process because voters weren't adequately informed that a lifetime ban was being imposed+.The Commission on Judicial Performance initiated formal proceedings against Riverside Superior Court Judge Christopher Sheldon, accusing the 48-year-old jurist of delegating judicial duties to clerks, who entered pleas while the judge was absent from his misdemeanor pretrial calendar.

13Gov. Pete Wilson vetoed the State Bar dues bill, saying the $ 458 impost authorized by the legislation was too steep and that the organization had deviated too far from its duties of educating, testing and disciplining California lawyers.

14The Court of Appeal for this district rejected a vagueness challenge to a state law designed to block the cloning of cellular telephones+.State securities fraud laws don't apply to the negotiation of a marital settlement agreement involving stock, the Fourth District Court of Appeal ruled.

15A judge cannot accept a cash prize from a private charity seeking to recognize the jurist's personal or professional achievements, Attorney General Dan Lungren opined, because it would violate the statute banning gifts to judges. The opinion was requested on behalf of Santa Clara Superior Court Judge Leonard Edwards, who was named by the California Wellness Foundation last year as one of three recipients of its $ 25,000 California Peace Prize Award.

17The death of a worker whose fatal heart attack was found to be a direct result of an upsetting phone call from his employer was not job-related for workers' compensation purposes, the Court of Appeal for this district ruled.

21The White House announced the nomination of Los Angeles attorney A. Howard Matz, a partner in the litigation firm of Bird, Marella, Boxer, Wolpert & Matz and former assistant U.S. attorney, to the U.S. District Court for the Central District of California.

23A Ventura Superior Court judge abused his discretion when he declined to sentence a convicted thief under the three-strikes law solely because his first "strike" was 20 years old, this district's Court

of Appeal ruled+.Judge George Schiavelli was named to the Los Angeles Superior Court Appellate Department, replacing Judge Barbara Jean Johnson, who retired the following month.

24The Court of Appeal for this district reinstated murder and insurance fraud charges against Elena Shamis. Justice Richard Aldrich, writing for Div. Three, said there was sufficient evidence to show that Shamis, who was the office manager for former Encino lawyer Gary Paul Miller, was actively involved in the planning of a staged traffic accident in which one of the participants was killed. Miller was convicted of fraud and conspiracy and sentenced to six years in prison last year, but jurors deadlocked on a murder charge against Miller+.A police officer or deputy sheriff who doesn't have a basic certificate issued by the Commission on Peace Officer Standards and Training can't make arrests, other than citizen's arrests, or exercise other "peace officer" powers, Attorney General Dan Lungren opined.

27A pregnant woman whose child dies in utero as a result of medical malpractice during delivery may recover emotional distress damages as a direct victim of negligence, but is not entitled to damages for the loss of the unborn child's companionship, the Fourth District Court of Appeal ruled+.This district's Court of Appeal upheld Proposition 213's ban on recovery of non-economic damages by uninsured drivers.

28The takeover of Hong Kong by China doesn't render the former British Crown Colony an unsuitable forum for litigation, the Court of Appeal for this district ruled. The decision overturned Los Angeles Superior Court Judge Ronald Cappai's ruling that a suit against two local residents in connection with a Hong Kong-sited business transaction could proceed here because the defendants might not receive due process in Hong Kong.

29Conservative activists, led by U.S. Sens. John Ashbrook, R-Mo., and Jefferson Sessions, R-Ala., announced a drive to block Margaret Morrow's confirmation as a U.S. district judge for the Central District of California.

30A child's suit against its mother's employer for prenatal injuries is not barred by the workers' compensation exclusivity rule, the California Supreme Court ruled.

November

4As courthouses reported heavy absenteeism, about 200 Superior Court and Municipal Court clerks packed the Board of Supervisors meeting to protest the county's offer of a 10 percent pay hike over three years+.The Ninth U.S. Circuit Court of Appeals granted an en banc hearing on Proposition 140, the initiative imposing term limits on members of the Legislature.

5Most of the county's 400 Superior Court clerks and judicial assistants stayed away from work to protest the city's offer of a 10 percent pay hike over three years+.U.S. District Court Judge Stephen V. Wilson ruled that Los Angeles Superior Court Judge John Leahy violated the civil rights of court clerks' union president Karleen George when he banned her from his courtroom in retaliation for criticizing the judges in a statement before the county Board of Supervisors.

6U.S. District Judge James Ware withdrew his bid for appointed to the Ninth U.S. Circuit Court of Appeals after admitting he lied about being the brother of a black boy shot to death by whites in Birmingham, Ala., in 1963+.The California Public Employee Retirement System said it would pay for the flight from Switzerland to the United States and for the medical care required by Superior Court Judge Judith Chirlin, who was recovering in Zurich after suffering severe heart problems while conducting an educational program in Sofia, Bulgaria.

7The U.S. Senate confirmed the nomination of Christina A. Snyder to the U.S. District Court for the Central District of California, and Sen. Barbara Boxer announced an agreement under which the nomination of Margaret Morrow to the court will come to the Senate floor before the President's Day recess in February+.Striking Superior Court clerks rejected the county's "last, best and final offer" to end the walk-off+.Republican senators agreed to the appointment of a commission to study

restructuring of the appellate courts in lieu of pressing forward with a move to split the Ninth Circuit.

10State Bar Executive Director Steven Nissen acted to halt raises that were given to some management employees and staff before Gov. Pete Wilson cut off the bar's funding.

11The State Bar Court ruled that the State Bar cannot discipline a lawyer for defaming judges absent proof the attorney knew the statement was false or made in reckless disregard of the truth.

12Ninth U.S. Circuit Court of Appeals Senior Judge Cecil F. Poole died at age 83+.Los Angeles attorney Stephen Yagman was sworn in as a special prosecutor in an involuntary manslaughter case stemming from a deadly FBI standoff with a white separatist in Ruby Ridge, Idaho.

13Los Angeles Superior Court Judge Abby Soven said she would retire in January+.Gov. Pete Wilson named Southeast Municipal Court Commissioner Raul Sahagun and Downey Municipal Court Commissioner Jesus Rodriguez judges of those courts, succeeding retired Judges Frank Gafkowski and Donald Wilson, respectively.

14Los Angeles County's trial court consolidation plan failed to win the Judicial Council's approval, leaving the county last in line for state trial court funding an new judgeships+.U.S. District Judge Mariana Pfaelzer ruled that Proposition 187, which bans public benefits to illegal immigrants, is an unconstitutional intrusion on the federal government's authority over immigration+.State Bar President Marc Adelman said his Veterans day meeting with two of Gov. Pete Wilson's aides left him with the impression the governor wants the state Bar to emerge strong from its current fiscal crisis.

17Ray L. Hart was elected assistant presiding judge of the Los Angeles Municipal Court and Veronica S. McBeth was elected presiding judge, the court announced+.Striking court clerks returned to work in the wake of a settlement with the Los Angeles Superior Court+.The U.S. Supreme Court rejected Justice Department arguments and ruled that the city of Monroe, Ga. may continue to elect its mayor and city council members at-large.

18Div. Four of this district's Court of Appeal rejected a bid by Deputy District Attorney Malcolm Jordan to overturn a judge's order denying Jordan attorney fees under the private attorney general statute. The court a year earlier ruled that the Civil Service Commission had enough evidence to conclude that Jordan's failure to be promoted during District Attorney Ira Reiner's tenure was due to Jordan's political activities+.The Judicial Council announced that Gov. Pete Wilson would be awarded the Bernard E. Witkin Amicus Curiae Award for his support of the Trial Court Funding Act.

19The Los Angeles County Bar Association Board of Trustees selected Court of Appeal Administrative Presiding Justice Charles S. Vogel to receive the association's 1998 Shattuck-Price Memorial Award+.Baker & Hostetler partner Michael M. Johnson and Los Angeles Municipal Court Judge Craig Veals were appointed to the Los Angeles Superior Court. Deputy District Attorney Lawrence Mason was named to the Inglewood Municipal Court+.The state Supreme Court ruled that a permit applicant's acceptance of a continuance can waive the strict time limits placed on planning agencies for approving or disapproving development permits+.The Fourth District Court of Appeal ruled that a child younger than the victim may be charged with committing a lewd act upon a minor.

20The Los Angeles Superior Court reached a contract accord with the court reporters' union that provides most reporters in the county with a pay increase over four years but also grants, for the first time, an additional pay incentive to more highly skilled, certified "real time" reporters+.Gov. Pete Wilson named Robert John Shuit, an assistant U.S. attorney in Las Vegas, to the Los Angeles Municipal Court bench+.This district's Court of Appeal held that where an action for selling below cost or other conduct specifically proscribed by the Unfair Practices Act fails because the plaintiff cannot show injurious intent, the conduct might still be enjoinable under the Unfair Competition Act upon a showing of "unfairness."

21Lawyers who run for judge must follow the same ethical rules as judges, including restrictions on their political activities and comments on legal issues under rules approved by the state Supreme Court. The action filled a legal gap that had largely exempted lawyers from the disciplinary standards governing judges they wanted to unseat+.The Association of California State Attorneys and Administrative Law Judges may file suit against the Los Angeles law firm of Irell & Manella to seek repayment of $ 250,000 in state funds paid on an illegal contract, but first should ask the state controller to bring the suit, a Sacramento Superior Court judge ruled+.The Ninth U.S. Circuit Court of Appeals ordered implementation of Arizona's parental consent law for minors' abortions.

22The Superior Court Clerks' Association voted to approve a contract that will increase members' salaries by 16 percent over the next four years+.A state law requiring a fired or suspended teacher to pay half the costs of an appeal proceeding deprives the teacher of due process, the Third District Court of Appeal ruled.

24The assumption-of-risk doctrine bars a recreational skier from recovering damages from a fellow participant for simple negligence, even if the defendant violated a local safety ordinance, the state Supreme Court ruled+.The State Bar's Committee of Bar Examiners announced that 4,851 applicants passed the July 1997 State Bar examination. The figure represents 62.9 percent of those who sat for the three-day exam.

25A ruling by the Commission on State Mandates, allowing a county to cut general assistance payments, is subject to judicial review under the independent-judgment test, the Third District Court of Appeal ruled.

26A police officer who commits the same crime as a civilian can be charged more harshly, since police are supposed to uphold the law, this district's Court of Appeal ruled.

27A confession of judgment, which must be accompanied by a declaration of an attorney independently representing the defendant, may not be signed by the attorney as representing himself, the Third District Court of Appeal ruled+.Los Angeles Superior Court Judge Edward Kakita was named presiding judge of the court's Appellate Department for 1998 by Chief Justice Ronald George, and Superior Court Presiding Judge Robert W. Parkin announced the rest of the court's judicial assignments.

28A law firm cannot avoid the high cost of a deposition transcript by using a business records subpoena, the Court of Appeal for this district ruled.

December

1A deponent may be required to reenact an event on videotape, the state Supreme Court ruled....Kings County Municipal Court Judge Ronald Maciel was publicly admonished by the Commission on Judicial Performance for ex parte contacts with the lawyer he appointed to represent a defendant in a capital murder case.

2The Los Angeles Superior Court adopted a new rule, to take effect Jan. 1, restricting journalists' right to photograph and record in courthouses....The Superior Court also released a new fee schedule that for the first time imposes a charge $ 75 for filing a cross-complaint or amending a pleading....Public Counsel Law Center named attorney Daniel Grunfeld its new general counsel and chief executive officer to succeed Steven Nissen, who left to become executive director of the State Bar of California....The U.S. Supreme Court ruled that states may not elect members of Congress before the November national election day. The decision struck down part of Louisiana's open primary, in which a candidate is declared the winner if he or she garners more than half the votes cast in the October primary.

3A judge's failure to define reasonable doubt requires reversal of the defendant's conviction, even if counsel explained the concept in their closing arguments, the Court of Appeal for this district ruled....The First District Court of Appeal again ruled against the Judicial Council on electronic

reporting, affirming an injunction barring superior courts from using recording devices to create official transcripts and also barring the use of state money to pay for such recording....Presiding Justice J. Anthony Kline of the First District Court of Appeal's Div. Two said he could no longer obey a 1992 state Supreme Court decision that lets the parties in a lawsuit erase previous rulings in order to settle their case.

4A sharply divided state Supreme Court ruled that the former trustee of a private trust can't invoke the attorney-client privilege to avoid disclosing information regarding trust administration to the successor trustee....The high court also ruled that local governments in California may sue utilities for antitrust violations without seeking the state attorney general's approval....Attorney Judy S. Craddick was appointed judge of the Contra Costa Superior Court.

5A school district may not implement a "zero-tolerance" policy of automatic expulsion for any student possessing drugs or alcohol, according to an opinion filed by Attorney general Dan Lungren....The Bankruptcy Appellate Panel for the Ninth Circuit ruled that recording a lis pendens on property of a Chapter 13 debtor violates the automatic stay.

8Retention elections for justices of the state Court of Appeal are subject to Proposition 208's campaign finance rules limiting individual contributions, state Fair Political Practices Commission attorney Lisa Ditora said....A criminal defendant tried by jurors whose names were known to the judge and lawyers but who were identified in court only by number wasn't denied a public trial, the Court of Appeal for this district ruled....The Ninth Circuit reinstated a civil rights lawsuit against the prosecutors who obtained the convictions of Lyle and Erik Menendez at their second trial for the murder of their parents, ruling that David Conn and Carol Najera aren't immune from liability for allegedly arranging to have a search warrant for the attorney of a witness executed while his client was testifying before the grand jury.

9The Fourth District Court of Appeal ruled that a defendant convicted of assault with a firearm is permanently barred from carrying a gun in California, and a judge is without authority to grant relief from that provision.

10The U.S. Supreme Court narrowed double-jeopardy protections for people who face both civil fines and criminal prosecution for the same conduct....The First District Court of Appeal ruled that a city's power to preserve historic buildings prevails over a landlord's right to demolish his apartment buildings and go out of the rental business.

12Los Angeles Superior Court Executive Officer/Clerk John Clarke and Los Angeles Municipal Court Administrator Frederick Ohlrich said they were negotiating a plan under which the smaller court's shorthand reporters would go to the larger court, in exchange for the Superior Court's electronic recording monitors. The two administrators said the plan would allow the courts to comply with a recent ruling that bars the use of state funds for electronic recording while saving the jobs of the people who run the tape machines in 80 Superior Court courtrooms....State Chief Justice Ronald George said he planned to mount a "pro-active" 1998 campaign to retain his seat....The First District Court of Appeal ruled that Proposition 215, which legalized the possession and cultivation of marijuana for medical purposes, did not legalize the sale of the drug, even on a non-profit basis.

13The State Bar Board of Governors set a Dec. 30 meeting to decide the final version of the dues bill it will send to the Legislature in January.

15An employee who is contractually obligated to resell his shares to a corporation on termination of employment retains his shareholder rights after leaving, in the absence of specific language to the contrary, the state Supreme Court ruled....Los Angeles Superior Court Commissioner David S. Wesley was appointed a judge of the court to succeed Diane Wayne, who retired in September.

16The Ninth Circuit rejected a bid to compel public funding of judicial races, holding that the state has no constitutional obligation to provide free ballot statements or other forms of public financing to candidates for the Los Angeles Superior Court....Assemblyman Robert Hertzberg, D-Van Nuys, said

he would introduce a State Bar dues bill in January. He said the bill would call for some restructuring of the organization, but that it would specify neither how to restructure nor how much dues should be....State Insurance Commissioner Chuck Quackenbush publicly apologized to Attorney General Dan Lungren, saying earlier accusations that Lungren violated legal ethics were "inaccurate."

17The Ninth Circuit ruled that a federal habeas corpus petitioner's otherwise untimely claim that he was denied due process may form the basis of a new trial order when he also meets the "miscarriage of justice" exception to the abuse-of-the-writ doctrine, the Ninth Circuit ruled.

18This district's Court of Appeal ruled that the requirement that an action for intentional interference with prospective economic relations be tied to independently wrongful conduct does not mean that the plaintiff must have a cause of action based on that conduct....The nation's first privately run federal prison opened near the Kern County city of Taft.

19The Ninth U.S. Circuit Court of Appeals overturned a lower court ruling that stuck down California's term limits law. In upholding the validity of 1990's Proposition 140, the court rejected the argument that voters were unaware that the measure imposed a lifetime ban on officials holding a particular office after they had "termed out"....In his first public speaking engagement since becoming president of the State Bar in September, Marc Adelman said the organization remains in a "precarious" and "difficult" position following Gov. Pete Wilson's veto of the mandatory dues bill....The signature of a single corporate officer on a contract is inadequate to bind a corporation, Div. Three of this district's Court of Appeal ruled.

22The state Supreme Court unanimously ruled that participation by two gang members in violent criminal activity on the same occasion constitutes a "pattern of criminal gang activity" under the Street Terrorism Enforcement and Prevention Act....The high court also upheld the death sentence of a man who sexually assaulted his neighbor, was released without bail and murdered another woman a few days later.

23A district attorney who reasonably suspects a deputy of using drugs may order that the deputy be tested, and need not have a pre-established policy or negotiate testing rules through the collective-bargaining process, Attorney General Dan Lungren opined+.Elizabeth A. Grimes, a partner in Gibson, Dunn & Crutcher, was named to the Los Angeles Superior Court to succeed Judge Barbara Jean Johnson, who retired.

LOAD-DATE: February 5, 1998

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Los Angeles Times

December 30, 1997, Tuesday, Home Edition

SECTION: Part A; Page 3; Metro Desk

LENGTH: 947 words

HEADLINE: CALIFORNIA AND THE WEST;
HEARSAY COMMENTS IN SEX ABUSE CASES UPHELD;
COURTS: JUSTICES REAFFIRM RULING THAT JUVENILES' STATEMENTS ARE ADMISSIBLE WHEN LIMITING PARENTS' ACCESS.

BYLINE: MAURA DOLAN, TIMES LEGAL AFFAIRS WRITER

DATELINE: SAN FRANCISCO

BODY:
A juvenile court, deciding whether to restrict a parent's access to a child, can consider out-of-court comments the child made to others about being sexually molested even if the child cannot distinguish truth from fantasy in a courtroom, the California Supreme Court ruled Monday.

The 6-1 ruling comes at a time of growing concern over the credibility of young children who make allegations of sexual abuse. "There is an increase in the number of child abuse cases involving very young children, so this will affect quite a few cases," said Stephanie M. Davis, one of the lawyers in the case.

The state high court reaffirmed a precedent that allows juvenile courts to admit out-of-court statements during hearings to determine if a possible sex abuse victim should be made a dependent of the court.

Even if a child is incapable of testifying, the "hearsay" statements about sexual abuse can be admitted if other evidence exists to corroborate the statements, the court said in establishing new requirements for admitting such out-of-court statements.

The decision came in a Los Angeles case in which a 3-year-old girl told a preschool aide that her father touched her vagina. When the case went to Juvenile Court, the girl appeared incapable of understanding the questions posed to her, at one point testifying "the clown" touched her genitals.

The judge said she could not declare the child a competent witness because it was impossible to conclude that the girl "understood the duty to tell the truth" or had "the ability to distinguish between truth and falsity."

Nevertheless, the judge decided that the child's statements to the preschool aide were admissible under an exception in the law for child dependency cases. As a result, the father, who was separated from the girl's mother, was forced to receive counseling and could see his daughter only with supervision.

The father appealed, and a Court of Appeal in Los Angeles upheld the judge's decision. The father asked the Supreme Court to review the case, arguing that a child who is incompetent to testify because of her inability to distinguish truth from fiction must be presumed to have been incompetent when she made the out-of-court statements.

The child, Cindy L., now 7, was attending a Los Angeles County preschool in 1994 when a teacher's aide noticed her touching her vagina during nap time. The aide asked in Spanish: "Cindy, what are you doing? You shouldn't be touching yourself right there."

Cindy replied: "Well, my father always touches me right here."

The aide informed the child's mother, who talked to Cindy that night. The mother said Cindy denied any abuse. After a second incident at the preschool, the director called the Los Angeles County Department of Children and Family Services.

A social worker interviewed the child. "Has anyone touched you in private places?" she asked the girl. Cindy replied, "Yes, Poppie," and demonstrated with her hand. Los Angeles police were called, but investigators could not determine whether abuse had occurred. At the Juvenile Court hearing, the county child welfare department tried unsuccessfully to obtain testimony from the child. The court found Cindy was incapable of testifying.

The Supreme Court, upholding the lower court decisions, established new conditions for admitting out-of-court statements in such cases. The court said these were needed to protect parents.

A juvenile court must find that the "time, content and circumstances" of the statements indicated reliability, and the child must either be available for cross-examination or other corroborating evidence of sexual abuse must exist, the Supreme Court said. A welfare agency also must notify other parties of its intention to introduce hearsay comments so others can contest them.

"The fact of a child's incompetence to testify does not prevent a court from finding that the various circumstances surrounding the child's previous statement--not only its spontaneity, but also the precociousness of the child's knowledge of sexual matters and the lack of motive to lie" indicate reliability and are grounds for admission as evidence, Justice Stanley Mosk wrote for the court.

Justice **Janice Rogers Brown,** in a dissent, said the Legislature, not the court, should determine when hearsay statements can be admitted in such cases.

"The role played by reality, imagination and suggestion in such a child's recollection of events is profoundly mysterious," Brown wrote.

LOAD-DATE: December 21, 1998

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The Recorder

View Related Topics

December 30, 1997, Tuesday

SECTION: NEWS SECTION; PG. 1

HEADLINE: DOUBLE WHAMMY FOR INSURERS

BYLINE: Martin Kassman

BODY:
The California Supreme Court dealt two expensive blows to the insurance industry in a single opinion Monday.

The court held unanimously that a company's investigation of an environmentally contaminated site can fall under "defense costs" that an insurer must pay for as part of its duty to defend.

And in a holding with implications for environmental cases and beyond, the court held by a 5-to-2 vote that insurers aren't entitled to allocate defense costs to a policyholder _pro rata_ based on the policyholder's having been self-insured or uninsured for part of the time when costs were incurred.

Six judges did agree, however, that defense costs may be allocated to the policyholder if the carrier proves that those costs were "not even potentially covered."

Justice Stanley Mosk wrote the majority opinion in _Aerojet-General Corp. v. Transport Indemnity Co._, 97 C.D.O.S. 9704, the second major insurance opinion this year authored by the court's most liberal justice. Chief Justice Ronald George and Justices Kathryn Mickle Werdegar and **Janice Rogers Brown** concurred.

The other justices dissented from various parts of the majority's holding.

Monday's opinion is the latest in a series of major insurance coverage decisions that have arisen from the activities of Aerojet, an aerospace and defense manufacturer in Sacramento County.

The company discharged pollutants into the ground for decades. Its liability to third parties has been estimated at between $500 million and $1 billion, according to Richard Seabolt, a partner at Hancock Rothert & Bunshoft who represents Lloyd's of London and a related company, which were among Aerojet's insurers.

Aerojet sued 54 insurance companies, whose policy periods ranged from 1950 to 1984, for indemnification and defense. A jury held that, because the harm was expected or intended from Aerojet's standpoint, it was not entitled to indemnification. The First District Court of Appeal upheld that verdict, and the Supreme Court limited its review of the case to other issues.

"The big dollar issue for the parties was indemnification," Seabolt said.

But the amount at issue in site investigation expenses wasn't exactly small potatoes: $26.7 million. Retired San Mateo Superior Court Judge John Bible ruled that these were not defense costs and had to be borne by Aerojet. But the court of appeal reversed, and Mosk's majority agreed with the appellate court.

" I f and to the extent that the insured's site investigation is conducted within the temporal limits of

the insurer's duty to defend and amounts to a reasonable and necessary effort to avoid or at least minimize liability, the related site investigation expenses may possibly be defense costs that the insurer must incur in fulfilling its duty to defend," Mosk wrote.

Attorney Nancy Casale, a partner in the Walnut Creek office of Cooper, White & Cooper who represents policyholders in environmental coverage cases, said the holding was "very, very important" because site investigation costs "can be a very significant part of the total damages." Aerojet counsel Scott DeVries of the San Francisco office of Los Angeles' Nossaman, Guthner, Knox & Elliott said the Aerojet site is only one of about 3,500 sites in California that are under investigation for possible remediation.

Justice Joyce Kennard, dissenting in part, would have made an insurer's liability for site investigation depend on whether it was ultimately determined that the insured was, in fact, a polluter and, if so, whether the pollution was deliberate.

Not surprisingly, the two lawyers who argued the case in the Supreme Court have different predictions about what will happen on remand concerning those costs.

"I think we're going to be able to go back down and prove that those site investigation costs were not necessary to their defense," said Seabolt, who argued for the carriers.

"I would call his position wishful thinking," replied DeVries, a partner at Nossaman.

DeVries said his client was "very happy for policyholders in general," though of course disappointed that the Supreme Court didn't disturb the ruling on indemnity, a bigger money item in this case.

On the allocation issue, Mosk relied on his own opinion earlier this year in _Buss v. Superior Court_, 16 Cal.4th 35, in holding that "defense costs that can be allocated solely to a claim, or a part of a claim, that is not even potentially covered can be allocated to the insured."

But the court rejected the insurers' argument that defense costs should be pro rated so that Aerojet would have to pay a portion corresponding to the years in which it was self-insured.

Mosk explained that, once a covered harmful event occurs during a policy period, the duty to defend remains throughout the period during which damage may have occurred. "In a word," he wrote, "although the _trigger_ of the duty to defend is limited to the policy period, the _extent_ of the duty to defend is not."

Mosk also criticized the court of appeal for straying from contractual analysis in favor of "vague 'fairness' and rough 'justice.'"

"Equitable contribution applies _only_ between insurers," he wrote.

The court's holding on allocation "is a terrific victory for the insured," said Cooper's Casale, who was not involved in the case. She said it's very common for companies to have periods during which they're self-insured.

Seabolt agreed that the allocation holding could ultimately be more important than the ruling on site investigation costs. "The allocation issue is a very hot issue in all of these continuous loss cases," he said.

Dissenting Justice Ming Chin, joined by Justice Marvin Baxter, would have required Aerojet to contribute a _pro rata_ share of defense costs. "Instead, the majority hands Aerojet a windfall by forcing successive insurers . . . to pay defense costs they did not contract to provide," Chin wrote.

LOAD-DATE: December 30, 1997

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The San Diego Union-Tribune

December 23, 1997, Tuesday

SECTION: NEWS; Ed. 1,2,3,4,5,6,7,8; Pg. A-1

LENGTH: 1861 words

HEADLINE: State chief justice leads court to middle of road

BYLINE: Bill Ainsworth; STAFF WRITER

BODY:
He counts trial lawyers, civil servants and the Legislature's leading Democrat among his admirers. His critics include anti-abortion activists, property rights advocates and even some crime victims' groups.

But California Chief Justice Ronald George is no lingering liberal left over from Jerry Brown's governorship. Instead, he's Republican Gov. Pete Wilson's own choice to head the state Supreme Court, a judge who caught the governor's attention with his impeccable law-and-order credentials.

When George took the office in May 1996, he was expected to continue the court's 10-year march to the right. Instead, he has surprised both liberals and conservatives by rapidly seizing the political center.

Under George's leadership, the California Supreme Court has strengthened the state's civil service, reaffirmed the discretion of judges to reduce some lengthy criminal sentences and thrown out a law requiring minors to receive parental permission before having an abortion.

But the court has also continued the tradition established by George's predecessor, Chief Justice Malcolm Lucas. It has upheld nearly all death sentences, confirmed the use of civil injunctions against gang members and given its blessing to the most constitutionally vulnerable part of the "Three Strikes and You're Out" law.

"He's leading from the middle," said Santa Clara University Law Professor Gerald Uelmen, who watches the court closely. "It's very different from the Lucas court, where you had a solid conservative majority."

For abortion foes, the difference amounts to betrayal. They plan to make George pay for his decisions by campaigning against him next year when he faces a confirmation election in November.

Ironically, George's judicial independence has pleased two groups of Wilson's political enemies, plaintiffs' attorneys and civil servants.

In his State of the State speech this year, Wilson compared trial lawyers to terrorists. Last month the "terrorists" trade group, the Consumer Attorneys of California, named George "jurist of the year."

Rick Simons, president of the group, which contributes heavily to Democrats, said George received the award not for any specific decision, but for working to keep trial courts operating and "showing a spirit of judicial independence. "

State workers, meanwhile, were happy with a decision by the George court that upset the governor's

efforts to give more state work to private companies.

In a 5-2 vote, the court reaffirmed a constitutional provision that prohibits the hiring of private workers for jobs that state employees can perform.

Case by case George, 57, said he is uncomfortable characterizing his judicial philosophy. "I believe I've steered a steady course in my 25 years on the court," said George, who has served as a judge on various levels since 1972. "We decide each case on its own merits."

His critics, however, have shown no reluctance to classify him.

"He's a judicial activist," said conservative San Diego attorney Mark Pulliam. "He's moving the court to the left."

George enraged conservatives in August when he issued a decision nullifying the parental consent law on the grounds that it violates the state's constitutional guarantee of privacy rights. The law required minors to receive parental consent or a judge's waiver before getting an abortion.

In 1996, the Lucas court upheld the law on a 4-3 vote. But then two justices in the majority retired, Lucas and Armand Arabian. With two new members, the court voted to rehear the case and reversed its earlier ruling.

State Sen. Ray Haynes, R-Riverside, called the decision "reprehensible."

"You shouldn't be playing a political game with a court decision," he said.

The California Pro-Life Council plans to send out mail urging its members to reject George and Associate Justice Ming Chin, who joined the decision to strike the parental consent law, said Jan Carroll, the group's lobbyist.

But even critics like Haynes and Pulliam seem to be retreating from a divisive fight that would split the Republican Party at a time when it's trying to elect a new governor.

George declined to talk about the substance of the decision, but he pointed out that the Lucas court decision had not yet taken effect. In such cases, he said, it's not unusual for a new court to reverse its predecessor.

When voters threw Rose Bird and two associate justices off the Supreme Court in 1986, the new court, under Lucas, reversed several decisions reached under Bird that had not become technically final.

George dismissed some of his critics as "woefully ignorant about what's going on," but said that he's not surprised by the attacks. "The court gets blamed for everything except El Nino," he said.

In fact, George said he made a point of writing the parental consent decision because he anticipated criticism. "I knew there would be political heat from deciding that case," he said. "I felt that as chief justice, I should bear it."

A far-ranging justice vitriolic opposition to George seems ironic since he has literally gone out of his way -- by traveling to all parts of the state -- to improve relations with attorney groups, court employees, lawmakers and the public.

During his first 18 months as chief justice, George -- who once considered a career as a diplomat -- has served as a sort of judicial ambassador. "I'm trying to make the court and judicial system more accessible by going out and talking to different groups," he said.

He has journeyed to courts in all 58 counties, traveled frequently to Sacramento to lobby lawmakers,

and spoken in front of a wide range of groups, from business clubs to gay lawyers to talk-show audiences in South Central Los Angeles.

His visit to remote Sierra County earlier this year made a big impression on the county's only Municipal Court judge, William Skillman.

"I don't think we've ever had a chief justice come here," he said. "He seems to be a decent guy who's interested in finding out what our problems are."

A former president of the California Judges Association, George has proved to be an astute lobbyist who has maintained good relations with Wilson, while also appealing to Bill Lockyer, the top Democrat in the Legislature.

Last year, he took time out from his busy schedule to personally administer Lockyer's oath as the Senate president pro tempore. In November, the 21-member Judicial Council that George heads gave Wilson its annual "friend of the court" award.

Lockyer said he will support George's efforts to win a new 12-year term in November, calling him "knowledgeable and approachable."

George's personal brand of diplomacy paid off in September when the Legislature passed his top priorities: a plan to provide more state money for trial court operations and add new judgeships, and a bill to increase payments to death-penalty defense attorneys.

This year, George wants the Legislature to pass bills to improve the pay and conditions of jurors, provide money for technological improvements and begin assessing the need to improve and repair courthouses.

Marathon man in Sacramento isn't surprising. His own career demonstrates that he can appeal to leaders of both parties.

A native of Los Angeles, George graduated from Princeton University's Woodrow Wilson School of Public and International Affairs in 1961. A trip around Africa persuaded him to give up plans to become a diplomat because he viewed U.S. Embassy personnel as too isolated from the countries they served.

During his seven-year career as a lawyer he served as a deputy attorney general. He specialized in fighting criminal appeals and argued several cases before the state and U.S. Supreme Court.

In 1972, George was appointed to the bench by then-Gov. Ronald Reagan. Since then he has been elevated by every governor, including Democrat Jerry Brown, who promoted him to the Los Angeles Superior Court in 1978.

Wilson first appointed George to the high court in 1991.

Since becoming chief justice last year, he said that his workload has tripled. Often he writes drafts of his opinions at his dining room table between 9 p.m. and 2 a.m.

But energy isn't a problem. marathon runner, but George and a group of friends have arranged runs in exceptionally harsh landscapes, including Mount Rainier and Death Valley. The most difficult, he said, was a 23-mile one-day run from one end of the Grand Canyon to another.

Away from the court, George said he enjoys the outdoors and spending time with his family. His

wife, Barbara, is an interior designer and two of his three sons plan legal careers. One son, Eric, works as a deputy legal counsel to Wilson.

Despite the long hours, George seems to like his job too much to give it up without a fight. "I would like to continue as long as I'm capable," he said. "I enjoy the work."

Already, he is talking to audiences around the state about his dominant campaign theme: the need to keep an independent judiciary. He also plans to form a campaign committee and may hire a consultant.

Court watcher Uelmen said George's stamina should serve him well as he tries to fend off the challenge against him in November.

"When he took office, he hit the ground running," Uelmen said. "He's built a strong base of support in the legal community."

Chief Justice Ronald George

Age: 57 School, 1964 J.D.

Princeton University, 1961 A.B.

Career: Justice, Supreme Court, 1991-1996

Justice, Court of Appeal, 1987-1991

Judge, Los Angeles Municipal and Superior Courts, 1972-1987

Deputy Attorney General, 1965-1972

Family: Married; 3 sons

Hobbies: Marathon running, hiking, water skiing

Key decisions by George Court Case

People v. Superior Court (Romero), June 1996

Ruling: A judge can decline to count prior convictions when determining sentences under the Three Strikes law if doing so would further the interests of justice.

Author: Justice Kathryn Werdegar Gallo v. Acuna, January 1997

Ruling: The court upheld the use of a civil injunction as a tool for police by affirming a San Jose law that bars gang members from congregating in a crime-infested neighborhood.

Author: Justice **Janice Rogers Brown**

Vote: 4 to 3 (George in the majority)

Case: Professional Engineers v. Dept. of Transportation, May 1997

Ruling: Court struck down a 1993 law allowing Caltrans to contract out more work, saying it violated a state constitutional provision requiring civil servants to peform work that it can handle "adequately and competently." Author: Justice Ming Chin Vote: 5 to 2 (George in the majority)

Case: People v. Davis, July 1997

Ruling: Juvenile court criminal convictions can be counted as strikes that trigger lengthy sentences under Three Strikes law.

Author: Justice Brown to 3 (George in the majority)

Case: American Academy of Pediatrics v. Lungren, August 1997

Ruling: Court nullified a 1987 law requiring a minor to receive parental permission or a judge's waiver before getting an abortion, deciding that the law violated the state constitutional right of privacy.

Author: George

GRAPHIC: 2 PHOTOS / 2 CHARTS; 3,4. UNION-TRIBUNE; 1. Ronald George: "The court gets blamed for everything except El Nino." 2. (Ronald George) (A-17) 3. Chief Justice Ronald George (A-17) 4. Key decisions by George Court Case (A-17)

LOAD-DATE: December 24, 1997

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December 19, 1997, Friday

SECTION: Pg. 4

LENGTH: 441 words

HEADLINE: High Court Rules First Drunk Driving Arrest May Be Charged as FelonyKeck: Justices Say Subsequent Convictions May Affect How First Case in Prosecuted

BYLINE: By a MetNews Staff Writer

BODY: Drunk driving may be charged as a felony even if the incident occurred before, rather than after, three other drunk driving arrests that resulted in convictions, the state Supreme Court ruled yesterday.

In an opinion by Justice **Janice Rogers Brown,** the court said the chronological sequence of offenses did not matter as long as the violation to be charged as a felony occurred within the same seven-year period as any three convictions for driving under the influence.

The action reversed a ruling by the Fourth District Court of Appeal and rejected the defendant's assertion that to charge the earliest drunk driving violations as a felony based on convictions for later acts violated the constitutional prohibition on ex post facto laws.

"At the time the defendant committed his first offense in 1992, he was on notice that if he committed a DUI offense within seven years of three or more other DUI violations resulting in convictions, he could be subject to felony punishment," Brown said. "The mere fact that conviction of the offense that was first in time was obtained after he had committed the offense triggered the enhancement penalty does not contravene the prohibition on the ex post facto clause."

The case stems from the arrest of Guy Edward Snook for drunk driving on April 6, 1992. He was released and later appeared in municipal curt as promised, but learned that the court had no records of the matter.

No further proceedings were held for 22 months.

In the meantime, he was arrested for drunk driving two months after the first offense, and twice the following year. He was convicted on misdemeanor charges arising out of the latter three arrests.

The case against Snook based on the first arrest then proceeded, and he was again found guilty. Imposition of sentence was suspended, and Snook was placed on three years probation, on condition he spend a year in jail.

The Court of Appeal struck the enhanced penalty, saying it came on what was the first offense and could not legally be affected by offenses that followed.

But Brown, writing for a unanimous court, said the Court of Appeal's ruling kept open a loophole that the Legislature sought to close.

"Under the Court of Appeal's interpretation of [Vehicle Code Sec.] 23175(a), a defendant who committed four separate drunk driving offenses close in time could still escape the enhanced penalty by pleading guilty to the second, third and fourth offense before going to trial on the first offense," Brown wrote. "This type of manipulation is precisely the situation the Legislature intended to

remedy."

The case is People v. Snook, 97 S.O.S. 9449.

LOAD-DATE: February 5, 1998

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View Related Topics

December 18, 1997, Thursday

SECTION: NEWS; PG. 3

HEADLINE: JUSTICES TO EXAMINE BOSSES' PERSONAL LIABILITY FOR FIRING

BYLINE: Greg Mitchell;
Reporter Greg Mitchell's e-mail address is gmitchell@therecorder.com

BODY:
The California Supreme Court agreed Wednesday to decide if managers can be held personally liable under state laws meant to deter workplace discrimination.

Saying a state appeal court had "given employees and their attorneys a powerful weapon to terrorize individual supervisors, business owners, and their companies," lawyers for a health care company supervisor urged the court to reject the First District Court of Appeal's interpretation of the Fair Employment and Housing Act.

The court's decision to take up _Reno v. Baird_, S065473, isn't too surprising, as the First District's opinion had created a clear conflict with _Janken v. GM Hughes Electronics_, 46 Cal.App 4th 55, a 1996 decision from the Second District.

Pediatric nurse Kimberly Reno claims her boss fired her at the behest of an important client who had heard rumors that Reno had cancer. Reno's boss, Marijo Baird, both owned and managed Redwood Health Care, a company that supplied nurses under contract. Because Redwood is now defunct, Reno's lawyers want to hold Baird personally responsible because of her role as a supervisor, even though her attorney Eric Angstadt maintains she has little in the way of assets.

But while Angstadt said the September ruling authored by Justice James Lambden "has the draconian effect of placing all supervisory employees in California at risk of losing their family's assets" every time they make personnel decisions, Reno lawyer Phil Horowitz says that just isn't the case.

"Ninety-nine percent of all employers defend and indemnify" their supervisorial employees in employment discrimination cases, said the Lawless, Horowitz & Lawless partner Wednesday.

Indeed, said Horowitz, the real importance of _Reno_ comes from the strategic advantage it provides employment lawyers who wish to keep their cases out of the more conservative federal courts.

By simply adding a California supervisor as a defendant, said Horowitz, the plaintiff can defeat attempts to remove the case to federal court.

In urging the court to take up the case, Angstadt, a partner at Walnut Creek's Hoyt, Miller & Angstadt, made the same point, but said the tactic would clog California courts with employment litigation that rightfully belongs in federal court.

In _Janken_, the Second District had said that because hiring and firing decisions benefited the employer, they shouldn't subject the manager to liability. The court drew a distinction between hiring and firing decisions on the one hand and harassment on the other. Holding managers personally liable for hiring and firing decisions, the court figured, would "chill" the exercise of sound management.

But in _Reno_, the First District took a different approach. "If supervisors are subjected to individual liability," reasoned Lambden, "they may refrain from engaging in unlawful discriminatory actions, and businesses would be better protected from the cost of discrimination."

Chief Justice Ronald George voted to take up _Reno_, along with Justices Joyce Kennard, Marvin Baxter, Ming Chin and **Janice Rogers Brown.**

LOAD-DATE: December 18, 1997

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December 16, 1997, Tuesday

SECTION: Pg. 1

LENGTH: 779 words

HEADLINE: Kicker: Supreme Court Rules:Worker Required to Resell Shares to Firm Retains Shareholder Rights

BYLINE: By KENNETH OFGANG, Staff Writer/Appellate Courts

BODY: An employee/shareholder who is contractually bound to resell his shares to a corporation upon termination of employment retains his shareholder rights after leaving, in the absence of specific language to the contrary, the state Supreme Court ruled yesterday.

"A shareholder without a shareholder's rights," Justice Stanley Mosk wrote for the majority, "is at best an anomaly, and at worst a shadowy figure in corporate limbo who would be voiceless in the conduct of the business of which he is part owner and largely defenseless against neglect or overreaching by management."

In a 6-1 decision, the high court overturned lower court rulings that an employer who executed a repurchase or "buy/sell" agreement was presumed to have intended not to allow an ex-employee to become a dissident shareholder.

Justice **Janice Rogers Brown** was the lone dissenter.

Case Remanded

The decision sends Alan W. Stephenson's suit-against the majority shareholder in Drever Partners, Inc. and the directors and officers of the corporation-back to Div. One of the First District Court of Appeal. The case was remanded so the panel can consider an issue unresolved on appeal from Marin Superior Court Judge Gerald E. Ragan's dismissal of the action.

Stephenson worked for Drever Partners from 1980 until May 1994, serving as chief financial officer from 1983 on.

A 1990 agreement allowed him to purchase 11 percent of Drever Partners' stock-500 shares-at one dollar per share. The agreement further provided that in the event of termination of Stephenson's employment for any reason, he would be required to sell the stock back to the corporation at market value, as determined by a panel of independent appraisers.

In May 1994, the parties agreed that Stephenson's employment would terminate as of July 1 of that year and that the shares which he was required to sell back to the corporation would be valued as of May 1.

Market Value

Although Stephenson left the company more than three years ago, he still owns his stock because of a dispute-the subject of separate litigation-regarding the market value. While the suit over the stock value was pending, Stephenson filed his shareholder action, claiming the defendants breached fiduciary duties by failing to insure that he was accurately informed of Drever Partners' financial condition.

He also said the defendants diverted corporate assets and resources and that he was precluded from sharing in any corporate distributions.

Stephenson, Mosk said, is entitled to the benefit of the general rule that where a shareholder has contracted to sell shares back to the corporation at market value, title to those shares doesn't pass until the value has been determined and tendered.

The justice rejected the argument that the contract contained an implied waiver of shareholder rights following termination of Stephenson's employment. Such an implication, Mosk said, would be inconsistent with language in the contract specifying the consequences of termination-loss of shareholder rights not being among them-and with the statutes specifying the rights of stockholders to participate in corporate affairs.

Mosk cited Corporations Code sections allowing a shareholder to compel an annual meeting, join with other minority shareholders to call a special meeting; vote for directors in person, by proxy, or as part of a voting trust or voting agreement; receive dividends; transfer or hypothecate shares to the extent not precluded by the articles of incorporation or by the certificate; receive meeting notices and financial statements, and inspect and copy records.

"Defendants do not contend the foregoing statutory provisions are inapplicable to closely held corporations," Mosk wrote. "Yet the implied contractual provision urged by defendants would have the effect of stripping plaintiff of all these statutory shareholder's rights even though he remains the legal owner of record of shares representing 11 percent of Drever Partners' equity."

Brown argued in dissent that Stephenson would not be left "in corporate limbo" by the dismissal of his derivative suit. "That spectre need not haunt us here," she wrote, because of the second agreement guaranteeing Stephenson the fair-market value of his stock as of May 1, 1994.

"Since plaintiff has no risk tied to the company's fortunes, he should have no rights as a shareholder," Brown wrote. "To the extent plaintiff's concern is that Drever Partners may be taking steps to impair its ability to complete the repurchase of his shares, plaintiff should have exercised his rights as a creditor of the corporation."

The case is Stephenson v. Drever, 97 S.O.S. 9369.

LOAD-DATE: December 19, 1997

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December 5, 1997, Friday

SECTION: Pg. 1

LENGTH: 856 words

HEADLINE: Trustee Can't Invoke Attorney-Client Privilege After Removal--S.C.

BYLINE: By KENNETH OFGANG, Staff Writer/Appellate Courts

BODY: The former trustee of a private trust can't invoke the attorney-client privilege to avoid disclosing information regarding trust administration to the successor trustee, a sharply divided state Supreme Court ruled yesterday.

In a 4-3 decision, the justices affirmed a ruling by Div. Three of this district's Court of Appeal in favor of Roger Moeller, the successor trustee of a trust that owns several pieces of Southern California real estate. Moeller, whose parents established the trust, was named successor trustee after Sanwa Bank resigned.

The bank quit as trustee after the trust assets were depleted in the course of a government-mandated environmental cleanup and related litigation. Moeller objected to the bank's final accounting, and sought production of documents relating to the trust's affairs, including its legal representation.

Sanwa objected to production of a number of the documents, claiming the attorney-client privilege. Los Angeles Superior Court Judge Robert Letteau denied Moeller's motion to compel, but the Court of Appeal granted a writ of mandate.

The panel ruled that all of the trustee's records were trust property to which the successor trustee was entitled.

Justice Kathryn Werdegar agreed.

"Both settled law and practical considerations lead us to conclude" that a predecessor trustee may not withhold relevant documents from its successor, the justice wrote.

The powers and duties of trustees, including the power to retain counsel, are set forth in the Probate Code, Werdegar noted. Since trust counsel is engaged by the trustee on the trust's behalf, she said, the holder of the attorney-client privilege with respect to trust matters is the trustee at the time the privilege is invoked.

Thus, "when Moeller succeeded Sanwa as trustee, Sanwa lost (and Moeller acquired) the privilege to refuse to disclose confidential attorney-client communications regarding Sanwa's administration of the trust," the jurist reasoned.

She added:

"The powers of a trustee are not personal to any particular trustee but, rather, are inherent in the office of trustee. It has been the law in California for over a century that a new trustee 'succeed[s] to all the rights, duties, and responsibilities of his predecessors.' "

Werdegar rejected the argument, advanced by Sanwa and the California Bankers Association, which filed an amicus brief, that denying the attorney-client privilege to predecessor trustees would unduly

inhibit candor between trustees and their attorneys.

She wrote:

"We recognize that, under the rule we adopt, a trustee must take into account the possibility that its confidential communications with an attorney about trust administration may someday be disclosed to a successor trustee. This is, however, not unfair in light of the nature of a trust and the trustee's duties. A trust is a fiduciary relationship with respect to property in which the person holding legal title to the property - the trustee - has an equitable obligation to manage the property for the benefit of another - the beneficiary."

She added that "professional trustees like Sanwa are held to a higher standard of care in discharging their legal duties than are others," and are expected"for, presumably, an appropriate fee" to bear the risk of liability for mismanagement.

Werdegar emphasized that the holding applies only to attorney-client communications related to the administration of the trust, and that a trustee may separately retainat its expense, rather than the trust'sseparate counsel to advise it with respect to potential liability.

Justice Ming Chin, joined by Justices Marvin Baxter and **Janice Rogers Brown,** dissented. He argued that under the Evidence Code, "the person who controls the privilege is the client who confidentially communicated with the lawyer."

The majority, Chin said, was usurping the Legislature's prerogative of defining the scope of the evidentiary privilege.

The justice added:

"The majority too easily discounts the problems its rule will create for trustees. A privilege to withhold confidential communications has little utility when the parties to a communication cannot reliably anticipate whether it will in fact be privileged."

Chin called Werdegar's distinction between trust counsel and separately retained counsel "illusory," and said it "will not allow predictable implementation as a practical matter." Since the only clear basis for determining in which capacity counsel was hired would be "who paid the attorney's bill, the trust or the trustee?," Chin wrote, trustees will be forced to retain "shadow counsel."

This would be unfortunate, he said, because "increased trustee fees are the most likely consequence of the majority's innovations in the Legislature's domain."

Attorneys who argued before the high court were Craig M. Lynch of San Fernando's Lynch & Lynch for Moeller; Kent L. Richland of the Beverly Hills firm of Greines, Martin, Stein & Richland for Sanwa, and Andrew S. Garb of the Los Angeles office of Loeb & Loeb for the amicus.

The case is Moeller v. Superior Court, Sanwa Bank RPI, 97 S.O.S. 9085.

LOAD-DATE: December 19, 1997

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December 5, 1997, Friday

SECTION: NEWS SECTION; PG. 1

HEADLINE: SUPREME COURT AIRS MERITS OF PRIVATE AG LAW

BYLINE: Greg Mitchell

BODY:
Three of the California Supreme Court's seven justices seemed ready Thursday to reinstate a controversial Oakland lawyer's unfair competition suit against a grocery chain he says routinely sold cigarettes to minors.

But another justice questioned the motives of the lawyer, and yet another questioned his methods.

Plaintiffs lawyer Donald Driscoll's company, Stop Youth Addiction Inc., sued Lucky Stores Inc. and a slew of other retailers in 1994, alleging they unfairly compete with law-abiding stores by selling cigarettes to minors, which is a misdemeanor. Once the kids get hooked on nicotine, Driscoll says, the stores profit from the repeat business of children.

Driscoll's for-profit group sued as a private attorney general under an increasingly controversial state law prohibiting unfair competition, California's Business & Professions Code 17200. The law defines all unlawful practices undertaken in connection with business transactions as unfair competition, and allows private lawyers to recover their fees.

The case has attracted intense _amicus_ interest from counties and health advocates who hope that Driscoll's efforts will curb teen smoking rates.

Business groups, on the other hand, back Lucky in saying that enforcement of criminal laws should be left to state officials who have no financial interest in the litigation. They hope, apparently in vain, that the court will use _Stop Youth Addiction v. Lucky Stores_, S055373, to scale back 17200.

Lucky attorney Gail Lees told the court her client didn't want to gut the state's consumer protection laws, but was concerned with the potential for abuse posed by private enforcement of penal code violations.

"Your concern is not unique," Werdegar told Lees. One might not like 17200, " but it's the law."

Lees, a partner at Los Angeles' Gibson, Dunn & Crutcher, said that a separate law barring the sale of cigarettes to minors -- first enacted in 1892 -- specifies that only government officials may enforce it, not private citizens like Driscoll.

"You've got to go back to the underlying statute," Lees told the court.

"I don't see your point," said Chief Justice Ronald George. Werdegar and Justice Joyce Kennard seemed to agree that Driscoll's group wasn't enforcing a penal code section, but was instead bringing an unfair competition claim premised on the alleged penal code violations.

Justice Marvin Baxter was concerned that Lees' take on the law would mean a legitimate tobacco merchant would have no recourse when a competitor " flagrantly" sells smokes to children in a

county where law enforcement has bigger fish to fry -- such as solving homicides.

Later, though, Baxter seemed to take a different angle.

"I see this as an uncontrollable situation," remarked the justice, noting that a business like Lucky could be hit with a series of similar suits filed by other private citizens.

"In terms of finality and resolving the issue, what protection is there from the defendant's point of view?" he asked.

And while Baxter said he didn't have any problem with the idea of private citizens suing just to stop the practice, he said he is troubled by Driscoll's request for restitution to those affected by the store's conduct.

"Where does the money go? It goes to somebody," said Baxter.

Baxter even made a chastened Driscoll admit out loud how much he'd asked for: $10 billion. "The prayer was inappropriate," conceded Driscoll.

That's not the only inappropriate activity of Stop Youth Addiction, according to Justice **Janice Rogers Brown.**

The group originally sued about 2,000 different stores and gas stations, allegedly based on a sting operation involving underage buyers who were paid an hourly wage.

"So you were actually having minors go in and purchase cigarettes," asked a clearly offended Brown.

Driscoll replied that whether or not that conduct was appropriate wasn't before the court.

But, asked Brown, if proving a violation of the penal code requires the group to violate the penal code, "doesn't that at least _suggest_ that there oughtn't be a private enforcement provision?"

Lees seized on Brown's point during rebuttal, calling Driscoll's tactics " unseemly" and noted that when the state conducts sting operations, it immunizes the minors it uses as decoys.

Justice Stanley Mosk, the only member of the court who didn't vote to review _Stop Youth Addiction_, asked if the case could be brought in all 58 of the state's counties, and whether a case could be brought based on just one illegal sale, rather than a pattern. Driscoll suggested the answer to both questions was "yes."

Driscoll has earned a reputation for filing novel, and some would say trivial, suits under the unfair competition act. He has accused a number of companies of making false claims in advertisements, like the makers of a children's toy oven that promised the treats would be ready in less than 10 minutes, instead of the 29 minutes Driscoll says it took.

Shortly after Stop Youth Addiction filed the suit, the State Bar of California publicly announced it would investigate charges that Driscoll was attempting to use the action to shake down store owners. Some store owners said they received letters informing them of the complaint, and that Driscoll offered to drop the matter in exchange for a few hundred dollars in attorneys fees and a promise to stop selling cigarettes to kids. The Bar later dropped its investigation, citing insufficient evidence.

A decision in _Stop Youth Addiction_ is expected within 90 days.

LOAD-DATE: December 5, 1997

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View Related Topics

December 5, 1997, Friday

SECTION: NEWS SECTION; PG. 3

HEADLINE: COUNTIES CAN FILE ANTITRUST SUITS

BYLINE: Daniel Terdiman

BODY:
In a case that upholds the rights of local officials, the California Supreme Court ruled Thursday that counties may act on their own in bringing federal antitrust class actions.

The court's decision -- that state law does not bar county boards of supervisors from filing suit against price fixing even when the complained-of violation took place primarily outside their counties -- means that antitrust violators could face federal suits not just from the California attorney general's office, but also from smaller, local government agencies.

"This decision today represents a victory not only for Stanislaus county, but for all cities and special districts up and down the state," said Michael Krausnick, Stanislaus county counsel, "to pursue actions when they believe they have been wronged in an unfair competition or antitrust action."

Pacific Gas and Electric Co. v. County of Stanislaus, S047749, originated when Stanislaus County sued PG&E and several of its subsidiaries in Sacramento federal court, claiming that the power giant was illegally fixing county gas prices.

In a 6-1 decision, the court discarded arguments made by both PG&E and its _amici curiae_ -- including the California attorney general's office -- that state law precludes counties from filing antitrust class actions based on violations occurring primarily outside the county.

Instead, the court found that the Legislature specifically intended to strengthen the power of counties in class actions with legislation passed in 1961 and 1977.

Writing for the majority, Justice Joyce Kennard found that PG&E's argument that only the attorney general can bring suits on counties' behalf was baseless.

The law "provides that 'any person' injured by a violation of state antitrust laws may bring a civil action," Kennard wrote. The relevant provision, 16750(b) of the so-called Cartwright Act -- which regulates price fixing, "defines 'person' as including the state and 'any of its political subdivisions and public agencies.'"

PG&E spokeswoman Mary Rodrigues said the Supreme Court's decision may complicate antitrust filings.

"We believe that the attorney general was the best entity to decide on antitrust lawsuits," Rodrigues said. "It doesn't appear that it's going to have any effect on us either way, but we just felt strongly about our position."

In dissent, Justice **Janice Rogers Brown** wrote: "The result reached by the majority is a crazy quilt of overlapping, conflicting authority to file multicounty antitrust litigation willy-nilly, one likely to generate needless intergovernmental conflict and conclude prematurely some public antitrust claims"

on the grounds that the dispute has already been settled.

In addition, she argued that in the wake of the majority's opinion, "we are apt to be treated to a horse race of multicounty Cartwright Act suits brought by any number of political subdivisions, a spectacle that will . . . undermine the weight accorded centrally vetted antitrust filings."

Brown added: "Unless the contrary appears affirmatively by statute, the attorney general has exclusive authority to institute . . . antitrust proceedings on behalf of all government entities."

Kennard rejected that notion, writing that such a presumption "is inconsistent with California law, which explicitly provides that a county's board of supervisors, not the state attorney general, directs and controls litigation in which a county is party, and that county counsel, not the state attorney general, ordinarily represents counties in civil actions."

Kennard added that Brown, in her dissent, made "no effort to reconcile" her presumption with state law and did not even acknowledge the existence of relevant statutes.

William Bagley, a partner at Nossaman, Guthner, Knox & Elliott, and one of PG&E's attorneys in the underlying case, said the Supreme Court's decision was "contrary to every piece of legislative history that existed on the statutes."

The federal district court dismissed the original antitrust suit on Jan. 16, 1996, and the Ninth Circuit U.S. Court of Appeals upheld that dismissal. But, Kennard wrote, "because PG&E's assertion that the county lacks the power to bring its antitrust action is an issue of substantial public interest that is likely to recur, we may reach the merits of the appeal even if the allegedly illegal action has been completed."

Krausnick says his office has filed a writ of _certiorari_ to the U.S. Supreme Court to appeal the federal action.

Chief Justice Ronald George, Justices Stanley Mosk and Kathryn Mickle Werdegar, Justice Patricia Bamattre-Manoukian of the Sixth District Court of Appeal and Justice Timothy Buckley of the Fifth District -- both sitting by assignment on the court -- concurred.

Reporter Daniel Terdiman's e-mail address is dterdiman@therecorder.com

LOAD-DATE: December 5, 1997

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December 2, 1997, Tuesday

SECTION: Pg. 1

LENGTH: 374 words

HEADLINE: Chief Justice George Says Judicial Independence Can't 'Be Taken for Granted'

BYLINE: By a MetNews Staff Writer

BODY: The quality of justice is dependent on the willingness and ability of judges to render impartial decisions, even on controversial issues, California Chief Justice Ronald George told a local audience yesterday.

"The independence of the judicial branch...cannot be taken for granted by anyone," the chief justice said in remarks to a luncheon meeting of the public affairs forum Town Hall Los Angeles.

George did not mention next November's retention election, when he and Justices Ming Chin and **Janice Rogers Brown** must face the voters. But it was difficult to mistake his meaning when he suggested that when a judge feels the need to "bend a finger to the political wind...it's time to relinquish one's position on the bench."

The chief justice made those remarks three months after publication of Field Poll results showing he could face some difficulty in the election because of his recent opinion for a 4-3 majority which held that the state's parental-consent law for minor's abortions was unconstitutional.

The chief justice has declined to talk about the poll numbers, and denied giving any thought to the election. But he urged his audience yesterday to devote its attention in the coming year to "preserving the ability of courts to act impartially, without political pressure."

George emphasized that he was not calling for judges to substitute their personal views for reasoned analysis of statutes and constitutional provisions, and that there is a proper place for criticism of judicial decisions. "Reasoned disagreement with a particular outcome...may serve as a catalyst for discussion" about whether the law should be changed, he acknowledged.

But a lack of public understanding about the role of the courts as an independent branch of government, he said, could lead to a loss of respect for the courts and resulting fiscal pressures as the courts compete with other governmental needs for funds.

The chief justice also commended judges and court personnel for facing "often overwhelming obstacles" in administering justice. He mentioned the lack of adequate facilities and security plaguing many of the courts he observed in his recently concluded tour of the courts in all 58 counties of the state.

LOAD-DATE: December 19, 1997

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November 25, 1997, Tuesday

SECTION: Pg. 1

LENGTH: 997 words

HEADLINE: Ordinance Doesn't Create Liability for Negligent Injury to Skier-S.C.Deck: Appeals Court Ruling in Suit Between Local Lawyers Unanimously Upheld by High Court

BYLINE: By KENNETH OFGANG, Staff Writer/Appellate Courts

BODY: The assumption-of-risk doctrine bars a recreational skier from recovering damages from a fellow participant for simple negligence, even if the defendant violated a local safety ordinance, the state Supreme Court ruled yesterday.

All seven justices agreed with lower courts that Los Angeles attorney Drew Antablin has no liability to Wilkie Cheong, his Westside suite mate, friend for 17 years, and frequent companion on skiing trips. But the unanimity of the result was undermined by the court's continued division on assumption-of-risk issues, as the case drew five separate opinions from the seven justices.

Cheong claimed his friend's negligence on a 1991 ski outing at Alpine Meadows Ski Resort in Placer County caused a collision, resulting in a shattered fibula and shattered tibia.

Antablin acknowledged that he was skiing too fast for conditions. He said he turned to his right in order to slow down, but unintentionally collided with Cheong.

The parties agreed Antablin's skiing was not reckless. Los Angeles Superior Court Commissioner Bruce Mitchell granted the defendant's motion for summary judgment based on the primary assumption-of-risk doctrine, and Div. Two of this district's Court of Appeal affirmed last October.

General Rule

Justice Ming Chin, writing for himself and four other justices, said the lower courts were correct in applying the general rule that an athlete has no liability for simple negligence resulting in injury to a co-participant.

Chin cited 1992's Knight v. Jewett, 3 Cal.4th 296, and Ford v. Gouin, 3 Cal.4th 339, in which the court set forth the difference between primary assumption of risk-a complete defense to liability-and secondary assumption of risk, which is an aspect of comparative negligence.

The question of how a particular assumption of risk is classified, Chin explained, is based on the nature of the activity and the relationship of the parties to the activity. Fellow participants in a sport are generally held to have undertaken primary assumption of the risk, the jurist added, because liability for ordinary carelessness would have the socially undesirable effect of chilling participation.

The justice went on to say that Placer County's Skier Responsibility Code doesn't alter the outcome.

Among other things, the code makes it unlawful "to ski faster than is safe" and makes it "the duty of all skiers to ski in a safe and reasonable manner, under sufficient control to be able to stop or avoid other skiers or objects." Violations are punishable by fines of up to $ 100.

Common Law

The duty imposed on a skier by the code is no greater than that imposed by Knight, Chin said. The 1984 enactment, he noted, "preserves common law principles of assumption of risk," reflecting an intent to protect both skiers and ski resort operators from liability for injuries occurring in the ordinary course of the sport.

Any violation of the ski code by Antablin didn't create a presumption of negligence, Chin went on to conclude, under Evidence Code Sec. 669, which codifies the negligence-per-se doctrine.

The justice explained:

"By specifically stating that skiers assume the inherent risks of skiing, including the risk of collision and the risk that others will fail to ski within their own ability, the ordinance makes clear that petitioner, who was injured in a collision with a fellow skier, was not 'one of the class of persons for whose protection the . . . ordinance . . . was adopted.' "

Because Cheong was outside the protected class, Chin said, it was unnecessary to determine.

Chin's majority opinion, leaving open the question of whether whether an enhanced tort duty towards a co-participant in an activity can ever be imposed solely on the basis of negligence per se, was joined by Chief Justice Ronald George and Justices Marvin Baxter, Kathryn Werdegar, and **Janice Rogers Brown.**

In a separate opinion, joined by Brown and Baxter, Chin argued that any imposition of co-participant liability for simple negligence must be made by a specific statute, rather than by negligence-per-se analysis under Sec. 669.

Chin also questioned whether any enhanced duty could be imposed by local ordinance.

"Arguably, the same standard of duty should apply statewide, and local governmental entities such as cities and counties should not be allowed to regulate questions of duty," he wrote. But he added that he would not take a firm view in the absence of an ordinance "that, unlike the one here, does attempt to modify the common law of torts."

Justices Joyce Kennard and Stanley Mosk wrote separate concurrences. Werdegar, while joining Chin's majority opinion, authored a separate concurrence joined by George.

Mosk opined that the Placer ski code "does not purport to displace the no-duty rule of Knight." But he reiterated the position he took in Ford, which involved a ski-boat safety provision of the Harbors and Navigation Code, that a statute may inferentially impose a higher duty than that imposed by Knight.

Mosk said he saw no reason why such a higher duty could not be inferred from a county ordinance.

Kennard argued, as she has in the past, that the court should not have discarded traditional assumption-of-risk analysis. With its fractured opinions, she wrote, "[t]his case illustrates the extent to which the Knight plurality's effort to abandon the traditional doctrine of assumption of risk is tearing at the fabric of tort law."

Werdegar said she was "not persuaded" that an enhanced duty could not be imposed under the doctrine of negligence per se.

Cheong was represented by Joshua Merliss of the Mid-Wilshire firm of Gordon, Edelstein, Krepack, Grant, Felton & Goldstein. Antablin's lawyers were David S. Ettinger and Christine A. Pagac of Encino's Horvitz & Levy and Wayne Hunkins of the Long Beach firm of Bollington and Roberts.

The case is Cheong v. Antablin, 96 S.O.S. 7565.

LOAD-DATE: December 19, 1997

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The Recorder

November 25, 1997, Tuesday

SECTION: NEWS SECTION POAGE 1

HEADLINE: ASSUMPTION-OF-RISK DOCTRINE REMAINS A MUDDLE

BYLINE: Greg Mitchell

BODY:
When the California Supreme Court rewrote the rules for the doctrine of assumption of risk five years ago, the result was some of the court's most fractured jurisprudence of the 1990s.

Knight v. Jewett, 3 Cal.4th 296, produced four separate opinions from the court, and _Ford v. Gouin_, 3 Cal.4th 339, produced four more. None commanded a majority, and the holdings have been widely criticized as confusing and muddled.

On Monday, the court took another stab at the issue, seeking to clarify whether a local "skier responsibility" statute could impose a duty of care on a skier who had collided with a friend and injured him.

The result -- more of the same. This time the court issued five separate rulings.

All of the justices agreed with majority author Ming Chin that the injured skier could not sue his friend. But separate concurrences by Justices Kathyrn Mickle Werdegar, Stanley Mosk, Joyce Kennard and Chin himself show the court is anything but of one mind when it comes to assumption of the risk.

"I'm glad to see a majority opinion," professor J. Clark Kelso of Sacramento's McGeorge School of Law said Monday. "That's an improvement."

But the majority's narrow ruling in _Cheong v. Antablin_, 97 C.D.O.S. 8851, will have little precedential effect, Kelso said, and "does very little to advance the courts' and the Bar's understanding of assumption of the risk."

"I don't think it adds anything to the law whatsoever," said Joshua Merliss, who argued the case unsuccessfully on behalf of the plaintiff.

Plaintiff Wilkie Cheong, a Santa Monica lawyer, was injured when friend and law partner Drew Antablin collided with him on a Sierra ski slope. Cheong conceded that, although Antablin was going fast, he was not skiing recklessly.

Cheong tried to swerve around the court's splintered _Knight_ precedent by contending that a Placer County ordinance provided the duty that _Knight_ had eliminated from California tort law.

In _Knight_, the plurality held that a participant in a sport has no duty of care to another participant, and therefore can't be held liable unless the injury was intentional or the conduct reckless.

But Placer County's Responsibility Code sets forth "duties" for skiers, including the duty to avoid collisions with downhill skiers. The ordinance also says that those who ski "assume and accept the inherent risks" of the sport.

Cheong's lawyer argued that the Placer County ordinance imposed a duty on Antablin not to collide

with another skier, but the court didn't bite.

"I knew we had a problem with the language in the ordinance about the assumption of the risk," said Merliss, who is of counsel at Los Angeles' Gordon, Edelstein, Krepack, Grant, Felton & Goldstein.

"We're very pleased with the result," said David Ettinger of Encino's Horvitz & Levy, who argued the case on behalf of Antablin's insurer. "They all came to the same bottom line on this case. But there are very different analytical routes to get there."

While all the justices agreed that Placer County's ordinance did not supersede _Knight_ in this case, the court fractured on the larger question of whether a local statute can impose a duty -- particularly when read in combination with Evidence Code Sec. 669, which states that a failure of due care can be presumed when a person violates "a statute, ordinance or regulation."

But, Chin concluded in his separate concurrence, "As indicated by its location in the Evidence Code, Sec. 669(a) states a rule of evidence only, not a rule of tort liability."

He was joined by the court's two most conservative members, Justices Marvin Baxter and **Janice Rogers Brown.**

Justice Mosk reiterated his criticism that the term "primary assumption of risk" is confusing and unnecessary, and questioned why a local ordinance could not establish a duty giving rise to tort liability.

Justice Kennard also criticized the _Knight_ formulation in a separate concurrence.

Justice Werdegar, joined by Chief Justice Ronald George, issued yet another concurrence, criticizing the interpretation of the Evidence Code in Chin's separate concurrence.

"This is like a three-dimensional chess game," said Ettinger, explaining that the court's approach in applying the standards set forth in the fractured _Knight_ and _Ford_ rulings depends on the positions taken by the individual justices in those cases and the cases that led to them.

McGeorge professor Kelso suggested that the court's entire approach to assumption of risk might be problematic. "Trying to analyze all assumption-of- risk cases as though they involve a duty is going to get you in trouble," Kelso said.

The seeming inability of the justices to reach consensus on the assumption-of- risk doctrine stems from fundamentally different viewpoints, explained Kelso, over whether the court's 1975 adoption of comparative fault -- in which damages are apportioned between the plaintiff and defendant -- meant the abolition of a traditional assumption-of-the-risk defense.

Or, as Kennard said in her concurrence: "This case illustrates the extent to which the _Knight_ plurality's effort to abandon the traditional doctrine of assumption of risk is tearing at the fabric of tort law."

LOAD-DATE: November 26, 1997

Copyright 1997 Metropolitan News Company
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November 21, 1997, Friday

SECTION: Pg. 1

LENGTH: 968 words

HEADLINE: Development Permit Applicant May Waive Automatic Approval-S.C.Deck: Applicant's Action Can Extend Strict Time Limits on Agency, Divided Court Rules

BYLINE: By ROBERT GREENE, Staff Writer

BODY: A permit applicant's acceptance of a continuance can waive the strict time limits placed on planning agencies for approving or disapproving development permits, a sharply divided state Supreme Court has ruled.

In a case originating in Alameda County, the court on Wednesday held that even though the 20-year-old Permit Streamlining Act states that a development permit is automatically "deemed approved" if not ruled on within a specified period, a denial that is otherwise untimely will be upheld if the applicant can be shown through his action to have waived the time limit.

Common Law

Justice Joyce Kennard said that nothing in the 1977 law, passed to overcome excessive government delays in processing permit applications, prevents courts from applying the common law doctrine of waiver.

In this case, she said, it was enough that an applicant in the City of Piedmont, when told by a member of the city Planning Commission that he was not going to get his permit approved at that meeting, agreed to a three-month continuance. That action waived the law's automatic approval provision and prevented Branden Bickel from prevailing when the commission, and the City Council, ultimately denied his remodeling permit.

"[W]e see no good reason why the waiver doctrine should not apply if the administrative record shows that the applicant has made a knowing, intelligent, and voluntary waiver in circumstances where the applicant might reasonably anticipate some benefit or advantage from the waiver, and if the waiver does not seriously compromise any public purpose that the Act's time limits were intended to serve," Kennard said.

She acknowledged that the Permit Streamlining Act benefits the public by giving neighbors some finality to development plans and assuring taxpayers that their government agencies must act more efficiently.

Public Benefit

But at least some public benefit is "inherent in most legislation," Kennard said. In the case of the permit act, the primary benefit is to applicants seeking agency approval, and any additional benefits are incidental, she said.

But Justice Marvin Baxter, joined by Justices Ming Chin and **Janice Rogers Brown,** called the language of the act "too plain for debate." He noted that the law itself provides a single 90-day extension to the initial time limits, only on mutual consent.

"At numerous points, and in consistent fashion, the Act makes clear that its time limits are strict and without exception, and that evasive tactics [by planning commissions] are prohibited," Baxter said. "Nowhere does the Act contradict itself by providing that the applicant may nonetheless extend the limits indefinitely by means of unilateral 'waivers.' On the contrary, aware that such 'waivers' would undermine the Act's stern purposes, its drafters included a number of safeguards against use of this very device to circumvent the rigid statutory limits" - such as prohibiting agencies from making a waiver a condition of approval, or from disapproving an application just to get the decision out within the statutory time limit.

In Baxter's view, the Piedmont Planning Commission "sought to coerce" a time extension and further modifications to Bickel's remodeling plans by implying that the only way he was going to get approval was to agree to an additional delay, taking his application beyond the initial statutory period and the 90-day extension.

Bickel's "waiver request" came after the commission chair said that "it's not going to pass tonight" and "it looks like we're on a continuance," and another commission member said, "Yeah...if that's what the applicant would like."

Bickel responded, "That's what the applicant would like."

All Bickel was doing, Baxter said, was acknowledging his limited options, or at best, offering the same "mutual consent" provided for in the act for the single 90-day extension that already was soon to expire.

To allow waiver is to subject applicants to the very actions the act sought to avoid, such as governmental "gamesmanship," "arbitrariness," and "caprice," Baxter said.

But Kennard, joined by Chief Justice Ronald George and Justices Kathryn M. Werdegar and Stanley Mosk, said a no-waiver rule would prevent an applicant who offered a faulty, but curable, application from obtaining a postponement to rectify the defects.

Bickel is a San Francisco real estate attorney. He was unavailable yesterday for comment.

His case dates back to 1991, when he and co-plaintiff Claudia Cate applied for approval of a second story on their ranch-style home. After the commission denied the permit and the council upheld the commission, he sought a writ of mandate from the Alameda Superior Court.

The court denied the petition, citing waiver and estoppel.

The First District Court of Appeal reversed, with one justice writing a separate opinion concluding that waiver of time limits was not precluded, but that no waiver was available in Bickel's case.

City of Los Angeles Deputy Planning Director Frank Eberhard said he does not expect the ruling to have much impact in Los Angeles. The Planning Commission does grant waivers on the time limits, he said, although he noted that Los Angeles provides more stringent time limits than the Permit Streamlining Act.

Eberhard said that in the 1980s and early 1990s, when real estate was strong, "there was a real problem getting cases out in other jurisdictions."

Such problems were part of the impetus behind efforts by Mayor Richard Riordan for development reform, Eberhard said.

Los Angeles City Planning Commission President Peter Weir was at the commission meeting in Sherman Oaks yesterday and could not be reached for comment. Calls to the mayor's office were not returned yesterday.

The case is Bickel v. City of Piedmont, 97 S.O.S. 8767.

LOAD-DATE: December 19, 1997

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View Related Topics

November 5, 1997, Wednesday

SECTION: NEWS SECTION; PG. 1

HEADLINE: COURT PERPLEXED BY FATHERS WHO WILL NOT WORK

BYLINE: Greg Mitchell

DATELINE: SACRAMENTO

BODY:
The justices of the California Supreme Court expressed little sympathy for deadbeat dads Tuesday, but provided no clear signal on whether they would let an indolent father be tossed in jail for failing to get a job.

"Incarceration isn't going to provide any funds for the child, is it?" asked Justice Stanley Mosk.

"They weren't paying before," responded Riverside County Deputy District Attorney James Fullmer.

"Aren't you imprisoning him for debt?" asked Justice **Janice Rogers Brown.**

But to Fullmer, spousal and child support aren't debts, they're "legal and moral obligations."

The case, _Moss v. Superior Court_, S057081, could set an important precedent in the hotly contested area of child support.

After Tamara Ortiz, now 37, divorced husband Brent Moss in 1991, Moss agreed to pay $192.50 a month to support their two children.

But for years Moss didn't come through with the cash, prompting Ortiz, who earned about $1,500 a month, to ask that her ex-husband be jailed on contempt charges.

When Moss appeared before Riverside County Municipal Court Commissioner Rebecca Dugan, she noted he was well-dressed and had no apparent impediments to employment. Moss' mother testified that he lived at home and that she paid most of the bills.

Dugan said Moss "could get a job flipping hamburgers at McDonald's," found him in contempt, and sentenced him to 30 days in jail.

That sentence was reluctantly overturned by a Fourth District Court of Appeal panel, which said it was constrained by an 1897 Supreme Court precedent, _Ex parte Todd_, 119 Cal. 57.

Noting that the failure to pay child support places a burden on society as a whole, Fourth District Justice Thomas Hollenhorst invited the Supreme Court to re-examine its 100-year-old ruling in _Todd_.

Chief Justice Ronald George and Justices Joyce Kennard, Marvin Baxter, Mosk and Brown voted to review the case.

On Tuesday, Fullmer tried at the outset to allay any constitutional fears by listing examples of

coerced labor that have survived constitutional scrutiny: military service, jury duty and high school graduation requirements.

In seeking to get around the Thirteenth Amendment's bar on involuntary servitude, Fullmer had a friend in Justice Kennard. Referring to a string of U.S. Supreme Court cases and the language of one in particular, Kennard suggested that compelled employment is not involuntary servitude as long as the subject isn't forced to "serve one particular employer."

Fullmer, a supervising deputy DA in Riverside County, told her the exception was broader than that, perhaps concerned Kennard was walking him into a corner.

And perhaps she was. "The fact that just a single employer is involved isn't dispositive, is it?" argued Chief Justice George, pointing to a hypothetical example of a cartel of employers coercing the labor of illegal immigrants. That, he suggested, would still be slavery.

Justice Baxter wanted to know if the court would have to overturn its own 100- year-old precedent, _Todd_, which held that a delinquent spouse could not be forced to work to pay alimony.

Not necessarily, replied Fullmer. The government's interest in child support and the care of children is much greater than its interest in alimony for the support of adults.

When it was his turn to argue, Moss' attorney urged the justices to leave _Todd_ intact. "You cannot compel someone to work and then punish them for not doing so," said Floyd Zagorsky of the Riverside public defender's office.

That drew the ire of Kennard, who accused Zagorsky of "obviously ignor ing " the distinction she had drawn between being coerced to work and being coerced to work for a particular boss. "You do not have public policy on your side," she said sternly.

But Taylor Huff, also of the Riverside PD's office, said Kennard was taking a few sentences from one case out of context. He pointed out that, under pre- Civil War slavery, one's master could transfer or sell a slave to another. "I don't think that made slavery any more palatable," he said.

Huff may not have won Kennard's vote, but he did his best to win Baxter's, who is known for his deference to the Legislature.

The government, Huff told the court, "is asking you to step into the shoes of the Legislature" by empowering family court judges to jail a deadbeat dad.

But Baxter didn't take the bait.

"That seems like a stretch," mused Baxter, because without enforcement powers, support orders would be meaningless.

LOAD-DATE: November 5, 1997

Copyright 1997 Journal of Commerce, Inc.
Journal of Commerce

November 4, 1997, Tuesday

SECTION: INSURANCE; Pg. 5A

LENGTH: 689 words

HEADLINE: Older-worker dismissal ruling upheld;
High court lets stand controversial decision

BYLINE: BY RON LENT

DATELINE: SAN FRANCISCO

BODY:

The California Supreme Court has let stand a lower court ruling that allows employers to replace older, better-paid employees with younger ones who are paid less.

The case, Marks vs. Loral Corp., centers on a lawsuit filed by Michael Marks, a former aerospace accountant. In 1992, Mr. Marks, then 49, a 22-year Loral employee, lost his job when his employer eliminated most positions at its Newport Beach corporate office where he had worked.

Mr. Marks charged age discrimination because Loral wouldn't let him transfer within the company while about 10 other workers under age 40 obtained new assignments.

Loral officials said that Mr. Marks lost his position because of economic reasons. He apparently made more money and had more benefits than younger workers.

IT'S THE ECONOMY

The high court's decision lets stand a July ruling in favor of Loral. The Court of Appeal in Santa Ana in a ruling written by Justice David G. Sills said that age discrimination laws were never intended to impede a company from controlling its costs.

""Employers may indeed prefer workers with lower salaries to workers with higher ones, even if the preference falls disproportionately on older, generally higher-paid workers," Justice Sills stated.

""Decision-making by costs - reliance on relative prices, if you will - goes to the very core of a market economy," he said.

Curiously, five of the Supreme Court's seven justices seemed to disagree with the Orange County appellate ruling. Chief Justice Ronald George and Justices Marvin Baxter and Ming W. Chin were one vote short in an attempt to decertify the appellate ruling, which would have kept it from being cited as precedent in other cases.

"VERY UNUSUAL' MOVE

Justices Stanley Mosk and Joyce Kennard voted for a full-blown review of the case, while Justices Kathryn Mickle Werdegar and **Janice Rogers Brown** apparently supported the appellate ruling.

The justices, as is their custom, gave no explanation for their action.

Irvine lawyer Catherine A. Evans, whose client won, admitted that the high court's move was ""very unusual. I'm baffled and very curious to know what happened."

Plaintiff Michael Marks' attorney, James J. Guziak, depicted the Supreme Court's action as ""extremely disheartening." Another of Mr. Marks' attorneys, San Mateo labor and appellate attorney William Quackenbush, said that ""the most difficult thing to understand is why a case should remain on the books when only two of the seven justices really indicated their full approval of the decision."

Mr. Quackenbush lamented the Supreme Court development. ""It is pretty devastating for anyone age 40 or older for this to remain law. Employers are now going to be free to arrange their restructuring and business decisions around this case."

Taking a different stance than Mr. Quackenbush is Sarah Rios, a human resources consultant for the Employers Group, an organization of 5,000 state businesses.

Ms. Rios indicated that employers would gain flexibility when they downsize work forces.

BOOK NOT CLOSED YET

""It will have a positive impact on California employers," said Ms. Rios. " "Employers are really scared of terminating employees nowadays because they can be sued in so many directions."

This may not be the final word on this controversial issue. Trial courts must follow the high court ruling, but appeals courts still can render conflicting decisions, setting the stage for the California Supreme Court to revisit the law eventually.

A San Francisco attorney cited possible insurance wrinkles to the Marks case.

""This pro-employer decision may not diminish the surge in age- discrimination litigation arising from the downsizing trend in the corporate world," said Robert Dolinko, partner in the labor and employment department at Thelen, Marrin, Johnson & Bridges.

""Risk managers should take the Marks ruling and other pertinent cases into account when assessing their employment practices liability exposures," Mr. Dolinko said. ""Keep in mind that general liability policies commonly exclude wrongful termination and similar perils."

LOAD-DATE: November 4, 1997

Copyright 1997 Times Mirror Company
Los Angeles Times

October 30, 1997, Thursday, Home Edition

SECTION: Part A; Page 1; Metro Desk

LENGTH: 1134 words

HEADLINE: STATE HIGH COURT DEALS BLOW TO OLDER WORKERS

BYLINE: MAURA DOLAN, TIMES LEGAL AFFAIRS WRITER

DATELINE: SAN FRANCISCO

BODY:
A divided California Supreme Court decided Wednesday to let stand a lower court ruling that allowed companies to lay off older workers and keep younger employees to save money.

The court's action means that trial courts throughout the state will be bound by the July ruling in favor of employers. A Court of Appeal in the case ruled that firing predominantly older workers is not age discrimination if the motivation is economic.

"It is pretty devastating for anyone age 40 or older for this to remain law," said William Quackenbush, a labor and appellate lawyer. ". . . Employers are now going to be free to arrange their restructuring and business decisions around this case."

Sarah Rios, a human resources consultant for the Employers Group, an organization of 5,000 state businesses, said employers will now have more flexibility when they make layoffs.

In the past, she said, employers have been afraid to lay off the most highly compensated employees because they usually are 40 or older and could claim age discrimination.

"It will have a positive impact on California employers," she said. "Employers are really scared of terminating employees nowadays because they can be sued in so many directions."

The Supreme Court does not explain its decisions to grant or deny review of cases. But it appears the majority of the justices was uncomfortable with the lower court's decision in the age case.

Chief Justice Ronald George and Justices Marvin Baxter and Ming W. Chin fell one vote short in a move to decertify the ruling, which would have prevented it from being cited as precedent in other cases. Justices often will deny review and instead decertify a ruling when they disagree with the result but believe the case is not a good vehicle for deciding an issue.

Justices Stanley Mosk and Joyce Kennard voted for a full-blown review of the case. Lawyers familiar with it were puzzled that Mosk and Kennard failed to vote to decertify, and thereby dilute a ruling that troubled them enough to want a review.

Justices Kathryn Mickle Werdegar and **Janice Rogers Brown** apparently supported the ruling, although their votes were not made public.

"The most difficult thing to understand is why a case should remain on the books when only two of the seven justices really indicated their full approval of the decision," Quackenbush said.

Although all trial courts will have to follow the decision, appeals courts still can issue conflicting rulings, prompting the California Supreme Court to revisit the law at a later date.

The court's action stemmed from a lawsuit brought by Michael Marks, a former aerospace accountant who lost his job in 1992 when Loral Corp., his employer, eliminated most jobs at the Newport Beach corporate office where he worked. Marks was 49 at the time.

Marks said he was discriminated against on the basis of age because he was denied the opportunity to transfer within the corporation while other workers under age 40 received reassignments. Only one other worker, also older than 40, was denied reassignment and laid off.

Loral officials said Marks was laid off in a cost-cutting move because he made more money and had more benefits than younger workers. Company officials could not be reached Wednesday.

James J. Guziak, Marks' lawyer, called the Supreme Court's refusal to intervene in the case "extremely disheartening."

Marks volunteered to take a pay cut but lost his job after he filed an age discrimination claim against the company for refusing to transfer him with younger workers, Guziak said. If Marks had been one year older when he was fired, he would have been entitled to a retirement package worth nearly $ 200,000 when he reached the age of 55, Guziak said.

He said Marks, who is divorced, was out of work for several years before landing another job. He was forced to sleep on a friend's couch for a while and could not make support payments to his children, who were teenagers when he was laid off, Guziak said.

Susan Kemp, a lawyer and labor consultant for the California Chamber of Commerce, said business still will be cautious about terminating older workers. She said their lawyers probably will advise them that layoffs should not predominantly affect one group, whether in age, race or sex.

"You still have to ask, 'Am I disparately impacting a class?'--because someone is going to raise the issue," she said.

"What they have permitted is for an employer to point to high salary as the explanation for a decision on whom to terminate, . . ." said labor lawyer Quackenbush.

During Marks' civil trial against Loral, the Orange County judge approved a jury instruction that said: "An employer is entitled to choose employees with lower salaries, even though this may result in choosing younger employees. If the choice is based on salary, there is no age discrimination."

The Court of Appeal in Santa Ana upheld the instruction. In a ruling written by Justice David G. Sills, the court said that age discrimination laws were never intended to impede a company from controlling its costs.

"Employers may indeed prefer workers with lower salaries to workers with higher ones, even if the preference falls disproportionately on older, generally higher paid workers," Sills wrote. "Decision-making by costs--reliance on relative prices if you will--goes to the very core of a market economy."

LOAD-DATE: December 21, 1998

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The Recorder

View Related Topics

October 16, 1997, Thursday

SECTION: NEWS SECTION; PG. 3

HEADLINE: SUPREME COURT TAKES 'PRP' COVERAGE CASE

BYLINE: Greg Mitchell

BODY:
The California Supreme Court agreed Wednesday to settle a raging debate over what the term "suit" means in standard insurance contracts.

At issue is whether insurers must step in to defend policyholders when they receive orders from environmental regulators like California's Environmental Protection Agency.

"This issue is of huge importance," policyholder attorney Barry Shotts said Wednesday.

That's especially true in the environmental arena, the Latham & Watkins San Diego partner said, because the government increasingly relies on administrative remedies when trying to assess liability for environmental contamination.

Shotts' client, Foster-Gardner Inc., operated a wholesale fertilizer and pesticide business from 1959 through 1988. In 1992, Cal-EPA sent the company a so-called potentially responsible party letter ordering it to clean up pollution it was alleged to have caused. Foster-Gardner then sought a defense from its insurers.

The duty to defend under most comprehensive general liability policies is triggered by notice of a "suit. " The provision applies to "literally tens of thousands of California businesses," according to one lawyer involved in the case.

Insurers argue that because Cal-EPA notices and orders aren't filed in court, they aren't "suits."

In July, the Second District Court of Appeal came down on the side of the policyholder. In deciding the case, Justice John Zebrowski noted that "the question is not free from doubt," but concluded that the PRP letter is "the functional equivalent" of a suit while also noting the "prejudice that an insured can suffer before any proceeding is commenced."

In its petition for review, lawyers for insurer Pacific Indemnity argued that the court erred in using a "functional" approach in interpreting the word " suit," instead of sticking to the plain meaning of the insurance contract.

"The appellate court," wrote Kirk Chamberlin of Los Angeles' Charlston, Revich & Williams, "simply failed to analyze the meaning of the term 'suit' within the context of the policy."

In seeking review, the insurers got some help: Two months after the panel issued its ruling in the case, another panel from the same district refused to follow Zebrowski's lead.

Citing dictionary definitions, Second District Justice Miriam Vogel held last month that a "suit" is a "formal proceeding initiated in a court of law under established procedures . . . and which results in a judgment." That ruling, in _Fireman's Fund Insurance Co. v. Superior Court_, 97 C.D.O.S. 7631,

probably increased the chances that the Supreme Court would tackle the issue.

Wednesday's action was a "fairly predictable reaction to what are two irreconcilable opinions emanating out of the Second District ," said policyholder counsel Shotts.

Chief Justice Ronald George and Justices Joyce Kennard, Kathryn Mickle Werdegar, Ming Chin and **Janice Rogers Brown** voted to grant review in _Foster- Gardner Inc. v. National Union Fire Insurance Co._, S063425.

LOAD-DATE: October 16, 1997

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The Recorder

View Related Topics

October 9, 1997, Thursday

SECTION: NEWS SECTION; PG. 1

HEADLINE: COURT LEANING TOWARD BUSINESS IN HARASS CASE

BYLINE: Greg Mitchell

BODY:
At issue in the case is whether a jury can second-guess an employer's good faith decision to terminate a suspect employee.

If so, asked Justice Ming Chin, "would it _ever_ be prudent" for an employer to fire an accused worker before some sort of trial had occurred?

"It could be prudent," insisted Thomas Kallay. His client, Ralph Cotran, won a $1.78 million judgment in a wrongful termination suit when jurors concluded he hadn't committed any harassment. The award was erased on appeal, however.

Kallay, a Los Angeles solo practitioner, said there is no obligation to dismiss an accused employee, only the obligation to take "immediate and appropriate action."

"What does that mean?" pressed Chin, and what about the threat the worker may pose to other employees?

And isn't it possible, asked Justice **Janice Rogers Brown,** that "immediate and appropriate action" includes termination?

The case -- which Kallay's opponent said could "affect the social fabric for years to come" -- began when two women accused Cotran of sexual harassment in 1993.

The women described Cotran, a vice president at Southern California insurance brokers Rollins Hudig Hall, as a compulsive masturbator and exhibitionist who repeatedly pressed them for sex.

Cotran's superiors took the charges seriously. After a two-week investigation that included interviews with 21 of the firm's employees, Cotran was fired from his $177,500-a-year job.

At his wrongful termination trial, however, he convinced the jury that he hadn't committed any of the 11 specific acts of sexual harassment alleged by the two women.

Instead, Cotran testified that he had engaged in consensual sex with both women over a period of time. Only after he refused to hike their pay, he said, did they come forward with the sexual harassment claims.

The Second District Court of Appeal wiped out the award last year, saying that to do otherwise would be "to require management to have a signed confession, or an eyewitness report from every co-worker before it can feel confident in discharging an employee accused of sexual harassment."

The case has generated intense _amicus_ interest from employment and labor groups.

Plaintiff's lawyer Kallay framed the matter as a simple contract dispute: Since it hasn't been proved that Cotran breached his employment agreement by committing harassment, the company breached the contract by firing him.

But Justice Joyce Kennard suggested that the question of the employer's good faith could be put to the jury, prompting Kallay to say he "violently disagreed."

When it was time for Rollins' lawyer Shand Stephens to defend the Second District's decision, he stressed the obligations imposed on employers by sexual harassment laws.

"Employers are the front-line implementers of the civil rights laws," and must act when they believe harassment has occurred, said Stephens, chief trial counsel for AON Corp., owner of Rollins Hudig Hall.

"If the law requires employers to act on their beliefs," he added, "the law must protect them when they act on their beliefs."

Justice Marvin Baxter asked whether someone like Cotran couldn't sue his accusers in such a case.

He also seemed concerned that an employer who still believed the fired worker had committed harassment might have to rehire or pay the worker back wages.

Under Kallay's theory, he asked plaintiff's _amicus_ lawyer William Quackenbush, "haven't you just bankrupted a number of small businesses in the state of California?"

LOAD-DATE: October 9, 1997

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The Fresno Bee

October 2, 1997 , HOME EDITION

SECTION: BUSINESS, Pg. C1, IN BRIEF

LENGTH: 365 words

BODY:

The Dow Jones industrial average rose to its first finish above 8,000 since Aug. 20.

The dollar fell, gold fell or stayed the same and bond prices rose.

Cattle futures prices plunged and November crude oil futures prices fell.

Conservation plan

will be signed today

A host of public officials including Gov. Wilson, U.S. Rep. Cal Dooley, D-Hanford, and state Sen. Jim Costa, D-Fresno, will attend a signing ceremony today marking the completion of a habitat-conservation plan in Kern County.

The 75-year, 19,900-acre habitat conservation/natural community plan allows for many uses for the acreage, which straddles the last five miles of the Kern River, including water recharge and farming. But the majority of the acreage -- 10,000 acres -- will be used for habitat and conservation activities for species on the U.S. and State of California endangered species lists.

The project is a result of a two-year collaboration between six agencies making up the Kern Water Bank Authority, a joint-powers commission.

Associate justice

will speak at dinner

Janice Rogers Brown, associate justice of the California Supreme Court, will be the keynote speaker at the 8th Annual Justice Pauline Davis Hanson Dinner at 6 p.m. today at Pardini's restaurant, 2257 W. Shaw Ave., Fresno.

The dinner is co-sponsored by Fresno County Women Lawyers and the Fresno County Bar Association.

Brown, appointed to the court by Gov. Wilson in 1996, previously served on the state 3rd District Court of Appeal.

The dinner honors the late Justice Pauline Hanson, who served on the 5th District Court of Appeal in Fresno and on the Fresno County Superior Court.

Cost: $ 35. Reservations: 264-2619.

Chain's fifth store

in Fresno opens

The fifth 98 Cent Clearance Center store in Fresno has opened at 4982 E. Kings Canyon Road. The new store will employ about 20 people.

The 15,000-square-foot store will sell a variety of products including cleaning supplies, food, health and beauty care products, stationery and party supplies, toys and holiday items for 98 cents or less.

The new Fresno location is the 57th store in the chain, which spans California, Nevada and Oregon.

LOAD-DATE: October 4, 1997

Copyright 1997 McClatchy Newspapers, Inc.
Sacramento Bee

September 26, 1997, METRO FINAL

SECTION: EDITORIALS; Pg. B8

LENGTH: 442 words

HEADLINE: SAC STATE AT 50

BODY:

California State University, Sacramento, neither dominates nor defines its surroundings, as do University of California campuses at Berkeley and Davis and universities in many other places. Tucked into a shady, 288-acre corner of east Sacramento, the institution doesn't rank high on the consciousness of many in the region.

But its presence, 50 years old this month, affects Sacramentans in ways that aren't always obvious or quantifiable. It educates a significant portion of the area's work force (nearly 23,000 undergraduate and graduate students attend annually), employs more than 5,000 people and contributes substantially to the regional economy. In smaller ways, it enriches the lives of both students and nonstudents, who can avail themselves of the many resources beyond the classroom: the library, an occasional concert or speech, or simply a Hornets football game.

The first students enrolled in what was then called Sacramento State College in the fall of 1947. Some 130,000 diplomas later -- with half of the recipients still living in the Sacramento area -- the whole region has reason to reflect and celebrate.

Among the university's graduates are many who have been central to Sacramento's, and the state's, civic and cultural life: Mayor Joe Serna Jr., former mayor and state assemblyman Phil Isenberg, state Supreme Court Justice **Janice Rogers Brown,** Superior Court Judge and former Assemblyman Lloyd Connelly, Sacramento County District Attorney Jan Scully, painters Gregory Kondos and Wayne Thiebaud, UC Regent Ward Connerly. But even more important, the list of alumni includes thousands whose names may not be recognizable, but who keep the region running as its teachers, nurses, engineers, social workers, entrepreneurs, planners, policemen and real estate agents. At the Capitol and throughout state agencies, the ranks are full of Sac State graduates.

There is certainly more that Sac State could do to shape its community. Its yen to play a larger research and advisory role in policy-making at the Capitol -- an obvious goal in its own backyard -- needs to be converted into reality. Regional planning can profit greatly from increased attention at this regional center of expertise. The recent establishment of the Institute for Education Reform, which has already issued strong recommendations for changes in the way the whole CSU system trains elementary- and secondary-school teachers, is a solid step in the right direction.

Still, in its first 50 years, a young university by most standards, Sac State's contributions are already profound. We wouldn't want to contemplate a Sacramento without it.

LOAD-DATE: September 27, 1997

Copyright 1997 McClatchy Newspapers, Inc.
Sacramento Bee

September 23, 1997, METRO FINAL

SECTION: MAIN NEWS; Pg. A1

LENGTH: 2794 words

HEADLINE: UNIVERSITY FACES NEW CHALLENGES

BYLINE: Brad Hayward, Bee Staff Writer

BODY:

It began without a campus to call its own, and in its first year produced one lone graduate.

Within six years of those humble beginnings in 1947, a permanent home for Sacramento State College was rising out of the peach orchards and hop fields along the American River east of town.

There, under the canopies of 3,000 trees planted to block the Central Valley sun, generations of Sacramentans have gone to get a college education. The single graduate of the Class of 1948 has been joined by 130,000 others.

Fifty years after 235 students signed up to attend its first classes, the campus now called California State University, Sacramento, this week begins a yearlong celebration of its history -- a history shaped by an enduring emphasis on teaching undergraduates from all walks of life.

As it reflects, Sacramento State also is grappling with challenges. A commuter campus by nature, and one somewhat removed from the rest of the Sacramento community by geography, CSUS at 50 is struggling particularly to develop a greater role in the life of the region it serves.

"We are Sacramento -- the students we produce become the police officers, the firefighters, the nurses, the doctors, the teachers, the salespeople," said Erwin Kelly, a CSUS economics professor for 26 years.

"I think we can be even more useful to the community. We need to say to the community, "What do you need?' and if we can, we'll bring it on campus, or we'll come to you, or we'll put it on television or we'll put it on video."

Also, despite the statewide and even national reputations of some CSUS academic programs -- criminal justice, teacher education, engineering and nursing among them -- some campus watchers say the institution overall is still, after 50 years, struggling to develop its own niche in California's public higher education system.

The year's anniversary activities kick off Wednesday with a campus parade and salute to the founders of Sacramento State. A gala at Memorial Auditorium ends the festivities in May, and planned in between are celebratory art exhibitions, performances and lectures.

Sacramento State was conceived in the 1940s, when the capital city was bustling with war activity at its military installations and booming in population. What it lacked was its own four-year comprehensive college to educate returning GIs and train the vast numbers of schoolteachers the region would need in the postwar years.

State Sen. Earl Desmond of Sacramento pushed the Legislature to authorize such a college, and a bill doing so was signed by Gov. Earl Warren in July 1947. Classes began less than three months later.

Guy A. West, then dean of Chico State College, was hired to head the new institution, which at first shared cramped quarters with Sacramento Junior College -- now Sacramento City College -- on Freeport Boulevard.

A permanent site ultimately was chosen on the banks of the American River at what is now 6000 J St., and classes there started in February 1953. The campus, awash in mud, had seven buildings.

Today, the 288-acre campus -- given its present name in 1972, when it joined the California State University system -- enrolls 18,700 undergraduates and 4,700 graduate students. It employs 5,200 people, including 1,300 faculty members.

How important is it to Sacramento? Start with money.

A 1996 CSUS study found that the campus creates 8,300 non-university jobs in the Sacramento region, and the local expenditures of the campus and its employees and students -- along with the ripple effects of that spending -- amount to $ 300 million per year.

Al Gianini, executive director of the Sacramento Area Commerce and Trade Organization, said CSUS and the University of California, Davis, are "absolutely critical" to the marketing of the Sacramento region to businesses interested in coming here.

"Where can they find new employees with technical degrees? Where can they send employees back to school to stay fresh? Where can they find professors to consult with on projects? Those are practical issues," Gianini said. "On a second level, it's all the amenities that come with a university -- that's going to a football game or a play, or just taking a class."

Much has changed in 50 years. The CSUS student body is larger and more ethnically diverse (about half the students are white). Many new buildings have gone up (though many dated ones remain). Fund raising from private sources has ballooned; the campus has raised $ 42 million so far in a $ 50 million drive that ends next June.

Longtime faculty members say the place is more fragmented, more departmentalized, less intimate.

But the thing that nearly everyone says matters most at CSUS has remained constant: a priority on teaching in useful and relevant disciplines.

The CSU system is charged by the state with admitting the top one-third of California's high school graduates; The University of California system takes the top one-eighth. Like most other CSU campuses, Sacramento State does not offer doctoral degrees and does not emphasize faculty research to the extent the more prestigious UC does.

"Our most significant impact on the community is our graduates," said Donald R. Gerth, president of Sacramento State since 1984. "We're not going to become a major research university, but I do not regard that as limiting. A major research university is not going to become a comprehensive university with a great deal of emphasis on teaching."

Relative affordability -- full-time fees are $ 1,974 per year -- and proximity to home are a big part of what draws students to CSUS. And many stay nearby after graduation. About 52 percent of CSUS undergraduates in fall 1996 were from Sacramento, Placer or Yolo counties. The Bay Area accounted for another 20 percent, the foothills and surrounding counties for 12 percent.

Of the 130,000 people with CSUS degrees, about 80 percent still live in California, half of them in the Sacramento area.

Men Phan, 21, a senior majoring in business, said she initially was attracted to Sacramento State because of its proximity to her family's home in Stockton and by the reputation of its nursing program.

Her career interests changed midway through college, but she still ended up pleased with what the university had to offer.

"They offer a lot of good majors and a lot of different programs," Phan said. "Sac State has one of the best business programs around, and I'm learning so much. The professors know what they're teaching, they get students involved with participation in class, and they don't let you lag off."

Another constant in Sacramento State's history is its appeal to nontraditional students. From its earliest days, the campus has enrolled many students who are older, married or working and who are not seeking the trappings of a traditional, residential, four-year college education.

"It's not like going to Duke -- you don't walk out and say, "I'm a Blue Devil forever!' I'll never say, "I'm a Sac State Hornet!' You come here, get your degree and leave," said Steve Sanderson, 30, a senior in biological sciences. "It's a good, solid place to get your education."

People on campus point to several challenges facing CSUS, such as creating a more cohesive core of undergraduate courses and better integrating technology into learning. Some faculty members complain about being pulled in too many directions; students lament the campus parking crunch.

But the criticism most frequently voiced in interviews with faculty, administrators, alumni, local politicians and community leaders is that CSUS does not do enough to be a part of the larger Sacramento community.

"The faculty needs to get more engaged in the life of the city," said Mayor Joe Serna Jr., himself a CSUS professor of government and an alumnus. "Sac State should be a big, major player both in the economic development of the city and the cultural life of the city. We're not there yet."

By many accounts, the university simply does not hold much of a place in the collective consciousness of the Sacramento region. Individual programs or cultural events might stand out, but the institution as a whole does not.

Some believe it's mainly an image problem.

"When people think of a center for higher education and learning in the Sacramento area, it's UC Davis that comes to mind," said Thomas Krabacher, CSUS associate professor of geography and chairman of the Faculty Senate. "We haven't been as effective as we need to be in making ourselves known."

Campus defenders tick off numerous university programs that directly engage the Sacramento community and address its needs -- among them the Real Estate and Land Use Institute, the Center for California Studies, the Community Counseling Center and the Institute for Education Reform.

Many faculty members participate in community groups related to their academic specialties. The university sponsors major cultural events such as the annual Festival of New American Music and Festival of the Arts. And CSUS sports hold the attention of at least some Sacramentans.

But many people inside and outside the university say there should be more: More opportunities for community interaction with faculty. More of a presence downtown and at the state Capitol. More reasons for the residents of the region to come onto campus.

William Pickens, a former CSUS administrator who now heads a commission examining the future of higher education in California, said part of the problem is that the physical isolation of the campus -- almost entirely bounded by railroad tracks, Highway 50 and the American River -- has a

psychological impact on the people who work there.

"It's an inward-looking institution as opposed to outward-looking," he said. "At UC Berkeley, you walk right onto Telegraph Avenue. Sac State is not physically part of the community. You could drive by it a million times and not know it was there."

Despite having a high-quality faculty, Pickens added, CSUS has not developed a niche that might sharpen the focus of the campus and raise its public standing -- a distinguishing feature like the research of San Diego State or the technical programs at Cal Poly, San Luis Obispo.

Gerth and CSU Chancellor Barry Munitz have tried in recent years to take advantage of Sacramento State's location and make it the "Capital Campus," the premier CSU campus for public policy studies, government internships and interaction with Capitol policy makers.

Munitz says the effort has gone "spectacularly well." Others are less enthusiastic.

"We have lots of public relations materials about being the Capital Campus, but many departments and programs feel very isolated out here from the Capitol," journalism Professor Michael Fitzgerald said. "Other campuses look to Sac State for guidance relevant to the Legislature, but to be quite honest, we don't know any more than anybody else, for the most part."

Gerth agrees that there should be more university engagement with the community. But he ties the future of the campus more closely to its historical mission, saying that Sacramento State will be judged mainly by the quality of its undergraduate education.

The commitment to that mission, at least, seems widely shared.

"When I came here, I thought I'd stay one or two years," said Barbara O'Connor, professor of communication studies. "I thought of it as a second-rate institution, and once I figured out what I wanted to be when I grew up, I'd go to a real research university.

"It is still, after 25 years, a joy to go into those classrooms. The students have a sense of purpose. Many will be first-generation college graduates. The diversity mirrors or exceeds the diversity of the population. You feel you're really there to make a difference in their lives."

Voices

"The faculty are easy to approach, they're very helpful, and most seem like they care. I always think of UC Davis as a little notch higher than Sac State, but the longer I'm here, the more it changes my opinion."

-- Ron Quam, cq 24, senior majoring in biological sciences.

"Walking out of that university with my degree, I felt well-rounded, that I had improved my skills and had a strong idea of what I was getting myself into. I was able to link with counselors and professors and peers with whom I could identify and who were incredibly supportive."

-- Pilar Montoya, 1982 graduate, president of Montoya Communications.

"It's not seen in the same way as a giant campus in the middle of a tiny town. You can't expect that. But it has brought into Sacramento a very impressive collection of bright faculty members and their families. That can't help but be of importance."

-- Phillip Isenberg, 1961 graduate, former state assemblyman and mayor.

"The quality of what Sac State has to offer is a lot higher than a lot of the community is aware of. The quality of Sac State is a lot higher than what a lot of the faculty on campus think it is. There's a sense

among many faculty that we're living in the shadow of UC."

-- Thomas Krabacher, Faculty Senate chairman.

"The general education program is not sufficiently cohesive or integrated. We have a collection of individual courses rather than looking, as a university, at the student's development. We're not doing a good enough job of helping students understand the value of general education."

-- Juanita Barrena, professor of biological sciences.

"If you do a lot of chest pounding, people look at it as exactly that. But how do we get people to recognize the important role the university plays? Those of us who care about it would like to see more recognition."

-- Robert Rivinius, 1968 graduate, California Building Industry Association chief executive officer.

"We're not training Nobel laureates, by and large. But that's not our mission. Our mission is to teach people and equip them for life. We prepare people to take jobs in this community, and we do a very good job of it."

-- Barbara O'Connor, professor of communication studies.

"The first time I met Don Gerth, I was sitting in the lobby of the Hyatt across from the Capitol, saying, "You have the only senior public campus in the state capital, and you're going to have to play a special role.' It's a very important campus for us."

-- CSU Chancellor Barry Munitz.

Prominent alumni

A few of the well-known graduates of California State University, Sacramento, are:

Janice Rogers Brown, state Supreme Court justice

Lloyd Connelly, Sacramento Superior Court judge

Ward Connerly, UC regent and Proposition 209 advocate

Kevin Fagan, creator of the "Drabble" comic strip

Phillip Isenberg, former Sacramento mayor and assemblyman

Gregory Kondos, artist

William Popejoy, California Lottery director

Jan Scully, Sacramento County district attorney

Joe Serna Jr., Sacramento mayor

Wayne Thiebaud, artist

Actor Tom Hanks, television personality Joan Lunden and singer Bobby McFerrin attended CSUS but did not graduate from the campus.

Source: California State University, Sacramento.

Milestones

1947: Legislation authorizing a new four-year college in Sacramento is signed on July 1 by Gov. Earl Warren. Registration begins Sept. 19 for the first classes, held on the Sacramento Junior College campus. By December, green and gold are chosen as the school's colors and the hornet as the mascot.

1948: John J. Collins Jr. of Roseville becomes the first graduate of Sacramento State College.

1949: The state purchases land along the American River in east Sacramento for a permanent campus. The State Hornet student newspaper begins publishing. Legislation is signed to allow the college to grant master's degrees.

1953: Permanent campus opens Feb. 9 after students travel to it from the Sacramento Junior College campus in a 150-car parade.

1954: The football team plays its first game, losing 46-0 to San Diego Navy.

1959: Three dormitories -- Draper, Foley and Jenkins halls -- open.

1966: New footbridge over the American River, modeled after the Golden Gate Bridge, is named for Guy A. West, the college's first president.

1972: Campus renamed California State University, Sacramento.

1973: Ground is broken for construction of the new University Union.

1975: New $ 6.2 million library opens.

1978: President James Bond resigns after several years of tumultuous relations with the faculty.

1984: Donald R. Gerth becomes president.

1991: CSUS becomes first university in the nation with two FM public radio stations, KXPR and KXJZ.

1997: Placer Hall, a new building produced by a partnership with the U.S. Geological Survey, opens. University marks its 50th anniversary.

Source: California State University, Sacramento.

GRAPHIC: Bee photograph/Dick Schmidt
Preparing for the 50th anniversary of California State University, Sacramento, Joe Porto, above, works on a commemorative brick project in the Library Quad. With the aid of a billboard, at left, college officials and students announce construction plans for a new campus in April 1951.
Buildings on the California State University, Sacramento, campus at 6000 J St. span from the old to the new. The building above houses the university's English Department; it was built in the mid-1950s. A modern sculpture, at right, frames the newest building on campus, Placer Hall.
When the college moved to its new quarters on J Street in 1953, 505 trees were planted. Today, 3,000 trees shade the 288-acre campus -- including an informational kiosk.
A mural decorates a wall of Lassen Hall, the college's first library. It is one of four buildings that remain from the seven built on the original campus in 1953.
Photograph specialto The Bee
An aerial view showing the campus under construction in 1959 features the administration building wing and the library expansion. What is now the Campus Commons area to the east of the American River was undeveloped at that time.
A walk on the American River levee gives Sacramento State students a view of the Guy A. West footbridge, which is named after the college's first president and is modeled after the Golden Gate

Bridge.

LOAD-DATE: September 24, 1997

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AP Online

September 10, 1997; Wednesday 12:02 Eastern Time

SECTION: Domestic, non-Washington, general news item

LENGTH: 718 words

HEADLINE: Court Broadens Rights On Age Bias

BYLINE: BOB EGELKO

DATELINE: SAN FRANCISCO

BODY:
The California Supreme Court broadened the right to sue for age discrimination and said bias against workers over 40 violates a "substantial and fundamental ... public policy" of California.

The 6-1 ruling allows victims of age discrimination to go directly to court without having to file complaints with a state agency.

The Aug. 27 ruling will have little practical effect for plaintiffs who file their cases first with the state Department of Fair Employment and Housing. They can try to resolve their cases with the state, either through mediation or through a hearing with a state-paid lawyer and limited damages, or they can go to court and seek a full range of damages.

But for other plaintiffs, such as the 60-year-old former hospital nurse whose case was before the court, the difference is crucial because she failed to file a complaint with the state.

A ruling barring her claim that her firing violated public policy would have limited her possible damages to recovery of wage losses. She now can seek damages for emotional distress and punitive damages.

The nurse's lawyer, Antonio Lawson, said the ruling was also an important statement that could affect other types of age discrimination cases.

"The highest court in California is making a statement about the significance of prohibiting and eliminating age discrimination, that it needs as many remedies as we currently have for race and gender," Lawson said.

He said the ruling may signal the court's willingness to review a recent decision by an appellate court in Orange County that allowed employers to favor younger, lower-paid workers over older workers.

Lawson's client, Joan Stevenson, said she was fired by Huntington Memorial Hospital in 1993 after more than 30 years of satisfactory performance. She said the hospital broke a promise to reinstate her after she returned from medical leave.

Lawson said Stevenson has lost her income and her residence and has been "traveling from relative to relative, friend to friend" since her dismissal.

The hospital's lawyer, Robert Dato, noted that Stevenson's factual claims have not been tested in court. He said the hospital denies discrimination.

But Dato agreed that the ruling marked an evolution in the court's thinking on age discrimination. Only three years ago, he noted, the court rejected an age discrimination suit against an employer with fewer than five employees, a level set by state law, and ruled that no public policy was being violated.

Dato said he argued, unsuccessfully, that age discrimination was different from race and sex discrimination because "there are a lot of perfectly permissible age-based discriminations in our society," like minimum ages for voting and drinking and mandatory retirement ages in some professions.

The dissenter in the ruling, Justice **Janice Rogers Brown,** also argued that age was entitled to less legal protection. She said age does not carry the stigma of race or sex and also contended the public interest is equally served by hiring younger workers as by keeping older workers.

"As baby boomers grow older, our society is becoming as solicitous of age as we once were fascinated by youth and beauty," Brown said.

But Justice Joyce Kennard, in the majority opinion, said the 1961 state law banning discrimination against older workers "is one that benefits the public at large." She cited the overall increase in life expectancy and the state legislature's expressed view that human resources should be used to their fullest extent.

"Like race and sex discrimination, age discrimination violates the basic principle that each person should be judged on the basis of individual merit, rather than by reference to group stereotypes," Kennard said.

"Age, like race and sex, is the product of the workings of nature rather than the individual's free choice; once acquired, the status of being over 40 is as permanent and immutable as race or sex."

The court ruled in 1990 that a sex discrimination suit could be filed directly in court. The hospital argued that the same principle should not be applied to Stevenson's case because race and sex discrimination are banned in the state constitution and age discrimination is barred only by statute. The court rejected the distinction.

LOAD-DATE: September 10, 1997

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The Legal Intelligencer

View Related Topics

September 9, 1997 Tuesday

SECTION: NATIONAL; Age Bias; Pg. 4

LENGTH: 641 words

HEADLINE: California Supreme Court Broadens Right to Sue for Age Bias

BODY:
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"Like race and sex discrimination, age discrimination violates the basic principle that each person should be judged on the basis of individual merit, rather than by reference to group stereotypes," Kennard said.

"Age, like race and sex, is the product of the workings of nature rather than the individual's free choice; once acquired, the status of being over 40 is as permanent and immutable as race or sex."

-- Associated Press

LOAD-DATE: September 10, 1997

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The Recorder

View Related Topics

September 9, 1997, Tuesday

SECTION: COURT WATCH; PG. 1

HEADLINE: WOMEN CONTROL SUPREME COURT -- FOR 1 CASE

BYLINE: Greg Mitchell

BODY:
The folks at Virginia Slims missed a great photo-op Monday at the California Supreme Court.

Yes, the court has come a long way: For the first time in its history, women outnumbered men on the bench.

But only for an hour.

That's because the court tapped Sixth District Court of Appeal Justice Patricia Bamattre-Manoukian to fill an empty chair at oral arguments Monday in _Pacific Gas & Electric Co. v. County of Stanislaus_, S047749.

Her presence on the court along with Justices **Janice Rogers Brown,** Joyce Kennard and Kathryn Mickle Werdegar gave women a 4-3 majority.

Justices Ming Chin and Marvin Baxter had recused themselves from the case because of conflicts, so the court reached out to Bamattre-Manoukian and Fifth District Justice Timothy Buckley to fill the void.

"This will be a first for us, certainly," Chief Justice Ronald George said Friday, while agreeing that the milestone reflected progress made by women in breaking down the state's male-dominated judiciary.

George said he hadn't even considered the significance of Bamattre- Manoukian's temporary elevation. "Which is the way it should be," he added.

It was probably just a matter of time too.

After all, Justice Brown's elevation last year made her the third female justice on the court. And the odds for women were improved a bit after George changed the way the court fills seats left open by recusals.

Instead of limiting itself to the small pool of presiding justices from the court of appeal -- as predecessor Malcolm Lucas did -- the court now includes all appellate justices in an alphabetical rotation.

But what a difference a decade makes: As recently as 1987, all seven justices were men.

LOAD-DATE: September 9, 1997

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Sacramento Bee

September 9, 1997, METRO FINAL

SECTION: EDITORIALS; Pg. B7

LENGTH: 882 words

HEADLINE: IS RON GEORGE THE NEXT ROSE BIRD? IT'S NOT LIKELY

BYLINE: John Jacobs

BODY:

However critical of Pete Wilson's seven years as governor of California -- his sometimes extreme pig-headedness; his well-advertised loathing of labor, organized and unorganized; his willingness to identify and exploit racial wedge issues for his own political gain -- one should credit him for appointing conscientious, responsible and racially diverse justices to the California Supreme Court.

Four justices on the seven-member court are Wilson appointees: Kathryn Mickle Werdegar, Ming Chin, **Janice Rogers Brown** and Chief Justice Ron George. They include the first Asian American man (Chin) and African American woman (Brown) ever to serve.

Last month, the Supreme Court struck down on privacy grounds a state law requiring minors who want abortions to get parental consent or a judicial order. The vote was 4-3. George wrote the opinion and Chin joined it. Brown dissented. The ruling affects some 30,000 unmarried teenage girls who get abortions each year in California.

Opponents of abortion promptly warned that they would target and defeat George and Chin next year. Both must face voters for confirmation on the 1998 state ballot. Republican Assemblyman Bruce Thompson, a staunch foe of abortion, said, "My goal in the next year and a half will be ... to throw them out on their rear end."

Last week, the California Field Poll asked respondents how likely they might be to do just that. The result was mixed, but somewhat negative. Before voters were told of the parental consent ruling, 29 percent said they would vote to confirm George and 19 percent they would not, with 52 percent undecided. When they were told of George's opposition to the parental consent law, 41 percent said they were more likely to support him and 40 percent said they were less likely. Another 17 percent said it made no difference.

So the political question thus becomes: Is Ron George the next Rose Bird? She was the chief justice, appointed in 1977 by Gov. Jerry Brown, who was rejected by voters in 1986. Two other liberal, Brown-appointed associate justices, Joseph Grodin and Cruz Reynosa, were also defeated in the Bird wreckage.

Tempting though it may be to envision a reprise, both the personalities and the political context today are totally different than in 1986. One should never say never in politics, but it seems highly unlikely that either George or Chin face much of a threat at all, no matter what the poll says or how accurate it was at the time it was taken. Indeed, most voters have never heard of either man. Suddenly faced with a pollster's question and having to provide a a quick seat-of-the-pants reply is not an accurate foretelling of what many voters might do on this issue more than a year later.

While there are many obvious differences between Bird and George, the biggest one is this: State

business interests, the insurance industry in particular, hated what they saw as Bird's anti-business rulings. They piggy-backed onto voter discontent over Bird's anti-death penalty rulings, and state Republican Party loathing of rulings it saw as partisan, especially a reapportionment decision that benefited Democrats.

The combination of business interests, GOP activists and voters outraged over repeated Bird court decisions that denied the death penalty to individual murderers was potent. In the 61 death-penalty appeals to come before her, she voted to reverse the death penalty every time. This led many voters to conclude that she was legislating her own morality from the bench, rather than enforcing the law.

The campaign against Bird, who was well-known and quite visible, was highly organized and generously financed. By contrast, the only group so far willing to target George is the California ProLife Council.

Because a majority of Californians continue to favor abortion rights, that group's opposition, if anything, is more likely to coalesce support for George and Chin among pro-choice voters than seriously cost them support. And as Wilson appointees, it would be difficult to argue that George and Chin are either "soft" on crime or consistently anti-business in their rulings.

Even Michael Schroeder, the anti-abortion rights chairman of the state Republican Party, an activist who took a six-month leave from his law firm to work against Bird, said any parallel would be "somewhat overblown."

"As long as justices are seen as nonpolitical, they are bullet-proof," said Schroeder. "With Bird, she was viewed as transparently political and as abusing her office. The parental-consent ruling can and will be viewed as improper and as politicizing the court, but by itself it's not enough to cost confirmation. It could cut into the margin of victory."

Moreover, said Stephen Barnett, a UC Berkeley law professor who opposed Bird's reconfirmation, "In contrast with Bird, you would find the entire legal profession uniting behind these justices. To vote them out of office because you disagree with one decision in one close case cuts the heart out of judicial independence."

McClatchy Newspapers political editor John Jacob's column appears in The Bee on Tuesday, Thursday, and Sunday. He can be reached by phone at 321-1914; by fax at 321-1996; by letter at Box 15779, Sacramento, CA 95852-0779; or by e-mail at jjacobs

LOAD-DATE: September 10, 1997

The Associated Press

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September 8, 1997, Monday, BC cycle

SECTION: Domestic News

LENGTH: 713 words

HEADLINE: California high court broadens right to sue for age bias

BYLINE: By BOB EGELKO, Associated Press Writer

DATELINE: SAN FRANCISCO

BODY:
The California Supreme Court broadened the right to sue for age discrimination and said bias against workers over 40 violates a "substantial and fundamental ... public policy" of California.

The 6-1 ruling allows victims of age discrimination to go directly to court without having to file complaints with a state agency.

The Aug. 27 ruling will have little practical effect for plaintiffs who file their cases first with the state Department of Fair Employment and Housing. They can try to resolve their cases with the state, either through mediation or through a hearing with a state-paid lawyer and limited damages, or they can go to court and seek a full range of damages.

But for other plaintiffs, such as the 60-year-old former hospital nurse whose case was before the court, the difference is crucial because she failed to file a complaint with the state.

A ruling barring her claim that her firing violated public policy would have limited her possible damages to recovery of wage losses. She now can seek damages for emotional distress and punitive damages.

The nurse's lawyer, Antonio Lawson, said the ruling was also an important statement that could affect other types of age discrimination cases.

"The highest court in California is making a statement about the significance of prohibiting and eliminating age discrimination, that it needs as many remedies as we currently have for race and gender," Lawson said.

He said the ruling may signal the court's willingness to review a recent decision by an appellate court in Orange County that allowed employers to favor younger, lower-paid workers over older workers.

Lawson's client, Joan Stevenson, said she was fired by Huntington Memorial Hospital in 1993 after more than 30 years of satisfactory performance. She said the hospital broke a promise to reinstate her after she returned from medical leave.

Lawson said Stevenson has lost her income and her residence and has been "traveling from relative to relative, friend to friend" since her dismissal.

The hospital's lawyer, Robert Dato, noted that Stevenson's factual claims have not been tested in court. He said the hospital denies discrimination.

But Dato agreed that the ruling marked an evolution in the court's thinking on age discrimination. Only three years ago, he noted, the court rejected an age discrimination suit against an employer with fewer than five employees, a level set by state law, and ruled that no public policy was being violated.

Dato said he argued, unsuccessfully, that age discrimination was different from race and sex discrimination because "there are a lot of perfectly permissible age-based discriminations in our society," like minimum ages for voting and drinking and mandatory retirement ages in some professions.

The dissenter in the ruling, Justice **Janice Rogers Brown,** also argued that age was entitled to less legal protection. She said age does not carry the stigma of race or sex and also contended the public interest is equally served by hiring younger workers as by keeping older workers.

"As baby boomers grow older, our society is becoming as solicitous of age as we once were fascinated by youth and beauty," Brown said.

But Justice Joyce Kennard, in the majority opinion, said the 1961 state law banning discrimination against older workers "is one that benefits the public at large." She cited the overall increase in life expectancy and the state legislature's expressed view that human resources should be used to their fullest extent.

"Like race and sex discrimination, age discrimination violates the basic principle that each person should be judged on the basis of individual merit, rather than by reference to group stereotypes," Kennard said.

"Age, like race and sex, is the product of the workings of nature rather than the individual's free choice; once acquired, the status of being over 40 is as permanent and immutable as race or sex."

The court ruled in 1990 that a sex discrimination suit could be filed directly in court. The hospital argued that the same principle should not be applied to Stevenson's case because race and sex discrimination are banned in the state constitution and age discrimination is barred only by statute. The court rejected the distinction.

LOAD-DATE: September 8, 1997

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The National Law Journal

View Related Topics

September 8, 1997

SECTION: COURT DECISIONS; Criminal Practice; Sentencing; Pg. B22

LENGTH: 240 words

HEADLINE: 'Three Strikes' Defendant Is Subject to Enhancements

BODY:
WHEN A DEFENDANT is sentenced under the "three strikes" law and his current conviction is for a serious felony, the trial court must impose a separate, determinate term for enhancements, the Supreme Court of California ruled Aug. 18. *People v. Dotson,* S056839.

Reversing, the court held that when a defendant is sentenced for a serious felony that is calculated by adding the applicable enhancements to the term for the current offense, the trial court must impose a separate, determinate term for enhancements attributable to the defendant's prior felony convictions. Justice **Janice Rogers Brown** said, "The three strikes law expressly subjects a defendant to a separate determinate term for enhancements, even when those enhancements are used in calculating the minimum indeterminate life term."

Tyrone Craig Dotson was convicted of first-degree burglary. The trial court found that Mr. Dotson had four prior serious felony convictions, subjecting him to the provisions of the three-strikes law.

Under that law, a court must sentence a defendant with two or more qualifying prior felony convictions to an indeterminate life term, with the minimum term calculated as the longest of three options. The last of these options is calculated by adding to the term for the current offense the terms for applicable enhancements. The court of appeals concluded the enhancements should not be added as a separate determinate term.

LOAD-DATE: September 19, 1997

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The Recorder

View Related Topics

August 29, 1997, Friday

SECTION: NEWS; PG. 1

HEADLINE: SILENT IS DEADLY FOR THREE STRIKES DEFENDANTS -- COURT

BYLINE: Greg Mitchell;
Reporter Greg Mitchell's e-mail address is gmitchell@therecorder.com

BODY:
With a bow to the bottom line, a divided California Supreme Court ruled Thursday that Three Strikes prisoners are not automatically entitled to new sentencing hearings just because their trial lawyers might not have realized that leniency was an option.

Settling a wide-ranging controversy over so-called "silent record" cases, the court ruled that if defense lawyers did not seek dismissal of prior convictions at sentencing, the prisoner's only recourse now is to file a petition for _habeas corpus_.

The issue has split the appellate courts, with several pointing out that it was widely assumed judges had no discretion to reduce harsh Three Strikes sentences until the Supreme Court addressed the issue last summer. Those appellate courts argued that prisoners were entitled to a remand for resentencing.

On Thursday the Supreme Court acknowledged the argument. But Chief Justice Ronald George concluded for a 4-3 majority that granting new hearings "would entail an unduly cumbersome and costly process, necessitating the transportation of a large number of inmates from prisons around the state to the various courts."

Moreover, George wrote in _People v. Fuhrman_, 97 C.D.O.S. 6975, new hearings aren't justified in many of the cases because the exercise of discretion "was not a realistic possibility."

In dissent, Justice Kathryn Mickle Werdegar blasted the majority's _habeas_ solution, saying it "will ensure that some defendants spend their lives in prison without ever having appeared with counsel before judges who correctly understood the law and the scope of their sentencing discretion."

Meanwhile, the court used the case to settle a separate Three Strikes issue, with all seven justices agreeing that a defendant can be assessed multiple strikes for a spree of felonies even if the convictions all come in one trial proceeding.

Thursday's decision settles a split that had developed in the wake of _People v. Superior Court (Romero)_, 13 Cal.4th 497, the Supreme Court's landmark Three Strikes decision of June 1996.

Romero affirmed a judge's power to strike prior convictions "in the interests of justice." And in an oft-quoted footnote, the court said its ruling was "fully retroactive."

That meant new sentencing hearings for pre-_Romero_ defendants whose pleas for leniency had fallen on deaf ears.

But the courts of appeal went all over the map on how to handle defendants who hadn't asked for leniency. Some pointed out that before _Romero_ almost every appellate court had taken the opposite position -- that trial judges had no discretion to strike priors -- and that cases would have to be

remanded for resentencing if it was not clear that the sentencing judge understood her _sua sponte_ power to strike a prior.

But an easier and cheaper solution, the Supreme Court concluded Thursday, is for affected prisoners to file _habeas_ writs "setting forth the circumstances that would support" a hearing to strike one or more prior convictions.

Justices Marvin Baxter, Ming Chin and **Janice Rogers Brown** concurred in _Fuhrman_.

In a separate concurrence, Chin and Baxter emphasized that trial judges are presumed to have followed the law unless the record suggests otherwise.

Werdegar's dissent, joined by Justices Stanley Mosk and Joyce Kennard, accused the majority of retreating on _Romero_'s promise of retroactivity.

If "the goal is simply to conserve the time of the judicial and correctional bureaucracies, then perhaps relegating defendants to _habeas corpus_ is more efficient, because many prisoners will not file petitions for _habeas corpus_, " Werdegar wrote. "And most of those who do will receive from the sentencing court not a hearing, but a postcard with the following words only: 'Petition denied.'"

Werdegar, the author of _Romero_, contended that the specter of busloads of prisoners swarming across the state en route to new hearings is misleading. A decision to remand the cases for sentencing, she wrote, "would today likely involve no more than a few remaining defendants."

The other issue decided in the case Thursday wasn't nearly as divisive.

When Scott Fuhrman was sentenced for a 1994 bank robbery and auto theft, a judge counted his two 1989 felony convictions as strikes.

On appeal, Fuhrman argued that those felony convictions should have netted him only one strike because they arose from only one proceeding.

Although Fuhrman conceded that the language of the Three Strikes law contains no "brought and tried separately" limitation, he pointed to another, unrelated criminal statute that does, and suggested the unrelated statute infused ambiguity into the term "prior conviction."

In dispensing with that argument, George said it is "reasonable to infer that had the drafters of the Three Strikes law intended to include the 'brought and tried separately' requirement . . . they were aware of the manner in which to do so."

LOAD-DATE: August 29, 1997

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The Fresno Bee

August 28, 1997 Thursday, HOME EDITION

SECTION: TELEGRAPH, Pg. A3, IT'S YOUR CALL

LENGTH: 445 words

HEADLINE: Court eases way for workers to sue for age bias

BYLINE: Claire Cooper Scripps-Mcclatchy Western Service

DATELINE: SAN FRANCISCO

BODY:

The California Supreme Court put age bias in employment on a par with race and sex discrimination Wednesday, ruling that many older workers may go directly to court to sue for wrongful termination.

The 6-1 decision applies to people 40 or older working for employers with five or more employees -- the same workers who are covered by the age-bias provisions of the state's Fair Employment and Housing Act.

The sole dissenter was Justice **Janice Rogers Brown,** who said the majority opinion upset a delicate balance of interests.

Under the court's opinion, though, workers claiming age bias need not go through protracted proceedings before the Fair Employment and Housing Commission or settle for the back pay that the commission can award.

Justice Joyce Kennard wrote the majority opinion, recognizing freedom from age discrimination in the workplace as a fundamental public policy enforceable in court.

"Because average life expectancy has risen to more than 80 years, most California residents either are now or will become over-40 employees, thus creating an extraordinarily broad class of potential victims of age discrimination in employment," she wrote.

Protecting them will serve the public at large by giving it the benefit of "valuable human resources" and relieving stress that saps productivity in the work environment, the opinion said.

Anna Segobia Masters, a member of the law firm that prepared a brief in the case for the California Employment Law Council, called the decision "an unnecessary creation of a new claim that will likely be viewed by employers as another reason why it's expensive and risky to do business in California."

But William C. Quackenbush, who also filed a brief in the case, said the court's "underlying tone" was encouraging for workers in upcoming appeals, including one he will file in the Supreme Court next week. It will ask the court to reverse a lower court's ruling allowing cost-cutting layoffs that primarily affect older workers.

In the short run, Wednesday's decision reinstated a suit filed by Joan Stevenson, a Pasadena woman who was fired from her job at Huntington Memorial Hospital at age 60.

Stevenson said she was fired after taking a hospital-approved medical leave in 1992. She claimed that the decision to terminate her was based on her age and the hospital's wish to deny her benefits to which she was entitled as a 30-year employee.

The hospital denied that age was involved in its decision. It said Stevenson was fired for overstaying her medical leave.

But the only issue decided so far in the case was whether Stevenson had a right to press her age-bias claim in court.

LOAD-DATE: August 29, 1997

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Los Angeles Times

August 28, 1997, Thursday, Home Edition

SECTION: Part A; Page 1; Metro Desk

LENGTH: 1387 words

HEADLINE: STATE HIGH COURT EXPANDS RIGHTS OF AGE BIAS CLAIMANTS; LAW: JUSTICES GIVE OLDER WORKERS SAME STATUS AS RACE, GENDER DISCRIMINATION VICTIMS. RULING SAYS EMPLOYEES OVER 40 CAN SUE WITHOUT FIRST COMPLAINING TO CALIFORNIA AGENCY.

BYLINE: MAURA DOLAN, TIMES LEGAL AFFAIRS WRITER

DATELINE: SAN FRANCISCO

BODY:
In a victory for older workers, the California Supreme Court ruled Wednesday that employees who are discriminated against on the basis of age have the same legal rights as victims of race and gender bias.

The 6-1 ruling opens another avenue for older workers to bring discrimination complaints when they are fired or demoted and sends a strong message that the state has a fundamental interest in preventing age bias in the workplace.

"With this ruling, age discrimination is put on a similar footing with race and gender," said Antonio Lawson, who represented Altadena resident Joan Stevenson in the case.

At the age of 60, Stevenson lost a clerical job she had held for 30 years. Because of what she called poor legal advice from a previous attorney, she failed to file a complaint with a state agency alleging age discrimination. A lower court had held that that administrative step was required before she could charge age bias in a lawsuit.

The court's ruling makes it possible for victims to proceed directly to the courts. "I am sure there are many people in my situation," Stevenson said Wednesday.

But employment lawyer William Quackenbush, who presented arguments on behalf of Stevenson as a friend of the court, said the ruling's practical effects are less important than the court's message.

Robert M. Dato, who represents the employer in the case, called the ruling "very significant."

"Age is taking a big step forward by virtue of this decision," he said.

Unlike most state high courts, California's has now held that the right not to experience age discrimination in the workplace is as important as the right to freedom from race or gender bias, Quackenbush said.

"It sends a message that age discrimination is not going to be tolerated in any form," he said. "That message is more important that the technical effects."

The ruling follows a lower appeals court decision that employers could fire older workers to save money. An appeal of that decision to the state Supreme Court is expected.

"Chronological age alone is not a reliable measure of any individual's vitality or ability," wrote Justice Joyce L. Kennard for the Supreme Court, "and many individuals remain robust and productive well past the normal retirement age."

Joining Kennard were Chief Justice Ronald George and Justices Kathryn M. Werdegar and Stanley Mosk. Justice Marvin Baxter agreed that Stevenson should be allowed to sue but disagreed with part of the majority's analysis. Justice **Janice Rogers Brown** dissented.

Age discrimination, Kennard wrote, "violates the basic principle that each person should be judged on the basis of individual merit." Like race and sex, age is not a matter of choice, she wrote.

"Age discrimination attacks the individual's sense of self-worth in much the same fashion as race or sex discrimination," Kennard said.

Justice Brown, however, contended that age was not an "immutable" characteristic like race and gender.

"Unlike race and sex, the various prohibitions against age discrimination arise not from any fundamental character, but from the realization more and more that the population needs such protection," wrote Brown. "In reality, as baby boomers grow older, our society is becoming as solicitous of age as we once were fascinated by youth and beauty."

The court's decision will affect businesses with five or more workers and employees more than 40 years old. Before the ruling, age discrimination victims could sue only if they first filed a complaint with the state Department of Fair Employment and Housing.

The flexibility the ruling now gives victims is less significant than the statement the court is making, lawyers agreed.

"This is at odds with rulings in virtually every other state and a complete surprise in light of the decisions coming from the state Supreme Court during the last decade," said lawyer Steven Drapkin, who represents employers.

Jeffrey Berman, a lawyer who heads a committee for The Employers Group, an association of 5,000 employers in the state, complained that the ruling creates uncertainty and raises the prospect that other classifications, like disability or marital status, may someday be elevated in legal status.

By allowing workers to take their complaints directly to court, the justices have also undermined the chance that the state agency could help mediate a dispute without a lawsuit, he said.

Stevenson, 65, had been a clerical worker at Huntington Memorial Hospital in Pasadena. Before she was terminated in 1992, she had taken a hospital-approved medical leave for back problems. She said that when she returned, she was told her job was no longer available and a younger woman had been hired in her place.

Divorced with grown children, she said she had to move out of her Altadena home and rent it out to make mortgage payments. She began living with various family members and tried but failed to get another job, she said.

"I hope you are never in that situation," she said. "It is not easy."

But Huntington Hospital lawyer Dato said Stevenson lost her job not because of her age but because she failed to return to work from her medical leave when she was required. Her case will now go to trial, he said.

The Supreme Court decision overturns a ruling by a Court of Appeal in Los Angeles, which

reluctantly held that Stevenson could not sue the hospital over age bias because the law appeared to bar such claims unless victims followed the state administrative route.

Stevenson could have proceeded with a lawsuit for breach of employment contract. But without the age discrimination allegation, she would not have been entitled to compensation for emotional distress and punitive damages if she prevailed.

The appellate court pleaded with the Supreme Court to review Stevenson's case because of its ramifications for older workers.

"We live in a time of rising life expectancy, a rapidly expanding older population and the desire, necessity and practice of many older individuals to remain active in the work force. . . ," wrote Court of Appeal Justice Joan Dempsey Klein, who is 73. "We respectfully urge the Supreme Court to explore further this troubling area of the law at its next opportunity."

LOAD-DATE: December 21, 1998

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August 28, 1997, Thursday

SECTION: Pg. 1

LENGTH: 947 words

HEADLINE: Justices Extend Wrongful-Termination Tort to Age Bias

BYLINE: By KENNETH OFGANG, Staff Writer/Appellate Courts

BODY: A worker fired due to age by an employer with five or more employees has a common-law claim for wrongful termination in violation of public policy, the California Supreme Court ruled yesterday.

"[T]he policy prohibiting employment discrimination against older workers," Justice Joyce Kennard wrote, "satisfies each of the criteria this court has established as necessary to support a common law action for tortious wrongful discharge: The policy has been articulated in a statute (the FEHA), benefits society at large, is 'substantial' and 'fundamental,' and was well established at the time of the discharge here."

With Justice **Janice Rogers Brown** the lone dissenter, the high court reinstated Joan Stevenson's suit against Huntington Memorial Hospital in Pasadena, which she claimed terminated her after 30 years of employment because she was 60 years of age.

The Court of Appeal for this district had upheld the dismissal of Stevenson's wrongful termination claim, ruling in February of last year that a violation of the age-discrimination ban set forth in the Fair Employment and Housing Act doesn't constitute a violation of fundamental public policy under 1980's Tameny v. Atlantic Richfield Co., 27 Cal.3d 167.

Stevenson was barred from suing under FEHA because she didn't file an administrative charge with the Fair Employment and Housing Commission within the statutory period.

But Kennard said the lower courts' rulings were inconsistent with the high court's 1990 decision in Rojo v. Kliger, 52 Cal.3d 65, which held that workers who failed to file FEHA claims after leaving their jobs, allegedly to escape sexual harassment, could sue for constructive wrongful termination at common law.

Kennard distinguished Jennings v. Marralle, 8 Cal.4th 121, a 1994 case in which the court held that no public-policy cause of action based on age discrimination lies against an employer which is exempt from FEHA because it has fewer than five workers.

In Jennings, Kennard explained, the court said there was no basis for articulating a public policy against termination of older workers by small employers, since neither FEHA nor any other statute expresses such a policy and there are traditional public-policy reasons for exempting small employers from statutory burdens.

But in the case of larger employers, Kennard said, there is an established public policy against terminating older workers and no valid reason not to apply it as a matter of common law. Not only is employment discrimination against that class a violation of FEHA, but more than 30 other California statutes express "a broader policy against age discrimination," while many other states have laws against age discrimination in employment, the justice said.

Unlike the small employer in Jennings, Kennard added, an employer of more than four persons will suffer no unfairness as a result of being sued for age-related termination.

"Stevenson belongs to the class of persons for whom the Legislature intended to afford a remedy for age discrimination in employment," the justice reasoned. "That she failed, for whatever reason, to avail herself of those remedies does not mean either that the policy against age discrimination in employment does not apply to her or that the Hospital did not engage in conduct prohibited by the FEHA when it terminated her employment because of her age. Because the FEHA's policy against age discrimination in employment applies to both Stevenson and the Hospital, she may assert her common law wrongful termination claim without exhausting her administrative remedies under the FEHA."

Justice Marvin Baxter, writing separately, said he was joining the majority only because of the public policy against age discrimination in employment, independent of FEHA's, expressed in Unemployment Insurance Code Sec. 2070.

Brown, dissenting, argued that the majority was putting courts "in the untenable position of using a legislative declaration of public policy as a touchstone to justify duplicative remedies that ultimately can serve only to frustrate legislative intent."

An attorney for Stevenson, Fernando Olguin Jr. of Pasadena's Voorhees, Traber, & Olguin, said he was confident the court would rule for the plaintiff, because to do otherwise would be inconsistent with Rojo.

"What this really stands for is the proposition that when the Legislature declares a public policy, there is a basis for a wrongful termination action at common law," Olguin said.

Had the court high court affirmed, he said, it would have "effectively frozen the common law in 1959," when California had no anti-discrimination statute. By reversing, he said, the court was upholding the principle that the common law "develops in response to changes in society," such as the ever-increasing age of the workforce.

Robert Dato, an appellate specialist with Long Beach's O'Flaherty & Belgum who argued for the hospital, emphasized that the hospital will press its position-that Stevenson was terminated for taking excessive medical leave, not because of her age-in the trial court. The decision, he said, stands largely for the notion that "judicial recognition of causes of action for employment discrimination is part of a continuing evolutionary process."

The ruling, he said, may have consequences not only for claims based on policies expressed in FEHA, but also for claims of sexual-preference discrimination, which are governed by a separate statutory scheme.

The case is Stevenson v. Superior Court, Huntington Memorial Hospital, 97 S.O.S. 6918.

LOAD-DATE: September 2, 1997

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The Recorder

View Related Topics

August 28, 1997, Thursday

SECTION: NES; PG. 1

HEADLINE: STATE HIGH COURT EXPANDS AGE DISCRIMINATION TORT

BYLINE: Rinat Fried;
Reporter Rinat Fried's e-mail address is r.fried@counsel. com

BODY:
The California Supreme Court on Wednesday clarified its position on age discrimination claims, expanding the rights of workers to bring tort claims for wrongful discharge.

California plaintiffs are already protected from age discrimination by state and federal statutes. But the Supreme Court's decision in _Stevenson v. Superior Court (Huntington Memorial Hospital)_, 97 C.D.O.S 6918, gives them another avenue for redress.

The decision means that workers employed in a business with more than four employees can now file age discrimination suits in state court rather than in federal court or with the state's Department of Fair Employment and Housing.

Taken up in part at the urging of the Second District Court of Appeal, the high court in _Stevenson_ also took the opportunity to clarify its ruling in _Jennings v. Marralle_, 8 Cal.4th 121. The 1994 decision, which prohibited an age discrimination tort against a business with fewer than five employees, had been widely interpreted as prohibiting victims of age discrimination from bringing tort claims against any California employer.

"Like race and sex discrimination, age discrimination violates the basic principle that each person should be judged on the basis of individual merit, rather than by reference to group stereotypes," Justice Joyce Kennard wrote for the 6-1 majority.

" T he policy prohibiting employment discrimination against older workers satisfies each of the criteria this court has established as necessary to support a common law action for tortious wrongful discharge," she added.

The decision drew a dissent from Justice **Janice Rogers Brown,** who said the majority opinion needlessly allowed plaintiffs to leapfrog administrative agencies.

"When the Legislature has provided an adequate statutory remedy to fully protect the interests of both the employee and public, the courts have neither reason nor need to intercede," she wrote.

Brown also argued that age doesn't deserve the same protection as sex and race.

But Kennard said the parallel holds, citing court's 1990 decision in _Rojo v. Kliger_, 52 Cal.3d 65. In that case, the justices found that a victim of sex discrimination could file suit in state court without first exhausting administrative remedies.

The court's ruling means Joan Stevenson will finally have the chance try her age discrimination case against her former employer, Pasadena's Huntington Memorial Hospital.

Stevenson believes hospital management fired her from her job as a hospital administrator in 1993 because of her age -- she was 60 -- and to deny her benefits she had accumulated as a long-term employee.

Stevenson sued the hospital in 1993. The hospital sought to have the case dismissed, arguing that she had not exhausted her administrative remedies. In late 1994, Los Angeles Superior Court Judge Coleman Swart sided with the hospital.

Stevenson appealed to the Second District Court of Appeal, where a unanimous panel in February 1996 said it was forced to uphold the trial court's decision because of the Supreme Court's ruling in _Jennings_.

The Second District said the high court's "sweeping language" in _Jennings_ closed the door on all age discrimination torts in California.

Supreme Court Justice Marvin Baxter, who authored _Jennings_, used Wednesday's ruling to clarify the court's earlier opinion. In a concurrence to _Stevenson_, he insisted that the court had intended its 1994 decision to apply only to small businesses. The Second District, he added, read passages of _Jennings_ "more broadly than their context warrants."

Stevenson's lawyer, Oakland solo Antonio Lawson, predicted Wednesday's ruling bodes well for California workers.

"Essentially what the court has done in a strong way is to make a statement that the prohibitions against age discrimination are as fundamental to this society as race and gender," he said.

Encino plaintiffs attorney Joseph Posner, who represented _amicus curiae_ California Employment Lawyers Association, agreed that the decision could help deserving cases.

"Unfortunately, the Department of Fair Employment and Housing has become an almost impossible hurdle -- it's chronically understaffed and underfunded," he said. "This way, if the DFEH people screws up something, you can still maintain a claim under common law."

Attorneys for the hospital did not return calls seeking comment.

But Anna Segobia Masters, a partner with the Los Angeles office of Oakland's Crosby, Heafey, Roach & May who drafted briefs for _amicus curiae_ the California Employment Council, said that the ruling unnecessarily creates a new class of age discrimination claim. "The Legislature already has in place a comprehensive statute that fully redresses age and all other forms of discrimination," she said. "The employer in this case was only asking the employees to go through that statutory" scheme.

LOAD-DATE: August 28, 1997

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The Recorder

View Related Topics

August 28, 1997, Thursday

SECTION: NEWS; PG. 1

HEADLINE: COURT: NO DOUBLE JEOPARDY FOR '3 STRIKES' SENTENCING

BYLINE: Kate Rix;
Reporter Kate Rix's e-mail address is krix@therecorder.com

BODY:
In a decision with big implications for Three Strikes cases, a divided California Supreme Court on Wednesday ruled that retrials on the issue of prior convictions do not violate double jeopardy protections.

Reversing a court of appeal ruling, Justice Ming Chin wrote for a sharply split court that federal double jeopardy provisions don't specifically apply to sentencing proceedings, even if they take place before a jury.

Chin wrote for a three-judge plurality that although jury trials on prior convictions bear "the hallmarks of the trial on guilt or innocence," they are not entitled to double jeopardy protection because they generally aren't mandated by federal law, and because of the narrow range of factual determinations.

"Like a trial in which the defendant's age or gender is at issue, the prior conviction trial merely determines a question of the defendant's continuing status, irrespective of the present offense," Chin wrote in _People v. Monge_, 97 C.D.O.S. 6903, "and the prosecution may reallege and retry that status in as many successive cases as it is relevant even if a jury rejects the allegation."

Justice **Janice Rogers Brown** concurred separately, providing the decisive vote while urging "a more cautious approach."

Three justices led by Kathryn Mickle Werdegar dissented. "The people having had one good chance to prove the truth of the prior conviction allegation, they should now be barred by the state constitutional double jeopardy clause from a second chance to prove the same charge."

The ruling partially reversed a Second District Court of Appeal ruling that had upheld Angel Jaime Monge's conviction for drug sale and possession but found evidence of a prior conviction for assault with a deadly weapon insufficient to establish a "strike."

The prosecution had submitted documents showing that Monge was convicted of violating Penal Code 245 -- assault with a deadly weapon. But the appellate court noted that the evidence did not prove Monge personally used a deadly weapon, which is necessary to qualify the conviction as a "strike."

The Second District further held that Monge was protected under double jeopardy provisions from being retried for that allegation. The ruling knocked more than 10 years off Monge's sentence.

While the case has been pending before the Supreme Court, no fewer than 10 other appellate courts have addressed similar issues. All will be resolved by Wednesday's ruling.

In reversing the Second District, Chin discounted a 1981 U.S. Supreme Court case, _Bullington v. Missouri_, 451 U.S. 430, which he described as the first departure from the high court's "consistent approach" of denying federal double jeopardy protection for sentencing hearings.

Chin concluded that _Bullington_ is "a procedural safeguard . . . unique to death penalty cases " that didn't apply to Monge, who is not charged with a capital offense.

"We do not believe _Bullington_ requires application of the double jeopardy clause to all sentencing proceedings that have 'the hallmarks of the trial on guilt or innocence,'" Chin wrote, quoting _Bullington_.

Chief Justice Ronald George and Justice Marvin Baxter concurred.

Cliff Gardner, appellate counsel for Monge, said the ruling makes a Three Strikes trial into "just a dress rehearsal."

"The prosecution, whether they're inept or good, will have as many shots as they want to prove their case" on priors, Gardner said Wednesday.

In her 43-page dissent, Werdegar wrote that _Bullington_ should indeed apply to Three Strikes cases, and that the California Constitution also "protects Californians from multiple retrials of sentence enhancement allegations."

"Not only does this court have a long history of relying on the state constitutional double jeopardy clause rather than its federal counterpart, there is in this state an unbroken line of cases applying the double jeopardy principles to non-capital sentence enhancement allegations," Werdegar wrote. Justices Stanley Mosk and Joyce Kennard joined Werdegar's dissent.

Carl Henry, a Los Angeles deputy attorney general who argued the case for the state, said that the Los Angeles County district attorney's office can now retry Monge on the prior conviction.

Gardner, who said he will appeal Wednesday's ruling, described _Monge_ as the "perfect vehicle" to bring the question of double jeopardy in Three Strikes cases before the U.S. Supreme Court. On at least two previous occasions the issue has come up, but was buried in federal _habeas corpus_ petitions.

"The only way the court could consider this is on direct appeal, and this is just that," he said.

LOAD-DATE: August 28, 1997

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Sacramento Bee

August 28, 1997, METRO FINAL

SECTION: MAIN NEWS; Pg. A1

LENGTH: 805 words

HEADLINE: CLAIMS OF AGE BIAS GET COURT BOOST

BYLINE: Claire Cooper, Bee Legal Affairs Writer

DATELINE: SAN FRANCISCO

BODY:

The California Supreme Court on Wednesday put age bias in employment on a par with race and sex discrimination, ruling that many older workers may go directly to court to sue for wrongful termination.

The 6-1 decision applies to people age 40 or older working for employers with five or more employees -- the same workers who are covered by the age bias provisions of the state's Fair Employment and Housing Act.

Under the court's opinion, though, workers claiming age bias need not go through protracted proceedings before the Fair Employment and Housing Commission or settle for the back pay that the commission can award.

Justice Joyce Kennard wrote the majority opinion, recognizing freedom from age discrimination in the workplace as a fundamental public policy enforceable in court.

"Because average life expectancy has risen to more than 80 years, most California residents either are now or will become over-40 employees, thus creating an extraordinarily broad class of potential victims of age discrimination in employment," she wrote.

Protecting them will serve the public at large by giving it the benefit of "valuable human resources" and relieving stress that saps productivity in the work environment, the opinion said.

Anna Segobia Masters, a member of the law firm that prepared a brief in the case for the California Employment Law Council, called the decision "an unnecessary creation of a new claim that will likely be viewed by employers as another reason why it's expensive and risky to do business in California."

But William C. Quackenbush, who also filed a brief in the case, said the court's "underlying tone" was encouraging for workers in upcoming appeals, including one he will file in the Supreme Court next week. It will ask the court to reverse a lower court's ruling allowing cost-cutting layoffs that primarily affect older workers.

In the short run, Wednesday's decision reinstated a suit filed by Joan Stevenson, a Pasadena woman who was fired from her job at Huntington Memorial Hospital at age 60.

Stevenson said she was fired after taking a hospital-approved medical leave in 1992. She claimed that the decision to terminate her was based on her age and the hospital's wish to deny her benefits to

which she was entitled as a 30-year employee.

The hospital denied that age was involved in its decision. It said Stevenson was fired for overstaying her medical leave.

But the only issue decided so far in the case was whether Stevenson had a right to press her age-bias claim in court.

The state Court of Appeal said she did not. The court said its ruling was a logical extension of a 1994 California Supreme Court decision holding that no public policy was violated by firing older workers in businesses with four or fewer employees.

The 1994 case did not deal with the rights of workers in larger companies.

In reconciling the two cases Wednesday, the Supreme Court drew a line between large-scale employers who are covered by the Fair Employment and Housing Act and small-scale employment situations in which discrimination may be "too subtle or too personal to make effective solutions possible."

But the court refused to draw a line between age discrimination and bias based on race or sex.

All violate "the basic principle that each person should be judged on the basis of individual merit rather than by reference to group stereotypes," said the court.

"Age, like race and sex, is the product of the working of nature rather than the individual's free choice; once acquired, the status of being over 40 is as permanent . . . as race or sex. Age discrimination attacks the individual's sense of self-worth in much the same fashion as race or sex discrimination."

The sole dissenter was Justice **Janice Rogers Brown,** who said the majority opinion upset a delicate balance of interests: workers' interests in protection from bias, employers' interests in avoiding undue economic burdens, and the public's interest in enforcing anti-bias policies without creating a hostile environment for business.

"Retaining an older employee who no longer performs satisfactorily for fear of costly litigation can be as disruptive to the work environment as a discriminatory discharge. . . . The hiring and advancement of younger workers serves the public interest as fully as the retention of older, more experienced workers," Brown wrote.

Stevenson's lawyer, Antonio M. Lawson, said his client was ecstatic at the court's ruling. She has been unemployed and had to rent out her home of 30 years to keep up with the mortgage payments, Lawson said. He said she has become "a vagabond," moving every two or three weeks to stay with different relatives and friends in California and Georgia.

"Hopefully, we can at least get her back in her home," he said.

LOAD-DATE: August 29, 1997

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View Related Topics

AUGUST 28, 1997, THURSDAY, FINAL EDITION

SECTION: NEWS; Pg. A1

LENGTH: 754 words

HEADLINE: State High Court Clears Way For Age Discrimination Suits
Older workers entitled to protection, j

BYLINE: Harriet Chiang, Chronicle Legal Affairs Writer

DATELINE: CALIFORNIA

BODY:
In a resounding victory for California's aging workforce, the state Supreme Court yesterday made it easier for fired employees to sue over age discrimination.

By a 6-to-1 vote, the high court ruled that workers terminated because of their age are entitled to the same protection against discrimination as employees let go because of race or gender.

The decision applies to employees over age 40 and will likely have an enormous impact in the workplace as the Baby Boomer generation ages and companies try to cut costs by getting rid of older employees with higher salaries.

Companies with at least five employees are subject to the decision. In 1994, the state Supreme Court ruled that small businesses are not bound by age-discrimination laws.

"Like race and sex discrimination, age discrimination violates the basic principle that each person should be judged on the basis of individual merit, rather than by reference to group stereotype," wrote Justice Joyce Kennard in the court opinion.

"Chronological age alone is not a reliable measure of any individual's vitality or ability, and many individuals remain robust and productive well past the normal retirement age," she said.

"Nevertheless," she said, "some employers have discriminated against highly qualified older workers solely because of their age, either by not hiring them or by replacing them with younger persons."

ONE DISSENTING JUSTICE

Justice **Janice Rogers Brown** was the lone dissenting vote.

Citing the need for a "vigorous state economy," she said keeping an older employee who is no longer up to the job to avoid a lawsuit "can be as disruptive to the work environment as a discriminatory discharge."

"The hiring and advancement of younger workers serves the public interest as fully as the retention of older, more experienced workers," Brown said.

Kennard also said there was a "substantial and fundamental" public policy against age discrimination.

"Age, like race and sex, is the product of the workings of nature rather than the individual's free choice," she said. "Once acquired, the status of being over 40 is as permanent and immutable as race and sex."

The ruling was sweet redemption for Joan Stevenson, who was 60 years old when she was discharged from her job as an administrative secretary at Huntington Memorial Hospital in Pasadena.

When she heard about yesterday's decision, she began to cry. "I raised three children on that job, and I had been there 31 years," Stevenson, 65, said from her daughter's home in Monrovia. "To see everything slip away -- it was devastating."

1992 LAWSUIT LAUNCHED CASE

Yesterday's decision revives Stevenson's suit in which she accused the hospital of illegally firing her in 1992 after she had been on a medical leave of absence approved by her employers. Earlier, a state appeals court had tossed out her suit.

Robert Dato, a Long Beach attorney for the hospital, said Stevenson was not fired because of her age but because she stayed out on leave too long.

Generally, he said, yesterday's decision will make it easier for fired employees to sue and to get bigger awards.

"To that extent, it is not good for employers," he said. "Age has taken a large evolutionary step as a classification today."

Lawyers who represent fired workers said yesterday's decision will give powerful ammunition to older employees whose jobs are in jeopardy.

"The court said expressly that employers are required to focus on the abilities of older employees and not their ages," said William Quackenbush, a San Mateo plaintiffs lawyer who filed a friend-of- the-court brief in support of Stevenson.

PREVIOUS RULING JEOPARDIZED

He said yesterday's decision may jeopardize an earlier ruling by a state appeals court that allows employers to replace older, higher- salaried employees with younger and cheaper workers. That decision in July by the state Court of Appeal in Orange County was hailed by management lawyers as a green light for employers to oust senior workers as a cost-cutting move.

Yesterday's decision "will make it easier to sue against age discrimination," said Joseph Posner, an attorney who filed papers in support of Stevenson on behalf of the California Employment Lawyers Association, a plaintiffs lawyers group.

Prior to yesterday's decision, fired workers suing over age discrimination had to go through the bureaucratic maze set out under the Fair Employment and Housing Act.

LOAD-DATE: August 28, 1997

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August 27, 1997, Wednesday

SECTION: Pg. 3

LENGTH: 1151 words

HEADLINE: Justices Reject Landlord's Suit to Recoup Losses Under Rent Control

BYLINE: By KENNETH OFGANG, Staff Writer/Appellate Courts

BODY: A landlord is not entitled to recover losses under an invalid rent control regulation through an action for damages if an adjustment of future rents will make the property owner whole, the California Supreme Court ruled yesterday.

In a 5-2 decision, the justices affirmed the dismissal of Earl W. Kavanau's inverse condemnation action against the City of Santa Monica.

Kavanau, a Los Angeles attorney who has been doing battle with the city over some $ 113,000 he claims to have lost between May 1990 and April 1994, argued his own case before the high court in June. The city was guilty of "stealing" when it enforced a regulation limiting rent increases to 12 percent per year and, he argued, should be required to reimburse those losses.

But the high court majority rejected that claim in an opinion by Justice Ming Chin. It said Kavanau was not entitled to maintain an inverse condemnation action because "he may obtain a full and adequate remedy for any interim loss flowing from the due process violation through an adjustment of future rents under the rent regulation process."

Kavanau filed his suit in 1994, after Div. One of the Court of Appeal ruled that the 12 percent cap denied him a fair return on his property and was unconstitutional as applied. The court's Div. Seven had rejected Kavanau's facial challenge to the rule three years earlier.

A divided Div. Three last year affirmed Los Angeles Superior Court Judge Ricardo Torres' dismissal of the suit, which included a claim for the taking of property without just compensation, in violation of the Fifth Amendment.

Kavanau had applied for a rent increase in Nov. 30, 1989, alleging a net operating loss of $ 117,000 over the previous 12 months. The board found he was entitled to an annual increase of $ 35,000 under the city's maintenance-of-net-operating-income formula, but ruled that he would have to spread out the increase over eight years because of the 12 percent cap, causing what he estimates are total losses of $ 113,000.

Div. Three, in an opinion by Justice Patti Kitching, said that because Kavanau had not lost "all use of his property," but had continued to derive the benefits of ownership, including the rights to charge rents, borrow against his ownership interest, and enjoy depreciation and other tax benefits, there was no taking and no inverse condemnation.

Chin yesterday rejected the view that a property owner must suffer a complete loss of the use of property before recovering damages resulting from illegal regulation. A series of U.S. Supreme Court cases, he noted, require that a number of factorssuch as the overall impact of the regulation, the nature of the regulatory interest, the extent of the property owner's reasonable expectations based on existing or traditional use, and the extent to which the owner may mitigate lossesbe considered.

Citing Penn Central Transp. Co. v. New York City, 438 U.S. 104, a 1978 case in which the court rejected a takings claim resulting from a landmark preservation law, Chin wrote:

"The 'economic impact'... on Kavanau of the 12 percent limit, which in effect merely delayed his rent increase, was not significant when compared to the benefits he continued to receive from his property, including significant rental income...Similarly, the 'interfere[nce] with [Kavanau's] distinct investment-backed expectations' was minor, considering he had constructive knowledge of the 12 percent limit when he chose to improve his property. Finally, the 'character of the governmental action'... does not compel us to find a taking."

Chin went on to say that allowance of future rent increases is a more appropriate remedy than damages because it "places the cost of compensating Kavanau roughly on those tenants who benefited from unconstitutionally low rents." Now that state law precludes rent control on newly vacated units, the justice suggested, Kavanau might be able to set rents at a level that will enable him to recoup his losses.

"In that case, he would not be entitled to an additional rent adjustment," the jurist reasoned. "Thus, in practice, future rent adjustments are likely to affect only those tenants who have not moved and who benefited from unconstitutionally low rents."

Justice Stanley Mosk, who joined in Chin's opinion, also wrote separately to emphasize his view that rent control laws are subject to the same "rational relationship" test as other economic regulations and not to any heightened standard of scrutiny.

Justice Marvin Baxter, joined by Justice **Janice Rogers Brown,** dissented, arguing that Kavanau had a state and federal constitutional right to damages.

"By mandating rents so low that its action denied plaintiff due process of law, the Board took from him a significant stick in the bundle of sticks that together constitute ownership of real property," the dissenting justice wrote. "...Since the rent ceiling imposed by the Board denied plaintiff the reasonable return his property would otherwise have earned, it necessarily denied plaintiff economically productive use of his rental property and to that extent took a right to which he was constitutionally entitled....Under both the Fifth and Fourteenth Amendments to the United States Constitution...and article I, section 19 of the California Constitution...plaintiff must be compensated for that taking by the governmental entity that took his property. It is not sufficient that he is permitted to raise the rent paid by his tenants from which increases he may eventually recoup his losses."

Kavanau said the court had left him with an "illusory remedy" and said he was considering petitioning for review in the U.S. Supreme Court. His rents, he said, are "already at market or close to market" because of vacancy decontrol, precluding him from recouping his losses through future increases.

"[California] courts have consistently been anti-property owner," he added. "We're known for that."

R.S. Radford, who argued for the Pacific Legal Foundation as amicus curiae in support of Kavanau, said that while he was disappointed in the outcome, he was glad the court had rejected the Court of Appeal's requirement that an owner lose "all use" before suing. That was "a major problem for takings litigation in the state of California," he said.

Radford also said he hoped Kavanau would take the case to the nation's highest court.

David Pettit of the Los Angeles firm of Hedges & Caldwell, attorney for the Santa Monica Rent Control Board in the case, said he doubted the issue had enough national impact to warrant high court review, but he agreed with Radford that the rejection of the all-use test could be significant.

"It might make it more difficult...to dispose of these cases on summary judgment or demurrer," he

said.

The case is Kavanau v. Santa Monica Rent Control Board, 97 S.O.S. 6858.

LOAD-DATE: September 2, 1997

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August 27, 1997, Wednesday

SECTION: Pg. 4

LENGTH: 766 words

HEADLINE: Minor's Statements to Probation Officer May Be Used to Impeach--S.C.

BYLINE: By DAVID FETTERMAN, Staff Writer/Appellate Courts

BODY: A minor's statements to a probation officer who is evaluating him for a fitness hearing may be used to impeach him at a subsequent criminal trial, the California Supreme Court said yesterday.

The lead opinion for three justices, written by Justice Ming Chin, resolved an issue specifically left open by 1985's Ramona R. v. Superior Court, 37 Cal.3d 802, which held that such statements couldn't be used substantively by the prosecution.

The decision reversed the Fourth District Court of Appeal's Div. Two, which said it was bound by dicta in a 1988 case, People v. May, 44 Cal.3d 309, which held that 1982's Proposition 8's Truth-in-Evidence provision abrogated the exclusionary rule that barred impeachment with prior inconsistent statements elicited in violation of a defendant's Miranda rights.

Div. Two reversed the conviction of 16-year-old Jesus Sandoval Macias, found guilty by a jury in Riverside Superior Court of six counts of second-degree murder and of driving without a valid license and, following a juvenile court determination that he was unfit to be tried as a minor.

Macias and a confederate smuggled a group of persons from Mexico in a stolen Chevrolet Suburban. When they stopped at a gas station, they noticed that immigration officials were following them.

A high-speed chase ensued, ending when the Suburban hit an Acura in a blind intersection near Temecula Valley High School, killing three occupants of the sedan and one passenger in the Suburban. The vehicle then overturned, killing two pedestrians in the crosswalk.

Riverside County Probation Officer Alex Candelaria prepared a report on Macias' behavioral patterns and social history. He interviewed Macias in Spanish in the company of the youth's attorney.

At trial, Macias said his cohort had forced him to keep driving by pinning his foot on the accelerator, and threatened him with death. The prosecution then offered statements made to Candelaria for impeachment.

The justice said May didn't address the impeachment issue, and was thus not controlling. Moreover, the jurist said, May's dicta extending immunity for statements to a minor's probation officer failed to appreciate Ramona R.'s rationale that substantive use was barred by the right against self-incrimination.

"In an apparent attempt to distinguish Ramona R...., and preserve the substantive use immunity provided specifically for juveniles," Chin wrote, "May suggested in dictum that a juvenile's statements to his probation officer could not be used 'for any purpose' at a subsequent trial because those statements were 'legislatively compelled,' based on the presumption of unfitness."

But the justice said there wasn't any indication that legislative compulsion had motivated the Ramona R. court; the better rule to follow, he said, was that of 1975's People v. Coleman, 13 Cal.3d 867.

"The intent of our exclusionary rule regarding probation revocation hearing testimony is to encourage the fullest possible truthful disclosure of relevant facts and circumstances...," the Coleman court wrote. "While the privilege against self-incrimination does assure an accused of the right to remain silent at his trial, it does notat least under modern principles of Anglo-Saxon jurisprudence[] encompass a right of an accused to lie in his own behalf at trial."

Justice Marvin Baxter, joined by Justice **Janice Rogers Brown,** concurred in the judgment but opined that the plurality erred in reaffirming Ramona R.

Having concluded that the youth's statements weren't legislatively compelled, Baxter explained, "[i]t follows that they are not statements obtained in violation of the minor's privilege against self-incrimination and, if relevant, may be admissible for all purposes."

Dissenting, Justice Stanley Mosk, joined by Justice Joyce Luther Kennard, said that "although Ramona R. did not specifically address the use of a juvenile's statements for impeachment, it follows perforce from our reasoning therein that they may not be used for that purpose."

He suggested that a jury, even if given a limiting instruction, would have difficulty considering statements expressing complicity in the charged crime as evidence of the defendant's veracity, without considering them substantively.

Such an instruction, Mosk wrote, would require, "in the words of Learned Hand, 'a mental gymnastic which is beyond, not only [the jury's] power, but anybody else's.'"

The case is People v. Macias, 97 S.O.S 6869.

LOAD-DATE: September 2, 1997

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View Related Topics

August 27, 1997, Wednesday

SECTION: NEWS; PG. 1

HEADLINE: ILLEGAL RENT CAP NOT A 'TAKING' -- SUPREME COURT

BYLINE: Greg Mitchell;
Reporter Greg Mitchell's e-mail address is gmitchell@therecorder.com

BODY:
In a victory for cities and tenants, the California Supreme Court on Tuesday rejected a landlord's claim that capping his rent increases had effected an unconstitutional taking.

In a 5-2 decision, the court held that even if a rent control scheme violates due process, the proper remedy is higher rent increases in the future -- not compensation from the city.

Tuesday's decision in _Kavanau v. Santa Monica Rent Control Board_, 97 C.D.O. S. 6858, "puts to rest the notion that rent controls somehow may be unconstitutional," said San Francisco Deputy City Attorney Andrew Schwartz, who filed an _amicus curiae_ petition on behalf of the rent control board.

The ruling was one of three "special filings" issued by the Supreme Court on Tuesday as the court scrambles to dispose of a glut of cases by the Aug. 31 conclusion of its term.

Earl Kavanau purchased a 10-unit rent-controlled building in 1988 and plowed more than $80,000 into improvements.

The next year he asked the rent board for higher rent on nine of the units to recoup his investment. The board decided Kavanau was entitled to rent increases totalling about $35,000, but said he had to spread the increase over several years so as not to exceed a then-existing 12 percent cap on annual rent increases.

In a decision that set the stage for Tuesday's ruling, an appeal court in 1993 held that the 12 percent cap was arbitrary and unconstitutional -- a decision the Supreme Court elected not to review.

Kavanau then brought an inverse condemnation action, arguing that the rent board's action amounted to a taking and that he was due compensation. Both a trial court and the court of appeal rejected his claim.

Tuesday's Supreme Court was a double-dose of bad news for landlords. First, while acknowledging it was bound by the first appeal court ruling for the purposes of deciding this case, the court expressed "serious doubts" about its reasoning and application to future cases.

"The court did not explain why the 12 percent limit could not be one aspect of a comprehensive scheme that as a whole provided landlords a fair return," Justice Ming Chin wrote for a 5-2 court.

And, while agreeing in principle with property rights advocates that a regulatory taking does not require a physical invasion or the loss of all beneficial use of a property, Chin concluded that Kavanau's rent control claims were not sufficient to establish a taking.

The economic impact of the 12 percent limit merely delayed Kavanau's rent increase, rather than eliminated it, Chin wrote. Nor was it significant in comparison to Kavanau's overall rental income. And Kavanau knew about the 12 percent cap when he made the capital improvements, Chin noted.

As for the court of appeal's finding of a due process violation, Kavanau can make up for it with future rent increases, Chin wrote, noting that the rent board will have to factor in the confiscatory rent ceilings it imposed on Kavanau in the past.

Chin's opinion was joined by Chief Justice Ronald George and Justice Kathryn Mickle Werdegar.

Justice Marvin Baxter disagreed that no taking had occurred, penning a vigorous dissent joined by Justice **Janice Rogers Brown.**

"There has been a taking of a substantial property right -- plaintiff's right to seek a fair and reasonable return from his property," wrote Baxter, adding that "it is not sufficient that he is permitted to raise the rent paid by his tenants from which increases he may eventually recoup his losses."

Since Kavanau has already been deprived of about $150,000, Baxter wrote, he is already owed compensation, and shouldn't be expected to wait until he can force future tenants to pay for the subsidy bestowed upon past tenants by the rent board's action.

In a separate concurrence, Justice Stanley Mosk suggested that property owners can't claim to be the victims of a regulatory taking if they have the option of selling their investment to avoid it.

"It appears doubtful," concluded Mosk, "that a landlord who is subject to lower-than-reasonable rents, and has the option of withdrawing from the rental market, or recouping his previous losses prospectively through a compensatory rent order, can ever press such a claim."

R.S. Radford, who argued for _amicus_ Pacific Legal Foundation, said there is some good language in the opinion for property rights advocates. But he called the result unfair.

"I don't know what to make of this," Radford said, adding that the majority position is "both unconscionable and unworkable."

Radford said that only the cities of Berkeley, Santa Monica and Cotati have the kind of strict rent controls at issue in the case.

Meanwhile, with Tuesday's release of _Kavanau_ and two other cases, the justices and their staff may want to pause to wipe their collective brow. The court issued four opinions so far this week and expects to issue four more by Friday. The cases were among a whopping 23 argued in June; by law, the opinions must be released within 90 days.

"The chickens are coming home to roost," said Chief Justice Ronald George, explaining that he scheduled the heavy June calendar to move the court away from a calendar-year term to one that runs from Sept. 1 to Aug. 31.

Before George was elevated to chief, the court would push to release decisions before New Year's, to improve the court's productivity statistics for the previous year.

George said that meant cases argued in November and December often didn't benefit from the full 90 days of consideration -- but the cases argued in June do because the court hears no arguments in July and August.

If the court does issue the remaining four opinions this week, that will bring the total for 1996-97 to 109.

LOAD-DATE: August 27, 1997

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View Related Topics

August 26, 1997, Tuesday

SECTION: NEWS; PG. 1

HEADLINE: SUPREME COURT OVERTURNS TAKINGS RULE

BYLINE: Daniel Terdiman;
Reporter Daniel Terdiman's e-mail address is dterdiman@therecorder.com

BODY:
A divided California Supreme Court discarded a 95-year-old eminent domain precedent on Monday, making it harder for property owners to collect certain types of compensatory damages.

In a 5-2 decision involving the construction of a Los Angeles light rail project, the high court overturned its 1902 decision in _Beveridge v. Lewis_, 137 Cal. 619. That ruling limited the government's ability to argue that, when it takes only part of a landowner's property, the benefits of the eminent domain project to the remaining property should reduce the amount of compensation. Only when such benefits are "special" to a particular property owner could they be considered under _Beveridge_.

By abolishing such distinctions on Monday, the court's ruling will allow Los Angeles County to argue that the damages from Continental Development Corp.'s loss of 373 square feet from its 4.43-acre lot to the rail line will be offset by the advantages of the transportation project -- even though those benefits are shared by other nearby property owners.

A Los Angeles County jury had awarded Continental $1,015,793 in damages. But consultants hired by the county's Metropolitan Transportation Authority estimated that Continental's proximity to the rail line actually would increase the value of its remaining property by more than $3.5 million.

L.A. Superior Court Judge Harvey Schneider refused to allow the jury to see the consultants' reports, citing _Beveridge_'s prohibition on the introduction of such evidence except when benefits of eminent domain projects are "special" or particular to the owner of the affected property.

But on Wednesday, the Supreme Court threw out that rule.

"We hold that in determining a landowner's entitlement to severance damages, the fact finder henceforth shall consider competent evidence relevant to any conditions caused by the project that affect the remainder property's fair market value, insofar as such evidence is neither conjectural or speculative," Justice Kathryn Mickle Werdegar wrote for the majority in _Los Angeles County, Metropolitan Transportation Authority v. Continental Development Corp. _, 97 C.D.O.S. 6779.

Werdegar acknowledged that the new rule puts the California Supreme Court at odds with the "majority view in the United States."

But, she wrote, _Beveridge_'s "distinction between general and special benefits no longer finds support in the reasons articulated at its inception."

"We further conclude this lack of support and the difficulties inherent in courts' efforts consistently to apply the distinction warrant overruling this aspect of _Beveridge_," Werdegar added.

She noted that, "The law has no mechanism by which to ensure an absolutely fair distribution of costs and benefits across the entire community.

"We must instead search for the rule of greatest relative fairness, or least unfairness," Werdegar added.

Chief Justice Ronald George and Justices Stanley Mosk, Ming Chin and **Janice Rogers Brown** concurred.

In a dissent joined by Justice Marvin Baxter, Justice Joyce Kennard criticized the majority for abandoning "California's adherence to a long- established rule of American law followed by most other states."

The result, Kennard added, "unfairly forces the landowner to pay for benefits that others receive for free. Limiting offsets only to special benefits more equitably distributes among the entire community the benefits and burdens of the project."

Property rights attorneys agreed with Kennard.

Said Gideon Kanner, of counsel at Santa Monica's Berger & Norton: "We are seeing now a continuation of a trend in the California Supreme Court in that it is going back to a 19th century notion that it is the court's function to protect the state from having to pay indemnity to property owners in eminent domain cases."

"It remains to be seen if they will enforce the new rule in an even-handed fashion," added Kanner, who filed an _amicus_ brief on behalf of Continental.

But the Los Angeles transit authority's attorney said the Supreme Court was only clarifying the law.

"The meaning of this word 'special' could not be determined," said James Powers, a partner at Los Angeles' Nossaman, Guthner, Knox & Elliott. "There was no way to define 'special benefit' in any meaningful way, and you couldn't tell what courts were going to do."

LOAD-DATE: August 26, 1997

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Los Angeles Times

August 22, 1997, Friday, Home Edition
Correction Appended

SECTION: Metro; Part B; Page 9; Op Ed Desk

LENGTH: 920 words

HEADLINE: THE COURT OF PUBLIC OPINION IS OUT OF ORDER;
LAW: TWO STATE JUSTICES ARE ATTACKED POLITICALLY AND UNFAIRLY FOR ABORTION CONSENT RULING. For the Record

BYLINE: STEPHEN R. BARNETT, Stephen R. Barnett is a professor of law at UC Berkeley's Boalt, Hall

BODY:
In the wake of the California Supreme Court's decision overturning the requirement of parental or judicial consent for a girl under 18 to get an abortion, the California ProLife Council, together with two state legislators, has announced a campaign to oust Justices Ronald M. George and Ming W. Chin, the two members of the ruling's 4-3 majority who will be on the ballot next year for voter confirmation.

There's a precedent for this, the pro-life people say: the 1986 expulsion of Chief Justice Rose Elizabeth Bird, which came about because voters disagreed with her judicial philosophy.

In 1986, I supported the ouster of Bird (though not of the two justices she dragged down with her, Cruz Reynoso and Joseph Grodin). The case against her was enormously stronger than the complaints voiced now against George and Chin. Whatever one thinks of the decision on abortion consent, an effort to knock judges off the court for their votes in one case poses a truly scary threat to judicial independence and constitutional rights in California.

The case against Bird was not based on any mere disagreement with the way she voted in a single case, or even in many cases. In 61 death penalty appeals, Bird voted to reverse the death penalty in all 61. This spotless record made it reasonable for voters to conclude not just that they disagreed with Bird's votes or judicial philosophy, but that Bird was refusing to enforce the law. While she couldn't hold the death penalty unconstitutional because the voters had written it into the state Constitution, she seemed to be finding some pretext in every case to keep it from being carried out.

To this could be added Bird's apparent partisanship, her overall bad judgment and her special failings as a chief justice. She flunked the test of judicial competence, broadly defined.

The complaints against George and Chin are nothing like that. The court in the abortion consent case was doing its job: deciding a close, difficult question under the privacy clause of the California Constitution. The vote was not partisan; all four justices in the majority, including George and Chin, as well as two in the minority, were appointed by Republican governors. Whichever side lost would scream that the decision trampled fundamental rights--the girl's or the parents'--but that's just the nature of the issue before the court.

If judges can be sent packing because a majority of the voters disagree with a ruling, then judicial decisions become political decisions. Judges will be told in effect to decide cases not as they think the law requires, but as the latest Field poll tells them the voters prefer. Judicial independence then invites judicial unemployment. The California Code of Judicial Ethics, which says that a judge "shall

be faithful to the law regardless of partisan interests, public clamor, or fear of criticism," becomes a judicial suicide pill.

Among the casualties will be constitutional rights in California's courts. Constitutional rights, such as freedom of speech at abortion clinics, among other places, protect individuals and minorities against the majority. To campaign against judges because of their votes affirming a constitutional right is to challenge the existence of constitutional rights.

Nor was there anything wrong with the way the court "reversed itself" in the abortion case. The court's original vote was 4 to 3 to uphold the consent requirement, but the decision was not yet final when two justices retired and two new ones, Chin and **Janice Rogers Brown,** joined the court. When that happens, the court's rules are clear: It's the new justices, not the old ones, who vote on rehearing the case. Chin and Brown both voted for rehearing, and Chin then made a 4-3 majority to strike down the law.

There's nothing new here. Cases were likewise "reversed" on rehearing when three new (conservative) justices replaced Bird and her colleagues in 1987. When the court's membership changes, there are bound to be some cases not yet final, and so a new justice may change the result.

Those who don't like the court's abortion consent decision can seek to put on the ballot--as in fact is being planned--a constitutional amendment to overrule it. Voting justices out of office would not change the court's decision, but a constitutional amendment would. An election debate over amending the state Constitution's privacy guarantee would be faithful to our constitutional system; an assault on judicial independence would not be.

CORRECTION-DATE: August 26, 1997, Tuesday

CORRECTION:
State Supreme Court: Due to an editing error, Chief Justice Ronald M. George's full title was omitted in Friday's commentary by Stephen R. Barnett.

LOAD-DATE: December 21, 1998

Copyright 1997 Times Mirror Company
Los Angeles Times

August 22, 1997, Friday, Home Edition

SECTION: Part A; Page 1; Metro Desk

LENGTH: 2014 words

HEADLINE: NESLER ENTITLED TO NEW TRIAL, HIGH COURT RULES; APPEAL: STATE JUSTICES FIND JUROR TAINTED SANITY PHASE OF CASE AGAINST MOTHER LODE WOMAN WHO SHOT MAN TO DEATH IN COURT.

BYLINE: MAURA DOLAN, TIMES LEGAL AFFAIRS WRITER

DATELINE: SAN FRANCISCO

BODY:
Ellie Nesler, who became a folk hero to some after gunning down a man charged with sodomizing her 7-year-old son, is entitled to a new trial to determine whether she was sane during the 1993 courtroom shooting, the California Supreme Court decided Thursday.

The Supreme Court ruled 4 to 3 that a biased juror tainted deliberations during the trial's sanity phase. Atty. Gen. Dan Lungren was reviewing the ruling Thursday and will decide within the next several weeks whether to retry Nesler, a spokeswoman said.

In the meantime, a defense attorney said he will ask the trial court to free Nesler on bail, possibly as early as next week. "I think I will be able to get her out," said attorney Paul Couenhoven.

Nesler, 45, is eligible for parole in January 1999.

A Tuolumne County jury convicted her of voluntary manslaughter for firing five shots into the back of Daniel Mark Driver's head during a break in a preliminary hearing on charges that he raped her son and molested three other boys at a Christian camp.

During the second phase of Nesler's 1993 trial, the jury rejected defense testimony that she had been suffering from post-traumatic stress disorder on the day of the shooting and found that she was sane at the time.

Nesler was sentenced to 10 years in prison. If the jury had found her insane, she could have been ordered to a mental hospital for as little as six months.

The court's ruling affects only the sanity verdict, not the manslaughter conviction. If she were found insane in a new trial, she would be released from prison and could be sent to a mental hospital.

Nesler, who had taken methamphetamines, or "crank," before the killing, shot Driver, 35, at close range as she and her son waited to testify against him. She had tried and failed to have her son's testimony videotaped so he would not have to face Driver.

Fearful about the confrontation, the boy had been vomiting all morning. When Driver arrived at the courthouse, he looked at the boy and "grinned with a mean, disgusted and haughty look," prompting the mother to lunge at him, the Supreme Court said. A family member held her back.

After the mother of another victim told Nesler that Driver probably "was going to walk," Nesler

grabbed a pistol from her sister's purse and shot Driver as he sat shackled at a courtroom table.

Nesler's trial sparked worldwide attention and inspired a folk song. Two banks in the Mother Lode region set up Nesler defense funds. T-shirts proclaiming "Nice Shooting, Ellie" sold briskly.

Some of her allure diminished during the trial as the gold miner's daughter appeared to savor the publicity and word of her drug use spread. After the shooting, Nesler told authorities: "Maybe I'm not God, but I'll tell you what, I'm the closest thing to it. I just felt he should be dead so I played judge and jury."

The single mother of two was found to have advanced breast cancer at the time of her conviction. Recent tests have indicated that her condition may be deteriorating, her attorney said.

The Supreme Court overturned her sanity verdict on the grounds that juror Katherine Boje told other panelists that a baby-sitter for Nesler had told her Nesler was a neglectful mother who left her children for long periods of time and regularly used drugs. After the verdict, Boje was overhead saying: "The bitch got what she deserved."

Chief Justice Ronald George, writing for the majority, said Boje demonstrated bias and violated her oath as a juror. The juror had spent 30 minutes in a bar during a break in deliberations, where she overheard a tirade by a woman who said she was Nesler's baby-sitter.

Boje subsequently revealed the damaging information she heard to other jurors, misrepresenting her source as a baby-sitter for Nesler, rather than a stranger at a tavern who claimed to have been a baby-sitter, the court said.

"Although inadvertent exposure to out-of-court information is not blameworthy," George wrote, ". . . it nevertheless gives rise to a presumption of prejudice because it poses the risk that one or more jurors may be influenced by material that the defendant has had no opportunity to confront, cross-examine or rebut."

Justices Joyce L. Kennard, Kathryn Mickle Werdegar and Stanley Mosk agreed with George that a new trial on Nesler's sanity was warranted. Justices Marvin Baxter, Ming W. Chin and **Janice Rogers Brown** objected, contending that the errant juror's behavior had not clouded the sanity verdict.

"In the highly charged local atmosphere this case produced," Baxter wrote for the dissenters, "it would have been almost impossible to protect defendant's unsequestered jury from any and all exposure to outside rumor, gossip and discussion."

He called the juror's "unfortunate" conduct a "human mistake of the kind we must be prepared to accept as the price of our precious jury system."

After allegedly molesting Nesler's son in 1988, Driver told him that if he repeated to anyone what happened, Driver would kill him and his sister, the court said. The boy later confided to his family, but Driver fled when charges were filed and was not arrested for several years, the Supreme Court said.

On the morning of the preliminary hearing, Nesler appeared nervous, upset and extremely anxious about her son, the court said. She told an investigator he might not be able to testify.

After the boy entered the waiting room for witnesses, the mother of one of the other alleged victims told Nesler that she felt her own testimony had not gone well and that Driver had smirked when they arrived.

The woman said she wanted to kill Driver and urged Nesler to try to do better when her turn to testify came.

Nesler then went into a courthouse hallway, grabbed the pistol and emptied it into Driver, missing only once. She told authorities: "You don't understand. He has raped hundreds of boys."

A blood test revealed Nesler had a concentration of methamphetamines. At the time, the family was living outside Sonora in a trailer and she supported her children by chopping firewood and collecting welfare.

The Supreme Court ruling becomes final in 30 days, and Lungren has 60 days after that to file the paperwork to retry Nesler.

Couenhoven, Nesler's state-appointed appeals attorney, said he will ask for a bail hearing next week but conceded that a trial judge could balk at setting bail before the Supreme Court ruling is final. "But after that," he said, "it is just a matter of time."

"I am ecstatic," Couenhoven said. "What can I say? I don't think she belongs in prison. I just want to get her out."

Donald Segerstrom, one of Nesler's trial attorneys, said she was in "good spirits" when he saw her several weeks ago but was worried that her cancer may be spreading.

Nesler's son, now a teenager, and his younger sister have been living with Nesler's sister while their mother is in prison.

"Every person who is a parent can sympathize with her situation and empathize and understand how those emotions could arise in a person," Segerstrom said. "Any mother would understand the lengths to which a mother will go to protect her children."

The Saga of Ellie Nesler

* Summer 1988: Nesler's 7-year-old son is allegedly molested at a Christian camp in the High Sierra by a camp kitchen worker.

* Late 1992: Former camp dishwasher Daniel Mark Driver, a fugitive, is arrested for shoplifting. He then faced previously filed charges of molesting Nesler's son and three other children.

* April 1993: Nesler shoots and kills Driver, 35, at his preliminary hearing on molestation charges.

* May 1993: Prosecutors say Nesler used methamphetamine the day she shot Driver.

* August 1993: Nesler is convicted of voluntary manslaughter.

* September 1993: In the trial's sanity phase, jurors find that Nesler was sane when the shooting occurred. She had claimed temporary insanity.

* October 1993: Nesler's sentencing is postponed because she has received a diagnosis of breast cancer and is set to undergo exploratory surgery in November.

* January 1994: Nesler is sentenced to 10 years in prison. The judge allows her 15 minutes with her two children before bailiffs lead her from the court in shackles.

* September 1994: Nesler unsuccessfully petitions for bail as she begins appealing her conviction.

* June 1996: Defense attorneys petition a Fresno appeals court to overturn Nesler's sanity conviction, alleging misconduct by one juror who persistently claimed special knowledge about Nesler.

* August 1996: Appeals court upholds the conviction, finding the juror's statements improper but that they did not affect the verdict.

* November 1996: State Supreme Court agrees to review possible juror misconduct in the sanity phase of Nesler's trial. Defense attorney says Nesler's cancer, which had been in remission, has returned.

* August 1997: Supreme Court upholds juror misconduct allegation and orders a new trial to determine if Nesler was sane when she shot Driver. State prosecutors are considering whether to move ahead with a trial for Nesler, who would be eligible for parole in January 1999.

Source: Times news files

Researched by TRACY THOMAS / Los Angeles Times

GRAPHIC: PHOTO: Ellie Nesler at 1993 arraignment. PHOTOGRAPHER: Associated Press

LOAD-DATE: December 21, 1998

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August 22, 1997, Friday

SECTION: Pg. 5

LENGTH: 643 words

HEADLINE: S.C. Grants New Sanity Trial to Woman Who Shot Molester in Courtroom

BYLINE: From Staff and Wire Reports

BODY: A woman convicted of manslaughter for the fatal courtroom shooting of her son's alleged molester was granted a partial retrial by the state Supreme Court yesterday because of juror misconduct.

The 4-3 ruling overturned a Tuolumne County jury's finding that Ellie Nesler was sane when she shot Daniel Mark Driver in April 1993 five times at close range during a recess at his preliminary hearing. Driver had been charged with sodomizing Nesler's 7-year-old son at a Christian camp where Driver worked.

The ruling entitles Nesler, 45, to a new trial on the issue of her sanity. She is serving a 10-year sentence in the California Women's Facility in Stockton and is scheduled to be paroled in January 1999.

The court found bias by a juror who told other jurors during sanity deliberations that Nesler was a bad mother and a drug user. The juror, Katherine Boj , said she had gotten the information from Nesler's babysitter, Chief Justice Ronald George said in the lead opinion.

Her source was actually a stranger she overheard in a bar, during a recess in deliberations, who proclaimed loudly that she was Nesler's babysitter and talked about her alleged drug use and neglect of her children, the chief justice wrote.

Though Boj denied bias and was found unbiased by the trial judge, her receipt of the information and use of it to try to sway other jurors during deliberations indicated a substantial likelihood that she was biased, the jurist said. George noted that Nesler did not argue, and was not required to show, that Boj 's remarks influenced the votes of other jurors.

The chief justice observed that while Boj may have heard the alleged babysitter accidentally at first, the juror's "decision to stay in the bar and continue to listen to the woman's remarks cannot be considered inadvertent." Telling the other jurors, and not the court, what she heard in the bar constituted serious misconduct, George said.

A juror's disclosure of outside information during deliberations "tends to demonstrate that the juror intended the forbidden information to influence the verdict and strengthens the likelihood of bias," George explained.

"We find a substantial likelihood that Boj was actually biased," violating Nesler's right to a decision by 12 impartial jurors, the jurist said.

Citing 1995's In re Carpenter, 9 Cal.4th 634, the chief justice noted:

"If we find a substantial likelihood that a juror was actually biased, we must set aside the verdict, no matter how convinced we might be that an unbiased jury would have reached the same verdict,

because a biased adjudicator is one of the few structural trial defects that compel reversal without application of a harmless error standard."

Concurring with the Chief Justice's opinion, Justice Stanley Mosk said he wasn't sure whether there was a substantial likelihood that Boj was biased. However, Mosk concluded, Boj 's misconduct entitled Nesler to the partial retrial because it raised a presumption of prejudice which the prosecution had not rebutted.

Dissenting Justice Marvin Baxter said the "snippets of gossip Boj overheard in one casual barroom conversation hardly compare with the wealth of evidence" in the case and were unlikely to have biased her.

The juror's conduct was "a human mistake of the kind we must be prepared to accept as the price of our precious jury system," said Baxter, joined by Justices Ming Chin and **Janice Rogers Brown.**

Nesler's case caused a furor over vigilante justice. She was acquitted of murder but convicted of voluntary manslaughter, a killing in the heat of passion; the new trial will not affect the guilty finding.

Her lawyers say she is seriously ill with breast cancer and have asked Gov. Pete Wilson for an early release from prison.

The case is People vs. Nesler, 97 S.O.S. 6671.

LOAD-DATE: September 2, 1997

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Sacramento Bee

August 22, 1997, METRO FINAL

SECTION: MAIN NEWS; Pg. A1

LENGTH: 881 words

HEADLINE: NESLER RETRIAL ORDERED

BYLINE: Claire Cooper, Bee Legal Affairs Writer

DATELINE: SAN FRANCISCO

BODY:

The California Supreme Court on Thursday granted Ellie Nesler a new trial on her claim that she was temporarily insane when she grabbed a gun in a Sonora courtroom in 1993 and killed Daniel Driver, the man accused of molesting her 7-year-old son.

One juror was biased against Nesler -- and proved it by lobbying other jurors with improper personal information contradicting the insanity defense -- the court said in voting 4-3 to overturn the results of Nesler's sanity trial.

The court did not reverse Nesler's conviction for killing Driver by firing five shots into his head at close range during a recess in his preliminary hearing. But as a practical matter, the ruling could be a major defense victory.

"The first thing I'm going to do is to try to get her out," said Paul Couenhoven, Nesler's appellate lawyer.

He said he will ask a Sonora judge to release Nesler on bail next week while a decision is made whether to hold another sanity trial. The state Department of Justice, which has prosecuted the case, had no immediate comment on whether it would pursue a new trial.

Nesler's crime drew world attention -- first as an example of vigilante justice and, later, as a potential case of "jury nullification" -- juror refusal to convict a sympathetic defendant.

But a Tuolumne County jury found Nesler guilty of voluntary manslaughter. In the second part of the trial, it found her to be sane, allowing her to be sent to prison for a 10-year term rather than to a mental institution. She has been scheduled for parole in January 1999 from Northern California Women's Facility in Stockton.

With Thursday's opinion, she could be out much sooner.

If there's no retrial, said Couenhoven, "that would be the end of it."

If there is a retrial and Nesler is found to have been insane when she killed Driver, said Couenhoven, she could still go free because it would be hard to prove that she still belongs in a mental facility.

Nesler underwent surgery for breast cancer while in prison. Couenhoven said that currently it is "up in the air" whether the cancer has returned or remains in remission.

In its opinion the Supreme Court decided that juror Catherine Boje was influenced by listening to a stranger's barroom ravings that Nesler was a bad mother who left her children with a baby sitter for days at a time and a "crankster" who often used methamphetamines.

Nesler claimed at her sanity trial that on the day of the shooting, maternal protectiveness, anguish over her son's upcoming testimony and a single dose of crank caused her to break with reality, shooting her smirking victim during a recess in his preliminary hearing.

The Supreme Court said Boje improperly contradicted Nesler's claim by introducing extraneous information, depriving her of the right to a trial by 12 impartial jurors based solely on trial evidence.

"Boje sat in a bar while a woman revealed damaging information about (Nesler) for half an hour," Chief Justice Ronald M. George wrote in reversing a Court of Appeal decision that Boje's improper conduct was a harmless error.

"Boje did not identify herself as a juror, and it never occurred to her to leave.

"She did not disclose the outside information or its source to the court. Instead, Boje violated her oath and disregarded the trial court's instructions by revealing this information to other jurors.

"These disclosures were made during deliberations, at a time when she disagreed with other jurors, in an apparent attempt to persuade them to change their views."

Justices Joyce Kennard and Kathryn Mickle Werdegar signed George's lead opinion. Justice Stanley Mosk wrote a separate opinion agreeing with the result.

Dissenting, Justice Marvin Baxter said Boje's chance exposure to outside gossip was "unremarkable in the extreme" in the small community.

"That she spoke of what she heard in the jury room (was) a human mistake of the kind we must be prepared to accept as the price of our precious jury system," he wrote. Justices Ming W. Chin and **Janice Rogers Brown** signed the dissent.

The Nesler case began in December 1992 with the arrest of Driver for shoplifting two pairs of Levis in Palo Alto. He was later transferred to the Tuolumne County jail to answer charges, filed in 1989, that he had molested four boys in the late 1980s.

On April 2, 1993, during Driver's preliminary hearing in that case, Nesler walked up to him during a recess, shot him, laid down the gun and surrendered.

The crime quickly prompted local rallies in support of Nesler's vigilante justice -- and a nationwide debate that made her a talk-show celebrity.

But Nesler tarnished her image by admitting in one interview that she had used crank the day of the shooting. A flurry of highly publicized statements followed and ultimately Nesler fired her original lawyer and replaced him with renowned defense attorney J. Tony Serra of San Francisco -- whose earlier clients had included members of the Hell's Angels and Black Panthers.

Amid the intense publicity, Nesler's trial on murder charges began in July. After nearly a month of testimony, the jury found Nesler guilty only of voluntary manslaughter. In the second phase of the trial, the panel decided she had been sane at the time of the shooting.

GRAPHIC: Ellie Nesler
She had tarnished her image by admitting she used crank the day of the shooting.

LOAD-DATE: August 23, 1997

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August 19, 1997, Tuesday

SECTION: Pg. 5

LENGTH: 645 words

HEADLINE: S.C. Upholds Judges' Discretion on Consecutive Terms in Three-Strikes Cases

BYLINE: By a MetNews Staff Writer

BODY: The three-strikes law doesn't mandate consecutive sentences when a defendant with prior serious-felony convictions commits a crime against multiple victims, the state Supreme Court ruled yesterday.

The high court was unanimous in concluding that Penal Code Secs. 667(c)(6) and 667(c)(7) do not mandate consecutive sentencing in such cases, although the decision produced three separate opinions.

Sec. 667(c)(6) provides that a three-strikes defendant convicted for more than one felony not committed on the same occasion shall be sentenced consecutively on each count, while Sec. 667(c)(7) provides that if there are multiple convictions "as described in paragraph (6),

The decision affirmed a Fifth District Court of Appeal ruling in the case of James D. Hendrix, convicted of two counts of robbery and two counts of attempted robbery in Madera Superior Court. Witnesses testified that Hendrix approached four persons sitting at a table in a shopping center, cocked a semiautomatic weapon, asked for money, and left after two of the victims gave him their money and the other two said they didn't have any.

Madera Superior Court Judge John W. DeGroot sentenced Hendrix to state prison, imposing consecutive three-strikes terms of 25 years to life on each of the four counts, plus 20 years for using a firearm against each of the four victims and 15 years in enhancements based on three prior convictions for serious felonies.

On appeal, the defense argued that the judge had discretion to strike the priors rather than sentence under the three-strikes law, and/or to impose concurrent sentences. The Court of Appeal agreed, but concluded that DeGroot understood his discretion with respect to whether to impose concurrent or consecutive terms, remanding only for reconsideration under People v. Superior Court (Romero), 13 Cal. 4th 497.

Justice **Janice Rogers Brown,** writing for the majority, reasoned:

"The most logical meaning of the reference to 'paragraph (6)' in subdivision (c)(7) is that it refers to subdivision (c)(6). So construed, 'more than one serious or violent felony as described in paragraph (6)' refers to multiple current convictions for serious or violent felonies 'not committed on the same occasion, and not arising from the same set of operative facts.'...Thus, when a defendant is convicted of two or more current serious or violent felonies 'not committed on the same occasion, and not arising from the same set of operative facts,' not only must the court impose the sentences for these serious or violent offenses consecutive to each other, it must also impose these sentences 'consecutive to the sentence for any other conviction for which the defendant may be consecutively sentenced in the manner prescribed by law.' By implication, consecutive sentences are not mandated under

subdivision (c)(7) if all of the serious or violent current felony convictions are 'committed on the same occasion' or 'aris[e] from the same set of operative facts.' "

The justice rejected the attorney general's contention that discretion to impose concurrent sentences for offenses committed on a single occasion applies only to second-strike, rather than third-strike, cases. That interpretation is implausible, she said.

Because the case is being remanded under Romero, Brown added, the high court found it unnecessary to review the lower panel's conclusion that the trial judge understood the extent of his discretion to impose concurrent sentences.

Chief Justice Ronald George, joined by Justices Ming Chin and Marvin Baxter, concurred separately, noting that the interpretation of the phrase "not committed on the same occasion, and not arising from the same set of operative facts," used in Sec. 667(c)(6), is before the court in another case.

The case is People v. Hendrix , 97 S.O.S. 6560.

LOAD-DATE: September 2, 1997

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August 19, 1997, Tuesday

SECTION: Pg. 5

LENGTH: 480 words

HEADLINE: Enhancements Must Be Added to Three-Strikes Sentences-S.C.

BYLINE: By DAVID FETTERMAN, Staff Writer/Appellate Courts

BODY: A trial court must impose a separate determinate term for enhancements upon a three-strikes defendant when the enhancements are used in calculating the defendant's indeterminate term, the state Supreme Court ruled yesterday.

In an opinion for a unanimous court authored by Justice **Janice Rogers Brown,** the tribunal said burglar Tyrone Craig Dotson should have received a separate determinate term of 20 years for his four prior serious felony convictions, in addition to the minimum indeterminate term of 26 years to life given him by Los Angeles Superior Court Judge Donald Pitts.

Dotson, whose sentence was affirmedwith modifications not relevant to the issue before the Supreme Courtby this district's Div. Two, broke into Victoria Patterson's home at night; she locked herself in a bathroom and called for help.

Her son, who lived next door, and several friends chased Dotson. Shortly afterwards, he was apprehended by police.

He received a six-year upper term for first degree burglary. Pitts calculated the greater of three options for his indeterminate term to be the six-year term plus any applicable enhancements, or 26 years to life; but did not sentence him to additional time for the prior convictions.

Brown explained that the three-strikes statute provides that the indeterminate life term must be imposed "in addition to any other enhancements or punishment provisions which may apply." Citing 1995's People v. Ramirez, 33 Cal.App.4th 559, she said that "[i]t is difficult to interpret the language of the statute in any other manner" other than the doubling of the enhancements urged by the prosecution.

She gave as an example of an anomalous result under Dotson's interpretation a hypothetical case in which the defendant committed first degree burglary, but had only three prior serious felonies. Such a defendant's present term plus enhancements would be only 21 years; the greater indeterminate term, in his case, would be the statutory minimum of 25 years to life.

However, Brown said, such a defendant could receive an additional determinate term of 15 years without offending Dotson's proposed rule against doubling enhancement terms, causing that hypothetical burglar, "who has only three prior serious felony convictions, to have a substantially longer overall prison term than [Dotson], who has four prior serious felony convictions."

The justice also observed that "the addition of a separate determinate term for enhancements appears consistent with the voters' stated intent...," as expressed in the ballot pamphlet for Proposition 184, the three-strikes initiative, which was "to ensure longer prison sentences and greater punishment for those who commit a felony and have been previously convicted of serious and/or violent felony offenses."

The case is People v. Dotson, 97 S.O.S. 6556.

LOAD-DATE: September 2, 1997

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Sacramento Bee

August 14, 1997, METRO FINAL

SECTION: MAIN NEWS; Pg. A18

LENGTH: 36 words

HEADLINE: CORRECTION

BODY:

A story on page A1 on July 13 incorrectly described the voting record of California Supreme Court Justice **Janice Rogers Brown** in death-penalty appeals. Brown usually has sided with the prosecution in such cases.

LOAD-DATE: August 15, 1997

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The Recorder

August 13, 1997, Wednesday

SECTION: COMMENT; PG. 4

HEADLINE: BAD JUDGES OF CHARACTER

BYLINE: George M. Kraw;
George M. Kraw is a San Jose attorney. His e-mail address is gkrawnnn@counsel.com. "Affairs of State" appears biweekly in _The Recorder_.

BODY:
The State Bar's bumptious, bungling and battered Commission on Judicial Nominees Evaluation is about to get another chance to fix its act and regain credibility with California lawyers and the public at large. But no matter what repairs are made, there is a basic problem with trying to hide debates over judicial appointments from public view under the guise of a neutral " merit selection" process.

Last year's inept handling of **Janice Rogers Brown's** Supreme Court appointment -- which ended in disclosure of a confidential commission report, riotous confirmation proceedings and the creation of two more Bar committees to investigate the investigators -- led to serious questions about the commission's competence and common sense. Among other dismal revelations, the nomination fight disclosed that no members of the California Academy of Appellate Lawyers were on the commission and that the commission chairman apparently had read fewer than one-third of Justice Brown's 155 appellate court decisions -- yet still had managed to determine that Brown was "not qualified" for the state Supreme Court.

Now the State Bar is about to put into effect 32 recommendations of an advisory committee that are aimed at deflecting complaints by abolitionists like former Supreme Court Justice Armand Arabian -- himself the recipient of a "not qualified" rating when first proposed for the Court of Appeal in 1979. If fully adopted, the reforms would tighten procedures, increase training, appoint at least one retired judge and one "distinguished practitioner" to a separate panel for appellate appointments, and allow the governor's appointments secretary to sit in on proceedings. The Bar's Board of Governors is still tinkering with the more controversial proposals, but final approval is expected by next month.

The JNE or "Jenny" Commission, created by statute in 1979 and tracing its origins to the gubernatorial administrations of Earl Warren, is important because public confidence in the judiciary begins with confidence in the selection process. The commission can only "rate" nominees; it has no veto authority. But in combining secret investigations and deliberations with a lack of public accountability, the commission further limits its effectiveness and is out of step with vast changes in the legal profession and public attitudes toward the law in the past decades.

WHITE SHOE NOSTALGIA

Today, much less of the state's serious legal business is done over breakfast at a men's social club than a half-century ago. But one of the great ironies of our increasingly egalitarian and merit-based profession is that many who have benefited from these changes exhibit nostalgia for customs of the _ancien regime_. Exclusivity doesn't seem like such a bad idea to those doing the excluding. The JNE Commission is ostensibly intended to act as the profession's judicial gatekeeper by vouching for qualifications. But even with increased race, gender and ethnic diversity, it retains more than a whiff of the exclusionary club atmosphere. That may explain the arrogance of commission members who rated Janice Brown "not qualified" for the Supreme Court without bothering to read all her appellate opinions; the $250,000 reportedly spent during the past three years by commission members for stays at such egalitarian redoubts as the Clift Hotel; and the virulence of JNE critics like Armand Arabian.

Earl Warren understood that a small group of lawyers meeting in private to review his judicial appointments might occasionally become tedious and unhelpful, and he wasn't shy about slapping around JNE's predecessor, the Committee on Judicial Qualifications, when it got out of line. This was accountability of a sort. When the committee in 1949 refused to approve the elevation of Los Angeles Municipal Court Judge William L. Jefferson to the Superior Court on grounds Warren deemed personal rather than professional, Warren came to San Francisco for the next committee meeting and threatened to publicly denounce its members unless Jefferson's nomination was ratified. The committee reversed itself. That story did not come out for 20 years.

Things are different today, when juicy disputes between the governor and the State Bar scarcely remain secret for 20 minutes. After the JNE Commission sent Gov. Wilson a draft report finding Brown "not qualified" for the Supreme Court, Wilson quickly held a press conference reaffirming his support for Brown. Someone -- presumably a commission member -- leaked a copy of the report to the _Los Angeles Times_, which attacked the nomination in a series of noxious front-page stories and an incoherent editorial about Brown, the State Bar, merit selection and Bob Dole's problems with the ABA.

ZERO DEFERENCE TO THE JNE

Negative JNE ratings don't cause much bother outside the legal community and a few newspapers, reflecting the public's indifference and zero deference to commission opinions. And they count even less afterward. Brown, who was criticized by the JNE for writing few published opinions while on the Court of Appeal, has since written several widely noted Supreme Court opinions and dissents, including the majority opinion in _Gallo v. Acuna_, upholding the use of civil injunctions against gang members, and a thoughtful, provocative dissent in last week's abortion ruling, _American Society of Pediatricians v. Lungren_, striking down California's parental consent laws. She's developing something of a following -- not unlike Judges Stephen Reinhardt and Alex Kozinski on the Ninth Circuit -- among lawyers and others intrigued by what she has to say, though not always in agreement with her.

Choosing judges is an inexact science, but how the JNE could legitimately have found this judge unfit for the Supreme Court is beyond me. The vote was reportedly for a "not qualified" rating by a 3-1 margin. Even though she was pigeonholed as a right-wing zealot, I doubt the commission poll against Brown would have been so one-sided if she had been a visible partner at a major firm or had a higher profile in Bar affairs. The commission emphasized Brown's lack of judicial experience and supposed tendency to inject personal opinions into her decisions. But Brown -- who had previously held a variety of high positions in the state attorney general's office -- had more judicial experience when she was nominated than Earl Warren when he was appointed Chief Justice of the U.S. Supreme Court, or Roger Traynor when he was appointed to the California Supreme Court. Expressing strong opinions would have disqualified many past jurists -- Oliver Wendell Holmes and William O. Douglas come to mind -- and there is no consensus that panels of bloodless functionaries make for the best appellate courts.

Throughout this century, legal reformers such as the American Judicature Society have sought to lessen the influence of voters and politics on the judiciary by encouraging "merit selection" of judges. This usually consists of a commission that recruits and evaluates judicial possibilities and then nominates a limited number of candidates for final selection by the governor or another appointing authority. Currently, 22 states have some form of merit selection. The ABA is proposing that merit selection be made standard nationwide and that private campaign funding for contested judicial elections be banned.

LINGERING SUSPICIONS

In California, Bar-appointed selection committees have never been given more than advisory authority, and many in and out of the Bar remain suspicious of them. The committees are useful for culling out the obviously incompetent, the substance-impaired and the judicially distempered,

especially among lower court candidates. But even after the proposed reforms, JNE's procedures will provide opportunities for anonymous attacks on the integrity and professional competence of judicial candidates. The names of individuals giving negative information will remain confidential, making rebuttal difficult. The commission's deliberations will still be largely secret -- although allowing the governor's appointments secretary to observe appeals of a negative rating is a small improvement.

Moreover, selection committees are not immune to "group-think," which makes them problematic in dealing with appointments to higher courts, where ideology and professional connections can both become an issue. There is no simple set of neutral principles that can be applied to determine the fitness of each Supreme Court candidate. The process inevitably involves ideological concerns. What is the point of trying to hide these concerns or pretending that they don't affect lawyers' views of judicial candidates?

The public doesn't trust lawyers meeting behind closed doors to do the public's business. And ultimately, bar associations and vetting committees like the JNE Commission have mainly themselves to blame for their current predicament.

LOAD-DATE: August 13, 1997

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View Related Topics

August 8, 1997, Friday

SECTION: EDITORIAL; PG. 4

HEADLINE: WHY 'JUDICIAL ACTIVISM' ISN'T ALWAYS A BAD THING

BYLINE: Scott Graham

BODY:
It was trash-the-judges time again this week when the California Supreme Court struck down a law that would require minors to get parental consent for abortions.

Legislators, Attorney General Dan Lungren and even two dissenting justices accused Chief Justice Ronald George and three colleagues of -- you guessed it -- judicial activism.

Their specific complaint is that George and the other majority justices in _American Academy of Pediatrics v. Lungren_, 97 C.D.O.S. 6151, second-guessed the Legislature's finding that the state was in dire need of a parental consent law to protect families.

"The majority's refusal to accord due deference to the Legislature's findings . . . results in a further step toward government by judiciary," declared Justice Marvin Baxter.

"Certainly, in matters of normative judgment," wrote Justice **Janice Rogers Brown,** "no court should be in the position to supplant a society's collective understanding, distilled through experience and expressed in legislative enactments. . . . Legislatures represent the will of the people."

There is one fundamental flaw with this argument. It presumes that legislatures function perfectly.

And as anyone who has spent even a few moments following the congressional campaign finance hearings knows, our legislatures are functioning far from perfectly.

It's as true in Sacramento as it is in Washington: Today's legislatures do not represent the will of the people. They represent the will of the greenback. They represent the will of highly paid campaign consultants expert in the art of manipulating voter fear and shame.

The voting public knows it, too -- hence the proliferation of voter initiatives and term limit laws.

The critics of "judicial activism" simply place too much confidence in pure, unchecked democracy. They forget that our country was founded by people who had a healthy distrust of democracy. That's why they gave us courts. Checks and balances, remember?

Does that mean the courts should have a license to invalidate one statute after another? Of course not.

But consider the case in question:

There can be little doubt that the parental consent law impinges on minors' right to privacy under the California Constitution. Two trial judges, four court of appeal justices and four Supreme Court justices have so held. The key question is whether the law advances a compelling interest that justifies the impingement.

Rather than accept on faith the Legislature's assertion that the law would protect minors' health and advance parent-child relationships, a superior court judge took testimony from 25 experts in the field of health care, adolescent development and the operations of parental consent laws in other states.

The judge then concluded on the basis of the evidence that the law would not protect minors' health or further parent-child relationships -- in fact, it would harm them.

The state did little to contest this evidence, instead relying on the bald legislative assertions. As George pointed out in his majority opinion, the state presented no empirical studies or other evidence showing that the longstanding lack of a parental consent requirement has caused harm to minors' health or hurt their family relationships.

George acknowledged that as a general rule, it's not the judiciary's function to reweigh legislative facts. But, he held, "when a statute impinges upon a constitutional right, legislative findings . . . cannot be considered determinative for constitutional purposes."

That may well be "judicial activism."

But considering the state of our political institutions these days, it's also a relief.

LOAD-DATE: August 8, 1997