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12-1-2005

# Court Review: Volume 41, Issue 3-4 - Working on the Components of Judicial Independence

Ronald M. George
*California Supreme Court*

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George, Ronald M., "Court Review: Volume 41, Issue 3-4 - Working on the Components of Judicial Independence" (2005). *Court Review: The Journal of the American Judges Association.* Paper 53.
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# Working on the Components of Judicial Independence

Ronald M. George

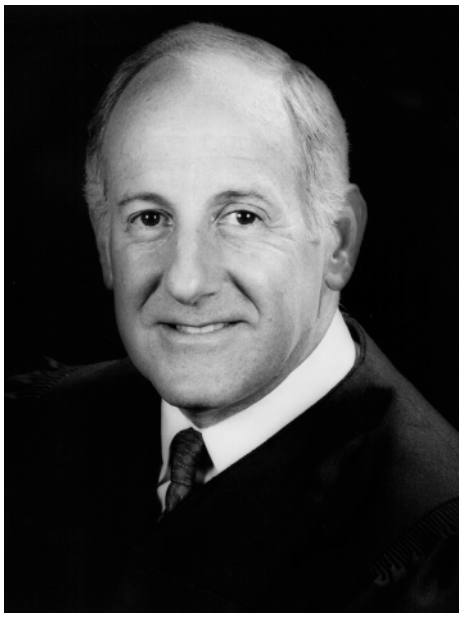
*Editor's Note: California Supreme Court Chief Justice Ronald M. George presented the keynote address at the October 2004 National Forum on Judicial Independence. We reprint his remarks here.*

Courts have often been cited as the weakest of the three branches of government. I do not necessarily agree with that assessment, but increasingly courts are realizing that that does not, in any event, mean they can or should remain silent or passive and allow our sister branches to determine our fate. Court governance and leadership, eliminating bias, improving access, and judicial independence are critical areas upon which we all must focus. They are necessary factors not only in preserving the strength of the judicial branch in our state and federal governmental structures, but also in ensuring that our nation continues at every level to be governed by the rule of law.

The significance of the traditional notion of judicial independence has been highlighted by a number of recent trends. Lately, many of us have come to realize with more and more force that judicial independence, deeply ingrained though it is in our national and local cultures, cannot ever be taken for granted.

There is continuing uncertainty surrounding permissible judicial speech following the U.S. Supreme Court's decision in *Republican Party of Minnesota v. White*.[1] The increasing politicization of judicial selections—whether by election or appointment—at the national and state levels has profound implications for the administration of justice and the countermajoritarian role of the courts. Legislative decisions on court funding made in response to unpopular decisions, partisan interpretations of decisions based purely on results, and threats of recall and opposition are heard with dismaying regularity. Some of you probably saw an article in the *New York Times* yesterday[2] that served as a timely reminder of the increasingly political nature of judicial elections.

We in California have no magic bullet to solve the difficult question of preserving judicial independence, but we have taken a wide variety of approaches in this endeavor. You may find them of interest in your home jurisdictions, so I will dwell on some of these by way of sharing our experience with you. Moreover, as the immediate past president of the Conference of Chief Justices, I can assure you that the chief justices in your states, by and large, also are deeply committed to taking steps to preserve judicial independence.



We in California have focused on two components we consider essential to judicial independence. The first is the very essence of the judicial function: independence and fairness in decision making. Courts, in order to fulfill their constitutional obligations, of course must be free to decide cases based upon their merits. The goal of the judicial branch is to uphold and enhance the rule of law while—unlike the representative branches of government—remaining unswayed by personal preferences or the latest opinion polls.

Courts, of course, must rely on the trust and confidence of the public we serve. As Chief Justice of California, I chair the Judicial Council, the constitutionally created entity charged with setting statewide policy for California's judicial system. Among our major goals have been ensuring access and fairness and strengthening and preserving the independence of the judicial branch. To that end, we have undertaken a wide variety of educational and informational programs aimed at both those who work in the courts and those who are served by the courts. Eliminating bias is a subject integrated into the core curriculum of the California Center for Judicial Education, our premier provider of judicial and staff education. In addition to substantive material, courses provide extensive information on ethics, administrative and managerial responsibilities, and community involvement.

Courts in turn are reaching out to their communities through programs coordinated with community groups, school projects, and educational public forums. For example, even our California Supreme Court the last few years has been holding one session each year in a location apart from our standard

**Footnotes**

1. 536 U.S. 765 (2002).
2. Adam Liptak, *Judicial Races in Several States Become Partisan Battlegrounds*, N.Y. TIMES, Oct. 24, 2004, at A1.

three venues, which are San Francisco, Los Angeles, and Sacramento. In each instance, the Court of Appeal for that district, in coordination with the local courts, educational establishments, and bar associations, has created extensive materials pertaining to the cases scheduled for oral argument. These are made available for use by thousands of students, some in attendance in the courtroom and others by television, and all with informed teachers, judges, and lawyers available in each classroom to lead discussions and answer questions. A statewide public-service cable network also has broadcast each of these court hearings to large portions of the state. We truly have electronically expanded the walls of both the courtroom and the classroom.

Our local courts engage in regular planning and involve their communities in discussions about how better to serve the public's needs. Judges are available as speakers for community groups and public forums, and actively participate in activities aimed at improving the administration of justice to a degree consistent with ethical constraints.

Now these are only some of the steps courts are taking, but they are emblematic of how seriously we take our obligation to inform and involve the public in order to foster greater confidence in and understanding of the role of an independent judiciary.

The response from the public has been overwhelming and enthusiastic. The justices of our six Courts of Appeal also have moved out of their chambers and into the community to hold sessions in different parts of their geographic jurisdiction and to coordinate with local schools to make these sessions rich and engaging educational tools.

The second component of judicial independence, which sometimes receives less attention than the first, but is key to ensuring the strength of the first, is institutional independence. In addition to decision-making independence, courts must secure adequate funding so they can remain immune to financial threats and pressures.

This critical need for certainty in fiscal support for the judicial branch is not a novel notion. For example, one can find reference to it in the early history of our nation. Alexander Hamilton in the Federalist Papers, No. 79, discussed the proposed provision forbidding any decreases in the compensation of judges during their term of office. He made an observation that applies generally to the judicial branch when he wrote, "We can never hope to see realized in practice the complete separation of the judicial from the legislative power, in any system which leaves the former dependent for pecuniary resources on the occasional grants of the latter."

In California, our quest for establishing predictable, adequate funding for courts statewide has acquired more and more urgency. The demands and expectations placed on the judicial branch have greatly expanded as the diversity and complexity of our state have grown. In the early 1990s, the situation had become critical. The existing combination of individual county support for local courts and limited state support resulted in major variations in the administration of justice and the quality of justice from courthouse to courthouse.

It became impossible to ignore the gross inadequacies of the fiscal structure as some courts came perilously close to bankruptcy, and others cut back vital services to the public in order to retain the ability to maintain core programs. The range of services for the public, the time to get to trial, the hours of clerk's office access, all differed from county to county. Consistency in the actual administration of justice was elusive at best, and in some areas the ability of courts to serve public needs was at great risk.

After many years of discussion and advocacy among the courts, the counties, and our sister branches of government, legislation was enacted in 1997 shifting from the counties to the state the responsibility for funding the trial courts. This was a major curative step toward equalizing adequate services statewide, and the need for it became apparent my first year as chief justice. I embarked upon a project that nobody had undertaken before, accompanied by Bill Vickrey, the Administrative Director of the California courts.

The two of us visited the courts in every one of California's 58 counties. That first year we had to obtain emergency funding just to keep some courts from closing, and this problem became progressive throughout the system. So once we obtained state funding the following year, that was a major step toward creating a true judicial branch and not one just in name, as opposed to a fragmented series of judicial entities across the state.

During those visits it became apparent to me that there was a substantial degree of duplication in the services provided by our municipal courts and the superior courts in terms of filing windows, different clerks' offices, different interpreters' services, jury pools, jury commissioners, and overlapping purchasing of supplies, and that efficiencies could be achieved both in terms of savings to the taxpayers and expansion of court services to the public if we were to merge our two levels of trial court into a single level.

So in 1998 we persuaded the legislature to place on the ballot a constitutional amendment permitting a merger of the courts on a county-by-county basis. We could not have gotten it through if we had tried to do it in one fell swoop. The electorate approved this measure by a two-thirds vote, and our trial courts began another fundamental revision pursuant to this constitutional amendment. County by county, the municipal and superior courts decided to merge into one level of trial court. About 50 of them did this within the first six months. The last eight had some problems, but through a combination of carrots and sticks we got them all done and went from having 220 trial courts in our state to 58 courts, one in each of our 58 counties.

These structural changes not only guaranteed more stable and dependable funding across California, but also helped solidify the court system as not merely a loosely affiliated group of individual venues, but as a more fully realized coequal, independent branch of government with a statewide perspective and presence.

The benefits of this approach have been reflected in the growth of California's judicial branch budget during the past four years. Despite a very shaky start to the budget process at the beginning of the current year, given the economic problems facing California and its government and the generally gloomy figure for our state's fiscal outlook, after meetings and negotiations I and members of our staff had with Governor Schwarzenegger and his staff, he agreed to

budget revisions that resulted in adding almost one hundred million dollars to our current trial court budget, which amounts to $2.31 billion, a 4.4 percent increase over the prior year and part of an overall 16 percent increase in trial court funding since fiscal year 2000-2001.

The original budget proposed for January 2004 would have been disastrous and would have resulted in court closures and employee layoffs, but as I noted, we ended up receiving a substantial increase to that figure. Now we shall have a difficult year, like everyone else, but will get through it all right. I should note here, with reference to the size of our budget, that we have more than 1,600 judges in California, plus approximately 400 court commissioners and referees. Our system is the largest in the United States, far surpassing the size of the federal court system nationwide, and perhaps the largest in the Western world.

The bottom line in dollars and cents for our system's current fiscal year is a budget that still does not meet all of the needs of our branch, but that allows courts to maintain services for the public at a reasonable level. Some courts have reduced hours of service and have cut back certain programs, but by and large courts have been able to cope.

The improvement in the judicial branch's situation this year resulted in large part from hearings that were held up and down the state on court needs and on the impact of court programs, including one hearing conducted before our Judicial Council, and I believe you will be interested in one particular presentation that was quite striking.

The speaker was a CASA worker, a Court Appointed Special Advocate, who told the story of meeting with a 16-year-old girl in juvenile hall who was trying to provide her younger siblings with the stability their parents could not, but who had succumbed to the drug and alcohol abuse that she herself had learned from those very same parents. This young woman had made remarkable progress, overcoming her addiction, finishing high school, going on for more education, and returning as a counselor to the drug rehab center that had helped her.

The former client then began to read a prepared statement on what the CASA volunteer had done for her. She soon lost her composure, as did many others in the room, as she explained in direct words how the volunteer's support and belief in her had changed her life.

This was one of several presentations that brought home the positive effect court services can have on individual lives. It is not about courts, not about judges. It is about access, about the services that we provide to the public. The public has to understand that they are the real stakeholders in this. The hearing conducted before the Judicial Council was televised on the California Channel, and not long afterwards I received a letter from the president of the United Domestic Workers of America stating that his organization, based on what its members had seen on the broadcast, wished to make a donation to the CASA program.

The recent budget cycle involved more than successful advocacy to restore judicial branch resources to a manageable level. A budget trailer bill strongly supported by legislative leadership of both parties—we worked hard to get this, I can assure you—and also supported by the governor and the state and local bar associations, included important revisions to the process by which our judicial branch budget is considered by the other branches, revisions that I believe will be of interest to you and that will certainly enhance our ability as a coequal, strong, and effective branch.

Under the new approach, an automatic adjustment to the base funding for trial-court-operating costs will be included each budget year. The figure is determined through a formula that includes changes in per capita personal income and changes in population. The assumption will be that the new budget will include these adjustments from the past year, rather than potentially starting again from zero with a need to rejustify the base budget each and every year.

In addition, under the new budget process, our proposed budget for the trial courts will be submitted concurrently to both the legislature and the governor. Under the preexisting procedure, the budget had been submitted initially to the governor, and only those items approved by him and the Department of Finance were included in the budget proposal presented by the governor to the legislature and hopefully advocated by his staff on our behalf. Now, instead of having the executive branch trim our budget proposal and then hopefully advocate on our behalf, we are able to present exactly what we think we need directly to the legislature.

This may sound highly technical and, undoubtedly, the details will be arcane to those not steeped in state budget terminology, but the fundamental message is far from technical. We have accomplished a sea change in our branch's relationship with its sister branches. The judiciary's budget no longer will be treated as that of just another state agency, but instead will be accorded the deference and consideration due an equal branch of government.

This does not mean that California's courts will have free reign to demand increases. Far from it. The process contemplated is a collaborative one in which the judicial branch has the responsibility to be accountable and to carefully and completely justify its budget requests, but changes in judicial branch governance during the past several years have made this a far easier task.

These modifications ultimately benefit the judicial branch, the state, and the public at large by establishing responsible and responsive growth. As a result of the revised budget structure, we anticipate a new era of predictable and stable funding, equal funding across the state, and funding adequate to permit court operations to meet the public's needs.

The third prong of our structural reform lies in the physical surroundings of the courts. Our judicial branch has actively sought the authority and the resources to acquire courthouse facilities from the counties that now own them. Once funding for the trial courts shifted from a local responsibility to a state obligation, it was no longer sensible—and the counties realized this—for the counties to own and maintain existing and future court facilities. Some of these courthouses are structurally unsafe and need to be replaced, and the degree of maintenance has varied quite a bit now that the counties basically feel they are out of the courthouse business.

The Trial Court Facilities Act, which was enacted at our urging in the year 2002, provides the authority to begin the transfer of all of the 451 court facilities in California from the counties to the judicial branch. This involves more than

2,000 courtrooms, about 10 million usable square feet, and about $4 billion worth of real estate. It is one of the largest transfers of real estate anywhere. This year's budget grants more than $23 million in expenditure authority to support the staff required to oversee the transfer of facilities and to plan the construction of new facilities.

The facilities transfer measure is predicated on self-funding. You may wonder how we are able to accomplish this in difficult economic times. Well, there are three sources. First of all, there is a redirection of court-generated revenue, which is flowing into a state courthouse construction fund instead of going to the counties. There is a special filing fee that is deposited into the court construction fund as well, and this funding will be supplemented by a future bond measure, which is expected to be on the ballot in 2006 or 2008, so this project has no impact on the state's general fund.

The basic concept of courts controlling their own physical environment, and specifically the judicial branch rather than a bureaucratic agency of California state government exercising this control, is truly a novel one that we anticipate will have tremendous benefits to our system. We no longer will have to compete at the local level with schools and police and fire services and emergency rooms. Instead, there will be a more reliable income stream, which we will manage in providing and maintaining necessary facilities for the courts.

I have spoken about the important structural changes that we have made, mainly these three mammoth reforms: the switch to state trial court funding, unification of our trial courts into a single level of trial court, and the process underway to acquire all the courthouse facilities in the state. These measures collectively have given us a more stable base from which to concentrate on our goal of improving our relationship with the public in order to effectively administer justice for all and to ensure a strong and independent judicial system.

It has been repeatedly demonstrated that the courts achieve their greatest successes in enhancing their services to the public when the judicial system collaborates with other interested and affected segments of the community, including of course the bar.

The word "court" traditionally conjures up a vision of two lawyers standing before a black-robed judge seated on an elevated bench arguing a matter that the judge will resolve by rendering a decision. That decision then will be carried out by the parties, usually outside the presence of the court, and, of course, the gulf between that vision and the reality of our courts today perhaps has never been greater.

In many proceedings in California, especially in family law, neither party to a dispute has a lawyer or can afford one. Many of California's courts report that 80 percent of those persons seeking a divorce or child custody or child support are not represented by counsel, and that the same is true of 90 percent of those seeking domestic violence restraining orders and 90 percent of the tenants in landlord/tenant cases.

Reflecting California's increasingly multicultural society, a growing number of our state's litigants do not speak English but instead—and this always amazes me to recite it—speak one of the approximately 100 languages that are translated each year in California's courts, running literally the gamut from "A" to "Z"—Albanian to Zapotec. The changes in the population of those who come before the courts challenge our preconceptions about the courts and demand of us that we respond creatively.

Ensuring effective access based on community needs is critical to the ability of the courts to meet the changing expectations and needs of the public. Access to justice signifies far more than providing an open courthouse door. It includes allowing meaningful access so that individuals can vindicate their rights.

The resolution of a legal issue can profoundly affect an individual's future. Will a family be able to stay together? Can a disabled child obtain the care and assistance to which she is entitled? Can an elderly homeowner keep her only asset, her home? Will the veteran whose life has been derailed by substance abuse find his way back to a productive life?

Often the small cases that set no precedent nonetheless will have a life-changing impact on an individual or a family. When we speak of policies to improve access and of making services available to a broader segment of the community, it is easy to think merely in abstract terms. In California, we have tried hard never to lose sight of the fact that real people with real problems are involved, and that with what is often a remarkably small investment of time, individual lives can be turned around. In the final analysis, it is our ability to provide justice for all that creates our strength. How well we succeed in this endeavor says much about us as a society.

In the final analysis, it is our ability to provide justice for all that creates our strength. How well we succeed in this endeavor says much about us as a society.

When I became Chief Justice of California in 1996, I began my visits to courts around the state in response to a commitment I made in the first of the State of the Judiciary Addresses that I have given every year to a joint session of the legislature. What Bill Vickrey and I learned in those visits—we were able to communicate with judges, court employ-

ees, lawyers, and community leaders—helped lead to the successful implementation of many of the changes that I have described. The purpose of those changes was not to make things easier for judges and court staff but rather to improve public access to and trust in our legal system.

I now want to highlight just a few of our initiatives that I hope will give you a sense of how broadly our courts have interpreted their mission to improve access and fairness in our justice system:

- Courthouse family-law facilitators now are at work in every county, helping persons navigate their way through the crucial proceedings of family law—divorce, child custody and support, domestic violence, and so on. Many local courts have developed self-help centers that focus on serving individuals who are not fluent in the English language. Some courts now offer regional services in rural areas, even providing vans that travel to remote parts of the county that otherwise are underserved.
- At the urging of the Judicial Council and the state bar, the legislature began to provide a $10 million annual appropriation for an Equal Access Fund to aid unrepresented litigants in civil cases, through various legal aid services and organizations. This has enabled us to establish self-help centers at courthouses with the assistance of legal-services providers.
- Community participation in court planning is now commonplace. Juvenile peer courts, community evenings when judges answer questions from members of the public, educational programs in local schools that teach our children about our judicial system and why it is important to them, all of these are part of the process of increasing community access and finding new tools for courts to better interact with their own communities.
- Collaborative justice courts, focusing on cases involving drug use, domestic violence, or mental health problems, have had remarkable success, and I know that has been the case in many of your states. These courts work closely with prosecution and defense counsel, local probation departments, education providers, therapists, and various social services and other community agencies to create programs that are fashioned to affect the underlying problems that often are the cause of the criminal behavior that lands an individual before the court.

Where 80 percent were projected to reoffend within two years after release from custody, after drug court 80 percent were still successfully free of drugs after two years. Such individuals are required to seek and maintain employment, and often the result is a reunited family. Truly, lives get turned around.

Court involvement does not end with adjudicating guilt or innocence and imposing sentence. Instead, it encompasses trying to change the underlying conduct and conditions that led to the offense. One court commissioner testified before our Judicial Council that the drug treatment courts in her county had reversed the statistic on success rates for defendants. Where previously 80 percent were projected to reoffend within two years after release from custody, after drug court 80 percent were still successfully free of drugs after two years. Such individuals are required to seek and maintain employment, and often the result is a reunited family. Truly, lives get turned around.

All this, of course, also makes economic sense when one considers the cost of keeping an individual in custody, the benefits to society in creating a productive and tax-paying citizen, and the financial as well as the emotional cost of placing children in foster care when they have to be removed from the home because of their parents' substance abuse.

Our court system has significantly expanded its use of technology in the last few years. We have installed interactive self-help kiosks in many courthouses, equipping them with user-friendly forms. We are in the process of simplifying our court rules. Perhaps the most impressive technological achievement is our self-help website, which provides a broad array of services online. Its more than 900 pages of information already have been translated into Spanish, and large portions are being made available in other languages commonly spoken in California.

More than 3 million visitors use the site each month. It contains all 580 Judicial Council forms for use in court proceedings, forms that now can be completed online. It offers background information on the court system and on individual courts, as well as practical information on how to proceed, including directions to the local courthouse. The website offers links and directions to where one can obtain additional assistance, legal and otherwise—for example, the location of the nearest domestic violence shelter—and it has links to a host of other law-related websites of many sorts. It already has won awards, but most importantly, it has demonstrated that online access to information about the courts is a remarkably useful resource for the public.

We also have made jury service less burdensome and more inclusive of a broader spectrum of the population through the one-day-or-one-trial mode of jury selection. Under this system, one's jury duty is satisfied by showing up at the jury assembly room for one day unless one is actually sent out to a courtroom

where jury selection is underway. Having shown up for jury service myself in response to summonses I received the last few years, both under the old system and the new, I can assure you that we have made substantial progress in improving the system. How we treat or mistreat our jurors comes back to us in terms of community support and legislative support for the courts.

We have increased the compensation of jurors, and jurors in civil cases also are now getting the benefit of our new plain-language jury instructions that are rendered by the trial judge to guide them in their deliberations. We hope to have the set of instructions for criminal cases available next year. We went through them all and rewrote them in plain English instead of arcane Victorian prose. One of the ones I like to cite as an example deals with the credibility of witnesses. We used to say, "Innocent misrecollection is not uncommon." Now we say, "People sometimes forget things."[3] Why not make it simple?

California's court system has experienced enormous innovation during the past several years, but there is no guarantee that the road ahead will be easy, and we are far from meeting all the needs of the public we serve. Like many other states, California faces tremendous budget challenges, and our judicial system's ability to continue to innovate and respond to reasonable community needs is not assured.

California's judicial branch is fortunate to have been able to work closely with the other two branches of government. That is something I have worked very hard to achieve. Each year I have dozens of meetings with individual members of the legislature, one on one, with the governor and his administration, and also with other entities that are stakeholders and partners in the justice system, emphasizing the need for adequate court funding and the essential role that the courts play in our democracy. The message I and others strive to convey to those who wield the purse strings in Sacramento and Washington, D.C., is that the courts are not a mere luxury to be funded in times of prosperity and neglected in bad times, nor should the fortunes of the courts be dependent upon the popularity of their latest rulings, interpretations, and applications of the law.

We seek to convey the message that the judicial system is not simply another bureaucratic agency. It is one of the three separate, independent, and coequal branches of government. It differs from its sister branches in the influences that must guide its functioning. We, of course, as we all know, must be guided by the state and federal constitutions, statutes, and precedent that embody the rule of law in our nation and our individual states. Although courts are an integral part of our democracy, they are not and should not be considered simply another representative arm of government responsive to the newest polls and sensitive to the latest trends.

We are striving to make our court system even more worthy of the designation "judicial branch." In California, our courts have taken on unprecedented responsibility for improving access, providing accurate fiscal information, and better communicating with lawyers, litigants, and the public. We have become active guardians of judicial independence and of the rule of law.

These days we sometimes hear the courts and the Bar criticized as impediments to the best interests of our nation or to the will of the people. I strongly disagree. In my view, judges and lawyers must be—and to a great degree are—committed guardians of the rule of law and of the rights of all Americans. Every day in California, and I know in your states as well, judges and lawyers can be found reaching out to all segments of the community, developing programs to assist self-represented and underserved litigants, contributing pro bono services, representing clients ethically and effectively, and impartially adjudicating civil disputes and criminal charges. I have no doubt that this is true in all your jurisdictions as well.

In my view, our legal and judicial system, and those who labor in its courthouses and law offices, deserve praise and gratitude from those who cherish our nation and the freedoms it extols. By working together to ensure independence, increase access, and provide the finest administration of justice possible, judges, court staffs, and attorneys contribute mightily to the strength and dignity of our nation and its principles.

In many respects these are challenging times for all of us, as private citizens, parents, members of the legal profession, and those privileged to serve on the bench, but these challenging times offer opportunities to better serve the public and strengthen our structure of government. We in California, like many of you, have been focusing on creative change and improvement. We look to you for ideas and innovation. Many of the improvements in California that I have mentioned have come from other states. We often have been the beneficiary of your efforts, and we have adapted your successes to our own needs. We look forward to working with you in the future to ensure and improve access to a fair and effective system of justice everywhere in our nation.

*Ronald M. George has been the Chief Justice of the California Supreme Court since 1996. He joined the California Supreme Court in 1991 following service on the Los Angeles Municipal Court, Los Angeles Superior Court, and California Court of Appeal. In 2003-2004, he served as president of the Conference of Chief Justices and as chair of the Board of Directors of the National Center for State Courts. He received the William H. Rehnquist Award for Judicial Excellence in 2002. He is a graduate of Princeton University and Stanford Law School.*

3. *See* Peter M. Tiersma, *Jury Instructions in the New Millenium*, COURT REVIEW, Summer 1999, at 28, 29-30.