



THE CAPITOL CONNECTION

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EXCLUSIVE: INTERVIEW WITH ATTORNEY GENERAL BILL LOCKYER



On November 5, Bill Lockyer was elected to a second term as California's Attorney General. Prior to being elected Attorney General, Lockyer served 25 years in the Legislature, the last 4 as president pro tempore of the Senate. As a legislator, he was noted for his interest in judicial administration and was instrumental in the unification of the state's trial courts and the transfer of funding responsibility for the trial courts from the counties to the state. Attorney General Lockyer recently looked back on his first term and forward to his second and shared his thoughts with *The Capitol Connection*.

Capitol Connection: Looking back on your first term as Attorney General, what are your most satisfying and significant accomplishments?

Lockyer: A great part of being Attorney General is that you have so many opportu-

nities to work in so many different policy areas. It's very difficult to pick just a few to highlight, but I am certainly proud of the work we've done in environmental enforcement. Over the last four years we've helped save Lake Tahoe by reducing MTBE pollution, restored a six-mile stretch of the American River by removing a left-over tunnel from the aborted Auburn Dam project, and placed renewed emphasis on enforcing the California Environmental Quality Act by ensuring local governments develop responsible development plans and protect water and air quality for our residents.

On public safety, we've revolutionized the way law enforcement investigates and solves violent crimes in California by creating the country's largest criminal offender DNA databank. I also am proud to have created the state's first Office of Victims'

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LAWMAKERS CONVENE IN SACRAMENTO

On December 2, the Legislature met in Sacramento in an organizational session to officially begin the 2003-2004 legislative session.

Chief Justice Ronald M. George swore in members of the Senate, including seven new members. The Senate then re-elected John Burton (D-San Francisco) as its president pro tem. Also elected were Sen. Don Perata (D-Hayward) as majority leader and Sen. Jim Brulte (R-Rancho Cucamonga) as minority leader. In the Assembly, members re-elected Herb Wesson (D-Culver City) as speaker, after their oath of office was administered by Supreme Court

Associate Justice Joyce Kennard. Other leaders chosen were Christine Kehoe (D-San Diego) as speaker pro tem, Wilma Chan (D-Oakland) as majority leader, Marco Firebaugh (D-East Los Angeles) as majority floor leader, and Dave Cox (R-Fair Oaks) as minority floor leader. Presiding officers in both houses admonished their respective houses to be prepared for a difficult year.

The most challenging issue awaiting lawmakers is the state's budget. Currently, a deficit well in excess of \$20 billion is projected for the fiscal year that begins on July 1,

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INTERVIEW: ATTORNEY GENERAL BILL LOCKYER

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Services, which is helping victims of crime obtain valuable assistance. We've also improved California's ability to fight methamphetamine production by shutting down nearly 3,000 toxic meth labs and securing a new anti-meth task force in the Central Valley.

Perhaps most significantly, we've made it a priority to crack down on elder abuse. I filed and won the state's first-ever civil and criminal prosecutions of nursing homes that abused the elderly and also created a surprise-inspection program of nursing homes that is helping to ensure compliance with state standards of care and safety.

CC: What are your disappointments and frustrations?

Lockyer: I don't have enough time! There is so much good work that my office does and can do to improve the quality of life for Californians that we run out of hours in the day to do it all at once. Over the next four years I intend to think, plan, and implement big in order to build on our successes. One of my top priorities will be to do everything possible in order to help California become the first state to eliminate domestic violence.

CC: How does it compare with your expectations?

Lockyer: I knew I would enjoy serving as California's Attorney General, but I had no idea how much I would love the work. Together with all of the hard-working employees at the Department of Justice, we are making a positive difference in the lives of Californians.

CC: You have sought reform of private arbitration for a number of years. How do you assess the changes made this year by the Legislature and the Judicial Council, as well as through developing federal and state case law? To what extent will these changes result in a system that is fair to all? What work, if any, remains to be done to ensure fairness?

Lockyer: The efforts by the Legislature and the Judicial Council to ensure that parties to private arbitration are not denied justice have been positive developments. Arbitration serves an important purpose by preventing our judicial system from grinding to halt under the weight of an enormous caseload. But arbitration should be an alternative source of justice, not an alternative to justice. I think we will need to watch carefully over the years ahead to see whether the reforms enacted have the desired effect.

CC: One of your most notable legislative achievements was SCA 4 which, after approval by the voters, allowed the state's trial courts to unify. What are the most significant impacts of unification? Has it worked the way you envisioned?

Lockyer: As you know, I worked for more than a decade to unify the state's trial courts and we never would have succeeded without the support of the Chief Justice, the Administrative Office of the Courts, and many trial court judges and administrators. I kept at it for so long because I believed that through unification the courts would become more efficient, the public would gain better access to the courts, and the judicial system would free up resources to further improve the administration of justice. Four years later, I think unification has significantly advanced those objectives.

CC: What are your legislative and other priorities for this year?

Lockyer: In light of California's dire fiscal condition, my legislative priorities recognize that there will be little or no funding available for new programs. The recent acts of corporate malfeasance that devastated the life-savings of so many has demonstrated that we need to have more vigorous enforcement of state consumer and investor-protection laws. I will propose legislation this year that gives my office concurrent jurisdiction with the Department of Corporations to enforce these laws. I will also propose legislation to clarify and expand laws that crack down on sex-offenders, polluters and drug dealers.

CC: What success have you had in your effort to eliminate the backlog in the DNA database?

Lockyer: When I took office in 1999, our DNA database was basically an empty shell of untapped possibilities. In less than two years we not only eliminated a backlog of more than 200,000 DNA samples from convicted violent felons, we also gave every law enforcement agency in the state a new tool to solve crimes they never dreamed they'd be able to solve. Prior to my administration, the DNA databank had helped solve an average of one case every year. Today, the databank is helping to solve more than one case every day. I'm very proud of this success.

CC: How have scientific, legislative, and jurisprudential developments in the use of DNA evidence affected our criminal justice process?

“One of my top priorities will be to do everything possible in order to help California become the first state to eliminate domestic violence.”

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INTERVIEW: ATTORNEY GENERAL BILL LOCKYER

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Lockyer: The use of DNA science has really changed the way the Legislature and the courts solve criminal justice problems. DNA is the best tool available to not only convict the guilty, but also exonerate the innocent. I was very proud to work with the Judicial Council to enact legislation that gives every convicted felon the right to obtain DNA testing that can offer probative evidence supporting their innocence.

CC: You have taken steps to improve the completeness and accuracy of DOJ's criminal history database including efforts to ensure that every court disposition is reported to the DOJ. What is the status of those efforts? What remains to be done?

Lockyer: The DOJ has worked closely with sheriffs, police chiefs and the courts to improve reporting of arrest and disposition information to the Department of Justice. Since 1999, reporting has improved markedly, from 77 percent to 89 percent for arrests and from 70 percent to 87 percent for dispositions. We've also increased the number of Live Scan devices available throughout California from 144 units in 1999 to over 600 today. As a result, over 94 percent of arrest reports are now submitted electronically to the Department of Justice, compared to just 10 percent in 1999. We've made significant improvements, but there is much more to be done. Ultimately, I am looking to the Judicial Council to help ensure that there is a statewide inte-

grated information system that will allow a seamless connection between every court in California and DOJ to ensure that 100 percent of this critical disposition information is submitted to DOJ.

CC: This year, your office sponsored AB 2442 (Keeley), which establishes a task force to review the Child Abuse and Neglect Reporting Act and the Child Abuse Central Index. What are your expectations for the task force? What issues will it address?

Lockyer: In 2001, California law enforcement received almost 200,000 domestic violence-related calls. Children were in 50 percent of these homes witnessing that violence. Also in 2001, the California Department of Social Services reported that there were 359,740 referrals for investigation of child abuse and neglect, involving 671,422 children. One in four California children are exposed to violence either as a victim or as a witness.

The state should be doing everything possible to both protect our children from violence and also hold child abusers responsible for their actions. Our laws should also make sure that we do not injure the wrongly accused. I expect the task force to conduct a thorough review of state law and to recommend thoughtful proposals that hold child abusers accountable and protect the innocent.

LAWMAKERS CONVENE IN SACRAMENTO

(Continued from page 1)

2003. Gov. Davis has called a special session of the Legislature for the purpose of addressing the current year shortfall. On December 6, the Governor released his plan to cut current year and budget year spending by \$10 billion, including current year reductions of \$50 million for the trial courts and \$10 million for the Supreme Court, Habeas Corpus Resource Center, courts of appeal, and the Administrative Office of the Courts. On December 9, both houses met briefly to consider the Governor's proposal and then adjourned. The Assembly announced meetings of the budget sub-committees to hear from the public on the impacts of the proposed reductions. Both houses will likely delay further action until lawmakers reconvene on January 6 and the Governor releases his 2003-04 budget on January 10.

The 2002-03 budget battle was among the most contentious in history, with Republicans vowing to resist any tax increases and Democrats committed to maintain funding for programs. The 2003-04 budget is shaping up to be an

even tougher fight as most post-election analysis suggests that both houses now consist of more liberal Democrats and more conservative Republicans. This has been explained as the result of a convergence of two factors: term limits, which led to the departure of many moderate lawmakers, and last year's redistricting process, which made most districts safe for candidates of one party and therefore more problematic for moderate candidates.

Another factor which could affect the 2003-04 budget process is the success of Republicans in gaining one seat in the Senate and two seats in the Assembly. Since passage of the budget requires a two-thirds majority, Republicans have greater strength in resisting a spending plan that includes tax increases.

While the state's fiscal difficulties are foremost on the minds of lawmakers, the regular session that began on

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ADR: A YEAR IN REVIEW

This has been an eventful year for contractual arbitration in California. Between September 2001 and October 2002, we have seen legislation to establish mandatory ethics standards for individual arbitrators, the development and adoption of these new ethics standards by the Judicial Council, a lawsuit by the National Association of Securities Dealers and New York Stock Exchange challenging these ethics standards, and a whole new wave of legislation directed at the companies that offer arbitration services.

SB 475 and the new ethics standards

This co-sponsored bill, Senate Bill 475 (Escutia), was enacted in late September 2001. Code of Civil Procedure Section 1281.85, part of that legislation, required the Judicial Council to adopt ethics standards for all neutral arbitrators in contractual arbitration effective July 1, 2002.

With the passage of this bill, the Administrative Office of the Courts (AOC) began its work to develop a recommended set of ethics standards for consideration by the council before the legislative deadline. To provide the staff with expert assistance in the development of these standards, Chief Justice Ronald M. George appointed a 19-member Blue Ribbon Panel of Experts on Arbitrator Ethics. The panel, chaired by Professor Jay Folberg of the University of San Francisco School of Law, included law school faculty; sitting and retired judges; legislative and executive branch representatives; business, consumer, and labor representatives; and practicing arbitrators. With the help of this panel and the input from the more than sixty individuals and organizations that submitted written comments on a draft set of standards and more than 40 who attended public forums on the standards, staff developed a recommended set of standards.

At its meeting on April 19, 2002, the council approved this set of standards. Among other things, these standards:

1. Established arbitrators' overarching ethical duty to act in a manner that upholds the integrity and fairness of the arbitration process and to maintain impartiality toward all participants at all times.
2. Expanded arbitrators' existing statutory disclosure obligations in the following ways:
 - Expanded the existing duty of reasonable inquiry that applies with respect to financial interests to require arbitrators to make a reasonable effort to inform themselves about all matters that must be disclosed.

- Expanded required disclosures about prior service as an arbitrator to include prior service as any other type of dispute resolution neutral for a party or attorney in the current arbitration.
- Established specific requirements for arbitrators to disclose if they or a member of their immediate family is or, within the previous two years, was an employee, expert witness, or consultant for a party or a lawyer in the current arbitration.
- Effective January 1, 2003, expanded the existing requirement that arbitrators disclose information about a provider organization's relationship with the parties, which now applies only in certain residential construction arbitrations to require that, in all consumer arbitrations, arbitrators disclose information about any financial or professional relationship between any dispute resolution provider organization that is administering the arbitration and parties or attorneys in the arbitration, including information about prior cases involving those parties or attorneys in which the provider administered dispute resolution services. If any such relationship is disclosed, an arbitrator is also required to provide information about his or her relationship with that provider organization.
- Restricted an arbitrator's acceptance of subsequent employment or professional relationships (including subsequent arbitrations) involving a party or a lawyer in the current arbitration.
- Restricted an arbitrator's acceptance of gifts, bequests, favors, or honoraria from any person or entity whose interests are reasonably likely to come before the arbitrator in the arbitration, and, for two years after the arbitration concludes, from any person or entity whose interests have already come before the arbitrator in the arbitration.

However, because of the short timeframe both for the drafting of the standards and for the public to comment on these standards, the Judicial Council directed its staff to seek additional comments on these standards immediately following their adoption. The standards were re-circulated for comment between May and September. At its December meeting, the council will consider recommended amendments to address the comments received during this post-adoption circulation.

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ADR: A YEAR IN REVIEW

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The 2002 arbitration legislation

In October 2001, after SB 475 was passed, the San Francisco Chronicle ran a series of three articles entitled "Private Justice" that raised concerns about contractual arbitration, including, in particular, concerns about: (1) consumers and employees being shut out of the court system through the use of pre-dispute arbitration provisions in contracts of adhesion; (2) potentially conflicting relationships between the private companies that offer arbitration services and the parties who appear before the arbitrators supplied by those companies; and (3) the potential negative impact that the lucrative private dispute resolution market may have on the public court system. While there had been a long series of unsuccessful bills intended to limit pre-dispute contractual arbitration or to modify aspects of the arbitration process, this Chronicle series sparked new legislative activity focusing on the business of arbitration in California.

In February 2002, Assemblymember Darrell Steinberg, then chair of the Assembly Judiciary Committee, called an informational hearing on contractual arbitration. At that hearing, legislators heard from a variety of those involved in or affected by contractual arbitration, including representatives of JAMS, the California Dispute Resolution Council, the Consumer Attorneys of California, and the California Chamber of Commerce. Out of this hearing sprang a whole new package of bills focusing, primarily, on the companies that provide arbitration services. The package included the following bills that were signed into law by the governor in October:

AB 2504 (Jackson). As originally proposed, this bill would have required judges to wait at least one year after leaving the bench before they could provide private dispute resolution services. As ultimately enacted, this bill amends the disclosure and disqualification requirements for judges and contractual arbitrators under Code of Civil Procedure sections 170.1 and 1281.9 so that judges are disqualified and arbitrators are required to disclose if they have any current arrangement with a party in a case concerning prospective employment or other compensated service as a dispute resolution neutral or are participating in, or within the last two years have participated in, discussions regarding such prospective employment or service with a party. Judges are also disqualified in any case that includes is-

sues relating to the enforcement of an agreement to use ADR or the appointment or use of a dispute resolution neutral if they have had such an arrangement or have had such discussions.

AB 2656 (Corbett). This bill requires that dispute resolution provider organizations make available to the public a computer-searchable database on the Internet that contains specified information about the consumer cases in which the organization has provided dispute resolution services in the last five years.

AB 2754 (Harman). This bill requires arbitrators and their clients to cease their relationship if they had financial dealings with each other.

AB 2915 (Wayne). This bill prohibits "loser pays" policies under which non-prevailing consumers are required to pay the fees and costs of opposing businesses, and implements administrative fee waivers for indigent consumers.

Two other bills that were part of this year's arbitration reform package were not enacted:

AB 3029 (Steinberg). This bill would have given consumers the right to choose, after a dispute had arisen, a dispute resolution provider organization other than one specified in a contract. As originally proposed, it would also have prohibited provider organizations from engaging in consulting or other business relationships with clients who are parties to consumer arbitrations. In the version of the bill passed by the Legislature, this prohibition was changed into a requirement that provider organizations directly disclose certain information to the parties in consumer arbitrations that they were administering, including any employment or consulting relationship with the parties or attorneys resulting in payment of \$30,000 or more; any financial relationship with the parties or attorneys; and any solicitation by the provider organization of the parties or attorneys.

This bill was ultimately vetoed by the governor. And by vetoing that bill, Davis negated his signing of *AB 3030 (Corbett)*, which proposed to set penalties for arbitrators who flout the new regulations, since that bill's effectiveness was specifically contingent upon *AB 3029* becoming law.

RIPPED FROM THE HEADLINES

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

“Legal aid for poor lagging, report says – An ‘access gap’ persists, and amid tough times the outlook is bleak.” *Sacramento Bee* (November 20, 2002)

A state commission’s report on legal aid for poor people facing evictions, employment barriers and other noncriminal but life-altering problems ranks California near the bottom in spending among industrial states and even further below many nations with comparable economies.

For most poor Californians, no legal services are available and the “access gap” remains wide, the commission report said. The gap persists despite a commitment in the highest reaches of California government to turn around a situation in which the state officially scorned the issue until recently and budgeted no money at all for legal aid until 1999.

“Open primary idea gets new life” *San Francisco Chronicle* (November 20, 2002)

Hoping to increase voter turnout and weed out political ideologues in the Capitol, California’s business lobby is laying the groundwork for a ballot initiative to switch back to open primary elections.

Voters approved an open primary system in 1996, but the U.S. Supreme Court struck it down four years later on First Amendment grounds after the state Democratic and Republican parties argued it meddled with their ability to nominate candidates.

Business interests led by the California Chambers of Commerce say they’ve come up with a version of the open primary that will pass constitutional muster. Critics already are attacking the plan as a ploy by big business to advance its agenda in Sacramento and squelch third parties.

“Long budget crisis looms as big test for spending interests” *Sacramento Bee* (November 26, 2002)

There is, as someone once observed, nothing like imminent disaster to focus the mind. And with California facing budget deficits of almost incalculable proportions, those who depend on the state for sustenance – local government and school officials, health-care providers, public workers, etc. – are focusing on what promises to be years of gut-wrenching political infighting.

Even if proposed tax increases are enacted, and that’s by no means certain, they will cover only a portion of the projected deficits – upwards of \$100 billion over the next half decade – and inevitably, that will mean deep spending cuts. How deep is anyone’s guess, but there’s no doubt that tens of billions of dollars will have to be slashed, and that process will pit budgetary interest groups against one another.

Even schools, which have enjoyed high political standing and extraordinary legal protections, will be touched by the crisis – and soon. Gov. Gray Davis’ budget advisers have concluded that the state faces a whopping \$30 billion deficit just in the next 19 months, and he’s virtually certain to propose a \$4 billion-plus

slash in school spending as a down payment.

“One-Day, One-Trial Helps S.F.’s Jury Response Rate”

The Recorder (November 27, 2002)

About 10 percent of San Franciscans summoned for jury duty in the first half of the year failed to show up. That’s good, compared to Alameda County, which had a 19 percent absentee rate for the third quarter, but bad compared to San Mateo County, where only 4 percent of those summoned during the first six months of 2002 fail to show up.

Superior Court Judge Richard Kramer attributes the improvement to the one-day, one-trial system adopted by the city in 2000. The one-day, one-trial system, which replaced a system where prospective jurors spent a two-week period of being on call, has made jury duty more palatable.

“GOP blanked on statewide offices but gains in Legislature” *Sacramento Bee* (November 27, 2002)

Much has been made in the media about the sweep of California statewide offices by Democrats, the first time that had happened in 120-odd years.

That said, the fact that Democrats gained the one minor statewide office they hadn’t previously held – secretary of state – has little impact on the ebb and flow of real power in the Capitol. If any aspect of this month’s elections changed anything in California, it was the Republicans’ little-heralded pickup of several seats in the Legislature.

Most importantly, the Republicans are playing a much stronger hand on the budget since spending and tax measures generally require two-thirds votes in the Legislature.

“Legal Group Urges States to Update Their Family Law”

The New York Times (November 30, 2002)

An influential group of lawyers and judges has recommended sweeping changes in family law that would increase alimony and property rights for many divorced women, while extending such rights for the first time to many cohabiting domestic partners, both heterosexual and gay.

The proposal, from the American Law Institute seek to update family law to reflect changes in society over the last 30 years. One conclusion, for example, is that if a spouse has committed adultery, it should not affect a judge’s decision about alimony or marital property.

“More Elected Than Appointed Judges Disciplined in 90’s” *Los Angeles Times* (December 1, 2002)

Elected judges are more likely to be disciplined for unethical conduct than appointed judges, according to the first-ever study by California’s judicial disciplinary agency.

Ethics experts suspect one reason is that elected judges get less scrutiny from voters than their appointed colleagues receive from governors, who rely on the State Bar of California to vet potential appointees. Governors are also keenly aware that their political legacies are shaped in part by the quality of

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RIPPED FROM THE HEADLINES

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their appointees to the bench.

“Lawmakers Face Budget Crisis as Session Begins” *Los Angeles Times* (December 3, 2002)

The pomp of swearing-in ceremonies fizzled fast Monday as a new Legislature peered into a budget hole deep enough to consume all of their spending plans and pet projects.

“If we fired every state employee – I mean every Highway Patrol Officer, every UC professor, every parks patrol officer – we would still be more than \$6 billion short,” Assembly Speaker Herb Wesson (D-Culver City) said of a budget deficit that is estimated at \$21 billion to \$30 billion over the next year and a half. “Yet somehow, we must find a way to get this job done.”

The weight of the enormous projected budget shortfall occasionally stifled celebrations, which drew hundreds of family members, friends, fund-raisers and campaign workers to the Capitol.

“Privacy Bill Back in the Hopper – Speier offers consumer measure for 4th time” *San Francisco Chronicle* (December 3, 2002)

Backers of stronger consumer protection of private financial information introduced a bill Monday similar to a measure killed last year on the Assembly floor after intense business opposition.

The hope is a new crop of legislators, sworn in Monday, will make it easier to win Assembly approval of tougher restrictions on how companies can use intimate information about a customer’s mortgage, credit card and insurance history.

This time, Senator Jackie Speier has a powerful ally – Senate President Pro Tem John Burton, D-San Francisco – who vowed to “do everything” to ensure the bill passes.

Burton’s and Speier’s optimism for passing a privacy bill stems partly from changes in the composition of the Assembly. In the past tougher privacy rules have been thwarted by a coalition of so-called business Democrats. But after the fall elections, those ranks have dwindled, and more liberal Democrats have been elected. Legislative passage is no guarantee of a signature by Gov. Gray Davis, who has yet to take a position on this year’s measure.

“Red Ink to Greet Green Legislators” *Contra Costa Times* (December 7, 2002)

While Sacramento’s budget crisis prompts financial analysts to clench their teeth and seasoned policymakers to shake their heads, many of the newly elected members of the state Legislature say they look forward to getting down to work on Monday.

Thanks to term limits, there are 32 rookies to join the 80-member lower house this year. Of the 32, 18 are Democrats and 14 Republicans. Overall, the Assembly comprises 48 Democrats and 32 Republicans.

That provides an interesting dynamic to this year’s budget process. Will rookies be more likely to stick with the party line and less likely to compromise, or will it be the other way around? Will ignorance of the budget prove to be an asset, bringing fresh

ideas, or a liability?

“Lawmakers decide to delay spending cuts” *Ventura County Star* (December 10, 2002)

State lawmakers convened a special session on Monday to deal with California’s mounting budget crisis but appeared in no immediate hurry to act on a list of \$10 billion in spending cuts proposed by Gov. Gray Davis last week.

After meeting with legislative leaders in the afternoon, Davis told reporters the actual budget shortfall will be “well in excess” of the \$21.1 billion estimate of the legislative analyst. He said it will likely be “in the high 20s” and possibly as much as \$30 billion.

The Assembly scheduled informational committee hearings on Davis’ proposals for next week but recessed its general session until January 6. Senators convened and then went home, to return this year only in the unexpected event that President Pro Tem John Burton calls another session.

“This is a very serious issue, and I want to do it right,” Burton said. “We’re not going to rush into these cuts without knowing what they do and to whom they do it. ... We want to know exactly what we’re doing and what kind of future we’re laying on our children.”

“State GOP Censures Its Chief; he had threatened recall for any Republican lawmaker who votes for tax hikes”

Los Angeles Times (December 11, 2002)

The California Republican Party rebuked its own chairman Tuesday in an unusual move that spotlights internal dissension and stirs the budget fight building at the Capitol.

The party’s 20-member board of directors voted unanimously to censure Chairman Shawn Steel. The vote came one day after Steel threatened in a speech to seek the recall of any Republican legislator who voted to raise taxes to help close the state’s vast budget gap.

Steel’s pledge to oust any Republican lawmaker who endorsed tax hikes was denounced by Assembly Speaker Herb J. Wesson Jr. (D-Culver City). “I’m appalled by Mr. Steel’s comments,” said Wesson. “Here we are facing the most difficult fiscal crisis that this state has experienced in modern times and we would have this individual resort to political thuggery and threaten to recall individuals for doing their job.”

The board that voted to verbally reprimand Steel includes Parsky and the Legislature’s minority leaders, Assemblyman Dave Cox (R-Fair Oaks) and Senator Jim Brulte (R-Rancho Cucamonga). They asked that he not articulate his personal opinions as party positions.

“Cox and Brulte have been very clear that they oppose taxes,” said party spokesman Rob Stutzman. “But the chairman made an electoral threat against members of their caucuses which is essentially their threat to make or not to make. That would be the rub.”



Judicial Council of California
Administrative Office of the Courts
Office of Governmental Affairs

770 "L" Street, Suite 700
Sacramento, CA 95814
Telephone 916-323-3121
Fax 916-323-4347
TDD 800-735-2929

Editorial Board

Martin Riley, Editor-in-Chief
Kourtney Burdick
June Clark
Kate Howard
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Contributors

Heather Anderson

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Yvette Trevino
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SPECIAL SESSION: WHAT DOES THAT MEAN?

California's constitution provides that the Governor may call a special session of the Legislature by proclamation. The Legislature is then bound to address only those subjects specifically mentioned in the proclamation. The general purpose of a special session is to ensure legislative focus on addressing a pressing need or particular issue. For example, the Governor called two special sessions last year to address the state's energy issues. Often, a special session runs concurrently with a regular session. Bills introduced in a special session, which are numbered sequentially and include a lower case "x" to denote them as special session bills, are not subject to the procedural deadlines imposed on regular session bills. Also, a special session bill becomes effective on the 91st day after the adjournment of the special session in which it was passed.

Gov. Davis' proclamation calling the current special session included these specific charges:

- To consider and act upon legislation to reduce General Fund expenditures and take other action as necessary to address the budget shortfall.
- To consider and act upon legislation to reorganize and consolidate state operations.
- To consider and act upon legislation related to protecting access to services in local, public health care delivery systems.

LAWMAKERS CONVENE IN SACRAMENTO

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December 2 will not be without issues of interest to the courts that are unrelated to the budget. A few such bills have already been introduced.

For example, Sen. Burton has introduced legislation that seeks to codify the U.S. Supreme Court's ruling in *Atkins v. Virginia*, 122 S.Ct. 2242. *Atkins* held that the death penalty could not be imposed on mentally retarded defendants but left it to the states to come up with statutes to ensure compliance. Last year, now termed-out Assemblymember Dion Aroner (D-Berkeley) authored AB 557, which was the first attempt at addressing *Atkins*. AB 557 would have established the process through which defendants may be found to be mentally retarded. The bill was amended in the Senate but was not taken up by the Assembly to ratify the Senate amendments before the 2001-02 session came to a close.

Most bills will be introduced in the two weeks just prior to the February 21 bill introduction deadline.