

Orange County's District Attorney Faces 3 Deputies

Most Voters Undecided

By Donna Prokop
Daily Journal Staff Reporter

SANTA ANA — Orange County District Attorney Michael R. Capizzi, opposed by three veteran prosecutors within his own office, heads into Tuesday's election with uncertainty over whether he will retain his coveted post.

Capizzi, 50, clearly has had the fundraising advantage in the four-man race — raising more than \$180,000 — while his next-closest competitor has gathered less than a fourth of that amount.

Capizzi also has a near-monopoly on endorsements from local law enforcement organizations, the Orange County Deputy District Attorneys Association, and elected Orange County politicians — including the unusual endorsement last week by U.S. Senator Pete Wilson.

Despite those obvious advantages, however, a recent poll showed Capizzi locked in a near-dead heat with Orange County Chief Deputy District Attorney James G. "Jim" Enright, 63, leading to widespread speculation that a runoff is likely this November.

The poll by Chapman College Professor Mark Baldassare found Capizzi and Enright even at 12 percent among Orange County registered voters. Among those considered more likely to vote, Capizzi had an edge of 16 percent to 13 percent for Enright.

Assistant District Attorney Ed Freeman came in third at 8 percent. Deputy District Attorney Thomas Avdeef, a gang prosecutor, was last among the candidates, at 4 percent.

Most Voters Undecided

A major factor in the race, however, could be that nearly two-thirds of the voters polled remained undecided.

"Let there be no doubt that when you have four people in a race — there's a distinct possibility that there's going to be a runoff," admitted Capizzi, in an interview last week. "But I'm optimistic that a runoff won't be necessary."

But Enright sees it differently. "I wouldn't rule out the possibility of winning the election outright," he said. "I think there is an anti-incumbent feeling out there. I don't think being appointed by the Board of Supervisors is a plus."

Enright, chief deputy since 1966, figures he benefits from name recognition left over from his close race in 1984 for an Orange County Superior Court judgeship, in which he garnered more than 430,000 votes. He has also handled high-profile prosecutions over the past two decades, including the 1970 marijuana conviction of 1960s LSD guru Dr. Timothy Leary.

Capizzi unanimously was appointed

See Page 3 — DEPUTIES

Miller Partner

kind of practice," Leydorf said. Slightly less than half of Heller Ehrman's practice is devoted to corporate practice for such clients as Wells Fargo and Bank of America. Since the firm's

PROFILE

Moving with steady determination, Los Angeles attorney and real-estate developer Frederick M. Nicholas is hard at work on yet another volunteer project.

This time, Nicholas is shepherding the mammoth development of the Walt Disney Concert Hall, an effort some experts say has the potential to be an architectural masterpiece upon its expected completion in 1995.

It is a familiar role for Nicholas, who in 1970 founded Public Counsel, which today has become the largest pro bono law firm in the country.

Nicholas, 69, also has played prominent roles in other major projects, including establishment of the Los Angeles Museum of Contemporary Art and development of new buildings for the Los Angeles Dance Gallery and the San Francisco Museum of Modern Art.

Frederick M. Nicholas



Position: Founder, Public Counsel
Law Degree: USC Law Center, '52
Age: 69

Working quietly and effectively behind the scenes, Nicholas for more than three decades has been one of the little-noticed architects of California culture.

"It's important to give something back to the community," says Nicholas, recently honored by Public Counsel with its first "Founders Award."

Nicholas is a man with an artist's sensitivity and vision of what a community should be, and the role that lawyers should play in it.

Sure, lawyers should go out there and earn a professional wage, he says. He did it himself. But a lawyer's relationship with the community doesn't end there.

"We as lawyers are in a special position in our society," he says. "We make the rules and tend to assume the positions of true power. Our society revolves around the law. That gives us an equally special duty to preserve and improve our society and somehow make it better."

So deep does this belief run, that Nicholas left law practice — his own firm, no less — in favor of full-time real estate development.

"My partners kept telling me not to spend so much of my spare time working on community activities," he says, chuckling. "So I decided I could do without partners."

As head of the Hapsmith Co. in Beverly Hills, Nicholas came to enjoy great success in the development of shopping centers and other commercial projects.

But in some respects, it seems that for Nicholas, law and business have been

See Page 7 — PROFILE

The Lines Are Clearly Drawn On Prop. 115

By Hallye Jordan

Daily Journal Staff Reporter

SACRAMENTO — During the final days before the June 5 primary election, Republican Sen. Pete Wilson has been conducting a whirlwind campaign throughout the state to wrap up the first phase of his race for governor.

And, at stops in Sacramento, Fresno and Bakersfield, the honorary chairman of the committee behind Proposition 115 will pose beside a dramatic visual prop promoting his tough-on-crime image and the anti-crime initiative he is supporting: the 9-foot tall, 24,965-page trial transcript for Richard Ramirez, the so-called Night Stalker.

Proposition 115, the Crime Victims Justice Reform Act, seeks to reform the criminal justice system by adopting procedures similar to those in the federal criminal justice system. The result, proponents say, will speed up trials, reduce revictimization of victims and cut court costs by "hundreds of millions of dollars."

In addition, Proposition 115 proponents, who include politicians, prosecutors, crime-victims groups and insurers, say the measure will increase the rights of victims and citizens by overturning the "Rose Bird Court" decisions, Supreme Court rulings they claim have skewed the system in favor of criminal defendants.

Goes Too Far

But opponents of the measure, namely criminal-defense attorneys and pro-choice, religious, civil-rights and medical groups, say it goes too far.

They say it tramples rights guaranteed independently by the California Constitution in its effort to raise the rights of victims by reducing those of criminal defendants. They claim proponents are using the public's lingering anti-Rose Bird sentiment, support for the death penalty and sympathy for crime victims to push through a prosecutors' wish list.

Critics also say the measure will result in far more criminal trials at a hefty price for county taxpayers and civil litigants.

About the only thing both sides agree on is the 41-page document makes drastic changes to the state's criminal justice system.

Under the measure, defense attorneys would be forced to turn evidence and a list of their witnesses over to prosecutors before trial and would face court-ordered sanctions if they are not available for trial on set dates.

It also would change the way juries are selected, restrict the use of preliminary hearings, expand the death penalty and create a new crime of torture.

State Constitution Affected

But, critics claim, the most sweeping change of all is the demise of the state Constitution as an independent source of rights.

Under the initiative, the rights of criminal defendants would be limited to those contained in the U.S. Constitution, rather than the broader state document.

Thus, opponents say, criminal defendants no longer would have the following rights as guaranteed other California residents under the state Constitution: equal protection and due process of laws, assistance of counsel, personal presence at trial, speedy and public trial, compulsory attendance of witnesses, confronta-

See Page 5 — PROP. 115

Bench Candidates Listed, Profiled

The primary-election battle for attorney general has captured most of the media attention among California races involving lawyers, but dozens of judicial offices around the state also are up for grabs Tuesday.

Today's issue provides a list of judicial races and candidates, plus stories, profiles and photos on bench battles in Los Angeles and Orange counties.

In addition, a profile of political consultant Joe Cerrell explains why judges around the state hire him — even when their seats are not at stake.

For this special judicial-election coverage, see Pages 8 and 9.

HIGHLIGHTS

SOUTHERN CALIFORNIA

A BATTLE OVER a successful jeans company has erupted into a test of wills between a company's founders and their lead counsel. **Page 2.**

COLLEGE COURSES cannot be censored merely because they contain indecent language or offensive topics, an appeal court has ruled. **Page 3.**

STATE

A WOMAN must stand trial in the death of her 4-year-old daughter who died when faith-healing attempts failed, a judge ruled last week. **Page 4.**

NATIONAL

TWO JUDGES supervising hundreds of asbestos injury lawsuits on Friday ordered the Manville Corp. bankruptcy case reopened. **Page 4.**

OPEN FORUM

PROPOSITION 115 will either gut the state Constitution or return it to where it was supposed to be, argue a critic and supporter, respectively. **Page 6.**

SECTION II

A RECENT SURVEY reveals that fewer than 2 percent of the Chinese nationals currently studying in the U.S. intend to return to their country. **Page 1.**

VIDEO CAMERAS, donated by Aetna insurance to police departments around the country, are the newest tool being used to curb drunken drivers. **Page 18.**

DAILY APPELLATE REPORT

A LISTING of information on courts in Southern California appears in the California Court Directory, which is inserted in the D.A.R.

JUDICIAL TRANSITIONS, tracking the movements of the state's judges, appears on the front cover of the California Court Directory. **Page 6044.**

FEATURES

Classified Advertising	I-11-23
Coming Events	II-18
Court Calendars	II-2
Crossword	II-18
Daily Appellate Report	Insert
Editorials	I-6
Legal Notices	II-4-17
National	I-4
Northern California	I-3
Sacramento Scene	I-7
Southern California	I-2
State	I-4
Trailing Calendars	II-3

PROFILE

Continued from Page 1

more means to an end — serving the greater public good — than ends in themselves.

Over the last three decades, Nicholas has logged in thousands of hours volunteering his time, legal skills and judgment to a broad range of causes and concerns.

"He loves the diversity of life," says Ira Yellin, an attorney/real estate developer in Los Angeles and a protege. "He's not the close-minded type who closets himself from things.

"To the contrary, he has a very broad and sophisticated range of interests and is willing to be exposed to everything that life has to offer. Because of that, he is a very interesting and informed person, which also makes him very adept at dealing with people of diverse interests."

Richard Koshalek, director of the Museum of Contemporary Art, described

Nicholas as a "consensus builder" who makes tough decisions without alienating people in the process.

"If Fred had not been here, it would have been almost impossible to get our new building built," he said, adding that Nicholas "is probably the foremost leader in the arts in Los Angeles."

"And," he said, "based on his past contributions and what is promised for the future, Fred's legacy will be one of quality."

Nicholas says his public involvements lead him "from project to project." His latest — the Walt Disney Concert Hall — may be among his most ambitious yet.

Besides the usual hurdles that come with getting the project finished on time and within budget, Nicholas shoulders the challenge of harmonizing the artistic energies of respected talents from diverse spheres, including Architect Frank O. Gehry of Santa Monica, Japanese sound designer Dr. Minoru Nagata and

Santa Monica graphic designer Deborah Sussman.

While he frequently can be found pouring over plans for the permanent new home of a non-profit organization, Nicholas' steady influence also can be felt throughout the public interest community.

For instance, he holds or has held fiduciary positions with the American Civil Liberties Union Foundation, Pitzer College, the American Federation of the Arts, the American Arts Alliance, the Music Center of Los Angeles County, the Lawyers Committee for Civil Rights Under Law and the California Economic Development Commission.

But despite the magnitude and breadth of his activities, Nicholas proceeds with a sense of quiet purpose rather than bravado.

"He's incredibly modest," says Steve Nissen, executive director of Public Counsel. "He asks for little in return for all he does. He just believes in the causes and projects he works on."

Nicholas says his wife, Joan, and his three children are crucial to rounding out his life. He also maintains his perspective by not taking himself too seriously.

"I try to divorce my ego from my function," he says.

Nicholas' unassuming attitude may explain why he hasn't lost the common touch.

"If someone works 30 or 40 years and doesn't have his integrity, he doesn't have anything," he insists.

Nicholas was born in New York in 1920. His family moved to Los Angeles when he was 13. He received a degree in journalism from USC — after having taken a prolonged break from school to serve in the Army during World War II, during which he was honored with a Bronze Star and a promotion to captain.

After a two-year stint as a reporter with United Press International, Nicholas said he realized his opportunities in journalism were too limited and decided to go into law.

He started off at the University of Chicago Law School — where he began collecting the first pieces of his personal art collection — and ultimately graduated from USC Law Center in 1952.

Nicholas joined Loeb & Loeb, working primarily on commercial paper and anti-trust, but left the firm four years later to form Swerdlow, Glikbarg & Nicholas. He left practice in 1962.

Nicholas' impact on the law since then has been immeasurable — if only for his pivotal role in establishing Public Counsel. Nearly 4,000 volunteer attorneys participate in the organization's efforts, which are sponsored by the Los Angeles County and Beverly Hills Bar Associations.

While many share the firm's success

Sacramento Scene

Tom Dresslar

Proposition 115 Is a Pandora's Box

Californians will be victimized by a crime of sorts Tuesday if the so-called Crime Victims Justice Reform Act wins voter approval.

Quite simply, the Pete Wilson-backed Proposition 115 is one of the worst and most dangerous pieces of legislation ever placed on the ballot. It's a 41-page bill of goods. And if pollsters are on target, the state's voters are going to buy it.

Its proponents have sold it with powerful imagery. They call it "The Speedy Trial Initiative" or "The Nightstalker Initiative." The attractive wrapping, however, hides a Pandora's Box.

An article detailing all the measure's faults would have as many pages as the nine-foot tall transcript of the Nightstalker trial which Wilson stood beside Friday at a press conference. A brief list follows.

Perhaps most importantly, Proposition 115 would subjugate California's constitution to the federal charter in criminal matters.

The measure would do so by specifying criminal defendants could be afforded no greater rights under the state constitution than under the federal constitution. The delineated rights include due process, equal protection, search and seizure, fair and speedy trial, confrontation of adverse witnesses and others, including privacy.

The provision is ironic, at least, considering many of the initiative's supporters, including Wilson, profess to be states-righters. It also lies in the face of a recent trend toward independent state action on constitutional issues by enslaving California's constitution to its federal counterpart.

The inclusion of privacy among the affected rights creates the second-most dangerous flaw in the initiative — it threatens women's right to choose abortion. The proponents heatedly deny this charge, but their rebuttal doesn't cut it.

If, in the future, the U.S. Supreme

case. But how much trust can be placed in the very people who have placed abortion rights in jeopardy?

There are numerous other reasons to reject Proposition 115.

It allows qualified police officers to give hearsay testimony in preliminary hearings. That means more cases are likely to go to trial, costing taxpayers millions of dollars and bringing the civil justice system to a crashing halt.

It would increase the use of grand juries in criminal cases by barring post-indictment preliminary hearings. As they now operate, grand juries are an affront to due process and shrouded in secrecy. They act as a rubber stamp for prosecutors.

It expands the death penalty by adding mayhem and foreign-object rape to the list of special-circumstance murders. Just what we need. More opportunity for the state to kill.

What do prosecutors want anyway? It's not like they consistently lose cases under the system they rail against. On the contrary, they invariably prevail.

They're like spoiled kids. As John Fogerty once wrote of politicians who send young men off to war, "When you ask them, 'How much should we give?' they only answer, 'More, more, more, more.'"

And some of their primary supporters have engaged in repulsive rhetoric. Victims' rights advocate Colleen Campbell — whose son was killed during his involvement in a drug deal — hit the top of the cheap-shot scale Friday in Sacramento at Wilson's press conference.

She told reporters in shrill tones that politicians and the American Civil Liberties Union were "lying, lying about what this initiative contains." She then charged the two groups "are just as guilty of murder as the people who are holding the guns, the knives."

First of all, the targets of her diatribe are not lying about Proposition 115. They are telling the truth. Second, they

SAFETY ENGINEERING LABS

AARON GOLDSMITH, P.E.

PRODUCTS LIABILITY
ACCIDENT RECONSTRUCTION

(818) 716-9797

Do your clients owe back

IDS

For profess

Today, getting it started in 1970 was anything but a sure thing, despite the obvious need.

"There really wasn't anyone helping the poor," he recalls.

Inspired by a Ralph Nader luncheon speech, Nicholas was determined to do something rather than just watch society's less fortunate fall through the cracks.

But as with the development of many new ideas, Nicholas' initially ran into a brick wall.

"The younger lawyers were very enthusiastic, but the older ones thought that it was crazy because they thought lawyers would be competing against themselves for business," he said.

Finally, Nicholas negotiated peace with the old guard by promising that the fledgling volunteer-lawyers' group would take cases pertaining only to the public interest, and would not get involved in commercial matters.

With that hurdle surmounted, the Beverly Hills Bar gave the group a modest grant — so modest in fact that Nicholas paid for the balance of the group's first-year budget.

The Los Angeles County Bar Association began subsidizing Public Counsel a few years later. In 1980, the American Bar Association awarded the group the prestigious Harrison Tweed Award for outstanding community service by a bar association. Today, Public Counsel is considered the national model for effective organization of pro bono legal efforts.

Still, Nicholas says, there is much more to be done.

Law schools can encourage a greater public-interest role for its graduates.

Firm managers can give associates and partners greater freedom to handle pro bono cases and accordingly adjust the lawyers' billable quota.

While praising the movement among large firms toward in-house foundations, Nicholas also urges lawyers to resist the temptation to use contributions as an excuse to write off public duties.

"If every lawyer gave 1 to 5 percent of their time, which is not much, this would be an entirely different society," he says.

— RICHARD C. REUBEN

WEATHER

environment reconstruction at litigation sites

SIDNEY R. FRANK

CERTIFIED CONSULTING METEOROLOGIST

229 El Monte Dr., Santa Barbara 93109 (805) 964-4477

BAIL BONDS

24-Hr. Service

1500 W. Martin Luther King Blvd.



JURY TRIALS COMPUTERIZED

ARE YOU PREPARING A MEDICAL MALPRACTICE CASE?

We now offer all California and/or
NATIONWIDE RESEARCH

Includes Seven years of research covering:

1. Medical Malpractice jury trial reports
2. Medical Malpractice Settlements and Arbitrations
3. Medical Malpractice experts who testified (& location)
4. Medical Malpractice attorneys who tried (& location)
5. Medical Malpractice cases "on point" with the case you are preparing
6. Next day delivery (FAX, Express Mail, Phone)

CALL VERDICTA 1-800-543-4282 (California)
that's 1-800-54 DICTA,
or (916) 485-4990 (Sacramento area)

World Class Team

At Commerce Escrow Company, you get the people, the experience and the understanding to handle your complicated commercial and industrial escrow.

Commerce Escrow Company places a team of trained professionals and resources at your service to carefully structure your transaction.

Let our world class team help you expand your world.

Commerce Escrow Company 213/484-0855