



The Human Touch
For Read Ambler, being a mediator means interacting with people on a more personal level than when he was on the bench.
VERDICTS & SETTLEMENTS



East Meets West
At 8, Helena R. Gweon came from Korea to California. She adapted, graduated from Harvard Law and now sits on the Sacramento County Superior Court.
JUDICIAL SPOTLIGHT PAGE 3



No Right to Speak

Criminal defendants do not have a right to speak during sentencing hearings unless they are under oath and a prosecutor can cross-examine them, the California Supreme Court ruled Thursday. For the full story, go to www.dailyjournal.com.

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Justices OK Tool to Fight Bias in Juries

By Laura Ernde

Daily Journal Staff Writer

Defense lawyers officially have a new weapon in their arsenal to get their clients' convictions overturned on appeal.

The California Supreme Court Thursday removed any doubt about the use of a technique known as comparative juror analysis to make sure prosecutors aren't improperly excluding blacks or other minorities from juries.

"Evidence of comparative juror analysis must be considered in

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Court Endorses Tool to Challenge Juror Picks

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the trial court and even for the first time on appeal if relied upon by defendant and the record is adequate to permit the urged comparisons," Justice Carol A. Corrigan wrote for a unanimous court. *People v. Lenix*, 2008 DJDAR 11396.

Comparative juror analysis closely examines the prosecutor's justification for striking potential jurors from the jury pool to make sure the reason was believable. For example, it arouses suspicion when a prosecutor's reason for eliminating a black juror also applies to white jurors who were kept on the jury.

Defense lawyers applauded the court for formally adopting the direction the U.S. Supreme Court gave in two recent cases. They are *Miller-El v. Dretke*, 545 U.S. 231 (2005) and *Snyder v. Louisiana*, 2008 DJDAR 3757.

State and federal courts in California have already been conducting comparative juror analysis in the wake of *Miller-El*. Last week, the 9th U.S. Circuit Court of Appeals overturned an Alameda County stabbing conviction after doing a comparative juror analysis. *Green v. LaMarque*, 2008 DJDAR 10964.

But Thursday's opinion made it an official mandate in California.

"It's an acknowledgement by this court, which has been resistant, that it's required to conduct comparative juror analysis," said Elisabeth Semel, director of the Death Penalty Clinic at UC Berkeley. "That's the big message."

Semel, along with appellate defenders Larry Gibbs of Berkeley and Cliff Gardner of Oakland, filed an amicus brief in the case urging the court to take the position it did.

"I think it's going to have a huge impact," Gibbs said.

He predicted it will most often be used in capital cases, where it's more likely that there's a complete record of jury pool questioning.

Semel said the decision should encourage defense attorneys to be especially diligent in making a complete record.

However, the state Supreme Court's ruling also came with some caveats.

Corrigan made it clear that comparative juror analysis is not a get-out-of-jail free card for defendants and comes with its own shortcomings.

She pointed out that it's difficult to rely on trial court transcripts to determine whether prosecutors were being genuine in giving race-neutral explanations for striking jurors.

On appeal, prosecutors don't have a chance to further explain their reasons for favoring one juror over another, which might be perfectly legitimate.

"These realities, and the complexity of human nature, make a formulaic comparison of isolated responses an exceptionally poor medium to overturn a trial court's factual finding," Corrigan said.

The court also said the analysis is best done at the trial court level and that appellate courts are under no obligation to undertake the analysis if the record about the jury selection process is not complete.

In a concurring opinion, Justice Marvin R. Baxter and Justice Ming W. Chin said it would be preferable to prohibit comparative juror analysis when no request for



LAURA MORTON / for the Daily Journal

UC Berkeley's Elisabeth Semel urged the court to require comparative jury analysis in an amicus brief.

it was made at the trial court level.

But they declined to make such a rule because the U.S. Supreme Court has not yet made it clear whether states are allowed to adopt such a rule.

Justice Carlos R. Moreno wrote separately to say that even with its pitfalls, comparative juror analysis is preferable than denying someone the chance to argue racial bias.

"Indeed, because those who discriminate rarely admit to discrimination, comparative analysis has been widely used in a variety of fields to ferret out the unlawful discrimination that hides behind pretext," Moreno said.

Deputy Attorney General Daniel B. Bernstein had argued against requiring comparative juror analysis for the first time on appeal. He declined to comment on the decision Thursday.

Bernstein won the underlying case. The Supreme Court upheld the murder conviction of Arthur Lenix.

After doing a comparative juror analysis, the court said there was nothing improper with the race-neutral reasons the Kern County prosecutor gave for dismissing the last potential black juror in the trial for Lenix, who was black.

The Supreme Court also conducted a comparative juror analysis in upholding the murder conviction and death sentence of Tomas Verano Cruz on Thursday.

In 1991, Cruz shot a Shasta County sheriff's deputy with the officer's gun to escape jail.

A unanimous high court supported the trial court's finding that the prosecutor did not improperly eliminate Hispanic jurors. *People v. Cruz*, 2008 DJDAR 11410.

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