GARY WINDOM, PUBLIC DEFENDER
State Bar No. 086775
ADDISON STEELE, DEPUTY PUBLIC DEFENDER
State Bar No. 192534
County of Riverside
4200 Orange Street
Riverside, CA 92501
Telephone: (951) 955-6000

Attorney for the defendant Robbie Catchings

THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF RIVERSIDE

PEOPLE OF THE STATE OF CALIFORNIA,

Plaintiff,

vs.

ROBBIE CATCHINGS

DOB 02.20.69,

Defendant.

No. SWF006186

OPPOSITION TO PLAINTIFF'S MOTION TO INCREASE BAIL

Date: November 30, 2007
Time: 8:30 a.m.
Dept: 61, Judge Couzens

TO: ROD PACHECO, DISTRICT ATTORNEY FOR THE COUNTY OF RIVERSIDE; DEPUTY DISTRICT ATTORNEY DAVID TAHAN; AND THE CLERK OF THE ABOVE-CAPTIONED COURT:

PLEASE TAKE NOTICE that on November 30, 2007 at 8:30 a.m., or as soon thereafter as the matter may be heard, in Department 61 of the Riverside County Superior Court, the defendant Robbie Catchings through his attorney the Public Defender by Deputy Public Defender Addison Steele will oppose the district attorney's motion to raise the defendant's bail.

This opposition is based on the attached declaration of counsel and any attachments, testimony, or evidence adduced at the time of the hearing on said motion.

ESTIMATED TIME: 30 MINS

This opposition is made on the grounds that the defendant is entitled to release on own recognizance or a reasonable bail once the preliminary showing is made of ties to the community and that the defendant is not a danger to society or a flight risk.

DATED: November 28, 2007

Respectfully submitted
GARY WINDOM, PUBLIC DEFENDER

BY: _____
R. ADDISON STEELE II
Deputy Public Defender
Attorney for Robbie Catchings

/////

/////

STATEMENT OF THE CASE

In November of 2003 Mr. Catchings was an inmate in the Riverside County Southwest Detention awaiting trial on his case in which he was acquitted of all counts. The Southwest jail is racially segregated and the correctional officers have developed an informal trustee system where they assign one inmate from each racial group in each pod to keep the peace within each racial group. Mr. Catchings had been so designated. On November 10, 2003, Mr. Catchings engaged in an argument with Bryant Griffin over Mr. Griffin staying on the telephones for too long because one person using more than his allotted time on the telephones can lead to violence between inmates in the pod. The telephones are right in front of the correctional officers' booth about twenty to twenty-five feet away. The argument was so subdued that none of the correctional officers even noticed it.

After the argument, Mr. Griffin went to take a shower. While he was in the shower he fell and hit his forehead causing a small cut above his eye. Another inmate, Michael Washington, saw Mr. Griffin enter the shower uninjured, saw him fall, and saw that he had the injury over his eye when he left the shower. Mr. Griffin then went to Correctional Officer Alonso Tovar and reported that he had fallen in the shower and needed medical attention. C.O. Tovar then took Mr. Griffin aside and asked him if something different had happened. Mr. Griffin then realized that he could take over Mr. Catchings' job as the informal trustee by reporting that Mr. Catchings had hit him—causing Mr. Catchings to be moved to a different pod, and at the same time get revenge because a "homeboy" of Mr. Catchings' was snitching on his (Mr. Griffin's) brother. In order to accomplish these two ends Mr. Griffin told C.O. Tovar that Mr. Catchings had hit him a single time and that "he did not want to testify in the case."

C.O. Tovar wrote in his Report that he then talked to Mr. Griffin's cellmate, Jasper Bates. He wrote in his report that he personally talked to Mr. Bates and that he said he saw a single punch from Catchings on Mr. Griffin. Mr. Bates was subsequently called at the preliminary hearing in this case and testified that he never even talked to C.O. Tovar, but that he had talked to a different correctional officer that suggested that he say that he witnessed

Mr. Catchings punch Mr. Griffin and that he would be rewarded for telling that story with extra commissary items. Mr. Bates then declined the correctional officer's offer to make a false witness statement and went about his business only to find out at the preliminary hearing that statements were attributed to him that he did not make.

Another inmate, Robert Evans, talked to Mr. Griffin after the incident and asked him what had happened to his eye. Mr. Griffin told Mr. Evans that he had fallen in the shower but that the correctional officers thought that Mr. Catchings had hit him. When Mr. Evans further inquired as to why the correctional officers had false information, Mr. Griffin told him that a "homeboy" of Mr. Catchings "is snitching on his brother" and therefore, "Fuck him," referring to Mr. Catchings. Mr. Griffin was subsequently sent to prison and until recently was living in a secured housing unit at Pelican Bay State Prison. He gave a statement to a defense investigator that he intends to refuse to testify if called as a witness by the prosecution.

Mr. Catchings has been charged with one count of a violation of Penal Code § 243(d), battery with serious bodily injury and one count of a violation of Penal Code § 245(a)(1) with a special allegation of great bodily injury. There are also two prison priors, two five year serious offense priors and two strikes alleged.

Deputy District Attorney David Tahan has informed defense counsel that the photos of the alleged injury to Mr. Griffin were destroyed.

Mr. Catchings now stands before the court for a bail review.

MEMORANDUM OF POINTS AND AUTHORITIES

I.

THE *VAN ATTA* CASE ESTABLISHED THAT THE PROSECUTION HAS THE BURDEN OF PROOF IN A BAIL HEARING

After the defendant has produced evidence of community ties, the burden falls upon the prosecution to present a record of non-appearance in court and to indicate to the court the

severity of the defendant's past record, and the "most serious" case the severity of the possible sentence. (*Van Atta v. Scott* (l980) 27 Cal.3d 424.)

The *Van Atta* case was a taxpayers suit that established that the burden of proof at an own recognizance (OR) hearing is on the prosecution. The court distinguishes between "the burden of producing evidence" and the "burden of proof." The court offers a definition of both burdens: "The burden of producing evidence is 'the obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue,'" citing Evidence Code § 110, and the "burden of proof is 'the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.'" (*Supra* 437-439). The court does place the burden of producing evidence of ties to the community on the defendant, and in this case such evidence will be presented by the defense at the OR hearing. The court also places the burden of proof upon the prosecution: "It is concluded that due process requires the burden of proof concerning the detainee's likelihood of appearing for future court proceedings to be borne by the prosecution at the OR hearing." (*Supra* 444).

The court did not come to its conclusion lightly. It considered the due process implications of pretrial incarceration. The court was concerned that a "detainee who is denied pretrial release remains in jail, often for periods of several months, despite the fact that there has been no determination of his guilt or innocence." The court pointed out that "a denial of pretrial release inflicts a direct 'grievous loss' upon the detainee." Citing *Morrissey v. Brewer* 408 U.S. 471. Another concern was that a "detainee's ability to adequately prepare a defense is greatly curtailed and consultation with an attorney is severely impaired. (*Supra* 435).

II.

THE PROSECUTION HAS THE BURDEN OF PRODUCING EVIDENCE OF THE DEFENDANT'S HISTORY OF NON-APPEARANCE IN COURT

The conclusion of the court is in four parts. The first part is that "The prosecution must bear the burden of producing evidence of the detainee's record of non-appearance at prior

court hearings and of the severity of sentence the detainee faces." It is custom in many courts to not seriously entertain an OR motion if there is not a bail report with a rap sheet and history of failures to appear. The law simply does not support such a position. It is the prosecution's burden to provide the court with such information, and if the prosecution fails to do so, the ruling on the OR motion must be for the defense because the prosecution has not made a showing to meet its burden. Also as to the consideration of the severity of the offense, the court emphasizes in footnote 12 that "only where the most serious offenses are charged can the severity of sentence by considered dispositive of the OR release decision." Fortunately for all who practice criminal law there is a precise definition of a "serious case." A "serious" case is one where the crime is a strike and is defined as such in Penal Code § 1192.7(c). The *Van Atta* court allows for the possible sentence to be considered not just in serious cases, but only in the "most serious" cases. In this case, the charges are battery with serious bodily injury and assault with great bodily injury. The battery with serious bodily injury charge is not a serious offenses and unless the legislature decides to change the classification of this particular crime to a serious one, and the court finds these to be the "most serious" of charges, the possible sentence cannot be considered at an OR hearing. The charge of assault with great bodily injury is a serious offense as defined Penal Code § 1192.7(c), however the court would have to determine that this is one of the "most serious" charges, which clearly it is not considering that murder, rape and mayhem are also on the Penal Code § 1192.7(c) list, in order to even consider punishment as part of the calculus of what is the appropriate bail.

III.

THE DEFENSE HAS THE BURDEN OF SHOWING TIES TO THE COMMUNITY, BUT DOES NOT HAVE A BURDEN OF PROOF

The second part puts a "burden of producing evidence of community ties," not to be confused with a "burden of proof," on the defendant, which the defendant intends to meet at this hearing. The third factor sets the ultimate question for the hearing: "The prosecution

must bear the burden of proof concerning the detainee's likelihood of appearing at future court proceedings," and has the prosecution met that burden? The fourth part is that the court does not have to render written reasons for its decision at an OR hearing. (*Supra* 446).

IV.

MERELY ADHEARING TO THE BAIL SCHEDULE IS AN ARBITRARY USE OF JUDICIAL DISCRETION

The court concluded in *Van Atta,* citing *Ex Parte Hoge* (1874) 48 Cal. 3, 5 and *In re Podesto* (1976) 15 Cal.3d 921, that its "decision merely requires, in keeping with well established precedent, that the trial court not exercise its discretion arbitrarily." There appears to be a culture where the bail schedule is treated almost as if it is the oracle to which all must adhere. The bail schedule's purpose is to set bails for those who have the ability and choose to post bail before an arraignment. The bail schedule does not consider ties to the community or any other factors except the crime charged. The bail schedule is meant for those defendants for whom the court knows nothing other than they have the financial ability to post a bond. It is not meant for those who can produce evidence of ties to the community. The judge's discretion is the factor that determines the bail for the defendant that meets his or her burden of producing evidence of ties to the community. Merely adhering to the bail schedule is exercising discretion arbitrarily. It is the discretion of the court that should be the focus of a bail hearing, and that is precisely what the *Van Atta* decision demands of the trial court.

V.

VAN ATTA REMAINS UNCHALLENGED VALID LAW

The court should be wary of any argument that suggests that *Van Atta* is no longer good law. The argument that *In re York* (1995) 9 Cal.4th 1133 has overruled Van Atta is simply incorrect. The *York* case addresses the court imposing conditions on an OR release,

specifically in *York* it was drug testing and search and seizure as conditions of release. The court ruled that such reasonably related restrictions, where the court states the reasons, are permissible. *York* in no way restricts the rule established by *Van Atta* that the prosecution has the burden of proof at an OR hearing. It doesn't even address the issue. It only limits *Van Atta* in that it allows the court to set restrictions on an OR release. If anything, it serves to show how strong the *Van Atta* case is because the court needed a seventeen-page opinion to add one small limitation to *Van Atta*. The *York* court appeared to be concerned by the language in *Van Atta* that the "sole issue" at an OR hearing was if the defendant was going to appear in court. That is no longer the case, the court can consider danger to the community and as established by *York* set conditions of OR release, but the rule that *Van Atta* established as to the prosecution having the burden of proof at an OR hearing remains the law of land. In this case, the defendant has no qualms with the rule established by *York* and will abide by any reasonably related restrictions, where the court states the reasons for those restrictions.

York also notes that *Van Atta* has been limited by statute in the language of Penal Code § 1318(a)(2). That Code section merely codifies the rule established by *York*. It in no way effects the established rule that the prosecution has the burden of proof in an OR hearing.

An argument that Van Atta is limited to the City and County of San Francisco is patently ridiculous. If such a proposition were to be entertained, that would mean that in San Francisco the prosecution bears the burden of proof at an OR hearing, but in the rest of California the defendant bears that burden. San Francisco may be a somewhat unusual place, but it isn't so different that it has its own set of judicial precedents. Following such a line of thinking would mean that a *Pitchess* motion could only be run in Los Angeles County, or that any other legal precedent would only be effective in the county in which the case was originally litigated. If such an argument were to be entertained, every precedent setting case would only be valid in the county where it was originally litigated.

Van Atta being a taxpayers' suit, and therefore a civil case, in no way limits its effectiveness as law with regard to bail issues. The court extensively discusses and affirms

that taxpayers' suits are a proper litigation method to resolve issues such as those presented in the *Van Atta* case.

VI.

THE UNITED STATES AND CALIFORNIA CONSTITUTIONS REQUIRE A REASONABLE BAIL AND $1,000,000.00 IS NOT A REASONABLE IN A CASE WHERE THE DEFENDANT IS MAKING COURT APPEARANCES ON A $130,000.00 BAIL.

The Eighth Amendment of the United States Constitution proscribes excessive bail. It states as follows: "Excessive bail shall not be required." The California Constitution also proscribes excessive bail and details what the court shall consider in setting bail. Article 1, Section 12(c) reads in part: "Excessive bail may not be required. In fixing the amount of bail, the court shall take into consideration the seriousness of the offense charged, the previous criminal record of the defendant, and the probability of his or her appearing at the trial or hearing of the case."

Mr. Catchings' bail is currently set at $130,000.00, however the bail schedule for this case is $1,050,000.00. The bail schedule for homicide, that is the premeditated killing of human being with malice aforethought, is $1,000,000.00. Mr. Catchings' bail schedule is more than that of a murderer.

One of Mr. Catchings' charges is not listed in Penal Code § 1192.7(c) and therefore is not serious. He has no significant criminal history since 1992. Mr. Catchings' elderly mother bailed him out. Among the items of collateral for the bail bond was Ms. Catchings' car that is her only transportation to her doctors' appointments. Mr. Catchings appearing at the trial or hearing of the case is virtually assured because the person that he would harm if he doesn't is his elderly mother. When the court considers the factors that are mandated by Article 1, Section 12(c), the is no conclusion that can be reached other than leaving Mr. Catchings' bail at the amount at which it is already set.

////

VII.

THE PENAL CODE DOES NOT CALL FOR A BAIL OF $1,050,000.00

The Penal Code at § 1269b(c) through (f) calls for each county's judges to set a bail schedule and outlines how that should be done. The Code however never specifically allows for a bail to be set at $1,050,000.00 for a battery and an assault charge. At Penal Code § 1269b(e), it does require the judges to "assign an additional amount of required bail for each aggravating or enhancing factor chargeable in the complaint, including, but not limited to, additional bail for charges alleging facts that would bring a person within . . . Section . . . 12022.6," however there is nothing beyond that allows for a bail that is more than the Bail Schedule calls for person who's accused of first degree premeditated murder.

Penal Code § 1271.1(c) gives the court factors it must consider beyond those in Article 1, Section 12 of the California Constitution. It reads as follows:

> At the hearing, the court shall consider evidence of past court appearances of the detained person, the maximum potential sentence that could be imposed, and the danger that may be posed to other persons if the detained person is released. In making the determination whether to release the detained person on his or her own recognizance, the court shall consider the potential danger to other persons, including threats that have been made by the detained person and any past acts of violence. The court shall also consider any evidence offered by the detained person regarding his or her ties to the community and his or her ability to post bond.

If the court considers the factors listed in Penal Code § 1271.1(c), there is no reasonable conclusion other than leaving Mr. Catchings' bail as it is presently set. There is no danger to other persons if Mr. Catchings' bail is left where it is currently set. This case is an allegation of a jail fight over use of the telephone and the allotted time for using the phone. Mr. Catchings is now living at his mother's home where there are no time limits on using the

phone and where he and his mother are able to quite nicely work out sharing the telephone. There is no allegation that Mr. Catchings ever threatened anyone and he has strong ties to the community.

VIII.

THERE IS NO CHANGE OF CIRCUMSTANCE TO EVEN JUSTIFY THE PLAINTIFF BEING GRANTED A HEARING TO INCREASE BAIL.

It is the plaintiff that requested that bail be set at $130,000.00.[1] Since the plaintiff made that request there has been no change of circumstances other than Mr. Catchings posting bond. The plaintiff asked for a bail amount, was given that bail amount, and now is not happy that Mr. Catchings has posted a bond and for the first time since the bail amount was set in 2003 is asking that the amount of bail that they requested be changed. The defendant having made bail is simply not a legitimate change of circumstances and therefore the plaintiff's request to increase bail should not even be entertained.

IX.

MR. CATCHINGS SHOULD NOT BE HELD IN CUSTODY ANY LONGER ON A CASE IN WHICH THE DISTRICT ATTORNEY IS UNLIKELY TO BE ABLE TO SECURE A CONVICTION.

Mr. Catchings was already for almost five and a half years on a case in which the District Attorney should have realized that a conviction could not be secured (RIF104021). After a mistrial was declared in that case because the jury was deadlocked 10-2 for acquittal on the most serious charges, Mr. Catchings had a bail hearing requesting that his bail on that case be lowered because of the change in circumstances resulting from the mistrial. At that

[1] A copy of the Complaint with the requested bail amount in the upper right hand corner, inside the District Attorney's stamp, is attached as Exhibit "A."

hearing the plaintiff successfully argued for Mr. Catchings' bail to remain the same in a case that did not have any prospect of getting any better for the plaintiff. Mr. Catchings was then held an additional two years until that case came to trial again. The plaintiff is now asking the court to put Mr. Catchings back in custody on a case that has even less prospect of resulting in a conviction. In this case the complaining witness, Bryant Griffin, is a state prisoner. He can do one of two things: He can come to court and testify for the plaintiff, the same agency that sent him to prison, and return to prison with a reputation of being an informer for the District Attorney, more popularly known as, "Wearing a snitch jacket," and face the potentially random and violent retaliation that comes with wearing a snitch jacket, and do this in exchange for nothing, or he can refuse to testify and face five days in county jail, when he's already a state prisoner, for refusing a court order, and return to prison without a snitch jacket and serve out his time in peace.

It is reasonable to believe that Mr. Griffin will not be testifying and therefore the district attorney will not be able to secure a conviction. Even if Mr. Griffin were to testify, he has told at least two completely different stories about what happened to his eye, and this is only the beginning of the problems with the plaintiff's case.

However Mr. Catchings is not the only person to sit in jail for a long period of time and then be acquitted of all charges. Howard Robertson, case number RIF115020, sat in custody for roughly three years and was then acquitted on all charges. Albert Cobb, case number RIF129534, sat in custody nearly a year before being acquitted of all charges. Joseph Thompson, case number RIF126216, and Ronnell Bennett, case number RIF113393, both sat in custody for several months before being acquitted on all charges. Marvin Travis, case number RIF104955, sat in custody for roughly three years through two trials and was eventually acquitted of all charges. Franco Castaneda, case number RIF104782, sat in custody for roughly four years until the district attorney finally acknowledged their own DNA reports and dismissed the case. These cases are only a random sampling from two deputy public defenders, Mr. Catchings' attorney and Supervising Deputy Public Defender Aimee Vierra.

The defendant realizes that the court is to take that charges as true when making a determination as to bail. However that presupposes that the district attorney is acting responsibly is filing and pursuing cases. Here in Riverside County the district attorney is failing to convict as charged on more than fifty percent of the cases that go to trial.[2] Therefore the court cannot presume that the charges are true, here in Riverside County statistically at least, the court must presume that the charges are not true.

X.

CONCLUSION

Upon a showing of ties to the community by the defendant, if the prosecution cannot meet its burden of proving that the Mr. Catchings presents a risk of violating terms of his release on bail, his bail should remain as currently set.

DATED: November 27, 2007

Respectfully submitted,
GARY WINDOM, PUBLIC DEFENDER

BY: _____
R. ADDISON STEELE II
Deputy Public Defender
Attorney for Robbie Catchings

[2] A recent Press-Enterprise article regarding the district attorney's conviction statistics is attached as Exhibit "B."

DECLARATION OF ADDISON STEELE, ATTORNEY FOR THE DEFENDANT

I am an attorney licensed to practice law in the State of California. I am employed as a Deputy Public Defender by the County of Riverside. I am the attorney of record in the above-named case. Mr. Catchings is charged with one count of a violation of Penal Code § 243(b), battery with serious bodily injury and one count of a violation of Penal Code § 245(a)(1), assault with a special allegation of great bodily injury pursuant to Penal Code § 12022.7. There are two five year priors, two prison priors and two strikes also alleged as special allegations.

Bail has been set in the amount of $130,000.00 on this case which defendant was barely able to post. I believe that bail, as presently set, is reasonably great enough to assure Mr. Catchings presence in court. I believe that the prospects of pecuniary loss and criminal penalty for failure to appear in accordance with the terms of a release on bond are well understood by Mr. Catchings and are a deterrent to flight. I have spoken with Evelyn Catchings, Mr. Catchings' father.

Ms. Catchings has told me that the defendant Mr. Catchings has strong ties to Southern California and especially our neighboring county, Los Angeles County, and is not a flight risk. Ms. Catchings has also given me the following information about her son: Mr. Catchings was born in Compton at Dominquez Valley Hospital. He grew up in South Los Angeles going to school in the public schools in South Los Angeles. He is living with his mother at her home on San Pedro Street in South Los Angeles. She says that he stays at home caring for her and helping her out because she is disabled. All of Mr. Catchings' close relatives live in South Los Angeles and Compton. He does not have any close relatives that live outside of California or outside of the country. Ms. Catchings believes that Mr. Catchings would not flee the jurisdiction because he doesn't have anywhere else to go where someone would let him hid from the police. She knows that he would not fail to appear because if he were to fail to appear her car and only transportation to her doctors' appointments would be lost. She says that he recently found a job as well.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

DATED: November 29, 2007

R. ADDISON STEELE II/DECLARANT
Deputy Public Defender
Attorney for Robbie Catchings

EXHIBIT
"A"

CASH BOND
RECOMMENDED $ 130,000.00
GROVER C. TRASK
DISTRICT ATTORNEY

AGENCY#: SCR03315001/SWDC

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
DEC 08 2003

SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
(Southwest)

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff, v. ROBBIE CATCHINGS DOB:02/20/1969 AKA: ROBERT THOMAS AKA: ROBERT BROWN AKA: TONY RIVERS AKA: GLEN HOWARD JAMES AKA: JAMES GLENN AKA: JAMES GLENN HOWARD BOOKING# 200222165 Defendant.	D.A.# 164267 CASE NO. SWF0006186 FELONY COMPLAINT OTHER

COUNT 1

The undersigned, under penalty of perjury upon information and belief, declares: That the above named defendant ROBBIE CATCHINGS committed a violation of Penal Code section 243, subdivision (d), a felony, in that on or about November 10, 2003, in the County of Riverside, State of California, he did wilfully and unlawfully use force upon the person of BRYANT GRIFFIN, inflicting thereby serious bodily injury.

COUNT 2

That the above named defendant ROBBIE CATCHINGS committed a violation of Penal Code section 245, subdivision (a), subsection (1), a felony, in that on or about November 10, 2003, in the County of Riverside, State of California, he did wilfully and unlawfully commit an assault upon BRYANT GRIFFIN, by means of force likely to produce great bodily injury.

It is further alleged that in the commission of the above offense the said defendant, ROBBIE CATCHINGS, personally inflicted great bodily injury upon BRYANT GRIFFIN, not an accomplice to the above offense, within the meaning of Penal Code sections 12022.7, subdivision (a), and 1192.7, subdivision (c), subsection (8).

PRIOR OFFENSE NO. 1

It is further alleged that said defendant, ROBBIE CATCHINGS was on or about April 3, 2001, in the Superior Court of the State of California for the County of Los Angeles, convicted of the crime of TAKE OR DRIVE VEHICLE UNLAWFULLY, a felony, in violation of section 10851, subdivision (a) of the Vehicle Code, and that he then served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

COURT ORIGINAL

CASH BOND

RECOMMENDED $ _____

GROVER C. TRASK
DISTRICT ATTORNEY

PRIOR OFFENSE NO. 2

It is further alleged that said defendant, ROBBIE CATCHINGS was on or about July 6, 1992, in the Superior Court of the State of California for the County of Los Angeles, convicted of the crime of ATTEMPTED PREMEDIATED MURDER, a felony, in violation of section 664/187 of the Penal Code, and that he then served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

PRIOR OFFENSE NO. 3

It is further alleged that said defendant, ROBBIE CATCHINGS was on or about June 5, 1989, in the Superior Court of the State of California for the County of Los Angles, convicted of the crime of POSSESSION OF A CONTROLLED SUBSTANCE, a felony, in violation of section 11350, subdivision (a) of the Health and Safety Code, and that he then served a separate term in state prison for said offense, and did not remain free of prison custody for, and did commit an offense resulting in a felony conviction during, a period of five years subsequent to the conclusion of said term, within the meaning of Penal Code section 667.5, subdivision (b).

SPECIAL ALLEGATION – 667(c) & (e)(1) and 1170.12(c)(1)

It is further alleged that the defendant, ROBBIE CATCHINGS, was on or about July 6, 1992 in the Superior Court of the State of California, for the County of Los Angeles, convicted of the crime of, ATTEMPTED PREMEDIATED MURDER, a serious and violent felony, in violation of section 664/187 of the Penal Code, within the meaning of Penal Code sections 667, subdivisions (c) and (e)(1), and 1170.12, subdivision (c)(1).

I declare under penalty of perjury upon information and belief under the laws of the State of California that the foregoing is true and correct.

Dated: December 8, 2003

CEM: jak

Complainant

COURT ORIGINAL

EXHIBIT
"B"

PE.com

Inland News

More defendants taking chances facing a jury

CLICK PLAY TO LISTEN

Download story podcast

10:00 PM PDT on Friday, October 12, 2007

By RICHARD K. DE ATLEY
The Press-Enterprise

The Riverside County district attorney's office has long boasted of felony conviction rates above 90 percent and its reputation for toughness in filing charges and the offers it makes to settle them -- if it makes any offers at all.

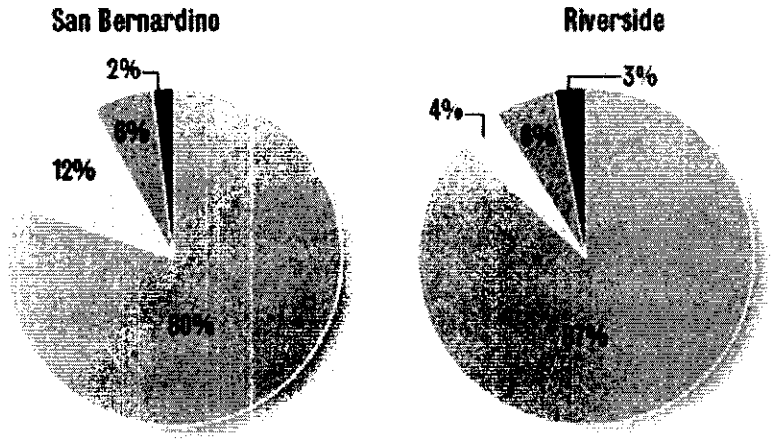
Thousands of defendants plead guilty rather than go to trial.

But now defense attorneys are advising more clients to put their case before a jury.

Story continues below

DISPOSITIONS: A disposition is the settlement of a case. A conviction or acquittal after trial, or a dismissal or a plea bargain before trial are among the ways criminal cases are disposed.

Guilty plea before trial | Other before preliminary hearing* | After trial | Other after preliminary hearing**



*These can include dismissals, including after drug court.
**These can include dismissals or transfers of cases.
SOURCE: CALIFORNIA JUDICIAL COUNCIL

THE PRESS-ENTERPRISE

There is mounting evidence, they say, that juries are acquitting defendants or rejecting enough charges to make going to trial more attractive than taking a prosecutor's plea offer.

Attorneys cite their own records and a court-generated database of 375 felony trials that concludes jurors agreed to convict on all charges about half of the time in 2006. The sample represents about two-thirds of the felonies tried in the county last year.

District Attorney Rod Pacheco says the study is biased and he is not changing course.

"We are very tough on crime in this office. If that's their complaint, they're right," he said. He said he was confident the community agrees with the charges his office files, and said easier deals to speed cases along are not in the cards.

"We are not going to surrender justice for comfort," he said in a recent interview.

'Better Outcome' at Trial

The conviction rate for Riverside County in 2006 was 94 percent, the highest for large-population counties in the state, according to a state attorney general's report on dispositions of felony adult arrests. The report covers all cases, not just the ones that go to trial.

"They keep saying that on paper they have the highest conviction rate -- who cares about that if they lose a big chunk of their trials?" said Riverside County Deputy Public Defender Addison Steele.

"Their offers to settle are so bad that you can almost count on it -- if you go to trial and even if you lose, you can still have a better outcome," he said.

The "better outcome" does not necessarily mean walking free. But juries might acquit a defendant on enough charges for the results to be better than what prosecutors offered in a plea bargain.

Indio attorney Christopher DeSalva defended Alejandro Gomez in a 2005 attempted murder case. DeSalva said prosecutors made no offers but he made two, for eight years and for 10. Rejected both times, he went to trial.

"My client was acquitted of every single felony. He was found guilty of a misdemeanor battery. The maximum penalty is six months. My guy was in jail (awaiting trial) for 13 months and five days," DeSalva said. Gomez was released after trial.

Attorneys say such results have brought an upswing in trials in Riverside County.

There were 709 felony and misdemeanor trials last fiscal year in Riverside County, 171 more than the previous year. San Bernardino County had 272 felony and misdemeanor trials last fiscal year, just 32 more than the previous year.

Less than 3 percent of cases go to trial in Riverside County, but each one can take days, weeks or even months. Riverside County and San Bernardino County face heavy court congestion. An estimated 1,300 criminal cases await trial in the western part of Riverside County alone, and a state task force of judges has been sent to help.

Charging 'High and Hard'

Too few judges, too many delays by lawyers, outdated court management practices and the district attorney's filing policies have all been blamed for Riverside County's court congestion.

The reputation for charging "high and hard" did not start with Pacheco -- his predecessor, Grover Trask, initiated it. Prosecutors point to reductions in violent crime -- only three California counties had less per capita in 2005 than Riverside County.

Pacheco has refused to alter the policy in the face of growing court congestion.

"We are not going to catch and release criminals -- that's for fish," Pacheco said. "Who do we choose to enforce the law against and who do we choose not to enforce the law against? I don't get to choose."

But defense attorneys say it is not a matter of whether to file charges, but what charges are worthy.

"For whatever reason, there is a decrease in willingness to re-examine a charge once the position is set, and the positions are set very early," said Riverside County Assistant Public Defender Robert Willey.

Word that Riverside County prosecutors never make plea bargains has "become an apocryphal story, sort of an urban myth," Pacheco said.

The office took guilty pleas before trial in 87 percent of the nearly 18,000 cases it disposed of during the last fiscal year, according to the state Judicial Council.

The county also had among the lowest percentages in the state of dismissed cases, 6 percent in 2006, according to the attorney general's office.

"We do receive information from defense attorneys and sometimes, not often, it is persuasive." Pacheco said.

In July, prosecutors dropped vehicular manslaughter charges against Riverside County firefighter Michael Arizaga. He was charged in the death of another firefighter when the fire truck Arizaga was driving crashed during a rainstorm.

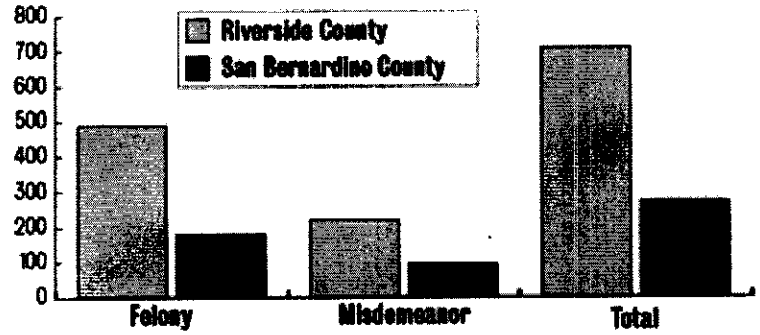
Prosecutors first believed Arizaga was at fault for the accident, but then considered defense evidence as well as material they had gathered that the weight distribution in the truck's design made it fishtail and overturn.

The decision to drop the charges "was based on our No. 1 ethical responsibility, which is to do justice," Pacheco said.

But such reconsiderations are rare, defense attorneys say.

Story continues below

JURY TRIALS: More than twice as many felony and misdemeanor trials were conducted in Riverside County than in San Bernardino County in the 2005-06 fiscal year, even though San Bernardino County filed about 55 percent more felony and misdemeanor cases.



SOURCE: CALIFORNIA JUDICIAL COUNCIL

THE PRESS-ENTERPRISE

Albert L. Cobb, 66, of Riverside, was acquitted in March on all counts, including attempted murder. Prosecutors said he tried to suffocate his mother, who was in her 80s. Cobb spent nearly a year in jail awaiting trial.

The incident stemmed from a confrontation in an assisted-living home, said Steele, who represented Cobb. Jurors heard medical testimony that the mother's bruises were age-related, that she had cognitive impairment, and that she could be combative with her son.

"I just don't know where they got their information and took it as far as they did with taxpayers' money," said juror Vicky Czarnecki, 56, of Hemet, in a telephone interview.

"He should never have been charged," she said.

Cobb was one of five of Steele's clients who have been acquitted on all charges in Riverside County since 2003.

"Every now and then we get a not-guilty verdict," Pacheco said. "We respect the community's right to make those determinations."

Pacheco denies his office over-charges -- files counts unsupported by evidence.

"If we are overcharging, we should have a 50 percent conviction rate," he said. "Our charging is in line with what our community believes is accurate evidence."

Breakdown of Verdicts

Riverside County Superior Court Judge Gary B. Tranbarger compiled statistics starting with his term as supervising judge for the criminal division at the Riverside County Hall of Justice. The numbers showed a 50.1 percent "all-guilty" conviction rate for 375 felonies assigned out of the downtown courthouse for 2006.

Mixed verdicts -- where jurors acquitted on some charges and convicted on others -- were reached in 34.9 percent of trials. Each mixed outcome case would need analysis to see which side might claim a "win," Tranbarger noted in the study.

The study said "all-not-guilty" verdicts were at 8.3percent, with the remainder either hung juries or dismissed.

The numbers on 159 felony trials through June 8 of this year included 42.1 percent all-guilty verdicts, 34 percent mixed verdicts, 11.9 percent all-not-guilty, 10.2 percent hung verdicts and less than 1 percent dismissed.

Tranbarger confirmed he had conducted the study obtained by The Press-Enterprise, but declined to comment on any interpretation.

A study by the court for 182 felony cases from 1997 showed 68.7 percent all-guilty verdicts, 22 percent mixed verdicts, 7.1 percent all-not-guilty, 2.2 percent hung juries and no court dismissals.

"Juries are expressing their opinion in favor of the defense in a noticeably larger number of cases," said Willey, the assistant public defender. "At least it

feels that way."

"It's one man's interpretation," Pacheco said of Tranbarger's numbers.

Tranbarger's work is a look at each case's outcome, charge-by-charge. A spot check of trials from October 2006 matched Tranbarger's results. Willey said the findings "are consistent with our office's observations."

Pacheco's office automatically "papers" or challenges any time Tranbarger is assigned to a criminal case. One of the reasons, Pacheco said, is Tranbarger's study.

"What's a judge doing, tracking stuff like that?" Pacheco said. "That exhibits his bias ... he's crafting these numbers to make us look less effective."

Tranbarger said in an e-mail the database was created "to help the court better manage the ever-growing criminal backlog. Jury verdicts are just one of the many facts about the case that are kept by the database." Tranbarger has denied previous allegations of bias against prosecutors.

Trask, now in private practice at Best Best & Krieger in Riverside, was district attorney at the time Tranbarger gathered his 2006 statistics.

"It's an old song to a new dance," he said. "The story about trying to show through a small sample that the office is pushing the wrong cases to trial."

When Pacheco returned to the prosecutor's office as a chief deputy district attorney in late 2002 after six years in the state Assembly, he found the office was engaging in plea-bargaining for serious and violent crimes after preliminary hearings. He said that violated the law, and he stopped it.

After preliminary hearing, defendants now usually have to choose between "pleading to the sheet" -- pleading guilty to all charges -- or going to trial.

Riverside vs. SB County

Virginia Blumenthal, a Riverside private attorney, says that has become a key difference between Riverside and San Bernardino counties.

"You can have more investigation after a preliminary hearing -- San Bernardino has no problem with that," she said. "Riverside County is not interested."

Those are policies that prosecutors get to make, said Loyola Law School professor Laurie Levenson. District attorneys "have enormous discretion about who to charge, what to charge, and whether to make a deal," Levenson said. "The system is built on the ideal that not only is there discretion available, but that DAs will properly exercise it."

Pacheco, who took office in January, says he is following the will of the electorate.

"The folks who live in this community appreciate the work we are doing," he said.

Staff writers John Berry and Elaine Regus contributed to this report.

Reach Richard K. De Atley at 951-368-9573 or rdeatley@PE.com

PROOF OF SERVICE

I, Addison Steele, declare:

I am a citizen of the United States and an employee of the County of Riverside; I am over the age of eighteen years and not a party to the within-entitled action.

That on November 29, 2007, I served a copy of the within:

OPPOSITION TO PLAINTIFF'S MOTION TO INCREASE BAIL

To be served on the following:

Executive Officer/Clerk
Riverside Superior Court
Riverside, California 92501

Rod Pacheco
4075 Main Street
Riverside, California 92501

I declare under penalty of perjury that the foregoing is true and correct:

Executed on November 29, 2007, at Riverside, California.

Addison Steele, Declarant
Attorney for Robbie Catchings