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Court of Appeal, Second District, Division 1, California.

A. Thomas HUNT, Plaintiff and Respondent,
v.
COUNTY OF LOS ANGELES, et al., Defendants and Appellants.

No. B021862.*

* The Supreme Court ordered that the opinion be not officially published.

| June 30, 1988.

Application was filed for award of attorney fees under the "private attorney general" statute based on taxpayer's previous success in civil rights action arising from county's practice of detaining juveniles for significant periods of time in facility where they came and remained in contact with adult detainees and prisoners. The Superior Court, Los Angeles County, Norman R. Dowds, J., awarded attorney fees, and defendants appealed. The Court of Appeal, Spencer, P.J., held that: (1) ten percent reduction in hourly rate of from $180 to $200 claimed by attorney was sufficiently supported by evidence; (2) total expenditure of over 760 attorney hours that was claimed on the application was not unreasonable; (3) fact that plaintiff had obtained substantial relief, was not, without more, sufficient basis for upward adjustment of attorney fee award; but (4) contingent nature of representation, including the more than two-year delay in payment of attorney fees, was permissible basis for enhancing lodestar amount.

Affirmed in part, reversed in part and remanded.

Attorneys and Law Firms

***661** Public Justice Foundation and Timothy McFlynn and Randall L. Gephart, Young Law Center, Santa Monica, and Loren Warboys and Mark I. Soler, San Francisco, for plaintiff and respondent.

DeWitt W. Clinton, County Counsel and Frederick R. Bennett, Asst. County Counsel, Los Angeles, for defendants and appellants.

Opinion

SPENCER, Presiding Justice.

INTRODUCTION

Defendants County of Los Angeles and certain elected officials and employees thereof appeal from a judgment awarding plaintiff A. Thomas Hunt attorney's fees in a taxpayer action.

STATEMENT OF FACTS

On May 4, 1985, the original plaintiff (one Alvy) filed a taxpayer suit alleging minors detained at the Los Angeles County Sheriff's Lennox substation were allowed to come and remain in contact with adult detainees and prisoners in violation of Welfare and Institutions Code section 208, were detained without a prior juvenile court determination there were no proper and adequate alternative facilities in violation ***662** of Welfare and Institutions Code section 207 and were detained under conditions which violated their rights to due process of law. It further alleged abused and neglected minors were securely detained in violation of Welfare and Institutions Code section 206 as a direct result of defendants' failure to provide legally required child welfare services, thereby causing such children to be taken into custody by Sheriff's Department personnel rather than Children's Services workers.

The instant action was one of four closely similar suits filed on the same date by plaintiff's counsel, one of which related to the City of Long Beach jail. At the time, California cities and counties detained substantially greater numbers of minors in adult facilities than those of any other state. Approximately 100,000 minors, or more than 20 percent of total detainees, were incarcerated annually in California adult jail facilities. The Los Angeles County Sheriff's Department alone incarcerated more than 18,000 minors annually, approximately 20 percent of California's total incarcerated minors. In 1984, approximately 6,600 of these were so incarcerated for more than six hours. Los Angeles County incarcerated more minors in adult jails than any other county in the nation. In 1985, more than 1,400 minors were detained at Lennox, one of 20 Los Angeles Sheriff's Department substations; at least 340 were detained for more than six hours. Virtually every minor detained could see, hear and communicate with adult prisoners.

The four related cases were matters of first impression under controlling state statutes. Due to a lack of

precedential authority or guidance in the legislative history of those statutes, preparation of this case required close analysis of other state and federal laws, as well as work with juvenile justice experts in developing and presenting to the court a persuasive challenge to defendants' practices and procedures. Plaintiff's counsel faced the prospect of overcoming a tacit presumption official practices of long standing are lawful and correct, as well as the commonly-held perception arrested minors deserve the treatment they receive.

On the day the instant complaint was filed, plaintiff's counsel obtained a court order granting immediate discovery, including interrogatories, requests for the production of documents, depositions of key jail officials and a June 10, 1985 tour of the Lennox jail by plaintiff's juvenile justice experts. The first round of discovery was completed in less than 30 days. During June and July 1985, plaintiff's counsel served additional interrogatories, requests for admissions and requests for the production of documents, which yielded voluminous Sheriff's Department and Department of Children's Services records. Defendants moved to strike and demurred to the complaint; plaintiff's counsel opposed the motions, primarily with success. Defendants served on the taxpayer plaintiff lengthy "boilerplate" interrogatories seeking detailed personal and financial information, to which plaintiff's counsel objected. Defendants refused to stipulate to the substitution of a different taxpayer plaintiff, compelling counsel to seek leave to amend the complaint. The unopposed motion was granted on July 26, 1985.

After defendants refused for weeks to provide additional discovery plaintiff's counsel considered essential, counsel filed two motions seeking access to video tapes defendants made of the June 10, 1985 inspection tour and a court order requiring the posting of notices of pendency of the action at key jail locations to facilitate the discovery of potential witnesses. Defendants vigorously opposed these motions, the former on the ground the video tapes might fall into the hands of "terrorists" and compromise jail security, and in turn moved to compel detailed answers to the interrogatories served on the taxpayer plaintiff. Defendant also moved to compel the production of plaintiff's counsel's original time sheets at periodic intervals throughout the instant litigation. Plaintiff's counsel opposed these motions; the first on the ground the information sought was irrelevant and the second by invoking attorney-client/work product privilege and arguing immediate production of original ***663** time records unfairly would reveal plaintiff's litigation strategy.

After extensive briefing and argument before Judge Norman R. Dowds on October 2, 1985, Judge Dowds ordered supplemental briefing and argument for November. Judge Dowds granted both of plaintiff's motions in their entirety, denied defendants' motion to compel answers to the taxpayer plaintiff's interrogatories and conditionally denied defendants' motion to compel the production of original attorney time records until the conclusion of the litigation. Pursuant to the condition imposed, plaintiff's counsel formally agreed to maintain original time records in a fashion which would permit defendants to discover the information they sought and to retain such secondary records as existed.

From October 1985 through January 1986, all parties were engaged in preparation for a preliminary injunction hearing in the City of Long Beach companion case, the outcome of which could have considerable impact on the instant litigation. Plaintiff's counsel secured a preliminary injunction in that matter on January 11, 1986.

Following a trial setting conference on January 17, 1986, trial of this case was set for March 31, 1986. In preparation for trial, plaintiff's counsel compiled and served four additional sets of interrogatories and requests for the production of documents and completed seven additional depositions of County officials. Counsel also spent considerable time identifying, contacting and interviewing at least 50 minors detained at Lennox during the previous six months to determine fully the facts of their incarceration and contact with adult prisoners. Pursuant to pretrial motions in limine to protect their anonymity, five minors agreed to testify at trial. The reviewing, coding and computer sorting of data entries from all 1985 juvenile booking slips and related jail records consumed substantial time and effort. The resulting summaries proved a valuable tool in presenting statistical data on the more than 1,400 minors detained during 1985. Counsel also prepared a trial brief, exhibits and lists thereof, proof charts and the testimony of expert witnesses.

Trial began on April 21, 1986 and concluded on May 1, at which time Judge Dowds issued his tentative ruling. That ruling rejected plaintiff's violation of due process claims and the allegation the Lennox jail was a secure facility within the meaning of Welfare and Institutions Code section 206, but found minors were detained in violation of sections 207 and 208. Plaintiff secured a permanent injunction preventing defendants from housing a minor at Lennox without a juvenile court determination there was no proper alternative available and from housing a minor under conditions which would allow the minor to communicate in any manner with or to be in the presence, unsupervised, of an adult prisoner. Plaintiff also secured a juvenile court ruling limiting the criminal detention of minors at Lennox to six hours except in extraordinary circumstances.

As an immediate impact, more than 1,400 minors annually detained at Lennox henceforth will be free from unsupervised contact with adult prisoners and hundreds

who would have been detained more than six hours now will be released or transferred unless defendants are prepared to prove the existence of extraordinary circumstances. Moreover, each of the 19 other Sheriff's Department substations faced institution of the same procedures or the prospect of successful litigation. When the Norwalk substation faced such litigation, the Sheriff ordered the Lennox procedures implemented at every substation. The juvenile court order also was issued on a substation-by-substation basis, thereby substantially benefitting the more than 6,600 minors, county-wide, who would have been held for more than six hours. In plaintiff's counsel's view, the only greater success which could have been achieved would have been a determination the juvenile court must make its rulings on a case-by-case basis.

The eighth cause of action, alleging the Department of Children's Services failed to provide adequate emergency response capabilities for abused and neglected children ***664** in the Lennox area, was handled differently from the balance of the instant matter. Plaintiff's counsel had served interrogatories on this defendant on July 9, 1985, seeking details of the emergency response program, cases and clients in the Lennox area. Defendants' counsel agreed to collect and forward this information. However, notwithstanding repeated prodding from plaintiff's counsel, more than five months passed without such production. Inasmuch as this phase of discovery remained uncompleted, plaintiff's counsel opposed defendants' November 1, 1985 motion for early trial, which nonetheless was granted. Due to defendants' nonproduction, plaintiff's counsel reserved identical interrogatories on January 15, 1986. In responding, this defendant now stated no such information could be compiled readily from existing records. Plaintiff's counsel then moved to compel further responses.

While counsel were attempting to resolve this impasse during February 1986, plaintiff's counsel deposed four Department of Children's Services workers. Although the depositions failed to yield the information sought in the interrogatories, they did indicate the County had improved and modified significantly the Lennox emergency response program since the initiation of the instant litigation; the County also had plans for further improvements.

The impasse ultimately was resolved by defendants' agreement to make various records available to plaintiff's counsel and expert witnesses for inspection. Due to the delay in reaching this resolution, plaintiff's counsel moved on March 12, 1986 to sever the eighth cause of action to permit trial of the remainder of the case to proceed as planned. The unopposed motion was granted by Judge Dowds. The pertinent documents finally were made available for inspection in May 1986, following trial of the remainder of the litigation. After a full review of discovery confirmed the defects at which the eighth cause of action was aimed had been substantially remedied, plaintiff's counsel proposed a stipulated dismissal of the cause. Defendants' counsel refused to cooperate, after which plaintiff voluntarily dismissed the cause.

Timothy McFlynn, a graduate of Stanford University School of Law, has been a practicing attorney since 1967. He was employed through 1969 by Luce, Forward, Hamilton & Scripps (then San Diego's largest law firm), where he represented commercial clients in complex business litigation. He also represented minority businesses pro bono through the Urban Coalition.

Mr. McFlynn was a Los Angeles County deputy district attorney through 1973, engaged principally in the prosecution of public corruption and official misconduct. He served as lead counsel in several large and highly publicized criminal prosecutions involving complex issues of public official perjury, conspiracy and grand theft, as well as similar attorney misconduct; pervasive Medi–Cal fraud; and police misconduct such as manslaughter and excessive force/brutality.

During 1974, Mr. McFlynn pursued an extensive trial and appellate practice with Hecht & Diamond, while serving as a volunteer in the areas of Title VII employment discrimination, class actions, First Amendment and environmental litigation for the Center for Law in the Public Interest (Center). He was a staff attorney for the Center from January 1975 to February 1982, hired specifically to conduct major employment discrimination litigation, and was co-lead counsel in a number of such class actions against public employers and unions. He was lead counsel in other complex class and taxpayer actions adjudicating reform issues in the criminal justice area. He has continued the latter activities since founding the Public Justice Foundation (PJF) nonprofit organization in mid-1982, where he is executive director.

Since founding the PJF, Mr. McFlynn has challenged the criminal processing of nondisorderly public drunkenness, the misdemeanor money-based bail system, the confinement of tuberculosis patients under six month isolation orders without hearings or other due process safeguards, the "computer arrests" of innocent persons sharing common surnames and the County's failure ***665** to provide emergency psychiatric care to acutely ill persons in custody. He also has been counsel for amicus in other significant constitutional challenges.

Mr. McFlynn's typewritten summary of the hours he expended while directing and coordinating strategy for the instant litigation was prepared under his direct supervision from contemporaneously kept handwritten time records he prepared and maintained on a daily basis. The original records in fact reflect the expenditure of far

more time than the compensable hours claimed. He exercised independent billing judgment at three junctures: (1) when contemporaneously recording time, (2) when selecting activities and hours he deemed compensable and (3) when collating the collective compensable time of all participants. In the latter instance, after counsel exercised collective billing judgment, the hours claimed were reduced across-the-board by five percent to eliminate possible overstaffing or duplication of effort.

Counsel collectively exercised billing judgment by excluding all time expended on this matter by Youth Law Center (YLC) staff attorney Greer Smith, as well as large blocks of travel time and considerable time all counsel spent on general "children in jail" issues useful to the success of this case, as opposed to the specific issues raised herein. Counsel also exercised collective billing judgment in eliminating many arguably duplicative hours where more than one attorney was present at a meeting or proceeding, as well as many of the hours necessarily spent reviewing pleadings and documents.

It is Mr. McFlynn's practice to record as done his activities and the time expended in an attorney's desk calendar; he consistently uses starting and ending times. His time keeping methods have evolved throughout his years of practice. At times, it is impractical or inconvenient for him to make contemporaneous entries in the desk calendar; he may make a note elsewhere, i.e., on a legal pad, and later transfer the entry to the desk calendar. Occasionally, he may neglect to make an entry or notation at the time the activity occurs, doing so later from his independent recollection, other file notes and records or the contemporaneously kept time records of co-counsel. Mr. McFlynn instituted the PJF practice of periodically copying time records and keeping copies in a secure location separate from the originals. His records are copied at least once a month and may be copied more frequently.

It is not unusual that a comparison of the time records of co-counsel involved in a conference call reveals varying amounts of time spent on the call. In most instances, an attorney remains a participant only so long as the conversation is pertinent to his or her specific area of the case. A May 10, 1985 summary entry for .2 hour is in error; the conversation concerned motions to expedite discovery in both this case and the Long Beach case. Thus, the time should have been split with only .1 hour charged to the instant matter. Mr. McFlynn commonly keeps a varicolored supply of pens on his desk. His time record entries are not color coded; the use of a particular pen is purely a matter of chance, and the color may change in the middle of an entry when he happens to lay down one pen, then pick up another.

Mr. McFlynn expended on this matter a total of 2.3 hours in 1984, 57.8 hours in 1985 and 95.1 hours in 1986 for a preadjustment total of 165.2 hours. He viewed the historical hourly value of these hours as $180 in 1984, $190 in 1985 and $200 in 1986. He has a history of court-approved hourly rates in similar litigation as follows: 1975—$90; 1976—$92; 1977—$100; 1978—$110; 1979—$125; 1980—$140 and $150; 1981—$150; 1982—$160; 1983—$170 and from 1978 to 1986, across-the-board—$165.

Randall J. Gephart, a graduate of Arizona State University School of Law, has been a practicing attorney since 1978. Until 1982, he was a United States Department of Justice antitrust attorney; he litigated mergers in various transportation industries, conducted several grand jury and civil rights price-fixing investigations in common carrier industries and obtained price-fixing convictions of three nationwide automobile transportation companies.

***666** Mr. Gephart was a senior litigation associate for Rosen, Wachtell & Gilbert from 1982 through 1983, specializing in complex federal court litigation which included two securities fraud actions. He was lead counsel in a federal class action enforcing Civil Aeronautics Board regulations relating to air-charter travel agents. He joined the PJF in 1984, where he bore the day-to-day responsibility in a class action litigating the care of acutely mentally ill persons in the Sheriff's custody. He also bore the brunt of the day-to-day litigation responsibility in the instant matter.

Mr. Gephart directly supervised preparation of the typewritten summary of the hours he expended in this matter from original contemporaneous time records he maintained on a daily basis. It is his practice to keep a separate time record for each day worked, generally making entries as each task is performed. He indicates starting and ending times by using the time sheet's breakdown into quarter-hour segments, drawing a line which does not denote any precise minute but an approximation within the time segments. When he is away from the office, if there is more than one matter involved, he will note in writing the pertinent information for each matter, including starting and ending times, and transfer it to the time sheet when he returns to the office. If there is only one activity easily remembered, such as a deposition, he may make mental notes of the pertinent information, completing a time sheet entry upon his return to the office.

His time keeping procedure has evolved over years of practice. In the early stages of this matter, he kept records on a case-by-case basis rather than a daily basis. In early 1985, he had lengthy discussions with Mr. McFlynn concerning time keeping habits, during which they looked through past time records and fee applications and considered possible improvements. The discussions were motivated in part by correspondence from defense counsel in this case and in part by a concern for

enhancing daily productivity. In May or June 1985, he switched to the system he presently employs, thereby bringing his habits into closer conformity with Mr. McFlynn's.

It always has been Mr. Gephart's habit to note his work activities as performed or, if out of the office, at least the same day. However, since he makes thousands of entries each year, undoubtedly there have been instances when he has forgotten to make an entry at the time. In that event, he later recalls the activity through conversation with co-counsel or independently and makes a corrective entry. Since 1984, he would estimate it has happened less than 10 times per case per year. A belated entry generally would be made from one or two days to one or two weeks after the fact; perhaps once in three years would a corrective entry be made as much as a month later.

Mr. Gephart determined his compensable hours and activities after discussion and review with his co-counsel in this matter. During those discussions, he encountered some references in co-counsel's contemporaneous records to activities in which he participated but for which he had no original time record. He did note and reconcile these instances where appropriate; he cannot recall any particular case, but there could not have been many, for he tends to be very compulsive about contemporaneous record keeping.

The process of compilation began before the court's decision. It is the PJF's custom to periodically update and summarize the time spent on a case. To the best of his recollection, he personally made all entries on his original time sheets. He personally copies his time records periodically to provide a duplicate record in the event of some mishap. Because of this practice, there may be belatedly recalled entries on the originals which do not appear on the copies. Where his time records indicate work on both this matter and the companion Long Beach matter, the compensable time claimed was divided between the two even though it might reasonably have been claimed for each case.

At an early stage of litigation, the PJF adopted a practice of rounding down when dividing time between the two companion matters; though it appears the original ***667** 3:00 p.m. entry for July 11, 1985 inadvertently was rounded up from .5 hour to .3 hour, it is in fact accurate. There is a later entry for the same date for .2 hour; the *total* of .7 hour was rounded down to .3 hour. However, the July 17, 1985 entry for 1.5 hours was inadvertently rounded up to .8 hour.

Certain original entries do reflect corrections or clarifications he made. An original entry for August 18, 1985 does not have the designation "Hunt" crossed out; "Hunt" is written over "Alvy," the name of the original plaintiff. The entire hour claimed is properly assignable to this matter. The May 12, 1985 entry shows the word "revised" scratched out and the word "documents" substituted; this more accurately reflects the activity undertaken. The crossing out of "12" and substitution of "9" reflects a billing judgment. There are 16 hours on that original page relating to this matter, while the fee application summary claims 8 hours; this too is an exercise of billing judgment. A change on the original record of June 3, 1985 from "7:00–7:45" to "7:00–8:45" is a correction to more accurately reflect time spent, either after conscious independent consideration or after review and consultation with co-counsel. The 9:15 entry on the March 5, 1986 original record was changed from "Hunt" to "Pyser"; this reflects only further consideration of the type of work done and the exercise of billing judgment, as does a reduction from .2 hour to .1 hour on the original record for March 6. He added detail on the 10:00 original entry for April 17, 1986 to identify the activity—a telephone call—which appears on the duplicate copy as .1 hour without such identification. Similarly, he added a phrase to the original 8:30 to 12:00 entry on April 25, 1986 to clarify the activity involved.

The 10:00 to 11:00 entry on June 12, 1985 reflects time expended, inadvertently omitted, recalled and corrected after consultation with co-counsel. The same applies to .2 hour claimed at 10:15 on June 13, the omission of which he discovered after consulting Mr. McFlynn's original time record for that date. The same process prompted similar additions on the original record for February 5, 1986. The apparent discrepancy in the original August 14, 1985 entry in the number of compensable hours simply reflects billing judgment.

Mr. Gephart expended 2.3 hours in 1984, 208.7 hours in 1985 and 233.7 hours in 1986, for a preadjustment total of 444.7 compensable hours. He views his historical hourly rates as $130 for 1984, $140 for 1985 and $160 for 1986.

In the judgments of Messrs. McFlynn and Gephart, Paul Mones played an important role in overall litigation strategy, selection and supervision of experts and identification and preparation of youthful witnesses. Mr. Mones is a graduate of the University of North Carolina School of Law, licensed to practice in West Virginia in 1978 and Massachusetts in 1984. He formerly was director of Juvenile Advocates, the only advocacy program for institutionalized children in Appalachia, and has worked as a youth justice consultant for judges, law officers and state legislators.

Mr. Mones has taught juvenile law at the undergraduate and graduate levels and published numerous articles concerning the treatment of children and families. He has lectured frequently to professional organizations, including the American Bar Association, the American Psychiatric Association and the National Association of County Officials. He is a recognized specialist in

children's rights and family violence who appeared by invitation to testify before the juvenile justice subcommittee of the United States Senate. He worked for the PJF from October 1984 through May 1986; he is not an attorney of record in this matter as he was not then licensed to practice in California. Consequently, his billable time has been deemed law clerk time.

Since Mr. Mones previously had left the PJF, he did not participate directly in preparing the fee application or formulating the accompanying declarations. He read through the declaration prepared for him, ascertained it was correct and signed it. The typewritten summary is an accurate reflection of his billable time.

***668** Mr. Mones' time records were not kept as rigorously as those of other PJF staff, but generally were maintained on a daily basis. He made notes as he worked, then recorded them in the pocket-sized calendar book he used in 1984. Basically, he made the entries either as the task was performed or shortly thereafter; he always did so by the end of the day. His time recording practices were different in the early stages of this litigation than in the later stages. Initially, he used an inconsistent methodology, only sporadically recording starting and ending times. During 1986, Mr. Mones made his time entries as he worked, usually including starting and ending times, except when he traveled. On those occasions, he made the entries at the end of the day. If anything, his original time records fail to reflect all of the time he spent on the case; "I was not as exact as I should be, and I didn't record all of the time." He could not recall any specific instance when he recorded his time later than the end of the same day.

When Mr. Mones returned to the PJF to assist in preparing the fee application, he was told to go through his time records and note with check marks those entries representing work on this matter. He did so, then turned over the records for typing into a summary. Thereafter, he examined other time records "because I knew there [were instances] when I didn't record my time [and] I thought this should be an accurate reflection of time [actually expended]."

On some occasions, Mr. Mones' records did not reflect an entry which did appear on the records of Messrs. McFlynn or Gephart. He discussed those entries, ascertaining his actual participation in a billable activity, then added the entries to the summary. Knowing there were occasions when he definitely was in a meeting or had a telephone conversation with others on the litigation staff, he verified his participation from their records. He noticed no glaring errors between his time records and those of others; in some instances, there were minor discrepancies in the starting and ending times. In a very few instances, his records showed a discussion and another participant's records did not. Since Mr. Mones was treated as a law clerk on this case, he did not exercise independent billing judgment. All such decisions followed comprehensive discussions with Messrs. McFlynn and Gephart.

The typed summary indicates .1 hour spent in telephone conversation with Mr. Warboys on August 9, 1985, a day his records indicate he did not work. He picked up that entry from Mr. Warboys' records, concluding he must have had the conversation on that date even though he did not work at the office. Similarly, his records indicate he did not work on July 31, 1985 while the typed summary allocates .2 hour to conversation with Mr. Warboys regarding the amendment to substitute the present taxpayer plaintiff. He has no present recollection of that conversation.

The Lennox jail tour summary entry for October 1, 1984 is simply a mistake in transcription; the activity actually occurred on October 3, as his and others' records show. The discrepancy between the original 2.5 hours "review state reports on kids in jail" time entry and the 1.6 hours summary entry reflects judgment in allocating the time between this case and its companion cases. Similarly, his original records show 1.6 hours spent on October 18, 1984 "for Long Beach and other jail business with [Mr. Soler]," while the activity is summarized as 1.3 hours spent on October 21. Again, the misdating is a mistranscription; he made a time allocation judgment after discussion with Mr. McFlynn and/or Mr. Gephart.

The November 11, 1984 summary entry also is a mistake in recordation—this time on his original records. The activity actually occurred on November 8 and, as noted, consumed one hour; the .5 hour on the summary is a billing allocation. Similarly, the November 18, 1984 summary entry is for time spent on November 15; the November 19 summary entry for time expended on November 20 and the December 23, 1984 summary entry for time spent on December 20, as indicated in Mr. Mones' original records. The latter reference to "Inglewood" is to a meeting at the Inglewood ***669** courthouse concerning this matter and its companion; five hours were allocated equally to the cases.

There is no discrepancy between his original records and the October 22 and November 7, 1984 summary entries; the time differentials reflect billing judgments. Although the original October 22 entry makes no direct reference to the instant matter, 1.3 hours properly is billable to it. He has no present recollection of the basis for the allocation, but he spent between three and four hours discussing with Messrs. McFlynn and Gephart the accurate attribution of time to various cases, during which they compared the typed entries to a number of records—not just original time records.

The November 12, 1984 summary entry is a

mistranscription of time actually spent on November 13 (as reflected in the original records), with an even allocation of 3 hours reviewing and drafting complaints in this case and its companion. The apparent discrepancy between the December 31, 1984 1.5 hours typed entry and his original records is a natural mistake, reflecting time actually spent on January 2, 1985. In this transitional period, Mr. Mones was changing his time keeping records from a pocket calendar book to a large desk calendar; some entries temporarily recorded in his 1984 book were not transcribed to the 1985 book. The discrepancy between 3 hours in the original and 1.5 hours on the summary is an allocation of time between this case and its companion.

Mr. Mones' original "juvenile meeting" entry for December 9, 1984 fails to show the time spent, while the "meet with [Mr.] Soler re kids" summary entry claims .5 hour. He determined the time from Mr. Soler's records; the transaction does indeed appear on those records. His original May 14, 1985 "file C.C.A.J.C." entry makes no specific reference to the instant case, but that is the date the complaint was filed. The .5 hour summary entry reads "five cases, call Warboys". He has no independent recollection of this and it does not appear on his records.

Mr. Mones' original June 11, 1985 entry shows 6 hours for a discussion relating to this case and its companion. He made a contemporaneous judgment he spent 6 hours on the two matters, approximately equally divided, between 7:30 and 4:30. Mr. Warboys' original records corroborate this. Mr. Mones' February 5, 1985 original records show two entries: 2 hours' "conference call prep" and 1.5 hours for a 2:00 p.m. conference call concerning the instant case and its companion. The total of 3.5 hours was reduced to 1.2 hours on the summary. The December 6, 1984 "prepared for and meet with Y.L.C. on kids cases" entry shows 1 hour on the original while the summary claims 2.5 hours. He does not recollect the specifics, but the change reflects consultation with Messrs. McFlynn and Gephart.

Mr. Mones expended 25.9 hours in 1984, 55.3 hours in 1985 and 27.7 hours in 1986, for a preadjustment total of 108.9 compensable hours. The hourly value of his time as a law clerk is judged to be $40 in 1984, $45 in 1985 and $50 in 1986.

Loren M. Warboys, a graduate of Harvard University School of Law, has been a practicing attorney since 1975. He is a member of the New York and California bars and is admitted to practice before three federal courts of appeals, as well as three federal district courts. Mr. Warboys was executive director of the Genesee Valley chapter, New York Civil Liberties Union, from August 1975 to December 1978, where a two-year youth project focused on the rights of children in schools, the family setting and the juvenile justice system. The project involved extensive research and litigation on the rights of institutionalized juveniles, due process rights in the juvenile justice system, rights of handicapped children, students' First Amendment rights, school suspensions, the confidentiality of student records and abuse, neglect and mental health commitments.

Mr. Warboys was counsel in many civil rights cases concerning the confinement conditions of pretrial detainees, the due process and First Amendment rights of government employees, police abuse, sex ***670** discrimination and discrimination against the handicapped. As a part-time attorney for the student youth advocacy project, he was counsel in education-related litigation and administrative hearings. He supervised and coordinated a network of attorneys and law advocates throughout the state, including 11 attorneys and 20 paralegal VISTA volunteers. He also conducted training sessions on all aspects of education law and, in 1977, coauthored a book on the subject.

Mr. Warboys has been a YLC staff attorney since January 1979, serving as acting director on occasion. YLC is a nonprofit center specializing in legal issues affecting juveniles throughout the United States. From September 1978 to October 1982, the YLC operated a special juvenile justice advocacy project and from 1979 through 1986, concentrated on issues concerning institutionalized children, including the confinement of minors in adult jails.

Mr. Warboys has been co-counsel or lead counsel in major civil rights challenges to conditions in juvenile training schools and detention centers, as well as to the detention of juveniles in adult jail facilities; many of these cases resulted either in consent decrees or permanent injunctions. He has inspected juvenile training schools and institutions in many states, preparing advisory opinions on the adequacy of juvenile confinement conditions and treatment. He has researched extensively the rights of institutionalized minors, making several presentations on the subject.

The YLC has no written procedures for the maintenance of time records; there is no standard office-wide practice beyond the use of a standard time sheet. There is an informal expectation the information requested on the forms will be provided, but the file number entry generally is not used. There are no specific guidelines concerning the amount of detail to be used in identifying a matter. The "work done" column requires enough specificity so the attorney later can be sure what he has done. As a rule, Mr. Warboys does not record nonclient time.

When the forms are completed, they go to secretaries who enter the information into the computer; once entered, the secretaries check off each item. This is done at no specific

interval; secretaries act as expeditiously as possible after receiving completed forms. They also paste the perforated individual time slips to backing sheets and add an identifying name. The attorneys do not necessarily initial each time sheet; each secretary works only for one or two attorneys whose handwriting is readily recognizable. The individual perforated slips may be placed out of order when they are mounted originally or may detach from the backing sheet and be reaffixed in no particular order; the adhesive on each is not strong. As a rule, the secretaries either return the carbon copies to the attorney or destroy them after making entries on the computer. His copies are not returned.

Time entries also may appear out of order because some notations were recorded originally elsewhere and later transferred to a time sheet. In addition, when an attorney is making time entries as work is performed, he or she may use more than one form as papers are shuffled about; considerable time thus may pass before sheets are completed. Recently, Mr. Warboys discovered some entries had been misfiled under a different case; he transferred them to this matter. The primary purpose of keeping time records is for potential attorney's fee applications, to permit determination of the hours spent on a case. The forms are not used to evaluate employees and there is no daily review to determine whether they are completed properly; a review is done whenever a fee application is being prepared.

Mr. Warboys generally does not record starting and ending times, but began doing so as a direct result of the November 1985 agreement in this case; otherwise, he is fairly consistent in his practice. As a rule, he tries to carry time forms with him as he works, but occasionally he forgets to do so. He relies on telephone company records to determine the amount of time spent on long distance calls. He can verify some of his work by cross-checking with other attorneys ***671** involved in the same task or through secondary records (i.e., mileage records, telephone records, notes to file or correspondence records). Since the execution of the agreement, he has attempted to include more detail and to indicate any task related solely to a specific subpart of the case. Much of the work related to all issues, which precluded parceling out time in that manner.

The degree of specificity required in time records as of November 1985 was communicated to every staff member working on the case, including paralegal Maime Yee. She recorded her time directly on the computer; Mr. Warboys has no personal knowledge of the procedure she followed, but it is his understanding she kept contemporaneous records. In his view, contemporaneous notations made on the standard form would not be essential; notes could be made in any fashion and later transferred. Ms. Yee worked on this case for a very concentrated period of time. Her situation was unique; she worked long blocks of predetermined time, often in the evening or at night.

Mr. Warboys directly supervised the preparation of the typewritten summary from his contemporaneous time records, maintained on a daily basis. He excluded many meetings and discussions with co-counsel, as well as most time spent reviewing and editing pleadings and other documents and all travel time.

A .15 hour January 16, 1985 summary entry shows a telephone call from Mr. Gephart which does not appear on his original record. A number of telephone calls or conferences with co-counsel do not appear in his original records; they were included in the summary from the contemporaneous records of other participants. He has no independent recollection of this particular call, but his work product notes contain all such items and Mr. Gephart's original time records corroborate the entry. As to a .1 hour January 31, 1985 summary entry for a telephone call from Mr. Mones, Mr. Mones' typed summary "indicated some conversation with me which did not appear on my records. I then check[ed] my attorney files to see if I [had] any phone calls that day and there was a corresponding phone call." Thus, he has an independent record of the specific conversation and the date, but not of the time expended. Mr. Mones claimed twice the time Mr. Warboys claimed.

The 1 hour February 9, 1985 summary entry for a letter to Mr. Mones is a mistranscription; his original records clearly show that entry on February 11, a date for which the summary shows no activity. The May 6, 1985 entry for a conference call with the PJF appears on both the summary and the original record; the apparent time discrepancy reflects billing judgment. The May 28, 1985 .2 hour "discovery conference with Smith, Schauffer and Soler" entry does not appear in his original records; he would have obtained it from another participant. The entry is not in Mr. Soler's original records, but does appear in Ms. Schauffer's records of June 28, 1985 as .5 hour. The date is mistranscribed on the summary; looking at Ms. Schauffer's original entry, it is difficult to discern whether the month is "5" or "6."

The apparent discrepancy between the May 31, 1985 summary and original record entries for a telephone call to Demuro reflects billing judgment. The discrepancy between the June 11, 1985 summary and original record entry for a telephone call from Mr. Mones is illusory. The original record shows two telephone calls—one of .3 hour from Mr. Mones which refers only to Long Beach and a second to Mr. Mones "re O.S.C." According to work product notes, part of the conversation covered the involvement in this case of juvenile court Judge Gutierrez; Mr. Mones' records agree.

The .2 hour June 5, 1985 summary entry for a telephone

call from Mr. Mones "re expert tour" does not appear on the original records. Mr. Warboys spoke to Mr. Mones regarding each entry on the typed summary when preparing his own summary. The apparent discrepancy between the .3 hour August 14, 1985 summary and original record for a telephone call from Mr. Gephart is a mistranscription. There is such an entry on the August 13 original ***672** record, which also appears on Mr. Gephart's original records. While the 1.2 hours September 18, 1985 summary entry for a telephone call relating to discovery does not appear in the original record, Mr. Warboys' work product notes verify he had such a discussion. Though he has no independent record of the time expended, the original records of Mr. Gephart and Ms. Schauffer both show 1.2 hours.

There is no original record entry of a .2 hour November 4, 1985 summary entry for a telephone call to Messrs. McFlynn, Mones and Gephart made with Mr. Soler. However, the call does appear on the original records of all other participants. Mr. Warboys has no original record for a February 7, 1986 telephone call from Mr. Gephart "re experts," but Mr. Gephart's original records show .2 hour for a "telecon Warboys & Schauffer." Similarly, there is no .3 hour February 19, 1986 original record entry for a telephone call to Mr. Gephart, but Mr. Gephart's original records have the entry as would telephone company records. The same is true of a .9 hour March 13, 1986 summary entry for a telephone call to Mr. Gephart and a .5 hour March 20, 1986 summary entry.

Mr. Warboys' summary shows two entries for March 14, 1986: one of .1 hour and one of .8 hour. The latter entry appears on his original records, as do several others for the instant case on that date; however, none of them is precisely .1 hour. The .6 hour March 25, 1986 summary entry shows a telephone call with Mr. Gephart which is not on the original records, but the original for March 26 has several entries relating to the instant case, including a .1 hour telephone call with Mr. Gephart; Mr. Gephart's original March 25 records show a .5 hour telephone call with Mr. Warboys. While a .4 hour telephone call with Mr. Gephart and a .3 hour entry do not appear on his March 27, 1986 and April 8, 1986 original records, they do appear on Mr. Gephart's original records for those dates. The same is true of April 11 and April 21, 1986 summary entries of .3 hour each.

Mr. Warboys expended 1.95 hours in 1984, 40 hours in 1985 and 88.9 hours in 1986 for a preadjustment total of 130.85 compensable hours. He views his hourly rates as $160 in 1984, $170 in 1985 and $180 in 1986.

YLC staff attorney Carol Schauffer played the key role in developing the eighth cause of action concerning inadequate County services to abused and neglected children; hence, much of the time she expended is not billed. Ms. Schauffer, a graduate of Northeastern University School of Law, has been a practicing attorney since 1978. She is a member of the California and Louisiana bars and is admitted to practice before the Fifth Circuit Court of Appeals and three federal district courts.

From March 1978 to August 1979, Ms. Schauffer was a staff attorney for the Louisiana Center for the Public Interest, which provided training and technical assistance to advocacy programs for the developmentally disabled in five states. She developed training materials, planned and conducted training sessions, wrote legal memoranda, assisted in litigation and represented some individual clients in this field. She was a staff attorney for the American Civil Liberties Union of Louisiana from August 1979 to April 1981, where she directly handled several civil rights cases involving privacy and First Amendment issues, conditions in local juvenile detention facilities and a job discrimination claim. She became a YLC staff attorney in December 1981.

Ms. Schauffer directed and supervised the preparation of the typewritten summary from original time records she maintained contemporaneously on a daily basis. She excluded many meetings in which she participated, many case-related telephone calls, travel and other activities she deemed to be duplicative of the hours of co-counsel. In preparing the typewritten summary, she consulted with Mr. Warboys and compared entries taken from his records with her own. Ms. Schauffer maintains her time records on the standard form in use at the YLC. Before the office obtained a computer, she regularly retained the carbon copy as a backup record; once time records routinely were entered in the computer, she ***673** ended this practice. When several time sheets have been completed, she gives them to her secretary; sometimes the carbon copies are returned to her for destruction, sometimes they are not.

When Ms. Schauffer is traveling, she attempts to carry the standard time sheets with her, for she does not have a good memory for hours worked. She has a habit of making entries as close as possible to the time at which work is performed, particularly after starting and ending times were required in this case; had she not done so, she would have been unable to recall those times. Ms. Schauffer did not begin recording starting and ending times until June 1985, since it had not been her practice before; entries for some later dates, such as October 30, 1986, also lack starting and ending times; this was her error. Sometimes when traveling, she may forget to carry time sheets; she then makes entries on the following day. She does not recall making an entry from memory on the following day, but cannot rule out the possibility. She keeps a separate record of telephone calls and, when necessary, completes mileage records; no one reviews her time records for accuracy or to assess productivity.

Ms. Schauffer has no original record for a summary entry dated January 23, 1985. Neither do her original records

show summary entries for .7 hour on February 8, .75 hour on March 20, .5 hour on April 25 or .25 hour on May 1, 1985. However, Mr. Warboys has a record of all these meetings and conferences, though his March 20 record shows .7 hour and April 25 shows .45 hour. The May 1, 1985 entry for .25 hour also is in Mr. Soler's original records.

A number of telephone conversations with Mr. Gephart do not appear in Ms. Schauffer's original records; specifically .1 hour on May 31, .2 hour on August 21, .2 hour on August 22, .1 hour on September 3, .1 hour on September 10, 1985 and .2 hour on March 4, 1986. However, each of these entries is on Mr. Gephart's records and some are on telephone records.

A two hour original "Cal jails" entry made early in the case was divided equally between the instant matter and the companion Long Beach case; "the people participating ... were primarily concerned with the Los Angeles jails." Pencil markings on the May 13 and May 20, 1986 original entries are not familiar. The May 13 original entry shows 5 hours spent on this case and its companion; the pencil notation halves the time to 2.5 hours. A May 12, 1986 .3 hour entry also has been halved and rounded down to .1 hour. A pencil entry, "1.25 to John Afin," on May 19, 1986 was not made by Ms. Schauffer; she does not know its significance.

Ms. Schauffer expended 18.1 hours on the instant matter in 1985 and 27.9 hours in 1986, for a preadjustment total of 46 compensable hours. Her historical hourly billing rates are $130 in 1984, $140 in 1985 and $150 in 1986.

YLC legal director Mark Soler played an important role in overall litigation strategy, the selection and supervision of experts and the identification and preparation of youthful witnesses. A graduate of Yale University School of Law, he has been a practicing attorney since 1973. He is admitted to practice in California, before the United States Supreme Court, six federal courts of appeals and eight federal district courts.

Mr. Soler clerked for a United States District Court judge in Connecticut from September 1973 to August 1974. He was a staff attorney until June 1976 for the Community Law Office in San Francisco, where his general practice included criminal and civil litigation; he also provided pro bono legal counseling at the Native American Health Center. He was an associate with Treuhaft and Walker from June 1976 to June 1978 in a general criminal and civil litigation and appellate practice; his particular focus was civil rights cases including claims of police brutality, First Amendment issues and constitutional challenges to federal and state drug laws.

Mr. Soler became a YLC staff attorney in November 1978 and has been executive director since August 1980, supervising the ***674** activities of seven staff attorneys who litigate the rights of children in the juvenile justice system (in particular, the confinement of minors in adult jails, detention centers and other correctional facilities) and the rights of children in foster care. He acts as lead or co-counsel in litigation and participates in training and technical assistance projects. He has authored or coauthored many articles and books on legal issues. The YLC also pursues education, mental health, rights of the disabled and health care issues.

Mr. Soler was an instructor in the journalism department of San Francisco State University from September 1976 to December 1984, where he taught all basic First Amendment concepts. From January to May 1985, he was an associate professor at Boston University School of Law; he taught a survey course covering juvenile courts, the juvenile justice system, foster care and the termination of parental rights and a seminar on complex litigation.

Mr. Soler directly supervised the preparation of the typewritten summary from his original time records, maintained contemporaneously on a daily basis. He spent substantially more time on this case than is reflected in the fee application. He excluded most in-office and intra-office meetings, many telephone calls, travel time and similar activity. His record keeping practices are those of Ms. Schauffer and Mr. Warboys. He does not retain carbon copies of the original time sheets; generally, his secretary returns them and he discards them. He gave no thought to the possible necessity of keeping the copies; no one before has ever requested original time records or suggested records were created or recreated for billing purposes. He began including starting and ending times for this case after communication with defense counsel.

As Mr. Warboys explained, there are many reasons the individual perforated time slips might be attached to backing paper in an out-of-order sequence. Often, Mr. Soler will begin recording his time on one sheet; at some point, the sheet will disappear on his desk and he will begin a fresh one. This may happen more than once a day. When traveling, he sometimes records time entries on a legal pad, transferring them to the standard sheets on his return. He cannot recall an instance when he recorded information for the first time on the day following an activity, but he cannot be sure he has never done so. He interprets "secondary records" to mean such items as mileage claims, payroll records, office check-in logs, overtime records and travel vouchers. Insofar as the YLC uses such records, it is policy to maintain them.

The YLC performs two types of work; some is financed with foundation grants and other funding, while the remainder involves particular suits which may lead to fee requests. The attorneys maintain time records only for all work potentially reimbursable through fee awards. Defendants' original interrogatory requested, "For each

day on which such person expended time on this case, state the number of hours devoted to remunerative tasks on the same day." He was not sure what information the defense sought; if it was salaried hours, the answer would be "at least eight hours for every day, some days as much as fifteen or sixteen." If it was information concerning potentially billable cases, the facts would appear in detail on contemporaneous time sheets. A prepared computer printout shows other remunerative hours in the latter sense; it is his understanding the office support staff checked the hours recorded on the computer for each day attorneys worked on this case against hours those attorneys might have claimed on other litigated cases. Thus, a date showing a blank indicates no work was done on other litigation which might result in a fee award. Maime Yee devised the method for extracting this information; he does not know who actually prepared the data.

There are no apparent discrepancies between the time he claimed and the entries on his original time sheets. His entries are fairly chronological. He was somewhat lax in keeping starting and ending times even after the agreement to do so; it was not his standard practice before then.

***675** Mr. Soler expended 5.7 hours on the instant matter in 1984, 18.9 in 1985 and .95 in 1986, for a preadjustment total of 25.55 compensable hours. His historical hourly billing rates are $180 for 1984, $190 for 1985 and $200 for 1986.

Paralegal Maime Yee received a Bachelor of Arts degree from the University of Idaho in sociology/social work in 1971 and a teaching certificate in Idaho in 1972. She received a Master of Arts degree in legal studies from Lone Mountain College of San Francisco in 1977 and considerable computer training in 1983.

During 1974 and 1975, Ms. Yee was an Idaho Youth Services caseworker, recommending court dispositions of youthful offenders and supervising and coordinating community services for such offenders, as well as placements in foster homes and institutions. From May 1977 to December 1978, Ms. Yee was a paralegal for Cooper and Scarpulla in San Francisco. She analyzed and organized pleadings and evidentiary materials, drafted and filed court documents and performed related tasks in a large antitrust action. She joined the YLC on January 1, 1979, researching and analyzing juvenile justice and foster care issues. She also performs data collection and analysis and computer work in the discovery phase of litigation.

In this matter, she created two computer database files, supervised the entry and integration of information into those files and used the database to compile statistics on minors who had been held at Lennox during 1985. While the database contains entries for 1,427 juveniles, the information was extracted from three separate sets of voluminous records: boxes of booking sheets for each day, the jailer's log entries and other County documents. Information relating to a number of statistical items had to be extracted from these documents and prepared for entry into the database after the documents were examined and analyzed. Once the information was analyzed, discrepancies resolved and entry into the database supervised, Ms. Yee formulated commands for indexing the categories of information and analyzed printouts for errors. The computer did some calculation from the indexed data, but she had to perform much of it herself. She also prepared exhibits and accompanying affidavits.

Ms. Yee supervised preparation of the typewritten summary directly from her contemporaneous time records. She has maintained time records since 1979 according to the practice generally followed at the YLC. She was instructed to note the date, the name of the case, the type of work performed and the time spent; the records should be kept as she worked. The type of work she does usually is concentrated and relates only to one case at a time. It was her practice to record the work as she did it; to her, "contemporaneous" means during the same period work is done, not necessarily the same day.

After she began working on this matter, Mr. Warboys asked whether she had included starting and ending times. She is not certain when he asked, but it definitely was no later than April 25, 1986. She had not done so at that point. She entered her hours in this case into the computer on two or three occasions, deriving her starting and ending times then. At most, this would be every two to three weeks. Because she worked in concentrated blocks of time, often at odd hours, it was easy for her to remember the times. Ms. Yee did not record her time in tenths of hours, but in whole or one-half hour segments, rounding up or down as appropriate. In some instances, it is possible to derive starting and ending times from the computer itself.

An April 1, 1986 entry indicates Ms. Yee worked 14 hours without a break. She would have gone to the restroom and possibly gotten a cup of coffee in that time, but no one break lasted more than two or three minutes; she believed it unnecessary to record such short breaks. Even though this was laborious and tedious work, it also was the sort in which one becomes completely absorbed; long periods of time pass without any thought of a break. In this case in particular, she would have taken few breaks of any significance; she was working "under a time crunch." She wrote down the amount of time worked on each ***676** day either at the end of the day or after a couple of days. Her salary is not dependent upon the hours she records; her time records are not subject to regular review.

Ms. Yee expended a preadjustment total of 139.5 hours in 1986. Her hourly rate is judged to be $50.

Francis M. Wheat is a member of Gibson, Dunn & Crutcher and past president of the Los Angeles County Bar Association. From his 37 years' experience practicing law, he is familiar with general criteria for the fixing of attorney's fees in Los Angeles County. He reviewed the histories, resumes and current rate requests of each legal staff member in this case. Based on his expertise, he considers the historic and current hourly rates requested to be reasonable and consistent with rates charged in Los Angeles for persons of comparable background and experience. It is common practice in Los Angeles to charge clients a premium above the normal hourly rate where the receipt of fees is contingent upon a successful result or a particularly excellent result is achieved. A further upward adjustment normally is made for any substantial delay in the receipt of fees.

John J. Costello is a partner in the accounting firm of Arthur Young & Company who has experience with the time accounting systems of both large and small law firms. In his experience, law firms customarily have a system which provides checks and balances to permit regular contact and verification of time expended by each attorney. In examining the records of the PJF in connection with another case, Mr. Costello found no such system. Accordingly, he would be unwilling to form an opinion of the overall accuracy of the time records.

John A. Daly is a member of Chase, Rotchford, Drukker and Bogust and previously was chief executive assistant city attorney for the City of Los Angeles. Since 1959, he has defended police litigation and civil rights cases for the City of Los Angeles. He has continued to do so through insurance carrier retention since joining his present firm in 1973, expanding his activities to the defense of other public entities. He is familiar with the fee structure of private law firms doing a volume of such defense work before California courts. At present, these firms charge $90 per hour for the trial attorney partner handling the matter and approximately $75 to $80 per hour for associate time. Those rates are based on receipt of a certain volume of business from the entities or exclusive concentration on defending public entities. Firms performing similar work on a sporadic basis generally charge $125 per hour for a senior trial attorney.

George J. Franscell, a senior partner in Cotkin, Collins & Franscell, has been practicing law for 28 years, during most of which he has specialized in civil rights and other litigation affecting public entities. He has primary responsibility for negotiating rates in such litigation and recruiting competent counsel with expertise in the field. In his opinion, there is a fairly definitive local market for skilled counsel with expertise in civil rights litigation. Rates for volume work average approximately $100 per hour for an associate, with senior associates and partners generally earning $120 to $125 per hour.

Principal Deputy County Counsel Frederick R. Bennett is one of defendants' attorneys. Over the past ten years, he has represented both plaintiffs and defendants extensively as lead counsel in a wide range of complex class action and public interest litigation, including civil rights, in which claims were made for attorney's fees pursuant to Code of Civil Procedure section 1021.5, 42 U.S.C. section 1988 and other methodologies. He has attended many seminars on attorney's fee litigation, attorney's timekeeping systems and prisoners' rights litigation and has taught similar seminars. He also has provided consultation to public and private attorneys across the country and has testified as an expert concerning the appropriate methodologies for determining such awards before the California Assembly committee on the judiciary.

Mr. Bennett has conducted and reviewed several surveys of hourly attorney rates in Los Angeles and California. In his experience, ***677** with some exceptions, courts normally award hourly rates ranging from $75 to $150 per hour for experienced counsel in the Los Angeles area. In his opinion, the typical prevailing rate for experienced counsel in prisoners' rights litigation approximates $100 per hour. Rates independent counsel quote the County for such litigation are consistent with those figures, ranging generally from $85 to $125 per hour. In Mr. Bennett's opinion, the "deep pocket" of public entities is an attractive incentive for attorneys to inflate hours expended or to devote unnecessary hours to litigation; there is little contingency and defendants generally have funds with which to pay a fee award.

Michael E. Galvin is a data processing specialist for the County with more than ten years' experience. The County frequently uses outside contractors for data conversion, which is the process of taking information from source documents and entering that information into a computer for processing, and for computer programming services which would take that data, process and analyze it and generate reports, tables and other presentations of information. There is a readily available market for purchasing such services; the market rate for data entry is approximately $8 to $10 per hour plus tax; at these prices, it is expected 8,000 to 10,000 characters of data per hour will be entered, depending on the complexity and legibility of the source documents. Routine programming services such as those involved in this matter generally cost from $28 to $50 per hour for experienced, highly qualified programmers. He estimates file definition and analysis in this matter would have taken 29 hours, while supervision and user meetings would have taken 7 hours. While data entry was simpler because not done from the source documents, it is his opinion it should not have taken more than twice as long; this is based on an

assumption 1,427 records were reviewed. The total cost of all services should not have exceeded $1,563.

CONTENTIONS

I

Defendants contend the trial court abused its discretion in awarding attorney's fees to plaintiff's counsel, in that the court's findings as to the number of hours to be compensated and the reasonable rate of compensation are not supported by substantial evidence.

II

Defendants assert the trial court abused its discretion in applying a multiplier of 1.5, in that recent decisions of the United States Supreme Court make the factors relied upon inapplicable.

DISCUSSION

I

Defendants contend the trial court abused its discretion in awarding attorney's fees to plaintiff's counsel, in that the court's findings as to the number of hours to be compensated and the reasonable rate of compensation are not supported by substantial evidence. We disagree.

[1] An award of attorney's fees pursuant to Code of Civil Procedure section 1021.5 lies in the sound discretion of the trial court; the determination will be sustained on appeal unless a review of the entire record reveals a palpable abuse of discretion. (*Bartling v. Glendale Adventist Medical Center* (1986) 184 Cal.App.3d 97, 103, 228 Cal.Rptr. 847.) The amount of an award is to be determined by the guidelines set forth in *Serrano v. Priest* (1977) 20 Cal.3d 25, 141 Cal.Rptr. 315, 569 P.2d 1303 (*Serrano III*); hence, the trial court's exercise of discretion must be based on the lodestar adjustment method, i.e., a determination of the reasonable hourly rate times the reasonable number of hours to be compensated as a foundation to be adjusted upward or downward by consideration of a number of other factors. (*Press v. Lucky Stores, Inc.* (1983) 34 Cal.3d 311, 322, 193 Cal.Rptr. 900, 667 P.2d 704.)

[2] Discretion is not abused so long as it is "based on a 'reasoned judgment' and complies with the '... [applicable] legal ***678** principles....' " (*Bullis v. Security Pac. Nat. Bank* (1978) 21 Cal.3d 801, 815, 148 Cal.Rptr. 22, 582 P.2d 109.) Facts which afford nothing more than an opportunity for a difference of opinion will not establish an abuse of discretion. (*Brown v. Newby* (1940) 39 Cal.App.2d 615, 618, 103 P.2d 1018; accord, *Blank v. Kirwan* (1985) 39 Cal.3d 311, 216 Cal.Rptr. 718, 703 P.2d 58.) Accordingly, if there is substantial evidence to support the trial court's determination, it must be sustained on appeal. (*Yakov v. Board of Medical Examiners* (1968) 68 Cal.2d 67, 72–73, 64 Cal.Rptr. 785, 435 P.2d 553; *Oakland Unified Sch. Dist. v. Olicker* (1972) 25 Cal.App.3d 1098, 1106, 102 Cal.Rptr. 421.)

Although evidence must be credible to be substantial, this court generally has no power to judge the effect or value of evidence, consider the credibility of witnesses or resolve conflicts in the evidence. (*Board of Education v. Jack M.* (1977) 19 Cal.3d 691, 697, 139 Cal.Rptr. 700, 566 P.2d 602.) Neither conflict nor " 'testimony which is subject to justifiable suspicion' " is a ground for reversal; the determination of those matters is the exclusive province of the trier of fact. (*Evje v. City Title Ins. Co.* (1953) 120 Cal.App.2d 488, 492, 261 P.2d 279, citing *People v. Huston* (1943) 21 Cal.2d 690, 693, 134 P.2d 758.) In sum, we must view the evidence in the light most favorable to the trial court's determination, resolving all conflicts and drawing all reasonable inferences in support thereof. (*Campbell v. Southern Pacific Co.* (1978) 22 Cal.3d 51, 60, 148 Cal.Rptr. 596, 583 P.2d 121.)

As *Serrano III* notes, "Fundamental to [the trial court's] determination ... [is] a careful compilation of the time spent and reasonable hourly compensation of each attorney ... involved in the presentation of the case." (20 Cal.3d at p. 48, 141 Cal.Rptr. 315, 569 P.2d 1303.) In other words, " '[t]he starting point of every fee award ... must be a calculation of the attorney's services in terms of the time he has expended on the case. Anchoring the analysis to this concept is the only way of approaching the problem that can claim objectivity, a claim which is obviously vital to the prestige of the bar and the courts.' " (*Id.,* at p. 48, 141 Cal.Rptr. 315, 569 P.2d 1303, fn. 23, quoting from *City of Detroit v. Grinell Corp.* (2d Cir.1974) 495 F.2d 448, 470; accord, *Blum v. Stenson* (1984) 465 U.S. 886, 888, 104 S.Ct. 1541, 1543, 79 L.Ed.2d 891.)

[3] Defendants argue the instant award fails miserably in the foregoing respects. The trial court found the fee applicants had overvalued their time by 10 percent; defendants find no evidence in the record to support this finding and characterize it as fatally vague. It should be noted there is no authority for the proposition a statement of decision is *required* for an order on a motion for

attorney's fees. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1294, 240 Cal.Rptr. 872, 743 P.2d 932.) In any event, defendants' argument assumes the court's findings must spell out that which is apparent from any reasonable reading of the fee application and must be based squarely either on the supporting evidence or the defense evidence. This is too narrow a view of the matter.

The fee application clearly sets forth the hourly rates requested in 1984, 1985 and 1986 for each member of plaintiff's litigation staff. A statement the court finds those rates to be overvalued by 10 percent provides an unmistakable factual basis for determination of the appropriate rate; nothing is required of defendants but a simple calculation. Further, the court was entitled to rely on all the evidence at its disposal in reaching its factual determination.

Some of that evidence indeed supports a conclusion the requested rates are overvalued by 10 percent. It is apparent all requested hourly rates are tied to those of Mr. McFlynn, varying in proportion to the other attorneys' experience and length of practice, with law clerk and paralegal hourly rates set proportionately. Mr. McFlynn presented evidence of historical hourly rate awards for the years 1975 through 1986 which ranged from $90 to $170 per hour; this included awards for 1981 of $150, for 1982 of $160 and for 1983 of $170, as well ***679** as somewhat lesser awards. In its totality, this evidence provides sufficient support for a conclusion Mr. McFlynn had overvalued his time by 10 percent and should be awarded an hourly rate of $162 for 1984, $171 for 1985 and $180 for 1986. Since the other requested hourly rates were tied directly to those of Mr. McFlynn, the conclusion those rates were similarly overvalued follows logically. In sum, although there is other evidence from which the court could have reached contrary conclusions it was not obliged to do so, for that evidence involves noncontingent, largely defense, fees; there is a substantial evidentiary basis underlying the trial court's finding and nothing more is required.

[4] Defendants reserve the brunt of their attack for the court's adoption of the requested number of hours, asserting again there is no substantial evidence to support that finding. Defendants acquired all of the original time records applicable to the instant proceeding and took seven depositions. After expending that tremendous effort, they have presented to this court records which truly call into question only the following number of hours: for Mr. McFlynn, .1 hour; for Mr. Gephart, 2 hours at the most; for Mr. Mones, 3.6 hours; for Mr. Warboys, 1.35 hours; for Ms. Schauffer, .1 hour; for Mr. Soler, .2 hours at the most and for Ms. Yee, no particular number of hours. This amounts to a total of 9.35 hours, less than one percent of the total billable hours claimed.

Nonetheless, defendants consistently characterize many of the hours claimed as "reconstructions," *not* contemporaneously recorded hours. To be sure, "each attorney should maintain accurate records of work done and time spent in preparing each client's case. Lawyers who fail to keep accurate records ... may *lose* or *waste* up to 40 percent of their billable time. [Citation.]" (*Martino v. Denevi* (1986) 182 Cal.App.3d 553, 558, 227 Cal.Rptr. 354, emphasis added.) The loss or waste of billable time harms plaintiff's counsel, not defendants. In any event, to "reconstruct" is "to build up again mentally (as from available evidence)." (Webster's New Third Internat. Dict. (3d ed. 1981) p. 1897, col. 3.)

With the exception of the sprinkling of hours noted above, each and every amount of claimed time not appearing on original time records or added to those records after the fact was derived from the contemporaneously recorded original time records of another participant in the same activity and/or from contemporaneous telephone records. In most instances, those contemporaneous records were verified by reference to work product notes and other documents. That is *not* "reconstruction," but the use of contemporaneous records. Moreover, the total number of hours involved is insignificant; there is no evidence of any time of this nature in Mr. McFlynn's records and 1.2 hours in Mr. Gephart's. For Mr. Mones, whose records assertedly are the worst, the record reveals only 1 hour in verified time taken from the records of another. Mr. Warboys' claim shows 5.15 hours of such time; Ms. Schauffer, 2.9 hours and Mr. Soler, no more than .2 hours. In sum, the evidence before this court reveals a maximum of 8.95 hours of assertedly "reconstructed" time independently verified in other contemporaneous time records—less than one percent of the total billable hours claimed.

[5] Defendants also make much of evidence time was not recorded until the end of the same day or the following day in some instances. Contemporaneity, however, is a relative concept. In a perfect world, every legal staff member would record the time expended on a certain task exactly at the time the work was done; but we do not live in a perfect world and people often forget to record details until a somewhat later time. All the same, such recordations are *relatively* contemporaneous and not inherently untrustworthy. Moreover, as noted above, a decrease in contemporaneity is far more likely to harm plaintiff's counsel than to result in the billing of *excess* time. (*Martino v. Denevi, supra,* 182 Cal.App.3d at p. 558, 227 Cal.Rptr. 354.)

[6] Defendants further argue strenuously that the lack of starting and ending ***680** times for many of the entries or the "reconstructed" inclusion of those times automatically lessens the reliability of the hours claimed and mandates a reduction. They cite no authority for this proposition. While the use of starting and ending times enhances a determination of the accuracy of hours claimed, the lack

of them does not render original time records inherently untrustworthy. "In California, an attorney need not submit contemporaneous time records in order to recover attorney fees, although an attorney's failure to keep books of account and other records has been found to be the basis for disciplinary action. [Citation.] Testimony of an attorney as to the number of hours worked on a particular case is sufficient evidence to support an award of attorney fees, even in the absence of detailed time records. [Citations.]" (*Id.,* 182 Cal.App.3d at p. 559, 227 Cal.Rptr. 354; *Margolin v. Regional Planning Com.* (1982) 134 Cal.App.3d 999, 1006, 185 Cal.Rptr. 145.) Even if this court were to adopt the federal practice of mandating the submission of contemporaneous time records with all applications for attorney's fee awards (*Martino, supra,* 182 Cal.App.3d at p. 559, 227 Cal.Rptr. 354 and cases cited therein), it would not follow that records lacking starting and ending times must be rejected as inaccurate and inadequate.

"To enable the trial court to determine whether attorney fees should be awarded and in what amount, an attorney should present '(1) evidence, documentary and oral, of the services actually performed; and (2) expert opinion, by [the applicant] and other lawyers, as to what would be a reasonable fee for such services.' [Citations.]" (*Id.,* 182 Cal.App.3d at pp. 558–559, 227 Cal.Rptr. 354.) Plaintiff's counsel presented a wealth of such evidence. Thus, this is not a case in which the trial court was "in the position of simply guessing at the actual value of the ... services," an unacceptable practice which "cannot be the basis for an award of fees." (*Id.,* at p. 559, 227 Cal.Rptr. 354.)

Defendants also point to the declaration of John J. Costello regarding the "checks and balances" commonly maintained by law firms to ensure the accuracy of time records and the absence of such procedures at the PJF. The evidence unequivocally establishes both the YLC and the PJF are nonprofit foundations; no attorney or other staff member personally benefits from fee awards and no one's continued employment or advancement is dependent upon the number of billable hours recorded. Hence, it reasonably may be inferred that a number of the "checks and balances" employed by for-profit law firms would be unproductive at the instant institutions.

Moreover, secondary records are not, as claimed by defendants, wholly lacking. Such records as travel vouchers, mileage records and telephone records do exist and are available for inspection. In many instances, specific time claims were verified from work product files in the presence of defense counsel. Further, had carbon copies of the time sheets the YLC uses been available for inspection, it is unlikely they would have resolved many "suspicions" of the nature defense counsel harbor. As Messrs. Warboys and Soler explained repeatedly, entries may appear out of order for a variety of reasons: an attorney may make notations on other paper while out of the office and neglect to transfer the entries until later in the day or even the following day; a time sheet may disappear among the papers on an attorney's desk, prompting him or her to begin using a fresh one, and the several time sheets which thus can be in use simultaneously may have out of order entries spanning some time.

Nonetheless, defendants find the present level of accountability unacceptable; they propose a rule which would require attorneys seeking fee awards to produce auditable records. This would hold those attorneys to a higher standard of proof than is required for an ordinary business to establish a history of profit and loss. Profit and loss statements are an orthodox method of demonstrating a history supporting a damages award; even though the statements will not withstand a full audit, they may provide a reasonable method of objectifying the necessary data. (*Guntert v. City* ***681** *of Stockton* (1976) 55 Cal.App.3d 131, 146, 126 Cal.Rptr. 690; see, e.g., *Mayes v. Sturdy Northern Sales, Inc.* (1979) 91 Cal.App.3d 69, 85, 154 Cal.Rptr. 43.)

[7] To justify adoption of their proposed rule, defendants point to other "flaws" in the present record-keeping practices of plaintiff's counsel. They note "conflicts" between one attorney's original time records and those of another participating staff member, as well as "conflicts" between the claims submitted and the staff members' original records. Generally, those "conflicts" are of three kinds: (1) a difference in the date on which a task purportedly was performed, in most instances explainable as a mistranscription of the date to the typewritten summary (only once did the staff member, Mr. Mones, misrecord the date of an entry involving .5 hour; eight other instances clearly are mistranscriptions), (2) discrepancies in the time claimed by various staff participants in an activity and (3) discrepancies in the time recorded on original records and the time claimed in the fee application. "Conflicts" of the second sort almost invariably involve conferences or conference calls in which the assorted participants spent differing amounts of time depending on the subject of discussion or elected to exclude the time altogether from a calculation of their compensable hours, while "conflicts" of the third kind invariably reflect an exercise of billing judgment; in only two of the latter instances was time revised upward a total of 2.5 hours, rather than downward. There is nothing in the record before this court to suggest the existence of any other genuinely unexplained "conflict."

In addition, defendants note certain "alterations" in original time records; those, too, fail to evoke reasonable suspicion. Mr. Gephart made four minor changes to clarify entries, corrected one inadvertent omission of the nature of the activity and actively exercised billing judgment favorable to defendants in three instances. Ms. Schauffer exercised favorable billing judgment by altering

the time on the original in one instance; on two other occasions, penciled alterations do not appear to have been made by her and most likely reflect a secretary's notation.

[8] Defendants further point to blocks of billable time equalling or exceeding eight hours a day without any indication of breaks taken. It appears little purpose would be served in requiring attorneys to note each brief trip to the water cooler, coffee machine or restroom; more time would be spent in the recordations than on the activities themselves. Moreover, nowhere is it written that an attorney must *eat* lunch, let alone that he or she must leave the office or stop working to do so. In the instant matter, the uncontroverted evidence establishes it was not uncommon for these attorneys to work quite long days—as much as 15 or 16 hours; hence, claims equalling or exceeding eight hours a day are not inherently suspicious. It is equally uncontroverted Ms. Yee also worked in concentrated blocks of time, often extending well into overtime on evenings or nights.

Defendants also note with grave suspicion variations, or the lack thereof, in the color of ink used to make original time record entries. On the one hand, defendants find highly suspicious Mr. McFlynn's repeated use of many colors of ink on a single time sheet, in some cases changing color in mid-entry. They surmise this practice reasonably may be viewed as one consciously adopted to obscure any subsequent changes which may be made. It is noteworthy that there is no other evidence before this court with which defendants can mount any specific challenge to Mr. McFlynn's original records. On the other hand, defendants find equally suspicious Mr. Gephart's use of the *same* color of ink in making some entries later added to his originals, suggesting that practice also was adopted to obscure the presence of changes. Were one to adopt defendants' stance, *any* entry made in whatever color of ink would be sufficiently suspicious to cast aspersions on the integrity of original time records. In sum, defendants point to no reasonable justification for imposing any higher standard of proof than that presently in use for the determination of attorney's fee awards.

***682** Defendants further argue they presented unequivocal evidence Ms. Yee expended vastly inflated amounts of time in performing the data processing services she provided at grossly disproportionate rates. Ms. Yee's services should not be viewed solely as those of a data processor; she has considerable expertise and background in the area of juvenile justice which made her analysis of the products of discovery far more valuable than that of a mere data processor. In addition, there is uncontradicted evidence the computer available to her could not perform all the functions necessary to the compilation of relevant statistics, adding to her burden of work, and she in fact performed other paralegal services. Further, she was required to extract pertinent data from at least three times the volume of raw documents considered by defendants' data processing expert and thus could have spent at least *six* times (not two times) as long as he did in extracting and entering that data. Considering the totality of this evidence, it cannot be said the trial court was obliged to accept defendants' theory and either further discount the value of Ms. Yee's services or discount her hours.

Finally, defendants maintain they clearly established there was considerable overstaffing in the instant matter, particularly in view of the result obtained. They argue forcefully that the facts upon which that result depended were largely uncontroverted; those in dispute related solely to unsuccessful issues. Most of the facts presented to the trial court were indeed uncontroverted; however, defendants overlook the vast amount of discovery necessary to ascertain those facts. That alone justified a considerable expenditure of time. Defendants further argue plaintiff's counsel unnecessarily expended time on various motions; the record reflects the contrary. Defendants displayed great recalcitrance in complying with some discovery requests; in each instance, plaintiff prevailed after moving to compel responses. In contrast, when defendants made similar motions which plaintiff opposed, plaintiff again was almost universally successful. Defendants presented all the arguments and evidence they could muster on this point to the trial court, which rejected it. There is nothing in the instant record to compel the conclusion that rejection was unreasonable.

[9] It must be borne in mind that Judge Dowds not only tried the instant matter and considered the fee application, but heard and considered nearly every pretrial motion. He was acutely aware of the great volume of pleadings filed and hearings conducted in this matter, as well as the enormity of the products of discovery. He had first-hand knowledge of the issues presented, the number of appearances made and the speed with which this matter was prosecuted. He was entitled to rely on this knowledge. (*In re Marriage of Cueva* (1978) 86 Cal.App.3d 290, 301, 149 Cal.Rptr. 918; cf. *Maslow v. Maslow* (1953) 117 Cal.App.2d 237, 243–244, 255 P.2d 65; *Cummings v. Kendall,* (1940) 41 Cal.App.2d 549, 555, 107 P.2d 282.)

Moreover, plaintiff's counsel presented ample evidence the YLC staff had greater expertise in the specific areas being litigated than did the local PJF staff. Without the 202.4 hours those attorneys expended in assisting the litigation of this matter, it reasonably may be inferred Messrs. McFlynn and Gephart would have been obliged to expend far more than the 599.9 hours they did. This was a complex case of first impression. In sum, given the breadth of Judge Dowds' experience of the case and the evidence presented, there is nothing in the record which mandates the conclusion the expenditure of 762.2 attorney hours and 236 law clerk/paralegal hours, postadjustment, unreasonably represents overstaffing.

Viewing the totality of the evidence in the light most favorable to the trial court's findings, the conclusion is inescapable those findings are supported by substantial evidence. Accordingly, the court's determination was "based on a 'reasoned judgment' " (*Bullis v. Security Pac. Nat. Bank, supra,* 21 Cal.3d at p. 815, 148 Cal.Rptr. 22, 582 P.2d 109) and there was no abuse of discretion in determining the applicable hourly rates and the hours to be compensated.

***683 II**

Defendants assert the trial court abused its discretion in applying a multiplier of 1.5, in that recent decisions of the United States Supreme Court make the factors relied upon inapplicable. We agree in part.

As Division Five of this court noted recently in *Downey Cares v. Downey Community Development Com.* (1987) 196 Cal.App.3d 983, 242 Cal.Rptr. 272: "A long line of California Supreme Court cases interpreting the common law 'private attorney general' doctrine and Code of Civil Procedure section 1021.5 (providing for awards of attorney's fees in public interest cases [)] firmly establishes a method for calculating an appropriate award. [Citations.] Under these authorities a trial court must[, after determining the lodestar or touchstone as a starting point in its calculation, exercise its] discretion to increase or reduce the lodestar figure by applying a positive or negative 'multiplier' based upon numerous factors or circumstances. [Citations.] The trial court's exercise of discretion will not be disturbed unless the appellate court is convinced the award is clearly wrong, since the experienced trial judge can best determine the value of professional services rendered in that judge's court. [Citation.]" (At pp. 993–994, 242 Cal.Rptr. 272, fns. omitted.)

Serrano III, supra, 20 Cal.3d 25, 141 Cal.Rptr. 315, 569 P.2d 1303 enumerates a number of relevant factors to be considered: "(1) the novelty and difficulty of the questions involved, and the skill displayed in presenting them; (2) the extent to which the nature of the litigation precluded other employment by the attorneys; (3) the contingent nature of the fee award, both from the point of view of eventual victory on the merits and the point of view of establishing eligibility for an award; (4) the fact that an award against the state would ultimately fall upon the taxpayers; (5) the fact that the attorneys in question received public and charitable funding for the purpose of bringing law suits of the character here involved; (6) the fact that the monies awarded would inure not to the individual benefit of the attorneys involved but to the organizations by which they are employed; and (7) the fact that in the court's view the two law firms involved had approximately an equal share in the success in the litigation." (At. pp. 48–49, 141 Cal.Rptr. 315, 569 P.2d 1303, fn. omitted.)

In the instant matter, the trial court initially reduced the reasonable hourly rate compensable, found all hours claimed to be reasonably expended and then applied an upward multiplier of 1.5. In applying the multiplier, the court found it was justified, in that "the results obtained in this case represent a substantial victory for plaintiff, even though he did not accomplish all of his goals;" "this case was one of first impression in California and was highly contingent as well as vigorously defended and the risk of non-compensation due to lack of success was substantial" and "[there was a] delay in payment of more than two years since work commenced hereon." Defendants argue the first two factors no longer can be considered, in light of recent United States Supreme Court decisions, and there is no substantial evidence to support the final factor.

Blum v. Stenson, supra, 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 91 is the first United States Supreme Court case to suggest the inapplicability of many *Serrano III* factors to federal fee award statutes. After considering existing authority, *Blum* notes: "In view of our recognition that an enhanced award may be justified 'in some cases of exceptional success,' we cannot agree ... an 'upward adjustment' is never permissible. The statute requires a 'reasonable fee,' and there may be circumstances in which the basic standard ... results in a fee that is either unreasonably low or unreasonably high. When, however, the applicant for a fee has carried his burden of showing that the claimed rate and number of hours are reasonable, the resulting product is presumed to be the reasonable fee" to which counsel is entitled. (At p. 897, 104 S.Ct. at p. 1548.) *Blum* adds the further caveat: "acknowledgement of the 'results obtained' *generally* will be subsumed within other factors used to calculate ***684** a reasonable fee." (*Id.,* at p. 900, 104 S.Ct. at p. 1549, emphasis added.)

[10] In actuality, the latter conclusion accords with California authority. Where a plaintiff has not prevailed entirely, the trial court "must realistically assess the litigation and determine, from a practical perspective," the importance of the litigation. (*Woodland Hills Residents Assn., Inc. v. City Council* (1979) 23 Cal.3d 917, 938, 154 Cal.Rptr. 503, 593 P.2d 200.) Where a lawsuit consists of related claims, as did the instant matter, and the plaintiff has won substantial relief, a trial court has discretion to award all or substantially all of the plaintiff's fees even if the court did not adopt each contention raised. (*Folsom v. Butte County Assn. of Governments* (1982) 32 Cal.3d 668, 685, 186 Cal.Rptr. 589, 652 P.2d 437.)

[11] In this instance, plaintiff won substantial, though incomplete, relief; there is a reasonable basis from which

the trial court could have concluded the litigation was of great practical importance and thereby determined the fee should not be reduced due to the incomplete nature of the success. This, however, would be an instance when "acknowledgement of the 'results obtained' " has been "subsumed within other factors used to calculate [the base] reasonable fee." (*Blum v. Stenson, supra,* 465 U.S. at p. 900, 104 S.Ct. at p. 1549.) Unless the trial court had further articulable reasons for concluding the result achieved was of quite exceptional importance, the "substantial victory for plaintiff" factor could not also be used to adjust the award upward. Since the court did not articulate its conclusion in greater detail, this aspect of the matter must be remanded for further consideration.

Defendants also rely on *Pennsylvania v. Dela. Valley Cit. Council* (1986) 478 U.S. 546, 106 S.Ct. 3088, 92 L.Ed.2d 439 (*Pennsylvania I*), in which the court examined the rationale for the conclusion reached in *Blum*. "A strong presumption that the lodestar figure ... represents a 'reasonable' fee is wholly consistent with the rationale behind the usual fee-shifting statute.... These statutes were not designed as a form of economic relief to improve the financial lot of attorneys, nor were they intended to replicate exactly the fee an attorney could earn through a private fee arrangement with his client. Instead, the aim of such statutes was to enable private parties to obtain legal help in seeking redress for injuries resulting from the actual or threatened violation of specific federal laws." (at ——, 106 S.Ct. at 3098, 92 L.Ed.2d at pp. 456–457.)

Downey Cares v. Downey Community Development Com., supra, 196 Cal.App.3d 983, 242 Cal.Rptr. 272 rejected a request that it adopt this line of reasoning, noting these United States Supreme Court decisions "were interpretations of federal statutes, based in part on available legislative history of congressional intent, for which there is no California parallel. [Citation.]" (At p. 995, 242 Cal.Rptr. 272.) Defendants urge this court to reject *Downey Cares,* in that the opinion does not examine the United States Supreme Court cases in any substantive manner. It is clear, however, that *Downey Cares* has properly analyzed the rationale expounded in *Pennsylvania I.*

[12] Code of Civil Procedure section 1021.5 is grounded squarely upon the common law private-attorney-general theory, authorizing an award of fees "in any action which has resulted in the enforcement of an important right affecting the public interest." "The private-attorney-general theory rests on the policy of encouraging private actions to vindicate important rights affecting the public interest, without regard to private gain. [Citations.] A central function is 'to call public officials to account and to insist that they enforce the law....' [Citation.] Implicit is the recognition that 'without some mechanism authorizing the award of attorney fees, private actions to enforce ... important public policies will as a practical matter frequently be infeasible.' [Citation.]" (*Serrano v. Unruh* (1982) 32 Cal.3d 621, 632, 186 Cal.Rptr. 754, 652 P.2d 985, fn. omitted.) Hence, the purpose of attorney fee awards pursuant to Code of Civil Procedure section 1021.5 is broader than that of the federal statutes *Blum* and *Pennsylvania I* considered. ***685** Rather than simply broadening the availability of relief for private injuries, section 1021.5 is intended to actively promote private efforts to advance important public policies. Inasmuch as the statutes do not serve directly comparable purposes, it would be inappropriate to adopt the rationale supporting *Pennsylvania I.*

Defendants urge the importance of other language in *Serrano v. Unruh, supra.* The court went on to note, in "[f]raming the private-attorney-general theory in California, both this court and the Legislature relied on federal precedent. [Citation.] Yet even were that not the case the unanimity of the federal rule—reflecting as it does time-tested workability—would merit our deference." (At p. 634, 186 Cal.Rptr. 754, 652 P.2d 985.) That language refers specifically to federal precedent regarding a prevailing party's entitlement to fees incurred in litigating a fee claim. *Maria P. v. Riles, supra,* 43 Cal.3d 1281, 240 Cal.Rptr. 872, 743 P.2d 932 expresses a view more appropriate to the case at bar: "Since both this court and the Legislature have relied on federal cases in framing the private attorney general theory, we regard the federal precedent in this area as persuasive. [Citations.]" (At p. 1290, 240 Cal.Rptr. 872, 743 P.2d 932.) Insofar as federal precedent interprets that theory, it may prove persuasive—nothing more.

[13] *Pennsylvania I* further concludes, "when an attorney first accepts a case and agrees to represent the client, he obligates himself to perform to the best of his ability and to produce the best possible results commensurate with his skill and his client's interests.... In short, the lodestar figure includes most, if not all, of the relevant factors comprising a 'reasonable' attorney's fee, and it is unnecessary to enhance the fee for superior performance in order to serve the statutory purpose of enabling plaintiffs to secure legal assistance." (478 U.S. at p. ——, 106 S.Ct. at p. 3098, 92 L.Ed.2d at p. 457.) Accordingly, "the 'novelty [and] complexity of the issues,' 'the special skill and experience of counsel,' [and] the 'quality of representation,' ... are presumably fully reflected in the lodestar amount, and thus cannot serve as independent bases for increasing the basic fee award. [Citation.]" (at ——, 106 S.Ct. at p. 3098, 92 L.Ed.2d at p. 456.) The latter conclusion is reasonable and persuasive. The market value of an attorney's time will be reflected in his or her " 'special skill and experience' " and " 'quality of representation,' " while both the market value and the number of hours reasonably expended generally will subsume the " 'novelty [and] complexity of the issues.' " However, the trial court did not rely on those factors in the instant matter to adjust the award upward.

[14] In *Pennsylvania v. Dela. Valley Citizens' Council* (1987) 483 U.S. 711, 107 S.Ct. 3078, 97 L.Ed.2d 585 (*Pennsylvania II*), the United States Supreme Court considered the propriety of reliance on two additional factors to enhance a fee award. The court noted: "Under the typical fee-shifting statute, attorney's fees are awarded to a prevailing party.... [Citations.] Hence, if the case is lost, the loser is awarded no fee; and unless its attorney has an agreement with the client that the attorney will be paid, win or lose, the attorney will not be paid at all. In such cases, the attorney assumes a risk of nonpayment when he takes the case.... That risk is measured by the risk of losing rather than winning and depends on how unsettled the applicable law is with respect to the issues posed by the case and by how likely it is that the facts could be decided against the complainant. Looked at in this way, there are various factors that have little or no bearing on the question before us.

"First is the matter of delay. When plaintiffs' entitlement to attorney's fees depends on success, their lawyers are not paid until a favorable decision finally eventuates, which may be years later.... Meanwhile, their expenses of doing business continue and must be met. In setting fees for prevailing counsel, the courts have regularly recognized the delay factor, either by basing the award on current rates or by adjusting the fee based on historical rates to reflect its present value. [Citations.] Although delay and the risk of ***686** nonpayment are often mentioned in the same breath, adjusting for the former is a distinct issue that is not involved in this case. We do not suggest, however, that adjustments for delay are inconsistent with the typical [federal] fee-shifting statute." (at pp. ——— – ———, 107 S.Ct. at pp. 3081–82, 97 L.Ed.2d at pp. 591–592.)

The court continued: "Although the issue of compensating for assuming the risk of nonpayment was left open in *Blum v. Stenson* [, *supra,*] 465 U.S. 886, 104 S.Ct. 1541, 79 L.Ed.2d 891 ..., Justice Brennan wrote that 'the risk of not prevailing, and therefore the risk of not recovering attorney's fees is a proper basis on which a ... court may award an upward adjustment to an otherwise compensatory fee.' [Citation.] (Brennan, J. concurring.) Most Courts of Appeals are of a similar view and have allowed upward adjustment of fee awards because of the risk of loss factor." (*Pennsylvania II, supra,* 483 U.S. at p. ———, 107 S.Ct. at p. 3082, 97 L.Ed.2d at p. 592, fn. omitted.) This accords fully with prevailing California authority.

After further noting the above construction of fee award statutes is not universal in the federal courts, legal commentators differ in their views and there is confusion in the legislative history attending the various federal fee statutes, the *Pennsylvania II* court, by a plurality of four, adopted the view of the District of Columbia Circuit Court of Appeals and concluded "that enhancing fees for risk of loss forces losing defendants to compensate plaintiff's lawyers for not prevailing against defendants in other cases.... If risk multipliers or enhancements are viewed as no more than compensating attorneys for their willingness to take the risk of loss and of nonpayment, we are nevertheless not at all sure that Congress intended that fees be denied when a plaintiff loses, but authorized payment for assuming the risk of an uncompensated loss. Such enhancement also penalizes the defendants who have the strongest case; and in theory, at least, would authorize the highest fees in cases least likely to be won and hence encourage the bringing of more risky cases, especially by lawyers whose time is not fully occupied with other work. Because it is difficult ever to be completely sure that a case will be won, enhancing fees for the assumption of the risk of nonpayment would justify some degree of enhancement in almost every case." (*Id.,* at p. ———, 107 S.Ct. p. 3086, 97 L.Ed.2d at p. 597.) The court plurality thereupon held it is impermissible to enhance a fee award for the risk of losing. (*Id.,* at pp. ——— – ———, 107 S.Ct. at pp. 3086–87, 97 L.Ed.2d at pp. 597–598.)

An equal plurality of four (O'Connor, J., concurring in part and concurring in the judgment at pp. ——— – ———, 107 S.Ct. at pp. 3089–91, 97 L.Ed.2d at pp. 601–603; Brennan, Marshall and Stevens, Js., dissenting at pp. ——— – ———, 107 S.Ct. at pp. 3091–3102, 97 L.Ed.2d at pp. 604–617) concluded contingency *is* an appropriate factor for the enhancement of a fee award. As Justices Brennan, Marshall and Stevens noted: "In the private market, lawyers charge a premium when their entire fee is contingent on winning.... The premium added for contingency compensates for the *risk* of nonpayment if the suit does not succeed and for the *delay* in payment until the end of the litigation—factors not faced by a lawyer paid promptly as litigation progresses.... [Contingency cases] are inherently riskier and an attorney properly may expect greater compensation for their successful prosecution.... As courts have gained more experience with fee calculations, many have begun to utilize as a 'lodestar' the reasonable hours worked multiplied by a reasonable hourly rate. [Citations.] The lodestar, however, was designed to simplify, not to circumvent, application of the Johnson factors where appropriate. [Citation.] Thus, ... in order to arrive at a 'reasonable' attorney's fee, a court must incorporate a premium for the risk of non-recovery, for the delay in payment, and for any economic risks aggravated by the contingency of payment, at a level similar to the premium incorporated in market rates. The risk premium can be reflected in the hourly rate that goes into the lodestar calculation, or, if the hourly rate does not include consideration of risk, in an enhancement of the lodestar. [Citation.] ***687** ... An adjustment for contingency is necessary if statutory fees are to be competitive with the private market and if competent lawyers are to be

attracted in their private practice to prosecute statutory violations.... Significantly, the plurality's opinion would validate payment of public-interest lawyers at substantially less than what would be competitive with the private market. In Blum, however, this Court made clear that nonprofit legal-aid organizations should receive no less in fee awards than the hourly rate set by the private market for an attorney's services. [Citations.]" (at pp. ——— – ———, 107 S.Ct. at pp. 3092–96, 97 L.Ed.2d at pp. 604–609, diss. opn. of Brennan, Marshall and Stevens, Js., emphasis original.)

Since the California Supreme Court relied on the prevailing federal sentiment in reaching the conclusion contingency is a proper factor justifying an upward fee adjustment, the concurring and dissenting plurality view is more persuasive than the prevailing plurality view. It is based essentially on the same reasons advanced by the majority of federal courts of appeals and by California courts. Therefore, we conclude *Pennsylvania II* offers no persuasive basis for deviating from long-standing California precedent; it follows that an upward enhancement for contingency, including the delay in payment (accord, *Pennsylvania II, supra,* at p. ———, 107 S.Ct. at pp. 3081–82, 97 L.Ed.2d at p. 592), remains appropriate.

[15] It is unequivocally clear it was appropriate in the instant matter. Plaintiff's counsel presented evidence it is common practice for attorneys in the Los Angeles area to charge a premium for contingency and for delay in receipt of payment. As a matter of first impression, the instant case could not have involved areas of law more unsettled; there was a very substantial risk plaintiff would not prevail on any issue and that the facts would be determined adversely to a favorable result. (*Id.,* at p. ———, 107 S.Ct. at p. 3081, 97 L.Ed.2d at p. 591.) Further, it is undisputed payment was delayed more than two years (and continues to be delayed to this date).

Defendants' stance any "delay" must be attributed to plaintiff's counsel misses the point entirely. First, pre-filing delay is not necessarily avoidable; only a rash and indiscriminate attorney files an action without first investigating its probable basis and the applicable law. Second, the opposition of plaintiff's counsel to defendants' motion for an early trial date does not establish any delay must be laid at plaintiff's door; the motion was opposed because defendants had failed to cooperate in the completion of discovery as of that time. Finally and most importantly, the "delay" generally considered compensable is that which results from the contingent-fee nature of the case. (*Ibid.*) It follows, the trial court did not abuse its discretion in relying on the degree of risk and the delay in payment to justify an upward enhancement of the award.

In sum, the trial court was correct in applying an upward multiplier to compensate for contingency and delay in payment. However, it is unclear whether the trial court had specifically articulable reasons for concluding the results obtained were of such exceptional importance as to warrant not only full compensation for an incomplete success but also an upward adjustment in compensation. Hence, to the extent the multiplier of 1.5 is based on the latter factor, its propriety must be reconsidered.

[16] The judgment is reversed insofar as the application of a 1.5 upward multiplier is based on the excellence of the result obtained and the matter is remanded for reconsideration of whether the result obtained is so exceptional as to justify an upward adjustment and to what extent the 1.5 multiplier is based on consideration of this factor. In all other respects, the judgment is affirmed. As the prevailing party on appeal, plaintiff also is entitled to an award of attorney's fees for the appeal consistent with the views set forth above (*Maria P. v. Riles, supra,* 43 Cal.3d at p. 1296, 240 Cal.Rptr. 872, 743 P.2d 932; *Serrano v. Unruh, supra,* 32 Cal.3d at pp. 637–639, 186 Cal.Rptr. 754, 652 P.2d 985), including consideration of whether the further ***688** delay in payment justifies the application of a further upward multiplier. Plaintiff to recover costs on appeal.

L. THAXTON HANSON and DEVICH, JJ., concur.