

Dan Lungren shakes up Justice

By Sigrid Bathen

"The attorney general touches the lives of Californians probably more than any other state office — with the possible exception of the governor. . . and I'm not even sure the governor should be excepted."

— Attorney General Evelle Younger

"A smart A.G. could practically take over the state from a dumb governor — if he had a mind to."

— Attorney General Robert W. Kenny



Photo by Rich Pedroncelli

Dan Lungren does not merely walk into a room. As Jim Robinson, recently hired communications director for the California attorney general, puts it, his boss "bounds" into a room. The description is apt.

Robinson — longtime speech writer and public affairs director for reserved, low-key former Governor George Deukmejian — says the contrast between the two men (both of whom, he hastens to add, he holds in high esteem) is sometimes striking. Others say the contrast between Lungren and his immediate predecessor as attorney general — reserved, low-key, liberal Democrat John Van de Kamp — is also striking, in style as well as philosophy.

Employees in the sprawling, 3800-employee state Department of Justice that Lungren oversees are sometimes startled to see the new attorney general "bound" into their offices, just to say hello and shoot the breeze. Recently, Lungren dropped in at a small (eight employees) state forensics lab in Santa Barbara. "I don't know when they last saw an A.G.," Robinson mused.

"I've held meetings all over the state," said Lungren, "and it's as much good for me as for my employees, because they give me an idea of what's really important."

In Congress, where he served five terms (1979-89), the Long Beach Republican was

Sigrid Bathen is a longtime Sacramento journalist who teaches journalism at California State University, Sacramento, and American River College. A Sacramento Bee reporter for 13 years, she was press secretary to Attorney General John Van de Kamp from 1983-87 and has covered legal issues, including the attorney general's office, for California Lawyer, the American Lawyer Newspapers Group, and other publications.

known as a formidable, sometimes unpredictable, legislative combatant. He would prepare for the day's battles with a karate workout in the House gymnasium. One of Lungren's karate partners, another member of Congress, described Lungren's karate style: "They call him 'the bull' because he just attacks." (See *CJ*, August 1984.)

The son of the personal physician to former President Richard Nixon, the 45-year-old Lungren has been in or around politics for most of his life. In 1988, while serving his fifth term in Congress, he resigned from the House after being tapped by Governor Deukmejian to serve as state treasurer following the death of Jesse Unruh. Lungren lost a bruising partisan battle for legislative confirmation in part because the Democratic-dominated Legislature thought he would be too political and in part because they were afraid he would be an attractive candidate for still higher office. The experience may have helped galvanize Lungren's political determination, and he decided to run for attorney general the following year, winning an extremely close 1990 race — only after the absentee ballots were fully counted — against San Francisco District Attorney Arlo Smith.



Lungren

Running on a platform that was staunchly conservative, strongly pro-law enforcement and intensely anti-crime, Lungren took over one of the most important — and most politically high-profile — agencies in state government at a time of severe budgetary cutbacks. He has approached the job with typical Lungren verve, aggressively promoting key state and federal crime-control programs and rearranging the office — changes some critics say were done clumsily and tactlessly.

Lungren's first year as attorney general has not been without significant internal turmoil, some of it spilling into the press in a series of articles describing controversial personnel moves and a decision-making process that critics — mostly other lawyers in the attorney general's office — say sometimes excludes necessary expertise within the office.

As is his style, Lungren, who writes most of his own speeches, does not apologize for his methods, which include holding private meetings on cases being handled in the office without the line attorney on the case present.

"I don't think people understand that the attorney general is elected to carry out the functions of this job," said Lungren. "The people who work here are to assist the attorney general ... I am in many ways a hands-on attorney general, and I don't feel inadequate to do that job."

The internal wrangle over Lungren's administrative style has been most apparent in the dispute over the departure of Marian Johnston, a nationally recognized civil rights lawyer who joined the attorney general's office nearly 14 years ago during the administration of Republican Evelle Younger and who headed the civil rights division when Lungren arrived.

When Lungren was sworn in last year, Johnston said, she approached her work with the new administration in the same way she had always viewed her responsibilities as a state lawyer with a particular set of skills: "This is a civil service office with people who care about the office and want to do the best job possible, whatever the political party of the attorney general."

But just seven months into Lungren's term, Johnston was

demoted, ostensibly because she privately criticized the new attorney general — an assertion Johnston adamantly denies. Lungren critics, though, believe he replaced Johnston as part of an effort to promote lawyers more philosophically in tune with his conservative politics. Lungren, they say, is so right-wing that there is little room for dissent, or even lawyerly disagreements. Johnston resigned in October to work for a Sacramento law firm.

Although other controversial personnel moves have been made by the Lungren administration, Johnston's demotion — and the stated reasons for it — generated a flurry of protests and news coverage, including newspaper editorials sharply critical of the attorney general. A major factor in the criticism is the esteem in which Johnston is held in the legal community as a nationally acclaimed expert on civil rights issues. A 1970 Stanford graduate, Johnston received her law degree from Columbia University in 1974, worked for California Rural Legal Assistance from 1974 to 1976, and for the state Department of Fair Employment and Housing from 1977 to 1978.

The dispute about Johnston's removal centers around Lungren's abandonment of a longstanding policy of having the deputy handling a case present when decisions about the case are made. Traditionally and ethically, Johnston and others say, the deputy attorney general on a case should always be involved in discussions of the case, primarily to add his or her expertise but also to avoid any appearance of legal decisions being made for reasons other than the merits.

But Lungren met without Johnston while considering what to do about a possible lawsuit to require the federal government to use revised figures for the 1990 census. The revised figures might have given the state still another congressional seat, but most of the purported undercount was in big cities where Democrats would stand to gain. The administration of Republican President George Bush was against the revision.

Lungren said he understood the issues well and did not need Johnston to be present while he decided what to do. When Johnston learned of Lungren's actions, which were announced in a press conference, she fired off a hot note to the attorney general.

Ironically, Lungren's decision to pursue the case followed Johnston recommendation.

When the dispute hit the newspapers, differences escalated, leading to Johnston's demotion (which cost her nothing in terms of salary or benefits) and her eventual decision to leave the office.

Lungren himself clearly dislikes discussing the Johnston matter, becoming visibly angry when details of her demotion are raised. "What we did was appropriate under the circumstances," he said tersely.

Concerning the census case, Lungren said: "I had to make a decision as to whether we were going to maintain the census case, and I did. It happened to be a particularly politically sensitive issue, and I think I understand politics as well as anybody. I reviewed the matter at some length, and I made my preliminary decision in my own mind, but I still wanted to retain the ability to change my mind. So I mulled

it over. I told my close executive staff here that I would hold a press conference the next day ... I wanted to make this decision myself. I wanted to put the spin on it, because there is always a spin put on it, and I'm tired of reading in the newspapers what we are doing or about to do or had done, when we hadn't done anything yet."

Lungren said it was only after Johnston told some of his ranking deputies "that she didn't trust anybody" in his executive staff and that the decision had been made based on political motives that he decided to demote her.

"If someone doesn't trust my motivations or motives and someone says they can't trust anybody on executive staff, it hardly suggests that is someone you want in a position of decision-making authority," Lungren said, adding, "I didn't find it strange under those circumstances to make the decision that I did."

Johnston said she leaves state service with decidedly mixed feelings. On one hand, she liked her work. On the other hand, she said, the attorney general's office "has become so politicized. People find it very difficult to do their work ... There is a tremendous fear factor, and a very real fear that we are not going to be able to continue as a responsible group of attorneys, handling cases to the best of our abilities."

She blamed her demotion — and ultimate resignation — on politics. "I don't know of any other possible explanation," she said. "In the census case, I was recommending very strongly that the case continue, but I was not included in the discussions, and I was not told when he [Lungren] reached the decision. I was removed from the case when I was the most experienced person."

Critics of the year-old Lungren administration say the treatment of Johnston focuses in sharp relief disaffection with the attorney general among some rank-and-file staffers in the state Department of Justice, and among some lawyers who work with the agency. Lungren supporters counter that the office is undergoing the usual organizational upheaval of a new administration, complicated by Draconian state budget cutbacks that have left the department with hundreds of vacancies.

One particularly visible protest occurred in September when some 60 to 100 lawyers protesting Lungren's record on civil rights, environmental and death penalty issues — as well as Johnston's demotion — staged a walkout during the attorney general's speech to the annual conference of the state Bar of California in Anaheim. Led by California Women Lawyers, according to news accounts, protesters were joined by delegates from Asian and gay-rights legal groups.

Clearly stung by the walkout, which Lungren said Johnston joined when she was still a member of the attorney general's office, Lungren defends his record on environmental, consumer, antitrust and civil rights issues. And in recent months, he appears to have stepped up his public visibility on these issues — even holding a press conference with the Environmental Defense Fund in November to announce that he was filing suit against manufacturers of ceramic tableware for failing to notify consumers of high lead levels in some products.

While adopting a strong pro-business stance in many areas, Lungren insists environmental and business interests need not be in opposition, and he is concerned that some state laws and policies are unnecessarily creating an anti-business climate in California.

"This state has inexorably moved toward a position where it is viewed as anti-business, and that hurts the people of this state," Lungren said. "We have the highest unemployment that we've had in probably a decade. ... I am extremely concerned about an anti-business perception — and in some cases an anti-business bias — in California, and I am doing everything I can to ensure that this attorney general will strongly and vigorously enforce the law, but in an even-handed fashion."

"When we take on a consumer-protection case or a Proposition 65 [the state toxics initiative] case, I have told my deputies that I want to be in a position that when we are analyzing the damage done as defined in the applicable statutes that we don't lean toward a deep-pocket dart board to pick our targets. ... We try to convey that we will go after people and go after them hard, but we will not take undue advantage of the position of the state."

"Part of that comes out of my philosophy: I'm a conservative and I believe in limited government. I see the almighty power of the state, and when the state's powers are weighed against the individual, whether it's a person or a company or an association or a school, that can be awesome, and that can influence people to settle cases that are beyond the merits. I think we have an obligation to, as we pursue the interest of the state, to also attempt to take a step back and say what is the best public interest, what is the greater public good that we're trying to achieve?"

But many employees, who spoke with reporters on the condition they not be identified, complained Lungren had no

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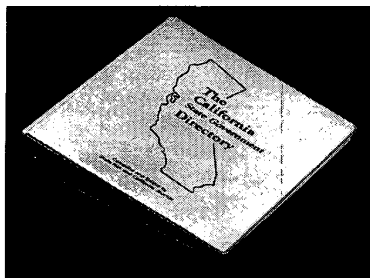
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coherent legislative program, made personnel and policy decisions based on ultra-conservative political ideology and alienated many employees early in his administration by summarily transferring several longtime criminal division lawyers and insisting that all criminal division attorneys handle death penalty cases if they wanted promotions.

"If this early perception — of a very politically driven, partisan office — plays out through the rest of the administration, then it will have a demoralizing impact on the office," said one former Justice Department attorney. "It will undermine their credibility as the chief law officer for the state, their impartiality and the quasi-judicial role which the A.G.'s office plays in many areas."

Chief Deputy Attorney General David Stirling, a former state legislator and Superior Court judge, has said in interviews that the changes were necessary to focus shrinking budgetary resources on key programs and were not made for arbitrary political purposes.

Beyond the Johnston case, which has been the most widely reported personnel controversy, critics cite other examples of arbitrary or uninformed decision-making by the Lungren administration:

- Early in his administration, the new attorney general was criticized for his decision to require all criminal division attorneys assigned to writs, trials and appeals to handle death penalty cases — a decision that longtime agency lawyers say is a major departure from the policies of past administrations, Democratic as well as Republican.

"For years, people were not required to do death penalty cases if they had moral, religious or ethical objections to the death penalty," said one former lawyer in the office. "Most handle death penalty cases, but there have always been a few who were hired with the understanding that they wouldn't have to, although they were given other heavy, major cases to handle so that the workload evened out."

The percentage of such cases in the division is believed to be somewhere between 6 percent and 15 percent. No one disputes the fact that such cases are notoriously complex and time-consuming. "If some people don't do that work, it leaves it to others to do it, which creates more stress on them," Stirling said in an interview for an August article in *California Lawyer*.

Because the policy is tied to promotional opportunities within the criminal division, some lawyers in the office are troubled by its arbitrariness and fearful that the policy might deter some qualified lawyers from working there and punish those who have been on the job for years. "It seems needlessly rigid and doctrinaire," said an attorney in the office. "For people who have worked in the department for years, it's really repugnant. I think people would understand if there were a problem, but there isn't."

"I think an A.G. has a right to set policy like this," said another deputy, who has worked in the criminal division for more than a decade and does not handle death penalty cases for reasons of conscience. "I don't agree with this particular policy because I think we have some very good deputies who would make very good supervisors who would not be promoted for this reason."

- Six months into the Lungren administration, legislative consultants and other lawyers familiar with the attorney general's crucial role in the legislative process complained that Lungren had virtually no legislative presence and no coherent legislative program. One top legislative consultant,

a lawyer who has worked with the attorney general's office for many years, told *California Lawyer* that the office had "disappeared on the civil agenda." On the criminal side, that lawyer said, "They have brushed off a few old proposals, but they're just old wine in new bottles."

Lungren responds that, in part, his profile in California may seem lower because he is concentrating his efforts at changes in federal law that he believes could speed up the processing of the state's death penalty cases.

Stirling adds that the attorney general's legislative program is intentionally limited because it is specific and focused. "Having been a member of Congress, the attorney general personally wants to review all legislation that this department initiates," he said. He cited measures streamlining the death penalty and *habeas corpus* reform as central to the legislative program.

Lungren expresses concern, and some annoyance, that he is rarely asked by reporters about crime and his response to it, which he says is the core of his legislative program at the state and federal level.

"I ran on the idea that law enforcement is the number one priority of the attorney general's office," he said, "and we've tried to make good on that." He cites an aggressive legislative approach on anti-crime measures in the Legislature and in Congress, as well as strong efforts to hold the line on budget cutbacks in the attorney general's Division of Law Enforcement, which comprises a majority of the agency's staff and resources.

"When I walked into this office, we were 93 people short in the section of DLE that responds to requests for approval for purchase of weapons," Lungren said. "One person was delayed 49 days under the provisions for a 15-day check. ... We're trying to build that section back up."

Lungren is extremely vocal on federal anti-crime legislation and just before Thanksgiving unleashed a blast at provisions of a federal crime bill that were adopted by a conference committee on November 24th. Lungren urged President Bush to veto the measure, saying it would be "a major retreat from law enforcement's efforts to do something about violent crime." He said the measure would extend death penalty appeals.

• In August, Lungren eliminated the office's highly specialized organized crime and white-collar crime units — the Special Prosecutions Unit and the Major Fraud Unit — and transferred the lawyers assigned to those units, which have investigated and successfully prosecuted several notorious cases, to the criminal appeals section, which among other things defends state imposition of the death penalty in capital cases.

The Special Prosecutions Unit was organized in 1979 by then-Attorney General Deukmejian, and the Major Fraud Unit in 1984 by Van de Kamp, who decried its elimination as "a very sad development, given [its] history of aggressive prosecution."

George Williamson, head of Lungren's criminal division, said in one news account that the changes will "give the office more flexibility ... we're getting more bang for our buck."

But one high-ranking lawyer familiar with the fraud unit, who asked not to be identified, said the reorganization will mean a less coherent approach to difficult cases. "These cases take an awful lot of time and resources," that lawyer said. "By being insulated from the mainstream, [the unit]

could take on major cases."

Lungren himself said he would have preferred not to eliminate SPU and Major Fraud, but was forced to make difficult cost-cutting decisions because of state budget cutbacks.

"I would not have folded SPU and Major Fraud if we'd gotten the budget we asked for," he said in November. "That does not mean we would not have made that programmatic change down the line, because we were going to look seriously at it, but I will guarantee you it would not have been done this year."

• In October, the *Los Angeles Times* reported that some three months earlier, Lungren met privately — without the state lawyer assigned to the case, Deputy Attorney General Patricia Barbosa — with representatives of the Hollywood Chamber of Commerce to "renegotiate" a tentative settlement of complaints that the chamber had failed to properly maintain the landmark HOLLYWOOD sign and the Walk of Fame. The chamber was to maintain the landmarks with money received from royalties and usage fees. The Lungren meeting was arranged by Johnny Grant, a chamber board member and celebrity announcer who often emcees Republican Party campaign events and is a longtime friend and political ally of the attorney general.

The settlement reached with the chamber required that the business group relinquish control of the two landmarks — which bring an average of \$100,000 a year in revenue to the chamber in royalties and usage fees — and pay the state \$220,000 restitution. The tentative settlement was reached

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early last summer following a lengthy investigation of the chamber's finances.

According to the *Times*, soon after the meeting with Lungren, the attorney general's office "decided not to force the chamber to accept the deal or face charges in court as it had threatened." Lungren staff told the *Times* the meeting was a "get-acquainted" session, although interviews and documents examined by the newspaper "show that the chamber officials not only discussed the case personally with Lungren, but also took the opportunity to seek a better settlement." The *Times* also reported that there was no evidence Lungren "acted specifically to help the chamber" after the meeting, and Grant insisted "no deal was made."

Nonetheless, Lungren's involvement in the matter has generated criticism from present and former state Justice Department lawyers and from city officials in Los Angeles, who hoped to assume control of the sign and funds for its upkeep as part of the proposed settlement.

The attorney general's office originally alleged that the chamber misappropriated as much as \$595,000 in roy-

alty payments and usage fees from souvenir manufacturers and other firms that use the two landmarks for films and ads. Instead of placing the money in a trust fund for maintenance of the landmarks, state investigators said, the chamber used the money for its own operating expenses and failed to maintain the sign and walkway.

In a surprise move on November 4th, the attorney general's office did go to court, filing a \$700,000 lawsuit against the chamber. The deputy attorney general filing the case was James Schwartz, and Lungren declined at the time to discuss with reporters the sudden decision to file suit, or whether criticism of the private meeting was a factor.

Lungren said that chamber representatives "didn't present a specific proposal *per se*" at his meeting with them. "They ... were there for the purpose of sharing and describing to me how they as the new members of the board felt that the old members were responsible for the improper activity that had taken place.

"What they presented to me was that if we go forward on these terms, the chamber would be bankrupt. I had to

then ask myself [whether] our purpose is to bankrupt the Hollywood Chamber of Commerce, or is it to establish that improper conduct took place with respect to the trust involved, to try and get recompense but to allow those payments to be made in a way that allows the chamber to continue?"

After the meeting — which Lungren insists is a perfectly appropriate function for the attorney general — he said he immediately informed Rod Walston, chief assistant attorney general in charge of the public rights division. Lungren said he asked Walston "to check into it and keep these things in mind, that's all." Lungren said delays ensued, and "finally we told [chamber officials] that if we can't get this resolved by a certain date, we'll have to file suit and take negotiations from there."

Lungren said his background in Congress as well as his private law practice honed his negotiating skills, which he says he uses in private as well as public venues. He has no compunction about meeting with individuals, like Hollywood chamber officials, who seek access to the state's top lawyer. (For five years before being elected to Congress,

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Lungren was with the Southern California law firm of Ball, Hunt, Hart, Brown and Baerwitz, which includes among its partners former Democratic Governor Pat Brown, and was a partner in the Sacramento law firm of Diepenbrock, Wulff, Plant and Hannegan before becoming attorney general in 1990.)

"I happen to have practiced law in the private sector, and now I'm in the public sector," he said. "I've tried cases. I've settled cases. I've had cases on appeal. I've gone to juries. I've gone to judges. I think I have a pretty good idea of how to try cases and how to evaluate them. And, just as when I was in the private sector it wasn't always appropriate or always necessary that the senior partner have another partner or an associate in attendance. I make that decision on an individual basis. I have no fear of meeting people. I'm not afraid, or have a lack of confidence that I won't understand the issues."

And, he says, if he does decide to meet privately without the principal deputy on a case present, he is fully briefed before these meetings take place. "And I always have another attorney with me ... usually someone in the chain of command, the head of the section or the division or Stirling."

Nonetheless, Lungren was harshly criticized for his dealings with the chamber, and the matter was reportedly raised during a closed-door staff meeting with lawyers in the attorney general's Los Angeles office in August.

The chamber investigation began during the administration of Van de Kamp, who said he avoided Grant's efforts to discuss the case at a social function because, "You don't want to give a sign to the outside world that people can circumvent the chain of command," he told the *Times*.

In addition, to doubts generated by some of his own lawyers, Lungren has had early difficulties dealing with the Sacramento press corps, particularly the part of it that concentrates on legal affairs. The problems come as something of a surprise to Lungren. Although he has always been somewhat combative, reporters generally have found his outspokenness made for good copy. Still, Lungren staffers complain they have trouble getting the press to concentrate on what they believe is their boss' real agenda.

"Why don't reporters ask more questions about crime?" asked

Robinson, his new communications and public affairs director, who is credited in some quarters with a sudden, marked improvement in Lungren's rocky press relations.

Although Robinson refuses to take credit, Lungren's media presence has increased significantly in recent months, including the page-one press conference on lead in ceramic tableware. Shortly after that press conference, which prompted harsh criticism from the tableware industry, Lungren was again in the news with a report on the high cost of using private counsel to litigate state concerns, followed a few days later by a major announcement on procedures to be used to implement the new assault-weapons legislation.

Apparently convinced, perhaps by Robinson, to pursue a less combative stance with reporters, Lungren nonetheless makes for a tough interview. He is a man of firm views, well-informed and supported by sometimes staggering detail.

Although staunchly conservative in fairly predictable ways, Lungren has sometimes startled opponents with unexpected departures from conservative ideology. In Congress in 1983 he reversed his longtime opposition to the bill marking the birthday of Dr. Martin Luther King Jr., saying that he had become "so hung up on the question of cost that I lost sight of the question of what this occasion symbolizes." Backers of the bill credited Lungren with bringing other conservatives in behind

the measure.


A 1984 *Journal* profile of the young congressman noted other unexpected nuances of the Lungren persona: A non-drinker in a town where "power lunching" is a kind of religion, he preferred to eat in his office—a brown-bag lunch packed by his wife, Barbara, while she packed the school lunches of their three children.

The first attorney general in recent memory to be based in Sacramento, he is fiercely protective of time with his family, who live in suburban Roseville. Asked about his family, the tough-guy image that Lungren projects, perhaps unwittingly, markedly softens. There is an edge of bitterness, too, when he talks about the unremitting demands on the time of elected officials, whether they be in Washington, D.C., or in Sacramento.

"One thing that used to upset me the most in Congress, probably more than any other thing, was the lack of responsiveness to the needs of families," he says grimly.

Lungren said he and his wife decided long ago that family came first. "My wife and I were lucky in that when I was in law school [at Georgetown University, in Washington, D.C.], she worked at the White House and I worked on the Senate side. We were able to see problems that existed with some people in politics with their families. We were forewarned. We made a very strong decision when we went back to Washington that family wasn't going to come second." ■

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