CASE SUMMARY

McClure v. City of Long Beach et al.

Date: August 6, 2004[1]. (Jury verdict returned Wednesday, August 4, 2004)

Parties: **Plaintiffs:** Shirley McClure and Jason McClure
Defendants: City of Long Beach, former City Council members, and former City Planning Director

Case No.: CV 92-02776-E

Judge: Hon. Charles F. Eick, Federal District Court Judge

Court: U. S. District Court, Central District of California (Los Angeles)

Plaintiffs' Attorney: Genie E. Harrison, Esq. and Litt & Associates, Los Angeles

Defendants' Attorney: Richard Robert Terzian, Esq[2]., Bannan, Green, Frank & Terzian, Los Angeles, and Bob Shannon, City Attorney, Long Beach

Jury Verdict: Shirley McClure - $20 million; Jason McClure - $2.5 million; (Largest award ever returned against the City of Long Beach; Jury deliberated more than four months before returning verdict.)

Case Summary: Civil rights and Fair Housing Act claims by plaintiffs against defendants City of Long Beach and various city officials for using building department to cite plaintiffs for building conditions not previously or subsequently considered violations in order to stop the conversion of six residential homes for the care of Alzheimer's victims in affluent neighborhoods of Long Beach.

Jury Findings / Comments: "An irrational prejudice against persons with Alzheimer's disease." Jury Forewoman Jeanette Sunder: "The city wasn't consistent because of the building violations. They didn't prosecute anybody else. We felt that they weren't consistent and that they did single her out."

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[1] Reported in the Associated Press; The Recorder, Friday, August 6, 2004.

[2] Dick Terzian has over 40 years of legal experience specializing in the representation of public agencies and counseling mayors, city councils, police departments, school boards, and city attorneys. Since graduating from Dartmouth College and University of Southern California Law School, Dick has tried over a hundred cases and has nearly 40 published appellate decisions to his credit. (www.SuperLawyers.com)

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Date: 8/5/04

Case Style: Shirley McClure and Jason McClure v. City of Long Beach

Case Number: 2:92-cv-02776-E

Judge: Charles F. Eick

Court: United States District Court for the Central District of California

Plaintiff's Attorney:

Genie E. Harrison, Law Offices of Genie Harrison, Los Angeles, Californai, Delia Ibarra, Barrett S. Litt and Robert M. Kitson of Litt and Associates, Los Angeles, California

Defendant's Attorney:

Robert Terzian and Kristin A Pelletier of Bannan Green Frank & Terzian, Los Angeles, California and City Attorney Bob Shannon, Long Beach, California

Description: Fair Housing Act and other civil rights claims by Shirley and Jason McClure agains the City of Long Beach and various city officials for thwarting their efforts to build homes for Alzheimer's patients.

Outcome: Shirley McClure was awarded $20 million; Jason McClure was awarded $2.5 million.

Plaintiff's Experts: Unknown

Defendant's Experts: Unknown

Comments: None

In Brief

Jury awards $22.5M in building case

LOS ANGELES — A federal jury awarded $22.5 million to a woman and her son who sued Long Beach for refusing to let them build homes for Alzheimer's patients more than a decade ago.

It was the largest award ever returned against the city of Long Beach.

After more than four months of deliberations, jurors found Wednesday that the city, two former City Council members and former planning director had "an irrational prejudice against persons with Alzheimer's disease" and they had violated the Fair Housing Act and the constitutional rights of the plaintiffs.

Shirley McClure tried in 1990 to convert six homes into residential homes for Alzheimer's patients, but neighbors complained that it was an illegal commercial venture. Much of the remodeling work also lacked permits. The city halted the work and filed criminal charges against McClure for city code violations. The charges later were dropped. McClure eventually abandoned the project and declared bankruptcy. She sued in 1992.

"The city wasn't consistent because of the building violations," jury foreswoman Jeanette Sunder said. "They didn't prosecute anybody else. We felt that they weren't consistent and that they did single her out."

Shirley McClure was awarded $20 million and her son, Jason, was awarded $2.5 million.

— The Associated Press

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Long Beach Lawsuit

City News Service
August 4, 2004

LexisNexis®

LOS ANGELES

A federal jury awarded $22.5 million today to a Long Beach woman who claimed city officials conspired to stop her from opening a number of Alzheimer's treatment centers in residential areas. Shirley McClure sued the city of Long Beach for housing discrimination in 1992, about two years after she was forced to stop the work on the properties in the wake of neighbors' complaints and citations for violating building and safety codes.

She acknowledged that much of the work was not legally permitted, but claimed the neighbors were unfairly influencing officials. She claimed those officials violated the federal Fair Housing Act. The trial in U.S. Magistrate Judge Charles Eick's Los Angeles courtroom lasted nearly seven months, and the jury deliberated off and on for nearly five months. According to reports in the Long Beach Press-Telegram, the trial was the longest and most expensive in the city's history, with lawyers' fees totaling more than $3 million before the jury went out in late March. The paper reported that city officials have argued they merely enforced building codes for the six homes she was remodeling in the Bixby Knolls and California Heights neighborhoods. Richard Terzian, an outside attorney who represented the city of Long Beach in the case, said the defense is considering whether to appeal.

LBReport.com

In Depth

$22.5 Million Jury Verdict Against LB City Hall in *McClure v. City of LB*; Next Moves Pending

(August 4, 2004, updated with verdict details) -- Following eleven months of trial and five months of deliberations, a Los Angeles federal court jury has returned a $22.5 million verdict against the City of Long Beach, two former LB Councilmembers and a former senior member of LB City Hall management.

The civil verdict came in the case of *McClure v. City of Long Beach, et al.*...in which Shirley and Jason McClure filed suit against LB City Hall, now-former Councilmembers Ray Grabinski and Jeff Kellogg, and now-retired City Hall Planning and Building Chief Eugene Zeller, alleging violations of federal laws in the nature of discrimination related to plaintiffs' efforts to open Alzheimers' homes in LB.

We post the substance of the jury's verdict below.

Plaintiff Shirley McClure is the mother-in-law of now-former Councilman Rob Webb.

LB City Attorney Bob Shannon said he was "disappointed in the verdict," adding "as far as I'm concerned, it was clearly against the weight of the evidence." Mr. Shannon said any further comment would wait until he'd had a chance to speak with his client -- the Long Beach City Council. A closed session with Councilmembers will be scheduled for Tuesday August 10 to discuss the matter, Mr. Shannon said.

LB City Hall is reportedly insured for amounts, if any, ultimately found due in excess of $12 million in this case.

In terms of generally applicable procedures, various post trial motions can be made following civil jury verdicts of this nature.

The case was tried on behalf of the city by outside counsel and has spanned several years. LB has incurred attorney fees to date of slightly under $4 million.

Further to follow as newsworthy. Check back with this page. Click "reload" or "refresh" on your browser for updated text.

[update]

Substance of the jury's civil verdict

On claims brought by Shirley McClure:

- In favor of Ms. McClure against the City of Long Beach for violation of section 3604(f) of the Fair Housing Act.

- In favor of Ms. McClure against the City of Long Beach for violation of section 3617 of the Fair Housing Act.

- In favor of Ms. McClure against Jeffrey Kellogg re [federal civil rights statute] section 1983 claim that Mr. Kellogg, while acting under color of law, violated Ms. McClure's right to Equal Protection under the U.S. Constitution.

- Found that Mr. Kellogg, while acting under color of law, violated Ms. McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Ms. McClure differently from others similarly situated out of malice.

- Found that Mr. Kellogg, while acting under color of law, violated Ms. McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Ms. McClure differently from others similarly situated because of an irrational prejudice against persons with Alzheimer's disease.

- Found that Mr. Kellogg, while acting under color of United States Consitution intentionally treated Ms. McClure differently from others similarly situated in a way that was plainly arbitrary.

- In favor of Ms. McClure against Ray Grabinski re [federal civil rights statute] section 1983 claim that Mr. Grabinski, while acting under color of law, violated Ms. McClure's right to Equal Protection under the U.S. Constitution.

- Found that Mr. Grabinski, while acting under color of law, violated Ms. McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Ms. McClure differently from others similarly situated out of malice.

- Found that Mr. Grabinski, while acting under color of law, violated Ms.

McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Ms. McClure differently from others similarly situated because of an irrational prejudice against persons with Alzheimer's disease.

- Found that Mr. Grabinski, while acting under color of the United States Consitution intentionally treated Ms. McClure differently from others similarly situated in a way that was plainly arbitrary.

- In favor of Ms. McClure against Eugene Zeller re [federal civil rights statute] section 1983 claim that Mr. Zeller, while acting under color of law, violated Ms. McClure's right to Equal Protection under the U.S. Constitution.

- Found that Mr. Zeller, while acting under color of law, violated Ms. McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Ms. McClure differently from others similarly situated out of malice.

- Found that Mr. Zeller, while acting under color of law, violated Ms. McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Ms. McClure differently from others similarly situated because of an irrational prejudice against persons with Alzheimer's disease.

- Found that Mr. Zeller, while acting under color of United States Consitution intentionally treated Ms. McClure differently from others similarly situated in a way that was plainly arbitrary.

> Sum of money awarded as compensatory or nominal damages in favor of Shirley McClure: $20 million

On claims brought by Jason McClure:

- In favor of Mr. McClure against the City of Long Beach for violation of section 3604(f) of the Fair Housing Act.

- In favor of Mr. McClure against the City of Long Beach for violation of section 3617 of the Fair Housing Act.

- In favor of Mr. McClure against Jeffrey Kellogg re [federal civil rights statute] section 1983 claim that Mr. Kellogg, while acting under color of law, violated Mr. McClure's right to Equal Protection under the U.S. Constitution.

- Found that Mr. Kellogg, while acting under color of law, violated Mr. McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Mr. McClure differently from others similarly situated out of malice.

- Found that Mr. Kellogg, while acting under color of law, violated Mr.

McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Mr. McClure differently from others similarly situated because of an irrational prejudice against persons with Alzheimer's disease.

- Found that Mr. Kellogg, while acting under color of United States Consitution intentionally treated Mr. McClure differently from others similarly situated in a way that was plainly arbitrary.

- In favor of Mr. McClure against Ray Grabinski re [federal civil rights statute] section 1983 claim that Mr. Grabinski, while acting under color of law, violated Mr. McClure's right to Equal Protection under the U.S. Constitution.

- Found that Mr. Grabinski, while acting under color of law, violated Mr. McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Mr. McClure differently from others similarly situated out of malice.

- Found that Mr. Grabinski, while acting under color of law, violated Mr. McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Mr. McClure differently from others similarly situated because of an irrational prejudice against persons with Alzheimer's disease.

- Found that Mr. Grabinski, while acting under color of the United States Consitution intentionally treated Mr. McClure differently from others similarly situated in a way that was plainly arbitrary.

- In favor of Mr. McClure against Eugene Zeller re [federal civil rights statute] section 1983 claim that Mr. Zeller, while acting under color of law, violated Mr. McClure's right to Equal Protection under the U.S. Constitution.

- Found that Mr. Zeller, while acting under color of law, violated Mr. McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Mr. McClure differently from others similarly situated out of malice.

- Found that Mr. Zeller, while acting under color of law, violated Mr. McClure's right to Equal Protection under the U.S. Constitution, intentionally treated Mr. McClure differently from others similarly situated because of an irrational prejudice against persons with Alzheimer's disease.

- Found that Mr. Zeller, while acting under color of United States Consitution intentionally treated Mr. McClure differently from others similarly situated in a way that was plainly arbitrary.

Sum of money awarded as compensatory or nominal damages in favor of Jason McClure: $2.5 million

SPECIAL REPORT: The McClure Trial

Judging the Jury

by Wendy Thomas Russell of the Long Beach Press-Telegram

Introduction

Daniel Poston quit jury duty on a Tuesday morning.

The Whittier postal carrier rode his motorcycle to downtown Los Angeles — just as he had done every weekday for nine months. He stepped through the familiar set of stately double doors at the U.S. District Court, took an elevator to the fifth floor and entered the small, empty jury room that had become his second home.

He walked to the dry-erase board and picked up a marker from the ledge below. Then he scrawled the words that would end his jury service: "We should change the name of this court to United States Dairy Court," he recalls writing, "because you guys are milking this thing to death."

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Shirley and Jason McClure vs. the city of Long Beach was an unusual case long before the jury arrived.

The 1992 lawsuit accused city officials of violating the U.S. Fair Housing Act by conspiring to prevent Shirley McClure and her son Jason from opening a chain of residential homes for Alzheimer's patients in upscale Long Beach neighborhoods.

The case took 11 years to get to trial and six months to get through testimony.But it was the length of jury deliberations — four and a half months — that made the McClure case stand out on the state's legal landscape. It was also the reason that Poston ultimately accused his fellow jurors of milking the system.

"For deliberations to last that long," said trial consultant and psychologist Lara Giese, of Los Angeles-based TrialGraphix, "it's really unheard of."

And costly.

The U.S. District Court incurred almost $120,000 in juror costs during the trial, according to court officials. It shelled out some $80,000 in juror pay, nearly $33,000 in mileage reimbursements and almost $6,400 for jurors' lunches — many of them at restaurants on historic Olvera Street.

That the jury managed to reach a verdict is almost as extraordinary as the length of deliberations, analysts said. Jurors awarded McClure $20 million in damages and her son $2.5 million — a city record.

"The longer (a jury is) out, the higher the chance of a hung jury," said Richard Gabriel, co-founder of Decision Analysis, a trial consulting firm in Los Angeles.This was no ordinary jury.

During their deliberations, jurors in the McClure case often chatted, slept, read and joked around instead of talking about the evidence, according to several jurors interviewed by the Press-Telegram. They frequently started deliberations late and ended early. And to give themselves a "mental break," one juror said he orchestrated a phony sick call to court so he and a few others on the panel could attend a horse race.

In addition, several in the group drank alcohol with their lunches during the testimony portion of the trial. Later, when the court footed the lunch bills, some occasionally ordered more than they could eat and took the rest home. And three jurors became so chummy they took weekend vacations together.

Whether the McClure jury did anything that would justify a reversal of judgment will be up to the courts to decide. The cash-strapped city of Long Beach, which stands to lose upward of $30 million if the verdict stands, has hired jury consultants to look into possible "juror misconduct," City Attorney Robert Shannon said. And to help thwart such an allegation, the McClures have asked jurors to sign declarations stating that they followed the law to reach their verdict.

Several legal experts said most of the jurors' behavior falls outside the realm of misconduct but indicated that, at best, some of the actions walked the line between unorthodox and improper. A few questioned the amount of freedom the court gave to jurors, wondering whether months could have been shaved from deliberations had jurors been monitored more closely.

U.S. Magistrate Judge Charles F. Eick, who presided over the case, declined to comment because motions related to the case are still pending in his courtroom.

"It seems like most of the delays were not due to the necessities of deliberations," said Laurie Levenson, a professor at Loyola Law School in Los Angeles, "but due to the desire to have, sort of, juror camp."

Three jurors have disputed that conclusion.

Steven Ortiz, a 52-year-old Albertsons truck driver and Vietnam veteran from Pico Rivera; Zoraida Joa, a 37-year-old medical transcriber and elder-care giver from La Puente; and Ashley Scott, a 21-year-old college student from Altadena, said they were dedicated, thoughtful and fair in their quest to reach a verdict.

They candidly acknowledged that they were easily side-tracked and often socialized inside and outside of the jury room. But they said everything happened in the context of a serious civic duty and, in large part, because of that duty.

They served on the trial for 209 days, they pointed out, and applied their own set of standards only as a way to cope with a difficult task.

"It's just like being incarcerated," Ortiz said. "That gets kind of tiring after 11 months."

No one anticipated it would last that long.

The trial

Jury selection began on Sept. 2, 2003, the day after Labor Day and exactly 38 weeks before Daniel Poston lost his temper and quit the jury.

There were 25 people in the jury pool, each of them pre-selected for their financial ability to serve on what was expected to be a 10-week trial. Many were retirees or government workers whose salaries were fully covered by their employers during long trials.

Judge Eick — then a 49-year-old, 15-year veteran of the Central District bench — introduced himself to jurors and explained a few things about federal court.

He told them that civil verdicts require unanimous votes by a jury, but that each jury can consist of anywhere between six to 12 jurors. That means that up to six people can be dismissed from a 12-person panel without a mistrial.

"You may have heard of the concept of alternate jurors," Eick told the panel. "There is no such thing as an alternate juror in a federal civil trial such as this one."

After Eick asked a series of questions designed to weed out bias, prospective jurors described their occupations, marital statuses and jury experiences.

Although the profiles were clinical, a few people managed to offer personal details about themselves.

Francisco Acosta, a Glendale postal carrier with a wife and two teenage children, told the judge he had lived in the Philippines before moving to California.

"I took four years of biological sciences in the Philippines, and (now) I'm delivering mail here," he said. "I love it."

Jeanette Sunder of Norwalk said she was a plant manager for the Los Angeles Unified School District, and her husband owned a liquor store.

We"have three adult children — 36, 34, 26 — and they're like rubber bands," she told the judge. "They come back home. But for right now, it's just me and my husband."

Sunder added that it had been less than a year since her last jury summons and that she was unsure why she was called again so soon.

"Just lucky, I guess," Judge Eick joked.

"I guess," Sunder said.

Little leeway

Some of the prospective jurors were obviously unwanted by one side or the other, but each legal team had only three peremptory challenges — requests to dismiss a prospective juror without having to state a reason. After a brief break, attorneys made their choices and handed the list to the judge. The McClures' legal team, led by Barrett Litt, excused a Social Security Administration worker, a civil engineer and a retired sheriff's sergeant. The city, represented by the Los Angeles law firm of Bannan, Green, Frank & Terzian, excused a traffic-school clerk, a home health-care worker and a flight attendant hesitant about her ability to be impartial.

The judge identified the first 12 people remaining on the list.

Acosta, Joa, Ortiz, Poston, Scott and Sunder made the cut.

So did Yoshiko Kato, a part-time gift wrapper from Gardena; John Supple, a retired U.S. Department of Defense supplies worker from Palmdale; David Martinez, a railroad machinist from La Verne; and Marian Lim, a California Department of Health Services nurse from Lakewood.

Rounding out the group was Mia Anelli, a children's party hostess, and Young Ra Kang, a Korean-born chemist. Their service was short-lived, however. Kang was let go the first day because of a work conflict, and Anelli was dismissed within the first month because of several absences. That left 10 jurors to decide the case.

Reflecting back on this selection process, attorneys on both sides said they were struck by how little they knew about each juror's views. Because of federal-court rules, they weren't allowed to submit written questionnaires to the prospective panelists or directly question them.

As a result, when attorneys looked into the jury box at the opening of the McClure trial, they didn't know who was looking back.

"We were flying very blind," plaintiffs' attorney Litt said.

City conspiracy?

The attorneys weren't the only ones entering unfamiliar territory.

Much like during the orientation at a new job, jurors spent the first weeks of trial familiarizing themselves with the courtroom, the case and one another.

From the outset, the trial's subject matter was heavy, often laborious.

Shirley McClure, the owner of a car-leasing firm, claimed city officials had intentionally sabotaged her plan to open six homes for Alzheimer's patients in Bixby Knolls and California Heights.

A Long Beach resident, McClure started the venture in honor of her father, who had been diagnosed with the disease.

She began refurbishing the properties in about 1990. But when neighborhood residents got wind of her plan, they lobbied city officials to stop the project, claiming such a business would be inappropriate and unsafe in their areas.

Shirley McClure claimed in her lawsuit that then-Councilmen Jeff Kellogg and Ray Grabinski and former Planning Director Eugene Zeller caved under pressure from residents and set out to prevent the business from opening. As a result, she claimed, the city cited her for numerous building and safety code violations. (Many other city officials were named in the initial suit but later dismissed.)

McClure acknowledged that she had not obtained the proper permits for much of the construction work at the sites, but argued that the city's efforts far surpassed the normal levels of code enforcement. For six days in the summer of 1990, for instance, two inspectors were assigned to monitor McClure's homes virtually full-time, she alleged. Fire and police officials also dedicated resources to the case, and criminal charges were filed and then dropped against McClure and her son, a participant in the venture.

"If you're trying to get a problem solved, you approach it one way," attorney Litt said. "If you're trying to shut someone down, you approach it another way."

4,000 exhibits

McClure claimed the city's wrongdoing resulted in her bankruptcy, loss of potential income and a series of debilitating health problems. In addition, she claimed, the city did not hold the subsequent owners of her properties to the same code standards — a clear indication that she was singled out.

In 1994, the lawsuit became too complex for the city to handle in-house, and city attorneys contracted an outside firm to take over. Represented by attorneys Richard Terzian, Kristin Pelletier and Russell Petti, the city said McClure was disingenuous and more interested in money than in patients. They argued that she had no experience in elder care, hired ex-felons to work for her and ignored a number of Department of Social Services requirements for such facilities, in addition to shrugging off numerous city ordinances.

"Because there were so many different projects, and we were getting so many different complaints, it was a unique experience," Pelletier said. McClure"was treated differently because we had to."

The case generated reams of paperwork.

Attorneys on both sides subpoenaed some 200 people and produced more than 4,000 exhibits, including photographs, transcripts, property reports, memos, letters, receipts, bank statements, medical records and business documents. In addition, Litt prepared more than 500 charts and graphics to highlight key evidence.

One by one, witnesses began to take the stand.

Friendships emerge

As the case unfolded, jurors grew accustomed to sitting in one position for hours at a time and hearing the legal jargon thrown around in the courtroom. Jurors also endured the drudgery of daily commutes.

Supple, the retired federal worker, rode the train every day from his home in Palmdale — a 60-mile rail trek that awed his newfound associates.

Staying focused on the case for so long was the hardest part, jurors said. Boredom was a frequent companion. Nearly every juror fell asleep during the trial at some point — some more often than others.

But when they weren't in trial, jurors found ways to stay engaged with one another. They talked about the Dodgers and the war in Iraq. They organized potlucks. They found common ground: Ortiz, the truck driver, and Martinez, the railroad worker, took cigarette breaks together. Poston and Acosta discussed their mail routes.

Friendships were forged over lunches and 15-minute breaks.

Scott, the college student, said she befriended Martinez early on. The two were assigned seats next to each other in the courtroom, and Scott said Martinez told jokes and drew funny pictures to make her smile.

The personalities behind the faces in the jury box began to reveal themselves. Kato liked to keep things in order, some jurors said, earning her the nickname"Momma." Scott was"the princess' because of her youth and good looks. Martinez, "the comedian."

"I guess by the third week or so, we had a sense of family already," said Joa, the medical transcriber who became known as"Z," short for her first name. "It just happened."

Jurors quickly learned to look out for one another. If panelists nodded off to sleep, others would nudge them or hand over pieces of gum or candy. Poston kept a container of Life Savers and other sweets beside his chair and sometimes passed them around.

The bonding was evident to attorneys and court personnel, too.

On Halloween 2003, for example, Ortiz suggested the jury wear orange and black — a coordinated effort that some lawyers interpreted as a message. "We speculated that it was a reference to"The Runaway Jury," Litt said, citing a movie based on a John Grisham novel in which one juror manipulates the decisions of other jurors.

Ortiz said it wasn't; he just wanted to lighten the mood.

The mood would receive a lot of lightening over the coming months.

Lunchtime libations

In early November 2003, Judge Eick called panelists into the courtroom and told them that the trial was taking longer than anticipated. Nine weeks had passed, and the plaintiffs were not through with their side of the case.

Some attorneys were nervous about how jurors would react. Boredom was still an obvious problem, with jurors sometimes struggling to keep their eyes open. (Martinez and Scott even once tried caffeine pills to stay awake in the jury box; it didn't work.)

The news"didn't seem to bother anybody," defense attorney Petti recalled.

In fact, some jurors were enjoying their new friends.

A group of them regularly ate lunch together at Colima Restaurant, a Mexican place on Cesar Chavez Avenue and Broadway, just blocks from the courthouse. At this point in the trial — during the testimony phase — jurors paid for their own meals and chose where to eat.

Poston said some jurors drank beer and other alcoholic drinks with these lunches — a practice that does not constitute juror misconduct, according to professor Levenson.

"As long as the juror is not intoxicated, drinking is not prohibited," Levenson said, citing several court cases dealing with the issue.

A photograph taken at Colima Restaurant during a lunchtime Christmas celebration in December depicts all 10 jurors posing around a table and toasting the picture-taker.

The jurors look comfortable, content. Joa has her hand on Martinez's shoulder. And three jurors — Acosta, Martinez and Ortiz — are holding beers in their hands. Poston said that three jurors held wine margaritas.

After the lunchtime party, Poston said, all 10 went back to court for the afternoon session.

Roaming Nevada

By mid-winter 2003 — three months into the trial — friendships had become cliques.The strongest involved Scott, Martinez and Sunder.

The three shared a sense of humor, Scott said. They began to spend more time with one another outside the courtroom and took several road trips together as friends.

In December, the trio went to Stateline, Nev., for a weekend to celebrate Scott's 21st birthday. Later, they revisited Nevada together and also spent time in Baja California.

That level of familiarity among jurors is rare, experts said. "I would start to be suspicious as to whether or not these people are really taking this seriously," said Jeffrey Frederick, director of jury research services for the National Legal Research Group in Virginia.

But as long as jurors do not discuss the case during social activities, he said, such activities are allowed. To a certain extent, he added, close relationships among jurors are a natural byproduct of long trials.

"These people are sharing a significant event in their lives," Frederick said. "They've been with each other for so long that often times they do develop these kinds of connections."As the cliques grew stronger, so did tension.

Jurors learned each other's foibles. Gossip became commonplace. They sometimes took their frustrations out on one another and bickered about little things — such as who ate someone else's snack or how high to set the air conditioner.

Even before deliberations began, arguments often ended in swearing, prompting someone to suggest a"curse cup' to encourage cleaner language. Jurors would toss in a coin or two for each swear word used.

"We just couldn't keep our mouths shut," Joa said. "Some days we talk as if nothing happened, and we all get along. Then the following week, somebody will push somebody's button."

Overcoming hardships

Still, jurors displayed what experts would consider an unusual, sometimes surprising, level of dedication to the jury.

Scott, for instance, took the fall semester off from Rio Hondo College in Whittier, where she was studying biochemistry, to serve on the trial.

Joa passed up a job as an elder-care giver and kept her jury service a secret from her Cuban-born parents, who were somewhat leery of the legal system.

Poston was involved in a motorcycle accident on a San Gabriel River (605) Freeway interchange on his way to court one day, and showed up for the trial anyway. (The judge later sent him to the hospital and sent the jury home for the day.)

And, most surprising of all, Kato continued to serve after her husband died in February.Jurors knew Kato's husband had been ill with diabetes, but his death was unexpected. Just a few days after his funeral, Kato returned to the panel.

"We were so far in there," Kato told the Press-Telegram after the trial. "You couldn't (leave)."

Ortiz, one of two jurors to attend the funeral, said the trial helped Kato keep her mind off her grief.

Plus, he said, "She felt that this was a really important case."

The deliberations

After the last witness had stepped off the stand and attorneys delivered their closing arguments, jurors began their deliberations.

That was March 23, the 117th day of trial.

For more than six months, jurors had heard how attorneys viewed the McClure case. Now, it was time for the attorneys to listen to them.

Lawyers on both sides anticipated a short deliberation period. Most civil trials — even long ones — require only a few days of deliberations, analysts said. Those that go on more than a week usually suggest a deadlock.

Counsel assumed that the McClure jury was tired of coming to court.

As the McClures' lead attorney, Litt stayed close to the courthouse the first few days. Two of the city's attorneys, Terzian and Pelletier, tried waiting in the hallways for a verdict.

"That didn't last long," Pelletier recalled. After the first week, attorneys went back to their offices and stayed by their phones. Litt said he advised his colleagues and clients to"get into as Zen a state as possible' and try not to think about the case.

"Once it's in the hands of the jury," he said, "all you can do is wait."

Jurors said they were overwhelmed.

Along with an oblong table, a refrigerator and a microwave, the jury room held some 30 binders filled with documents and photographs associated the case, a computer, several DVDs and poster boards used to display evidence.

There were 28 questions on the verdict form, all requiring a unanimous vote by the jury. The questions teemed with legalese.

Four questions dealt with specific sections of the U.S. Fair Housing Act. The rest asked whether City Councilmen Kellogg and Grabinski and Planning Director Zeller had violated Shirley and Jason McClure's constitutional right to equal protection by intentionally treating them differently from others "out of malice," and because of"an irrational prejudice against people with Alzheimer's," and in a way that was"plainly arbitrary."

If the jury found the officials liable, it would have to determine the damages.

After the majority of the jury picked Sunder as the forewoman, the group took an initial vote to see where everybody stood. Jurors recalled that some of them sided with McClure; others sided with the city. A few were undecided.

It was clear, Sunder told the group, they had a lot of work to do.

"We didn't really know where to start," Joa said. "We didn't know how to get from A to B."

Rough start

A note to the judge, penned three days into deliberations, was the first indication that talks had become heated.

The first two notes had been benign — one asking for equipment, the other for depositions of Grabinski and Kellogg, documents that had not been presented during the trial and that jurors had not been allowed to view. The latter request was denied.

The third note came at 3 p.m. on the third day — March 25.

"We need a cool-down period," the note read. "We are bumping heads, and we need to cool off. We need to leave early."

It was a Friday, and the judge let them go.

After that, according to courtroom records, leaving early became common.

Deliberations during the first nine weeks were interrupted or cut short about 60 percent of the time. Out of 41 scheduled days, 19 were shortened and nine were canceled due to illnesses, emergencies and appointments, court records show.

On May 3, the jury met for only 45 minutes.

While the court withheld jury pay when deliberations were canceled, each juror was paid the standard $40 for each full or partial day, officials said. They got their paychecks once a week, although some jurors — including both postal carriers — had to turn the checks over to their employers.

Procedural issues, such as interpreting the language on the verdict form, also slowed the process.

"We were stuck on the definition of"arbitrary' and"intentional," Scott recalled.

On April 2, Joa tried to bring a dictionary into the jury room — a potentially serious mistake because jurors are explicitly instructed to rely solely on the evidence presented during the trial to make their decisions. Because she was caught at the door and instructed to leave the book behind, Joa's accidental misstep didn't rise to the level of misconduct. But jurors wondered whether it would.

"When Z brought the dictionary," Scott said, "we thought it was going to be a mistrial."The jury's voting method was also time-consuming.

Scott said votes by a show of hands were ruled out after jurors realized that some panelists might influence how others voted. Sunder would call for a vote, and everyone would write"yes' or"no' on a piece of paper, Scott said. Then someone would count the votes and announce the results. This method was used many times during the four and a half months.

The jury must have gone through"a million pieces of paper," Scott said.

'Mental breaks'

Even when the McClure jury was in court the entire day, the routine always included a certain amount of socializing.

Regularly, they would show up to the jury room at 8:30 a.m. — often with coffee and pastries — and spend a half-hour or longer eating breakfast and chatting, jurors said. Deliberations would begin in earnest between 9 and 9:30 a.m. Still, people would easily get sidetracked and often end up on topics outside the case.

Jurors had a name for the socializing:"mental breaks."

Some jurors slept and joked around during their breaks.

Martinez, for instance, used some of the poster boards to set up a"sleeping area' in the jury room. And someone drew a

bull's eye on the back of a poster board and threw pens at it for fun.

With so much tension in the jury room, they said, mental breaks were a necessity.

"It felt like we were wasting time, but we were really not," Joa said.

Each day, panelists got to know the evidence a little more intimately. Even now, Joa rattles off names of city inspectors and expert witnesses as though they were personal acquaintances.

Sometimes jurors would get away from the group discussions by going through evidence binders on their own, or watching one of several DVDs made from videotapes, or reading through their own notes taken during the trial.

Joa estimates that the group watched part of a pivotal July 1990 Long Beach City Council meeting 30 times, and another video involving a confrontation between McClure and Councilman Grabinski 50 times. Both videos, she said, ran about 10 minutes apiece.

Jurors said these methods helped them learn the case and form their opinions.

Courthouse abuzz

As weeks stretched into months, the federal court buzzed with talk about the case.The word"McClure' evoked incredulous grins, rolled eyes, even sneers from some court employees. During a conversation with Long Beach city attorneys in another federal courtroom, one court reporter called the trial"a laughingstock."

Lawyers in the case were hard-pressed to explain the delay.

"I've never seen anything like this," Mike Mais, a deputy city attorney monitoring the case from Long Beach, said at the time.

Whether Judge Eick was disturbed by the jury's pace or the courthouse chatter is unknown. He declined to comment, citing pending motions related to the case.

But two months into deliberations, attorneys for McClure and the city agreed for the first time in years: Something should be said to the jury.

On May 20, attorneys for the city penned a motion suggesting that Judge Eick read the following statement to jurors:

"Without telling me how you stand, numerically or otherwise, I would like an indication as to whether you feel you are making progress in your deliberations. Do you believe you are progressing in your deliberations and will be able to reach a verdict?"

McClure's attorney responded to the motion by suggesting an even stronger statement.

"Ladies and gentlemen of the jury," Litt's statement began, "I have asked you to come in to discuss with you some concerns that I have with regard to the pace of deliberations in this case."

The statement ended by asking jurors to estimate"how many more days (they) would need to reach a verdict."

Judge Eick denied both motions.

Possible deadlock?

Attorneys on both sides said they understood Eick's reasons for wanting the panel to come to its own conclusions in its own time, but they worried that the trial eventually would end in a hung jury.

Behind closed doors, however, the jury wasn't close to a deadlock.

Jurors interviewed said they were convinced that a hung jury would have been insulting to everyone involved — including them. Instead, they talked about the importance of reaching a verdict, the effort that had gone into the case so far, and how they owed it to both sides to make a decision.

The questions were getting answered, jurors said, albeit at a sometimes tedious pace.

Everyone on the panel eventually decided, for instance, that Kellogg and Grabinski had treated McClure differently than other residents arbitrarily and out of malice. Joa said most jurors believed the councilmen didn't tell the whole truth on the witness stand and should have tried in earnest to help McClure start her business back in 1990.

They were split on whether Zeller should pay the consequences for what they viewed as the actions of his employees, however. And they hadn't agreed on whether any of the three officials had acted with a prejudice against people with Alzheimer's disease.

Despite the tension, nine of 10 jurors believed the questions could be answered eventually and were willing to stick it out.

The one dissenter was Poston.

'Dairy Court'

Long considered a bit eccentric by his fellow jurors, Poston was known for occasional outbursts. He took playful teasing personally, some said, and, by his own admission, often had his feelings hurt. Once, he said, he put $10 into the"curse cup' and released a litany of profanity-laced insults aimed at no one in particular.

On the morning of May 25, jurors strolled into the jury room with their coffee and pastries and were shocked to find Poston's hand-written"United States Dairy Court' message on the dry-erase board.

Poston stayed quiet at first, Ortiz recalled, and some jurors speculated it was a message from"the outside," possibly from the cleaning crew.

But when Kato got up to tell a bailiff about the incident, Poston rose and erased the board. After a spat with jurors, he walked out and told court officials he didn't want to serve anymore.

Judge Eick called a special hearing.

Attorneys hoped the disgruntled juror would illuminate what was going on in the jury room, but those involved said Eick asked Poston only one question: Could he continue to deliberate?

Poston, who was practiced in answering yes-or-no questions after nine weeks in the jury room, said he answered with a firm"no." He was immediately dismissed, over Litt's objection.

Poston wasn't the only one who wanted out.

On May 27, two days after Poston's departure, Lim — the Lakewood nurse — sent a note to the judge asking to be excused.

Forewoman Sunder"doesn't want to start on time — instead chitchatting about other subjects and not on the subject of deliberation," Lim wrote, adding that people were sleeping and reading newspapers and that tension had led to"profanity and yelling."

Eick didn't excuse Lim, but her note prompted McClure's attorneys to file yet another motion.

"Plaintiffs strongly urge the court to make a firm statement about the jurors' legal obligation to use the time they are together to deliberate and act as fact finders on this case," the motion read.

Eick declined to grant the motion, opting instead to call a hearing.On May 28, a Friday, he directed panelists into the jury box and asked them to focus their thoughts on the case and try to reach a verdict.

"It is not uncommon for there to be some friction and frustration during your deliberations," he told them. "We need you to continue with your work, preferably without further interruption ... You may take your time, but do not waste your time."

Judge Eick's patience that day was understandable, professor Levenson said.

"You have to be really careful," she said. "You don't want to send a message that would coerce the jurors."

Still, she added, judges have latitude in dealing with excessively long deliberations — such as requiring that jurors work into the evenings.

"I've seen judges tell jurors to put the pedal to the metal," she said. "There are things they can do to get the jurors focused and moving."

'Coercive statement'

Eick's meeting with jurors did little to assuage the attorneys' curiosity.

On June 7, Litt tried another tactic. With the aid of National Jury Project consultant Karen Jo Koonan, he suggested the judge tell jurors "how other juries sometimes approach their deliberations."

Defense attorneys opposed the statement, calling it "coercive and improper." But they did suggest, as they had three weeks earlier, that the judge ask jurors whether they were making progress.

"We both agreed that something ought to be said to the jury, but we never agreed on what that was," Terzian said. "And, in the end, the judge didn't say anything."

About a week after the judge denied her request to be excused, Lim wrote a lengthier letter to the court.

At a hearing held June 8, Eick returned the letter, unread, to Lim. As Pelletier recalled, Eick told the juror that "frustration is not good cause for dismissal." The judge didn't read the letter because it might have revealed the contents of deliberations, she said.

Horseplay

In late May, troubled by all the absenteeism, Eick altered the schedule to give jurors Friday afternoons off to schedule their appointment and meetings.

The alteration had an immediate effect.

In June, the jurors shortened or canceled deliberations on five of 21 scheduled days, a dramatic improvement over the month before. And in July, they shortened or missed only three days.

The constant schedule, jurors said, made occasional "mental breaks" all the more crucial.

As an example, Ortiz said he called in sick one day so that several in the group could attend a horse race at Hollywood Park, a race track in Inglewood.

"It was a break in the monotony," he said.

It also may have been a break in prudence.

"Lying to the court in any form is improper," Professor Levenson said.

The trip to the racetrack was kept quiet. And after Lim's letter, the jury operated in relative solitude. Few formal questions or requests were sent to the court. And, according to public records, no one asked to be dismissed.

Free lunches

In June, Supple was excused from the jury to take a long-scheduled vacation, about the time some attorneys started to hear smatterings about the court-funded lunches.

During deliberations, the jury had been instructed to eat lunch together at one of several restaurants in downtown Los Angeles. The list of restaurants, Joa said, included courthouse cafeterias and cafes, a Domino's Pizza, a Subway, a Chinese restaurant and two Mexican restaurants on Olvera Street.

Unlike state court, where jurors are responsible for their own meals, the federal court paid for these lunches. Also, court officials said, a bailiff accompanied the jury to prevent outsiders from speaking to jurors and to ensure that segments of the group did not deliberate without the others. Having an official with them, Poston said, also deterred jurors from drinking alcohol with their meals.

Two of the restaurants on the list — La Golondrina Cafe at 17 Olvera St., and El Paseo Inn at 11 Olvera St. — were jury favorites. They also were the two most expensive places on the list, with an average main course costing $12 to $15.

Poston said some jurors were taking advantage of their free lunch, ordering more food than they could eat and taking the rest to go. Poston acknowledged he once brought a meal home to his wife, and that the group rang up at least one $350 tab at Golondrina Cafe.

"Not only were they paying for our lunches," Poston said of the court, "they were paying for our families' dinners, too."

Answering a request by the Press-Telegram, U.S. District Court Clerk Sherri Carter said $6,385 was spent on 49 lunches — an average of about $13 to $16 a lunch for every juror.

The other deliberation days were cut short before lunchtime, she said.

While Carter maintained that "the most common luncheon venues are in the category of cafeteria-style restaurants," McClure jurors said they preferred La Golondrina and El Paseo.

Jurors said that even during the most tense days of deliberations, they could usually agree on one thing: Olvera Street for lunch.

Mediation proposed

By July, lawyers weren't the only ones losing hope in the jury.

During a conference call, Judge Eick told attorneys that U.S. District Judge George H. King had offered his services as a mediator between McClure and the city. If the attorneys wished to settle the case, now was the time.

Counsel on both sides said they exchanged e-mails about the possibility, but the e-mails soon sputtered to a halt. Any expedited settlement died in cyberspace.

Meanwhile, behind closed doors, jurors had started discussing damages.

Using the anonymous voting method, each person wrote down an amount. Some fell in the $10-million to $20-million range, others in the $50-million range.

Scott, the college student, wrote down the highest number: $100 million.

Ortiz remembers laughing at the amount.

"You're nuts," he recalled telling her.

The group averaged the numbers and wound up with a figure in the $50-million to $60-million range, much too high for many jurors. They scrapped that plan, Scott said, and began talking about specific expenses and lost income to arrive at a new number.

Over the next month, jurors answered a few questions and inched closer to an agreed-upon amount.

But tension was thick.

Seven angry jurors

Toward the end, jurors said, everyone except Lim had decided to vote against the city on every issue. Lim declined to be interviewed for this story, but Scott and Ortiz said she was convinced city officials held no prejudice against Alzheimer's patients — an issue at the root of six questions on the jury form.

These last six questions, Ortiz said, were central to the case.

"We felt that if we would not have shown prejudice against Shirley, if we would have been deadlocked, we would have been the laughingstock of downtown," Ortiz said. "So we did what we had to do. It wasn't an easy job."

Scott recalled that most jurors were simply trying to find ways to persuade Lim to change her vote.

At one point, someone asked Lim, "If we lower our money amount, will you change your answers to"yes?"' Scott said. "We were just trying to end it."

It didn't work.

On July 14, Sunder penned a note to the judge indicating that someone was refusing to deliberate.

Although there is no record of it in the court docket, attorneys said they were called to court the next day — July 15 — to deal with the matter. There, Sunder named Lim as the uncooperative juror, and Judge Eick called Lim into the courtroom. He asked her if she was refusing to deliberate; she said she was willing to deliberate and had been doing so, attorneys said. Eick sent her back to the jury room.

"The Ax"

The tension worsened after the jury's usual bailiff was replaced.

On July 21, four months into deliberations and just two weeks before they would render a verdict, the bailiff — U.S. Marshal James McPheron — got sick, and U.S. Marshal Dennis Noble was assigned instead.

Jurors said Noble wasn't nearly as easy-going.

A former Long Beach police officer, Noble shortened the jury's hour-and-a-half lunch breaks to an hour and often limited them to the courthouse cafeteria. And some jurors worried that he was listening to their conversations through the door.

"He was assigned to speed us up," Ortiz asserted. Some jurors called him "The Ax."

Noble denied the allegation.

He said he was assigned after McPheron had a heart attack and that he followed the guidelines he was trained to follow. He acknowledged, though, that he was probably more strict than his predecessor.

"There are just some bailiffs that are more liberal," he said, "and (some) that just get the job done."

Eventually, some jurors said, Lim agreed that Kellogg and Grabinski were prejudiced against Alzheimer's patients, but she would not budge on the two questions pertaining to Zeller — whose own son is mentally disabled and lives in a residential-care facility similar to the ones McClure wanted to open.

Ortiz said Zeller's connection to the McClures was more indirect and even now believes that Zeller's role in the conspiracy was relatively minor.

"I don't think he had any prejudice against Alzheimer's (patients)," Ortiz said, adding, however, that Zeller was responsible for actions taken within his department. "That's the way it had to fall."

On the morning of Aug. 4, 2004, jurors said Lim inexplicably moved into the majority.

Scott recalled that there was a discussion that day about whether another note should be sent to the judge stating that Lim was "refusing to deliberate." But when the group took another vote a short time later, Scott said, Lim's answers had "magically changed to a"yes."'

Four and a half months had passed since they began deliberations. It was shortly before noon.

The jury had reached a verdict.

The verdict

Judge Eick's courtroom clerk, Stacey Pierson, immediately began calling attorneys. The verdict was in, she told them, and would be read at 1:30 p.m.

The news caught everyone off guard.

"I was working at home and was in my sweat suit," plaintiff's attorney Litt recalled.

Within seconds, Litt was on the phone with Jason McClure.

"You're never going to believe this," Litt told him. "We have a verdict."

A similar discussion was taking place on the 27th-floor offices of Bannan, Green, Frank & Terzian.

Pelletier said she was told, "You need to come down here, we have a verdict."

She responded with an incredulous "Really?"

One last lunch

Meanwhile, the jury went to their last free lunch at La Golondrina Cafe, where jurors said many of them ordered margaritas to celebrate.

Because the verdict had not yet been read and bailiff Noble was still accompanying the jury, drinking was prohibited, according to an official with the U.S. Marshal Service. Noble, who sat at a separate table from jurors, said he did not believe they ordered alcohol. He maintained that any drinks would have been "virgin margaritas."

To help settle the issue, the Press-Telegram requested a copy of the Aug. 4 lunch receipt from the U.S. District Court. Court Clerk Carter declined to provide it, citing "severe staff reductions in the clerk's office and our responsibility to provide staff services to the courts and to litigants in other matters."

Nonetheless, jurors were still at La Golondrina Cafe when all the attorneys arrived to court at 1:25 p.m.

They were still there 30 minutes later as attorneys exchanged nervous smiles, drank bottled water and conversed in hushed tones.

"Well," a court reporter said of the jurors' lateness, "at least they're consistent."

At 2:07 p.m., an expressionless jury entered the courtroom.

One by one, Eick read the answers on the verdict form, which by then had been spotted with grease stains. Each answer favored the McClures.

Damages were set at $20 million for Shirley McClure, $2.5 million for her son. Jason McClure, who was in court without his mother, made a fist and smiled.

By the end of the reading, Scott was propping her head up with her hands, chewing gum.

"I want to thank you for the tremendous sacrifice each of you made to serve in this case," Eick later told the jury. "You have devoted almost a year of your lives to the justice system, and that is remarkable."

After the verdict, as Jason McClure stepped away to call his mother with the good news, some jurors chatted with news reporters then accepted an invitation by Litt and his associates to have drinks at the Traxx Restaurant in Union Station.

Attorneys' impressions

During recent interviews, attorneys on each side declined to comment on how jurors' actions would affect the case's future, saying the legal significance of those actions would be decided by the court.

But City Attorney Robert Shannon called some of the newspaper's finding "outrageous" and said he worried the integrity of the jury process had been sacrificed.

The attorneys hired to defend the city issued a more reserved statement.

"The information that the Press-Telegram has obtained is, of course, concerning to us and goes some way to explain the verdict, which we believe was not supported by the evidence presented at trial," it said.

Litt also released a written statement on the McClures' behalf. His criticized Shannon for condemning jurors "rather than acknowledging (the city's) own misconduct."

"The jurors in this case gave up nearly a year of their lives to do their public duty, and did an outstanding job, as anyone familiar with the depth of their review of the evidence must acknowledge," the statement said. "Now it appears that the city has expanded its reach to attack not only the McClures but the jurors."

Jurors interviewed defended their process — and their pace.

"Some people will say, 'Why did it take so long?' " Ortiz said. "It was a lot of work!"

Ortiz and others said they wouldn't hesitate to serve on another jury. They now count this experience among the most interesting and important of their lives, they said.

And one of the most dramatic.

"Some of us were saying during the trial, we should make a movie out of this," Joa said. ""The Runaway Jury' or something."

Judging the jury

Swigging a cream soda in his Whittier apartment, Daniel Poston pet his Chihuahua, C.J., and talked about life after McClure.

He said he was still torn over his impulsive decision to leave after giving nine months of his life to the case. He lost his temper, he said, and it cost him his vote. Now, he said, he wonders whether the jury would have reached the same verdict — or any verdict — had he stuck it out.

Finishing his drink, Poston rose from his seat, disappeared into a bedroom that doubled as an office and emerged with a copy of the picture that was taken at Colima Restaurant last December. He and other jurors are seen smiling, toasting.

When he was on the jury, he placed the enlarged print in an 8-by-10-inch, black, plastic frame. After he left, he removed it from the frame, doctored the print to read "Jury From Hell," and slid it back into place.

Sitting in a well-worn easy chair, Poston scanned the photo and shook his head.

"I certainly would not want them deciding my fate."

— Staff writer Jason Gewirtz contributed to this report