# REPORT ON THE COURT SYSTEM - LOS ANGELES COUNTY

October 1981

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REPORT BY THE TASK FORCE ON COURTS

LOS ANGELES COUNTY

ECONOMY AND EFFICIENCY COMMISSION

October, 1981

# REPORT ON THE COURT SYSTEM
# LOS ANGELS COUNTY

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TABLE OF CONTENTS

# EXECUTIVE SUMMARY

In March, 1981, the Board of Supervisors directed our commission to undertake an analysis of court congestion and delay. In accordance with our usual practice, we appointed a task force to establish project objectives, direct the work and formulate recommendations. This report contains the task force conclusions and recommendations.

Congestion of the court system means this: the system has insufficient resources to produce the work required of it according to standards of performance acceptable to those demanding the work. Increased response time, delay, and other service reductions are the consequences of that situation. In the absence o* realistic means to increase system resources, we can anticipate a breakdown 6f the system. According to legal professionals, signs and symptoms of breakdown are already appearing, since some civil suits in the Superior Court are facing the five year dismissal deadline and backlogs continue to increase.

What, then, are realistic means to increase court system resources in a period of declining tax revenues? The task force considered first the litigiousness of our community. Court caseloads continue to increase; workload reductions could effect economies. However, we prefer a litigious society, where individuals seek resolution of their disputes under law in the courts, to a society which is alienated and frustrated by the inability to find nonviolent means of dispute resolution. A litigious society results from a concern in the community to maintain law and order.

The issue, then, is to find ways to increase court system resources in a period of Increasing workload and decreasing taxes. There are essentially only two ways to achieve this: save money or charge for services.

The bench and bar and legislative bodies have been producing inventories of proposed changes for decades. Most have proven nearly impossible to implement because of the conflicting objectives of participants in the processes of adjudication and because of the continued escalation of tensions between the separate branches of government dating back to Marbury vs. Madison.

The changes we propose are no different. Their effective, practical implementation can only occur if all participants agree first on the specific objectives of the proposed change as they would affect congestion and on detailed local and state-wide implementation plans.

In particular, we call for an Increased degree of comity between the Board of Supervisors and the Judiciary in seeking local Initiatives to reduce costs, improve cost control, and develop alternatives to present methods of resource allocation. We recommend that the Board and the Courts cooperate locally, through the Judicial Procedures Commission, to implement:

- full cost accounting throughout the court system, using the County's system (FIRM);
- contracting with private firms where feasible for security services and for relevant services of attorney service firms;
- increased data processing support;
- Presiding Judge Eagleson's caseload management program and experiments to compare it to alternative designs;
- increased compensation of arbitrators and enforced sanctions on trials de novo;
- dissolution of the "Blue Ribbon Committee on Courts" and assignments of its function to the Judicial Procedures Commission.

- increased support and encouragement of private adjudication options;
- local administrative consolidation;
- increased caseload diversion through neighborhood justice centers.

The task force also concluded, however, that local initiatives will not be enough to release significant resources in the court system. State laws, rules and regulations dominate system operations. Since Proposition 13, the State finances a major share of the system's cost. Yet it is at the State, rather than the local level, where many of the obstacles to court improvements have persisted for over twenty years. The task force recommends that the Board of Supervisors and the Judiciary cooperate on legislative programs to enable local action on the following:

- full cost recovery for excess public costs imposed by those electing arbitration, private adjudication, arid County-supplied legal process-serving when available from private firms;
- a new fee-for-service policy specifying proportionality of fees to the costs they finance, permitting full cost recovery when lower cost alternatives are available, and indexing fees to costs or inflation;
- a new State subsidy policy indexing the subsidy to costs and featuring judicial-impact financing for all new laws;
- a new policy on the interest rates affecting judgments.
- authority to negotiate improved courtroom technology with affected groups;
- authority to elect smaller juries in civil cases based on quantifiable assessments of risk;
- authority to implement or expand such experimental pro-grams as the Economic Litigation Project, the El Cajon Project and probate reforms.

We have no illusion that any of our proposals will be easy to implement. Many are not new; some are over twenty years old. We are convinced that they will, if implemented, effect major improvements in the court system.

Part of any realistic approach to congestion may, in the long run, incorporate additional judicial positions and required support staff as part of the solution. That is not the issue. The issue is how to obtain the financing for the increased resources. We have identified cost reduction strategies, revenue increasing strategies, improved information and control, and process efficiency improvements. If the bench, bar and legislative bodies adopt these objectives and implement the changes, obtaining additional judicial resources will become more feasible.

# I. INTRODUCTION

In this report, the task force discusses its principal findings and recommendations on the court system. In this section we review the subject and state objectives. Section II (starting on page 18) contains a list of recommendations. Subsequent sections contain additional detail.

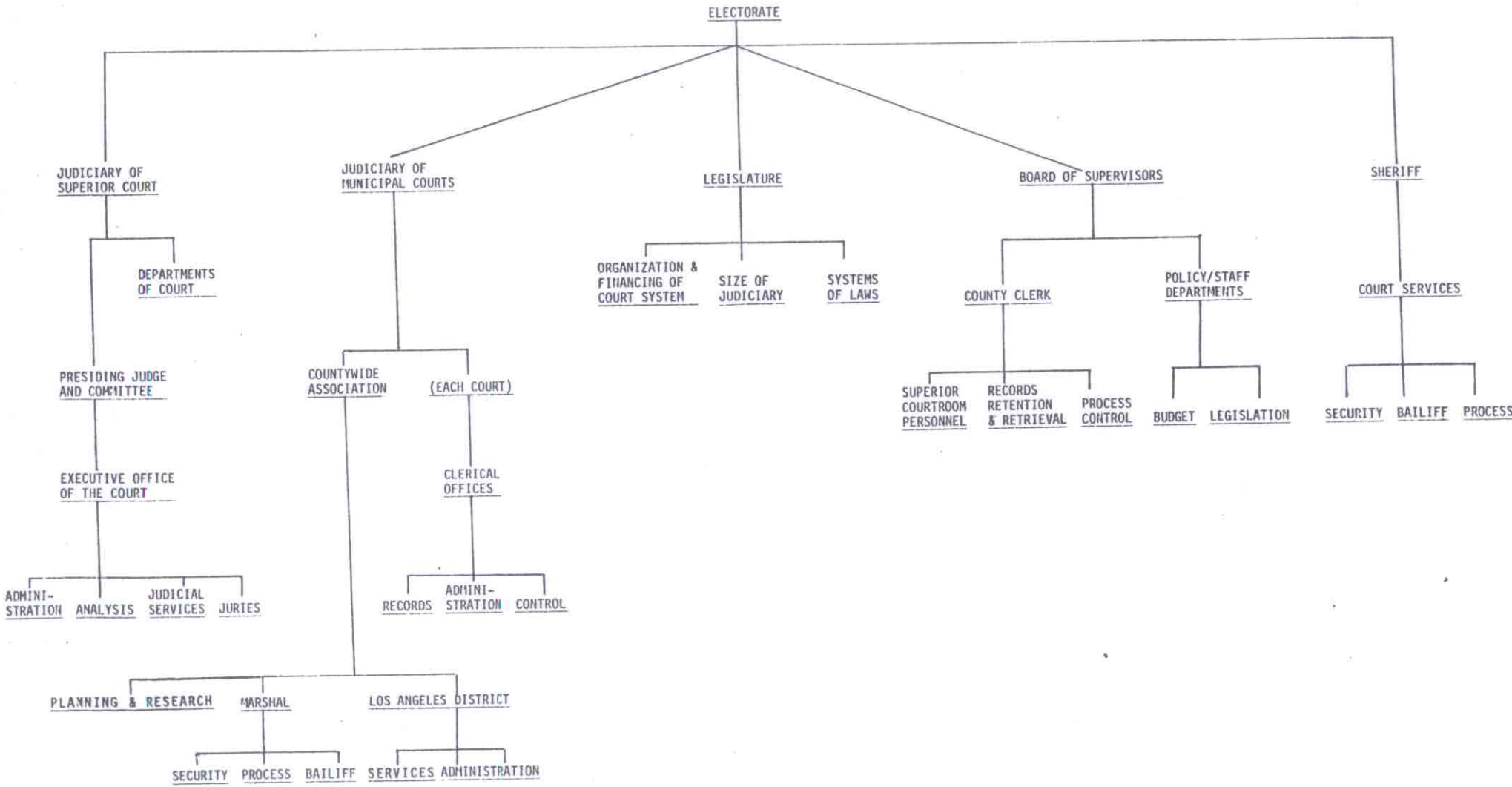
Court System Costs and Revenue

We include in the court system in Los Angeles County the Judiciary of the Superior Court and Municipal Courts, the Executive Officer of the Superior Court, the County Clerk, Clerks and Administrative Officers of the Municipal Courts, the Marshal, and court support activities of the Sheriff's Department. We exclude such other elements of the "justice system" as the District Attorney, the Public Defender, the various City Attorneys, about thirty five police departments:, bar associations and the bar. The diagram on the next page illustrates the basic structure of the court system in Los Angeles County. The system employs a workforce of 4,300.

Our estimate of system cost includes all expenses attributable to court system operations in Los Angeles County. In addition to the budgeted salaries, benefits, services and supplies allocated to system departments, we include overhead costs and indirect charges representing the contributions of those County functions which spend money on facilities and equipment, their

SCHEMATIC STRUCTURE OF THE COURT SYSTEM

1980's, LOS ANGELES COUNTY



maintenance, operation and replacement, and on other internal support services consumed by the system. Similarly, we include sums the State requires the courts to spend during the course of trials to compensate witnesses and to provide for other costs borne by private parties because of compelling public interest in a trial. The table below summarizes the sources of cost and amounts we have included in our estimate of the cost of the court system. The total, $231 million, accounts for approximately 6% of the County's operating budget exclusive of income transfer funds.

Estimated Current Cost of the Court System
Los Angeles County
1980-81

| Source of Cost | Amount ($ Thousands) |
|---|---|
| **Superior Court** | |
| Court Appropriation plus Benefits and Indirect Costs | 36,202 |
| Judges' Salaries and Benefits | 13,674 |
| Annual Cost of Space | 5,117 |
| Mandatory Courts' Expense | 14,841 |
| Clerk Appropriation plus Benefits and Indirect Costs | 26,731 |
| Sheriff's Court Services, including Estimated Overhead | 22,126 |
| Total Superior Court | 118,691 |
| **Municipal and Justice Courts** | |
| Courts' Appropriation, Benefits and Indirect Costs | 67,481 |
| Annual Cost of Space | 6,818 |
| Mandatory Courts' Expense | 10,194 |
| Marshal | 27,757 |
| Total Municipal and Justice Courts | 112,250 |
| Total System Cost | 230,941 |

The primary sources of system financing are state and local taxes. The court system collects revenue from two sources in addition to taxes: 1) fines, forfeitures or penalties, and 2) fees for service. In both * cases, statutes dictate the distribution of the money among funds earmarked for specific purposes and among jurisdictions providing police and other justice related services.

We summarize the current funding of the court system from those sources in the table below. We exclude funds collected by the Municipal Courts for disbursement to city governments, since such funds contribute to the support of municipal police and prosecutorial functions of the justice system rather than to the support of the court system itself. Approximately $6 million is earmarked for County roads. The remaining total non-tax revenue of $36 million supports 15% of system cost ($231 million).

Estimated Non-Tax Revenue in the Court System
Los Ange98leOs8CountY

| Source of Revenue | Amount ($ Millions) |
|---|---|
| Fines, Forfeitures, Penalties | 25.0 |
| Fees for Service | |
| Process Serving | 2.3 |
| Court & Clerk Fees | 15.0 |
| Total Fees | 17.3 |
| Total | 42.3 |

## The Need for Change

The court system, in Los Angeles County as elsewhere in the State, has the same troubles as other governmental institutions. Taxpayers have severely limited public financing of the system while the growth of demands on the system continues unabated and the complexity of its social functions increases.

In the absence of change, the predictable result is increasing congestion, defined generally as longer system response times, declining production, or reduced levels of service. The public and elected officials resist changing the system to correct the difficulty. They believe it can be reorganized or managed better to operate more efficiently, producing more service at less cost. They strongly resist any approach that would feature increasing the resources available to the system. They are reluctant to introduce any changes that would radically upset traditional norms of government service in local communities.

These difficulties are the same for the courts as for other governmental agencies. In the court system in Los Angeles County, the facts[1] are these:

- Between 1971 and 1981, the total number of cases filed annually in the Superior Court increased by 14%, from 187,000 to 214,000; annual non-parking filings in Municipal Courts rose 9%, from 2.3 million to 2.5 million.
- Over the same period, the total cost of the court system increased 140%, from $96 million to $231 million. During the same period, the consumer price index increased by 116%. Discounted for inflation, system cost rose 11%, or slightly more than 1% per year.

[1] The choice of measures and interpretation of their meanings is difficult for this as for any governmental system. Our intent here is to summarize descriptive data.

- Non-tax revenue credited to the court system rose by 57%, from $27 million in 1971 to $42 million in 1981. In constant dollars, this amounts to a decline of 27%, or an annual decrease of 3%.

- During the same period, the workforce employed by the court system increased by 6%, from 4040 to 4290. County population increased by 6% from 7.0 million (in 1970) to 7.5 million (in 1980). The number of authorized judicial positions increased by 30%, from 320 in 1971 to 415 at present. The number of active lawyers in Los Angeles County increased by 129%, from 11,800 to 27,000.

The task force concludes that the demands on the system, as measured by such indicators as filings and the number of lawyers, have increased more rapidly than or at the same rate as resources. Over the past decade, aggregate caseloads have increased by 11% and the number of active lawyers by 129%, while cost in constant dollars increased 11%, staff size increased 6%, and non-tax revenue, in constant dollars, declined 24%. The graphs on pages 7 and 8 illustrate these trends.

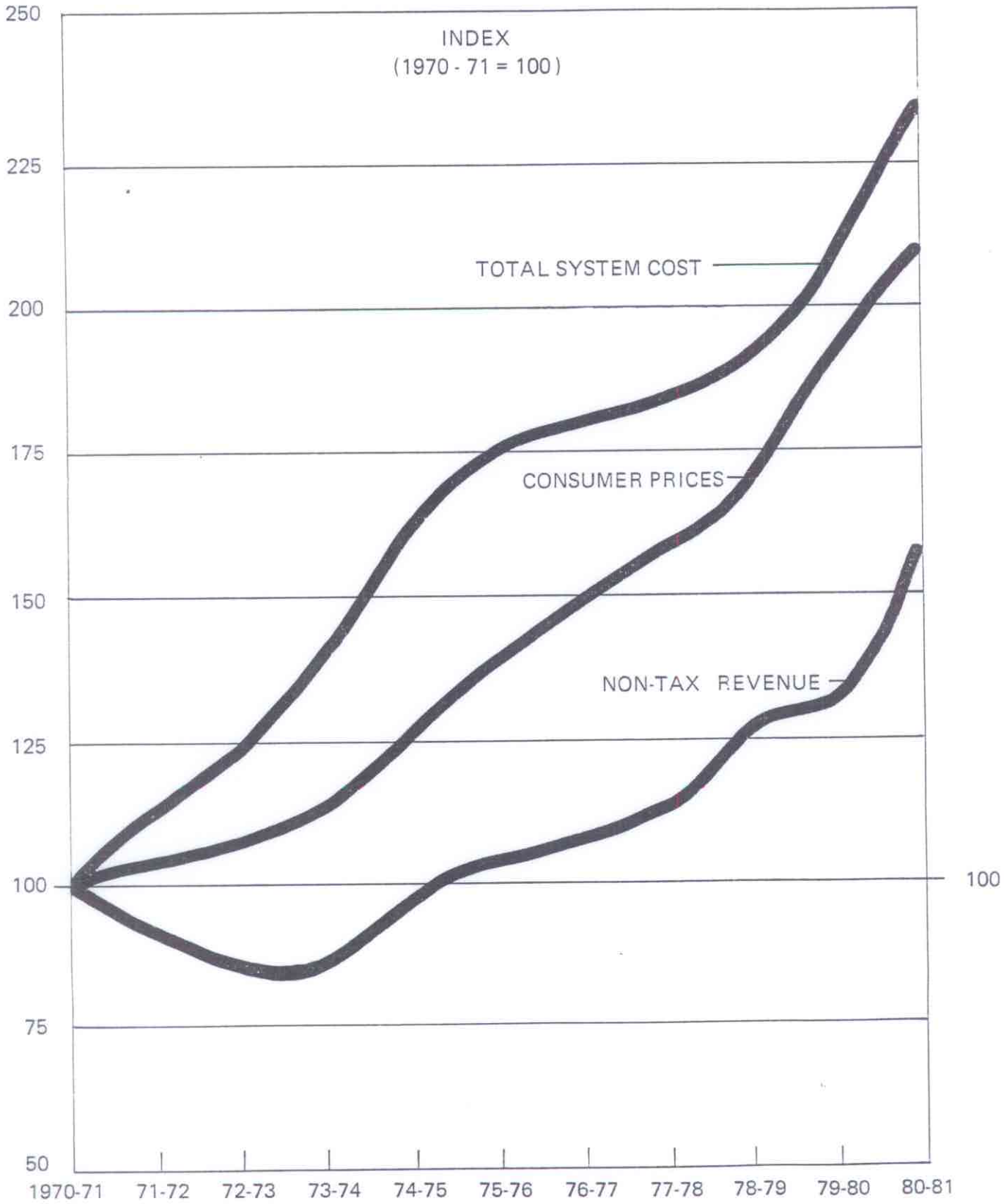
Indicators of production illustrate some of the effects of increasing demands in the period of declining resources.

- In the Superior Court, the number of cases decided annually (dispositions) increased by 30%, from 155,000 to 200,000; in Municipal Courts, non-parking dispositions increased by 5%, from 1.9 million to 2.0 million.

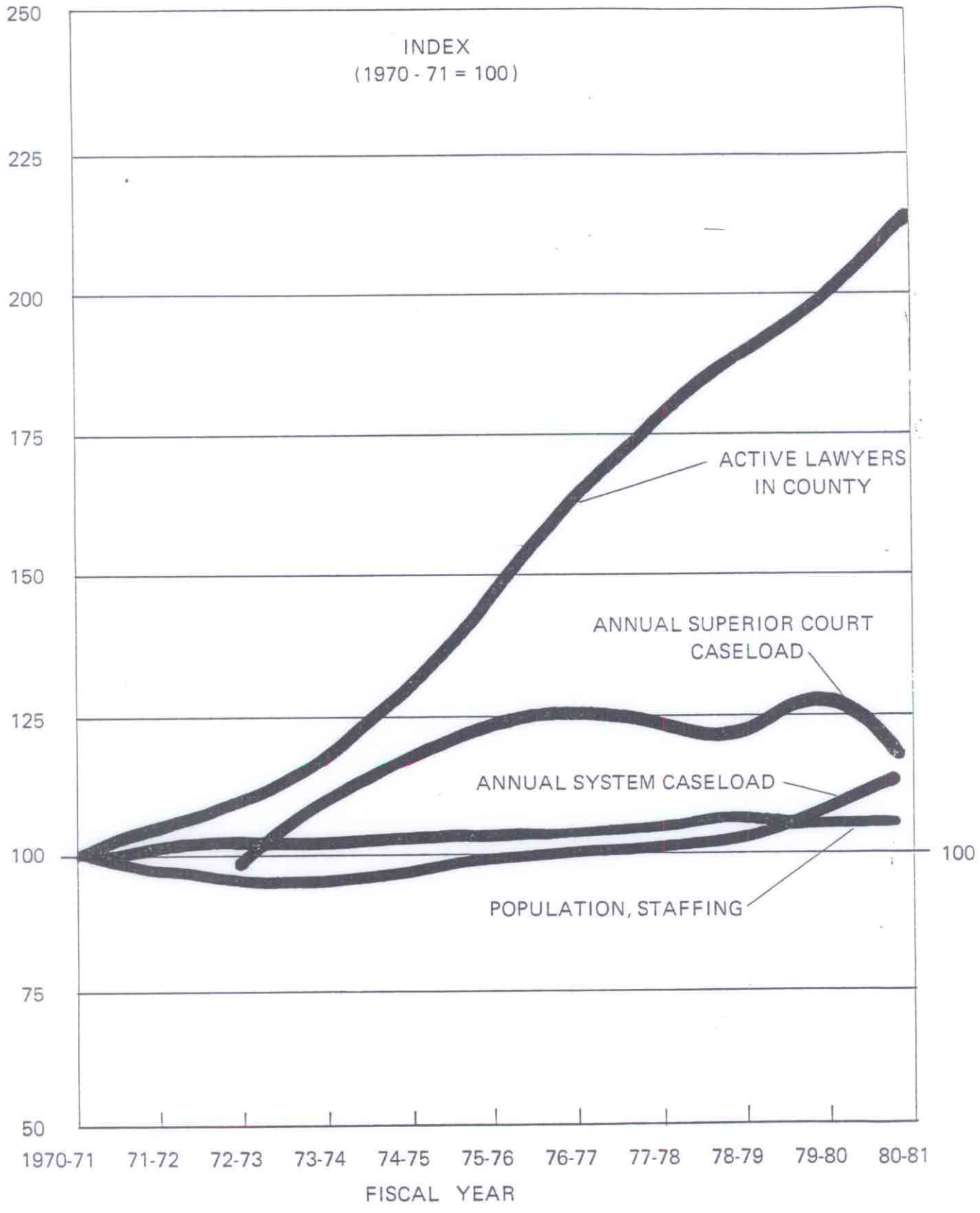
- In each year over the decade, the number of new cases filed exceeded the number of cases decided. Aggregate annual system filings increased 13%, from 2.5 million to 2.8 million; aggregate annual system dispositions increased 6%, from 2.1 million to 2.2 million.

- In the Superior Court, the number of cases awaiting trial at the end of the year increased 70% from 47,000 to 80,000. For civil cases awaiting trial the waiting time doubled from approximately 20 months to nearly 50.

COST, NON TAX REVENUE AND PRICES
LOS ANGELES COUNTY COURT SYSTEM



POPULATION, COURT SYSTEM STAFFING, NUMBER OF LAWYERS
LOS ANGELES COUNTY COURT SYSTEM



The task force concludes that the principal effect of increasing demands and declining resources on the court system is reduced service. The increasing number of cases entering the system must wait increasing lengths of time for attention. Moreover, professionals who use the system or manage it and the public generally consider the lengthening response time as intolerable -- ten years ago, waits of two years were considered problematic.

Clearly, change is required. Through the growth decades for local government, professional managers and system users made the straightforward case for increasing system resources. More judges, more support personnel, more facilities to house them, and more money to pay for all this would increase the output of the system and permit it to respond consistently to the demands placed on it. The money was available: few questioned whether improvements of the process or its efficiency might increase productivity sufficiently to reduce the need for additional resources.

Now, however, the option of increasing resources within the current operating system is not readily available. Taxpayers have clearly put priority on controlling the purse strings of governments, and the elected bodies in charge of finance have responded with increased controls.

Additional tax resources will not be available to finance change, even if everyone agrees that additional resources are part of the solution in any case. The question then is, what kinds of change would improve system responsiveness without increasing taxpayers' costs?

Obstacles to Change

Politicians and other professionals have worked hard over the past several decades to assemble sizable inventories of court improvement proposals. A few have been implemented. Most have not. Change of the court system is feasible only if its advocates recognize the following as practical limitations on its long-range effectiveness:

- complexity of implementation
- fragmentation of effects
- traditions of the legal system

Complexity of Implementation. No single individual or governing body in Los Angeles County has the authority to change the court system or any of its parts. In order to implement effective change, depending on the specific proposal, it is necessary to obtain the consistent, coordinated, and timely action of the following: 1) the Legislature and the Governor, 2) the Supreme Court and Judicial Council, 3) the County Board of Supervisors, 4) the Presiding Judge of the Superior Court and all Superior Court Judges, 5) the Municipal Court Judges' Association and all Municipal Court Judges, and 6) the Sheriff. The Legislature establishes the laws governing legal procedure and priorities as well as laws specifying the organization of the system, some if its costs, and the structure of its financing. The Supreme Court and Judicial Council promulgate procedural rules which implement legislative policy.

The County Board of Supervisors budgets and appropriates major elements of system financing, sets the boundaries of Municipal Courts' Districts, appoints the Clerk of the Superior Court and governs the Clerk's organization, personnel policy and financing, and advocates or opposes changes considered by the State. The 415 elected judges of the Superior Court and Municipal Courts and the elected Sheriff manage respective components of the court system through executives they appoint under policies they establish. No major change of court system policy or organization would be effective without the concerted support and collaboration of these officials.

In addition, some of the changes viewed by court professionals as the most promising in terms of their effects on congestion would require direct public intervention to amend the Constitution or County Charter. Increasing the interest rates paid on judgments, limiting the size of juries, or reorganizing the court system would require amending the Constitution and Charter. Many of the changes proposed over the years, including administrative changes, would be tested in court by those who might view them as adverse to their interests. For example, in 1965 the Superior Court and the County sought court resolution of their disagreement over salaries of support personnel.

Finally, effective change would require the cooperation of police agencies and the legal community, including District Attorneys, Public Defenders and Probation Officers as well as attorneys in private practice. Although they* have no role in implementing court system change, they have a significant influence on the demands placed on the system as well as on the processes and procedures that govern use of system resources. They have substantial influence with the public and with legislative bodies, and they

are organized in powerful associations which have a record of successfully exerting that influence.

Fragmentation of Effects. Many in the large inventory of court improvement proposals would affect at most one type of case or one component of the system. When such proposals are evaluated in the context of system-wide congestion, their effects seem minimal.

Aside from considerations of justice, for example, probate reform proposals are viewed as potential means of expediting cases. Probate cases account for approximately 8% of the demand on the system and approximately 3% of judicial time. Even cutting demand or improving efficiency by as much as 50% in the probate area would have at most a 4% effect on the Superior Court and a negligible effect on the system. Similarly, criminal cases account for 7% of the demand and 25% of judicial time consumed in Superior Court; non-traffic criminal cases account for 50% of the time consumed in Municipal Courts. Realistic, significant reduction of 20% in the cost or improvements in the productivity of criminal processes -- by far the largest demand on the system -- would reduce aggregate demand by at most 10%.

The same kind of perspective is necessary when considering the sources of system cost and potential savings. Consolidating the Sheriff's Court Services function and the Marshal could save as much as $4-S million according to current estimates. That is a significant amount of money -- enough to finance almost ten courtrooms -- and worth the 20-year effort to accomplish it. Relative to the $231 million cost of the court system, it is nearly imperceptible. Similarly, any action that would affect the judiciary alone should be considered in perspective: the 415 judicial officers employed

in the court system account for approximately 10% of its total workforce. The substitution of such less costly means of production as arbitrators for judicial officers can create substantial savings, but will not be discernable within the context of total system costs.

Traditions of the Legal System. One fundamental assumption of our social system is that the bloodless path to justice under law requires the preservation of an adversary system. Legal professionals, who dominate the court system, are trained as advocates. When court improvements are proposed, universal agreement is rare in the legal community on 1) the objectives of the proposal, 2) the potential utility of the proposal in meeting it objectives, 3) the price of the change, and 4) who will pay the price.

Central to this obstacle to change is the perception in the legal community of a necessary tension between efficiency of performance and justice. Regardless of the proposed improvement, the first question is "How will this affect the balances of just rights, processes and outcomes?" rather than, "How will this reduce cost or relieve congestion?" Professionals (lawyers, judges, administrators, analysts) are less likely to agree on what is just than on what might be efficient; the consequence is no agreement on the basic objectives of proposed changes among those whose collaboration is essential for their effectiveness.

For example, those who believe that the goal is to reduce congestion in the civil courts may propose such changes as no fault insurance, prejudgment interest, market rates of interest, contingency fee limitation, mandatory settlement, and mandatory arbitration. Each is designed to meet

a different specific objective and each is based on a different theory of court operation. No-fault insurance and contingency fee limitation are designed to take cases out of the system; interest rate and period changes to speed up the process by manipulating financial incentives; settlement and arbitration to speed cases by manipulating system resources to provide alternative routes. Civil litigants, plaintiff and defense lawyers, insurance companies, public agencies, and public interest law firms disagree on those objectives, even when they agree on the overall goal of reducing congestion in the civil courts. In the absence of agreement on basic objectives, all participants conclude that the only realistic alternative is to add resources to the system. Some abandon the overall goal. When our commission recommended interest rate adjustments in 1980, many civil lawyers responded, "Why single us out? -- it is the criminal caseload which is congesting the courts." The problem is that all of the proposals are viewed in terms of the participants' concepts of justice rather than in terms of their potential impact on congestion.

The task force concludes that significant barriers continue to impede the effective implementation of change in the court system. They include complexity of implementation, fragmentation of effects, and traditions of our legal system. An additional consequence of the adversary nature of the legal community is a discounting of the utility of facts and empirical analysis in illuminating problem areas and evaluating alternative treatment strategies. No one knows, for example, whether the defendants in injury cases exploit the incentives of low interest rates and zero prejudgment

interest by delaying settlement. No one has conducted an empirical review of the dynamics of case delay. The investment necessary for such a review hardly seems worthwhile to system administrators, who can expect the results to be subject to adversary debate in which each side marshals facts which are to the* advantage of that side and ignores all others.

Overcoming obstacles is a matter of political will. If we do not overcome them our society and its political institutions are facing two basic alternatives: 1) resurgence of the growth and increasing centralization of government, or 2) collapse of our system of peaceful dispute resolution. Ills with no remedies cannot be borne for long.

Approach to Change

The court system performs the functions for which it is designed. It provides for the resolution of over two million disputes annually, within the framework of processes that litigants and professionals agree protects the rights guaranteed in our society; the system forces compliance with its decisions under law; the system processes and stores information for later use. Its difficulties should be reviewed in that context, without exaggeration of their significance.

The court system is congested. Demands placed on it have increased more rapidly than its capacity to satisfy them. Congestion means the same for the court system as it does for highways.

When the number of vehicles entering a highway increases beyond its capacity, the result is an increase in the amount of time it takes to use the highway As the time interval increases, highway users begin to judge it as congested, and seek alternatives to reduce the time of travel between points. Treatments include reducing the number of vehicles, widening the

the roads and building more roads, and replacing the system with alternative forms of transportation.

In the court system, resolving congestion requires a commitment to one or more of three basic 6bjectives and investment in one or more of three basic means to meet the objectives.

Effectively meeting any one of the three basic objectives would reduce congestion. They are:

- Reduce the caseload entering the system,
- Speed up the flow of cases,
- Increase or reallocate system resources.

To meet any of these three objectives, it will be necessary to invest in (pay the price of) interfering with one or more of the three underlying social or political forces governing its use and its behavior. They are:

- Administration and Structure
- Incentives and Disincentives
- Legal Processes and Procedures

As we noted above, little can be accomplished unilaterally by the Board of Supervisors or the County Judiciary. Legislation or Constitutional amendment is required in all cases involving incentives and legal process, and in many cases involving administration or structure.

The next section contains a list of our recommendations. Each of the remaining sections of this report focuses on one of the three areas, administration, incentives, and legal process. In each, we identify issues related to congestion or to the feasibility of change, discuss proposed changes in terms

of their objectives, and propose a position or an action to the Board of Supervisors and the Judiciary. In a few cases, the improvements we recommend can be implemented immediately at the local level by the Board or the Judiciary or both. In other cases, implementation would require longer-range local or legislative action.

## II. LIST OF RECOMMENDATIONS

In this section, the task force lists its recommendations to the Board of Supervisors and the Judiciary of Los Angeles County.

Few of these recommendations are "new.11 The basic ideas can be found, for example, in American Bar Association pamphlets dating back to 1959. Nor is congestion in the trial courts “new.” Chief Justice Earl Warren cited its correction as a major social goal; more recently, Chief Justice Warren E. Burger has proposed numerous improvements.

What is new is the urgency of change. Los Angeles County and the State of California do not have the funds to correct the system by adding resources to be financed by taxes.

Joint Action: Judiciary and Board of Supervisors

Despite normal tensions and conflicting objectives that arise from the separation of powers, the task force concludes that the Board and the Courts can cooperate on several projects to increase system resources by reducing costs and improving cost control. The task force recommends:

- dissolution of the Blue Ribbon Committee on Courts" and assignment of its function to the Judicial Procedures Commission;
- implementation of program and performance accounting modules of the Financial Information and Resources Management System (FIRM) throughout the five depart-ments of the court system, including time reporting for operating personnel;
- incorporation of contracting for court security services, when judged feasible by the courts;
- increased data processing support and private sector contracting for clerical court functions;
- increased experimentation with Superior Court intervention strategies in caseload management;

- change of arbitrators' compensation to the per-case basis authorized by law, indexing of compensation and the jurisdiction of arbitration, enforcement of statutory sanctions regarding trials de novo;

- support and encouragement of the use of private adjudication processes authorized by law and proposal of legislation to require payment by the parties of any additional appeals or trial costs they impose on the public system.

System Financing

The task force expects the court system to remain as deficient in tax financing as the rest of State and local government. Alternative sources of financing must be found. The task force recommends that the Board and the Judiciary seek legislation:

- a new policy of user financing which 1) specifies proportionality of fees to the costs they finance, 2) requires full cost recovery in cases where those demanding a service have a choice of lower cost alternatives, and 3) establishes fee indexing to costs or inflation;

- a new State subsidy policy indexing subsidy financing to a fixed proportion of total court system costs and to the effects on court system workload of each new law (Judicial Impact).

System Structure

The task force has reviewed the various proposals for court unification, court consolidation, and administrative consolidation. The task force prefers priority efforts on short term programs to correct backlog and reduce costs to long range structural change. The task force recommends:

- top priority on backlog correction and cost reduction improvements;

- development of local initiatives to achieve administrative consolidation.

Economic Incentives and Disincentives

The task force considered proposals to correct congestion by manipulating financial incentives to file lawsuits, delay their processing, and use alternative forums for dispute resolution. We did not reach a consensus on such `proposals as prejudgment interest, no-fault insurance or contingency fee regulation. We believe that interest rates should be corrected to market levels and that alternative methods of dispute resolution should be encouraged. The task force recommends that the Board and the Judiciary:

- support legislation increasing interest rates to the 10% ceiling and proposing constitutional amendment of the ceiling to market levels;
- support the development and financing of neighborhood justice centers based on cost-benefit assessment of their effectiveness in reducing congestion.

Legal Procedures

Courts and lawyers require traditional methods of processing cases, keeping records and maintaining communications in order to safeguard litigants' rights. They have legitimate concerns over technological and procedural changes that might abridge rights. However, many changes that would save money and time and could be implemented locally are impeded by an absence of legislative authority. The task force recommends:

- top priority on legislative authority to implement courtroom technology improvements and negotiate their impact with affected unions.
- continued efforts to permit reduced jury size in civil cases;
- continued support, evaluation and monitoring of such pilot projects as the Economic Litigation Project and the El Cajon Project;
- continued efforts to effect Probate reform through the uniform code or revisions or through fee structure reforms.

## III. ISSUES: LOCAL ADMINISTRATIVE ACTION

As we explained in the introduction, the court system has a good case for additional resources. Attempts have failed to reduce system caseload or to speed cases by manipulating the underlying incentives or modifying legal processes. If such attempts continue to fail, the expected increase in caseload cannot be managed effectively without additional resources.

The question is how to generate additional resources. One alternative is to add judicial positions, based on an assessment that the system now operates as efficiently as possible. The other alternative is to introduce system improvements which will finance the additions or reduce the need for additions.

The courts generally contend that the system operates at optimal efficiency. The Board of Supervisors generally proposes system improvements, and has appointed commissions and committees to evaluate proposed improvements. In evaluating the situation, our task force has concluded that improvements are possible.

### Relationship of the Court System to the Board of Supervisors

*Issue: How can the Board of Supervisors and the courts cooperate to assure continued improvement of the efficiency of court operations?*

The Judiciary is an independent branch of government. It establishes policy and manages its own resources independently of the Board of Supervisors and other County or State agencies. Since the Board influences the level of resources to be provided, a degree of tension between it and the courts is normal when evaluating the need for resources against an assessment of operational efficiency. The Board controls court resources -- particularly data

processing and facilities management resources -- which have themselves a direct effect on the cost and efficiency of the court system. The Board has considerable influence over the success or failure in the State government of court requests for additional judicial positions and other resources. Therefore, the Board needs a consistent responsible source of information and analysis to assist it in determining what improvements are needed and how to implement them. The courts need the support of the Board in supplying cost-effective services and in proposing State-wide implementation of reforms that cannot be implemented locally.

Advisory Committee Structure. Since 1961,the Board of Supervisors has appointed a Commission on Judicial Procedures to recommend changes and improvements in judicial administration. The commission has sixteen members: each Supervisor appoints two, who may or may not be lawyers; the remaining six are officials of the justice system. The commission has no assigned staff, but obtains services as needed from the courts and from the Chief Administrative Office.

In 1980, on recommendation of Supervisor Ward, the Board established a Blue Ribbon Committee on Courts and appointed a chairman. The function of this committee was not stated clearly in the Board directive, but it was generally understood to provide a method of monitoring court efficiency and the utilization of judges' time.

The Blue Ribbon Committee, regardless of how constituted, is a clear duplication of effort and a source of unnecessary cost. The Judicial Procedures Commission is a competent and balanced source of information and analysis for the Board of Supervisors, on such narrow subjects as the utilization of judges'

time and on more significant questions of legal processes. Therefore,

> *The task force recommends that the Board of Supervisors dissolve the Blue Ribbon Committee on Courts and assign its function to the Judicial Procedures Commission.*

Cost Accounting. One of the principal difficulties in justifying and implementing proposed court improvements is establishing the impact of the proposed changes on costs. Comprehensive cost information is simply not available by process, type of case, source of cost, or function performed.

The County has developed an automated accounting system featuring financial, program, performance, and cost accounting components, known as the Financial Information and Resources Management System (FIRM). It can accommodate flexible definitions of programs and cost centers which cross departmental lines. It can account fully for the cost of services provided by one organization for the benefit of another. For example, managers could use the system to compute the cost of Mechanical Department services to each court or to allocate the costs of law and motion departments among the various trial departments. The courts now use the financial accounting component of this system.

For its most effective uses in planning and controlling resources, the system relies on positive payroll input. "Positive payroll" systems are those which use time reports to generate information on the cost of each function performed by system personnel.

The use of time records is a standard in industry for professionals: it is the basic practice which permits accurate billing for services and accurate accounting for overhead costs. According to a 1978 survey conducted by the Los Angeles County Bar Association, 90% to 95% of lawyers in Los Angeles keep time records.(1)

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(1)"Committees and Sections - Income, Expense and Economic Survey"; Los Angeles Lawyer (Vol 1, No.2, April 1978), 10.

The court system embraces the activities of five autonomous departments and twenty-four autonomous districts in its direct activities. It consumes the services of such indirect County support agencies as the Mechanical Department, the Personnel Department, and the Department of Data Processing. In the absence of centralized system management, it is essential to supply the various components with reliable information on the costs of operations, particularly where the cost is attributable to the joint or coordinated activity of several components.

Internal court management -- Presiding Judges and Executive Officers -- would benefit from the additional controls and report generation provided by a cost accounting system. In addition, the court could use it to continuously monitor an improved weighted caseload system as well as diagnose high demand areas for the entire system rather than just the judiciary. The courts and the Board of Supervisors have the authority to implement such a system. We think bailiffs, clerks, administrators, reporters, and all other court system personnel should participate. The incremental cost of implementing the County system is trivial compared to the utility of the information it generates.

In implementing the FIRM system, it is important to recognize and provide for three conditions on its practical value. First, no management information system accomplishes anything by virtue of its mere presence. The information it generates must be used by system managers for the management purposes for which it is designed. If the information is not used, the system represents unproductive costs. Second, the information generated must be protected from misuse. Cost accounting -- FIRM in particular -- is a poor control tool and not designed for disciplinary purposes. It is designed for analysis of costs and the sources of cost by function. Which costs, and which functions, must be decided by the Presiding Judges and Executive Officers

who will use the information. The Presiding Judges may also provide for confidentiality of the basic data. Third, the information generated must be useful. The Presiding Judges and Executive Officers must be convinced of its consistency, accuracy, and completeness. The utility of the information diminishes in direct proportion to the degree of coercion felt by participants. Therefore, as a major first step in implementation, the Presiding Judges and Executive Officers will decide on the feasibility of implementation for each grouping of court system functions and each class of employees based on their ability to persuade participants of the benign managerial purposes of the information.

The County's Auditor-Controller and Data Processing Departments are equipped to implement an effective cost-accounting system (FIRM). The Presiding Judges, Executive Officers, and Department managers can improve system management by using it. Implementation will represent an opportunity for the courts and the Board of Supervisors to collaborate on a positive, feasible system improvement. Therefore,

*The task force recommends that the Judiciary and the Board of Supervisors collaborate in implementing, throughout the court system, the program, performance, and cost accounting modules of the County's Financial Information and Resources Management System (FIRM).*

Security Services. Traditionally, the Sheriff has provided for security in the Superior Court, and the Marshal in the Municipal Courts. For decades, one of the standard proposals for generating additional resources by saving administrative money in operations has been to assign civilian, rather than peace officers, to the security function in some facilities. (2) At present, some courts operate without bailiffs, some obtain bailiffs from a pool and some operate with the traditional bailiff. In some facilities, the County's Mechanical Department provides security services.

Security services are available by contract from private companies at 30% to 40% less than Mechanical Department costs.(3) Contract security services obviously cannot provide the same quality of service as a highly trained Deputy Sheriff or Marshal. Nevertheless, they can and do provide adequate levels of security to major corporations with security and crowd control problems that are as severe as the courts' as well as to several County departments in selected environments. The issue is the level of service required by the courts, and the cost-risk tradeoffs that may be acceptable to produce major savings.

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(2)See, for example Board of Supervisors Minute Orders No. 198, November 4, 1966; No. 96, March 4, 1980; No. 77, August 11, 1981; No. 101, August 18, 1981; the various articles and correspondence supporting or motivating those Board orders.

(3)Contract Services Advisory Committee and Economy and Efficiency Commission, Contracting for Security Services, September, 1979; Chief Administrative Officer, Contracts Development Program, Quarterly Status Report, July 30, 1981; Chief Administrative Officer, Management Audit of Mechanical Department, December, 1977.

Contracting for security services, to the extent that the performance of contractors can meet court requirements, represents an opportunity to save money. Our task force has not determined whether or not or to what extent the Presiding Judges and other managers can effectively substitute contracting for the present system; the evaluation of cost-risk factors is their responsibility. In August, 1981, the Board of Supervisors established a task ?6rce to design and recommend court security systems. Considering the present financial condition of the County and the needs of the courts for resources, the task force should incorporate maximum feasible contracting in its recommended design. Therefore,

*The task force recommends that the Board of Supervisors the Task Force on Security and the courts incorporate contracting in security plans where judged feasible by the courts.*

Information Management. Staffing in the Department of the County Clerk has declined over the past decade, relative to indicators of demand for its services. Annual case filings increased by 14%, the active civil caseload by 70%, and the number of judicial officers by 30%, while staffing of the County Clerk increased by 12% from 870 to 970. Most of the increased staffing is allocated to new courtrooms rather than to filing operations. According to authorities we interviewed, the principal effect of stress in this department is an increase of three - to fivefold in the elapsed time between the presentation of a document and its formal entry in the system for later use and reference.

Again, one remedy for the situation is to add people. Recently, the County Clerk has found resources to hire temporary and part time clerical help to facilitate document processing.

Long term, permanent remedies, however, cannot be limited to sustained increases of staffing proportional to workload. We propose that the County put high priority on increasing the use of technology and contracting as resources.

The functions of the clerk are highly amenable to data processing. Such functions as registering, certifying, coding, indexing, classifying, reviewing for form, and retrieving at issue memoranda or certificates of readiness (if required by the courts) now require multiple handling and sorting of filed documents. Personnel performing such functions as indexing and recording documents could benefit from data processing assistance. Although the court system now has some data processing support in the County Clerk's department, we believe that extension of the capability would produce major savings.

The County Clerk is analyzing the feasibility of contracting for such functions as microfilming, data entry, and the maintenance of the records center. We commend those efforts and encourage their rapid, high priority conclusion. However, in the opinion of County Counsel, the legal requirement that the County Clerk maintain custody and supervision of Superior Court records has apparently precluded serious consideration of contracting to take advantage of the capabilities of private firms in the retrieval, copying, or certification of documents. In our view, those possibilities should not be excluded. It may be possible for the County Clerk to deputize qualified employees of service firms, or to devise contracts that are as strong instruments of accountability for document custody as civil service employment.

Therefore,

*The task force recommends that the Board of Supervisors 1) place top priority on implementing improved data processing systems, 2) continue evaluation of contracting proposals initiated by the County Clerk, 3) encourage the County Clerk to work with the attorney service industry To find ways to utilize its resources through deputization or contract.*

Superior Court Intervention Strategies. For statutory and practical reasons, the Superior Court puts top priority on the disposition of criminal, juvenile, probate, family, and mental health matters. The deterioration of court schedules that results from declining resources affects the remaining civil cases first -- personal injury and property damage claims, and other civil complaints or petitions. These cases represent approximately 30% of the total filed annually, and approximately 39% of the judicial time consumed in deciding cases. These are also the predominant cases that are scheduled for trial as long as five years after the complaints are initially filed. Statements about court congestion and delay refer to these civil cases, because they are the only cases assigned to long waiting times under the law and court rules.

According to some of the research and some field experience in this area, the court can intervene at the local level to expedite the processing of such cases. The specifics of proposed intervention strategies differ. All of them, however, take advantage of one of the central characteristics of civil cases: 97% of such cases settle before trial or are decided at uncontested trials. The table on the next page summarizes the number of cases decided by trial or by pre-trial action in 1979.(4) Data for other years reveal similar results.

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(4) Source: Annual Report of the Administrative Office of the California Courts, 1980, Tables 14, 15, 17 and 18, 132 ff. Uncontested matters are those in which only one side presents evidence at a trial.

Summary of Dispositions
Los Angeles County Superior Court
1979

| Type of Case | Number of Dispositions Before Trail | After (Uncontested) | After (Contested) | Total | Percent Settled or Uncontested |
|---|---|---|---|---|---|
| Personal Injury – Motor Vehicle | 21,844 | 185 | 286 | 22,315 | 98.7 |
| Personal Injury – Other | 8,663 | 91 | 324 | 9,078 | 96.4 |
| Other Civil Complaints | 14,785 | 1,991 | 1,095 | 17,871 | 93.9 |
| Other Civil Petitions | 24,773 | 8,035 | 770 | 33,578 | 97.7 |
| TOTAL | 70,065 | 10,302 | 2,475 | 82,842 | 97.0 |

According to the experts we interviewed, most[5] of the cases settle late in the process, as the pressure of an approaching trial date increases. Therefore, court intervention strategies are designed to establish local means of encouraging earlier settlement.

As is true in most areas of court improvement, practitioners have designed contending theories of local court intervention. We have identified three, each of which is supported by some evidence of success.

The first has been proposed by the National Center for State Courts.[6] Center researchers analyzed the effects of structural court variables on the

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(5) This appears to mean at least 50%, but the exact number which settle at various stages is not known to the court. According to one expert, about 1/3 settle before settlement conference, about 1/3 at settlement conference, and 1/3 between settlement conference and trial.

(6) Thomas Church, Jr., Justice Delayed: The Pace of Litigation in Urban Trial Courts, National Center for State Courts (No.R0041), Williamsburg, 1978; and Larry L. Sipes, "Managing to Reduce Delay", California State Bar Journal (Vol.56, No.3, March 1981), 104.

rate at which the courts process caseload in twenty one courts of general jurisdiction. They evaluated the impact of court size, caseload, backlog, judicial productivity, scheduling methods, and other indicators on the elapsed time between key events in case processing. They found no evidence that those variables affect the pace of litigation. To explain variability of pace among courts, they developed a behavioral theory, termed "local legal culture." Essentially, they concluded that courts are not the dominant force in determining how long a time it takes to decide a case. The dominant forces are the behavior and expectations of the lawyers who use the courts, judges, and court system staff.

Based on this research, the National Center for State Courts and the National Conference of Metropolitan Courts propose a system of active court intervention in the management of caseload. They recommend that the court establish standards of case processing times in the form of maximum permissible elapsed time between major events. The Maricopa County Superior Court implemented a case management plan on a trial basis. The court achieved a 36% reduction of caseload, 39% increase in disposition rate, a 45% increase in trial rate, and a 31% increase in settlement rate, attributable to the plan.(7)

The second court intervention strategy has been developed by Hon. Reginald M. Watt, Judge of the Superior Court in Butte County, California, and implemented in several California counties.(8) Judge Watt's program takes direct advantage of the knowledge that cases tend to settle rapidly as soon as it is clear to litigants and their attorneys that trial is imminent. The program is a direct attack on backlog. Its central feature is that active

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(7) Sipes, op.cit.

(8) Steven Pressman and Becky Morrow, "The 72,000 Case Overload," Los Angeles Lawyer (Vol.4, No.6, September 1981), 21; Los Angeles County Economy and Efficiency Commission, Minutes of Public Hearing on Courts, July 1, 1981; Becky Morrow "L.A. Branch Court May Try Plan to Cut Backlog," Los Angeles Daily Journal, March 26, 1981.

civil cases are set for trial in excess of available courts; cases which are at-issue are set for trial. To be effective, the program requires 1) active and complete support of the Presiding Judge and Supervising Judges, 2) a settlement program, 3) firm no-continuance policies to enforce trial setting dates, 4) constant monitoring.

The program has had dramatic effects in clearing backlog of active civil cases in Butte County, Sonoma County, and Marin County. In Sonoma County, for example, implementation of the program reduced the number of cases awaiting trial for more than one year from 545 to ten, the active list from 1572 to 535, and the median time to trial from 39 months to six months.

The third program of direct court intervention has been implemented in the Central District of Los Angeles County by Presiding Judge David N. Eagleson.(9) The plan takes advantage of the knowledge that some cases maintained in the court's inventory are settled out of court without information to the court, and that others may be within the limits set for arbitration or amenable to early settlement. It features some elements of both the National Center for State Courts' program and Judge Watt's program: 1) early status conferences to determine whether a case has settled or is appropriate for arbitration, 2) specialized settlement panels for mandatory conferences and strong controls over voluntary conferences, 3) supervised trial setting conferences and controlled discovery phases, 4) court-managed trial scheduling based on the date at issue rather than the date of filing, and 5) stacking of cases ready for trial in courts nearing readiness to try them.

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(9) Hon. David N. Eagleson, Program Announcement, June 19, 1981; Milt Policzer, "Eagleson Details Steps to Reduce Court Backlog", Los Angeles Daily Journal, June 23, 1981; Steven Pressman and Becky Morrow, op.cit.; Los Angeles County Economy and Efficiency Commission, op.cit.

The significance of these programs is that they show that active court intervention in the management of case processing can be an effective alternative to increasing the resources of the court to accommodate growth. Both the American Bar Association and the State Bar of California have recognized that the courts have the authority under present law to control the rate of case processing using a variety of techniques.(10)

Our task force has reviewed the various proposals. The findings are backed by responsible empirical research over a broad variety of courts and by practical implementation experience in several California courts. We therefore conclude that the courts are making strong efforts to improve the efficiency of case management. We believe that the Board of Supervisors should explicitly recognize those efforts and support them at every opportunity.

However, we are concerned that the absence of experimentation may preclude comparison of the effectiveness of the three contending theories of intervention. The court and the Board would benefit from such comparison, based on well designed experiments, in order to identify and develop optimal local intervention strategies. In particular, concurrent with the pilot program in the Central District, the court could implement pilots in branch courts to test the National Center Program and Judge Watt's program. Monitoring the results would then generate empirical information on the advantages and disadvantages of each and on the most effective local strategy for reducing backlog. Therefore,

> *The task force recommends that 1) the Board of Supervisors explicitly recognize and support action by the Presiding Judge of the Superior Court to reduce backlog and 2) the Board and the Court collaborate to design and evaluate experiments in branch courts to test the effectiveness of alternative intervention strategies.*

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(10) See, for example, Charlotte Low, "Tough Mindedness Viewed Favorably to Cut Congestion," Los Angeles Daily Journal, August 14, 1981; Ralph Kleps, "Court Reform: The State Bar Opts for Vigorous Court Management," Los Angeles Daily Journal, August 14, 1981, 4.

Conclusion. The task force has reviewed the relationship between the Board of Supervisors and the court system. The task force recommends five joint actions by the Board and the Judiciary to collaborate on system improvements: 1) dissolution of the "Blue Ribbon Committee on Courts", 2) implementation of program and performance accounting, 3) contracting with private firms where feasible for court security, 4) increased priority on data processing applications and contracting strategies by the County Clerk, 5) recognition and support of local court intervention strategies. These alternatives are designed either to reduce costs or to speed case pro-cessing; The task force turns now to alternatives designed to increase resources.

Alternative Court Resources

*Issue: What are cost-effective means of adding court resources?*

The Judiciary operates under strict principles of legal process established by the tradition of common law, by legislative policy established in the statutes and by rules of court promulgated by the Judicial Council and the Supreme Court. Cases enter the court system because two or more parties present a dispute for adjudication. Traditionally, those that could be resolved by some other means did not enter the system; cases taken to court were limited to those for which the general sense of public policy was that justice required decision of the matter by a judge accountable to the electorate. As the number of cases entering the system increased, common sense and prudent management Would dictate increasing the number of judges available to decide them. Otherwise, judicial decisions would be deferred indefinitely into the future and the system would frustrate justice with increasing delays.

Uses of the court system accelerated far more rapidly than population through the 1960's and 1970's. Moreover, the interpretation of rights became an intensified fuction of the courts and the processes required to resolve disputes became more complex. As the systems for adding judicial resources led to increasingly costly and cumbersome systems, the Judiciary and the Legislature sought means of supplying alternative, less costly resources to provide for dispute resolution within the judicial framework.

Our task force has reviewed the status of two major recent innovations -- the use of tax-supported arbitration and the use of private judges paid for by the parties. Our conclusion is that each represents a cost-effective means of adjudicating disputes at less cost than a full court, with minimum risk to justice. Each is provided as an alternative path under court control. Neither interferes with the rights of parties to seek judicial relief or to appeal decisions under the law.

Arbitration. The word "arbitration" refers to several different processes and procedures, many of which take place outside of the court system and are essentially voluntary.(11) In the court system, the word arbitration

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(11) Addition of such words as "compulsory" or "mandatory" obfuscates the meaning. What is voluntary about arbitration is that the parties agree to be bound by the decision of the arbitrator. See, for example, Eddy S. Feldman, "Arbitration News: But Is It Arbitration?", Los Angeles Daily Journal (Vol 93, No. 233), 21; Los Angeles County Economy and Efficiency Commission, Selected Current Civil Service Issues, July 16, 1980, 31; Webster's Seventh New Collegiate Dictionary, G & C Merriam, Springfield, 1967; Webster's New Dictionary of Synonyms, G & C Merriam, Springfield, 1968; Frank S. Zolin, "Press Release", Los Angeles County Superior Court, November 15, 1972; Judicial Council of California, "The Philadelphia, Pennsylvania Compulsory Arbitration Program," 1973 Report to the Governor and the Legislature, January, 1974, 55 ff; Browne Greene, et al, The Los Angeles Attorneys' Special Arbitration Plan, Los Angeles Trial Lawyers Association and Association of Southern California Defense Council, Circa June 1976; Ralph N. Kleps, "On the Docket: Arbitration, A Reform Whose Time Has Come?", Los Angeles Daily Journal, October 25, 1977, 1.

refers to the program established by statute in 1978.[12] It is required in the Los Angeles Superior Court, optional in the Municipal Courts. It is a substitution system for civil cases valued by the court at $15,000 or less. Parties may choose arbitration for cases valued at higher amounts. As a general rule, cases assigned to arbitration are damage suits for money. Family law, probate and class action suits are exempt.

The arbitrator is a less expensive substitute for a judge with staff and attendants[13]; the arbitration process is a less expensive, quasi-private, substitute for the process of public adjudication, since it can be informal and does not require compliance with strict rules of evidence. The decision of the arbitrator has the same force and effect as the judgment of a court, except that it is not subject to appeal. Either party may elect to have a trial de novo -- that is, to reject the arbitrator's decision and seek a court or jury judgment by trial.

The objective of the arbitration program is to divert cases to a less expensive, more rapid track than trial. As we explained in the introduction, even massive reductions of court workload, when limited to one or two classes of cases, are not likely to have measurable effects on congestion defined in terms of aggregate system caseload. In assessing the arbitration program, then, the task force sought to answer three questions:

- does the program divert cases effectively reducing judicial workload?
- does the program save money?
- how can the program be improved?

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(12) Chapter 743, Cal Stats 1978.

(13) The salary and benefits of the judge alone amount to $350 per day; arbitrators earn $150 per day.

In July, 1981, the Rand Corporation published a comprehensive analysis of the first year of the arbitration program.(14) Although the first year analysis is early for program revision decisions, and although the analysts had access only to limited and fragmentary data, the report contains three findings of major significance.

First, the program successfully diverts cases which might otherwise go to jury trial, potentially saving as much as 26 judge-years annually in the State-wide system.

Second, whether the program saves money or not depends entirely on the rate at which cases are tried de novo after arbitration. If the number of cases actually going to trial after arbitration exceeds three percent of those referred, the program loses money.

Third, whether the program expedites case disposition depends entirely on whether it is chosen by the parties or assigned by the court. Those assigned by the court must wait for court attention. According to the Rand study, voluntary arbitration (by stipulation or plaintiff's election) took an average of seven months from the at-issue memorandum to the decision, while cases assigned to arbitration by the court took 22 months.(15)

We also reviewed local information on the arbitration program and discussed it with judges, attorneys, administrators and arbitrators. All of the information substantiates our conclusion that the arbitration program has

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(14) Deborah R. Hensler, Albert J. Lipson, Elizabeth S. Ralph, Judicial Arbitration in California: the First Year, the Institute for Civil Justice, Rand (R-2733-ICJ), Santa Monica, 1981.

(15) Presiding Judge Eagleson's program features early status decisions which are designed to eliminate this problem in Los Angeles.

significant but partially realized potential as a realistic means of addressing court congestion. These sources, and some of the information in the Rand report, suggest that several adjustments to the program might improve its effectiveness and utility.

First, arbitration is an alternative path in the system. It is as much subject to congestion as other paths. In particular, if the supply of arbitrators is not sufficient to handle the caseload assigned, this path will also become congested. The statute provides for a fee of $150 per day for arbitrators on the court panel, and authorizes counties to change the basis to $150 per case. In the private sector, the going rate for arbitrators ranges from $350 to $750 per day[16]; fee schedules for agency arbitration depend on the amount at issue, [17] and are charged on a per-case basis.

No one has suggested that the backlog of arbitration cases has reached a critical number or that waiting times are excessive. Judges and administrators we interviewed nevertheless anticipate difficulty with maintaining a sufficient supply of arbitrators. They propose increasing the pay to $150 per case as authorized in the law in order to attract arbitrators and in order to provide an incentive to hear more than one case per day. The adjustment, together with early status conferences, has apparently been successful in Orange County.

Second, the law establishing the program until 1985 does not take inflation into account. The mandatory assignment of cases applies only to those

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(16) Interview data. Average is $500 per day.

(17) Karen St.George, "Arbitration: Firms at Odds Save Time, Money Settling Out of Court", Los Angeles Business Journal, March 23, 1981, 24.

valued by the court at $15,000 or less. The $150 figure for arbitrator's compensation is fixed. Even if inflation moderates to average 6% between 1979 and 1985, the $15,000 jurisdictional amount will be worth only $10,000 by 1985 and the $150 compensation will decline in value to $106 in today's dollars. Thus, the caseload affected by the mandatory assignment program will decline and the value of the work to arbitrators will decline. Moreover, annual program evaluation will become difficult as eligible cases drop out of the system in an uncontrolled manner. Thus, we suggest indexing the jurisdictional amounts for case assignment and the compensation of arbitrators to inflation. This change would require legislation.

Third, the law (Section 1141.21) permits the court to impose sanctions on litigants who reject an arbitrator's decision and try the case de novo. Arbitrators' fees, expert witness fees, and statutory court costs may be charged against the side demanding trial de novo if that side does not improve its position from the arbitrator's decision. The court's authority does not extend to attorney's fees or to the full cost of the trial.

Such sanctions are important as a means of discouraging trials de novo, thus improving the chances that the arbitration program will result in real savings rather than become just another pre-trial phase of case processing.

According to the Rand study, no courts are using the option to impose sanctions.[18] According to some of the experts we interviewed, the sanctions are not strong enough without inclusion of attorneys' fees, the total cost of the new trial, or both.

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(18) Hensler et al, op.cit.,94.

The issue of sanctions is not purely administrative or economic. It is a justice issue. Many authorities view the imposition of sanctions in any form as a serious violation of our society's traditions of justice. It punishes people economically for seeking their day in court. It displaces the public court system as a moderating social force with either a privately financed system or a system avoided because of costs. It could radically interfere with incentives designed to encourage nonviolent adjudication of disputes, thus diminishing access to and the quality of justice.

Because the potential of arbitration as one means for reducing costs and releasing court resources is significantly dependent on the rate of trials de novo, the task force reviewed descriptive statistics on the dynamics of assignment, requests for trial de novo, and results of trial de novo. According to court data for fiscal years 1979-80 and 1980-81, 18,206 cases were assigned to arbitration and 12,062 were decided after assignment. The following facts are significant in considering the issue of sanctions:

- Of the 18,206 cases set for hearing, 67% (12,269 cases) were set by stipulation or plaintiff's election and 33% (5937 cases) by court order;
- Of the 12,062 cases decided, 47% (5639 cases) decided by settlement before hearing and 52% (6,250 cases) by arbitrator's award;
- Of the 6,250 cases decided by arbitration, 38% (2,225 cases) were re-filed in requests for trial de novo, and 1% (63 cases) have actually been tried.

We also reviewed data supplied by the court on the results of 43 cases which were among those actually set for trial. The results are summarized in the table on the next page.

Results of Trials de Novo
Los Angeles County Superior Court[19]
1979-1980

| Trial Requested By | Degree of Improvement (Number of Cases) None | 0-15% | 16-99% | 100% or more | Reversal | Total |
|---|---|---|---|---|---|---|
| Plaintiff | 8 | 0 | 0 | 3 | 9 | 20 |
| Defendant | 10 | 2 | 6 | 1 | 4 | 23 |
| TOTAL | 18 | 2 | 6 | 4 | 13 | 43 |

In eight of the* twenty trials requested by plaintiffs (40%) and in twelve of the 23 trials requested by defendants (52%), the party insisting on trial failed to improve the verdict or achieved an improvement of 15% or less. Regardless of party, the trials established no material improvement in 20, or 46%, of the 43 cases. Once in the trial setting process, ten of the 43 cases were decided at settlement conferences, 17 in court trials, and 16 in jury trials. Three awards exceeded $15,000.

We have no data on which of the cases tried de novo were originally among those assigned to arbitration by the court and which were assigned by stipulation or election. We believe that this is the key issue in the use of sanctions to discourage trials de novo. Nearly half of the time the party insisting on trial fails to improve over the arbitrator's award, but imposes on the taxpayer the dual costs of arbitration and trial. We hesitate to propose sanctions when the court imposes arbitration on the parties, since that may abridge the basic right to trial. We see no reason, however, to provide any litigant with two sequential opportunities at public cost, since that merely encourages them and their attorneys to use arbitration as a pre-trial device to

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(19) Source: David N. Eagleson, Presiding Judge of the Superior Court of Los Angeles County, Monthly Newsletter, June 9, 1981 and July 8, 1981.

hedge on the risk of trial. Therefore, we propose that the court use its statutory authority to impose sanctions in cases where trial de novo follows elective or stipulated arbitration and the party requesting trial does not improve on the arbitrator's award.

The data we have on the results of arbitration are significant in view of the Rand findings. In particular, the arbitration program in Los Angeles is saving money, since the rate of trials de novo, at 1%, is far less than the rate Rand found to be the break-even point (3%). However, the task force has concluded that implementation of some adjustments, two local and one legislative, would substantially improve the program's potential. Therefore,

> *The task force recommends that the Board of Supervisors and the Superior Court establish as policy 1) per-case rather than per-day compensation of arbitrators3 2) support of legislation to index the jurisdiction of the court to require arbitration (now $15,000) and the compensation of arbitrators (now $150) to inflation; the task force further recommends that the Superior Court establish as policy the enforcement of statutory sanctions on litigants requiring trials de novo after arbitration when arbitration is chosen by election or stipulation.*

Private Judges. Arbitration is a court-managed means of substituting less expensive, tax supported resources for judges and courtrooms. Arbitrators are not judges and the process is not strictly judicial. In contrast, private adjudication is not tax supported, may not be less expensive than a court, proceeds according to the strict formal rules of evidence and trial, and is not included among court-managed resources. The private judge supplies a court decision, subject as others to appeal, which is financed by the parties in the litigation. Use of a private judge is entirely voluntary. The case generates demand on the public court system, including the filing of a petition for assignment to a referee or temporary judge and an order effecting

the assignment signed by the Presiding Judge.[20] Thus, the procedure is, like arbitration, the transfer of a case to an alternative path to disposition. Unlike arbitration assigned by the court, however, both sides must agree to use the procedure.

For litigants, the system has two major advantages. First, it permits a quick decision since the judge is hired by the litigants and the case is not subject to waiting times attributable to lack of available judicial resources. Second, it permits the selection of a judge known to be expert in the field encompassing the issues and in a position to devote full attention to the case and its issues for as long as necessary. Thus, from the litigants' points of view, the system improves access to and quality of justice. Consequently, according to those we interviewed, many contracts now incorporate clauses stipulating private judgment as the means for resolution should disputes arise.

Public policy issues are complex. Clearly, this system has vast potential for relieving court congestion by substituting resources. The panel of trial judges and commissioners available for this work in Los Angeles County includes 42 retired judicial officers. If each were to work half time for one year and devoted the standard 5.5 hours per day to case disposition, they could clear 1000 major cases (averaging ten days per case). Considering the current situation, that is a major public benefit which, in our view, must not be discounted.

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(20) Litigants have this option under the California Consitution, VI (21) and the Code of Civil Procedure, Section 638 et. seq.

However, recent increasing use of the option has attracted considerable publicity,[21] generated controversy, and produced technical legal maneuvers designed to test its validity and challenge its future usefulness. Aside from such technical legal questions as whether private judges are qualified to issue post-judgment orders, we have considered three issues. Two are equity issues; one is a cost issue.

The first equity issue is that the option is available, as a practical matter, only to those who can afford private judges' fees for service ranging from $500 to $750 per day. For that price, litigants get a speedy decision while those who cannot afford a private judge wait for years for attention from the public system. Eventually, critics claim, this will lead to two systems of justice -- one for the wealthy and one for the poor and middle class.

In our view, those are legitimate concerns but not sufficient to abolish the process, regulate its use, or discourage its further development into court sponsored programs. Since both parties must agree to use the private option, we do not anticipate its use in cases where one party has an economic advantage over another[22] or in cases where the amounts at issue are too small to permit recovery after attorneys' and judges' fees. Therefore, we expect its principal applications to be in complex business cases rather than in personal injury and most probate or family cases. Moreover, by taking specific, highly

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(21) See, for example, G. Christian Hill, "Rent a Judge: California Is Allowing Its Wealthy Litigants to Hire Private Jurists," Wall Street Journal, August, 1980; "Rent a Judge System Hit for Leading to Legal 'Apartheid'", Los Angeles Daily Journal, July 10, 1981; Clifford R. Anderson, Jr., "Rent a Judge," Letters Section of Los Angeles Daily Journal, August 27, 1981.

(22) Although not prohibited, for one party to pay would be challenged as a conflict of interest as soon as a judgment was rendered for the paying party, invalidating the process.

complex cases out of the public system, private judgments should relieve pressure on the disposition of personal injury, probate and family cases -- thus improving the speed of justice for those seeking it in the public system. Finally, the use of the system can be monitored and subjected to the same kind of scrutiny as the publicly sponsored arbitration program. The State can establish changes of the procedures, restrict their application or impose costs at such time as inequities among economic groups become clear.

The second equity issue is that private adjudication permits litigants to enter the appeals process, at public cost, more rapidly than others who wait for public trials. In our view, it would be reasonable to require litigants who obtain expedited justice by paying for it to also pay the full cost of work they generate in the public systems of appeal. Otherwise, litigants will have the choice of avoiding delay in the trial courts, but the taxpayers will have no choice in financing the correction of errors that may occur during the trial process.

The third criticism of the private adjudication process is its public cost. As use of the system expands, it will be challenged by those who object to policies encouraging its use. Hypothetically, it could create pressures on the court system in excess of the savings it generates, at least until the technical details are clarified.(23) In our view, public policy should support private adjudication when it can be shown to produce a public benefit either in relieving congestion or reducing costs. Shifting case jurisdiction and creating

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(23) This is occurring now. Judge Eugene Sax's attempts to enforce his judgment in Western Oil & Gas, et al vs. Air Resources Board led to disqualification procedures, stays, and transfer orders as well as potential litigation over his fees -- work for the Los Angeles Superior Court and the California Supreme Court.

new issues do not qualify. Those using the private adjudication system for trials do so by reason of affluence or economic advantage; they should therefore also pay for any additional work they generate.

In short, we believe that use of the private adjudication process should be encouraged. We do not anticipate serious equity problems because of the nature of the cases likely to go to the system. If equity problems develop, the State can correct them. We agree with critics who claim that those using the process could generate additional costs in excess of what they save the trial courts. We propose early correction of this flaw. Therefore,

> *The task force recommends that the Superior Court and the Board of Supervisors 1) establish a policy of support and encouragement of the use of the private adjudication process as authorized by law and 2) propose to the State that the authorization for the system be revised to require payment by the parties of any additional appeals or trial costs they generate in the public system.*

Conclusion. The task force has reviewed methods of addressing congestion by supplying additional court resources, within the judicial framework, without increasing the number of judicial positions. Arbitration and private adjudication, as presently authorized, are realistic, cost-effective means of resolving disputes at less cost than a full court, at minimum risk to justice. The task force recommends improvements to enhance the potential of these programs in supplying auxiliary resources. For arbitration, the task force recommends per case rather than per day compensation, indexing of jurisdiction and compensation to inflation, and the enforcement of statutory sanctions when litigants who choose arbitration later try the case de novo. For private adjudication, the task force recommends support, together with legislative action requiring payment by the parties of any costs they impose on the public system.

# IV. ISSUES: SYSTEM FINANCING AND STRUCTURE

To the extent that additional resources are justifiable in the court system, their financing will depend on new methods and on a resolute approach to minimizing taxpayer financing. The reality is, taxpayer financing is not available. Recent cuts of public safety and health services illustrate the difficulty of maintaining current priorities. In a period of fixed or declining tax resources, shifting financial priorities to the court system from other governmental services would create additional pressure on services which have already been radically cut. Consequently, the Judiciary and elected officials responsible for system financing have sought alternative means to provide funding for increased resources without additional taxpayer support.

The financing and structure of the court system are State issues. Neither the Judiciary nor the Board of Supervisors in Los Angeles County can change the methods, amounts, or distribution of financing without legislative action. Similarly, only the Legislature can implement a reorganization of the system. Constitutional amendments are also required.

Our task force has reviewed several concepts for refinancing the system and for restructuring it. Several of these ideas, if implemented, will support the objective of relieving congestion by creating a more effective allocation of resources. None is designed to eliminate or reduce the need for additional resources in the system. Because State support is required, these proposals cannot be implemented immediately. The earliest feasible implementation could take place in fiscal year 1981-82; more likely in 1982-83.

## Financing

*Issue: How can the Judiciary, the Board of Supervisors and the Legislature design and implement improvements of court system financing?*

Non-tax financing of the court system consists of fines, bail forfeitures, and fees for service. The table below summarizes total current collections from each source. The graph on page 7 illustrates the trend from 1971 for County retained revenues only.

Non-tax Financing of Court System
Los Angeles County, 1980-81
($ Millions)[24]

| | Superior Court | Municipal Courts | Total |
|---|---|---|---|
| Fines, Forfeitures | 3.3 | 84.0 | 87.3 |
| Fees and Charges | 10.7 | 24.8 | 35.5 |
| TOTAL | 14.0 | 108.8 | 122.8 |

The difference between County-retained and total court revenue results from statutory distribution formulas allocating the major share of Municipal Courts' revenue to city governments. County-retained revenue is also allocated by law to special funds. Thus, much of the revenue collected by the courts cannot be used for general court purposes according to current statutes. The table on the next page summarizes the current distribution of Municipal Courts' revenues. Superior Court, County Clerk, Sheriff, and Marshal revenues are retained by the County for court system support. Thus, at present the County collects and retains approximately $36.7 million for support of the court system. That amounts to 16% of the total $231 million cost. Charges of $10.7 million in the Superior Court system fund 15% of the cost of civil cases, assuming that

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(24) Sources: Los Angeles County Board of Supervisors, County Budget Fiscal Year Ending June 30, 1981, as confirmed and supplemented by interviews with Auditor, Administrative Office, and Court personnel.

Distribution of Revenue
Los Angeles County Municipal Courts, 1980-81
($ Millions)

| Source of Revenue [25] | Distributed to: Cities | Special Use [26] | County General | Total |
|---|---|---|---|---|
| Fines and Forfeitures | 61.9 | 5.9 | 16.2 | 84.0 |
| Fees and Charges | 18.3 | 0.0 | 6.5 | 24.8 |
| TOTAL | 80.2 | 5.9 | 22.7 | 108.8 |

criminal and juvenile cases consume 40%.of the total. The remainder is financed by the taxpayer. [27] In contrast, total revenue collected by the courts, $123 million, is enough to finance slightly more than half of system costs.

Statutory distribution formulas also require the County to allocate fee revenue to certain functions rather than to general support. The distribution of the basic $75 civil filing fee is as follows:

| | |
|---|---|
| Clerk's fee | $54.00 |
| Judges' Retirement | 3.00 |
| Reporters' Fee | 13.00 |
| Law Library Fee | 5.00 |
| TOTAL | $75.00 |

Thus, $8 of the $75 is earmarked for segregation in special purpose library or retirement funds, while the remaining $67 is retained for general court support.

We believe that it is time for an overhaul of the State's non-tax revenue policy. The balance between taxpayer and user financing should be improved to favor the taxpayer. The structure of the financing should be more flexible, featuring increased local control where constitutionally feasible.

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(25) The distribution by source assumes pro-rata allocation rather than statutory formulas which vary by jurisdiction. Recently, the State estab-lished surcharges on fines to finish courthouse construction. Those revenues are not separated here, since they represent general court support.

(26) Roads only; Night Court, Sheriff, Marshal and Clerk are part of the court system.

(27) Through grants, State subvention, judges' salary payments, and local taxes.

We are convinced that major improvements are possible. We do not claim that they will be simple, or easy to implement; nor do we claim that we have developed definitive proposals. The issues are major public policy concerns.

User Financing. By user financing, we mean the payment of fees for services rendered by identifiable individuals or groups who consume the service. The term implies that the consumer has a choice of whether or not to create the demand for the service. For most public services, the benefit is divided between the consumer and the public at large. It is thus difficult to establish an equitable balance between taxpayer and consumer financing.

In the case of courts and many other essential public entities, some argue, not unreasonably, that the service should be free to all -- that is, entirely tax financed. Others claim that civil trials benefit only the litigants and should be wholly financed by the litigants. The reality is, tax financing is on the decline during a period when the demand on courts is increasing and the courts are short of resources. What is needed is an enlightened new approach designed to use fees to control the incentives driving up demand for service without materially reducing access to the court system. We believe such a policy would incorporate six major features.

First, the policy would exclude fines, forfeitures and penalties as an acceptable source of demand-related user financing. To propose that fines become a major focus of revenue-generation is to propose a form of speed-trap justice.

Second, the policy would exclude major revision of the jurisdictional allocation of fine and forfeiture revenue among cities and counties. Fines

rightly should support the police and prosecutorial functions of municipalities as well as the adjudicatory functions of the courts associated with them. The specific formulas should be reviewed for proportionality to costs.

Third, the policy would, after review, specify the relationship of fees for service to the cost of the service the fee is intended to support. Revenue from the $3 allocation to Judges' retirement, for example, finances 4.7% of the 22.3% of salary currently contributed to the system by the State, but it does not even approximate a major element in the 68% of payroll needed to eliminate the unfunded liability of $450 million.(28) Similarly, charging litigants the full cost of court reporter services as needed, rather than as a share of the filing fee, would raise $1.9 million and could increase litigants' and attorneys 8incentives to choose computer assisted alternatives.

Fourth, and most important, the policy would include full cost recovery for systems' response to the demands of civil litigants and their attorneys when a private sector alternative exists, when the demand is deemed frivolous or unnecessary by the court, and when the demand is extraordinary compared to statistical norms in the processing of similar cases.

Private sector alternatives are available to the Sheriff and Marshal as servers of process in civil cases. While the statutes permit fee for service, they also fix a maximum price. The price is substantially lower than the public cost. (29) Consequently, the government is subsidizing a public entity competing with private firms. We propose changing the statutes to require

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(28) Coates, Herfurth & England, Inc., Actuarial Report: State of California Judges' Retirement System, for the Board of Administration, March 2, l981

(29) The price has been set at *8.50 per service. Recent legislation, (SB 1230, 1979) if passed, will raise it to $14.00. The approximate average County cost is $23.

full cost recovery, enabling legitimate public-private competition. That will have the effect of doubling revenues, if lawyers continue to use the public service, or reducing costs by a like amount if the business goes to the private service companies. Similar pricing should apply in any other case where the taxpayer presently subsidizes a government service competing with private firms.

The court should charge full costs of action to any litigant or attorney whose activity imposes a workload on the court which is not, in the judgment of court officials, justified by the necessity or gravity of the situation. In our interviews, we heard many complaints about frivolous motions, duplicative motions, and poorly prepared legal documentation. We see no reasonable way to prevent such workload without abridging rights or creating a bureaucratic screening system. In our view, a less cumbersome means. of reducing this kind of workload on the court, when the court judges it frivolous, is to charge full cost.

Finally, court statistics show that certain demands, while granted as a matter of right, are extraordinary for classes of cases. Examples include the demand for jury trial and the demand for daily transcripts of court proceedings. Litigants pay for the twelve jurors actually chosen to decide a case, but not for the panel of 30-40 jurors from whom the twelve are chosen. Charges for full panels would raise on the order of $600,000 at current juror rates. The statutory fee for daily transcripts is $128 per reporter-day; currently reporters' salaries and benefits amount to $174 per day; we estimate fully burdened costs at $230 per day. In both cases, the County retains capacity in the court system to meet demands which are statistically rare. The taxpayers'

dominant interest is in the 98% of cases which do not require juries and the 99.5% in which a daily transcript is not required. Thus a new policy should incorporate full cost recovery in these cases.

The fifth point we would include in a new policy for user financing of the court system is an exclusion of juvenile and criminal cases and of such civil processes and procedures, designed as alternatives to traditional adjudication, as small claims court and arbitration.

The sixth element in the policy would index filing fees as a proportion of the costs they are intended to fund or to inflation, whichever is less. Filing fees and the revenue from fees and charges have not kept up with inflation over the past decade, and they have fallen far behind the increases of cost attributable to demands for service. The reason is that the statutes specify fixed fees rather than formulas related to cost.

We do not agree with those who suggest that the full cost of civil litigation should be borne by the parties, except when the parties choose private adjudication. Access to the courts is far preferable, in our view, to the alternative means of resolving disputes that people could select if turned away from the courts. We are proposing, however, that the Legislature, with the support and consistent firm backing of the Judiciary, adopt a policy establishing a proportion of cost as the basis for fees rather than fixed fee schedules. Fees would then increase or decrease from year to year, based on prior year costs.

With the exclusion of fines and forfeitures and the limitation to primary sources of demand for civil litigation, the new policy would have little impact on revenue in the Municipal Courts. In developing the policy, the Board, Courts and Legislature would take into account the needs of the poor when filing in forma pauperis and could establish sliding fee scales for

application when the amounts at issue are small or some other ability-to-pay issue is involved. The policy can also take into account the variability inherent in different classes of cases where compelling public interests or practical issues are at stake, such as in family law, conciliation and probate. Excluding criminal and juvenile cases, which account for 40% of judicial time in the Superior Courts,(30) the $10.7 million fees collected by the Superior Court account for 15% of the cost. Aside from indexing, we estimate that our proposed policy would raise $5 million, or release equivalent resources through privatization of process serving and cost-avoidance. Therefore,

> *Recommendation 3. The task force recommends that the Board of Supervisors and the Judiciary collaborate on promoting a new legislative policy of user financing of the civil case system. First, we recommend immediate steps to require full cost fees for service for jury panel, court reporting, and process serving. Second, we recommend that the system of fees for service be changed to (1) specify proportionality of fees to the costs they finance, and 2) require full cost recovery in cases where those demanding a service have a choice of lower-cost alternatives.*

State Subsidy. The State provides a substantial portion of court systems' costs. Since Proposition 13, the State has augmented general County funds with bailout money from surplus or from revenues generated on the State tax base. In addition, the State pays all but $9,500 of each judge's $59,600 salary in the Superior Courts, makes the employer's contribution to the retirement fund, pays arbitrator's fees, and subsidizes other direct costs. Finally, the State now provides a direct subsidy of $60,000 per judicial position to assist the County in paying for the support of additional judges.

In considering the alternative responses to Proposition 13, the Post Commission and the Economy and Efficiency Commission have recommended that the

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(30) Administrative Office of the Courts, Annual Report, January, 1980,71.

State assume full financial responsibility for the court system. Before Proposition 13, the Executive Officer of the Superior Court, the Judicial Procedures Commission, and others proposed increased State financing of the court system.(31)

Although each of these foresaw a potential erosion of local control in case of full State financing, their arguments supporting a major shift to State financing are persuasive. Local control of most court policy is a myth. The State laws establish not only the procedures which must be followed and detailed rules of court operation, but also such purely administrative elements as the size of the judiciary, the organization of the court system and the courts, court services provided by the Sheriff and the Marshal, hiring practices and personnel rules, and so forth. In contrast, as the Post Commission emphasized,(32) the operations of the court system are a compelling function of the State. Local initiatives to save money or increase revenues in the system require legislative approval. State financing is preferable, then, as a shift of pressures to economize to the political level which must adopt changes.

Our task force has reconsidered these proposals and arguments. We find them unconvincing. First, State government is no more affluent than County government at present, and it is much more remote politically from the communities to be served. If the objective is obtaining the additional resources necessary to prevent court system collapse, then a shift to State financing,

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(31) A. Alan Post, Chairman, et al, Final Report: Commission on Government Reform, State of California, January 1979, 44; Economy and Efficiency Commission, Challenge for the 1980's: Can We Govern Ourselves? January, 1979,15; Judicial Procedures Commission, Minutes of May 20, 1976, attached correspondence.

(32) ibid

with the inevitable increase of State control, would merely confuse the issue. The State can't afford adding to the courts better than the County. Second, we remain convinced that one principal motivation for public support of Proposition 13 was to reduce government costs--rather than to shift costs among alternative tax bases. Removal of financial pressures to a remote State agency would dilute pressures for court improvement. Regardless of the absence of comprehensive local control and accountability in the present system, a shift to the State would eliminate local influence entirely over cost control and revenue decisions. Therefore, we have not repeated past recommendations to shift financing of the courts to the State level.

The present subsidy system is deficient, we believe, in two respects, both caused by the State's reliance on fixed dollar formulas. First, the impact of fixed dollar amounts declines as costs increase with inflation. Support falls to inadequate levels. Second, the fixed dollar formula bears no relationship to fluctuations of workload that may be caused, in part, by changes of State law. The level of support should be increased to a share of total system cost ($231 million) and indexed so that the State's share remains a constant proportion of costs net of fee revenue. Since many of the new laws adopted by the State have major impact on the court system workload,(33) we think that the subsidy should take the impact of new legislation into account. Therefore,

> *The task force recommends that the Board of Supervisors and the Judiciary seek legislation which would index State subsidy support 1) to a fixed proportion of total court system costs, and 2) to the full incremental costs attributable to any new law affecting the courts (Judicial Impact Statements).*

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(33) e.g. Welfare and Institutions Code changes in the mid 1970's reduced filings for juvenile delinquency and increased filings for civil petitions.

Conclusion. The task force has reviewed the amounts and structure of court system financing. Major improvements are needed. We recommend an overhaul of the user-financing policy established by the Legislature. We recommend that the State increase its subsidy, index it to cost, and accommodate judicial impact findings in the formulas.

## Court System Structure

*Issue: How can restructuring of the court system improve efficiency, reduce costs, or otherwise increase resources available for court work?*

The structure of the court system is no less irrational, from an organizational efficiency perspective, than the rest of government. A chart of the basic structure (see page 2) demonstrates extensive application of the principles of separation of powers. It is intuitively appealing, as it is for all of government to suggest that major gains of efficiency would follow from consolidation.

Various proposals for reorganization of the court system have persisted for decades.(34) All of them are based on the same theory as the consolidation of public health care and hospital functions, which were accomplished during the 1970's, and the consolidation of fire services, police services and so forth which is frequently proposed. That theory is that fragmented organizations have excess capacity which could be eliminated or allocated more efficiently in a consolidated system.

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(34) See references. This was one of Roscoe Pounds's themes in 1906; various forms have been studied and analyzed extensively and less than extensively by consultants (1967), commissions (1967, 1975), and research groups(1978).

Court reorganization proposals have three forms:

- jurisdictional consolidation, or unification, to consolidate the Superior Court and Municipal Courts into a single trial court of general jurisdiction;
- district consolidation, to consolidate all Municipal Courts into a single Municipal Court District;
- functional consolidation, to consolidate such administrative and support agencies as the Executive Officers, Clerks, Sheriff (Court Services) and Marshal into single units.

Unification is roughly analogous to city-county consolidation into a single metropolitan government. The theory is that, when demand slackens in a Municipal Court, the court could do work assigned from the Superior Court calendar, and the reverse. The ability to centralize resource allocation is greater in large units than in small ones that have fewer resources to reallocate. The large unit can produce savings through specialization and has sufficient resources to purchase technological productivity improvements.

District consolidation is roughly analogous to consolidation of all cities into a single city--for example, Los Angeles. The theory is, again, that control over resource allocation could improve and that the increased size could produce economies of scale.

Functional consolidation is roughly analogous to cities and counties using such forms of consolidation as joint powers, contracts, and special districts to reduce the overheads of managing separate organizations while retaining political control.

Our task force has not agreed on a recommended position on current unification proposals or consolidation proposals.[35] While we neither oppose nor support jurisdictional or district consolidation, our tendency is to prefer

(35) SCA 25 and SB978; Los Angeles County Grand Jury - Arthur Young, Municipal Court Consolidation, June 1981.

proposals to achieve functional consolidation, where feasible, to both. More important, we would prefer that the political and analytical energies of the various parties to change be focused on more pragmatic and demonstrably effective ways to address the severe problems of backlog and fiscal insufficiency experienced in the court system. Even when executives in business see the need for reorganization, they are likely to correct severe short-term problems before reorganizing.(36). The reason is, the energy consumed by the reorganization, the problems it creates, and the complexities of its implementation may cause enough inattention to current problems to permit failure before the process is complete.

Experience with local governmental consolidation efforts demonstrates that detailed planning of implementation is one key to effectiveness. Consolidation of health care services may or may not have produced public benefits. The experience of implementing it could not lead anyone to be sanguine that the benefits are universal, balance the disadvantages, or are as timely now as they were. Indeed, the once unified department has now been split into separate Health and Mental Health departments; the geographic regionalization has priority over functional resource allocation strategies; economies of scale, if present, are not evident in performance data; the department is experiencing severe reductions of resources.

We believe that consolidation of governmental services is chancy for three reasons. First, reorganization is never sufficient to effect change. It shifts power; thus whether it forces change, and in what direction, depends

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(36) Harold Seneker, "Five International Harvesters in One," Forbes, April 15, 1977.

on the objectives and resources of those to whom power is shifted. The reorganization can create efficiencies, but it is not possible to guarantee that it will create them. Second, the promise of scale economies is seldom realized in labor intensive governmental agencies. There is simply no evidence that one large governmental entity is any better than a large number of smaller ones; there is some evidence to the contrary. (37) Third, to the extent that size can create efficiencies it can also degrade responsiveness. Large units are not as close to the people as smaller units, and the priorities of service change radically after consolidation.

In contrast, experience with all forms of administrative and functional consolidation has been positive, particularly in the contract cities and joint powers agencies. The cities retain political, policy, and fiscal control; the Sheriff or other county agency has the will to produce the service at optimal cost and the motivation to maintain consistently positive relationships with the city and constituents.

Administrative consolidation has similar promise in the court system -- indeed, it is one of the features of unification plans. Its key advantage is that it does not disturb the distribution of political power or the ability of local elected officials to influence policy. As the experience of the contract cities with insurance demonstrates, it can effect realistic, significant economies of scale.

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(37) for a good analysis, see the research papers prepared for Governor Reagan's Task Force on Local Government Reform, 1974.

The courts have made some gains in administrative consolidation, and have some realistic proposals for its continued development.(38) Some counties have merged the Clerk and Executive Officer of the Superior Court into a single support organization.

Although structural change is not a sufficient condition for system improvements, it may well be a necessary condition in the court system. One of the reasons why court improvements are consistently defeated -- consolidation of the Marshal and Sheriff since the early 1960's -- is that the fragmentation of power creates an equilibrium of balanced opposing forces on each proposed change. In that event, the equilibrium cannot be broken until power is shifted through reorganization. Such reasons have more to do with governance of our political institutions than with efficiency, congestion or delay. Local initiatives, to develop inter-court contracting or joint-powers strategies for example, may be the most feasible and therefore effective approaches to improving resource allocation and achieving scale economies. Therefore,

> *The task force recommends that the Board of Supervisors and the Judiciary put top priority on 1) short term strategies to correct backlog and reduce costs, and 2) the development of local initiatives to achieve administrative consolidation of court functions.*

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(38) Judicial Council of California, Court Administration Consolidation Project, July 1980; also, Presiding Judges' Association of the Municipal Courts, Agendas, 1981.

## V. ISSUES: INCENTIVES AND DISINCENTIVES

The court system in Los Angeles County is congested because the demands placed on it are growing more rapidly than its resources. In fact, system resources are declining relative to demand. In Sections III and IV we discussed means to increase resources by adding to the system, reorganizing it, or improving operating efficiency and control.

In this section, we turn to another family of alternatives--those designed to reduce demand on the system by manipulating the economic incentives and dis-incentives of litigants and their attorneys. The proposals we have considered apply primarily to civil cases filed in the Superior Court.

It is important to recognize that attempts to control congestion or delay by manipulating incentives would modify the underlying system of justice rather than its administration by public officials. Implementation requires legislative action or constitutional amendment. Action has been slow because of the equilibrium among powerful interest groups who propose contending theories to the legislature which would justify action that other, equally powerful interest groups believe adverse to their interests. Each of the opposing theories has a persuasive a priori basis, but none has been tried and verified empirically. Since no one knows what the effects would be of the various contending proposals, and they are highly controversial, the Legislature fails to act.

Our task force believes that an understanding of the issues is crucial to a reasonable and effective County policy--Board and Judiciary--on court improvement. The County is a major litigator as well as financier of the court system and component of its management. Should the County support or oppose

proposals designed to reduce court costs when they entail the risk of increased litigation costs? In the absence of sound cost trade-off information, the County and other public agencies have consistently opposed many proposed changes of the incentives system.

What motivates people to use the court system with ever-increasing frequency is itself open to debate, and attempts to manipulate those motivations, even when mere insurance or lawyer market economics is involved, may be socially explosive strategy. During the 1960's, people chose riots, mass civil disobedience, crime and insurrection to resolve their grievances and moderate their disputes. At least part of the reason for increased litigation through the 1970's was a shift to working within the system. People turned to the courts to protect their rights and act in the place of impotent or irresponsible legislatures. Reversal of this motivation is not desirable, considering the alternatives.

On the other hand, the public cost of maintaining capacity in the Superior Court system exceeds the value of the litigated issues in a surprising number of cases. The annual cost of system capacity, $119 million, is the equivalent of $230 per hour per courtroom in a 2000 hour year; the cost of a civil court alone, excluding indirect support costs and such overhead as the cost of space, is $208,000 per year, or the equivalent of $166 per case-hour in a 1250 hour judge year. According to such authorities as the Executive Officer of the Courts,[39] consistent with Judicial Council data, the 10% of the cases actually tried consume 85% of court system resources. Thus, we believe that court costs of $170 to $190 per hour can be fairly attributed to trials, and a cost of $14,000 to a ten day trial. Yet according to data collected by Rand,[40] 45%

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(39) Public Hearing, op.cit. July 1, 1981.

(40) Hensler et.al., op.cit, 37.

of jury verdicts in Los Angeles County personal injury cases amount to $15,000 or less. Similarly, of the 45 de novo trials we reviewed, only ten resulted in verdicts exceeding $7,000. Even though the size of awards appears to be increasing and large awards appear to be growing in number,(41) additional incentives may be desirable to divert cases from trials which cost the public more than the plaintiff receives before attorneys' fees. Comprehensive data on the size of awards and settlements are not routinely reported, except for jury awards, and would require major effort to construct. In the absence of such data, the nature of desirable incentives is extremely controversial.

On the fundamental level, the incentives driving civil litigation are analogous to those driving criminal trials. Two parties have a dispute, one party wants to punish the other; the one to be punished wants to minimize the amount. Both parties, then, undertake a risk assessment and re-evaluate the risk from time to time during the process between initially undertaking the case and deciding between settlement and insisting on a trial. The party claiming satisfaction, whether a contract or an injury, wants speed and relates the potential amount of compensation to the risk of receiving less. The party charged or a third party payer benefits from time and relates the potential size of the payment and the cost of resisting to the risk of paying more. For both, the filing of a lawsuit provides a powerful incentive to settle, since third party adjudication increases risks significantly.

Volumes have been written on trial risk assessment and on optimizing risks in case evaluation. In our view, what is needed is a clear recognition

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(41) California Citizens' Commission on Tort Reform, Report: Righting the Liability Balance, Los Angeles, September 1977.

that each side will optimize risks and costs regardless of the system of incentives. In fact, the plaintiffs' and defense bars tend to recommend opposing approaches to court improvement strategies precisely because they view the changes in terms of risk assessment rather than in terms of the effects on congestion or delay.

The most important consideration in the public sector today, including in the courts, is cost. As a method of reducing the public costs of congestion and delay, the manipulation of litigants' financial incentives in tort or contract cases might have a major effect. Such cases consume 38% of total court resources, measured by judicial time spent on their disposition, of which 12% is personal injury and 26% other civil complaints.(42) Therefore, a 10% improvement, in the number filed or in the time consumed deciding them, could save $3 million--enough to finance seven civil courtrooms. We emphasize, however, that manipulation of incentives would affect not only cost, but also justice in our society.

Accelerated Processing Incentives.

*Issue: How can change of economic variables assist litigants and courts in ensuring speedier case resolution?*

Most civil cases settle before the award of a judgment by judge or jury. When they settle, however, is controlled more by the litigants and their attorneys than by the court. Some claim that a firm, early trial date is the most effective impetus for settlement. Others claim that economic incentives motivate delay.

In most civil cases, one side demands money as satisfaction for some wrong it attributes to the action or negligence of the other side. The other side may deny responsibility or it may accept some degree of responsibility and disagree on the just level of payment. If the issue is a contract between

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(42) Administrative Office of the Courts, Annual Report, 1980, 71.

the two parties, the amount owed may be computable from contract provisions.

The issue may be a motor vehicle accident, professional malpractice, or poor conditions permitted by the owner of property, manufacturer of goods, or provider of services. In those cases the amount, fair compensation for an injury, is not immediately computable and may be the primary issue at the trial or during settlement negotiations.

When a jury or court decides a claim where the money required for satisfaction is computable, it may include interest earned on that amount from the time of the claim to the judgment.(43) The court has no authority to include interest earned on personal injury awards until after the amount is established by a judge or jury--that is, until after the judgment. In any case, the interest on judgments may not exeed 10%,(44) and is now set at 7%.

This creates an incentive for anyone defending a claim for money to defer judgment and payment for as long as possible, provided the risk is high that payment will be required and provided the costs of deferral (e.g. legal costs) do not exceed earnings on the funds retained. For example, suppose an insurance company expects to pay $5000 after defending an automobile accident. At current bank rates, it can earn at least $750 per year by retaining the funds. It should take steps to avoid settlement or delay judgment as long as the legal costs of retaining the case in the inventory of unsettled claims do not exceed $750, because the company retains the net. With the elaspsed time between the claim and judgment in the neighborhood of five years for cases going to trial, and market interest rates in the neighborhood of 15%, retained earnings

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(43) Civil Code, Sections 3287 and 3288.

(44) California Constitution, XV(1).

on the original $5000 are enough to finance the claim.

Those who believe such incentives are a major reason for court delay propose that the law be changed to require prejudgment interest, and that the Constitution be amended to correct rates to prevailing market levels, or that statutes be amended to correct rates from 7% to the maximum 10% permitted by the Constitution.(45)

Our task force has no consensus on prejudgment interest, agrees that statutes should be amended to correct rates to 10%, and would urge support of a Constitutional amendment to correct rates to market.

We have no consensus on prejudgment interest because we have seen no convincing empirical evidence to form a sound basis for prediction of its effects on congestion, delay, and public costs. In our view, while mandatory prejudgment interest could motivate the defense to reduce elapsed time between filing and satisfaction only in large value cases, it would also eliminate any disincentives claimants have for filing lawsuits.

Moreover, prejudgment interest would shift the incentive for delay from one party to another: with prejudgment interest, plaintiffs would benefit from delays. The underlying issue is risk. Plaintiffs would risk the probability of a total loss against the potential interest earnings from delay;

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(45) e.g. SB 1176 (Petris, 1981); AB 2026 (Statham, 1980); AB 188 (Statham, 1980); SB 1394 (Robbins, 1980); see also "Joint Effort Needed to Cut Trial Delays," Los Angeles Daily Journal, February 11, 1981; William Shernoff, "Insurance Reform Before Tort Reform," Los Angeles Daily Journal, May 8, 1981; Los Angeles Herald Examiner Editorial: Plaintiffs Tired of Waiting in Line?", Los Angeles Daily Journal, July 7, 1981; Minutes, Conference, Los Angeles County Bar Association, March 7, 1981; Robert Hunter, Taking the Bite Out of Insurance: Investment Income in Ratemaking, National Insurance Consumer Organization, Alexandria, 1980; Judicial Procedures Commission, Minutes, May 7, 1981 and September 3, 1981; The Superior Court of Los Angeles County, Report of the Committee on Court Improvements, July 1977.

defense risks the probability of a net gain after costs against the potential interest costs of delay. To the extent that, in the absence of prejudgment interest, delay presently benefits the defense, delay would benefit the plaintiff after a shift to mandatory prejudgment interest. The risk/reward motivations of these sides is a justice issue, rather than a congestion-cost issue. Therefore, we recommend no position on prejudgement interest.

On the other hand, the constitutional limit of 10% on the interest on judgments and the statutory limit of 7% clearly violate free-market principles and provide indefensible anti-competitive advantages to debtors. Therefore,

> *The task force recommends that the Board of Supervisors and the Judiciary 1) adopt no position on prejudgment interest and 2) urge passage of legislation increasing interest rates to 10% and proposing a constitutional amendment replacing the interest ceiling with a market equivalent.*

Caseload Reduction Incentives

> *Issue: How can change of economic incentives assist in reducing court caseloads?*

Financial Motivations. Just as plaintiffs and their representatives tend to propose financial incentives as a means to reduce delay, defense experts tend to propose manipulation of financial motives as a means to reduce congestion by taking cases out of the system.(46) They propose no-fault insurance programs, limitation or prohibition of contingency fees, and various procedural reforms.

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(46) Defense Research Institute, Responsible Reform (1973: No.5), Milwaukee, 1973; George W. Tye, "Let's Have Real Insurance Reform." Los Angeles Daily Journal, May 18, 1981; Alan Ashby, "Insurance Industry Lines Up to Block Prejudgment Interest," Los Angeles Daily Journal, June 8, 1981; California Commission on Tort Reform, Report: Righting the Liability Balance, Los Angeles, 1977. Hon. Baxter Ward, et al, Illegal Attorney Referral Activity In Los Angeles County, August 1974; Kim Clark, "Waiting For Insurance Money, Family Lives in Burned Home," UPI: Los Angeles Daily Journal, August 14, 1981; A.Alan Post et al, op.cit., 49-50 and 106.

Our task force has reviewed the information available from proponents of these schemes; we find the same flaws as in the documentation of prejudgment interest and interest rate proposals. The theories are persuasive enough. If attorneys cannot recover reasonable fees and costs from filing lawsuits on behalf of injured parties, they won't file lawsuits. Since fewer lawsuits will be filed, congestion will decline. If third party satisfaction is always available in case of damage or injury, the need to sue to prove negligence will decline, resulting in fewer lawsuits and less congestion. Nevertheless, we have found no compelling empirical evidence that these theories are a sound basis for action to reduce congestion and delay. We view them as justice issues. Los Angeles County, for example, is suing the Insurance Commissioner over the industry's territorial rate-setting system. That, of course, is a question of how the industry can most fairly spread its risk. No-fault insurance is unlikely in California until the suit and its issues are resolved.

Therefore, the task force has established no position on the issues of relieving congestion by creating disincentives to discourage lawsuits.

Caseload Diversion. The caseload in the Superior Court and Municipal Courts would decline if people would go elsewhere with their disputes. We have already described arbitration and private adjudication as court-managed means of diverting caseload as it enters the system. The Small Claims Court of Municipal Courts is another successful means of achieving the same end.

We have pointed out that it is undesirable, in seeking to motivate choice of alternative paths, to restrict access to the traditional court system; because of the potential social costs. Nevertheless, in the absence of comprehensive data on the final dollar value of cases entering the stream of Superior

Court filings, we know that at least some do not belong there at all. According to current rules, cases valued at $15,000 or less can go to Municipal Court for adjudication. Yet as the arbitration and jury award data show, cases may eventually settle for less than $1000. According to some, attorneys know in advance in some cases what the likely outcome will be.(47) It seems reasonable, then, to seek means of diverting such cases from the Superior Court caseload.

Direct approaches to case diversion have been proposed, including judicial prejudgment statements, sanctions on attorneys and attorney competence reviews. We believe such proposals are flawed, as methods of reducing congestion, because they could offset due process or access to the courts, increase attorneys' exposure to malpractice, or create more work than they could save.

We prefer indirect approaches to case diversion which make alternatives widely available to permit satisfactory dispute resolution at less expense than settlement or trial processes. In particular, we think that the establishment and expansion of grant-financed mediation, conciliation, and negotiated settlement programs should be encouraged. As distinguished from adjudication and arbitration, each of these processes relies on the parties to seek and agree on a settlement both can accept. The third party is a neutral, as a judge or arbitrator, but has no decision-making role. Instead of judging the facts and imposing a decision on the parties, the third party in these cases provides technical and communications assistance to the parties, enabling them to reach agreement.

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(47) e.g. William Kay Kirby, "On Plaintiff's Attorneys, Pilot Project, and Equal Protection of The Law," Los Angeles Daily Journal, July 1, 1981.

These alternatives are available in Los Angeles in the Santa Monica Municipal Court and the Family Law Department of the Superior Court. Community based, non-court alternatives are available from the Neighborhood Justice Center in Venice sponsored by the Los Angeles County Bar Association, from such legal services organizations as Bet Tzedek in the Fairfax area of Los Angeles, and from other Bar-sponsored "modest means" programs. Programs of this kind have been supported by Chief Justice Warren E. Burger, Governor Brown, and such local organizations as the Judicial Procedures Commission.(48)

Many of the authorities we interviewed view these programs as a preferred method of keeping disputes out of the courts. Others, however, argue that such processes can be effective only in cases where the parties know one another and expect some continuing relationship (e.g., merchant-consumer, spouse or family, employer-employee, neighbor, landlord-tenant) rather than in cases where one party demands satisfaction from a stranger (e.g., auto accident, medical or legal malpractice, mechanics liens, product liability, property condemnation). We consider this debate irrelevant. The point is, diverting some cases from the courts, which would otherwise go there, releases court resources to dispose of cases for which these alternatives are inappropriate.

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(48) Editorial, "Fighting Off the Locusts," Los Angeles Times, June 23, 1977; UPI, "Burger Lauds Russian People's Court System," Los Angeles Daily Journal, September 6, 1977; Gene Blake, "Justice With A Personal Touch," Los Angeles Times, January 15, 1978; A.P., "Brown and Lawyers Head for Showdown," Los Angeles Times, January 3, 1978, Judicial Procedures Commission, Minutes, December 4, 1980; Eve Neilson, "Paralegal Perspective: Mediation As An Alternative To Trial," Los Angeles Daily Journal, October 3, 1980; Planning and Research Unit, Bulletin, Volume 3/3, August 1980.

We believe that neighborhood justice centers and similar programs offering mediation or conciliation have considerable unrealized potential for relieving court congestion. They operate as information and referral centers for disputants seeking relief. When, in their staff's judgment, mediation is appropriate, they have a credible record in persuading both sides to try it. During the first six months of the program in Los Angeles, both parties agreed to participate in the process in 53% of the cases set for hearing. While both parties actually did participate in only 41% of the cases, the center's performance in persuading them to participate improved consistently.(49) According to recent reports, the center has opened more than 2000 cases and settled approximately 1000.(50)

Programs were initially financed by grants from the Law Enforcement Assistance Administration to support administrative and clerical staff, services and supplies. Legal and mediation services are staffed by volunteers. They are substantially less costly to the public than courts and adversarial adjudication. Their public funding has, however, expired, and sources of public funding for such programs have vanished.

We agree with critics of mediation that it is not appropriate or practical in all cases. So far, neighborhood centers may not be widespread enough to affect caseloads. Neverthe less, in some cases, the economic incentives should favor broader utilization. A merchant, for example, is more likely to collect a debt on a mediated schedule than on a judgment which is subject to default.

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(49) David I. Sheppard, et.al., Neighborhood Justice Center Field Test, Office of Program Evaluation, Law Enforcement Assistance Administration, USGPO (027-000-00762-1), February, 1979.

(50) Judicial Procedures Commission, Minutes, November 20, 1980.

We have not sought to determine whether these programs are preferable to Bar rules mandating pro bono legal work of members, to legal aid and public interest law firms' financing of low-cost adversary advocacy, or to entrepreneurial forms of supplying traditional legal services. From what we have learned, we are convinced that public and philanthropic support of such programs as the Venice Neighborhood Justice Center and Bet Tzedek should be encouraged, particularly when utilized through the courts, as in Santa Monica, or through other public agencies. Therefore,

*The task force recommends that the Board and Judiciary actively support the development and financing of neighborhood justice centers* based on cost-benefit assessment of their effectiveness in reducing court congestion.*

Conclusion. The task force has reviewed the question of whether manipulating economic incentives and disincentives is an appropriate means of reducing congestion and delay in civil courts. We have reviewed the theories of contending interest groups to establish prejudgment interest, market rates of interest on judgments, contingency fee limitation, and no-fault insurance. While we find all the theories persuasive, we find no evidence that such changes would materially reduce congestion or delay. From the perspective of an analysis of congestion, the interest groups' proposals merely reflect conflicting objectives. Some would eliminate economic incentives to delay, permitting the number of cases filed to float; others would eliminate incentives to file lawsuits, but permit elapsed time to float. Our finding, then, is that these proposals are justice and tort reform* issues rather than public cost issues. In considering interest rates, however, the task force concludes from market principles that the Constitutional ceiling of 10% is obsolete.

We support a Constitutional amendment to increase rates to market levels, indexed to bank rates. Finally, we believe that current economic incentives favor mediation alternatives in some cases. We propose public and philanthropic support of neighborhood justice centers as means of encouraging alternative forms of dispute resolution in appropriate cases.

## VI. LEGAL PROCEDURES

One of the central functions of the court system is to provide a process which protects the rights of parties to a dispute and permits each to advocate a cause without fear that opponents have unfair advantages in the system, Regardless of what may be proposed to improve the efficiency of the court system, it can be implemented only if the parties to change -- judges, lawyers, legislators -- are convinced that it will have little or no impact on the major attributes of the process.

Certain changes designed to improve court system efficiency clearly fall in a class where the risk is high of radically changing the process: limiting the right to counsel or the right to jury trial and regulating the behavior of lawyers in representation by limiting continuances or enforcing sanctions. In other cases, the risk to the process is not clear, but the effects on legal process are a matter for contention inhibiting decisive and quick action by the Legislature or the Courts: introducing new courtroom technology, or relaxing the jurisdictional boundaries between Superior and Municipal Courts.

The task force established as an early constraint on our effort that we would not concentrate on evaluating such proposals or developing new ones. We view the probability of effective local action to implement such changes as nil. State-wide action will almost certainly implement some of these changes, but only after judges and lawyers generally agree on the details of a specific design they are persuaded will not disrupt judicial fundamentals.

Nevertheless, in the course of our review, the task force discovered that the courts in Los Angeles and in California have been actively experimenting with changes that appear, from evaluation, to have beneficial effects on process efficiency without disrupting the system of justice. In addition, we have found that the courts have sought technological improvements for years, only to be frustrated by legislative inability to act.

Our group consists primarily of non-legal professionals. As lay people, we hesitate to claim conclusive evidence that any of these programs will work in the long run. We support their continued development. We propose increased experimentation at the County level, and recommend that the Legislature remove obstacles to local implementation.

Courtroom Technology

Courts, litigants and their attorneys, and the community need accurate, comprehensive records of testimony, evidence and decisions during pre-trail stages and trial. They form the basis for final adjudication and for reviews on appeal, if sought. By tradition, these records are kept in print or facsimile media constructed by court reporting technicians, lawyers, or paralegal professionals who are physically present at the events being recorded. The tradition has also required the physical presence of witnesses and opposing parties, to protect the right of an accused to confront and examine accusers and witnesses. Evidence and records are under the control and protection of the court system at all times.

With widespread availability of contemporary data processing and communications technology, these process requirements impose extraordinary Inefficiencies on the courts. Court reporters' notes must be dictated and later typed, while tape recordings would be a direct method of keeping the record during deposition and trial, deferring transcription until needed for

review or appeal. Alternatively, computer-assisted transcription would eliminate the step requiring reporters to dictate from stenotype equipment by encoding and recording stenotype symbols for later decoding by computer when print records are needed. Similarly, lawyers or witnesses must travel, at times abroad or out of State, to take and provide testimony, while videotape transcription, if necessary under the supervision of legal authorities in both places, could reduce the transportation costs of depositions. Conference telephone calls, or videoconferencing, may be an adequate replacement for the physical presence of lawyers arguing such pretrail tactical devices as demurrers and discovery motions.

All of these devices and methods have been proposed, subjected to experiments and cost analysis, and debated for as long as 20 years. They are used in such States as Alaska, and some are currently used in California.(51) They save time and money.

The obstacle to comprehensive development of these options is not the concerns of judges and lawyers. Those concerns are real enough, especially in the area of computer security, but criteria are gradually being worked out judicially.(52) The obstacle is legislative paralysis in the face of union and interest groups opposition. In the case of Los Angeles, the proposal to use electronic reporting in only 5% of Superior Court cases has been defeated since 1971.

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(51) Director, Administrative Office of the U.S. Courts, Report: Electronic Reporting of Court Proceedings, 1961; Executive Director, National Association of Municipal Judges, Electronic Court Reporting in Southern California; Auditor General, State of California, Electronic Court Reporting, February, 1970, Earl C. Gollschalk, "Courts Calling on Telephones to Economize," Wall Street Journal, June 1, 1981; Superior Court, County of Los Angeles, Recording and Transcription of Los Angeles Superior Court Proceedings, September 1972.

(52) 81 Daily Journal D.A.R. 2349 (C.A. 5th, July 20, 1981); 81 Daily Journal D.A.R. 2523 (C.A. 2nd, August 10, 1981).

We believe that the applications of technology will continue to advance in the legal community, regardless of whether the court system keeps up. (53) The irony is, improved efficiencies in other sectors of the legal community will magnify inefficiencies in the court system if they remain out of phase with one another.

One of the absurdities of the post-Proposition 13 era in California is that the local agencies bearing the cost and pressure of revenue reductions have no authority to improve technology, even when they are the public bargaining agent with the unions involved. Therefore,

> *The task force recommends that the Board of Supervisors and the Judiciary place top priority on obtaining legislation permitting increases of courtroom technology applications.*

Size of Civil Juries

The right to a jury trial in civil cases is guaranteed in the United States Constitution (Amendment VII) and was a particular concern of the authors. Nonetheless, it is described in every inventory of court improvement proposals as a major source of unnecessary cost which is to be avoided or reduced at every opportunity. (54) Needless to say, proposals to abolish or limit juries in civil cases are highly controversial. They are opposed with particular vehemence by those trial lawyers who appreciate the built-in economic advantage held by business and institutions over individuals. Such proposals therefore

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(53) Steve Martini, "L.A. Court Reporter System On Way Out?," Los Angeles Daily Journal, February 2, 1971; Becky Morrow, "Dramatic Jump in Use of Law Firm Computers Seen," Los Angeles Daily Journal, September 19, 1980; Ralph Kleps, "Focus on Court Reform: 1980 Balance Sheet,: Los Angeles Daily Journal, January 12, 1981.

(54) see References.

have the reputation in the legal community of being unfeasible. Nevertheless, the voters approved a Constitutional amendment to permit reduction of jury size in civil cases before Municipal Courts in California. Recent legislation (SB 35) implemented this amendment by establishing a three year experiment in Municipal Courts in Los Angeles County.

The argument against reduction of jury size is that smaller juries are more prone to error, leading to an unjust result. The arguments for reducing size rely principally on cost; some also argue that modern business cases are too complex for lay juries.(55)

Based on philosophical reasoning, such debates can rage on forever. In England, juries in civil cases were abolished by 1937 except for libel and fraud. Who is to say that justice in England is today more efficient or more just than it is here?

We believe that an appropriate approach to this question should hinge on public policy debate over quantified risk. The United States Supreme Court has recognized the validity of six-member juries in criminal cases.(56) Policy-makers can decide on risk in advance: that is, establish how probable the potential conviction of an innocent person should be relative to the potential acquittal of a guilty person. Based on this data, the optimal jury size can

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(55) Hon. William P. Hogoboom, "The Jury: Costs and Proposed Changes," Town Hall Reporter, March, 1979, 9; Philip Hager, "Bar Assn. President, Citing Court Delays, Urges Abolition of Juries in Civil Cases," Los Angeles Times, August 7, 1976; Chief Justice Warren E. Burger, "Are Civil Juries Necessary? Excerpts of Address printed in Los Angeles Daily Journal Report No. 79-17, September 14, 1979. Hon. Jacob D. Fuchsberg, Judge of New York State Court of Appeals, Los Angeles Daily Journal Report No. 80-19, October 24, 1980.

(56) Ballew vs. Georgia, October, 1977.

be computed to minimize risk. (57) The methods are not universally acclaimed.(58) They do, however, bring the issues into a practical focus which can be analyzed by the Legislature in terms of the costs and benefits of alternatives.

We do not claim to have a definitive answer on questions of jury size. We anticipate the results of experiments in the Municipal Courts. We are convinced, nevertheless, that electing small juries, where authorized, may be a feasible way to reduce costs without increasing the risk of unjust verdicts in civil trials. We are impressed that the issues of the debate are subject to quantification. Therefore,

> *The task force recommends that the Board of Supervisors and the Judiciary continue seeking approval of methods of reducing costs and delay by reducing jury size.*

Pilot Projects

The legal community has proposed several technical and procedural reforms, and persuaded the Legislature to experiment with a few of them. We reviewed the status of two pilot projects -- the Economic Litigation Project and the El Cajon Project -- and proposals in the Probate area.

The Economic Litigation Project is an experiment implemented in Los Angeles and Fresno to simplify procedures.(59) The project is designed to reduce the private costs of litigation for cases valued at $25,000 or less. It is in effect until 1982 in the Superior Court and Municipal Courts.

The project limits the behavior of litigants and attorneys in preparing and trying their causes. It limits pretrial motions and discovery and requires simplified pleadings.

Sponsors, participants, and independent observers are presently evaluating project effectiveness.(60) From what we have learned, the project

(57) Stuart S. Nagel, "Management Science and Jury Size," Interfaces: A TIMS/ORSA Journal (11:3, June, 1981), 34.
(58) William V. Gehrlein, "Management Science and Jury Size: A Commentary," Interfaces: A TIMS/ORSA Journal (11:4, August 1981), 67
(59) Code of Civil Procedure, Section 1823 et.seq.
(60) Judicial Procedures Commission, Minutes, May 21, 1981

has considerable promise for reducing delay as well as public and private costs. It is not without its critics, particularly because discovery steps are eliminated.(61) The task force has deferred judgment on the program and its potential cost savings. We believe that its effects should be compared to such alternative programs with similar or overlapping jurisdiction as the arbitration program in Superior Court and the Small Claims programs in Municipal Courts.

The El Cajon Project is an experiment implemented in San Diego. It is designed to save time and money by authorizing the Judiciary of Municipal Courts to hear and dispose of issues usually decided by the Superior Court.

The central feature which interests our task force is that the law permits Municipal Court Judges, when the parties agree, to retain felony cases for sentencing rather than transfer them to the Superior Court. Usually, felony cases are processed in two major stages. The Municipal Court holds the preliminary hearing, to determine whether the evidence is sufficient to bind the defendant over to the Superior Court for trial. The case is then tried in the Superior Court. If a defendant pleads guilty at the preliminary hearing, the case is transferred to Superior Court for sentencing. In both instances, trial and sentencing, much of the work performed in the Municipal Court may be duplicated later in the Superior Court. By eliminating this duplication, the pilot project has the potential to reduce Superior Court workload without a major increase of Municipal Court workload.

Comprehensive evaluation of the effectiveness of this experiment has not been concluded.(62) Nevertheless, it appears to have substantial

(61) William Kay Kirby, op. cit.

(62) Los Angeles County Municipal Courts Planning and Research, "Analysis of El Cajon Municipal Court Experiment," Memorandum from William A. Soroky to Honorable Clarence A. Stromwall, January 21, 1980

potential for improving system resources management within the framework of current law. We believe the experiment should be continued, and that the Judiciary should consider implementing some of its elements in Los Angeles County with careful attention to design of experiment considerations which would permit comprehensive analysis of its cost effectiveness. Information generated by implementation of the cost accounting system (FIRM) would be particularly valuable for evaluation.

Finally, we reviewed the status of proposed Probate reforms. One proposal is to change the basis of lawyers' fees for probate work from a percentage of the estate to an hourly rate or piece rate. The second is the Uniform Probate Code adopted in Idaho in 1971.(63) Fee schedule modification is designed to create incentives for efficient processing in the private legal sector; the uniform code is designed to take much of the probate caseload out of the courts.

According to those we interviewed and some of the literature, these changes have been effective in other States. We believe they should be considered by the Board of Supervisors, the Judiciary, and the Legislature as one means with potential for reducing congestion.

On April 21, 1981,on motion of Supervisor Hahn, the Board of Supervisors instructed the Public Administrator-Public Guardian to recommend improvements of probate processing (Minute Order No. 92). While the instruction was directed at County administered estate processing, we believe that the probate expertise of the Public Administrator and County Counsel could be brought to bear on this aspect of court congestion. We therefore propose that the County continue its analysis and incorporate fee structure and uniform code changes among the alternatives.

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(63) Terry L. Crapo, "The Uniform Probate Code -- Does It Work?", UPC Notes (No. 16, Athens, July 1976); The Washington Post, "Editorial: $1908 an Hour", reprinted in Los Angeles Daily Journal, March 27, 1981; 81 Daily Journal D.A.R. 1093 (C.A. 4th April 10, 1981).

Conclusion. The task force has reviewed several proposed and experimental court improvement proposals which have not been widely implemented because of their potential impact on due process. We recommend top priority effort to obtain legislative authority to negotiate courtroom technology improvements with involved local unions. We recommend continued effort to seek authority to reduce civil jury size based on quantification of risk. We recommend continued support and development of procedural improvements when proven effective by evaluation of the Economic Litigation Project, the El Cajon Project, and Probate reform.

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