

LOS ANGELES COUNTY
ECONOMY AND EFFICIENCY COMMISSION

ROOM 163, HALL OF ADMINISTRATION / 500 WEST TEMPLE / LOS ANGELES, CALIFORNIA 90012 / 974-1491

George E. Bodle, Chairperson
Dr. Carolyn L. Ellner, Vice Chairperson
Lauro J. Neri, Vice Chairperson
Gloria Starr, Vice Chairperson
Dr. Curtis Ventriss, Vice Chairperson

MINUTES

FULL COMMISSION MEETING

July 1, 1981

Susan Berk
John D. Byork
Margaret Paterson Carr
Anne S. Collins
Dr. Mario Di Giovanni
Milton G. Gordon
Mary Jane Kidd
Thomas F. Kranz
Dr. Richard G. Lillard
Abraham M. Lurie
Robert Ruchti, II
Dr. Warren H. Schmidt
Wally Thor
Bryan Walker

Commission Staff
John Campbell
Martha Ohanesian

Members Present:

George E. Bodle, Chairperson
Susan Berk
John D. Byork
Joe Crail
Anne S. Collins
Jack Drown
Carolyn L. Ellner
Milton G. Gordon
Thomas F. Kranz
Richard G. Lillard
Lauro J. Neri
Robert Ruchti, II
Gloria Starr
Wally Thor
Peter L. Tweedt
Bryan Walker
Connie Worden

Members Excused:

Gunther Buerk
Abraham Lurie

Guests:

Leonard Shapiro, Private Citizen
Frank S. Zolin, Executive Officer,
Superior Court
Honorable Marion E. Gubler, Judge,
Municipal Court, Burbank, and Chairman,
Presiding Judges' Assn. of the
Municipal Courts of Los Angeles County
Richard M. Coleman, Esq., President-elect,
Los Angeles County Bar Association
Honorable David N. Eagleson, Presiding
Judge of the Superior Court

George Bodle called the meeting to order at 9:30 a.m.

Announcements

Mr. Bodle stated that the E & E Commission was assigned by the Board of Supervisors to appoint a Task Force to undertake an analysis of the courts, focusing on the issues of congestion and delay as well as court reform. The Task Force is chaired by Thomas Kranz and assisted by Executive Secretary, John Campbell. He noted that regular member, Richard Lillard, was newly elected President of the Grand Jurors' Association. He then turned the meeting over to Mr. Kranz.

Mr. Kranz said that the Task Force had met frequently since March. The purpose of today's hearing would be to establish some of the principal matters for review.

Speakers

Leonard Shapiro, speaking as a private citizen, addressed the commission. He supplied a list of suggestions (attached).

Mr. Frank S. Zolin, Executive Officer, Superior Court addressed the commission. He stated that trial delay was severe; and that should present trends continue, the system of civil justice in Los Angeles will collapse. He explained that the objectives of providing high quality justice and of operating efficiently are not always congruous. The high value placed traditionally on the quality of justice in the United States establishes, as the primary goal of the court, the resolution of legal disputes.

He reviewed basic descriptive statistics on the Superior Court in 1980-81 as follows:

Number of cases filed	213,669
Number of authorized judicial positions	261
Est. number of filled judicial positions	242
Number of criminal cases filed	19,328
Est. number of criminal courts	70
Number of juvenile cases filed	27,296
Est. number of juvenile courts	39
Number of probate cases filed	16,801
Est. number of probate courts	5
Number of family cases filed	72,573
Est. number of family courts	47
Other filings - appellate, etc.	7,172
Number of special activities judges	5
Number of civil cases filed	70,499
Est. number of civil judges	76

State law requires that criminal and juvenile cases be given priority; in addition, local policy favors family law cases, probate and mental health for practical reasons. Consequently, the civil calendar is the only place where slack is permitted to develop. At times, it is necessary to shift resources out of civil into one of the other departments.

In 1975, the Superior Court had a civil backlog of about 35,000 cases with a wait to trial of 30 months. This year, the backlog is about 72,000 cases with a wait of 42 months.

If everything stays the same and the growth in litigation continues, the Superior Court will need 39 additional judicial positions by 1990 to stay

Question (Drown): Are there standardized hours for judges?

Answer: Yes. Ordinarily, the judge is on the bench from 9:00 in the morning and then from 1:30 in the afternoon. It is important to recognize that judges may work in chambers or at other locations when not on the bench.

Question (Tweedt): Did any of the crimes happen in unattended courts?

Answer: No crimes, but many incidents.

John Campbell introduced the following subjects for later discussion:

1. Make additional use of private judges. Encourage litigants to use private judges or have the court contract with private judges.
2. Have a flying squad of judges to go around the state and clear backlog.
3. National Center for State Courts has done research on case management techniques - court imposing strict deadlines on litigants and attorneys.
4. Calendaring techniques (individual vs. master calendars)

Mr. Zolin made one more recommendation for possible revenue source. Have litigants in civil cases pay for reporter services. (They now pay a partial fee of \$13.50.) This would amount to an increase of \$1.9 million a year. His two recommendations would total \$2.5 million in revenue per year.

The Honorable Marion E. Gubler, Judge, Municipal Court, Burbank and Chairman, Presiding Judges' Association of the Municipal Courts of Los Angeles County, addressed the commission. He stated that there are 24 municipal courts in Los Angeles County and that each handles hundreds of cases a day. Although their workload has been increased (many felonies are now filed as misdemeanors), they are taking care of the influx. Civil suits get to court within 6 months or less; and generally speaking, they do not have a backlog. The problems of congestion and delay are simply not there as they are in the Superior Court, due to the different nature of the cases. Judge Gubler feels they have a very efficient operation. Municipal court judges have been appointed to sit as Superior Court judges when needed. The big problem is that they have been so busy with their own work that they have not been able to do as much as they would like to.

current with its workload.

The only alternative to additional resources is to implement means of reducing the volume of cases. One promising method of accomplishing this is to change the basic economic incentives. He favors increasing interest rates on judgments and permitting the assessment of pre-judgment interest.

Mr. Zolin cautioned the commission not to lose sight of one central fact in considering the various proposed reforms: the majority of cases (90%) are disposed of without trial; the 10% which require trial consume about 80% of the court resources.

Question (Kranz): 60% of the cost of litigation is paid by litigant and 40% by taxpayer. Would it be feasible to have litigant pay all?

Answer: Litigant pays closer to 70% now with the latest fee increase; and yes, it is possible to increase revenue. Mr. Zolin also recommended that litigant could pay for all jurors (35 or 40) instead of just the 12. This would mean additional revenue of \$572,000 for Superior Court and \$44,000 for Municipal Court.

Question (Ellner): Could civil cases cut jurors from 12 to 8 or 6?

Answer: Superior Court has supported and introduced such legislation since 1972.

Question (Ellner): The current limit for arbitration is \$15,000. Would it be worthwhile to raise the limit to \$50,000 or \$100,000?

Answer: It is possible to increase arbitration limit, but that decision must be made by the legislature. Current backlog of arbitration is 17,600.

Question (Neri): Please comment on Leonard Shapiro's suggestion to eliminate bailiffs in civil matters.

Answer: 42 courts operated for 11 months with no bailiffs or court attendants. It did not affect the disposition of cases but caused serious security problems, considering the crime and violence that occurs in the court facilities.

Question (Drown): How long has it been since the court had a productivity study done? Do judges have any performance or productivity incentives?

Answer: The reward process is indirect, except for commendations by the presiding judge and peers. Appointments to appeals levels, for example, rely on the Governor's judgment. In addition, it is impossible to evaluate the performance of an individual judge based on simple standardized or statistical measures, because of the high variability of cases. One major case, for example, may take as long as a year.

He does not advocate consolidation or unification and feels caution must be used in making changes. If there is to be reorganization, then there should be one class of judge and one pay scale under a unification system.

He noted that most departments in county government do not produce income, or limited income. The 1978-79 budget for the Municipal Courts shows an income of approximately \$90 million with \$35 million in expenditures (\$2.55 earned for every dollar spent). The 1979-80 budget produced just under \$100 million with \$46 million in expenditures. Projection for this year is estimated to exceed \$125 million in income.

They have created revenue by (1) a traffic school referral fee of \$10-\$15, and (2) indigent defendants now pay for public defenders to the extent of their capability. They encourage jurors to pay for their own lunches and have limited payments to witnesses. They have formed a committee to update the data processing system used by the county. Big inroads have already been made in this area; and it will eventually mean a savings of millions of dollars when used properly. The problematic communication on criminal history between the county and Sacramento is in the process of being solved. An interfacing system has been developed to deal with the computer differences.

Question (Drown): You mentioned that the Municipal Courts generate revenue. Where do these funds go? Do they pay for court operations?

Answer: The funds go to about 15 special purposes: around 80% goes to city governments, but some also goes to night court, to facilities, and to other special purposes, including the state government.

Question (Kranz): When a defendant is arraigned and a preliminary hearing is held in a Municipal Court, most of the time he or she is held to answer in Superior Court. Since many judges are mandated by a blanket appointment as sitting Superior Court Judges, is there any chance that preliminary hearings could be disposed of in Municipal Courts; thereby saving the system a lot of money?

Answer: Some judges think so. Judge Adams from San Diego County found it to work in the El Cajon experiment. In order for us to do it in Los Angeles County, we would need cooperation and authorization from the Superior Court. We have always worked very well with the Superior Court and I think this has possibilities.

Richard M. Coleman, President, Los Angeles County Bar Association, addressed the commission. He assured the commission of the Bar's eagerness to expedite cases and announced that The Court Improvements Committee has been formed to see to that end. The committee is made up of representatives from

the Bench and the Bar, including the Plaintiffs Personal Injury Bar, the Defense Personal Injury Bar, government lawyers, prosecution and defense and criminal trials, commercial litigators and a cross section of the Bench. They will be meeting on a continuing basis.

Mr. Coleman stated that various California counties have implemented a program developed by Judge Reginald Watt of Butte County to reduce court backlog. Judge Watt has reduced backlog in his area from 40 to 60%. (The state as a whole has gone up some 20%.) It takes 6 months to see results and 2 years to see meaningful results. Judge Watt's 5-point program is as follows:

1. The attitude of the presiding and supervising judge. They must believe in the plan.
2. There must be set for trial as many cases as are set at issue. In other words, as soon as a case is set at issue, another case must be taken out to keep current for trial. Where there is a backlog, you must set for trial more cases than are set at issue in order to eat into the backlog. Judge Watt's experience has been that this does not increase backlog.
3. Meaningful settlement program. Has a teaching booklet on how to settle cases, and there is a technique to it.
4. A firm no-continuance policy. When the cases come to trial, they must go out to trial.
5. Constant monitoring at each stage to be sure the suggestions are being carried out.

Mr. Coleman has also formed a committee to deal with interest on judgments. He feels this is a key factor in court delay; the excessively low interest rate of 7% has become an economic incentive to keep the case in court. He feels an amendment should be added to the Constitution allowing for an amount that would exceed the current Constitutional limit of 10%. Although efforts have gone in this direction, it has not been accomplished. It is unlikely with a July 10 deadline to get this bill on the June '82 ballot, but he is hopeful to get it on the November '82 ballot. Other alternatives might be to take it out of the Constitution and peg it to either the Federal Reserve or the prime rate (problem: rate would change every day); or perhaps take highest rate for the previous 6-month period or previous 1-year period.

There is a program where lawyers serve as arbitrators. The problem is for it to be mandatory there is a statutory limitation of \$15,000 or less. If you are pleading a \$30,000 case, the court has the right to intervene, say they think it's really a \$15,000 case and send it to arbitration. The problem is if you are not satisfied with the award, you have the right to a new trial with very few penalties for requesting such. Wayne County has developed a very successful program to deal with arbitration. They require all cases to

go to mediation; there is no money limit. If you are dissatisfied with the award, you can have a full-fledged trial. However, if you do not come up with a 10% improvement in your award, you are liable for all court costs and attorneys' fees. This program has taken 58% of the cases out right at the mediation level.

Mr. Kranz then asked Bob Lynch, County Counsel, and Tom Mix to comment on the subject of raising the interest rate, as there may be a difference of opinion.

Mr. Lynch said it was speculative, and that insurance companies will probably factor some of that into their rates if there were a higher judgment.

Mr. Mix, President of the Los Angeles County Trial Lawyers Association, concurred with Mr. Coleman.

Mr. Kranz then asked Mr. Lynch how raising the interest rate would affect public entities like county and municipal governments. Mr. Lynch replied that the last amendment to the Petris Bill exempted public entities.

Question (Berk): You spoke of the problem of moving the increased interest rate bill through the legislature. Would it be possible to move it through an initiative process as it is a consumer issue as well?

Answer: I fully agree with you, and we are looking into that. We hope to work with community groups on issues important to us all, but the timing is difficult.

Question (Ruchti): I think commencement of the interest rate should be left up to the discretion of the judge. Do you agree?

Answer: No, I do not. It should be set for everyone, and they should be certain of the result.

John Campbell stated that the Task Force has also been talking about economic incentive issues that would affect the number of cases filed in the first place by plaintiffs. The interest rates and the theory there is that delay is principally on the defense side. We have discussed no-fault insurance as one possibility, and we've discussed issues that have to do with fees and sanctions, etc., that may apply on the side of growth of the caseload; but also may affect access to the justice system.

Mr. Coleman commented that he was in favor of an attorneys' fee provision, which could be left up to the discretion of the court.

Commissioner Joe Crail, President of Western Mutual Insurance, commented that the policy of the industry is not uniform. He sees an industry position, that nuisance suits can increase. However, many companies in many cases view rapid settlement as in their interests.

The Honorable David N. Eagleson, Presiding Judge of the Superior Court, addressed the commission. He provided copies of the description of programs now being implemented in Los Angeles (attached).

He pointed out that judges and the courts are passive; their activity and workload depends on how many lawsuits are filed. He quoted from a recent article (copy attached) comparing the size of the legal practice to the size of the judiciary in five industrial democracies. The judiciary in California is small, relative to the number of lawyers as compared to the other countries. The court rejects the idea that the backlog is the result of inefficient or nonproductive court. The problem is that the court is overwhelmed by the number of cases being brought.

He described some ideas which would be effective but are almost certainly unfeasible. He pointed out that they are social policy issues, that the judiciary will neither advocate nor actively oppose. 1) elimination of juries in civil cases, 2) disincentives applied to plaintiffs and defendants, such as attorneys' fees to prevailing parties, 3) modification of voir dire, 4) abolition of preliminary hearings.

He asserted that the \$45 million budget of the Superior Court is less than 1% of the \$4.6 billion budget of Los Angeles County. He said that any reduction as proposed by the Board of Supervisors would create further delays and backlog in the processing of civil cases.

Question (Kranz): Would you comment on the settlement conferences, stacking and the attempts that you announced last month which go into effect July 1, as well as September?

Answer: The concept of stacking is not a new one. We have adopted a procedure of calling the lawyers in a couple of days early and assigning them out to a trial court. The lawyers work in liaison with that court, get their witnesses put on call, mark their exhibits, etc. and ready to go as soon as that court is available. We think this will save "down" time.

In relation to settlement techniques, we have picked out the most skillful settlement officers and put them into panels. These people will do nothing but hear settlement conferences all day. This frees the other judges to start their trials anywhere from a half hour to an hour earlier. This will allow more trial time and a more rapid movement of the trial case through the system.

In the area of voluntary settlement cases (when a lawyer goes to a judge of his own choice), we have increased the threshold requirements. Now a case must have a trial estimate of 20 days or more and have an amount in controversy of \$100,000 or more.

The court is trying to balance how much of our judicial person power we want to put into settlement efforts and how much we want to leave for the actual trial of cases. As you know, the smaller cases are now being sent to arbitration. The Bar Association has formed a fine pool of arbitrators, and we are going to ask them to increase the number of cases that they will take per year.

Question (Campbell): Would you comment on Judge's Watt's program, as described by Mr. Coleman, and individual calendaring as opposed to master calendaring?

Answer: We have been doing what Judge Watt does for the last ten years, though we have not put a name to it. We have been having settlement conferences for the past twenty years. However, we are still inundated with hard-core cases - major matters that simply do not come up in rural counties.

As for direct calendaring, you should know this. The number of filings in Los Angeles County Superior Court for the fiscal year ending July 1, 1980, was 213,000. The number of cases filed in the entire United States District Court system was 188,000. They had 516 authorized judges plus senior judges to hear 188,000. We had an authorized complement of 250 judges to hear 213,000. They disposed of 180,000 cases; we disposed of 170,000 cases. They use the direct calendaring system. We use the master calendaring system. The master calendaring system in this county is overwhelmingly the most productive way to go.

Task Force Chairman, Thomas Kranz, thanked the speakers for an extremely informative session and turned the meeting over to Commission Chairman, George Bodle.

Mr. Bodle invited any new members of the commission, who were interested in joining the Task Force, to attend the next Task Force meeting.

Mr. Bodle then adjourned the meeting at 12 noon, there being no further comment from commissioners.

JC:jn

Attachments 3