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Economy & Efficiency Commission Presentation

Editorial Note: Although every effort has been made to insure the accuracy of the material in this presentation, the scope of the material covered and the discussions undertaken lends itself to the possibility of minor transcription misinterpretations.

**PRESENTATION BY
Honorable James A. Bascue, Presiding Judge
Los Angeles County Superior Court
Topic: State of the Court and the Grand Jury
February 1, 2001**

Chairman Philibosian introduced Judge James A. Bascue, Presiding Judge, Los Angeles Superior Court. Chairman Philibosian mentioned that Judge Bascue had been Chief Deputy District Attorney. Prior to being appointed to the bench by Governor George Deukmejian, Judge Bascue conceived the idea of the Hardcore Gang Detail in the District Attorney's Office. Judge Bascue has been a nationwide lecturer and has helped set up similar programs throughout the United States. Following his assignment as Chief Deputy, he was Trial Council to the State Bar, totally revamping the State Bar System of Investigating and Prosecuting Attorneys.

Judge Bascue thanked Chairman Philibosian and commented that it gave him great pleasure to discuss the issues concerning the Los Angeles Court, and in particular the Grand Jury. He began by discussing the changes that have been made over the past three years: one was the unification of the courts; and another was funding of the courts by the State of California. The Court is now responsible to the State Legislature and State Judicial Council. The Judicial Council has been given rule-making authority, and is allocating resources. It is neither an elected body, nor does it have proportional representation.

Unification in the year 2000, was a traumatic event for the Los Angeles Court, principally because the Court did not see its need or benefit. There were three votes taken. In the first two votes 70% of the judges voted against unification. However, it had become increasingly clear that there were no viable options available other than unification. It was also clear that retribution would be taken against the Los Angeles Court if it were not adopted. Judge Bascue felt that there was merit to it, even though the transition was difficult.

Unification created a court system of approximately 600 judges and 6000 employees, 57 Court locations, 6000 jury trials a year, and 7000 jurors per day entering the court system. The budget is \$1B. The Los Angeles County Court Districts are larger than most county court systems.

Judge Bascue mentioned that since the Courts were merged only a year ago the Unified Los Angeles Courts are limited as to what they could do with the facilities and technology, since these organizations. The District Attorney, Steve Cooley, has commented that although there is staff for misdemeanor cases, assignment of deputies to take care of the felony cases would require more space. He stated that even though the Courts have accrued over \$1.2M in savings, some of these monies have gone into improving the quality

of services.

Judge Bascue talked about changes in the operation of the Los Angeles Court. One of the changes was access to justice. The reality is that a large percentage of the cases in Los Angeles courts than involve unrepresented litigants. In small claims - 100% are representing themselves; in unlawful detainers - about 80%; and in family law - almost 70% are without lawyers. This is an access to justice issue. The Los Angeles Court is now reaching out to help these unrepresented litigants.

Judge Bascue stated that the Central Civil Courthouse is partnering with the Los Angeles County Bar to provide a Self-Help Center on Domestic Violence for restraining orders. The California Rules of Court now requires the Presiding Judge to work on access to justice issues.

Judge Bascue commented that the Court is working with the City of Los Angeles on a grant of \$1M to open two community courts, one in VanNuys, and another in downtown. These courts will be working with the community to address and tailor justice to that community's needs. For example, if there is graffiti, the court can have the offenders clean it up. This approach is patterned after the New York Project.

Judge Bascue stated that the new approach of the Court will be: "It Will Be The Largest Neighborhood Court". Previously, the Court was operated centrally, but it has become clear that the Court must be decentralized. Over the last two years a study was made questioning participants from many communities regarding the Superior Court. The study's results produced good and bad news: the quality of justice dispensed was adequate, but the Court's treatment of the users was not. Judge Bascue stated that the Courts needed to be a more customer-oriented organization. Courtesy will be extended at all levels, from filing a document, to the Court Clerk, or to the judge in the court.

Judge Bascue went on to discuss One-Day, One Trial. In Los Angeles County there is a 40% "no show" of the people summoned for Jury Duty. Judge Bascue stated that every juror he could find was ordered into the Court for an Order to Show Cause (OSC) or a contempt, and was sanctioned up to \$1,500 for not appearing. It is anticipated that districts will have a more effective sanctions program in the future. The reality is that the Court is running out of jurors to make the One-Day, One Trial work. People are now selected that were not previously considered. For example, as a sole proprietor of a business, or a doctor with a practice, they could have been excused in the past, but not in the current environment. (There was so much hostility over this policy in Pasadena from jurors, who were angry about being there, that a bailiff had to be placed in the jury room.) A national expert has been hired to see whether there will be enough jurors to run the Criminal and Civil Justice system if the Court goes to the One-Day, One Trial as written. Citizens expect it to happen, as well as the Legislators, but it must be feasible.

Judge Bascue reiterated that 7000 jurors participate in the court system, daily. Mistreatment of the jurors is not intentional: computer terminals are being installed, courthouses are being refurbished, and Jury Subpoena Forms need to be simplified. Nevertheless, the reality is that jurors have to wait. This policy must start in the Jury Assembly Room, and continue throughout the system, including the judges.

Concerning the Grand Jury Judge Bascue stated that he thought that one Grand Jury performing dual functions worked fine. At the time it was changed the community felt that the Grand Jury did not reflect its interests, thus raising constitutional issues. To be indicted by that Grand Jury was possibly a violation of the Equal Protections Clause and probably Due Process of the Constitution. The Court has had three criminal indictment challenges by defense lawyers claiming that they were unconstitutional as a result of the Grand Jury not being properly representative of the community. Those hearing challenges, while defeated, cost the taxpayers between \$300,000 – \$500,000. Judge Chavez made the decision, last year that we would have a Civil Grand Jury and Criminal Grand Jury.

Traditionally, the District Attorney's Office has staffed the Grand Jury. The rationale was that since they were doing criminal work, they required a liaison. The liaison was key to Judge Bascue, as supervising judge, because that position was his "eyes and ears" to the Grand Jury, other than the foreperson. When the criminal and the civil functions were separated, the District Attorney continued to staff the criminal side, with the Criminal Grand Jurors being selected for a thirty-day period. Thirty days makes it difficult to train

Grand Jurors. What was lost with a thirty-day jury was that some of the investigations might run for more than a month.

Judge Bascue stated that the Civil Grand Jury initially was somewhat left alone. The Civil Grand Jury did not have a District Attorney Liaison, and their facilities were less than satisfactory. In part as a result of this, there have been some emotional and personality conflicts with this Grand Jury that have occasioned a number of difficulties. We have now given them adequate space and the County Counsel is to act as liaison.

Judge Bascue said that a task force has been appointed to study court facilities. The Court does not own the courthouses, Los Angeles County does. The State does not want to take over the courthouses, while the County wants to hand them over in their existing condition. Meanwhile, as Presiding Judge, he has 57 court locations that he doesn't control, and the County does not have an incentive to provide deferred maintenance.

In trying to determine the responsibility for facilities, Judge Bascue got the following answer from the Los Angeles Court's Counsel: "Alternate facilities and secretarial staff have been provided by Los Angeles County and the Court from existing resources. But the passage of Trial Court Funding (a State Act of 1997), and resulting transfer of the funding of the Trial Courts from counties to state, has provided no funding for the Court for the Civil Grand Jury operation. To insure the Civil Grand Jury is able to carry out its important local government watch dog function, the Los Angeles County needs to provide it with additional resources, facility, staffing and training that is required. The funding of the Grand Jury and its needs are primarily a Los Angeles County responsibility. Penal Code §914.5 provides that the Grand Jury shall not spend money or incur obligations in excess of the amount budgeted for its investigative activities by the Los Angeles County Board of Supervisors, unless it is approved by the Presiding Judge. Similarly, Penal Code §926 provides expenditures for experts' assistance, auditors, appraisers and cannot exceed the minimal amounts unless it is approved by the Los Angeles County Board of Supervisors. Penal Code §931 provides that payment for all the expenses of the Grand Jury shall be paid by the Treasury out of the General Funds of the Los Angeles County."

Judge Bascue mentioned that the Grand Jury has very few applications for appointment from the Asian or Hispanic population. Outreach was made to the Board of Supervisors to encourage people to apply; however, there were issues. He stated that he would explore whether the Grand Jury should remain bifurcated or merged.

Commissioner Thompson asked whether the Los Angeles County Board of Supervisors sets the amount of monies for the Grand Jury, with the state paying those monies. Judge Bascue replied that he did not know what the State's responsibility was versus that of the Los Angeles County. His understanding from Mr. Bennett's memo was that the resources for the Grand Jury were a Los Angeles County function. Whether or not it is reimbursed by the state, he was not sure. Commissioner Thompson asked: "What happens if someone falls down in the Courthouse, who do they sue? Judge Bascue answered that right after the unification all the prior Los Angeles County lawsuits and the Los Angeles County lawyers immediately joined California State, so there was an interesting transition period. Since California State is responsible for the Court, they will indemnify for the court side. But if it is a facility "slip and fall" both entities will be sued, and they will pro rate any settlement.

Vice Chair Lucente asked Judge Bascue that since he was caught in the transition, were the expectations low for any output from this year's Civil Grand Jury? Judge Bascue responded that his impression is that he has an angry group.

Commissioner Stoke asked whether Judge Bascue had received any indication of the Los Angeles County position towards its obligations in respect to the Civil Grand Jury. Judge Bascue stated that he has not met with them.

Commissioner Anderson asked if there were any information on the Criminal Grand Jury makeup. Judge Bascue said that there is not much information, however, the Petit Grand Jury is not being challenged and is constitutional. The trial time really impacts the jury panel and jury pool. Most people can serve on a five-

day trial, but a thirty-day trial is many times composed of an entirely different group of people.

Ms. Jeanne Kennedy a former commissioner attending the Commission meeting stated that she was encouraged to hear that Judge Bascue was setting up a committee to study the Grand Jury; however, she wondered why no one has asked a former foreperson to be on any of these committees. There were three individuals at this meeting who could contribute pertinent information to make the Civil Grand Jury more successful and who would be pleased to assist the committee. Judge Bascue stated that Ms. Kennedy's observations were well taken and that these individuals may find themselves on his committee.

Chairman Philibosian stated that the E & E Commission has a Grand Jury Task Force that is specifically assigned to look at the Grand Jury. The Chairperson is Commissioner Hill, a former Grand Jury foreperson; as is Commissioner Anderson, the immediate past foreperson; and retired Judge Thompson, who has had considerable experience in the criminal and civil justice systems. He stated that the Economy & Efficiency Commission is considering what can be done, within our charter, to assist in developing an effective Civil Grand Jury. This directly impacts the work of the Commission because one of our charges is to consider the recommendations of the Grand Jury.

Commissioner Hill stated that she felt that the decision to have the bifurcated Grand Jury was a "knee-jerk" reaction that was not well thought out, given the fact that there was no place to house them. Of concern is that in the short time that they have existed there has been tremendous turnover and a disillusionment in the entire system. The system itself provides ongoing training that is crucial and critical to the integrity of the reports that are released. She felt that the Grand Jury System has been significantly impaired by this decision.

Judge Bascue responded by saying that there was significant pressure placed on the Court to take this action. There were some concerns that the Grand Jury did not spend enough time functioning in its civil watch dog capacity. The other rationale is the constitutional issue. He stated that there was a lot of thought put into the decision, but the "ball was dropped" in the transition. The prestige of being on the Grand Jury was fulfilling both functions, issuing a quality report and being involved in the criminal indictment process. There are problems finding competent Grand Jurists who are willing to sit for a year, and this decision has not helped. The Grand Jury and Trial Committee have a proposal to move the function of the Grand Jurors from the court to the county. This solution is being discussed.

Commissioner Thompson stated that the Court needs to come up with novel ways to outreach and get individuals to participate on the Grand Jury. The Civil Grand Jury does not have standards, therefore how can we permit standards to be placed on the representation of the Criminal Grand Jury? Judge Bascue replied that he attended a meeting with MALDEF (Mexican American Legal Defense and Educational Fund) and their Legal Council. They agreed that the decision to split the Grand Jury has not solved all of the problems. It solved the immediate issue concerning the continuous litigation of criminal indictments, but the watch dog function is just as important. The Council for MALDEF agreed with Judge Bascue. Judge Bascue stated that one part of the problem may have been addressed, but there are still Civil Grand Jury issues. The civil side of the Grand Jury has the potential to have much more impact on the community for a longer period of time. Chairman Philibosian mentioned that the difference was that no one has filed lawsuits or contested any indictments as a result of the Civil Grand Jury make-up.

Commissioner Hill stated that the media had a significant impact on the unification decision. Judge Bascue agreed that the media has a very powerful influence. The Court has been in a very difficult position, to get the appropriate representation on both Grand Juries. He asked if we did return to the old system, what can be done to assist the court to better reflect the diversity of the community. Commissioner Hill interjected that she would like to see the media work to defend the system, and be able to use the media as a means of establishing outreach to recruit within the County.

Commissioner Oakes introduced himself as General Council to the Radio and Television Association. He commented that shortly after the O. J. Simpson Trial, the media felt like second class citizens in the courthouse and that it was being excluded unfairly. The Radio and Television Association wanted to thank Judge Bascue, because his efforts have resulted in a sense of openness. A channel of communication has

been opened between the Media Committee Chair, Judge Paul Gutman and the media representatives. When the press goes to the courts it knows it is going to get a “fair shake”. Judge Bascue said that he appreciated and understood the importance of the media. He intends to have press briefings, and talk more about the positive efforts of the court.

Commissioner Padilla asked what Judge Bascue would envision his legacy to be? Judge Bascue said he is working on a major addition in family law, outreach to the bar associations, and to put together a proposal on Eastlake Juvenile Court. There are ten facilities that should have been torn down thirty years ago. As one of these inadequate facilities Eastlake Juvenile is under federal investigation. It will probably be eight years before there is state funding for new courthouses.

Judge Bascue stated that when you talk about justice you have to differentiate the civil from the criminal. He believes that the Civil Justice System is in very good condition. The litigators who use the court are going to fast track in VanNuys and Santa Monica, which is an expedited case processing system. The processing of cases in civil is probably the best in the nation. On the criminal side there have been cases in the court system where some of the public has lost confidence in the quality of justice; i.e., depending on whether or not minorities and/or indigents are being fairly treated, and whether the defendant has money. The Rampart case dealt a crushing blow to citizen’s confidence in the criminal justice system.

Commissioner Thompson stated that in 1973 he wrote a paper while attending Pepperdine relating to the Grand Jury. He suggested, then, that each city council member (most had a least five council people) make recommendations to the Grand Jury pool, then pull names from that pool. Huntington Park, Southgate and all of the small cities would have the same weight when the jurors are selected in this manner.

Chairman Philibosian thanked Judge Bascue for his presentation, and the Commissioners recognized his presentation. Judge Bascue thanked the Commission and stated that he would be happy to appear anytime in the future.

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