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Trial Court Efficiency

Assembly Committee on Judiciary

ASSEMBLY COMMITTEE ON JUDICIARY

TRIAL COURT EFFICIENCY

Hearing of December 10, 1981
State Building Auditorium
107 South Broadway
Los Angeles, California

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CHAIRMAN ELIHU M. HARRIS: The subject of today's hearing is trial court efficiency. Efforts to reduce court delay, cost and congestion have taken many forms. Over the past several years courts have used a wide range of approaches to attempt to solve the problem of court delay. Today we will hear reports regarding some of the methods that are being used to improve court management as well as a progress report on the economical litigation project experiment which has simplified pleadings and procedures in an attempt to reduce the cost and delay involved in civil litigation.

We will hear testimony regarding a specific legislative proposal, AB 1946,which would change the judicial forum for appealing administrative hearing determinations concerning public assistance. We will also discuss AB 1209 which would permit attorneys to make certain court appearances by telephone rather than in person.

We will begin the testimony with Judge Reginald Watt. Judge Watt.

JUDGE REGINALD WATT: I hope that nobody treats anything that I say as criticism of either the system or the total judiciary or any individual judge or any county. The approach which I'm taking is that backlog can be eliminated. I don't use the term reduction of backlog, but backlog elimination. Your inquiry asked for the nature of the backlog problem, the extent of the backlog problem, causation, what's causing the problem, what steps are being taken to tackle the problem, what legislative efforts should be undertaken, and I'll try to address each of those within the time constraints.

With reference to the nature of the problem, court congestion and delay is the number one problem in the judiciary in the United States today. A horrendous number of cases are being tried. A horrendous number of cases await trial for over one year. An unreasonably large and unnecessarily large number of cases are awaiting trial per judicial position. The time lag between at issue and trial. The second, third and fourth times that a case is called up for trial and then continued to a new trial. That's the nature of the problem. The extent of the problem: throughout the State of California there are over 150,000 cases at the Superior Court level at issue awaiting trial. Half of those, 75,000 cases, have been at issue for over one year. The time lag between at issue and trial varies from five months to nearly 50 months. The number of cases at issue awaiting trial per judicial position varies from 50 cases per judicial position to 300 cases per judicial position and,in one court, 600 per judicial position. The inflow into the system, which is the number of at issues filed each month is, county by county and court by court, so infinitessimally different so as not to be a substantial varying factor, with a few exceptions. The range of new cases coming into the system is 16 to 18 new cases per month per judicial position and,extraordinarily,those

courts which are experiencing the most serious delay problems are those which have the fewest number of cases coming in as distinct from the larger number of cases.

The problem for example in short causes, that's a case which can be tried in one day or less, of which over 95 percent are marital dissolutions, and with those cases whether it is one year at issue to trial or whether it is nearly two years as it is in some counties, the wear and tear on the litigants, the parents, the children, the emotional stress, ripping about families because they're waiting at a time when they need the help the most and putting problems behind them to the greatest extent. All of those are a part of the total problem.

The cause of the problem: I don't view cause as the cause. There is no such thing as the cause. A contributing factor. The concept of shifting from the idea of proximate cause to legal cause is a substantial contributing factor. Nothing happens for a single reason. There are many causes, but if I had to point to the most significant, substantial contributing factor I would say unequivocally that it is a question of attitude. An unwillingness to tackle the problem is the number one problem. As Roosevelt said, the only thing we have to fear is fear itself. The problem of getting into a position where those in positions of responsibility are willing to tackle the problem even if they have some severe doubt whether it can be done.

The backlog elimination program which we are pursuing. I have laid out the figures to the extent that they are available and, Assemblyman Harris, if you need more I have a few more copies. I won't take the time of going over each point, but I think it well to take a moment with this sheet in front of you to see what has been done. I won't talk theory. I'm only talking facts. We started in Butte County in January 1977, a three judicial position court. We had 580 cases at issue awaiting trial. We're now operating with 180. Per judicial position it was 193, now it is 60. At the start there were 240 over one year cases at issue, now there are two. The time lag from at issue to trial has been reduced from 24 months on short causes to one and one-half months. On the long causes from 39 months to five months. We started in Sonoma County in January 1979. It is a seven judicial position county in which there were 1575 cases, there are 576 at the moment. We cut off two-thirds. The number of cases per judicial position was reduced from 225 to 75. Over one year from 565 to 22. Short causes time from 14 months to one and one-half months. Long causes from 36 months to six months. All the way down the line depending on the length of time with one exception and working with a particular court the same results are there. One of the areas which gives me the greatest encouragement and is a credit to Los Angeles County, if you'll drop down to second from the bottom, is Pomona, that's inside Los Angeles County. That's a 15 judicial position county. They started in June of 1981. They had 3385 cases at issue awaiting trial. They now have 1650. They cut it from 225 per judicial position to 110. Look at the next figure. The number of cases at issue over one year from 967 to zero. In six months they have wiped out all of the cases over one year. That's to the credit of Dave Eagleson, as the presiding judge for telling Art Baldonado to go ahead. And credit to Art Baldonado, supervising judge in Pomona County, saying we'll go after it. They've reduced their short cause lag, they've reduced their long cause lag from 33 months to 12

months. They are still coming down. Pomona will, in six months, be operating at 60 per judicial position just as certain as we're sitting here. The point is that it is being accomplished in court after court after court.

CHAIRMAN HARRIS: Please tell us how.

JUDGE WATT: That's my very next point. Five steps. First is the attitude of the presiding judge. Or in Los Angeles County the supervising judge because the structure is the same. The attitude of the person in the position of responsibility to be willing to tackle the problem even if there are misgivings about tackling the problem. I'll say right off the bat that this is no program for timid souls. You've got to be willing to tackle it.

The second point is a substantial, not a small, a substantial increase in the number of cases being moved toward trial.

The third point is a very tight, no continuance policy.

The fourth point...

ASSEMBLYMAN HOWARD BERMAN: What was the second point?

JUDGE WATT: A no continuance policy. The second one, a substantial increase in the number of cases moving toward trial. Putting it on the trial setting calendar, setting it on the trial calendar. I'll be going back to each one of these in detail, Assemblyman Berman.

The fourth point is a meaningful settlement program.

And the fifth point is a monitoring program. Watching it continuously. Watching the statistics. Watching the effects, rechecking and monitoring.

I'll come back on this one by one. As far as the attitude, I think the point speaks for itself. You've got to have somebody in a position of responsibility who is willing to go, willing to tackle it.

The second point on the number of cases moving towards trial. Sonoma County is an example. When we started with them they were moving onto the trial setting calendar, the process is that a notice of trial setting conference or a notice of trial goes out and moving it towards trial, setting a trial date. When we started they were setting 40 cases per month. We started with the first month we moved that to 50. The second month to 60. The third month to 70. And the fourth month to 80. The fifth month to 100 cases per month going onto the trial calendar. We then let it sit for two months. Then we moved from 100 to 140. The next month from 140 to 180. The next month from 180 to 220. The same judges, the same horses, the same number were moving through the system 220 cases a month whereas at the start they were moving 40 cases a month.

Pomona. When they started, they were moving 20 cases a month toward trial. They are now moving 120 a month. What I'm saying is that this is the flight level at which this is operating. We're not talking theory, we're talking fact. It can be done. It is being done. The no

continuance policy. It's a one way street. No continuance for counsel. The court can continue if there is no court available. One of the problems in dealing with the no continuance policy is the attitude of the attorneys. They can be sold on the fairness of a no continuance policy by explaining to them that if they come up to trial and they're not ready and they're asking for a continuance,they are asking to muscle into the ticket line ahead of those who were ready and in that way they are getting an unfair advantage on the next setting. They buy it when they understand what it is because those others who are in the line are ready to go to trial and they are not ready to go to trial and they graciously step aside as long as they are given a solid reason as to why it is unfair to allow a continuance because what they're doing is muscling into the ticket line.

CHAIRMAN HARRIS: Do you run into reversal of decision problems based on the fact that the attorneys were rushed or that there were problems in the presentation of the case?

JUDGE WATT: I'll respond this way, Assemblyman Harris. Any program should have a place for a reasonable exception, but it should be an exception and the procedure should be keeping the exceptions to exceptions and not letting exceptions become the rule. You've always got to have a safety valve. As far as the court is concerned, if a case comes up to trial and there's no court available, then it should be put at the first available time. Again, just as a matter of basic premise.

CHAIRMAN HARRIS: Even though a lot of attorneys' requests for continuances are a sham, they say witnesses isn't here, they haven't been able to get investigators' reports, what I'm saying about those, how do you avoid those so-called theoretically reasonable excuses for continuance? Do you say, "Well it's too bad?"

JUDGE WATT: You take the step to harm the least, the one who is doing his job. If the one who is requesting the continuance is the one who has been delinquent you then make the decision, you either go to trial or you strike the case from the civil active lists, vacate the trial date and make them start over. If the one who is innocent or who is doing their job wants to go to trial you go to trial. If the one who is innocent does not want to go to trial you vacate the trial date and start over. Putting each on a fair basis. Mr. Berman.

ASSEMBLYMAN BERMAN: I don't understand the basic reasons why at least what you've said now would have the dramatic effect that your statistics show. The fact that they are now putting out 140 notices of trial setting conferneces instead of 40 a month only ends up shortening the calendar by that ratio. They're now doing 140 trials somewhere down the road instead of 40.

JUDGE WATT: If you only had steps one, two and three, attitude, increase in number of cases moving to trial and a no continuance policy, on the day of the trial you'd have disaster. And that's the reason you've got to move in a meaningful settlement program so that you trim out the excess. We know this. We know that 90 to 95 percent of the cases will settle. The question is not whether they'll settle, but the time frame in which they'll settle. And therefore you accelerate the time frame so that the 95 percent are settled within six months as distinguished from within 50 months. As a part of that

settlement program, the issue of procedure contains an article, a 21 page article, a guide for conducting civil settlement conferences in detail, covering the legal basis for settlement, the types of cases, the procedure, the role of the settlement judge, the conduct of the settlement conference, the matters for consideration, and all those details. I didn't bring extra copies but it is in the procedure journal and Mr. Lopez if you wish copies, I can make them available.

Assemblyman Berman, I will respond to your indication that perhaps it isn't all clear. Don't worry about that. Because it's the same everywhere. Ralph Gampell, the Director of the Administrative Office of the Courts, is familiar with the general program. But about a year ago I could see that he was beginning to buy the idea because we were beginning to show real progress and I said to him, "Ralph, you've got to be out of your cotton picking mind if you accept anybody's word for anything in the position that you're in, anybody's word. Get on your bicycle, go up to Sonoma County, sit down with the judges, sit down with the clerks, sit down with the court reporters, sit down with the bailiffs and find out exactly what's happening." He said, "I've already made the arrangements. I'll be there Friday." He called me the next Monday and he said, "My God, I thought I was at a revival meeting." He said, "I asked them if they were working any more and they said no." He said what do you do that's different and they said we don't know. But it works. And that's what I'm saying to you, it works. Vince Lombardi said football is blocking and tackling. What we're doing here is blocking and tackling. We're working on fundamentals. No fancy stuff, no razzle dazzle. No quickies. Working on the basics. What we're doing here is saying work within the rules. No tinkering with the system at any point. As far as the request for legislative proposals, may I respectfully say the efforts that I would recommend would be that this Committee and the Legislature get out the word that it can be done. The backlog, court congestion and delay problems are problems that can be licked.

The time has come to tackle backlog and to tackle delay directly. It is a matter of internal mechanics of the courts. I would suggest specifically as far as legislation dealing with the backlog problem to put it on ice for a year. Not consider legislation for the purpose of wiping out backlog at this point. If legislation would be considered, consider it on the merits of the particular problem for the improvement of administration of justice as distinct from tackling the backlog problem because it can be done. If legislation is undertaken, the problem is that there is too great a tendency to wait to see if this new legislation will make a difference rather than directly tackling the matter.

CHAIRMAN HARRIS: Well, one of the problems is this that we (inaudible) a number of things by arbitration, and many of these efforts we think are certainly in the right direction and these happen regardless of whether this particular effort continues or not. We have a problem because we have an increased amount of litigation and the response heretofore has been to add more judges. That's not just to eliminate the backlog, we want also to make sure that we can come up with alternatives to the approach of simply adding more judges whenever there is an increased caseload by (inaudible) municipal and superior courts and that's what I really am saying. I think we're

going to have to continue to have creative approaches and not simply wait and see whether or not this works.

JUDGE WATT: About waiting for additional judges. This approach, you see, doesn't cost another dime of money. This approach doesn't call for as much as changing a comma in the Constitution or any statute or any rule of court. Working within the system. Assemblyman Berman do you have a question?

ASSEMBLYMAN BERMAN: Look at Pomona. There are 15 judges out there and you've made this incredible change.

JUDGE WATT: I'm going to give the credit where it belongs and that is to Art Bolanado and Dave Eagleson for saying go ahead.

ASSEMBLYMAN BERMAN: I'm just trying to understand what is happening. All right, the notion of going from 40 to 140 trial setting conference notices is, that's not going to take a lot of judicial time.

JUDGE WATT: Exactly. That's the very point. It's a clerical operation.

ASSEMBLYMAN BERMAN: But then they shell out. I mean I assume is there a standard time which a notice goes out and sets the date. You don't get anything by sending out the notices much earlier, but just having a longer time until that conference occurs.

JUDGE WATT: In Pomona, he's got all of the cases set now through April, so he's got all the cases presently awaiting trial on the trial calendar and the new cases coming in are being set within the rules of the court which is no less than 60 nor more than 90 days superimposed on top of it. By mid June you'll be totally current in the Pomona courts. I'm going to just say two more things and then I'll stop because I'm over my time. The Court of Pericles was astounded when a young scientist of that day had the temerity to suggest that the moon might possibly be as immense as the whole mainland of Greece. I'm suggesting that it's larger. I'm saying that it can be done, that it is being done, that it has been done. The decision making process in our society today is such that it varies tremendously and with all due respect to you all, if we compare the decision making process on the merits of a (inaudible) as it is done when those respectfully say in the Legislature, in the executive branch, in the private sector, or in the court system, are we not really looking at the decision making process in the court system being at a very substantially higher level. If we talk about taking matters and chunks out of the judicial system we are ensuring a lower quality of justice. To say we should at this point reverse that process and put those matters into the judicial process would be the disaster that we're talking about if you move the number of cases up on a no continuance policy without settlement. We have to work out and change the internal mechanics so that the judicial process can handle the workload and handle more and thus place the total system in a position of having a higher quality of justice. It can be done. I would be pleased to work with any county in this state or any court in this state at any time. The Legislature can make a tremendous contribution by each of you encouraging your courts to allow help to come and it can be done and it can be done within a reasonably

short time. If there are further questions I would be glad to respond, otherwise I recognize and appreciate the fact that I've run over my time.

CHAIRMAN HARRIS: Judge Watt, I think a couple of things. One is that I think the Legislature may in fact have an indirect impact on a lot of this simply by virtue of the fiscal reality that we face and inability to respond with economic resources to deal with caseloads and trying to eliminate the backlog. Therefore, either by virtue of adopting new legislative procedures or by not creating judgeships, we imagine pressures are going to be very evident in the very near future. I'm interested though in your input and certainly we want that of the Judicial Counsil as well as individual judges and we will try to look at this in a comprehensive way, and to look at all of the approaches that you might utilize, again whether it is arbitration or settlement conferences. To try to make sure that we have a system of justice that is expedient and one certainly that maintains the quality that you have spoken about, so I certainly appreicate your comments, and again as many others have done, salute you for your continued diligence in seeing that some progress is made in dealing with what has become a problem that is almost like a tumor. It kind of grows and festers until somebody looks at it and tries to cut something out. So thank you.

ASSEMBLYMAN BERMAN: There's something to battle. It's like Werner Erhard, the fellow who founded EST and then started this hunger project. I went to a lecture, a four hour lecture on how to end hunger in the world and he said well it's for everybody to want to end hunger in the world. In other words, I don't quite understand the mechanisms for why this is happening, other than some religious experience that the judges working with it are going through to have them do things that they weren't doing before.

JUDGE WATT: Assemblyman Berman, I'd be glad to respond, my only pause is that I might be broaching on somebody else's time...

CHAIRMAN HARRIS: Maybe as people go on we can get some reaction.

JUDGE WATT: I would be glad to go into that in detail. What I wanted to do is show you what has been done, the rough outline, each step is a whole subject in itself. If I may repeat to a minor extent, it's the exposure of the case to trial with the assurance that there will be a court available, that there will be no continuance, and a meaningful settlement program that makes the difference.

ASSEMBLYMAN BERMAN: The consequences of what you're saying is that if the purpose of certain things we do is to shorten the backlog, creating new judges, promoting aribtration, thinking about consolidation or unification of the courts, all this. None of this is significant to, it's just having people follow a different routine than they...

JUDGE WATT: Let's take the example you talk of, unification. What I'm saying is, deal with the subject of unification on the merits for the improvement of administrative justice and not as a means for reducing backlog. I'm saying, wipe out the backlog and deal with the

problem. The problems of the courts, the problems of the judicial system will be different in kind, not just in degree. If all of the cases were burned up over this weekend and you started fresh only with the new cases next month. Deal with each of the problems on the merits of how that will improve the administration of justice and not for the purpose of eliminating backlog. You've got to have every one of those other steps, but working on basics once again. We're talking here of blocking and tackling and not the razzle dazzle.

CHAIRMAN HARRIS: Do you think it makes a difference in terms of the differentiation between criminal and the civil calendars?

JUDGE WATT: Up to this point, Assemblyman Harris, I have avoided the criminal side of it and I'll tell you exactly why. There is too great a tendency in every court in this state, and understandably so, to say our problem is the criminal cases, we're overwhelmed, we can't get a civil case to trial because we get too many criminal cases. This is true in every county in the state. It's the French phrase "l'idée fixe" which is a fixation. They're drawn to it. For that reason I take a 180 degree turn away from the criminal. Get the mind off of the criminal. Get the mind and attention on the civil cases. Because that can be broken. Then we can turn around and come back to the criminal cases. I'll be tackling the criminal side of it reasonably soon. I won't try to say any details except that the trial of a criminal case is the trial of the facts within the framework of the law. The trial of a civil case is the trial of the facts within the framework of the law. We can deal with that but it's the psychological problem...

ASSEMBLYMAN DAVE STIRLING: Judge Watt, did I, I think I did understand what you're saying, that the problem as it existed in the civil aspect of these cases has been one of attitude, and when those attitudes change and different approaches are used you can begin moving these cases. The same thing would be true in the criminal area. Generally that's the problem more than procedural aspects of it.

JUDGE WATT: More than the legislative aspects of it. Internal mechanics of getting it. The attitude was the number one.

CHAIRMAN HARRIS: Thank you, Judge. We appreciate it very much. Judge Trotter.

JUDGE JOHN K. TROTTER: Mr. Chairman, Assemblymen. My approach to this problem is a little bit different than Judge Watt's. If, as Assemblyman Berman pointed out, there is some religious fanaticism involved here, I guess I'm the agnostic in the group. I agree in part with Judge Watt, but I disagree in other parts.

First of all, I think that my overall emphasis is to encourage the Legislature to recognize that the problem is more peculiarly one that should be dealt with by the courts rather than by the Legislature. As all judges, we hate to give up what little power you've left us and we think that we can solve some of these problems. Obviously we haven't done a very good job so far, but I think we're working at it.

ASSEMBLYMAN BERMAN: Funny, my colleagues have talked about what little power you have left us.

JUDGE TROTTER: We don't have enough time to debate that. But in all seriousness, I strongly believe that. Judge Watt is a rabid believer in his program and I am a believer in it to a certain extent. But I think we have to recognize, and this is where I think we have to talk about state intervention, that different areas of this state have different needs, even though we can say that each judge in the superior court of the State of California has "X" nubmer of cases or there are "X" number of cases per judicial position. I think we would be less than honest if we didn't recognize that in the central district of Los Angeles County the cases that each judge has are sometimes much more time consuming and complex than the judge in Yolo County may have. IBM v Ford may be one case and that may take 10 judicial years and those cases all seem to gravitate to the urban courts. The urban courts are the ones that have the severe problems. I'm a firm believer that there are many things that we can do. Judge Watt's ideas are all sound, but I daresay that there is not an urban court that is not doing them already. We in Orange County, and I am with some pride of authorship the architect of our plan, have reduced our time to trial, we've cut it in half. The way we did it isn't significant. That's not what I'm here to tell you. What I'm here to suggest to you is each county has its own peculiar problems that have to be recognized. Whether Los Angeles County needs an influx of judges on a temporary basis on assignment from those counties that are current, or they should have the ability to send their cases to other areas that are more current, I don't know the answer to that. That is a peculiar problem. It is a state problem and the litigation, the heaviest litigation in the state gravitates towards the largest urban areas, Los Angeles and San Francisco, and to a lesser but still significant extent, Orange County.

We have made, in my opinion, dramatic strides, but we have used something that you gave us to do that and the thing that I think was the most significant piece of legislation to help court congestion was the arbitration bill. I strongly urge that we not let that sunset, that we increase the limits to $25,000 for the entire state, not just the two counties, and that when we consider the rent-a-judge problem that we not confuse judicial arbitration with rent-a-judge nor have the adverse inferences that come from the rent-a-judge affect the judicial arbitration program.

The criticism for the rent-a-judge program is that only the wealthy can benefit from it. In judicial arbitration there is no cost to the litigant. It is equally applied. I understand the trial lawyers' position, having been a trial lawyer for more than 20 years before being a judge, that philosophically to take any case away from the jury system is not the right approach. Once you can overcome that philosophical argument, there is no practical argument against arbitration. It benefits everybody. And in Orange County we have really utilized that bill to help us break a tremendous backlog.

ASSEMBLYMAN D. STIRLING: Yes, Judge Trotter, recognizing the limitations in that the parties could choose to go to court after arbitration, do you have any ideas as to how many of the cases that have gone through arbitration in your court at any given period of time have

subsequently gone to court because one of the parties was not satisfied?

JUDGE TROTTER: Yes, Assemblyman Stirling, we have about the same rate in Orange County as the State on a request for trial de novos. That's about a third. About a third of the cases that go out to arbitration file a request for trial de novo. Now you have to remember that the lawyers look at that the same way they look at a requirement to file an appeal or a notice of appeal. If you don't file that within 20 days jurisdiction...

ASSEMBLYMAN D. STIRLING: How many of them then would perhaps be tried?

JUDGE TROTTER: We try less than one percent.

ASSEMBLYMAN D. STIRLING: So ultimately even though one third are are filed on for trial de novo, only one percent...

JUDGE TROTTER: Only about one percent in our county actually get to trial. I have to say that we put a tremendous amount of settlement pressure on the litigants when they come back in and whether we can be criticized for that I'm not competent to say, but I can tell you that when they come back into the system after arbitration, after they've filed their trial de novo and they perfect it by making an appearance at the first order of appearance it's at a settlement confenence. We find that those cases are generally easier to settle at that point than other cases because someone has already evaluated that case and gives the losing party cause to reflect that maybe their position isn't as good as they thought it was.

ASSEMBLYMAN D. STIRLING: So since that is pretty much a statewide percentage, you would see no value in eliminating the right or the ability to request a court action subsequent to the arbitration.

JUDGE TROTTER: No, it's not that big of a problem and I am one who doesn't believe that you should take away their right absolutely. They have that right. In most small cases they can't economically exercise that right and that's what arbitration gives them. And that is not just from the plaintiff's standpoint, it's from the defense standpoint. It is an expensive process and it is getting more expensive. But I think one of the things that has to be addressed that no one really likes to talk about is the problem that the judiciary has within itself. There are tremendous attitude problems, there are work habit problems, there are problems of specialization versus seniority, seniority systems in court that allow the judges with the most seniority to get their assignment oftentimes result in judges taking assignments that they are not as qualified or competent or expeditious in their handling of cases than other judges would be. That is a court problem that has to be addressed. The continuing attempt by the different counties to solve their own problems should look at that. They should involve themselves in those things. I think that lawyer competence is a problem. The proliferation of lawyers is a problem. All of those cause the court congestion. The resolution of court congestion is not a simple thing. There is no simple answer. Whether Judge Watt's system works everywhere or not, I don't know. I would like to think it would. I think that in our county we did not adopt it. We do things a little

bit differently, but I think just as effectively, which again only points out that there is more than one way to solve the problem. But all the resolutions tend to be rather simplistic, and all of the ideas to solve the problems tend to be very -- merely adding judges I don't think has solved the problem. Whether we haven't added enough is something for someone else to debate, I don't know. But I think that all of the problems of congestion, if you look at them carefully, result and come from urban counties. The addressing of these problems has to be addressed in that context. Again, not to single out the colossus to the north of Orange County, but they have the most unique problems and to say that a plan that might be efficient in Orange County, or Butte County or Yolo County would be efficient in Los Angeles Central would miss the point of the problem. Those things have to be addressed and they have to be addressed in a logical manner by the people who are faced with the problem, and I would suggest that we look at that very carefully.

There are many, many stop gap measures. I don't know if you want to hear some. All can come from the court itself by means of court rule without legislation. Whether you have a special trial panel. We opted for a civil trial panel in Orange County and we only had five judges on that panel. Those five judges tried 50 percent more jury trials than the entire court did last year.

CHAIRMAN HARRIS: I don't think we necessarily need to talk about rigid procedures and the ones that certainly don't recognize individual differences in a particular county as opposed to another, but should we talk about standards, we should talk about some way to make sure that something is done to implement speedier trials, to eliminate backlogs, those kinds of things, as opposed to sitting back and saying, "Well, you know if it takes five years it just takes five years. If we try something and it doesn't work, so what," that kind of thing. How do we get some kind of accountability in the courts other than simply by saying, "Well I hope you guys will be accountable and I hope you guys will do your job, but if you don't, well, that's the way it is."

JUDGE TROTTER: I don't know if I can answer that. I don't know if anybody can. I can make a couple of suggestions and I think that the arbitration bill has been treated badly. I think that is a goldmine that we have not yet really begun to benefit from. I think that the attitude of certain courts concerning the arbitration bill has left it in a position of less success than it should enjoy. I think increasing the limits of the arbitration bill will have a dramatic effect, but again, there are attendant problems to that, but that is one problem.

There are many peripheral things that can be done. I personally believe that a prejudgment interest bill would be significant. That's not going to end court congestion, but it certainly is a tool in an arsenal that can be used. I think the real bottom line analysis has to be accepted that urban counties are different and they have to be treated differently. They have to be given whatever special help they need to solve their problems. There are only two counties, if you consider them urban, that are anywhere near current in their backlog. And they are Santa Clara County and Orange County. All other counties

that have any significant population are dramatically behind and the only statistic in all of this that is meaningful is how long it takes to get to trial after you are ready. Any other statistic has no meaning. It doesn't matter how many cases you have in your backlog. How long does it take you to get there once you're ready?

ASSEMBLYMAN D. STIRLING: I think that's part of the problem. How long does it take you to get there after you are ready? It's my opinion and it was most recently expressed by Melvin Belli in the treatise that he wrote, that most cases that go into court, particularly of a PI nature, could be totally resolved within six months from the day they're filed. Certainly in less than a year, so the question of when they're ready is part of the problem. We've got cases that are going on for five years. There should be a strict timetable administered by the courts to weed these cases out and get them out of the system and require the attorneys to cooperate as in federal court.

JUDGE TROTTER: You've touched on a problem that I'd like to answer in a round about way if I can.

Some of the reason that court congestion plans have been successful is that they have changed the attitudes of the lawyers. They already had the sufficient manpower to handle the number of cases they had but the lawyer culture was such that they didn't want to get the case tried before a certain date. Now in those counties, and most of them are less urban counties, there have been remarkable results because once the culture was changed and they understood they could get their case to trial in a year and there was nothing wrong with doing that, that was fine. But in Los Angeles County and to a lesser degree, Orange County, we can't do that because we can't handle all of the cases we have. Whether they are ready or not makes no difference. It's just the next hot pot, and there are only so many judges and so many cases and they don't fit together. There are too many of the cases. So with the elimination...

ASSEMBLYMAN D. STIRLING: On that same point, would that mean obviously with LA Superior having the backlog, the first concern is where you can begin to determine what a procedure ought to be in a normal situation you are completely overwhelmed by the backlog. Would that be true if the backlog were not there. If you could start fresh with a procedure, could you abstract it. Could you provide us a hard timetable whereby cases ought to be processed, weed out the simple cases early, and the others that had to go to trial which would be a more select group would then go into the trial calendar. Is that a possiblity except for the fact that you are overwhelmed by the...

JUDGE TROTTER: I think it's a very distinct possibility and it is not only a possibility, that was the plan that we adopted in Orange County. An early determination and more court management of the file. That is the key to successful civil calendars: court management. But when you're faced with an avalanche of cases it's very difficult. Court management means judicial time. So do you take your judicial time away from disposing of the case at the end of the siphon so that you can early on manage those cases, and that is a delicate, delicate balance. But in an abstract situation and in the best of all worlds, yes. An early determination, an early hearing, early court

involvement so that the pace of the litigation is not determined by the lawyers but is determined by the court, will definitely cause the cases to be disposed of more readily, quickly and expeditiously. But, when there is a backlog of the extent that now exists, that's fantasy. We have to rate the backlog so that we can then have enough judicial time to manage. I don't know whether they can both be done at the same time or not. I don't have an answer to that. In our county we took the judicial time to manage the cases and we didn't try very many cases during the time that we were managing. But because of that we now have the ability to try more cases and we have reduced our time lag, we've cut it in half.

ASSEMBLYMAN D. STIRLING: Let me just inquire. Do you have any figures on the categories of the types of cases that make up the civil calendar, the filings, PI...

JUDGE TROTTER: Well, most of the cases are personal injury cases. The percentage in our county may vary, but the great majority of cases that are filed, other than domestic that are civil, are personal injury cases. There is a significant number of cases that are business oriented, maybe 20 percent business litigation. Very few condemnation, and a very, very small percentage of anything else.

ASSEMBLYMAN D. STIRLING: Is there any kind of grouping of those cases that can be taken out of the normal civil court system and put into a specialized system?

JUDGE TROTTER: Yes and no. I view civil cases as two types: the ordinary run-of-the-mill case and the complex large case. Urban counties have an inordinate number of the complex, difficult cases. That's the problem. If you were to track cases by whatever determination, time, expense, value, you would find that 80 to 85 percent or maybe even 90 percent of the cases fall into the run-of-the-mill category. The other cases are the ones that clog the courts because they are not the ordinary ones. Those 80 to 90 percent of the cases settle at a much much higher rate than the complex, difficult, unusual cases do.

Judge Watt's statistics on settlement I agree with for the 85 percent. That's not true for the other 10 or 15 percent. And those are the cases that you find in the urban courts. The asbestosis cases of Los Angeles County a perfect example.

ASSEMBLYMAN D. STIRLING: But I bet that when David Eagleson comes up here to testify, the breakdown of percentages of PI cases that are in the court system would be pretty similar to the ones that are in other areas. And those are run-of-the-mill cases with a few exceptions that are particularly and more significant and more complicated. Would the same basic thing be true even if in the urban areas they have more complex type cases? The breakdown is going to be mostly PI cases.

JUDGE TROTTER: There are no shipyards in Butte County, so there's no asbestosis cases in Butte County. There is no heavy manufacturing in some of the other counties, so they don't have complex products liability cases. Those cases don't exist in other than

basically urban areas. It is those cases that you cannot say are the same as any other case when the Jucicial Council assigns cases per judicial position. That's not a realistic evaluation of the case and the judicial position. But I do believe that early identification and management of a case is the absolute, single most important feature to maintain in a civil backlog. But even if that's done, what you would find in the urban counties is that you have identified a much higher percentage of complex cases than another county would identify. Those cases do not settle at the same rate. Those cases must be tried. The trials are longer. They take more judicial time. Even to settle those cases is more difficult and takes more judicial manpower. That has got to be recognized. An overall approach is good in theory but in practice it has to be segregated to those counties that have peculiar litigation. And they do. Airplane crash cases. San Diego went through that with that one crash recently. Again, I don't have any answer.

CHAIRMAN HARRIS: Any other questions? Please summarize.

JUDGE TROTTER: We are all subject to improvement. The judiciary as well. Judicial attitudes and work habits have to improve. I don't mean that all of the judges are implicated but there is certainly room for improvement. Judicial involvement in settlement of cases and management of cases has got to improve and it has to be increased. Where they are going to get the people to do it has to be answered on a county by county basis. But court management of the cases, that smacks a little bit of the federal system, and the lawyers probably would not like that, but that changes attitudes and I think will help dramatically in the long run.

ASSEMBLYMAN D. STIRLING: When does the first real settlement conference occur considering the date of filing. I guess it's done more as it relates to the time of trial...

JUDGE TROTTER: No, that's where we differ. We do it differently. We took the arbitration bill and used that to give us a first hearing which we did not otherwise have which we call a status conference. Again, very federalistic in concept. We hold that status conference when the at-issue memorandum has been on file for nine months, which is the earliest time we can, except that now there's a new time under the new bill. So at nine months the at-issue memorandum which is the document which says we are ready, or at least the issues are joined, has been on file for nine months. That means the case is about a year old. We have a hearing to determine whether that case should be sent to arbitration. If the case should be sent to arbitration it is out of the system. If it should not be sent to arbitration because the judge determines that it has a value in excess of $15,000, it is set immediately for a settlement conference. It takes about four months to get from the status conference to the settlement conference, so we are hearing cases in settlement conference that are less than 18 months old. After that first settlement conference, including the status conference, we have removed, by either settlement or by removing the cases because they are not ready, in excess of 75 percent of the cases that were originally on file and had at-issue memorandums on file. They have been either settled, sent to arbitration or taken off the civil active list. So that's what I mean by early management. We have reduced the number that get to trial.

ASSEMBLYMAN D. STIRLING: What, $15,000, that was your bill, wasn't it, the arbitration bill?

ASSEMBLYMAN BERMAN: Well, Jerry Smith...

ASSEMBLYMAN D. STIRLING: Okay, $15,000, you're talking about going to $25,000.

ASSEMBLYMAN BERMAN: Well, I had a bill that would have raised it statewide to $25,000, but because of political considerations, we ended up raising it only in San Bernardino.

ASSEMBLYMAN D. STIRLING: Okay, that's what I'm directing the question toward, though. LA County again has got the backlog that overwhelms everything. Our thinking about the future is limited because of that situation. I'm wondering what is magical about a $25,000 limit. Do you feel the Legislature would have the jurisdiction, the authority, under the Constitution, to set that arbitration figure. It's done the way you are talking about, that is, if the parties have the full availability to the court and at some point at a conference the judge recommends, very strongly arbitration...

JUDGE TROTTER: He orders it.

ASSEMBLYMAN D. STIRLING: Pardon? What would be wrong with increasing the arbitration limit to as much as $100,000?

JUDGE TROTTER: Well again...

ASSEMBLYMAN D. STIRLING: Particularly if you have de novo rights thereafter. What difference would that make?

JUDGE TROTTER: You make a good point. And that is the point that the trial lawyers make. Philosphically, once you say that a litigant's right to jury trial is determined by the value of the case, have you not compromised the basic system? I can say yes to that and I can say no to that. Yes you have in theory. In practicality, no you haven't, because of the very reason you just said. If we don't do something, we're going to lose the whole system. The trial lawyer's answer to that, and I don't mean to speak for the trial lawyers, but having been one, and I sympathize with their position because I believe in the jury system, is that we should look for other remedies. This isn't a remedy. I disagree. I believe that arbitration of lower level, and with inflation lower level gets higher everyday, lower level civil disputes should be resolved by arbitration. If they can't be or if it is resolved unsatisfactorily, they still have that right to come back. So I think that you would face...(Inaudible)... would be 100 percent trial de novo instead of the 30 percent. Everybody would come back. Or I shouldn't say that. But I think Assemblyman Berman's -- the higher the level, the greater the number of people who are going to come back into court. I think you'll see that. But you know, arbitration, if you really look at it, exists in our society in many forms. There is not a private health care provider that doesn't have an arbitration provision in their contract.

ASSEMBLYMAN BERMAN: You can get huge kinds of cases in labor

management that are just all decided by arbitration. There is no trial de novo.

JUDGE TROTTER: I don't think there is any less justice given to the litigants because of the judicial arbitration bill than there was before. There is a tremendous saving to the public, to the lawyers, and obviously to the court in doing that. And to raise it to $25,000, in my opinion, makes an awful lot of sense. Thank you very much.

CHAIRMAN HARRIS: Thank you very much. Anyone who would like to revise or extend their remarks, the record will be open for a short period of time, at least two weeks following this hearing, so you can in fact add to your remarks and provide other information that you think the Committee should be aware of in its deliberations on the specific legislation before us or legislation that we can contemplate on the basis of the hearing. I'd like to call up Ralph Gampell, the Director of the Administrative Offices of the Courts. Mr. Gampell. Also I'd like to announce it is my intention to run this hearing through the noon hour and try to finish by 1:00.

MR. RALPH GAMPELL: Mr. Chairman, members, my name is Ralph Gampell. I'm the administrative director of the California courts. I must apologize for my late arrival. You've already heard, as I understand Mr. Chairman, from Judge Watt, talking about the views with which I'm very much in agreement on relieving backlog and you will shortly be hearing on another matter which I understand is of concern to you on economical litigation from Judge Norman Epstein who is connected with ABA studies, but more particularly is a member of the Judicial Council advisory committee on the economical litigation project, and with your permission I want to anticipate that testimony. I think he will tell you that it is not an unmitigated blessing but there are parts of it which seem very well worthwhile preserving.

I would like to discuss with you, if I might, my own observations in the years that I've been in this job, on the problem of backlog. And it does seem to me that Judge Trotter in the little bit of his testimony that I heard, was maybe more pessimistic about the position of the rest of the state absent Los Angeles. And I think it would be fair as a broad generalization to say that with fairly limited exception the backlog problem in California is a Los Angeles problem. It's easy to say it's been solved in Santa Clara County for example. Santa Clara County is no rural county. Santa Clara County has got 36 superior court judges I think. And the time from at-issue to trial, not trial date, trial, is five and one-half months. Which is skirting the statutory minimum.

ASSEMBLYMAN D. STIRLING: Do you happen to know what it is from the date of filing?

MR. GAMPELL: No, but the critical date of course is filing the at-issue memo. From my own experience as a trial lawyer, which was in Santa Clara, though some years ago, there is no force to put on the lawyers by the court to delay the filing of the at-issue. So I think that it would be the normal length of time from the date of filing. It's not years. There is no permission, remember as there was in some courts in the old days, you now have permission to file your certificate of readiness. You file the at-issue when you are ready.

ASSEMBLYMAN D. STIRLING: I recall the first time that I ever filed a case in federal court. And after the response was filed, within a matter of three months, as the plaintiff's case went down, my case was the plaintiff's case, I let three months go by without doing anything. And I had a notice from the court saying that if you don't get in here and tell us why you haven't done anything in three months this case is going to be dismissed by the Court's own motion. And while the courts may not do anything to delay the attorneys, do they do anything to kick them in the seat and say let's get things done?

MR. GAMPELL: I don't think there are any courts that I know of which "kick 'em in the seat" to file the at-issue memo. But from then on it seems to be that the whole way to eliminate the backlog is continual kicking in the seat thereafter. This is obviously the case in Santa Clara County. You are in trial. You either settle or you're in trial in five and one-half months. Now if that were isolated, you could say that there was some particular phenomenon. The last figure I heard from San Mateo County, which is still an urban county, is six months. Something like seven months to a year in Sacramento. Thirteen or 14 months in San Francisco. Well, I'm not saying that these are the ideal numbers, but they are not four and three-fourths years. And they are urban counties. And if you're taking the posture that most cases settle, as they do, then the only way, and recalling all our experiences as trial lawyers, you only settle that case when it's at the front of the file drawer. When you know that either you settle or you spend this last long weekend preparing for the trial on Monday you're going to go.

ASSEMBLYMAN BERMAN: Well, who thinks like that? I can understand why the defense lawyer thinks like that. First of all with no prejudgment interest these arguments which seem to have some merit that his client is no worse off in the delay, he's probably better off. But isn't the plaintiff's lawyer who follows that procedure of dealing with the case that's in front of the file drawer, isn't he sort of shafting his client?

MR. GAMPELL: Well, a successful plaintiff's lawyer has got a lot of business and...

ASSEMBLYMAN BERMAN: Well, maybe the point really is that a system which doesn't push the plaintiffs' lawyers, is a system which lets a lawyer take more business maybe then he should be handling.

MR. GAMPELL: I think that's true, but I don't think that your focus should be on the time delay between filing your complaint and filing your at-issue memo. Your real focus is from filing an at-issue memo to what happens next. When do you go to trial.

ASSEMBLYMAN D. STIRLING: Whose real focus?

MR. GAMPELL: The system's focus, I think, is when the case is given. And I've always viewed the case being given when the parties say, "If you've got a court, we're ready to go," we have filed the at-issue memo. In actual practice I think we all know they really aren't ready to go and the fact that you keep the pressure on by saying in five and one-half months there is going to be a trial, the obverse of that is by golly you'd better be ready or else you've got to settle your lawsuit.

ASSEMBLYMAN D. STIRLING: I guess the only thing that disturbs me is that in LA Superior we talk about four and three-quarter years from the date of issue memo. We talk about it from the date of filing. And it's amazing how fast the whole system moves in the last five months. Even though you only have that much time before the five year statute runs out.

MR. GAMPELL: Well, equally well if you know that you are going to be in trial in a half a year in some of these northern urban counties you move fast too, or else you take the case off calendar. Because, by the very nature of things, and I'm sure Judge Eagleson can speak to this, cases which are in the backlog, in the inventory, produce business just by being there, the motions, the discovery motions, the demurrers, whatever you can think of. Either to churn money for one side or to delay or to move ahead, whatever you want, there is going to be action on it and judge time is going to be expended on those cases. So, all I want to say in this connection is that the Watt program, the Homer Thompson approach in Santa Clara County, both are directed to the same thing, namely, to expose the case to a court. And the most intensive interjection of the judicial system in attempting to settle a lawsuit. If the court in its wisdom feels that three hours or four hours devoted to try and settle a case is better than three or four or five days in trial, then you're going to settle a lot more cases. And if I could throw out an idea only of my own, not a Judicial Council idea, I'd like to pick up on a colloquy you had with Judge Trotter. Assuming the argument is correct, that five percent of the cases take 95 percent of the time, then I wonder whether or not those cases should not be included in the mandatory arbitration program. It seems to me Judge Trotter is talking about big commercial cases.

ASSEMBLYMAN D. STIRLING: What was the distinguishing factor, that they were too big and complex for settlement?

MR. GAMPELL: Yes, but wasn't it Assemblyman Berman who said that in international commercial transactions, arbitration is written into the contract. The document choice of law is written in. Sometimes even the name of the arbitrator is written in. So, there's nothing peculiar or bizarre in attempting to get those cases. And I use as an analogy, if I might, a case which wasn't in the state system, but which was in the federal system. Memorex v IBM. It was tried across the street from us in the federal court in San Francisco before Judge Conti, I think, three and one-half months, five and one-half months, whatever. Judgment for Memorex. The Judge enters an order. Judgment for IBM now. That is he overturns a verdict, gives IBM a verdict. And says, by the way, this case was too complicated for the jury, which if what I hear is correct, this case should have been heard by somebody else. It's true they're entitled to their trial by jury. But if we look at what is settlement by an experienced judge or arbitration, it is really somebody putting a price on the file. That's all it ends up. If your discovery has been properly done, and if you think it's worth $5,000 and the other side things it's worth $250,000, one of you doesn't understand the case. So, to that extent, whether it's done by arbitration or whether it's done by jduges devoting real effort to settling cases, that's where the backlog is going to go away. And it seems to me that that certainly is happening in the northern counties. And I believe that it is happening to a lesser degree because of the

very volume involved, in some of the stellite courts down here in Los Angeles.

I heard from the supervising judge of one of the courts down here that he was following similar techniques to Judge Watt and his backlog has been heavily cut into. So, all I'm saying is I don't believe that it is an end of the world problem.

ASSEMBLYMAN BERMAN: Are you saying the problem in LA is not the problem of a higher proportion of complex cases?

MR. GAMPELL: I'm sure they have a proportion of complicated, business litigation cases as this is a business hub. But San Francisco is no rural backwater. They also have fairly heavy tough business cases. I don't think there is any slick answer. I think the way this is going to be solved is the way it's been solved in other counties. It's going to be nibbled away. It is going to need a tremendous amount of dedication on the part of everybody involved in the justice system. But we are seeing in big urban counties that it is happening.

Now, if I could give you an example of a less than urban county where many of you know the judge by name. The PJ is Judge Berenson in Ventura County. He believed that this idea of early exposure to trial, really leaning on the litigants wouldn't work. Now he apparently has become one of the people singing loudest in the choir. Now it's true that's not an urban area, but I believe this kind of system will work in every area. Have I said enough? Probably too much. But I really do believe that it is not something where there is (a) a quick fix and (b) I do believe that with real dedication it can be handled.

ASSEMBLYMAN D. STIRLING: Mr. Gampell, the frustrating part no doubt from where you sit or David Eagleson sits and numerous others, we as well, if the experts don't know what the fix is or can't give us some specifics, in other words it's a matter of attitude, it's a matter of dedication, I mean, I understand that, who is supposed to have the answers. We have no answers. That is all well and good for awhile, but at some point we've got to get some answers. I'm trying to just get something concrete that will come out of this hearing that we will then be able to say at least we have constructive steps that we can move forward with.

MR. GAMPELL: My problem is this, and I suspect if you pose the same question to Judge Eagleson he would answer the same way. Some judges work at this level. Some judges do very dedicated work at that level. Some judges do less dedicated work at this level. The PJ can do nothing about it. He does the best he can with the resources he has. Judge Schauer, and I suspect Judge Eagleson, will agree that they have the right number of judges for their continuing workload. That if in some way the backlog could be gotten rid of, they're in great shape. So, there are some things that I think there is no immediate answer to. But I do believe that with new techniques that Judge Eagleson has introduced in Los Angeles, that that backlog can be substantially eliminated. And I really don't think that there will be a need for any massive change. I would like to see explored, and maybe I'll be laughed out of the room, this idea of taking the big cases and sending them to arbitration. I don't think it's such a dumb idea.

ASSEMBLYMAN D. STIRLING: Well, if you feel that way and Judge Trotter felt that it was the other group of cases that perhaps ought to go to arbitration, then I get back to the original idea that we were throwing around here a moment ago. Why not simply increase that limit to a very substantial amount and at least for some period of time make arbitration available in much greater...

MR. GAMPELL: I wouldn't use money. I would use time. That is, when they come up at whatever the appropriate status conference is, when they give their estimate of time with any case where they say it is going to take longer than 15 trial days, okay folks, that case goes to arbitration.

ASSEMBLYMAN D. STIRLING: Well what happens there, we have all sat in Department 1 of LA Superior, at least many of us have, and given an estimate of trial, or at least have done so in the at-issue memorandum, and comes to find out you're nowhere close and furthermore you never really believed that to begin with.

MR. GAMPELL: I can't answer that.

ASSEMBLYMAN D. STIRLING: Use that as a factor.

MR. GAMPELL: Yes, of course, The other thing of course and I guess we're all whistling in the wind over there, enact a tough pre-judgment interest bill and a lot of Judge Eagleson's backlog would disappear like snow in the sunlight. Because most cases settle. If his inventory could be brought into the daylight and focused on, an awful lot of it would go away.

ASSEMBLYMAN D. STIRLING: We're working on that.

MR. GAMPELL: Thank you very much.

CHAIRMAN HARRIS: One last question. Do you think then that, because of the unique circumstances and unique problems that it poses, perhaps our attention should be focused on Los Angeles and that things that are going on in the other parts of the state seem to have handled themselves but perhaps we need to put a little more attention, a little more focus on the kind of activity needed in the Los Angeles County court where the backlog is...

MR. GAMPELL: Well, in making that observation I was not in any way pointing a finger at...

CHAIRMAN HARRIS: I'm not saying that it's anybody's fault, but the problem is that Los Angeles has a lot of cases and I'm not blaming anybody, other than saying that a solution has to be found, and the same is true of any other...

MR. GAMPELL: Yes, I do believe from what I've seen, from what I've been hearing from the big urban areas is that it isn't a disaster. And clearly, as Judge Eagleson will tell you, is still no happy place in Los Angeles. Thank you very much.

CHAIRMAN HARRIS: Thank you. The next item on our agenda is my bill, AB 1209, which would permit a party to a civil action or the party's attorney to appear by telephone rather than in person at certain hearings at which no oral testimony is to be received. Several courts have already implemented telephone conferences on a limited basis. We will receive testimony as to how those courts are using telephone conferences and a representative from the Telephone Company is here to tell about the equipment needed, installation and cost involved. The next witness is Bill Bates, chairman of the State Bar Committee on Rules and Procedures of the Courts and as well I would like to bring forth Joy McGuire and Mr. Larry Feldman.

MR. BILL BATES: Good morning.

CHAIRMAN HARRIS: Good morning.

MR. BATES: Mr. Chairman, members of the Committee, my name is Bill Bates. I chaired this year the committee on Rules and Procedure of the Courts of the State Bar which brought this proposal initially through the Board of Governors and you, Mr. Chairman, were gracious enough to sponsor it as a bill in the Assembly.

If I may very briefly summarize why we feel this bill is a good proposal and how it works and then briefly speak of the experience in the places where it has been tried already.

First, we believe obviously that the judicial system should be as productive and efficient as possible to the primary benefit of the consumers of that system, the citizens of California who find themselves litigating within it. Currently there are many types of court appearances, including some which are really non-substantive, which require the personal presence of an attorney, including trial setting, and unopposed motions. For rural practitioners even a minor matter that happens to be held in a court in the next county can consume the whole day. The people who pay for this, obviously, are our clients. We don't believe that this expense is productive or necessary and we think that simply allowing telephone appearances is one way to alleviate that problem.

The bill would not compel anyone to stay away from court. Personal appearances by anyone who wished to appear are still allowed. This does not apply to testimonial matters where the demeanor of the witnesses is important. It does not apply except to pretrial matters. It does not apply to any domestic relations matters. It does not apply to criminal matters. It does not apply where the court wants to discuss settlement with the parties. Given the limitations, we think that it will not apply to all courtrooms for all judges around the state. It may very well be only judges hearing law and motion matters in those courts which assign functions in civil matters.

What we think it will do is to allow attorneys with cases in distant courts to save travel expenses and travel, time charges to their clients, allow routine business to be processed without billing the clients for a trip to the court, and we think also to increase the efficiency of the courts themselves. The American Bar Association Action Commission about which Mr. Janofsky will be testifying later as

I understand it, has a preliminary report on the results of judicial use of telephone conferencing around the country and their study indicates that all of the judges who use telephone conferencing regard it as a means of reducing the time and cost of civil litigation. Court time is thought to be shortened several ways, primarily by shortening the length of the hearing, facilitating scheduling and maximizing the judge's ability to use time off the bench, removing cases faster by status calls to all parties. A note on exactly how it would work mechanically. That is something which the bill would leave up to the Judicial Council on the theory that the mechanics of court processes and how this should be implemented should be left really to the judiciary who would be most affected by it. Our one hope and request is that there be some sort of a uniformity among the procedures that are developed so that the attorney in Eureka with a matter in Los Angeles has some inkling that he's practicing in the same jurisdiction when he tries to use their system. There is already a rather substantial body of experience with telephone conferencing procedures. Many courts now permit trial settings to be handled entirely by telephone. In law and motion matters there has been a procedure in the Torrance Branch of the Los Angeles Superior Court under the supervision of Judge Goebel since 1977 as part of the economic litigation project which Judge Epstein as I understand will discuss this afternoon. Fresno Superior Court, beginning in 1980 under Judge Ann Green, has allowed telephone conferencing. Ira Brown in San Francisco who handles all the law and motion matters there has been trying telephone conferencing since July of this year and Ms. McGuire will be able to describe that in some detail.

I have brought with me a letter from Mr. Freise of the San Francisco Bar Association who has described briefly Judge Brown's experience. San Francisco is important in my view because Judge Brown handles about 60 to 90 matters on his calendar every morning. He wants to take it off experimental status and make this a permanent part of his routine.

Usage of the system has been quite light up until now. Mr. Friese in his letter explains that he thinks that may be due to the amount of publicity they have attempted to get during this early period.

In jurisdictions other than California, there has been very extensive experimentation. I'm sure Mr. Janofsky will be able to comment upon that so I won't try to go into it in any detail. I can tell you, though, that there is significant experience with telephone conferencing in trial courts, among other places in Colorado, Maine and Wisconsin, Federal courts in Marylamd, the eastern district of New York, Pennsylvania, Wyoming and San Francisco. The ABA Journal in September 1981 quoted a Superior Court Judge from Atlantic City who I think summed the situation up. Telephone hearings, he said, are not an experiment any longer. We believe that it's time for telephonic appearance procedures to move into the mainstream in California also and so we urge passage of Assembly Bill 1209.

MR. LARRY FELDMAN: Mr. Chairman, my name is Larry Feldman and I am Chairman of the Court Improvements Committee of the LA County Bar. Our committee has studied the use of telephone and even before the bill was written had done a survey to determine the acceptance of telephone usage on motions. And it was a basic feeling of the committee

and everyone we spoke to that using the telephone was a good way to deliver legal services in a more economical manner. In fact we sent someone up to San Francisco to talk to Judge Brown about his telephone program and we were astounded to learn that at that time which was November of this year he had told us that he had only eight telephone calls during this entire time, and I think two things should be addressed by this Committee. One is the cost of such a system. How much is it going to cost to use it in an urban area like Los Angeles if it is going to be used by the members of the Bar? And the second is, the manpower to run it. If you have 30, 40 or 50 matters on your calendar and each person is going to avail themselves of the telephone, I do not believe that it can be run by just some judge placing telephone calls. You need someone there who is going to set up the calls and have the lawyers waiting for the court. The Court's going to need enough time to then deal with his calendar for the next day.

And the other thing that I think should be addressed by the Committee is that, as presently drafted, the bill leaves it solely at the election of the attorney as to whether that attorney wants to use the telephone. I can think of instances where the court is going to want the lawyers there and should have the power, either by court order or by court rule, to force lawyers to come to those hearings. Other than that, I think oru committee is in favor of the general concept.

CHAIRMAN HARRIS: So you think it ought to continue as an experiment?

MR. FELDMAN: Well, I think without knowing what the costs are, and I would weight the cost whether it should be an experiment, a pilot or made part of a law, but I don't know what those costs are, but I know generally that telephone equipment necessary to handle any sizeable calendar is costly and the staff to run it is going to be costly.

CHAIRMAN HARRIS: Ms. McGuire, could you shed any light on this? Thank you. Would you take the microphone close to you. Thank you.

MS. JOY McGUIRE: The costs really are minimal because of the fact that there are very few modifications that have to be done to any telephone system in the courtroom to do that. In San Francisco, Judge Brown has been using the conference setup in the open court and in order to accommodate that we wanted to provide him with a system that would allow anyone in the courtroom including the court reporter to hear what was going on as well as the attorneys who were appearing by telephone. To that end we have utilized a combination of a protable conference unit that has three microphones that can go to all parts of the courtroom plus a loudspeaker that allows broadcasting all sides of the telephone conversation. All we had to do was install a special jack on the court clerk's telephone and the portable conference unit is plugged in whenever there is a telephone conference. The monthly rate for the telephone conference unit itself is about $25.00 and the installation charge is $100. That's on the most recent rate case that we've had. So that would be the cost to the courtroom.

CHAIRMAN HARRIS: The attorneys don't need anything special?

MS. McGUIRE: No, the attorneys do not need anything special. If the hearings were held in chambers, as they are in some other places, then sometimes you simply use a speaker phone -- but the portable one appears to be the most cost effective and easily used equipment. The other portion of it then is setting up the conference call and we have done it in two ways. Although, what was done was to establish a system which would allow the telephone company conference call operator to be the manpower used to hold the calls, as opposed to the courtroom themselves. And some of those are some of the things that we are still dealing with because we haven't had that heavy a volume.

CHAIRMAN HARRIS: Any estimate of cost?

MS. McGUIRE: Yes, a three minute conference call within that is three links, two attorneys and the court, in the San Francisco Bay Area would be $3.95 for the first three minutes and $.95 for each additional minute. The cost starts when the judge calls roll on that particular motion. The costs do not start when the operator rings the two attorneys or the one attorney into "q" and of course I'm saying three people, you could have as many as you want involved in the conference call.

CHAIRMAN HARRIS: Same cost?

MS. McGUIRE: No, there is an additional cost as you add links to the call.

CHAIRMAN HARRIS: How much?

MS. McGUIRE: One dollar and fifty cents for each link, but I think that is only up to $3.00 a link, or at least that's the way it is in the file. There are three rate steps in California so that if an attorney in Los Angeles or San Diego wishes to appear by telephone as one of the links of the conference call then the charge for the first three minutes goes to a maximum of $10.85 at this moment. And then you know additional timing charges are of course involved. But the costs are still somewhat minimal for whatever issue you want to have.

As an example, I conducted a staff meeting of my own by telephone from my home in Santa Clara County and had nine people all over the state participating in the call. The call lasted for an hour and 15 minutes and instead of my paying plane fare to bring all my employees to San Francisco, the cost of that conference call was $225. So, you know, it is an incredible saving.

MR. BATES: I believe, Mr. Chairman, that the attorneys who are requesting the telephone appearance also are the ones who are bearing those costs rather than it being a cost to the Court.

MS. McGUIRE: Yes, that's right. Thank you, Bill. The Court is not charged.

CHAIRMAN HARRIS: So the court costs would actually be the cost of the equipment, $25.00 a month.

MS. McGUIRE: That's correct.

CHAIRMAN HARRIS: That answers the question.

MR. FELDMAN: I'm not sure that it does. It's hard for me to believe that it would only cost $25.00 a month to set up the system for every courtroom in the 8th floor of the LA Superior Court and I am almost sure and perhaps Judge Eagleson could comment on it, that the operator who takes the normal calls into that size of a court is not going to be able to deal with 150 calendar matters set a day and line up all those lawyers to be present. I think that's just unrealistic. You know, I don't have any numbers. That just seems unrealistic to me to believe. All I'm saying is that I think we should look at it. I think this idea is right and I think there is really no reason not to have it as long as it is cost effective...

CHAIRMAN HARRIS: You think we ought to do a little more studying of the cost figures?

MR. FELDMAN: I think we should find out what it's going to cost the taxpayers to put in such a system and maybe we should have the lawyers in general and the litigants bear the kind of cost if it is a high cost, because I think in the long run those litigants are going to benefit by this.

CHAIRMAN HARRIS: Ms. McGurie, are you aware of any other hidden costs or other costs that perhaps may not be as definite?

MS. McGUIRE: No, one of Judge Brown's standards after beginning of the trial was that it is not to put any undue burden on his people and as such I have had one of my employees oversee the conference call days when they have them set up and particularly now with the light usage, it is Judge Brown's clerk who is able to set up the conference calls with the conference operator.

CHAIRMAN HARRIS: But they've only had eight...

MS. McGUIRE: Well no, we have had eight days.

CHAIRMAN HARRIS: Thank you. Okay. Let's now call on Mr. Filosa. Hello, how are you?

MR. TONY FILOSA: Fine, Mr. Chairman.

CHAIRMAN HARRIS: I understand that you have a comment on both bills that are before the Committee today.

MR. FILOSA: I'll be very brief. My name is Tony Filosa, I'm the Clerk/Administrative Officer of the Municipal Court in Beverly Hills and I also chair the legislative committee for the municipal court clerks association in California.

I'm here mainly to address myself to AB 1946 and AB 1209. The Association is not concerned with the merits of the legislation as much as it is with resources to implement legislation and any clerical efficiency that is attendant thereto.

As for AB 1209, Mr. Chairman, my understanding is that there may be more study on this bill. Our only comment on it is that when

we talk about resources, we're concerned with who is going to man the telephone.

CHAIRMAN HARRIS: We have the same concern that Mr. Feldman indicated and that you think perhaps it's going to be a little more work than Ms. McGuire thought.

MR. FILOSA: I think so. We moved away from telephonic procedures over the past few years to cut down on personnel in the court because of Proposition 13. We use a great deal of recordings down in the courthouse for general information, procedures, third party information to the public. This bill would reestablish telephonic procedures and our concern would be, of course, personnel neccessary to man the telephones and also the communication problem that developed when you take matters as important as appearances and pleas or what have you...

CHAIRMAN HARRIS: Could it be done on a pay as you go basis, in other words that there would be some estimate of utilization, and the court costs would be assessed to those attorneys who wanted to utilize the procedure as opposed to coming down and wasting gas and more time.

MR. FILOSA: That certainly would be one solution to the problem.

CHAIRMAN HARRIS: That would satisfy your concern then to the cost?

MR. FILOSA: As to the cost, of course that might defray costs as far as your telephonic installation equipment.

CHAIRMAN HARRIS: I'm talking about adding the cost of a clerk to field the calls. If you knew there was going to be an estimate of 100 utilizations a day that would require half a clerk...

MR. FILOSA: That would satisfy our concerns as long as we knew we had some resource where we could hire another individual. Certainly they would have to in courts that deal with a large civil volume.

CHAIRMAN HARRIS: I see.

MR. FILOSA: May I address myself to AB 1946? In that particular bill the intent is to handle public assistance appeals via small claims. Is that correct?

CHAIRMAN HARRIS: Yes.

MR. FILOSA: Inasmuch as small claims court is an entity unto itself, with special forms, special fees, and where the appearance procedures are all different and there are no attorneys present, we would suggest that if it's necessary to transfer this type of appeal to the municipal court, that it can't be handled in a similar nature as labor code appeals are presently handled. That is, if they are within the jurisdiction of the municipal court they are transferred over on appeal basis rather than putting them into the small claims network. It's a specialized area that we feel it would be difficult to fit it

into that small claims court. It would be far easier to put it into the present system that we have now.

CHAIRMAN HARRIS: So you think this legislation is ill advised?

MR. FILOSA: Yes, I do. We feel that it could be handled within the municipal court and within our jurisdiction provided it is within our jurisdictional limit. One of the questions we have on it is that when the labor appeals were transferred to municipal court they were done so without fee. We would wonder why this would be access at the appellate level which is what this amounts to, without some type of fee being paid or something.

CHAIRMAN HARRIS: Well, one of the ideas of course is cost. That not just the courts but the overall system would benefit by more expedient hearing, one that didn't involve all the complications of the regualr court. I guess our concern is not the court costs but the overall costs of hearing these matters.

MR. FILOSA: Well in this area I can't speak to how involved they are, they certainly are a specific area of the law that maybe small claims court should not be involved in. It may be more in line for it to be within the municipal court. But again that's more of a judicial determination. My concern is mainly if you're going tobring an action into the municipal court there should be some fee for it. It shouldn't be a free ride.

CHAIRMAN HARRIS: Thank you, Mr. Filosa, thank you very much. Judge Eagleson. Good morning, how are you?

JUDGE DAVID EAGLESON: I wanted to comment about your bill. I really feel that the approach that you have should be reversed. What you do here is allow the party or the party's attorney to elect to appear at any of the telephone conferences. You're putting the control of the calendar in the attorneys' hands and I think that the gist of what you've heard this morning suggests that perhaps the emphasis should be on the court running the calendar and running the administration of justice rather than counsel. For example, currently, in our county at least, trial setting is a perfunctory kind of hearing, the lawyers do not have to show. They can stipulate to not appear or file a declaration of appearance. They already have a way out without having to come to court. We intend to change that radically as of January 4 by ordering every litigant to appear at a trial setting conference where we make orders that have a faint resemblance to the rule 9 orders that were made in the federal court in the central district of California in Los Angeles here, setting forth specific obligations and responsibilities of counsel with respect to getting ready for trial. At that particular time we also intend to give them a trial date and a mandatory settlement conference date so their attendance is absolutely essential if that hearing is going to mean anything. The arbitration status conference that you referred to, again, in Orange County with Judge Trotter, is very meaningful, where at that point in time the lawyers are given another date at which to appear and they of course have got to check with their calendars and make sure that they can appear on the date that is given.

In our county, downtown here we're handling about 100 of these arbitration status conferences at 9:00, 100 at 10:30 and 100 at 1:00 and 300 a day. We couldn't make that many phone calls a day. Even if we worked on a premise that we would allow counsel to appear by telephone we couldn't physically make that many calls a day. I think the idea is good but I think it should be left to what I call local court option to see whether, depending on your caseload, if you have a court that can do it comfortably, then I think that court should have the option to do it. But please don't put it in the hands of counsel, because you're going to see there is something therapeutic sometimes in coming down and having to go through one of these things. As you know, I think we pioneered the idea in this state. Judge Goebel began this experiment several years ago and it's now being abused, selectively I'm told.

CHAIRMAN HARRIS: You think perhaps the Legislature is ill advised at this point, that certainly there is not enough evidence that in fact it is workable?

JUDGE EAGLESON: No, I think it is worth it under special circumstances. I like the idea of creating the authority, assuming the authority is needed. I'm not sure whether you would do this upon stipulation of the parties or whether the court has some jurisdictional think to hang its hat on, but in case there is any doubt about the power of the court to create a telephone conference culture thing, I think that clarifying legislation and/or Judicial Council ruling would be appropriate.

The other bill, AB 1946, I don't think helps at least as far as our county is concerned. We find that we have roughly about 20 of these welfare appeals a month in our law department. They take about five minutes each and if you were to do what the author proposes here, that is, put it into small claims court, then unless you change the small claims rules you have a three part process rather than a two. You have the administrative hearing, you have a small claims hearing, and then an appeal to the superior court, so you're adding an extra dimension.

CHAIRMAN HARRIS: You think there is no real cost saving?

JUDGE EAGLESON: Absolutely not. Five minutes is five minutes. We have now the labor commissioner appeals as you know. And somewhere in the last couple of years a bill was passed that provided in effect an appeal through either the municipal court or the superior court depending upon the amount in controversy. If you had a $15,000 plus determination at a labor commissioner level then the matter comes to the superior court de novo. If you had less than that the municipal court. That seemed to have worked fine. We used to get them all whether $500 was involved or $50,000, but we broke that out now. I have sat here listening to the other comments about what's going on in this county. I didn't come prepared with any remarks on those subjects, but I'd be happy to talk to you if you have any particular questions.

CHAIRMAN HARRIS: I think obviously there seems to be a focus on the Los Angeles courts as certainly one of the primary areas of the problem, and maybe you could kind of give us some ideas as to what you

think about Los Angeles. We heard for example that the urban county factor was what Judge Trotter indicated was partially responsible, the complexity of the trials in Los Angeles as opposed to Butte County. What do you see as the problem and what do you see as the solution?

JUDGE EAGLESON: It's a little self-serving perhaps and perhaps it would be construed as a copout, to suggest there is a cultural difference between what goes on in Los Angeles and San Diego counties and Orange County as opposed to what goes on in, for example, Butte County, there is a difference in the way lawyers practice law and in the kinds of cases...

ASSEMBLYMAN D. STIRLING: What's that mean?

JUDGE EAGLESON: I think we have a very aggressive, imaginative, active, ambitious group of plaintiff lawyers in Los Angeles County. I don't say that critically but in terms of the imagination they bring to trial lawsuits, their use of expert witnesses, if they can possibly find an expert to back up what they say, they bring in experts, both prosecution and defense. In the old days you used to try a case with one plaintiff's doctor and one defense lawyer and one defense doctor. I don't think that's done anymore.

ASSEMBLYMAN D. STIRLING: Is that because the attorneys try to get away with more or the jduges permit more?

JUDGE EAGLESON: I wouldn't put it that way.

ASSEMBLYMAN D. STIRLING: I put it that way.

JUDGE EAGLESON: I think they are much more imaginative, much more aggressive than they used to be.

ASSEMBLYMAN D. STIRLING: You mean if their offer of evidence is not accepted they will threaten to appeal so that the judge has got to go along with it?

JUDGE EAGLESON: No, it used to be if you had a $100,000 case you were in the big leagues. We pick up our statistics now on our jury trials, it's hard to find a case, if it's a plaintiff's verdict, for less than $100,000. So when you have a quadraplegic or you have someone with asbestosis, whatever, the potential recovery is substantially higher -- a million dollar verdict doesn't scare a jury anymore. Not any more. The imagination and the horizons of the public are now very much up in the air. Consequently, as a lawyer you are never completely satisfied in your heart of hearts that you've done all that you can to prepare your case. But where you know you have a case where the potential is six or seven figures you spend more time on the case, you bring more expert witnesses to bear on whatever issues are involved and this certainly leads to a protracted kind of litigation. The average case, listen to this, the average case in this county, in the central civil, ls 14 trial days. Five years ago it was 6.4 days.

ASSEMBLYMAN D. STIRLING: And that's because the jury's awareness of larger values on life...

JUDGE EAGLESON: I think so. Mr. Feldman here is an excellent plaintiff's lawyer, I don't know whether he's still here or not but he could tell you certainly what's happening in jury verdicts. I think there is a difference between what goes on in some of the less urban counties and in Los Angeles.

The second difference is that this business of exposing cases for trial is a phenomenon that is at least 20 years old. Judge Watt has done a commendable service to the public and the judiciary by reminding us of the fact that one way to get rid of some cases is to expose them to the threat of trial. Lawyers, many of them, particularly if they have a bad case,are not all that sure of themselves in the courtroom without a struggle and go to trial. You've got to tell those people, look you're going to trial unless you settle. A lot of them settle. But when you have hard core litigators that are very very fine lawyers, I don't mean to be cavalier about this, but you could auction off courtrooms. They would want them that badly. You don't scare them away. Last year I was in Department 1. I continued 3300 and some old cases on my own motion. The reason I did that in the majority of those cases was that I had no courtroom available.

CHAIRMAN HARRIS: Does it make any difference whether it is civil or criminal trials?

JUDGE EAGLESON: Well, Mr. Harris, the criminal thing is a little different discussion. If you have a criminal defendant, there is no one standing for him to plea, the Supreme Court may come down with a ruling to help him, the prosecution witness may die. He just has no incentive to get out of the system unless somebody offered him some kind of a deal, so-called plea bargaining. But when that courtroom door opens up, if you can produce that courtroom then that's when he has to face reality and that's when...

CHAIRMAN HARRIS: It seems to me much of the testimony we've heard focuses on what kind of techniques, what kinds of incentive pressures, if you will, can implement that would in fact require or somehow induce speedy resolution of conflict, whether it's civil or criminal. In other words, if trial is going to take place within 30 days, for example, and no continuances are going to be granted, in civil trials for example, as Judge Watt indicated, those kinds of things perhaps would be a positive factor in moving the trials through the process.

JUDGE EAGLESON: Yes, I think there are two things. I'm being very general.

CHAIRMAN HARRIS: I understand.

JUDGE EAGLESON: One is you can turn the operation of the courthouse back to the judges. Quite a few lawyers are going to come to you and tell you all the good things about bills that are good for plaintiffs. Defense lawyers are going to come to you and tell you that they want this because it's good for defendants. Very,very few of these lawyers, at least when they appear in front of committees, will tell you what is good for the system. The only people you're getting input from that I'm aware of, who are telling you what's good for the system are the judges, because we don't care whether plaintiffs win cases or

whether defendants win cases. I agree with somebody up here a moment ago who said unless somebody does something this system is going to collapse, and the insurance companies should sit up and take notice and the plaintiff's lawyers should sit up and take notice. I may not be around to see the collapse, it may last as long as I have left to go, but it won't be around somewhere in the future unless things change. The only objective evidence you're getting on what's good for the system is coming from informed members of the judiciary who have these stories.

CHAIRMAN HARRIS: When you say turn back the courts to the judges, can you be specific?

JUDGE EAGLESON: Yes, I'll give you an example. Mr. Stirling filed a complaint in Federal court and I guess he didn't do something within three months and the judge sent out a notice to show cause why the case shouldn't be dismissed. We can't do that. We can't do anything to any lawyer for two years. Because the only time that you can move a case out of the system, short of trying it that is, is notice to show cause to enter a dismissal and it's what we call a two year statute,CCP Section 583(a). And then the appellate courts have made the rationale or excusal from that dismissal so liberal that it's practically a useless tool. We are going to implement it, so you'll be happy to hear this. We're going to use that device for other reasons that I'll explain to you sometime, but it doesn't bear on this. It is not an effective tool. If you would take a look or you would have your staff take a look at Rule 9 of the federal rules here in Los Angeles County and see what they're telling you. I can also provide you with the trial practice rules in the City of Pittsburgh where they get to trial within eight months from the time the cases are ready. You'll see what I mean by the court control of the calendar. That's the first thing you have.

ASSEMBLYMAN D. STIRLING: Are you saying that the trial court level judiciary would support some kind of a mechanism, that the Legislature can deal without infringing on the separation of powers problem.

JUDGE EAGLESON: The Legislature of course has promulgated rules and statutes that tell us what we can do and what we can't do. I'm saying that if you will take a look at Rule 9 you will find that we don't have the tools. You can put meaningful responsibility and capacity for movement back into the system if you will promulagate some of the ideas and concepts such as are within the federal rules. That's the first thing.

The second thing is that we've got to provide even handed disincentives to continue litigating beyond a reasonable point. Hypothetically, if an insurance company,for example, knows that it's going to have to pay off because the plaintiff was really injured and the liability is clear, it is not right to not pay off as early as that determination should be made. On the other hand, it is not right for a plaintiff to linger around and insist either if he has a phony claim and his lawyer and the defense lawyer are reasonably convinced that his claim will not be successful at the time of trial. There have to be some kind of disincentives, cutting evenly across the board, and getting both sides, to dissuade continuation of suits that are not bona fide. The whole concept of law, conceptually,is built on bona fides. And I submit that it is an ideal concept that doesn't work in the real

world. You've got to put these people at risk.

ASSEMBLYMAN D. STIRLING: The federal system does it as it goes along. In other words it gets them out of there in a hurry. They don't have a choice of whether there's an incentive or not. Whereas, in the superior court you almost have to do it retroactively. When they ultimately get to trial and somebody determines they weren't justified in taking as long or whatever, then there'd have to be sanctions.

JUDGE EAGLESON: No, it's not a question of length of trial. One is case management. When the judge moves the lawyers along. The other is the lawyers and their clients are experiencing a disincentive. That's an internal thing. It has nothing to do with the Court. It's the law that says if you, for example, are offered $50,000 and you don't improve your position at trial, you have to pay defense costs. Including the real cost of expert witnesses, including the real cost of attorneys' fees, including a lot of other things. Or if the plaintiff makes a demand of $100,000 and the defendant doesn't pay off and the plaintiff gets a verdict of $150,000 then you, Mr. Defendant, must pay real attorneys' fees. You must pay real expert costs. So this puts the counsel and the litigants at risk, beyond a point in time, to linger unnecessarily and unreasonably in the system. Right now there is no penalty, really, for not making judgments and bailing out after you really know what your case is all about.

ASSEMBLYMAN D. STIRLING: Do you feel like that view that you just expressed is the generally agreed upon...

JUDGE EAGLESON: The lawyers on both sides would fight it.

ASSEMBLYMAN D. STIRLING: I was first going to ask you about your colleagues in the court, but I assume they would generally agree. All right, we get down to the people who are the other aspects, the attorneys, you said both sides would fight that. Because it puts more pressure on them as they proceed through the system, right?

JUDGE EAGLESON: Well, I don't want to speak for them, but having been a lawyer for 20 years, having been up in your hallways many times, the people that you see frequently up there I think will resist that (inaudible).

CHAIRMAN HARRIS: Is there any justification for that resistance?

JUDGE EAGLESON: I don't think so. I don't know of any other thing in life that is risk-free. If you go into the stock market, you take a risk. If you go into business, you take a risk. If you go into marriage, you take a risk. There is no such thing as a risk-free life. And I just believe that if the lawyers look ahead and step back in their position as advocates, they have to see this thing going down the drain. They have to see this whole court system going down the drain.

CHAIRMAN HARRIS: Would we put unreasonable pressure on lawyers if we were to do this in terms of additional deadlines they would face as a result of this kind of a change?

JUDGE EAGLESON: Yes, there is more pressure, there's no question about it, but you raise a very interesting point. I think that having practiced law as a sole practitioner, so I know what deadlines are all about, you do take too much business. And if you had more pressure, I hate to say it, but if you had more pressure on you that file doesn't get any attention. The guy who brings the fee in the door is going to get your attention. Once you do what you have to do there and the next fee that comes in. That's the case that gets your attention. It's just the way it is. And we've done something about that. There was a bill not long ago to put us in a position to cut attorneys' fees if they didn't get their estates sold within a certain length of time. Very salutary. I think we have to stop worrying about counsel. We have to start worrying about the public in the system. The public is entitled to more than just a lick and a promise when somebody gets around to it. That cuts on both sides.

CHAIRMAN HARRIS: Good point. That's the key. Any other questions? Thank you, Judge Eagleson. Thank you very much. Judge Saeta of the Superior Court of Los Angeles County, Chairman California Judges Association Civil Law and Procedure Committee. Welcome.

JUDGE PHILIP M. SAETA: Thank you. I am appearing on behalf of the CJA because the civil procedure section's position on your 1209 was adopted by the board and I didn't know the positions of the other people, but I was interested in what Mr. Feldman had to say because basically we came independently to the same conclusion. Maybe I could take you back just a little bit. The 8th floor in LA Superior Court has a telephone system for the (inaudible) rooms so that any person can call in at 4:00 on the day before the hearing and by means of a three minute belt can hear what the tentative ruling is for the next day. That program was established by Judge Goebel and he's just one of the five judges on the floor. And by using that for a year or so, by getting the equipment and finding out what costs were and seeing what the use was, the service it was providing; it was then extended to the other courtrooms that were doing law and motion so now you can, without making an appearance, come in and do it. I would suggest the same kind of approach is worth it in Los Angeles, and maybe in a court like Judge Brown's which is a very large court for law and motion. It could be done on a phase-in basis to see how the equipment was used and to see what the utilization is, and then work out the bugs and then put it in. One of the thrusts of CJA's position is to make it mandatory for one court. For example, we could take one of the five departments in Los Angeles and say in this court it will be, at the judge's discretion, mandatory for this type of case that you use the telephone system rather than not. That way you could get a mass of cases and get some experience. A typical calendar in a heavy law and motion court would be typical of the ones here in Los Angeles and would be typical of Judge Brown, would be to have 20 or 30 matters that actually go. Hearings on those matters, there might be 30 or 40 set, but they disappear, taken off calendar, there's continuances, some kind of ruling, but if you have 20 or 30 cases, the mechanics of getting the calls lined up, and in most cases there are just two sides of lawyers. The mechanics of setting up 30 cases or 20 cases and 40 to 60 lawyers are more than you could reasonably handle in the busy law and motion court. Assuming some people would want to come in and the court is busy with those appearances and the judge is doing it from the bench, some coming in and some on the

phone, there's got to be somebody, I think, who lines up one or two calls in advance so that you have all the lawyers ready to go. Otherwise the calendar which would take one or two or three hours, let's say two hours, of the judge's time and law and motion would expand tremendously. Most of the time law and motion is spent in chambers reading the files for the next day and preparing. Many judges cut their oral arguments down to half an hour or an hour just by telling counsel to shut up and go away. But the files are in the chamber and you've got to get at the file or you're not ready for the next day. You've issued your tentative ruling so to take a judge to have a hearing from 9:00 to 9:03 and then wait two minutes while the next call is set up and assuming the attorneys are there like they are supposed to be to answer the phone, you can't work in that two minutes, realistically, and then take another three minutes. You've got to have those calls ready just like you would in a calendar where you say, Case one, Case two, Case three and the people come forward and there's a five second delay between cases. So I would think in a heavy volume court it should be experimented with and we're very much in favor of the experiment because it really is an anguish, at least it is for me, to look out and see 40 or 80 lawyers out there, which is what you see at 9:00 and then you've realized yourself that the cheapest rate here is $80 dollars an hour and multiply 80 times the number of people out there and some will be there until 10:30, it's astronomical and I think it's a waste, so I think I'd like to at least have an experiment to see how it would work.

The second point I'd like to make, besides the experiment, is to leave the judicial discretion in there. Judge Epstein can speak for himself, but when I investigated this for the purpose of our committee's recommendation, there were certain circumstances where he would want to see lawyers eyeball to eyeball, he would want to be able to call them in. If you get more than four lawyers, a conference call becomes ridiculous. If you have three local lawyers and one from San Francisco or out of town, let him do it by phone, do not make him make the trip down here for a 15 minute hearing, but leave it within the discretion of the judge. If it turns out that after a couple years it works real fine and the things I've talked about don't happen, then make it go statewide. I think the committee has a hard time with the bill in its present posture of having it mandatory at the attorneys' discretion on all these kinds of things.

CHAIRMAN HARRIS: What about procedures? Should we limit or broaden the types of matters that may be dealt with on the phone?

JUDGE SAETA: Well, we addressed it really from the law and motion, we picked up the word demurrer and we look at it more from that posture of,I have to defer to Judge Eagleson, if he's still here, in terms of trial setting and those kinds of things and arbitration -- they're holding 300 a day. The reason why that works is because nobody shows up. I don't know about that. Our committee didn't address that. We addressed summary judgment, demurrers and motions. Now, many times counsel can submit on the phone, call the clerk and say I'm going to make an appearance, I'm going to submit on my papers. Actually allowing argument is a matter of discretion of the judge. You don't even have to allow argument on a motion. I think most judges do allow it because sometimes things can be said beyond the papers. I would say a very

heavy summary judgment motion which is opposed is not the kind a judge would really want to do on the phone. But you could do demurrers and summary judgments on the phone. I don't see any inherent difference between an attorney withdrawal and a summary judgment, and a demurrer and a motion to amend or anything like that. The preference ought to be to the out of county lawyer in terms of use of this kind of a system. Because that's where the transportation expense is, but I would phase it in because the committee thinks it is a good idea.

CHAIRMAN HARRIS: Thank you. Any other questions? Thank you. I'd like to call up Judge Epstein and Mr. Janofsky, please.

MR. LEONARD JANOFSKY: Mr. Chairman, members of the Committee, my name is Leonard Janofsky, and currently I am serving as the chairman of the ABA Action Commission to Reduce Court Cost and Delay. I'm going to make my comments brief here because I know time is running out on you and I will focus a little more on what is going on around the rest of the country.

I might say this preliminarily: The action commission was formed by the American Bar Association because of our concern about the twin evils of delay and the high cost of litigation and I'm not goint to say anything about delay because we've heard a lot about it here. I will say this, that this is not a problem unique to California or to Los Angeles. In all of the major cities of the United States, certainly in all cities over 500,000, with some very rare exceptions, the matter of delay is a very serious problem and there are a number of other cities which have five year delays just as we have here in Los Angeles. The average in those cities is about three years.

The area of greatest concern to the Action Commission is the matter of litigation costs. Our survey has indicated that, and I think the census supports us, 87 percent of American families have a dollar income of less than $25,000 a year. The Action Commission feels that unless you have a case which can be handled properly on a contingent fee basis or which is covered by insurance, that those people who constitute the average Americans, simply can't afford to litigate in our system the way it operates today. And that's the reason that we have been working on trying to experiment with ways and means of directly attacking the way we try cases, in addition to supporting an alternate approach which is that of finding alternate mechanisms for the handling of dispute resolution. That is moving cases outside of the court.

Now the Action Commission has focused to date during the two years of its existence on three areas. First on what is called economical litigation, we have a project going in Kentucky, the project here in California that Judge Epstein is going to speak to you about, and we have a project going in Colorado. We are going to develop several others.

The second area we have been concerned about is expediting appeals. We have several projects going now and in one of them we have been able to reduce the appeal time from the average of two years to seven months. I won't go into the detail on that with you now. I want to say just a few words if I may about what is going around the country in this matter of tele-conferences. Now there are well over

15 states throughout the United States where courts are already using tele-conferences in some form or another. Indeed it's being used in many of the federal courts. The federal courts in Baltimore, the federal court in Newark, New Jersey, the federal courts in Philadelphia, the federal courts in the eastern district of New York, the federal court in Cheyenne, Wyoming, and the federal court in the northern district of California in San Francisco, are utilizing some form or another tele-conferences. Indeed, there are three states, New Mexico, Washington and Virginia, where tele-conferencing is used in connection with motions and matters of that type in connection with appeals, not really in the trial courts.

Now a short time ago the Action Commission, working together with the Institute of Court Management conducted a survey of 43 judges located in 31 different courts in 15 states throughout the country. And that survey gives some indication of the types of matters being considered through the technology of tele-conferences. The matters that are most involved relate to motion hearings, demurrers, pretrial conferneces, the scheduling and setting of trial dates. There are other types of civil matters where tele-conferencing is used, such as rulings on depositions in connection with expert witness testimony, for example in child custody and insanity hearings. Some courts have even experimented with it in respect to temporary restraining orders and indeed there are some courts which are using it in connection with criminal cases. One of the major examples of that is in the courts of Denver, Colorado.

The litigation section of the American Bar Association consists of 35,000 lawyers. They are now working with us on this and their counsel feels that as far as this is concerned that we've passed the experimental stage and they're going to develop a program at the meeting this February to try to educate the 35,000 lawyers in that section to what tele-conferencing is all about in order to get the support of that group.

Mention was made here of the question of cost. And that is certainly a legitimate matter to look into. I would say that, based upon our investigation, the cost is a matter that ought to be able to be handled. I recognize that in Department 81, the law and motion department of Los Angeles, there is a tremendous volume of cases that have some unique problems, not only in cost but also in the matter of personnel. But overall I think that the evidence will show that the matter of costs can be handled.

Let me just make one comment here. One of the pilot programs that we have been involved in is the one headed by Judge Peckham who is the chief judge of the northern district of California in the federal courts and he has some statistics. In the course of his experiment, where he conducted 122 telephone conferences in 86 cases, and in those matters there were 241 attorneys that participated, 194 of them were from the Bay Area and 47 of them were from out of town, perhaps down here in Los Angeles. His figures show that the cost for those matters going the normal route would have been $35,730. He says that his figures show that using the telephone procedure, that the client cost was $7,230. So we hope that California will go forward in this area. I'm not going to get into this matter of the mechanics of it, that is something that you all can work out. But, Judge Eagleson was

talking about the system falling on its face and not only Judge Eagleson but there are at least two justices of the United States Supreme Court within the law two years who have come out and said that our system is just too expensive for everyone and therefore we hope that you will lead in this area of tele-conferencing and I also would like to say, before Judge Epstein speaks, that we hope you will continue to keep your finger on this matter of economical litigation. Maybe not in the present form that has been used in the last several years during the pilot, but it is absolutely imperative that we continue to make progress within this area if the legal system is to continue to be what the Supreme Court called the decent element in our society and if it is to be meaningful to the average American.

CHAIRMAN HARRIS: Do you have any response to the notion of returning control of the courts to the judges and expediting trial by virtue of more judicial discretion in terms of when and where?

MR. JANOFSKY: I'm in favor of strong court management. The judge should take control of the case as far up front as possible, in other words, enough discovery, enough definition of issues so you can do something about it. But I would say this, I think the attorneys are at fault, there's no doubt about it. It isn't every judge who has the attitude that Judge Eagleson has and even judges have to be first floor. They're human beings too. They kind of like to do things in the same old way. They're no different than you are or I am, and I think this has to be a joint project and I don't believe in pointing fingers at the lawyers or pointing fingers at the judges, I think all of us have to share the blame and we all have to pull together to get this job. Sometime you got to put some pressure on the judges too.

ASSEMBLYMAN CHARLES IMBRECHT: (Inaudible)

MR. JANOFSKY: Let me make this quick. Our commission is not, that is not its concern. Our mission is to endeavor to attack directly the way in which we try cases from the complaint through to the filed judgment, to make changes in the existing system. Mainly by simplifying, and streamlining. We have other groups in the ABA who are working on this matter of alternate dispute mechanisms. They are working in a lot of areas, mediation, arbitration, in the so-called big case matter of having the parties get together after the case has developed to a certain point and having a presentation made say to the president of the company by the two lawyers. There are any number of experiments that we are conducting in that respect. Arbitration happens to be one of them.

CHAIRMAN HARRIS: Judge Epstein.

JUDGE NORMAN EPSTEIN: Thank you Mr. Harris, Mr. Imbrecht. Let me say first that tele-conferencing is alive and well in Torrance. I inherited the system from Judge Goebel who established it. I'd take credit for it if I could. I have not attempted to calculate how much money is being saved, but comparing the time that's involved, spending five or 10 minutes on the telephone as against the time to travel from almost anywhere to Torrance, especially for out of town counsel, you're talking about saving from a couple hours to an entire day. In the aggregate, the amount must be enormous.

I want to talk a little about our economic litigation program.

CHAIRMAN HARRIS: One more thing on that point before you go on. Do you see any particular pitfalls like lining up of calls, other types of cost factors?

JUDGE EPSTEIN: The telephone conferencing that I do is the law and motion of the economic litigation program. And that is not a heavy load. The number will range from a few to 19 or so. Rarely over 20. And that's usually a handleable number. The attorneys who call in today get a time for tomorrow and will be on the line if they haven't submitted. I recognize there are problems, special problems, when you have a very high volume. But I certainly agree with the other speakers that this is the direction to go. The economics are so pronounced to litigants and counsel that I really have trouble understanding a rational argument not to move in this direction. The telephone conferencing that Judge Goebel established was really an outgrowth of the economic litigation program which he was in charge of during his time in Torrance. One of the things about that program was that it does encourage some innovative spinoffs and this has been one. I'll just say this about the basic need and the basic problem, seconding what Mr. Janofsky has discussed here.

We are in real danger of creating a system in which the civil courts are simply not available to most people. All the people pay for the courts. Their taxes go to support us all. And yet we have a system, if we don't have it now we're in danger of creating it, where except for special fund cases, insurance, and certain isolated classes of cases, dissolution, probate, etc., dispute resolution is simply not available in courts because it is too expensive. If that is not remedied I think we have a very unstable and unhealthy situation for the public as well as the Bar and I suggest that the solution is not simply to take great gobs of cases and remove them to some other system of dispute resolution, leaving the courts only for the rich. It was those thoughts and related thoughts that led your colleagues a few years ago to establish this program on an experimental basis. The idea was to reduce the cost of litigation in four ways. Simplifying the pleadings, reducing motions, reducing discovery, and streamlining the trial. And the program has had some success and it has had some failures. It's an experiment. I think one of the things you do with an experiment is to assess what works and what does not and there's certainly no disgrace in recognizing things that don't work and scrapping them instead of attempting to persist in error. And I hope in the future that that is the direction we will all go. The reduction of motion aspect of the program I think has been eminently successful. There are no special demurrers in the economic litigation program. Motions to strike are severely curtailed. And because of the limitations on discovery the number of discovery motions that come out are similarly reduced. That unquestionably saves a lot of money. I don't know if anyone has attempted to quantify just how much, but if you compare what we do with the normal law and motion calendar the results are apparent.

The limitation on discovery deserves a little bit more in a moment, but I'll just say that that's where the money is and to the extent that there has been substantial savings, and the studies that have been held on this indicate that there have been, that's principally

where they are. The streamlining of pleadings has been a total failure. The statute has had no impact whatever. Lawyers are going to plead the way that they have always pled unless somebody tells them that they cannot. The Legislature adopted a statute a couple of years ago aimed at that direction. I think it will have a salutary effect. It is the Waters bill calling on the Judicial Council to establish forms, and they are well under way of doing that. Some people have said it is sort of like going back to the 13th century where you buy and rent and trespass in a case of replevin, but I think actually it's going to save both attorneys and courts a good deal of time and...

CHAIRMAN HARRIS: Continuing Education of the Bar has begun seminars on this.

JUDGE EPSTEIN: Good. The streamlining of trials, the last aspect of it is harder to gauge. In the superior court we have had so few cases that have gone to trial that there is really very little there to test. Most cases that come to a mandatory settlement conference, I handle the mandatories for the ELP program in Torrance, those cases that get there, 93.88 percent go no further. The remaining six percent or so do go to trial. But a very small number of those that haven't been disposed of up to the mandatory settlement conference actually go to trial so we really don't have enough experience in all these years to tell you whether it's had that much effect.

In the Los Angeles Municipal Court, though, all the civil cases, except unlawful detainers, substantially are tried under the program. If they're tried in a court they are tried under these streamlined procedures. Discussing it with my colleagues on that court I am told by all of them that it has had no discernible effect on the length to trial. And one lawyer who had a lot of work in that court has had an interesting comment. He told me that the relaxed rules about hearsay and the rest of it have tended to make him a sloppy lawyer when he appears anywhere else when the standard rules are enforced. My suggestion is that what we ought to do with this program, or any program that the Legislature might choose to establish, is to take those features which are proven to have some value, modify them as needed, use those and scrap the rest of them that are marginal value or just don't work. There have been a couple of major problems with the ELP program and I want to, in all candor, tell you what I believe they are.

The most serious problem we have had has been incident to the experimental nature of the program itself. It exists in Los Angeles Municipal Court, that's one of 24 municipal court districts in the county, and in one branch of the superior court. There are almost no lawyers who confine their civil practice to one or the other of those two courts or both, with the exception of attorneys who specialize in unlawful detainer downtown and by misadventure unlawful detainers were exempted from the program. The result is that it is a trap for the unwary and lawyers have certainly been trapped in this. If you go to a branch court that is strange to you, you probably figure you'd better see what day they hear law and motion and expect to find a few other wrinkles that are unusual. But you don't expect to find that the federal rules of civil procedure are operating in this one branch and nowhere else in California. That's almost the sort of thing that we have had, in spite of a massive effort in judicial education in which the Bar, both

courts, CEB and CJA, the local bars have been involved. Nevertheless, the number of lawyers and the mass of litigation is so vast it is just hard to get this information through. I think that effect has been unfortunate and it has probably resulted in a confusion that the total cost of the experiment just about equalled the total gain. That would not be true if you didn't have this special differentiation, if you had a program that was statewide or at least regionwide in a large region. If it were statewide, then obviously that problem would be eliminated.

The second problem has to do with the rules themselves. The program was established on very bold, far-reaching lines, as sometimes happens with this sort of an experiment. It was perhaps a bit too bold. Some of the things just didn't work. There was a mandatory witness and evidence statement, which I've written about in some material that I'll make available to you, that did not work. There were other aspects of it that were too severe, limiting all discovery in municipal court, for example. That didn't work well.

Finally, there is a substantial number of lawyers who feel that the only way to try a case is to do it first cabin, to do all the discovery that is available and not leave any stone unturned. Obviously a program that limits the discovery tools available would not go down too well with an attorney who has that view and what you have to consider is a legislative policy matter that is an economic tradeoff. It is very expensive to try a case that way and I would suggest that not all cases justify it.

What I think we need is to learn from that experience to consider a program on a wide basis that limits discovery on reasonable lines, permits a reasonable amount of discovery for these cases, possibly deposition, possibly a limited number of some combination of interrogatories, request to produce and request for admissions, with an escape valve for that unusual rare case where something more is required. I think that something of that kind could be done, and done on a wide basis so that everyone would be operating under the same rules, at least at the municipal court level. That would solve a good deal of the problems that have beset the program up to now. Whether it should be adopted in the superior court presents a more complicated question on which views will probably differ more widely than on municipal court. The Judicial Council has monitored this program and has been sensitive to changes as they have been requested. The Legislature had the wisdom in establishing the program to give the Council authority to change the rules during the program on the basis of evidence that indicated that some adjustment was needed. That has happened three times and each time it has happened the Judicial Council has acted at the erliest possible legal date to modify the rule. It is monitoring the program. There is now a committee under the auspices of the Los Angeles County Bar Association that is examining the program which I expect will shortly be making recommendations to the Board of Trustees of the County Bar and that way, if they feel something should be done, I hope we'll be talking to you. I'd be pleased to answer any questions about this.

ASSEMBLYMAN IMBRECHT: How would you suggest that there be an arbitrary limit placed upon depositions,...

JUDGE EPSTEIN: I'm not speaking for any committee at this point, I'm just expressing a personal view, one way to do it would be to say that you have a right to one deposition, as a matter of right you can have one deposition of the party, employee, officer of the party that you are suing. You may also have up to a limited number of requests, say 25, requests for admissions, demands to produce, or interrogatories. The rule now says absolutely no interrogatories at all. My own view is that is uneconomical. There are times when a few well written interrogatories can save a lot of money and it is much more expensive to have to do it in a more elaborate fashion. But the experience I've had in seeing these cases and from discussions I've had with lawyers who try them, I think it is a rare case where the maximum recovery is now over $15,000, indeed where it's not over $25,000, it's a rare case where that combination will not give the litigant adequate preparation. And when that rare case does come along there ought to be some provisions for the court to permit further discovery.

ASSEMBLYMAN IMBRECHT: You wouldn't suggest then that we adopt such a change on a statewide basis to propose further experimentation? I'm not sure whether Fresno has this...

JUDGE EPSTEIN: Yes, Fresno does have the program and in Fresno the municipal court is not quite countywide, there are some justice courts in Fresno.

ASSEMBLYMAN IMBRECHT: Basically, most people practicing in that region are subjected to the same...

JUDGE EPSTEIN: That's right, and I'm not in a position to speak for how well the Fresno program has worked, but I do suggest that if you do this on a spotty basis, if it is done in County one and not next door in County two, it creates a situation that invites the sort of problems that we've had.

ASSEMBLYMAN IMBRECHT: I guess my question was was it wise to choose Los Angeles County as the site of this experiment as opposed to those counties...

JUDGE EPSTEIN: I guess the question is whether it ought to be done as an experiment, or whether we ought to try to take what we've learned and...

ASSEMBLYMAN IMBRECHT: Are we ready to propose it on a statewide basis?

JUDGE EPSTEIN: Well, I think there is enough information available so that the policy judgments can now be made. I don't think that extending the program in the courts where it now exists or applying it to Los Angeles County as an experiment, I doubt that that's going to produce a great deal more information than has already...

ASSEMBLYMAN IMBRECHT: The only recommendation I've heard has been from the board of trustees of the LA County Bar Association. Are we anticipating a report from the Judicial Council with (inaudible).

JUDGE EPSTEIN: There is a monitoring committee of the Judicial Council that is studying the matter and is planning, as I understand it,

to make recommendations to you. Tenatively I believe the Council view is that the best of the program, at lease in the municipal court, ought to be adopted as a new program that is applicable statewide, and the rest of it ought to be dropped. Any program that is adopted statewide ought to be as simple and easy to apply as...

ASSEMBLYMAN IMBRECHT: Do you have any idea when they're prepared to make this recommendation?

JUDGE EPSTEIN: I think this spring.

CHAIRMAN HARRIS: Thank you very much. Judge LaRue.

JUDGE ANNETTE LaRUE: I represent an eight judge court that has been involved in the experiment for economical litigation since it started. It was a disaster at first in particular because the unwary, which was nearly everyone, found that they hadn't filed their list of witnesses as required by the rule and so in many cases we didn't do justice when we applied the rule. Rule 1721 now requires a request and that seems to be working very well. One party that wants that information serves it on the other party, they have notice, and we find then that there isn't the injustice that existed previously. The time provisions for that are 30 to 45 days before the first setting for trial. That's workable, and in our court we can actually get filed within 45 days and so that isn't really a problem for the Fresno Municipal Court. I would like to suggest that there be an expansion of Rule 1719(e)(2) which allows a deposition of parties only in case the litigation is complex or the extent of damages. That isn't really very applicable to Fresno because in Muni Court, because $15,000 is just that. I think that there should be more discretion given to the law and motion judge to order depositions. I agree with Judge Epstein that a deposition, one for each side, should be provided for as a matter of right and that's where the pressure is coming from from the attorneys. They feel like they have to have one look into the other guy's hands.

What we're trying to get rid of is the avalanche of interrogatories and the use of the deposition to drive one party or the other out of court. So if we turn it around and say you can have one deposition and then others on court order if you need them, we can rely at least in Fresno on the inertia of most of the practitioners that they aren't going to come to court and ask for it. If they have a good reason of course they will come. They will get it if the court has that power.

The other suggestion that I'd like to make is that there be a formulation of some short, patterned interrogatories for common types of cases. The up to $15,000 personal injury case is the first one that comes to mind. So that we can have a statement of some sort, what is the theory of your case, what is the theory of your defense, you (inaudible) to rely on. If we have a limit, six or eight interrogatories that could be put out as a matter of pattern and if more are called for by those responses, again on court order. I am the law and motion judge, I've handled it months at a time. Now we're passing it around some. But I don't think that would be a severe problem on a law and motion judge to make a determination if there should be more. Again, I am

relying somewhat on intertia. I think inertia is what causes the mindless proliferation of interrogatories out of machinery that call for the very stringent rules in the first place.

CHAIRMAN HARRIS: Judge LaRue, would we expect a big outcry from the Bar for such form interrogatories...

JUDGE LaRUE: Well, I think the attorneys who are in Fresno and who have dealt with our experiment would be glad to have some. What they need protection from is this mindless repetition of questions that are so burdensome, but I would assume that if such forms were made that they would be made carefully and by someone who has in mind the fact that the system is going to collapse from the weight of the paper. But I think some interrogatories would be useful, certainly they would be cheaper than depositions in the ordinary case. I think in short that a little more information could be given to the litigants. I might say that I see that depositions are being taken in our cases simply by agreement. It isn't that we're not having depositions.

CHAIRMAN HARRIS: Is the Judicial Council beginning to prepare those form interrogatories?

JUDGE LaRUE: They haven't asked us about it, but I certainly would approve of that.

CHAIRMAN HARRIS: Do you have any questions? Thank you very much, Judge, we appreciate your comments. Mr. Kranz, please.

MR. THOMAS KRANZ: Mr. Chairman, members of the Committee, I shall be brief. I believe that members of the Committee and counsel have copies of our prepared remarks today and we'd like to briefly describe the nature of our commission, the Economy and Efficiency Commission. There are 21 members appointed by the five Los Angeles County Supervisors.

CHAIRMAN HARRIS: Are you all lawyers?

MR. KRANZ: No. I'm glad you brought that point out. The chairman of the commission and myself were the only practicing lawyers on our 21 member commission. During the past eight months we have had many public and private research (inaudible) who participated in our public hearings, and I would like to state that one of the commission members was very critical of the entire judicial system and our 15 recommendations that we have made to the board of supervisors which were recently adopted about a month ago, we feel are just a preliminary step in the entire process of really seriously evaluating the judicial system in this state. We do not as lay people attempt to even begin to suggest how the system can be made more efficient in the long run. What we have tried to do is present first steps for generating some degree of reasonable fees, not so that the litigants themselves are going to have to pay for everything because we don't want to see that. We still feel that access to the court system is one of the most sacred traditions of the entire system of government that we have. In the sessions that we had with mayors of cities and members of labor unions, professors, people from the business community, who supposedly reflected the alleged liberal and conservative members of the board of supervisors,

there was a unanimous attitude among all the commission members and we would hope that in addition to our testimony today that the remarks summary of our full report would be included in our remarks today.

We'll just briefly state that we obviously support the concept of telephone conferences as we recommend the need for increased courtroom technology. We would, however, emphasize that we favor local discretion where the local court, local district, local muni or local superior court system could better work out their own framework and guidelines for telephone conferences rather than having an entire statewide design of rules that could be cumbersome and really defeat the purpose of cost effectiveness.

Secondly, we totally support the pilot programs of the economic litigation project that are currently in use here in Torrance. I know that the Committee wishes to conclude at one, but I would be happy to answer questions if any members have them.

CHAIRMAN HARRIS: How long has the commission been in existence?

MR. KRANZ: Well, the economy and efficiency commission has been in existence well over ten years. The task force on court congestion was appointed last February by at that time Chairman Edelman and,I might add,in response to numerous complaints that all five board members had been receiving about the judicial system here in our county. Really, one motion by at that time supervisor Baxter Ward in November of last year set up a blue ribbon commission. Supervisor Dana, recently elected last November also wanted a motion. Both our commission which is designed to advise the supervisors on the issue of cost and government effectiveness and the judicial procedures commission which is entirely of lawyers and judges, were asked by the board to look into the problem of delay and congestion. We are a task force of the full commission that meets each month.

CHAIRMAN HARRIS: It is ongoing?

MR. KRANZ: That is right. The task force is part which was created for this specific purpose, but the commission is an ongoing commission.

CHAIRMAN HARRIS: Thank you very much. We'll probably be in touch with you. I hope you will continue to forward ideas to us as we try to figure out what we're going to do about this problem. That concludes the hearing unless anyone else who is not on the agenda has any remarks he would like to have added. In which case he can certainly have them put into the record. Otherwise we condlude. Thank you.

# # # # # #

EXHIBIT A

CALIFORNIA LEGISLATURE

Assembly Committee on Judiciary

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December 8, 1981

TO: Members of the Assembly Judiciary Committee

FROM: Rubin R. Lopez and Ray LeBov

RE: Hearing on Trial Court Efficiency

On December 10, 1981, the Assembly Committee on Judiciary will hold an interim hearing in Los Angeles on Trial Court Efficiency. The hearing is scheduled to begin at 10:00 a.m. in the Auditorium of the State Building at 107 S. Broadway, Los Angeles, California.

The purpose of this memorandum is to provide you with background and material regarding many of the relevant issues that will arise at the hearing. Efforts to reduce court delay, cost and congestion have taken many forms. Over the past several years, courts have used a wide range of activities and varying approaches to solve the problem of court delay. The Institute for Civil Justice (The Rand Corporation) recently published a national inventory of efforts instituted by courts aimed at reducing or eliminating pretrial delay. A copy of this national inventory will be available at the hearing.

This hearing will focus on specific proposals and experiments designed to improve the operation of California's trial courts. Two legislative proposals, AB 1946 (Konnyu) and AB 1209 (Harris), will be discussed. AB 1946 would

change the judicial forum for appealing administrative hearing determinations concerning public assistance. AB 1209 would permit attorneys to make appearances in certain court matters by telephone rather than in person. The Committee will also receive testimony regarding some of the methods being used by our state's trial courts to improve court management practice. Finally, the Committee will hear testimony from individuals involved with California's Economical Litigation Project, an experiment designed to try simplified pleadings and modified pretrial and trial procedures in order to reduce the cost and delay in civil litigation.

AB 1946

Existing law provides for review in the superior court of decisions by the Director of Social Services or the Director of Health Services with respect to public assistance program determinations.

As heard by the Assembly Judiciary Committee on April 29, 1981, AB 1946 provided that such review would be in the small claims court when the amount in question is within that court's monetary jurisdiction. (Note: Currently the small claims jurisdiction upper limit is $750. As of January 1, 1982, the small claims upper limit will go to $1500.)

The bill's author stated that existing law, whereby all reviews are in the Superior Court, "jams the superior courts with costly legal cases for relatively small claims." The author further stated that the bill "would speed justice, cut attorneys' costs, reduce appeal periods, and eliminate a goodly portion of the public assistance grants as expenses that are given to recipients during an appeal."

AB 1946 was opposed by various Legal Services offices who argued that, since parties cannot be represented by Counsel in small claims court, the disparity between the skills of an individual claimant and whoever represents the Department in the small claims court hearing would result in an unfair disadvantage to the unrepresented claimant. It was also pointed out that small claims court would be an inappropriate forum for the resolution of the complex legal entitlement issues involved in this type of review.

Assemblyman Konnyu has informed Committee staff that he plans to amend AB 1946 to provide that judicial reviews of public assistance determinations would be heard in the court of

appropriate monetary jurisdiction. For matters within the monetary jurisdiction of small claims court, the recipient would be given the option of choosing small claims of the regular municipal court calendar.

AB 1209

AB 1209 was introduced on behalf of the State Bar, and is based on a proposal by the Bar's Committee on Rules and Procedures of Court. It provides that a party to a civil action or the party's attorney may apply by telephone rather than in person at any hearing of a demurrer, an order to show cause, or a motion heard before the action is called for trial. The bill would not apply to hearings in domestic relations actions or to hearings in which oral testimony is to be received.

The bill further requires the Judicial Council to promulgate rules necessary to secure uniform application of the above provisions. AB 1209 was set to be heard on April 29, 1981, and was referred to interim study so that the Committee could have the opportunity to learn the results of a proposed Judicial Council review of the use of appearance by telephone in the San Francisco Superior Court and other courts.

According to the sponsor of AB 1209, the bill has several goals. First, it would allow counsel who do not care to appear in person to stay at their desks while waiting for law-and-motion matters to be heard, instead of having to wait at the courthouse. Second, it would allow counsel who have cases pending in distant courts to save the time and money necessary to personally appear at all proceedings in those cases. Third, AB 1209 would allow appearances by telephone for routine matters, such as trial-settings, arbitration-determination hearings, and pretrial conferences, where personal appearances are unnecessary but often required.

Several organizations have expressed concerns with the bill in its present form. For example, the California Judges Association favors a multi-county experiment but believes "the judge should retain discretion to require an appearance." CJA further notes that "in some multi-party cases a conference call is not practical because there are too many people to be heard and in some instances the judge should be allowed to require appearance when there will be extensive argument."

At the hearing, the Committee will hear testimony on the use of telephone conferencing in several courts which have implemented it on a limited basis (including San Francisco Municipal Court and the Torrance Branch of the Los Angeles Superior Court). A representative of the Pacific Telephone Company will also testify about the equipment needed, installation, cost, and related technical aspects.

The California Economical Litigation Project

In 1976, legislation was enacted which authorized the establishment of California's Economical Litigation Project (ELP) (see the attached copy of Code of Civil Procedure 1823 et seq.) Proponents of the experimental project argued that the high cost of litigation discouraged litigants in cases involving small amounts of money from using the judicial system to pursue valid claims and meritorious defenses. The procedures under the ELP were aimed at reducing court costs in both pre trial and trial stages of litigation.

The program began in January 1, 1978 and was to involve two superior and two municipal courts. The details of ELP's implementation and authority to make changes in the project's operation, notwithstanding other provisions of the law, were left to the Judicial Council (see the attached copy of California Rules of Court 1701-1809.) The Council selected the Southwest District of the Los Angeles Superior Court (Torrance), the Fresno Superior Court, the Los Angeles Municipal Court, and the Fresno Municipal Court as the sites of the experiment.

Except for certain special proceedings (e.g., small claims actions), all cases filed in ELP municipal courts are subject to the program's special rules and procedures. In ELP superior courts,some special proceedings,such as Family Law Act and Uniform Parentage Act cases, commitment proceedings, and cases involving an amount in controversy exceeding $25,000, are excluded. In addition, provisions are made to permit the withdrawal of a case from the project upon a showing of good cause. As originally enacted, the project was to run for three years; however, in 1980 the duration of the experiment was extended for two years to permit additional time to evaluate the project.

ELP sought to reduce the cost of litigation by making procedural changes in four areas of civil practice. The project sought to: simplify pleadings and eliminate demurrers; eliminate the use of certain pretrial motions; limit discovery; and modify trial procedures.

(a) Simplified Pleadings: ELP pleadings are supposed to be limited, simple,and subordinate. The only pleadings permitted are the complaint, answer, and cross-complaint. No demurrer is allowed.

No pleading need be verified. Statements in the pleadings are to be short and plain,"specifying the date, place and nature of the occurrence or transaction upon which the claim is based and showing that the pleader is entitled to relief" [Rule 1715(a), 1815(a)]. All pleadings may be amended both before and at trial to conform to proof.

(b) Motions: ELP rules permit motions to dismiss because the complaint or cross-complaint does not give notice of a claim upon which relief can be granted. Motions to strike are permitted if they seek to strike: (1) a cause of action of a multi-court complaint, (2) a prayer for relief not supported by the allegations of the complaint and (3) an affirmative defense which does not state facts constituting the defense. Motions for a further bill of particulars are prohibited.

(c) Discovery: Limitations placed on discovery in ELP cases is perhaps the most sweeping innovation of the experiment. ELP rules provide that no discovery is to be permitted except as specified. Depositions to perpetuate testimony and demands for bills of particular are permitted. Similarly, certain matters such as a request for admissions are permitted because they are not technically "discovery". Each party is required to file a statement listing all persons it will call as witnesses and describing physical evidence it will introduce. Also, the party must attach copies of documentary evidence upon which it plans to rely. Failure to file the required statement may result in exclusion of the evidence or witness at trial. There are two exceptions to the sanction for failure to supply the list: (1) an adverse party may be called and (2) evidence may be permitted for impeachment.

The United States Department of Justice, Office for the Improvement of the Administration of Justice Commission study of ELP discovery provisions. Its review found that:

> Several conclusions can be drawn from this study. The first is that the typical small personal injury or breach of contract/ promisory note case involves relatively little discovery and, at least in these

> two courts, a very low incidence of serious abuse. However, the ELP study shows that even in this type of case more discovery takes place than is actually needed. The ELP rules have significantly reduced the amount of discovery taking place in the cases subject to these rules. Although the reduction in discovery activity in the average case is not great, the potential cost savings, in relation to the typical claims, is quite significant.

However, the study went on to state, "The one discouraging note, however, is the indication that little if any of the savings have been or will be passed on to the client. In fact, defendant's counsel indicate that the cost of obtaining information through other devices, as well as the preparation of the contention statement, may cause them to raise their fees."

(d) Trial Procedures: In ELP cases several changes in methods of conducting a trial are permitted: trial briefs cannot be required; the judge may interrogate parties and witnesses; narrative testimony is permitted; the trial judge determines the order of evidence; all relevant non-privileged evidence may be admitted; electronic recording of proceedings may be permitted; no findings of facts or conclusions of law are required. In superior court, ELP jury cases are handled in the same way as non-ELP cases, with three exceptions: (1) Non-impeachment evidence is limited to information disclosed in the evidentiary statement (2) voir dire is conducted by the judge (3) peremptory challenges are limited. In municipal court, ELP jury cases are handled like non-ELP cases except non-impeachment evidence is limited as noted above.

EXHIBIT B

CALIFORNIA LEGISLATURE—1981–82 REGULAR SESSION

ASSEMBLY BILL No. 1209

Introduced by Assemblyman Harris

March 19, 1981

An act to amend Section 575 of, and to add Section 1006.5 to, the Code of Civil Procedure, relating to civil procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 1209, as introduced, Harris. Civil procedure.

Under existing law, the Judicial Council may promulgate rules governing pretrial conferences. Under existing law, an appearance by a party or attorney at a conference, or a hearing of a demurrer, an order to show cause, or a motion, is generally made in person.

This bill would provide that the Judicial Council may promulgate rules governing pretrial, trial setting, and arbitration conferences, and would require those rules to include provisions allowing a party or attorney to appear by telephone, unless the conference is combined with a settlement conference.

The bill would also provide that a party or attorney may appear by telephone at a hearing of a demurrer, an order to show cause, or a motion heard before trial, except hearings in domestic relations actions or in which oral testimony will be received. The Judicial Council would promulgate rules necessary to secure uniform application of this provision. Those rules could also govern other hearings in civil actions or proceedings.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 575 of the Code of Civil Procedure is amended to read:

575. The Judicial Council may promulgate rules governing pretrial, *trial setting, and arbitration-determination* conferences, and the time, manner and nature thereof, ~~in civil cases at issue, or in one or more classes thereof,~~ in the superior, municipal, and justice courts. *Those rules shall include provisions allowing a party or the party's attorney to elect to appear at any of those conferences, unless it is combined with a settlement conference, by telephone rather than in person.*

SEC. 2. Section 1006.5 is added to the Code of Civil Procedure, to read:

1006.5. (a) A party to a civil action or the party's attorney may elect to appear by telephone rather than in person at any hearing of a demurrer, an order to show cause, or a motion heard before the action is called for trial, except hearings in domestic relations actions or in which oral testimony will be received.

(b) The Judicial Council shall promulgate rules necessary to secure the uniform application of this section. Those rules may also govern other hearings in civil actions or in other civil proceedings as specified by the Judicial Council.

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ASSEMBLY COMMITTEE ON JUDICIARY
ELIHU M. HARRIS, Chairman

Prepared by
R. LeBov

BILL DIGEST

BILL: AB 1209 HEARING DATE: 4/29/81

AUTHOR: Harris

SUBJECT: Civil procedure: telephone appearances

OBJECTIVE:

This bill is intended to streamline various judicial proceedings by permitting a party or attorney to appear by telephone rather than in person.

BILL DESCRIPTION:

Under existing law, an appearance by a party or attorney at a conference, or a hearing of a demurrer, an order to show cause, or a motion is generally made in person.

This bill would provide that a party or attorney may appear by telephone at any of the above proceedings, except hearings in domestic relations actions or in which oral testimony will be received. The Judicial Council would promulgate rules necessary to secure uniform application of this provision.

SOURCE:

State Bar of California

SUPPORT:

California Taxpayers Association

OPPOSITION:

Association of Defense Counsel

(CONTINUED)

COMMENT:

1. The Judicial Council is currently studying the use of appearance by telephone and is expected to report its findings later this year. Also, the Superior Court of San Francisco will soon institute a program similar to what this bill proposes. Therefore, the author indicates that he will ask that this bill be referred to interim study so that the Committee may have the opportunity to learn the results of the Judicial Council study and the San Francisco experience.

EXHIBIT C

AMENDED IN ASSEMBLY APRIL 28, 1981

CALIFORNIA LEGISLATURE—1981–82 REGULAR SESSION

ASSEMBLY BILL No. 1946

Introduced by Assemblyman Konnyu

March 31, 1981

An act to amend, add, and repeal Section 10962 of the Welfare and Institutions Code, relating to public assistance appeals, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1946, as amended, Konnyu. Public assistance appeals.

Existing law provides for review in the superior court of decisions by the Director of Social Services with respect to public assistance.

This bill would, until January 1, 1988, provide for review of such decision in the small claims court with respect to petitions involving amounts within the monetary jurisdiction of small claims court, and require such review as to claims deemed denied by the director which involve amounts within the monetary jurisdiction of small claims court.

Article XIII B of the California Constitution and Section 2231 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. The statutory provision also specifies the manner for paying this reimbursement and requires any statute mandating these costs to contain an appropriation to pay for the costs in the initial fiscal year.

This bill would appropriate an unspecified sum to the Controller for allocation and disbursement in accordance with Section 2231 of the Revenue and Taxation Code to local agencies and school districts for costs mandated by the state and incurred by them pursuant to this act.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 10962 of the Welfare and Institutions Code is amended to read:

10962. The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case, provided that the amount at issue exceeds the monetary jurisdiction of small claims court. Petitions for amounts within the monetary jurisdiction of small claims court shall be filed solely with the small claims court pursuant to Chapter 5A (commencing with Section 116) of Part 1 of Title 1 of the Code of Civil Procedure. All requests within the monetary jurisdiction of small claims court which are deemed denied pursuant to the provisions of Section 10960, shall automatically be appealed by the county department to small claims court within 30 days. Such review, if granted, shall be the exclusive remedy available to the applicant or recipient or county for review of the director's decision. ~~Decisions of the small claims court shall be final and not subject to further review.~~ The director shall be the sole respondent in such proceedings in superior court. Immediately upon being served in superior court the director shall serve a copy of the petition on the other party entitled to judicial review and such party shall have the right to intervene in the proceedings.

No filing fee shall be required for the filing of a petition pursuant to this section. Any such petition to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal therefrom. The applicant or recipient shall be entitled to reasonable attorney's fees and costs in superior court, if

he obtains a decision in his favor.

This section shall remain in effect only until January 1, 1988, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends such date.

SEC. 2. Section 10962 is added to the Welfare and Institutions Code, to read:

10962. The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. Such review, if granted, shall be the exclusive remedy available to the applicant or recipient or county for review of the director's decision. The director shall be the sole respondent in such proceedings. Immediately upon being served the director shall serve a copy of the petition on the other party entitled to judicial review and such party shall have the right to intervene in the proceedings.

No filing fee shall be required for the filing of a petition pursuant to this section. Any such petition to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal therefrom. The applicant or recipient shall be entitled to reasonable attorney's fees and costs, if he obtains a decision in his favor.

SEC. 3. Section 2 of this act shall become operative on January 1, 1988.

SEC. 4. The sum of _____ dollars ($_____) is hereby appropriated from the General Fund to the Controller for allocation and disbursement in accordance with Section 2231 of the Revenue and Taxation Code to local agencies and school districts to reimburse them for costs mandated by the state and incurred by them pursuant to this act.

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ASSEMBLY BILL No. 1946

Introduced by Assemblyman Konnyu

March 31, 1981

An act to amend, add, and repeal Section 10962 of the Welfare and Institutions Code, relating to public assistance appeals, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

AB 1946, as introduced, Konnyu. Public assistance appeals.

Existing law provides for review in the superior court of decisions by the Director of Social Services with respect to public assistance.

This bill would, until January 1, 1988, provide for review of such decision in the small claims court with respect to petitions involving amounts within the monetary jurisdiction of small claims court, and require such review as to claims deemed denied by the director which involve amounts within the monetary jurisdiction of small claims court.

Article XIII B of the California Constitution and Section 2231 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. The statutory provision also specifies the manner for paying this reimbursement and requires any statute mandating these costs to contain an appropriation to pay for the costs in the initial fiscal year.

This bill would appropriate an unspecified sum to the Controller for allocation and disbursement in accordance with Section 2231 of the Revenue and Taxation Code to local agencies and school districts for costs mandated by the state and incurred by them pursuant to this act.

Vote: ⅔. Appropriation: yes. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 10962 of the Welfare and Institutions Code is amended to read:

10962. The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case, *provided that the amount at issue exceeds the monetary jurisdiction of small claims court. Petitions for amounts within the monetary jurisdiction of small claims court shall be filed solely with the small claims court pursuant to Chapter 5A (commencing with Section 116) of Part 1 of Title 1 of the Code of Civil Procedure. All requests within the monetary jurisdiction of small claims court which are deemed denied pursuant to the provisions of Section 10960, shall automatically be appealed by the county department to small claims court within 30 days.* Such review, if granted, shall be the exclusive remedy available to the applicant or recipient or county for review of the director's decision. *Decisions of the small claims court shall be final and not subject to further review.* The director shall be the sole respondent in such proceedings *in superior court.* Immediately upon being served *in superior court* the director shall serve a copy of the petition on the other party entitled to judicial review and such party shall have the right to intervene in the proceedings.

No filing fee shall be required for the filing of a petition pursuant to this section. Any such petition to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal therefrom. The applicant or recipient shall be entitled to reasonable attorney's fees and costs *in superior court,* if he obtains a decision in his favor.

This section shall remain in effect only until January 1, 1988, and as of such date is repealed, unless a later enacted statute, which is chaptered before January 1, 1988, deletes or extends such date.

SEC. 2. Section 10962 is added to the Welfare and Institutions Code, to read:

10962. The applicant or recipient or the affected county, within one year after receiving notice of the director's final decision, may file a petition with the superior court, under the provisions of Section 1094.5 of the Code of Civil Procedure, praying for a review of the entire proceedings in the matter, upon questions of law involved in the case. Such review, if granted, shall be the exclusive remedy available to the applicant or recipient or county for review of the director's decision. The director shall be the sole respondent in such proceedings. Immediately upon being served the director shall serve a copy of the petition on the other party entitled to judicial review and such party shall have the right to intervene in the proceedings.

No filing fee shall be required for the filing of a petition pursuant to this section. Any such petition to the superior court shall be entitled to a preference in setting a date for hearing on the petition. No bond shall be required in the case of any petition for review, nor in any appeal therefrom. The applicant or recipient shall be entitled to reasonable attorney's fees and costs, if he obtains a decision in his favor.

SEC. 3. Section 2 of this act shall become operative on January 1, 1988.

SEC. 4. The sum of _____ dollars ($_____) is hereby appropriated from the General Fund to the Controller for allocation and disbursement in accordance with Section 2231 of the Revenue and Taxation Code to local agencies and school districts to reimburse them for costs mandated by the state and incurred by them pursuant to this act.

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ASSEMBLY COMMITTEE ON JUDICIARY
ELIHU M. HARRIS, Chairman

Prepared by
R. LeBov

BILL DIGEST

BILL: AB 1946 (as amended 4/28/81)

HEARING DATE: 4/29/81

AUTHOR: Konnyu

SUBJECT: Public Assistance Appeals

OBJECTIVE:

This bill is intended to expedite the judicial review of appeals of public assistance determinations by providing for mandatory small claims court review of claims within that court's monetary jurisdiction.

BILL DESCRIPTION:

Existing law provides for review in the superior court of decisions by the Director of Social Services or the Director of Health Services with respect to public assistance programs.

This bill would provide that the review shall be in small claims court when the amount in question is within that court's monetary jurisdiction.

SOURCE:

Author

SUPPORT:

Unknown

OPPOSITION:

Western Center on Law and Poverty
California Rural Legal Assistance
Legal Aid Foundation of Los Angeles

(CONTINUED)

COMMENT:

1. The bill's author states that existing law whereby all reviews are in the Superior Court, "jams the superior courts with costly legal cases for relatively small claims." The author states that the bill "would speed justice, cut attorneys' costs, reduce appeal periods, and eliminate a goodly portion of the public assistance grants as expenses that are given to recipients during an appeal." Is the Small Claims Court an appropriate forum for the review of the often complex issues relating to entitlement to public assistance benefits?

2. Opponents of the bill point out that since parties cannot be represented by Counsel in small claims court, the disparity between the skills of an individual claimant and whoever represents the Department in the small claims court hearing would result in an unfair disadvantage to the unrepresented claimant.

   Department of Social Services regulations provide that a claimant may authorize a representative to represent him or her at the hearing on a claim. It is not anomalous to permit such representation at the hearing but to then prohibit it at a subsequent review?

3. The State Department of Social Services estimates that this bill would add 18 personnel years to its staffing requirements at an annual cost of $475,000.

TELECOMMUNICATIONS IN THE JUDICIAL SYSTEM

(By August J. Goebel, Judge of the Superior Court
Los Angeles, California)

Our judicial decision making process is dependent upon oral or written communication. Historically judges rode circuit to bring justice closer to the citizens to communicate with them; but lawyers travel to the courthouse to communicate with judges. Presently it is more common to see the lawyers traveling to the courthouse.

Is it necessary in every instance for lawyers to spend their time and effort to travel to a courthouse in order to orally communicate with a judge? Lawyers effectively communicate with a judge by means of writing. Is it necessary that all oral communication be face to face, or can this communication be carried out as effectively by means of more modern methods of communication and at lesser costs to the litigants?

There are ways to eliminate face to face oral communication and yet maintain effective communication. The purpose of this paper is to describe the results of four years of experimentation by the author in the California Superior Court for the County of Los Angeles. It is submitted that any reductions in the cost of communication among lawyers and judges will result in a reduction in the high cost of litigation.

LOCATION, JURISDICTION AND NATURE OF THE COURT

Some background information is necessary for the reader to be able to evaluate the conditions under which the experiment has been conducted.

The Superior Court of Los Angeles is a trial court of general jurisdiction with 196 judges. The court has a central district located in central Los Angeles, with nine separate districts located in various parts of the county. The Southwest District located in Torrance has nine judges -- six assigned to hearing civil (law and equity) cases; family law and probate proceedings, and three assigned to hear criminal felony trials. Civil jurisdiction encompasses all civil disputes in which the amount in controversy is in excess of $15,000.00.1/

In 1977 the California legislature authorized an experimental Economic Litigation Pilot Project designed to develop means to reduce the high cost of litigation, and granted to the Judicial Council the power to designate the pilot courts and to develop and adopt rules of procedure for project cases. The Judicial Council selected the Municipal Court of the City of Fresno and of the Los Angeles Judicial District, and the Superior Court of Fresno County and the Southwest District of the Los Angeles Superior Court.2/

Torrance is located approximately 22 miles from the Los Angeles Central District County Courthouse, 20 miles from Century City, 35 miles from Santa Ana in Orange County, 40 miles from the San Fernando Valley, 60 miles from San Bernardino and Riverside, 120 miles from San Diego and 400 miles from San Francisco.3/

1/ The highest jury verdict returned in a trial in which this writer presided was $4,500,000.00.

2/ The details of the project are the subject of a separate presentation.

3/ These are representative cities or areas containing concentrations of lawyers.

There have been 3,600 cases filed in the Economic Litigation Pilot Project in the 28 months it has been in existence. Although trial dates have been available for the past 21 months, only 32 cases have proceeded to trial. 1,620 cases have been disposed of other than by trial. There are 1,950 cases remaining in the project.

The floor of the monetary jurisdiction of the Superior Court was $5,000.00 until July 1, 1979, when the upper limits of the Municipal Court's jurisdiction was raised to $15,000.00; thereby increasing the floor of the Superior Court's jurisdiction to $15,000.00. The ceiling of the Economic Litigation Pilot Project is $25,000.00 in Torrance. Prior to July 1, 1979, filings in the Economic Litigation Pilot Project in Torrance averaged 150 cases per month. Approximately 72% of those cases were personal injury cases, 24% arose out of contract, and 4% were miscellaneous. Since the increase of the Municipal Court's jurisdiction, filings have been reduced to approximately 75 cases per month.

The author has supervised the Pilot Project in Torrance since its inception; handling all proceedings in all cases -- law and motion, trial setting conferences, voluntary and mandatory settlement conferences -- but other judges have heard the trials. During this period the author has carried a regular trial schedule, being assigned normal jury and non-jury civil trials, all purpose cases (complex litigation), and Coordinated Cases (multi-county cases consolidated before one judge in one county for all proceedings). A usual court day involves hearing one or two settlement conferences from 8:30 or 9:00 to 10:00 a.m. Monday through Thursday; Pilot Project law and motion proceedings from 9:00

until 9:30 or 10:00 a.m. on Friday; and civil trials from 10:00 to 4:15 p.m. Monday through Friday.4/

TELEPHONE EQUIPMENT USED

Until approximately July of 1979, a standard five-button telephone was used in conjunction with a Telephonic Equipment Corporation KTS-500 call diverter for bridging or conferencing multiple party calls. While that system worked, it was not as efficient as is afforded by the Bell System Com-Key 416 speakerphone presently in use.

There are four separate telephone lines available for our use. We do not have the Touch-A-Matic adjunct to the Com-Key 416, although at times it would be helpful.

The principal instrument is placed on the author's desk in chambers. Secondary instruments are placed on the clerk's desk and the bailiff's desk in the courtroom. Cost of installation was approximately $500.00 and the added monthly charge is approximately $70.00.

While this system works well, specially designed equipment incorporating the following would provide greater efficiency:5/

(1) A micro cassette wire-to-wire recorder (with beeper) to afford capability for making a tape recording of the proceedings when necessary;

4/ The writer has been a Superior Court judge for 8 years; being assigned to a felony trial department for 2 years, 20 months in law and discover departments in the Central Civil District in Los Angeles, and the balance in a civil trial department in Los Angeles as well as Torrance.

5/ Perhaps it could be called a "Lega-fone."

(2) Five separate lines, with volume or power boost for each line to avoid reduction in volume when five lines are conferenced;

(3) An external plug-in clip-on microphone and earpiece;

(4) A "hold" capability for each line, so one or more lines could be placed on hold, thereby permitting conversation between the judge and one lawyer during a settlement conference, without breaking the conference call;

(5) The replacement of voice actuated transceivers used in the Com-Key 416 for one person can overpower another with these transceivers;

(6) A built-in calculator[6/] for use in settlement conferences;

(7) A built-in timer; and

(8) A Touch-A-Matic adjunct, or memory re-dialing capability.

One factor cannot be overemphasized: if a telephone system is to be effective, the equipment used must be high quality equipment permitting communication without annoying problems.

EXAMPLES OF PROCEEDINGS IN WHICH TELECOMMUNICATION HAS BEEN EFFECTIVELY USED

While the telephone has been used in three principal areas, we have used it for many other proceedings. Some of these proceedings are as follows:

In 1977, in a non-jury case involving an action by taxpayers to stop construction of a juvenile facility in north Los Angeles County, plaintiffs' lawyers were unable to arrange for an expert witness (an

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6/ For example, similar to that offered by the "Superphone."

architect) to come to Los Angeles from Connecticut due to scheduling conflicts. The parties stipulated that the witness' testimony could be taken by telephone; that the oath (administered over the telephone) would be deemed taken in compliance with our statutes; that they would waive personal appearance of the witness and the right to confront the witness on cross-examination; and would waive other statutory requirements concerning oral testimony. Plaintiffs paid $25.00 to have a speakerphone specially installed in the courtroom and paid for a 1-1/2 hour telephone call from Los Angeles to Connecticut. The official court reporter reported these proceedings the same as any other proceedings. The result was that a witness not subject to subpoena and who could not come to California, was able to be effectively examined by both sides at a great savings. This was a pro-Bono case for plaintiffs' lawyers.

In a family law dissolution case where the lawyers had arrived at a stipulation as to a division of assets and where there were no children, the wife was ill with the flu at the date and time scheduled for trial. By stipulation we conducted all the proceedings in chambers and permitted the wife to communicate by means of the speakerphone. The case was concluded that day, avoiding another return trip and appearance in court by both lawyers as well as the parties.

On applications for ex parte orders in family law cases, or other cases, where telephone notice of the appearance of the moving party before the court for an order shortening time has been given in accordance with our rules, and where one lawyer has not been able to be present for that hearing but is at his or her office, we have communicated with his

or her office and conducted that hearing by telephone.

In one case an elderly lady fell at Los Angeles International Airport while debarking an airplane. At the time of the mandatory settlement conference she was again hospitalized in Ft. Smith, Arkansas. Her lawyer first obtained permission for her not to be present, suggesting she would be available by telephone. At the time of the mandatory settlement conference we settled the case with the lawyers. We then put that settlement on the record, made an explanation to the plaintiff and obtained her consent, all by telephone.

We had one continued hearing of a mandatory settlement conference where one party was in Lancaster, California (approximately 100 miles distant), his lawyer was in Burbank (about 30 miles distant), another party was in the San Francisco area and his lawyer was in Los Angeles. We avoided a return to court for all by conducting the second session of the mandatory settlement conference over the telephone. The case was settled.

In another case a judge whose courtroom adjoined the author's courtroom came to chambers and used the speakerphone to put a minor's compromise on the record. The mother-guardian ad litem lived in Alaska. Her lawyer originated the conference call. In that instance he used Televert equipment.

Recently we were trying a case where six lawyers represented various parties. The Court of Appeal issued a writ of mandate in the case during the trial. The six lawyers and the author were able to communicate with

the clerk of the Court of Appeal from chambers by means of the speaker-phone and obtain the specific terms of the order immediately.

In each and all of the instances recited above, the court reporter was able to make the usual verbatim record by positioning himself near the speakerphone. Those examples are representative of many uses that can be made of telecommunications to reduce costs of litigation.

USING TELECOMMUNICATIONS IN TRIAL SETTING CONFERENCES

Our usual procedure in the Los Angeles Superior Court for setting cases for trial is to have the lawyers appear in the clerk's office in order to select dates for the mandatory settlement conference and for trial. In the Economic Litigation Pilot Project this was to be handled by the court clerk.

We adopted rules, which are set forth verbatim on the At-Issue Memorandum, that these trial setting conferences will be conducted each Monday morning by telephone. The court clerk makes all his calls while the trial judge is conducting a mandatory settlement conference. We have found that this procedure works best where the parties are represented by a large law firm having a trial setting clerk, and that it is helpful if the lawyers designate their office file number on the At-Issue Memorandum that is filed.

USING TELECOMMUNICATIONS IN LAW AND MOTION HEARINGS

The Economic Litigation Pilot Project rules provide that all argument in the law and motion matters is to be heard by telephone except (1) where one party is appearing in propria persona, (2) where there are more than

four lawyers of record, or (3) where it is a summary judgment motion.7/

The following is an explanation of the operation of a civil law and discovery department in Los Angeles County Superior Court.

For many years judges have prepared "tentative rulings" for all cases after considering the moving and responding papers in each case. These tentative rulings were made available to lawyers at 8:30 a.m. the morning of the hearing, which hearing was scheduled for 9:00 a.m. Customarily, the lawyer favored by the ruling is expected "to submit on the tentative ruling." The other lawyer will argue his or her position; and if the court desires, the lawyer for the party favored by the tentative ruling will reply. In probably 90 to 95% of the cases, the judge does not change his or her tentative ruling. No court reporter is present for these hearings unless specifically requested by one of the parties.

In 1975 in the Central District the author caused a continuous loop telephone tape recording device to be installed in his department so that all tentative rulings (without detail) could be placed on the tape by his law clerk and made available to lawyers at 4:30 p.m. on the date before the hearing.8/

7/ Despite this rule, in one of the Ford Pinto gastank explosion cases -- not an Economic Litigation Pilot Project case -- the three lawyers specifically requested that argument be heard by telephone on a motion for summary judgment, in one instance, and in another to quash a subpoena re deposition served on Henry Ford II. Ultimately the case was settled during a telephone conference, although there had been face to face settlement proceedings prior thereto.

8/ That procedure has been expanded so that all law and motion departments in the Central District now use this equipment and procedure.

The objective in installing this equipment was to enable lawyers to learn of the tentative ruling in their case at an earlier time, thereby giving them a greater opportunity to consider submitting on the tentative ruling without a court appearance. The only serious complaint about this procedure expressed by lawyers was that the length of the tape (3 minutes) did not permit recording the reasons for the ruling, and that it was not made available early enough to permit them to contact the opposing lawyer in many instances to arrange for a submission on the tentative ruling.

In the Economic Litigation Pilot Project we sought to overcome these objections in three ways:

First, the tentative ruling is made available on Wednesday in most instances;

Secondly, the court clerk calls the attorneys and reads the full tentative ruling to the attorney or the attorney's secretary.9/ He also tells them the time to expect the call on the day of the hearing, and states that if they are not available to receive the call, they will be deemed to have waived argument.

Thirdly, the clerk tells the attorneys they will be expected to argue by telephone. However, if lawyers insist on a personal appearance, we permit it. In those instances, they argue in chambers while the other lawyer argues by telephone. We have found we make many converts to this

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9/ The court clerk would probably add, "Counsel, you know, this is one case where the judge will not change his tentative ruling any way," so as to obtain more submissions on the tentative ruling.

procedure when the lawyer in chambers sees how easy it is to argue by telephone.

We have found that in more than one-half of the cases, the attorneys have submitted on the tentative ruling. We usually average from three to five matters actually heard on a Friday morning.

On Friday morning the court clerk places the telephone calls for the first case a few minutes prior to 9:00 a.m. When he has all lawyers on the line, he will place them on "hold," and bring the file to chambers.10/

At the time of the hearing, the "script" goes something like this:

"Judge: Good morning, counsel. Will you please state your appearance so I may recognize your voice."

[The lawyers do so.]

"Judge: Are you familiar with the tentative ruling?"

[Both usually indicate they are.]

"Judge: I assume counsel for Moving Party (if the prevailing party) is willing to submit on the tentative. Before I hear from counsel for Responding Party, I would state that I am most concerned with (stating the reasons for the tentative ruling]."

[Argument and reply argument.]

10/ Customarily a student law clerk is in chambers. He or she is usually a second or third year law student.

"Judge: The tentative ruling will stand. The motion is granted as prayed, etc."

"Is notice waived?"

[Both counsel "yes."]

While this argument is being heard, the court clerk will commence making calls on the next case if sufficient lines are available. He can usually estimate rather accurately how long each hearing will last.

IMPORTANCE OF THE CLERK

Enough emphasis cannot be placed on the importance of the court clerk. He or she is the key to effective use of telecommunications. The court clerk must be willing to try something new, must have good rapport with counsel and be respected by counsel, and must be capable of convincing lawyers to try something new.

BENEFITS AND DISADVANTAGES TO LITIGANTS AND LAWYERS

It is apparent the greatest benefit to lawyers in using telecommunication results from the saving of travel time; time that is otherwise wasted in the sense that the lawyer must bill his client for travel time or absorb it -- an injustice to both. A lawyer also benefits from the convenience of scheduling, particularly if the courthouse is located some distance from the place of the other appointment or appearance.[11/] The principal disadvantage, as stated by lawyers, is that they "cannot get the adrenalin flowing" while making a telephone argument and they cannot read the judge's facial reaction to their

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11/ During the gasoline crunch, there were many requests from lawyers to handle matters by the telephone.

argument or the argument of opposing counsel. How much adrenalin is needed, for example, for a five minute argument to compel attendance of a party at an independent medical examination? The heavy motions are expected to be argued in court where they can get their adrenalin flowing

The reaction of probably 90% of the lawyers has been favorable and positive to the use of communications in other than complex motions.

BENEFITS AND DISADVANTAGES TO THE COURT

The author has conducted probably 400 hearings of one kind or another by telephone. It appears the principal benefit derived by the court from use of telecommunication is that it avoids many appearances by lawyers in cases. That, of course, saves court time. It also affords greater flexibility in scheduling because lawyers are more readily available.12/

Proceedings conducted by telecommunication are generally more informal, and the participants are more relaxed. This sometimes assists in commencing settlement discussions. We have settled many cases as a result of a hint dropped during law and motion proceedings.

From a personal standpoint, if counsel cite a case, my student law clerk goes to the bookshelves, gets the volume, turns to the proper page and places it before me -- all without interruption. This cannot happen on the bench.

12/ In one instance we had a lawyer, by prior arrangement, argue his case from a telephone booth outside of a courtroom in Los Angeles. We would have had to have waited for 45 minutes for him to drive to our courtroom.

The principal disadvantage to a court is that this procedure will not work in a high volume department, such as in the Central District in Los Angeles, where the daily calendar contains 30 to 50 matters. The number of telephone calls to be made is too many for one clerk.

NECESSITY FOR COOPERATION BY LOCAL BAR ASSOCIATIONS

No experiment such as this can be successful without active participation and support by members of local bar associations. Invaluable assistance was given to us by the Los Angeles County Bar Association, Committee on the Economic Litigation Pilot Project, and by the South Bay Bar Association. These committees contained a good cross section of lawyers, those persons who were willing to develop rules to make an idea work. Without that attitude and assistance new procedures or practices such as these are doomed to failure.

The procedures described here may be outmoded before they can be placed into widespread use. The Maricopa County Superior Court in Phoenix, Arizona, has been experimenting with video phone. I understand the results of this experiment appear to be very promising.

In conclusion, we in the legal and judicial professions owe a duty to the public to make our judicial system a system that is second to none in quality of decisions and in trying to reduce costs of arriving at those decisions. One way to achieve that goal is to utilize modern methods of communication by lawyers and judges.

PRELIMINARY RESULTS ON THE JUDICIAL USE OF TELEPHONE CONFERENCING*

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Introduction

The classic model of litigation in American courts involves the resolution of cases through proceedings in which a judge, counsel for the parties, and (in some cases) the parties themselves and potential witnesses are all present in a courtroom. Although only a small percentage of cases (civil or criminal) actually result in a trial, a high proportion involves at least one, and often several in-court appearances, even though no examination of witnesses may take place. In a civil case, for example, it is not unusual for in-court (or in-chambers) proceedings to be held for arguments on motions, scheduling future appearances, or conducting a pretrial conference.

Conducting most judicial business with all participants physically present consumes a lot of time and a lot of resources. It takes time for lawyers to travel to the courthouse and to wait while other cases are being heard, and it is expensive for the clients. In many judicial districts, judges, and sometimes court reporters, are frequently required to travel to different locations to hear cases also.

The use of telephone conferences in lieu of in-person proceedings is one possible method for reducing the time, money, and effort required to bring the participants before the court, without sacrificing the rights of the litigants or the quality of the proceedings. In its most basic form, telephone conferencing is a three-way conversation among the judge and the attorneys for each side; each participant can be heard by the others.

The judge is generally situated in chambers with a speaker phone on the desk instead of using a standard hand receiver. The lawyers, in turn, are located in their respective offices where they may have their own speaker phones or use a regular phone. Depending on the nature and significance of the subject matter, a record of the proceeding may be take neither by a court reporter

present in chambers, or by a tape recorder attached to the telephone. The judge gives instructions on how the hearing is to be conducted in roughly the same manner as at in-person hearings.

While the individual judges in some jurisdictions have introducted telephone conferencing into their courtrooms on a regular basis, there has not yet been widespread adoption. The examination of the factors involved in the diffusion of this innovation, obviously, could constitute an entire study. One of the problems that we believe inhibits greater consideration of telephone conferencing, however, is the lack of information about the procedures associated with telephone conferencing and their consequences on the nature of court proceedings.

The information presented here is structured around questions that judges and lawyers, who may wish to learn more about telephone conferencing, are likely to want answered. The are:

- o Who uses telephone conferencing?
- o What kind of court business is conducted by conference calls?
- o How are telephone conferences scheduled, initiated, and conducted?
- o Does telephone conferencing affect the nature of the proceedings?
- o What equipment is needed and how much does it cost?
- o What are the advantages to the court by using telephone conferencing?
- o How has telephone conferencing been adopted?

In this essay we present initial results from a study of telephone conferencing being conducted jointly by the ABA Action Commission to Reduce Court Costs and Delay and the Institute for Court Management. For the past several months, we have interviewed over forty judges who currently use telephone conferencing. Their views are important because they provide an account of how conferencing is used as well as their views on the advantages and disadvantages of telephone conferencing.

While our answers to these questions reflect the results of interviews primarily with judges, we implemented a survey in December 1980 to determine comparable reactions from attorneys to telephone conferencing. In addition, pilot projects will be designed for implementation beginning early in 1981, to obtain information on conferencing's effects on clients, counsel, and the court. The project includes courts in Colorado, Maine, and New Jersey and possibly other states.

An obvious question may occur to many readers. If telephone conferencing is so good, why is further research needed? Part of the answer is that telephone conferencing is not always successful. Lawyers may decide to avoid it. Court staff may not want to place the calls. Judges may be reluctant to depart from long-established practices. Due to these sorts of problems, the innovation has been tried without success in some courts. In other instances, the innovation has not been institutionalized. While one judge may use it effectively, if he is appointed to another court or leaves the bench, his successor may not use the equipment. From our perspective, the limited diffusion of telephone conferencing suggests that it is not a simple acquisition of more refined technology. Telephone conferencing needs to be integrated into the judge's approach to case management. Moreover, certain environmental and organizational factors, such as support staff, adequate resources, flexible court rules and procedures, and a progressive bar contribute to its success.

Whereas the pilot projects will involve both civil and criminal cases, at least in some of the courts, the interviews done to date with judges have focused almost exclusively on the use of telephone conferences in connection with civil matters. In addition, while we structured the interviews to gain information about the range of telephone conferencing's application, our primary focus has been on civil motion hearings. This type of proceeding provides a valid basis for comparing traditional in-court appearances with telephone conferences.

Finally, it is important to recognize that the way in which telephone conferencing is used reflects the diversity of practices across jurisdictions and the alternative approaches used by different judges in a given court. While the differences make it difficult to generalize about all judges, the diversity is important because it suggests that judges adapt conferencing to how they wish to conduct business rather than being confined by the constraints of the innovation.

Who Uses Telephone Conferencing?

The variety of courts in which we found telephone conferencing is striking in terms of jurisdiction, size, and location. Judges in federal district courts, state courts of appeal, state trial courts of general jurisdiction, and state and local trial courts of limited jurisdiction have conducted court proceedings by telephone on a regular basis, as indicated below. Moreover, the variation in geography and population density suggests that virtually any area of the country is suitable for telephone conferencing.

The reasons for telephone conferencing may be different in one area than in another. Judges in areas that are inaccessible due to weather conditions (e.g., Wisconsin or Colorado in wintertime) or geography (e.g., Hawaii) indicate that necessity is the mother of innovation. They find it difficult to travel, and attorneys do not find it easy to come to court. The sheer distances, even in good weather, are also a consideration in many jurisdictions. In states that are large and sparsely populated (e.g., New Mexico, Wyoming) the savings in the attorney's time is a reason why judges utilize it.

Some courts (e.g., West Palm Beach) tend to draw attorneys from other jurisdictions (e.g., Miami). In fact, in most metropolitan areas, there is likely to be at least one court that draws heavily from another part of the area that is

60 to 75 miles away. Finally, even within a metropolitan area, attorneys frequently are scheduled for court appearance on the same day in different courts. Telephone conferencing may serve to cut down on scheduling conflicts.

What Kind of Court Business is Conducted by Conference Calls?

Telephone conferencing is an alternative to two traditional means of resolving motions. First, motions may be decided strictly on the papers by the judge with no oral presentation by the parties. Briefs, memoranda, or points and authorities are evaluated by the judge in assessing the claims made by the moving party. Second, an in-person hearing before the court may be held. Usually (though not in every jurisdiction), the lawyers for the parties have filed papers discussing the merits of the motion, so that the purpose of the hearing is for counsel to present supplemental oral arguments and for the judge to have the opportunity to gain additional information.

Not only do jurisdictions vary widely in terms of the patterns of utilization of these two types of methods of resolving motions, there is limited information available on the percentage distribution of different types of motions heard using the different methods. In order to gain some sense of the relative frequency of telephone conferences in the jurisdictions where this innovation is now used, the judges were asked how often and in what types of matters they used the telephone.

Generally, the judges interviewed said motions that may be dispositive of the case (e.g., summary judgment) are argued less frequently by telephone than those that are procedural (e.g., to join parties) or that involve issues concerning discovery. While procedural and discovery motions are more frequent in absolute terms

than substantive motions, judges also claim that a higher percentage of these motions are resolved by telephone than are substantive motions. One of the questions to be explored in our second phase of research is the extent to which telephone conferences are used as an alternative to in-person hearings, or--equally plausible--as an alternative to resolution of relatively unimportant procedural motions that would otherwise be decided on the papers without any argument by counsel.

While the initial Action Commission-ICM research focused on the use of telephone conferencing in civil motion hearings, preliminary findings indicate that a very wide range of court business is court business is conducted by telephone. In civil cases, for example, the telephone is used for scheduling conferences, pretrial conferences, motions hearings, and the setting of trial dates. Telephone conference is used less frequently in criminal cases, but its functions in some courts include taking pleas of guilty as well as conducting motion hearings. Other uses include taking depositions and obtaining expert witness testimony in child custody hearings, commitment proeedings, and small claims trials.

Jurisdictions Where Telephone Conferencing Is Used to Conduct Court Business

Federal District

California (San Francisco)

Maryland (Baltimore)

New Jersey (Newark)

New York (Eastern District)

Pennsylvania (Philadelphia)

Virginia (Richmond)

Wyoming (Cheyenne)

State Court of Appeals

New Mexico (Santa Fe)

Washington (Spokane)

State Trial Courts of General Jurisdiction

California (Fresno) (Los Angeles)

Florida (West Palm Beach)

Georgia (Atlanta)

Hawaii (Maui, Hilo)

Massachusetts (Fall River)

Michigan (Pontiac, Big Rapids)

New Jersey (Atlantic City)

New Mexico (Santa Fe)

Wisconsin (Tenth District)

State Trial Courts of Limited Jurisdiction

California (Los Angeles)

Ohio (Columbus)

How Are Telephone Conferences Scheduled, Initiated, and Conducted?

Whereas civil motions hearings are frequently scheduled for a specific day and time, judges tend to use telephone conferencing more flexibly. Some judges decide motions and other matters by telephone during times of the day that otherwise might not be used fully. For example, some judges find it profitable to conduct court business by phone prior to going on to the bench early in the morning or after coming off the bench in the late afternoon.

The question of how telephone conferences are scheduled and initiated varies. Some motions are scheduled in advance for a telephone conference while other motions may be decided during a status call to determine the progress made by counsel in resolving outstanding issues. Some judges intitally suggest a telephone conference in certain cases to one side. If the one attorney is agreeable, the court suggests that the attorney contact the other

party and then make the necessary arrangements on the time and day.

A different approach is used by other judges, especially in resolving strictly procedural motions. Here, they may call the attorneys on a non-scheduled basis. This techniques is likely to be used by the judge to gather information that he does not have in the written materials that have been submitted and that fails to warrant the expenditure of time and resources involved in holding an in-person hearing.

A considerable degree of uniformity exists in the conferences themselves are conducted. Generally, the judge begins by indicating the purpose of the call, the issues before the court, and the parties involved. The judge sets forth the rules and guidelines for the hearing: who is to speak first, avoidance of irrelevant arguments, and what to do in case of equipment malfunctions. In other words, the judge exercises the same care in governing the telephone hearing as an in-person appearance.

The issue of whether a record is made varies from judge to judge and case to case. Moreover, the record may be a verbatim account or a summary of the proceedings. In addition, whereas some judges ask a reporter to be present in chambers when a record is needed, others will tape record all proceedings.

Does Telephone Conferencing Impair or Improve Court Proceedings?

Of the judges interviewed, there is virtually unanimity on the nature of its effects in several key areas. We asked judges who used telephone conferences to assess its impact along seven basic dimensions: (1) counsel's preparation; (2) relevancy of counsel's arguments; (3) judge's preparation; (4) judge's control over the proceeding; (5) judge's ability to use questions; (6) care of

scheduling proceedings; and (7) length of the hearings. Except for the last dimension, nearly all judges said that telephone conferencing did not change the proceedings, for the better or the worse. In terms of the length of the hearings, however, most judges said telephone conferencis were shorter than in-person hearings.

Significantly, the judges who utilize telephone conferencing report no serious difficulties in conducting the conferences. Technical problems--e.g., disconnected parties, static on the line, inadequate amplification, difficulty in identifying the speaker--were rare occurrences. In terms of arranging the hearings and conducting them, the judges do not experience problems serious enough to warrant holding counsel in contempt for failure to be present at the scheduled time or for inappropriate behavior during a conference.

What Equipment is Needed and How Much Does It Cost?

Increasingly, federal, state and local governments are upgrading their telephone equipment. As a result, the existing telephone lines and telephones in many courts have conferencing capabilities. In this situation, the additional equipment is a speaker phone which costs from $8-$12 each month to lease from a phone company. Obviously, if the court is committed to the use of telephone conferencing, it is cost-effective to purchase this single piece of equipment.

In situations where the equipment is somewhat old, there may be a need to acquire a phone with conferencing capabilities to replace the existing one. This item may cost $14-$20 to lease per month, plus a $80-$100 one-time installation charge. Again, there are potential savings from purchase of needed phones.

The major cost of the equipment is the installation and monthly operating charges associated with new telephone lines. If a line

is not already present that has a conference capability, one must be acquired. The cost of the line varies from locale to locale, but an approximate amount is $20-$40 each month to lease.

Another cost is the monthly service charge for local and long-distance calls. Many courts bear these costs. Some do it on grounds that this investment saves a much greater amount for counsel and clients. Others argue that, in criminal cases, both attorneys are usually public employees (i.e., district attorney and public defender). Hence, the court's expenditure produces a net gain to the state.

However, some courts prefer to bill attorneys. How do they do it? One method is a flat fee based on average amount of time for normal hearing. This usually is charged to the moving party. Other courts call collect. With either method, however, the courts strive to avoid spending more money trying to collect revenues than the amount which they seek to recoup.

What Are the Advantages to the Court by the Use of Telephone Conferencing?

Some judges who have not tried telephone conferencing have expressed the view that there are no benefits to the court, and have suggested that there is a net loss since the court provides the equipment and the lawyers save travel time and money. Yet, this is not the opinion of judges who use the innovation.

All of the judges who use telephone conferencing regard it as a means for reducing the time and costs of civil litigation. Court time is thought to be shortened in several ways, primarily by shortening the length of the hearing, facilitating scheduling, and maximizing the judge's ability to use time off the bench for moving cases faster by status calls to all parties. This ability

to conduct telephone conferences in chambers frees up courtrooms which may be severely limited in some jurisdictions.

In addition, conferencing is helpful in resolving problems that arise in the troubled area of discovery. Some judges rule on problems arising during a deposition--not only a great cost and time saver, but they alse may constrain counsel when they know that the judge can rule on a contested matter in a few minutes. Finally, the ability of the judge to initiate telephone conferences on a variety of matters enhances the court's control over case flow and the docket.

How Has Telephone Conferencing Been Adopted?

Most of the judges who use telephone conferencing say that they thought of the idea themselves and implemented it with minimal discussions with other parties, such as court officials and members of the bar. Most of them had had some experience with conference calls during their years in private law practice. After coming on the bench, they began using telephone conferencing for various types of court business because they thought it was a good idea that would save time and money. The innovation has generally been adopted without any specific suggestions or technical assistance from a state court administrator's office, independent organization, or judicial training institution. Particularly in rural areas where distances are great, use of the telephone (especially for relatively minor matters) is seen by some judges to be an essential aspect of sound judicial administration. Once the judges have initially adopted it, the extent to which they use telephone conferencing seems to depend of the length of time they have used it. Those

who have had greater time to explore various applications appear to use it more extensively.

The judges who use telephone conferences report that the innovation has wide support among the bar. Although the evidence is fragmentary, there are indications that some judges tend to encourage telephone conferencing in cases where they have a high degree of confidence that the lawyers will like this idea. We hope that the systematic surveys of attorneys in Colorado and New Mexico will help clarify the predispositions of the bar to telephone conferencing in terms of what is feasible and desirable.

We appreciate the opportunity to talk to judges around the country for the past several months about the utility of telephone conferencing. They have enabled us, in a relatively short period of time, to begin bringing together information that previously was scattered and fragmentary. Their experiences have helped shape the pilot projects soon to be implemented. The results of work, both interim and final reports, will be shared with members of the bench and bar through forums such as The Judges' Journal.

Law and Motion Telephone Hearings Praised in L.A.; Questioned in Fresno

EXHIBIT F

By CHARLOTTE LOW

Conducting superior court law and motion hearings by telephone is an innovation widely praised for saving time and money in Los Angeles County, where a Torrance judge has experimented with the procedure for almost five years, but regarded with some reservations by practitioners in Fresno County, where the program has been in effect for only one month.

The two programs are different in purpose, but each allows the judge and parties to a motion hearing to communicate with each other by speaker telephones during a hearing on a motion as though they were all in the courtroom.

The Torrance program began in August, 1975, when Los Angeles Superior Court Judge August Goebel, who takes credit for inventing the idea, published a set of local rules permitting lawyers to argue motions by conference telephone in his court. Participation in Goebel's program was then completely voluntary.

In January, 1978, the Torrance branch of the Los Angeles Superior Court began participating in the Economical Litigation Project an experiment in simplified court procedures set up by the state's Judicial Council. Goebel began hearing all motions under the ELP and he has made participating in telephone motion hearings almost mandatory in his court.

When Goebel began the program he used a conference telephone in his office, which hooked into the county's Centrex System and which required calls to be placed through the courthouse operator. In 1979, he was able to persuade the County Communications Department to install more sophisticated equipment which permits him to listen to as many as four lawyers argue and his own clerk to set up the calls.

In contrast, the Fresno program was set up strictly as a convenience for out-of-town lawyers, to save long trips to Fresno to make brief arguments. Unlike Goebel, who hears arguments while sitting in his chambers, Fresno Superior Court Judge Kenneth Andreen, to whose court the Fresno telephone experiment is confined, holds the hearings in his courtroom like in-person hearings. Fresno-area lawyers are expected to appear personally in Andreen's courtroom to argue, while out-of-town attorneys are permitted to use the telephone. The telephone hearings are interspersed with the regular hearings on Andreen's calendar.

Lawyers who wish to participate in the Fresno program must write or call the court at least two days in advance, and then be ready to accept a collect call from Andreen's clerk the day of the hearing.

"We don't encourage local lawyers to use the system" Andreen told The Daily Journal, citing the extra two or three minutes it takes his clerk to set up the call for each telephone hearing. "It slows down the court calendar," Andreen explained.

Since the Fresno system went into effect March 5, it has been used only four times. Only lawyers with even-numbered cases can use the Fresno system, because motions in odd-numbered cases are heard in another Fresno courtroom.

In Torrance, Goebel's clerk Jim Givens calls all the lawyers with motions to be heard on Goebel's regular Friday calendar the Wednesday before. Givens gives the lawyers Goebel's tentative ruling on each motion, along with a summary of Goebel's reasoning for the decision, and sets up a telephone conference for the attorneys who still wish to argue their cases after hearing Goebel's tentative ruling.

Acting on Goebel's orders, Givens discourages lawyers from appearing personally in Goebel's court, although Goebel will allow a personal argument from an attorney if he insists.

"This is a new system. For it to work, lawyers must feel they're being given a fair shake," Goebel told The Daily Journal.

Goebel readily allows persons handling their own cases without lawyers to argue their cases personally.

"They don't understand how normal courtroom procedures (like personal argument) can be legally circumvented and we don't want them to think they're being taken in," he said.

The judge also permits motions for summary judgment to be argued live in his courtroom because the arguments on those motions may be longer and more complicated.

Both Goebel and Andreen say that their equipment is so sophisticated that a court reporter taking notes would have no trouble distinguishing the voices. But Givens noted that the quality of the telephones decline when more than two lawyers are using them at once.

Two Bay Area lawyers who argued in Fresno expressed pleasant surprise to learn shortly before their scheduled hearings that a telephone argument system existed.

Oakland attorney Judith Sundstrom learned the day before her scheduled appearance on a motion for a protective order that she might not have to spend $100 of a client's money to fly to Fresno to defend the matter in person. Andreen waived the two-day notice requirement to allow Sundstrom to argue by telephone.

"It was a little confusing," Sundstrom said of the experience. "You don't get the body language of your opponent."

Sundstrom said that she found herself standing to argue even though she was in her own office, because she always stands during arguments in court.

Paul Siegrist of San Francisco, a staff attorney for United California Bank, used the Fresno telephone system to argue a demurrer he had filed only because he broke his glasses shortly before he was supposed to fly to Fresno and could not see his way to the airport.

Siegrist called the program "convenient," but said that oral argument on his pleading would have made no difference anyway.

Attorney Wayne Witchez of Fresno, who argued against Siegrist's demurrer in a personal appearance in Andreen's court, complained that "it's hard to argue to a squawk box."

It's unfair to force Fresno lawyers to make a trip to court to argue their cases while out-of-town attorneys are able to argue from their offices, Witchez said, adding that he would have been "upset" if Siegrist had not had a "valid excuse" like broken glasses to prevent his personal appearance in court.

Witchez did praise the high quality of Andreen's telephone system.

Los Angeles area litigators were more enthusiastic about their experiences with Goebel's program. Jeffrey Crafts of Gilbert, Kelly, Crowley & Jennett likes the system because it is easier to get from his home to his Wilshire District law office by 9 a.m. than to the Torrance courthouse.

Goebel's system works because the judge himself is well prepared for the hearings and often walks over to consult nearby law books in his chambers in the middle of a telephone hearing, something that would be impossible to do in open court, Crafts said.

But for "the big ones" — motions for summary judgment, motions for judgment on the pleadings or major demurrers — Crafts would like to have the option to appear personally in court, he told The Daily Journal.

Crafts believes that "intangible" factors like personalities or style of argument can make a difference in a close and serious case.

Century City lawyer Sidney Tinberg of Chung & Tinberg said he had more time to argue over the telephone in the Torrance system — 20 minutes — than he would have had in a personal appearance, and he was able to work on other cases while he waited for the call.

The fact that Goebel ruled against Tinberg after the attorney argued against a motion to strike part of his pleading did not change Tinberg's assessment of the procedure.

"The telephone didn't make any difference," he said, adding, "It's a waste of time to appear personally on a law and motion matter."

Torrance attorney William McKim said he would have no objection to handling any motion, or even a trial, over the telephone, calling it a "step into the 20th century.

"It is at the very least unpatriotic and at the most traitorous" in light of the current gasoline shortage and inflation to travel to court for adversary hearings, McKim declared.

Goebel sees problems with using a telephone system for hearing law and motion matters in the congested downtown branch of the superior court. He handles no more than about 10 motions and on only one day a week. The 20 or so telephone calls Givens must place are no great burden, Goebel said. Andreen hears between eight and 10 motions each day, the overwhelming majority of them in person.

But the clerks in the seven down town law and motion departments, each handling around 30 matters per day, might find the burden of making at least 60 daily telephone calls — one to each of the lawyers on both sides — intolerable, Goebel said. The act of telephoning also adds a few minutes to each hearing, he pointed out.

Superior Court Judge Robert Weil, who presides over the seven departments, said he is studying how telephone equipment might be used to expedite motion hearings downtown but has no plans now to imitate Goebel's system there.

But the five judges who hear motions (two courtrooms are presided over by commissioners) now have special telephone lines which they use to dictate tentative rulings on tape so that lawyers can call in for them the day before the scheduled hearings. Between two and five of the 20-40 matters scheduled in each courtroom each day go off calendar because lawyers agree to submit them on the telephone tentative rulings, Weil said.

The cost of installing the equipment is another reason the downtown courts have hesitated to implement a telephone hearing system. Goebel said it cost about $500 to place special telephones in his Torrance chambers and they add about $68 per month to his phone bill.

With seven downtown courtrooms installing the system "becomes expensive," Weil said.

A grant from the American Board of Trial Advocates paid the $1,100 installation cost of the Fresno system.

Goebel persuaded the county Communications Department to install his special equipment last year on an experimental basis, in return for which Goebel promised to write a report on how much time and money the system saves lawyers participating in it.

EXHIBIT G

LAW OFFICES OF
SHARTSIS, FRIESE & GINSBURG
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

ROBERT CHARLES FRIESE
ARTHUR J. SHARTSIS*
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TELEPHONE
(415) 421-6500

December 8, 1981

William Bates, Esq.
McCutchen, Doyle, Brown & Enersen
Three Embarcadero Center
San Francisco, California 94111

Re: Court Appearance by Telephone

Dear Bill:

I write this letter in my capacity as Chairman of the Business Litigation Committee of the Bar Association of San Francisco, and as the person of that Committee primarily responsible for the current Law-and-Motion-by-Telephone experiment in San Francisco Superior Court.

As you know, this experimental project commenced late in August of this year and is scheduled to last six months. Judge Ira Brown, Jr. has indicated to me recently that he would recommend that the procedure be made permanent. While this recommendation may be viewed as reflective of the project's success, it should be emphasized that usage of the telephone as a means of arguing Law and Motion matters has been light. We have intentionally gone slowly in seeking to publicize the program statewide until we felt we had the system and the telephonic equipment under control. We have used the portable conference call unit provided by Pacific Telephone & Telegraph in this project. The unit has been satisfactory, and the speaker quality has posed no problem for the court reporter.

We have had an occasional problem with the quality of voice transmission, but have now managed to minimize this by placing the calls through the court clerk of the

Law and Motion Department rather than through the telephone company's conference call operator. Using the court clerk to place the calls also cuts down on the time the attorney is placed on hold.

We anticipate that use of the system will increase once we pursue further publicizing of the program with other Bar Associations throughout the State.

In general, I believe that court appearance by telephone can be very useful in many situations other than law and motion matters. Exceptions might be hearings in which testimony by witnesses is involved, where document exchange is required, or where the presence of numerous counsel would make a conference call cumbersome.

I reviewed Assembly Bill 1209 shortly before its original submission, and remain highly supportive of its attempt to make court appearance by telephone more widely available. I believe that the key to passage of such a bill lies in keeping it voluntary and in giving individual courts some leeway in how they effectuate the program. (For example, the San Francisco program excludes discovery matters and, due to the nature of the telephone system in San Francisco City Hall, cannot avail itself of certain equipment advantages which might be possible for other courts.) The enclosed Request to Appear at Hearing By Telephone is submitted as an example of how one court has fine-tuned its rules. Also enclosed is a copy of my recent article from the Bar Association of San Francisco's Brief/Case magazine entitled "Court Appearance By Telephone."

Please excuse my inability to join you at the hearing before the Assembly Committee on Judiciary on December 10. I must attend a Board of Directors meeting on that day but (supportive to the end of the technology) can be made available by telephone.

Sincerely,

Robert Charles Friese

RCF:rec
Enclosures
cc: The Honorable Ira Brown, Jr.
Donald Guinn, President
Pacific Telephone & Telegraph Co.

NAME, ADDRESS, AND TELEPHONE NUMBER
OF ATTORNEY(S)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF .....

Plaintiff(s)	CASE NUMBER
Defendant(s)	REQUEST TO APPEAR AT HEARING BY TELEPHONE Law & Motion Department Hearing Date _____

Attorney requesting to be joined by telephone: _____
(print name)

Telephone number to be called: (___) _____.
(The attorney named here will be the person asked for by the Telephone Conference Coordinator.)

EXPLANATION OF PROCEDURE:

1. Counsel for any party has the right to request to participate by telephone in a hearing of any noticed motion in the Law and Motion Department (EXCEPT DISCOVERY MATTERS and matters in which the Court may advise counsel that appearance in person is required).

2. Counsel not wishing to participate by telephone in such a hearing may appear and argue in person.

3. The cost of any telephone call(s) involved in such a hearing will be charged to the telephone number of the first counsel requesting to appear by telephone. (Should counsel wish to apportion charges among themselves, any such arrangements shall be made by such counsel independently.)

4. Counsel requesting to appear by telephone shall be available between 9:30 a.m. and 11:00 a.m. if their matters are on the first half of the calendar and between 10:30 a.m. and 12:00 noon if their matters are on the second half of the calendar (unless otherwise advised by the Law and Motion Department). Failure to be reachable by telephone during this period shall be deemed to constitute a failure to appear.

5. Counsel electing to appear by telephone will be notified by the Judge of the tentative ruling on the motion at issue at the commencement of the conference call.

6. COUNSEL ELECTING TO APPEAR BY TELEPONE WILL SERVE A COPY OF THIS FORM (A) ON ALL OTHER COUNSEL, (B) A COPY TO THE CLERK OF THE COURT, AND MUST CONCURRENTLY SERVE A COPY (C) IN A SEPARATE ENVELOPE TO THE TELEPHONE CONFERENCE COORDINATOR, LAW & MOTION DEPT., SUPERIOR COURT, CITY HALL, SAN FRANCISCO, CA. 94102.

7. Only those attorneys who submit the printed form as directed will be called. Any attorney desiring to appear by telephone may do so regardless of whether opposing counsel requests to appear by telephone.

8. Counsel wishing to ascertain whether opposing counsel has elected to appear by telephone should contact opposing counsel, NOT the Law & Motion Dept.

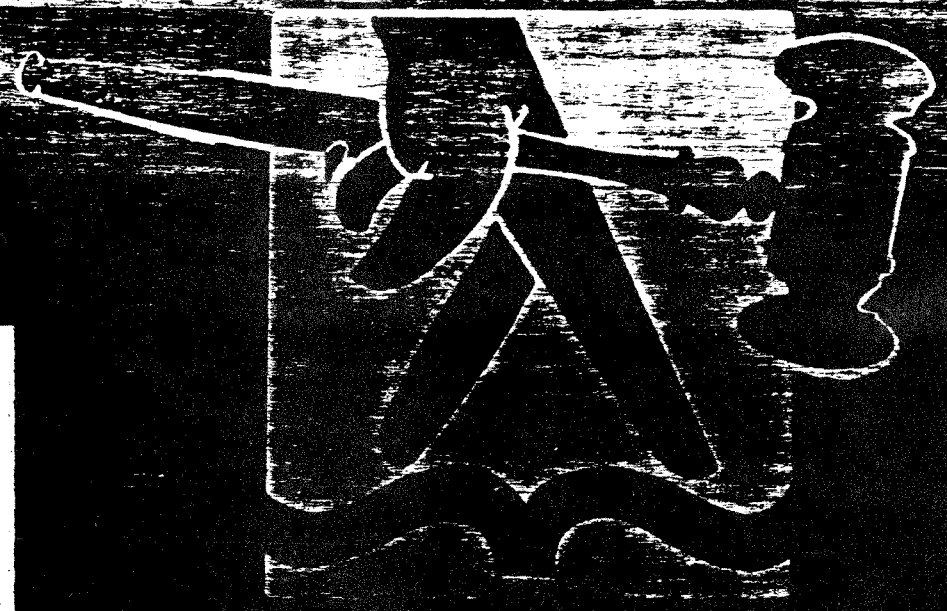
9. IF THIS FORM IS NOT RECEIVED BY THE LAW AND MOTION DEPARTMENT AT LEAST TWO COURT DAYS BEFORE THE HEARING DATE, YOU WILL NOT BE CALLED.

June 1981 Vol. 7, No. 7 Publication of the Bar Association of San Francisco

brief/case

Is there a dial-a-court in your future?

The BASF Law & Motion Experiment begins . . .



ROBERT C. FRIESE
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255 CALIFORNIA STREET
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Also inside: □ **A conversation with the Hon. J. Anthony Kline — can Governor Brown's Legal Affairs Secretary find happiness on the San Francisco bench?** □ **The delicate art of cross examination** □ **A farewell from brief/case editor Ron Laupheimer**

COURT APPEARANCE

SAN FRANCISCO'S LAW AND MOTION PROJECT

BY TELEPHONE

By Robert Charles Friese

Robert C. Friese, a partner in Shartsis, Friese & Ginsburg, is the current chair of the BASF's Business Litigation Committee. Friese says he wrote this article for brief/case because "I am generally appalled by the costs and delays of litigation and the fact that the dispute resolution process in this country is so expensive and complicated that it does not serve the bulk of the people who rely on it. I view telephonic law and motion as one step toward reducing the costs."

In a move that only an attorney could consider revolutionary, a test project that would permit counsel to appear via telephone on law and motion matters is set to begin July 13 in the San Francisco Superior Court.

This test culminates several years of background work by the BASF's Business Litigation Committee, assisted over the last year by Judge Ira A. Brown, Jr. of the Law and Motion Department, Bill Bates for the State Bar's Courts Committee, and by representatives of Pacific Telephone and Telegraph Co. (particularly its president, Don Guinn). Working as chair or co-chair of the Committee for the past two years, I have been primarily responsible for attempting to implement this program. It seems to offer the best features of similar programs while also taking into account the special problems

(Continued on page 12)

Law and Motion Project

(Continued from page 11)

and sensitivities of counsel and the court in San Francisco. Comments on the project and the court form proposed are still arriving, but the experiment itself will obviously be the final proof.

Why do we need telephonic law and motion?

Most litigating attorneys know that various experiments with court appearance by telephone are underway elsewhere. Judge Charles Egan Goff, who tried law and motion by telephone while serving as Presiding Judge of the San Francisco Municipal Court, is an enthusiastic supporter of the concept. Superior Courts in Fresno, Torrance, and certain courts in Los Angeles are experimenting with such projects, and several judges in the United States District Court here often resort to the telephone to join distant counsel in law and motion and related matters.

But the most expansive approach to date was submitted to the California Legislature as Assembly Bill No. 1209, part of the State Bar's legislative package this year. Although this bill (submitted by Assemblyman Elihu Harris) has been withdrawn for fine-tuning, its key elements suggest other potential areas for appearance by telephone. For example, it would have permitted the Judicial Council to promulgate rules governing pretrial, trial setting, and arbitration conferences in which counsel could appear by telephone unless the conference included a settlement conference. It also would have allowed appearance by telephone at hearings on demurrers, orders to show cause or motions heard before trial (except for hearings in domestic relations matters or where oral testimony is involved). The Courts Committee of the State Bar helped prepare and support Assembly Bill No. 1209.

Other states — including Colorado, New Jersey, Maine, and Hawaii — are introducing the telephone conference for motions and other pretrial matters such as scheduling and status hearings. They are being monitored by the American Bar Association's Action Commission — a five-year project designed to work with bench and bar on programs to reduce the cost and delays of litigation.

costs and delays of litigation. [Editor's note: For additional information, see The Wall Street Journal (June 1, 1981) p. 31.]

In sum, there is a lot of activity in this area, and we think our program may be viewed as state-of-the-art. Meeting the special challenges of a court as complex and busy as Judge Brown's requires special effort and imagination.

The BASF program

Here is how the BASF program will work, quoting from the proposed court form:

"1. Counsel for any party has the right to request to participate by telephone in a hearing of any noticed motion in the Law and Motion Department (EXCEPT DISCOVERY MATTERS and matters on which the court may advise counsel that appearance in person is required).

"2. Counsel not wishing to participate by telephone in such a hearing may appear and argue in person.

"3. The cost of any telephone call(s) involved in such a hearing will be charged to the telephone number of the first counsel requesting to appear by telephone. (Should counsel wish to apportion charges among themselves, any such arrangements shall be made by such counsel independently.)

"4. Counsel requesting to appear by telephone shall be available between 9:30 a.m. and 11:00 a.m. if their matters are on the first half of the calendar and between 10:30 a.m. and 12:00 noon if their matters are on the second half of the calendar (unless otherwise advised by the Law and Motion Department). Failure to be reachable by telephone during this period shall be deemed to constitute a failure to appear.

"5. Counsel electing to appear by telephone will be notified by the judge of the tentative ruling on the motion at issue at the commencement of the conference call.

"6. Counsel electing to appear by telephone will serve on all other counsel a copy of a court form noticing this fact, and must concurrently serve a copy in a separate envelope to the Telephone Conference Coordinator, Law and Motion Dept., Dept. 9, Superior Court, City Hall, San Francisco, CA 94102.

"Counsel wishing to ascertain whether opposing counsel has elected to appear by telephone should contact opposing counsel, NOT the Law and Motion Department.

"7. If the court form is not received by the Law and Motion Department at least two court days before the hearing date, counsel will not be called."

The program's exclusions and limitations

The most notable exclusion from the program is the discovery motion. Including such motions would have presented substantial logistical and technical problems because of such factors as the time limits on the in-court telephone conference coordinator (who must coordinate the flow of calls with the telephone company's conference call operator) and the limits of current telephone equipment in the San Francisco Superior Court's courtrooms other than the Law and Motion Department. (Special jacks were installed in that Department to enable rapid transfer of calls among three lines to be set aside for telephone conferences.) As the system becomes more sophisticated, discovery matters too might be argued by telephone. But for the time being, it seems wisest to evaluate the basic system before reaching for the next level of complexity. (Continued on page 18)

The most notable exclusion is the discovery motion — a whole new level of complexity best left for later.

The client who must buy your entire morning for a 5-minute motion surely deserves a better break.

LAW AND MOTION PROJECT

(Continued from page 11)

The primary limitation, however, is personpower. The time of Judge Brown's staff has been held as inviolate, on the theory that it would be unacceptable to place the additional duties associated with this project upon them. Instead, for the duration of this six-month test, a telephone company employee will assist to the extent necessary to act as telephone conference coordinator. Beyond this six-month period, an alternative source of funding will probably be required. The coordinator's essential functions are to: (1) gather, by civil number and calendar position, the forms from counsel requesting to appear by telephone; (2) transfer this information to the conference call operator; and (3) work with that operator to facilitate the flow of calls as one matter ends and another begins. Obviously, the flow of calls must run smoothly, or this program would soon be of historic interest only.

The project might also exclude matters in which the presence of numerous counsel makes the telephonic approach unwieldy, and matters requiring document review and/or live testimony. In such instances, the coordinator would simply advise counsel requesting to appear by telephone that their personal appearance will be required.

Paragraph 4 of the court form indicates that counsel whose matter appears on the first half of the calendar will be expected to be available to receive the call from the conference call operator between 9:30 am and 11:00 am or, if on the second half of the calendar, from 10:30 am till noon. Although it is expected that the average wait for the call will be substantially less than one hour (especially if counsel has one of the earlier matters to be called), it is important to note that counsel's unavailability to take a call will be deemed a failure to appear. Thus, counsel who use this system must keep clear of involvements that might prevent them from being reachable, and should advise appropriate staff that they are expecting the call.

Impact on tentative rulings

Paragraph 5 deals with tentative rulings and, although peripheral, may prove useful to the program. Under current Law and Motion Department procedures, tentative rulings are posted outside the courtroom door at about 9 am on the morning the matters are set to be heard. Thus counsel must either be present personally or send someone to the court to learn the result of the tentative ruling. Under the proposed system, Judge Brown would inform counsel at the commencement of the conference call of the tentative ruling and, if counsel wants to argue the matter, simply proceed with the hearing. Some of those who commented on this aspect believe that it may encourage unnecessary oral argument, but others think it will discourage it, on the theory that a lawyer is less likely to argue if not present.

Legend has it — though I have been unable to confirm this from primary sources — that Judge Brown has changed his mind on a tentative ruling twice since taking over the Law and Motion Department.

In the final analysis, we hope the bench and bar recalls who foots the bill for some of the inefficient niceties that we take for granted.

The I-won't-do-it-unless-he-does syndrome

Paragraph 6 requires that the lawyer who wants to appear by telephone must give notice of this fact to other counsel by serving them with a copy of the court form. Some of those commenting on the project suggest that such notice mailed only two days before the scheduled hearing might not reach opposing counsel until after the hearing. However, the alternative of establishing an earlier filing requirement for such notices was deemed unacceptable because it might create added confusion in the filing requirements. Instead, the Committee thought that lawyers who cared whether opposing counsel would be physically present or appear by telephone could easily find out by contacting opposing counsel in advance.

It is hoped that most counsel will have sufficient confidence in the content of their argument (as opposed to the thespian aspects of their presentation) not to be intimidated from appearing by telephone merely because their opposition may be waiting in the courtroom.

The conference call equipment itself

One of several keys to the program's success (or failure) will be the telephone company's new portable conference call unit. This unit enables counsel to be heard through a microphone at the counsel's table, the judge to be heard through a microphone at the bench, and counsel appearing by telephone to be heard via a speaker which appears to produce sufficient volume and clarity for the court reporter and all others in the courtroom to follow the proceedings.

Another key is the telephone company's conference call center, which has the capacity to hold a number of conference calls at the ready, to be transferred as required to the court's available line(s) as one matter is finished and the next is called.

Ultimately, if the telephone system within City Hall is modified to accept it, equipment enabling the telephone call coordinator to direct-dial all counsel who want to participate by telephone is possible, thus bypassing the conference call operator entirely.

Conclusion

It should be stressed that the Law and Motion Department of San Francisco Superior Court has certain special problems which may make the approach outlined here partially (or wholly) inappropriate for courts elsewhere. For example, in many courts (even busy ones) there is no single law and motion judge or law and motion department. Instead, individual judges handle their own law and motion matters, and might or might not find it economically justifiable to consecrate any money to conference call equipment or staff time to coordinate the process.

The message here is that there may be no single best system, although we hope the one we are proposing can be a useful, basic model and learning tool for other courts who may be interested in the concept modified to meet their own specific conditions and needs.

But in the final analysis, we hope that bench and bar will recall who foots the bill for some of the niceties we take for granted but that undermine the efficiency of the decision-making process.

Anyone who would like to comment on the project or on the court form itself may contact the author (preferably in writing), now or during the project, at Shartsis, Friese & Ginsburg, 255 California Street, Suite 900, San Francisco, CA 94111.

LAW AND MOTION BY TELEPHONE EXHIBIT H

Test Program

Law And Motion By Telephone

A test program that would allow counsel to appear via telephone in law and motion matters is scheduled to be implemented July 13, 1981 in San Francisco Superior Court.

The Business Litigation Committee of the Bar Association of San Francisco worked with Judge Ira A. Brown, Jr., of the court's Law and Motion Department and representatives of Pacific Telephone and Telegraph Co., to develop the plan.

Here are the key elements of the proposed program, taken almost verbatim from the court form that would be used by attorneys when requesting telephonic law and motion proceedings:

1. Counsel for any party has the right to request to participate by telephone in a hearing of any noticed motion in the Law and Motion Department (EXCEPT DISCOVERY MATTERS and matters on which the court may advise counsel that appearance in person is required).

2. Counsel not wishing to participate by telephone in such a hearing may appear and argue in person.

3. The cost of any telephone call(s) involved in such a hearing will be charged to the telephone number of the first counsel requesting to appear by telephone. (Should counsel wish to apportion charges among themselves, any such arrangements shall be made by such counsel independently.)

4. Counsel requesting to appear by telephone shall be available between 9:30 a.m. and 11:00 a.m. if their matters are on the first half of the calendar and between 10:30 a.m. and 12:00 noon if their matters are on the second half of the calendar (unless otherwise advised by the Law and Motion Department). Failure to be reachable by telephone during this period shall be deemed to constitute a failure to appear.

5. Counsel electing to appear by telephone will be notified by the judge of the tentative ruling on the motion at issue at the commencement of the conference call.

6. Counsel electing to appear by telephone will serve on all other counsel a copy of a court form noticing this fact, and must concurrently serve a copy in a separate envelope to the Telephone Conference Coordinator, Law and Motion Dept., Dept. 9, Superior Court, City Hall, San Francisco, CA 94102.

Counsel wishing to ascertain whether opposing counsel has elected to appear by telephone should contact opposing counsel, NOT the Law and Motion Department.

7. If the court form is not received by the Law and Motion Department at least two court days before the hearing date, counsel will not be called.

The program is designed to result in substantial savings in legal fees to clients whose counsel will no longer have to travel to and from the courthouse on such matters.

Anyone wishing to comment on the project or on the court form is encouraged to contact (preferably in writing) Robert Charles Friese, at Shartsis, Friese & Ginsburg, 255 California St., Suite 900, San Francisco, CA 94111.

All comments are requested by Friday, May 8.

PART 3.5

Of Alternative Procedures

[Added by Stats 1976 ch 960 § 1.]

TITLE 1

PILOT PROJECTS

§ 1823. [Legislative findings and declarations.] The Legislature finds and declares that the costs of civil litigation have risen sharply in recent years. This increase in litigation costs makes it more difficult to enforce smaller claims even though the claim is valid or makes it economically disadvantageous to defend against an invalid claim.

The Legislature further finds and declares that the development of simplified procedures to reduce the expense of litigation is

inhibited by the absence from present law of methods for experimentation with procedural innovations to reduce expense. Hence, it has not been possible to adopt the usual management technique of a trial pilot program on a small scale of changed methods of operation with the expectation that experience with the pilot program will permit its permanent adoption in its designed form or with modification as experience dictates.

The Legislature further finds and declares that there is a compelling state interest in the development of pleading, pretrial and trial procedures which will reduce the expense of litigation to the litigants and there is likewise a compelling state interest in experimentation on a small scale with new procedures to accomplish that result before those procedures are adopted statewide. Therefore, the provisions of this part are added to this code to provide a means of experimentation with procedural innovations to reduce the cost of civil litigation. [1976 ch 960 § 1.]

§ 1823.1. [Courts selected by Judicial Council.] The Judicial Council shall conduct in two superior courts, or branches thereof, in any county in which the population exceeds 260,000, as determined by the 1970 federal census, and two municipal courts, or branches thereof, in any county in which the population exceeds 260,000, as determined by the 1970 federal census, selected by the Judicial Council with the approval of a majority of the judges of the selected courts, a pilot project for a period of five years. [1976 ch 960 § 1; 1980 ch 71 § 1.]

§ 1823.2. [Jurisdiction municipal courts.] Within the pilot project municipal courts, all civil actions other than small claims actions shall be filed, heard and determined as provided in this chapter, except that any action may be withdrawn from the provisions of this chapter by order of the court for good cause, either upon motion by any party or upon the court's own motion. [1976 ch 960 § 1.]

§ 1823.3. [Jurisdiction superior courts.] Within the pilot project superior courts, all civil actions in which the amount in controversy does not exceed $25,000, except eminent domain actions, shall be filed, heard and determined as provided in this chapter, except that any action irrespective of the amount in controversy may be withdrawn from the provisions of this chapter by order of the court for good cause, either upon motion of any party or upon the court's own motion. The Judicial Council shall provide by rule for determining the amount in controversy for the purposes of this section. [1976 ch 960 § 1.]

§ 1823.4. [Adoption of rules by Judicial Council.] Notwithstanding any other provision of law, including this chapter, the Judicial Council shall provide by rule for the procedures to be followed in the pilot project courts and the rules of procedure for pilot project superior courts shall provide for such methods of pretrial discovery as are consistent with the objectives of this part. Unless otherwise prescribed by Judicial Council rules, Sections 1824 to 1826.14, inclusive, shall not be applicable to pilot project superior courts. Initially the Judicial Council rules in the pilot project municipal courts shall not be inconsistent with the provisions of this chapter. Thereafter, the Judicial Council may adopt rules which change or modify the provisions of this chapter to implement new or modified procedures for the conduct of the pilot project. [1976 ch 960 § 1.]

§ 1823.5. [Laws applicable.] Except where changed or modified by the provisions of this chapter, including rules adopted by the Judicial Council pursuant to this chapter, all provisions of law applicable to civil actions generally shall apply to the processing of civil actions in the pilot project courts. [1976 ch 960 § 1.]

§ 1823.6. [Collection and evaluation of data.] The Judicial Council shall develop procedures for the collection and evaluation of data to determine the cost effect of simplified procedures conducted pursuant to this chapter. [1976 ch 960 § 1.]

§ 1823.7. [Advisory committee.] Pursuant to Section 68501 of the Government Code, the Chairman of the Judicial Council may appoint an advisory committee to advise the Judicial Council regarding the conduct of the pilot projects. Staff assistance to the advisory committee shall be provided by the Judicial Council. [1976 ch 960 § 1.]

§ 1824. [Pleadings and motions.] (a) The pleadings shall consist of a complaint filed by the plaintiff, an answer filed by the defendant, and a cross-claim filed by the defendant at his election.

(b) Motions shall be in the form generally provided in this code. [1976 ch 960 § 1; 1977 ch 579 § 37.]

§ 1824.1. [Contents and construction of

pleadings.] (a) No technical forms of a pleading are required. Each allegation of a pleading shall be simple, concise and direct.

(b) A pleading which sets forth a claim for relief, whether as a complaint or cross-claim, shall contain a short and plain statement of the occurrence or transaction upon which it is based showing that the pleader is entitled to relief and a demand for judgment for the relief to which he deems himself entitled. Claims may be pleaded alternatively or inconsistently.

(c) An answer shall state in short and plain terms defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. A denial may be for lack of information or belief. Affirmative defenses must be affirmatively pleaded in short and plain terms in an answer.

(d) Allegations in a pleading to which a responsive pleading is required are deemed admitted if not denied.

(e) All pleadings shall be construed to do substantial justice. If fraud or mistake is alleged as the basis of a claim or defense, the circumstances of the fraud or mistake shall be stated with particularity. [1976 ch 960 § 1.]

§ 1825. [Discovery.] No discovery shall be permitted. [1976 ch 960 § 1.]

§ 1825.1. [Statement of witnesses and physical evidence.] (a) Each party shall file with the court a statement of witnesses and physical evidence within 45 days after the date the case is at issue.

(b) The statement shall include the names and addresses of witnesses the party intends to call and a description of the physical and documentary evidence the party intends to produce with copies of the documents the party intends to rely upon at trial. A party is not required to identify witnesses, physical evidence, or documents which he will use only for impeachment. [1976 ch 960 § 1.]

§ 1825.2. [Procedure regarding statements.] The court shall hold statements filed with it under seal until it has received the statements of all parties to the action or the time for filing statements has expired. The court then shall contemporaneously transmit copies of the statements to the adverse parties. [1976 ch 960 § 1.]

§ 1825.3. [Limitation of evidence.] At trial a party may call as witnesses only those persons disclosed by him and introduce only physical evidence and documents identified in the statement, except where relief is granted for any of the causes specified in Section 473. If relief from a statement is granted, the adverse party shall be entitled to a continuance to meet the new evidence. Production of evidence for impeachment is not limited. [1976 ch 960 § 1.]

§ 1825.4. [Pretrial conferences.] Pretrial conferences are not required; however, counsel shall be encourage to communicate personally or by telephone in an effort to narrow the issues prior to trial or to resolve the disputes. [1976 ch 960 § 1.]

§ 1825.5. [Demurrers and pretrial motions.] No demurrer or pretrial motion shall be used or permitted, except as follows:

(a) One motion may be made by the defendant to dismiss the action on the ground of a jurisdictional defect or on the ground that the complaint does not give notice of a claim upon which relief can be granted.

(b) Motions may be made for a continuance of the action for good cause.

(c) A motion may be made to withdraw the action from the controls of the procedure under this title for good cause.

(d) One motion may be made by each party for summary judgment or partial summary judgment.

(e) Motions for change of venue. [1976 ch 960 § 1.]

§ 1826. [Trial date.] If possible, the date for trial shall be set within 20 days from the date the court distributes the statement of witnesses and physical evidence in accordance with Section 1825.2. [1976 ch 960 § 1.]

§ 1826.1. [Jury trials.] Where a jury is demanded, and the case is tried to a jury, the trial shall not be conducted in accordance with this part, but shall be conducted in accordance with the procedures established in this code other than in this part. Where a jury is waived, the trial shall be conducted as set forth in Section 1826.2 to 1826.14, inclusive. [1976 ch 960 § 1.]

§ 1826.2. [Opening statement.] An opening statement to the court by counsel for the parties shall be permitted in the manner and for the duration determined in the discretion of the court. [1976 ch 960 § 1.]

§ 1826.3. [Trial briefs.] Trial briefs shall be permitted, but shall not be required. [1976 ch 960 § 1.]

§ 1826.4. [Interrogation of witnesses; Narrative testimony.] The counsel for the

parties and the trial judge may interrogate the parties and witnesses. Narrative testimony shall be permitted. [1976 ch 960 § 1.]

§ 1826.5. [Order of proceeding.] The trial judge shall have the discretion to determine the order in which the evidence is introduced and the trial is conducted. [1976 ch 960 § 1.]

§ 1826.6. [Written submission of testimony.] Written submissions of direct testimony shall be permitted if the court determines that such submissions will result in a saving of time for the court and counsel. [1976 ch 960 § 1.]

§ 1826.7. [Record of proceedings.] Upon agreement of the parties and with consent of the court, proceedings under this title may be recorded by video tape, electronic recording, or court reporters. [1976 ch 960 § 1.]

§ 1826.8. [Admissibility and weight of evidence.] No privileged information shall be admissible, except as provided in Division 8 (commencing with Section 900) of the Evidence Code. Subject to the provisions of Section 352 of the Evidence Code, all other evidence relevant to the action shall be admissible. The trial judge shall determine the weight to be accorded any admissible evidence. [1976 ch 960 § 1.]

§ 1826.9. [Amendment of pleadings.] The trial judge, in his discretion, may permit a pleading to be amended to conform to proof. [1976 ch 960 § 1.]

§ 1826.10. [Closing arguments.] Closing arguments by counsel shall be permitted in the manner and for the duration determined in the discretion of the court. [1976 ch 960 § 1.]

§ 1826.11. [Findings of fact and conclusions of law.] Findings of fact or conclusions of law shall not be required or made. Upon request of any party to the action, the court shall issue a brief explanation of its decision either orally or in writing. [1976 ch 960 § 1.]

§ 1826.12. [Post-trial motions.] Any motion which may be made after trial in the court pursuant to law may be made in any action tried pursuant to this title. [1976 ch 960 § 1.]

§ 1826.13. [Conclusiveness of judgment or final order.] The effect of a judgment or final order, in respect to the matter or matters directly adjudged, is conclusive between the parties and their successors in interest but shall not operate as collateral estoppel of a party in other litigation with a person who was not a party to the action in which the judgment or order is rendered. [1976 ch 960 § 1.]

§ 1826.14. [Appeal.] Any party shall have the right to appeal any judgment or final order consistent with the law governing such appeals. [1976 ch 960 § 1.]

§ 1833. [Study of project: Annual report.] The Judicial Council shall conduct a study of the effects of the pilot project and shall make an annual report of its findings to the Legislature. [1976 ch 960 § 1.]

§ 1833.1. [Implementation of title.] The provisions of this title shall be implemented by the Judicial Council only when and to the extend that funds are made available to implement the pilot project and the study set forth in Section 1833. [1976 ch 960 § 1.]

§ 1833.2. [Operative date.] The provisions of this part shall become operative no later than January 1, 1978, and shall apply to cases filed on or after the operative date. [1976 ch 960 § 1.]

EXHIBIT J

DIVISION IV

Special Rules for Trial Courts in Pilot Project for Economical Litigation

Adopted by the Judicial Council of California, effective January 1, 1978

Chapter

1. Rules for Municipal Courts. Rules 1701–1751
2. Rules for Superior Courts. Rules 1801–1859

CHAPTER 1

Rules for Municipal Courts

Rule 1701. Authority

The rules in this chapter are adopted pursuant to section 1823.4 of the Code of Civil Procedure and pursuant to the authority granted to the Judicial Council by the Constitution, article VI, section 6, to adopt rules for court administration, practice and procedure.

Rule 1702. Severability

If a rule in this chapter is invalid, all valid parts that are severable from the invalid part remain in effect. If a rule in this chapter is invalid in one or more of its applications, the rule remains in effect in all valid applications that are severable from the invalid applications.

Rule 1703. Applicability of general rules

Except where changed by these rules and Part 3.5 (commencing with section 1823) of the Code of Civil Procedure, all provisions of law applicable to civil actions generally apply to actions subject to these rules.

Rule 1705. Rules of construction

These rules are intended to and shall be construed so as to implement Part 3.5 (commencing with section 1823) of the Code of Civil Procedure.

Rule 1707. Construction of terms

As used in these rules, unless the context or subject matter otherwise requires:

(a) "Shall" is mandatory, and "may" is permissive.

(b) The past, present and future tense each includes the other.

(c) The singular and plural number each includes the other.

Rule 1709. Collateral estoppel

A judgment or final order, in respect to the matter directly adjudged, is conclusive between the parties and their successors in interest but does not operate as collateral estoppel of a party or a successor in interest to a party in other litigation with a person who was not a party or a successor in interest to a party to the action in which the judgment or order is rendered.

Rule 1711. Applicability of special rules; withdrawal for cause

(a) Except as otherwise provided in this rule, the rules in this chapter apply to every civil action filed and heard between January 1, 1978, and December 31, 1980, in the Fresno Municipal Court and in those branch courts of the Los Angeles Municipal Court designated by the presiding judge of the Los Angeles Municipal Court. These rules also apply to any action transferred to any such court by reason of improper venue or lack of jurisdiction in the court in which it was filed, if the action would have been subject to these rules if originally filed in the court to which it is transferred. [As amended effective July 1, 1979.]

(b) The rules in this chapter do not apply to any action under chapter 5A (commencing with section 116) or chapter 5B (commencing with section 118) of Title I of Part 1 or any proceeding under Part 3 (commencing with section 1063) of the Code of Civil Procedure.

(c) Any action may be withdrawn from the provisions of this chapter by order of the court for good cause,

either upon motion by any party on not less than five days's written notice or upon the court's own motion. The motion shall be heard and determined not less than 10 days before trial of the action. No limited or partial withdrawal shall be permitted.

Rule 1713. Pleadings; enumeration

The pleadings allowed are complaints, answers, cross-complaints and answers to cross-complaints. The demurrer is not allowed.

Rule 1715. Pleadings; contents

(a) No technical forms of pleading are required. Each allegation of a pleading shall be simple, concise and direct.

(b) A pleading which sets forth a claim for relief, whether as a complaint or cross-complaint, shall contain:

(1) A short, plain statement specifying the date, place and nature of the occurrence or transaction upon which the claim is based and showing that the pleader is entitled to relief; and

(2) A demand for judgment for the relief to which he deems himself entitled.

Claims may be pleaded alternatively or inconsistently. A complaint or cross-complaint need not be verified.

(c) An answer shall admit or deny the allegations upon which the adverse party relies and shall contain a brief statement of any new matter constituting a defense. The answer need not be verified, even if the complaint or cross-complaint is verified. Allegations in a pleading to which a responsive pleading is required are deemed admitted if not denied.

(d) All pleadings shall be construed to do substantial justice. If fraud or mistake is alleged as the basis of a claim or defense, the circumstances of the fraud or mistake shall be stated with particularity.

Rule 1717. Pretrial motions

Pretrial motions are permitted subject to the following limitations and exceptions:

(a) A motion to dismiss may be made on the ground that the complaint or cross-complaint does not give notice of a claim on which relief can be granted.

(b) A motion to strike a cause of action of a complaint or cross-complaint pursuant to section 435 of the Code of Civil Procedure is permitted only on the ground that the cause of action fails to give notice of a claim on which relief can be granted. Motions to strike a prayer for relief in a complaint or cross-complaint pursuant to section 435 of the Code of Civil Procedure are permitted only on the ground that the prayer is not supported by allegations of the complaint or cross-complaint.

(c) A motion to strike an affirmative defense in a answer pursuant to section 453 of the Code of Civil Procedure is permitted only on the ground that it does not state facts sufficient to constitute a defense.

(d) A motion for a further account pursuant to section 454 of the Code of Civil Procedure is not permitted. [As amended effective July 1, 1979.]

Rule 1718. Notice of order

When the court rules upon a motion or makes an order with all parties or their counsel present, no additional notice to the parties is required. However, nothing in this rule affects the duty of the clerk to mail notice of entry of judgment pursuant to section 664.5 of the Code of Civil Procedure.

Rule 1719. Discovery limited

(a) Except as otherwise provided by this rule and rules 1721 and 1723, no discovery is permitted.

(b) Nothing in this rule prohibits written requests for admissions of fact and of the genuineness of documents pursuant to section 2030 of the Code of Civil Procedure.

(c) The provisions of section 2031 of the Code of Civil Procedure are applicable. A description of an item of evidence in terms essentially similar to the description given in the statement served pursuant to rule 1721 by a party in possession or control of the evidence shall be considered a sufficient description of the item for purposes of a motion pursuant to Code of Civil Procedure section 2031.

(d) The provisions of section 2032 of the Code of Civil Procedure are applicable.

(e) The court may, on motion and subject to such terms and conditions as are just:

(1) Require statements containing information as specified in subparagraphs (4) and (6) of rule 1825(b). If a party fails to disclose the information after a court order requiring disclosure, the court shall, if any other party is prejudiced by the failure, impose such sanction provided in Code of Civil Procedure section 2034 as is appropriate to the circumstances, and, if the default is in bad faith or negligent, may require the defaulting party to pay all of the prejudiced party's expenses of preparation to the date of imposition of the sanction, including reasonable attorney's fees.

(2) Authorize depositions to the extent depositions are permitted in subdivision (a) of rule 1831, when it appears that they are necessary because of the complexity of the case or the extent of damages; and to the extent permitted in subdivision (b) of rule 1831.

(f) Any party may take the deposition of any person on stipulation of all the parties.

(g) Any party may serve on any person a subpena duces tecum requiring the person served to mail copies of documents, books or records to the party's counsel at a specified address, along with an affidavit complying with section 1561 of the Evidence Code.

The law pertaining to depositions on oral examination governs what may be sought, notice to other parties, and orders for the protection of parties and of the person served.

The party who issued the subpena shall mail a copy of the response to any other party who tenders the reasonable cost of copying it. [As amended effective May 1, 1980; previously amended effective July 1, 1979.]

Rule 1721. Statement listing witnesses and evidence

(a) A party may serve on any adverse party a request in substantially the following form:

TO: _____, Attorney for _____:

You are requested to serve on the undersigned, within 20 days, a statement of: the names and addresses of witnesses you intend to call at trial; a description of physical evidence you intend to offer; and a description and copies of documentary evidence you intend to offer or, if the documents are not available to you, a description of them. YOU WILL NOT BE PERMITTED TO CALL ANY WITNESS, OR INTRODUCE ANY EVIDENCE, NOT INCLUDED IN THE STATEMENT SERVED IN RESPONSE TO THIS REQUEST, EXCEPT AS OTHERWISE PROVIDED BY LAW. SEE RULES 1721 AND 1725, RULES FOR THE ECONOMIC LITIGATION PILOT PROJECT.

(b) The request shall be served no more than 45 days nor less than 30 days prior to the date first set for trial, unless otherwise ordered.

(c) A statement responding to the request shall be served within 20 days from the service of the request. Witnesses and evidence that will be used only for impeachment need not be included.

(d) No additional, amended or late statement is permitted except by written stipulation or unless ordered for good cause on noticed motion.

(e) Except as provided in rule 1725, a party upon whom a request was served may not call, as a witness against the party who served the request, a person whose name and address were not listed in the statement, nor introduce into evidence against that party any physical or documentary evidence not described in the statement or, in the case of documents that were available, copies of which were not attached to it.

(f) No request or statement served under this rule shall be filed, unless otherwise ordered.

(g) The court shall furnish forms for requests under this rule.

(h) The time for performing acts required under this rule shall be computed as provided by law, including Code of Civil Procedure section 1013. [Repealed and adopted effective May 1, 1980.]

Rule 1722. Transitional provisions

Any party who filed a statement pursuant to former rule 1721 prior to May 1, 1980, that remains under seal may direct the clerk either (1) to mail copies to all other parties or (2) to return all copies of the statement to the party who filed it.

A party who directs the clerk to mail the statement to the other parties and is later served with a request under new rule 1721 is deemed to have complied with the request to the extent the witnesses and evidence were disclosed in the statement.

Statements remaining on file under seal shall be discarded by the clerk on dismissal of the action or rendition of judgment. [Adopted effective May 1, 1980.]

Rule 1723. [Repealed effective May 1, 1980.]

Rule 1725. Calling witnesses; introducing evidence

(a) A party upon whom a request under rule 1721 was served may call not witness, and introduce no evidence, against the party who served the request, except for witnesses and evidence disclosed as required in rule 1721, or as provided in this rule.

(b) Witnesses and evidence used solely for purposes of impeachment may be called or offered without having been disclosed.

(c) An adverse party may be called as a witness without an intention to do so having been disclosed.

(d) Evidence obtained by discovery authorized by this chapter may be offered.

(e) The court may, upon such terms as may be just, for any cause specified in section 473 of the Code of Civil Procedure, permit a party to introduce evidence not otherwise permitted by this rule. If such relief is granted, the adverse party is entitled to a continuance to meet the new evidence and is entitled to meet the new evidence by evidence not disclosed in its statement.

(f) Nothing in this chapter limits the introduction of evidence in any hearing pursuant to section 585 of the Code of Civil Procedure. [Repealed and adopted effective May 1, 1980.]

Rule 1727. Pretrial conference

(a) Counsel shall confer personally or by telephone in an effort to narrow the issues or to resolve the dispute prior to trial.

(b) The court may require a pretrial conference in those cases or classes of cases in which it appears that the conference may be economical to the parties by narrowing the issues or resolving the dispute prior to trial. Except as otherwise provided by local rule or by order, if a pretrial conference is required, the procedures set out in rules 210 through 218 of the California Rules of Court shall apply to the extent they are not inconsistent with this chapter. [As amended effective May 1, 1980.]

Rule 1729. Trial setting

If possible, actions shall be assigned a date for trial that is no later than 50 days from the date a memorandum to set for trial is filed and served pursuant to rule 507 or, if another party files and serves opposition to the memorandum, from the date the court determines that the case is at issue as to all essential parties. [As amended effective May 1, 1980.]

Rule 1731. Jury trial

If the case is tried to a jury, the trial shall be conducted in accordance with the law applicable to the trial of civil actions generally. Where a jury is waived, the trial shall be conducted as set forth in rules 1733 to 1751, inclusive.

Rule 1733. Opening statement

An opening statement to the court by counsel for the parties shall be permitted in the manner and for the duration determined in the discretion of the court.

Rule 1735. Briefs

Trial briefs shall be permitted but not required.

Rule 1737. Examination of witnesses

Counsel for the parties and the trial judge may interrogate the parties and witnesses. Narrative testimony shall be permitted.

Rule 1739. Order of evidence and trial

The trial judge may determine the order in which the evidence is introduced and the trial is conducted.

Rule 1741. Written testimony and documents

(a) If the requirements of subdivision (c) are met, a party may introduce into evidence the affidavit of any witness, including reports of expert witnesses and statements of opinion that the witness would be qualified to express if testifying in person, if the affidavit is made on personal knowledge, sets forth evidence that would be admissible but for the hearsay rule, and affirmatively shows that the affiant would be competent to testify to the matters stated therein.

"Affidavit" includes declarations under penalty of perjury and "affiant" includes "declarant."

(b) Any party may call as a witness, for direct or cross-examination, the author of any such affidavit. Calling the affiant as a witness for direct examination is subject to the restrictions of rule 1725; calling the affiant as a witness for cross-examination within the scope of the affidavit is deemed "impeachment" under that rule.

(c) Such an affidavit shall be received in evidence if:

(1) The court determines admitting it will result in a saving of time for the court and counsel; and

(2) it is admissible pursuant to rule 1745; and

(3) a copy, together with the current address of the affiant, has been received by the party against whom it is offered at least 15 days prior to the trial, and the affiant is subject to subpena for the trial.

(4) If a party offering such affidavit was required to serve a statement pursuant to rule 1721, the affiant was listed in the statement.

(d) Documentary evidence other than affidavits described in subdivision (a) of this rule is admissible, subject to the provisions of rules 1711, 1725 and 1745. [Repealed and adopted effective May 1, 1980.]

Rule 1743. Record of Proceedings

Upon agreement of the parties, the court may order proceedings under this chapter to be electronically recorded in accordance with procedures approved by the Judicial Council.

Rule 1745. Privileged information

No privileged information shall be admitted, except as provided in Division 8 (commencing with section 900) of the Evidence Code. Subject to the provisions of section 352 of the Evidence Code and rule 1741, all other evidence relevant to the issues in the action shall be admissible. The trial judge shall determine the weight to be accorded any admissible evidence.

Rule 1747. Amended pleading

The trial judge may permit a pleading to be amended to conform to proof.

Rule 1749. Closing arguments

Closing arguments by counsel shall be permitted in the manner and for the duration determined in the discretion of the court.

Rule 1751. Findings of fact—conclusions of law

Findings of fact or conclusions of law shall not be required or made. Upon request of any party to the action made not later than the time of submission of the case for decision, the court shall issue a brief explanation of its decision either orally or in writing.

CHAPTER 2

Rules for Superior Courts

Rule 1801. Authority

The rules in this chapter are adopted pursuant to section 1823.4 of the Code of Civil Procedure and pursuant to the authority granted to the Judicial Council by the Constitution, article VI, section 6, to adopt rules for court administration, practice and procedure.

Rule 1802. Severability

If a rule in this chapter is invalid, all valid parts that are severable from the invalid part remain in effect. If a rule in this chapter is invalid in one or more of its applications, the rule remains in effect in all valid applications that are severable from the invalid applications.

Rule 1803. Applicability of general rules

Except where changed by these rules and Part 3.5 (commencing with section 1823) of the Code of Civil Procedure, all provisions of law applicable to civil actions generally apply to actions subject to these rules.

Rule 1805. Rules of construction

These rules are intended to and shall be construed so as to implement Part 3.5 (commencing with section 1823) of the Code of Civil Procedure.

Rule 1807. Construction of terms

As used in these rules, unless the context or subject matter otherwise requires:

(a) "Shall" is mandatory, and "may" is permissive.

(b) The past, present and future tense each includes the others.

(c) The singular and plural number each includes the other.

Rule 1809. Collateral estoppel

A judgment or final order, in respect to the matter directly adjudged, is conclusive between the parties and their successors in interest but does not operate as collateral estoppel of a party or a successor in interest to a party in other litigation with a person who was not a party or a successor in interest to a party to the action in which the judgment or order is rendered.

Rule 1811. Applicability of special rules; withdrawal for cause

(a) Except as otherwise provided in this rule, the rules in this chapter apply to every civil action in which the amount in controversy does not exceed $25,000 filed and heard between January 1, 1978, and December 31, 1980, in the Fresno Superior Court and in those branch courts of the Los Angeles Superior Court designated by the presiding judge of the Los Angeles Superior Court. These rules also apply to any action transferred to any such court by reason of improper venue or lack of jurisdiction in the court in which it was filed, if the action would have been subject to these rules if originally filed in the court to which it is transferred. [As amended effective July 1, 1979.]

(b) The rules in this chapter do not apply to any special proceeding, including any proceeding under Part 3 (commencing with section 1063) of the Code of Civil Procedure, any proceeding under Part 5 (commencing with section 4000) or Part 7 (commencing with section 7000) of Division IV of the Civil Code, any proceeding under the Probate Code, or any commitment proceeding under the Welfare and Institutions Code.

(c) Any action may be withdrawn from the provisions of this chapter by order of the court for good cause, either upon motion by any party on not less than five days written notice or upon the court's own motion. The motions shall be heard and determined not less than 30 days before trial of the action. No limited or partial withdrawal shall be permitted.

Rule 1813. Pleadings; enumeration

The pleadings allowed are complaints, answers, cross-complaints and answers to cross-complaints. The demurrer is not allowed.

Rule 1815. Pleadings; contents

(a) No technical forms of pleading are required. Each allegation of a pleading shall be simple, concise and direct.

(b) A pleading which sets forth a claim for relief, whether as a complaint or cross-complaint, shall contain:

(1) A short, plain statement specifying the date, place and nature of the occurrence or transaction upon which the claim is based and showing that the pleader is entitled to relief; and

(2) A demand for judgment for the relief to which he deems himself entitled. Claims may be pleaded alternatively or inconsistently. A complaint or cross-complaint need not be verified.

(c) An answer shall either contain a general written denial or admit or deny the allegations upon which the adverse party relies and shall contain a brief statement of any new matter constituting a defense. The answer need not be verified, even if the complaint or cross-complaint is verified. Allegations in a pleading to which a responsive pleading is required are deemed admitted if not denied.

(d) All pleadings shall be construed to do substantial justice. If fraud or mistake is alleged as the basis of a claim or defense, the circumstances of the fraud or mistake shall be stated with particularity.

Rule 1817. Jurisdictional statement

A jurisdictional statement shall be filed by the plaintiff with every complaint and by the cross-complainant with every cross-complaint. The statement shall state whether the action is a civil action subject to the rules of this chapter and shall disclose whether the amount in controversy exceeds $25,000 exclusive of attorney's fees, interest and costs. By filing a jurisdictional statement that states that the amount in controversy does not exceed $25,000, the plaintiff or cross-complainant expressly consents that any judgment in his favor entered in an action subject to the rules of this chapter may not exceed $25,000 including punitive damages but exclusive of attorney's fees, interest and costs. The statement of every plaintiff or cross-complainant represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign its statement and state its address. The signature of the person signing the statement constitutes a certificate by him that he has read the statement and that to the best of his knowledge, information, and belief, there is good ground to support it. If a complaint or cross-complaint is filed without a jurisdictional statement, it shall be presumed that the amount in controversy does not exceed $25,000, but only after reasonable notice and an opportunity to file the jurisdictional statement has been given to the complainant or cross-complainant. If the jurisdictional statement states that the amount in controversy exceeds $25,000, the action is not subject to the rules of this chapter.

Rule 1819. Pretrial motions

Pretrial motions are permitted subject to the following limitations and exceptions:

(a) A motion to dismiss may be made on the ground that the complaint or cross-complaint does not give notice of a claim on which relief can be granted.

(b) A motion to strike a cause of action of a complaint or cross-complaint pursuant to section 435 of the Code of Civil Procedure is permitted only on the ground that the cause of action fails to give notice of a claim on which relief can be granted. Motions to strike a prayer for relief in a complaint or cross-complaint pursuant to section 435 of the Code of Civil Procedure are permitted only on the ground that the prayer is not supported by allegations of the complaint or cross-complaint.

(c) A motion to strike an affirmative defense in an answer pursuant to section 453 of the Code of Civil Procedure is permitted only on the ground that it does not state facts sufficient to constitute a defense.

(d) A motion for a further account pursuant to section 454 of the Code of Civil Procedure is not permitted. [As amended effective July 1, 1979.]

Rule 1821. Notice of order

When the court rules upon a motion or makes an order with all parties or their counsel present, no additional notice to the parties is required. However, nothing in this rule affects the duty of the clerk to mail notice of entry of judgment pursuant to section 664.5 of the Code of Civil Procedure.

Rule 1823. Discovery limited

(a) Except as otherwise provided by the rules of this chapter, no discovery is permitted.

(b) Nothing in this rule prohibits written requests for admissions of fact or of the genuineness of documents pursuant to section 2030 of the Code of Civil Procedure.

Rule 1825. Statement of contentions, witnesses and evidence

(a) A party may serve on any adverse party a request in substantially the following form:

TO: _____, Attorney for _____:

You are requested to serve on the undersigned, within 20 days, a statement of: (1) your client's contentions in support of any claim or defense you will present at trial; (2) the facts on which you base such contentions; (3) the name and address of any witness you intend to call to testify; (4) the name, address and the office or position of every person with knowledge of facts relevant to the issues raised by the pleadings or by the contentions in your statement who at the time of the occurrence or transaction upon which the claim is based or at the time of the statement is an officer, director, superintendent, member, agent, employee, or managing agent of your client; (5) a description of the physical evidence, and a description and copy of any documents, you intend to produce in support of a contention; and (6) a description or copy of all documents, papers, books, accounts, letters, photographs, objects or tangible things, not privileged, that are relevant to the issues raised by the pleadings or by the contentions in your statement and are in the possession, custody, or control of your client. Attach to the statement copies of documents in the possession or control of or available to your client that you intend to rely upon at trial. Except as required by items (4) and (6) above, you are not required to identify witnesses, physical evidence, or documents that will be used only for impeachment.

Where inconsistent with the pleadings, the statement of contentions controls the subsequent course of the case unless at or before trial, on noticed motion, it is modified to prevent manifest injustice.

YOU WILL NOT BE PERMITTED TO CALL ANY WITNESS, OR INTRODUCE ANY EVIDENCE, NOT INCLUDED IN THE STATEMENT SERVED IN RESPONSE TO THIS REQUEST, EXCEPT AS OTHERWISE PROVIDED BY LAW. SEE RULES 1825 and 1829, RULES FOR THE ECONOMIC LITIGATION PILOT PROGRAM.

FAILURE TO DISCLOSE MAY ALSO BE A BASIS FOR SANCTIONS UNDER RULE 1829.1.

(b) The request shall be served no more than 45 days nor less than 30 days prior to the date first set for trial, unless otherwise ordered.

(c) A statement responding to the request shall be served within 20 days from the service of the request.

Witnesses and evidence that will be used only for impeachment need not be included.

(d) No additional, amended or late statement is permitted except by written stipulation or unless ordered for good cause on noticed motion.

(e) No request or statement served under this rule shall be filed, unless otherwise ordered.

(f) Except as provided in rule 1829 a party upon whom a request was served may not call, as a witness against the party who served the request, a person whose name and address were not listed in the statement, nor introduce into evidence against that party physical or documentary evidence not described in the statement or, in the case of documents that were available, copies of which were not attached to it.

(g) The court shall furnish forms for requests under this rule.

(h) The time for performing acts required under this rule shall be computed as provided by law, including Code of Civil Procedure section 1013. [Repealed and adopted effective May 1, 1980.]

Rule 1826. Transitional provisions

Any party who filed a statement pursuant to former rule 1825 prior to May 1, 1980, that remains under seal may direct the clerk either (1) to mail copies to all other parties or (2) to return all copies of the statement to the party who filed it.

A party who directs the clerk to mail the statement to the other parties and is later served with a request under new rule 1825 is deemed to have complied with the request to the extent the witnesses and evidence were disclosed in the statement.

Statements remaining on file under seal shall be discarded by the clerk on dismissal of the action or rendition of judgment. [Adopted effective May 1, 1980.]

Rule 1827. [Repealed effective May 1, 1980.]

Rule 1829. Calling witnesses; introducing evidence

(a) A party upon whom a request under rule 1825 was served may call no witnesses, and introduce no evidence, against the party who served the request, except for witnesses and evidence disclosed as required in rule 1825, or as provided in this rule.

(b) Witnesses and evidence used solely for purposes of impeachment may be called or offered without having been disclosed.

(c) An adverse party to the action may be called as a witness without an intention to do so having been disclosed.

(d) Evidence obtained by discovery authorized by this chapter may be offered.

(e) The court may, upon such terms as may be just, for any cause specified in section 473 of the Code of Civil Procedure, permit a party to introduce evidence not otherwise permitted by this rule. If such relief is granted, the adverse party is entitled to a continuance to meet the new evidence and is entitled to meet the new evidence by evidence not disclosed in its statement.

(f) Nothing in this chapter limits the introduction of evidence in any hearing pursuant to section 585 of the Code of Civil Procedure. [Repealed and adopted effective May 1, 1980.]

Rule 1829.1. Sanctions for failure to disclose real evidence or identity of witnesses

If a party upon whom a request under rule 1825 was served fails to disclose the information required by subparagraph (4) or subparagraph (6) of the request form set out in subdivision (a) of rule 1825 the court shall, if any other party is prejudiced by the failure, impose such sanction provided in Code of Civil Procedure section 2034 as is appropriate to the circumstances and, if the default is in bad faith or negligent, require the defaulting party to pay all of the prejudiced party's expenses of preparation to the date of imposition of the sanction including reasonable attorney fees. [As amended effective May 1, 1980; adopted effective February 4, 1978.]

Rule 1831. Depositions

(a) Any party may obtain and use the deposition of any other party or of any person for whose immediate benefit the action is prosecuted or defended, or anyone who either at the time of the occurrence or transaction upon which the claim is based or at the time of taking the deposition was or is an officer, director, superintendent, member, agent, employee, or managing agent of another party, in the manner and for the purposes provided by sections 2016 and 2018 through 2024 of the Code of Civil Procedure.

(b) Any party may take the testimony of any person by deposition upon court order if the court finds that it is more probable than not that the person will be unavailable at trial as a witness within the meaning of section 240 of the Evidence Code. The order may be made only on motion for good cause shown and upon notice to the person to be deposed and to all parties. If a deposition is ordered to be taken pursuant to this subdivision, such deposition may be used for any purpose authorized by section 2016 of the Code of Civil Procedure.

(c) Any party may take the deposition of any person on stipulation of all the parties.

(d) Any party may serve on any person a subpena duces tecum requiring the person served to mail copies of documents, books or records to the party's counsel at a specified address, along with an affidavit complying with section 1561 of the Evidence Code.

The law pertaining to depositions on oral examination governs what may be sought, notice to other parties, and orders for the protection of parties and of the person served.

The party who issued the subpena shall mail a copy of the response to any other party who tenders the reasonable cost of copying it. [As amended effective May 1, 1980]

Rule 1833. Request for inspection and reproduction of records and other tangible property

The provisions of section 2031 of the Code of Civil Procedure are applicable in any action subject to the rules of this chapter. A description of an item of evidence in terms essentially similar to the description given the item in a statement filed pursuant to rule 1825 by a party in possession, custody or control of the evidence shall be considered a sufficient description of the item for the purposes of a motion pursuant to Code of Civil Procedure section 2031.

Rule 1835. Order for examination by physician

The provisions of section 2032 of the Code of Civil Procedure are applicable in any action subject to the rules of this chapter.

Rule 1837. Trial setting

If possible, actions shall be assigned a date for trial that is no later than 120 days from the date an at-issue memorandum is filed and served pursuant to rule 206 or, if another party files and serves a counter-memorandum, from the date the court determines that the case is at issue as to all essential parties. [As amended effective May 1, 1980.]

Rule 1839. Jury trial

(a) Except as otherwise provided by this rule, where a jury is demanded and the case is tried to a jury, the trial shall be conducted in accordance with the law applicable to the trial of civil actions generally. Where a

jury is waived, the trial shall be conducted as set forth in rules 1841 to 1859, inclusive.

(b) The trial judge shall examine the prospective jurors to select a fair and impartial jury. However, upon completion of his initial examination, the trial judge shall permit counsel for each party who so requests to submit additional questions which the judge may put to the jurors. The scope of such additional questions shall be within reasonable limits prescribed by the trial judge in his sound discretion.

(c) Each party is entitled to challenges for cause. If there are only two parties, each party is entitled to three peremptory challenges. If there are more than two parties, the court shall, for the purpose of allotting peremptory challenges, divide the parties into two or more sides according to their respective interests in the issues. Each side is entitled to four peremptory challenges. If there are several parties on a side, the court shall divide the challenges among them as nearly equally as possible. If there are more than two sides, the court shall grant such additional peremptory challenges to a side as the interests of justice may require, provided that the peremptory challenges of one side to not exceed the aggregate number of peremptory challenges of all other sides. If any party on a side does not use his full share of peremptory challenges, the unused challenges may be used by the other party or parties on the same side.

Rule 1841. Opening statement

An opening statement to the court by counsel for the parties shall be permitted in the manner and for the duration determined in the discretion of the court.

Rule 1843. Briefs

Trial briefs shall be permitted, but not required.

Rule 1845. Examination of witnesses

Counsel for the parties and the trial judge may interrogate the parties and witnesses. Narrative testimony shall be permitted.

Rule 1847. Order of evidence and trial

The trial judge may determine the order in which the evidence is introduced and the trial is conducted.

Rule 1849. Written testimony and documents

(a) If the requirements of subdivision (c) are met, a party may introduce into evidence the affidavit of any witness, including reports of expert witnesses and statements of opinion that the witness would be qualified to express if testifying in person, if the affidavit is made on personal knowledge, sets forth evidence that would be admissible but for the hearsay rule, and affirmatively shows that the affiant would be competent to testify to the matters stated therein.

"Affidavit" includes declarations under penalty of perjury and "affiant" includes "declarant."

(b) Any party may call as a witness, for direct or cross-examination, the author of any such affidavit. Calling the affiant as a witness for direct examination is subject to the restrictions of rule 1829; calling the affiant as a witness for cross examination within the scope of the affidavit is deemed "impeachment" under that rule.

(c) Such an affidavit shall be received in evidence if:

(1) The court determines admitting it will result in a saving of time for the court and counsel; and

(2) it is admissible pursuant to rule 1853; and

(3) a copy, together with the current address of the affiant, has been received by the party against whom it is offered at least 15 days prior to the trial, and the affiant is subject to subpena for the trial.

(4) If a party offering such affidavit was required to serve a statement pursuant to rule 1825, the affiant was listed in the statement.

(d) Documentary evidence other than affidavits described in subdivision (a) of this rule is admissible, subject to the provisions of rules 1811, 1829 and 1853. [Repealed and adopted effective May 1, 1980.]

Rule 1851. Record of proceedings

Upon agreement of the parties, the court may order proceedings under this chapter to be electronically recorded in accordance with procedures approved by the Judicial Council.

Rule 1853. Privileged information

No privileged information shall be admitted, except as provided in Division 8 (commencing with section 900) of the Evidence Code. Subject to the provisions of section 352 of the Evidence Code and rule 1849, all other evidence relevant to the issues in the action shall be admissible. The trial judge shall determine the weight to be accorded any admissible evidence.

Rule 1855. Amended pleading

The trial judge may permit a pleading to be amended to conform to proof.

Rule 1857. Closing arguments

Closing arguments by counsel shall be permitted in the manner and for the duration determined in the discretion of the court.

Rule 1859. Findings of fact—conclusions of law

Findings of fact or conclusions of law shall not be required or made. Upon request of any party to the action made not later than the time of submission of the case for decision, the court shall issue a brief explanation of its decision either orally or in writing.

RULES FOR TRIAL COURTS IN PILOT PROJECT FOR ECONOMICAL LITIGATION

CHAPTER 1. RULES FOR MUNICIPAL COURTS

Rule 1711. Applicability of special rules; withdrawal for cause

(a) Except as otherwise provided in this rule, the rules in this chapter apply to every civil action filed and heard between January 1, 1978, and December 31, 1982, in the Fresno Municipal Court and in those branch courts of the Los Angeles Municipal Court designated by the presiding judge of the Los Angeles Municipal Court. These rules also apply to any action transferred to any such court by reason of improper venue or lack of jurisdiction in the court in which it was filed, if the action would have been subject to these rules if originally filed in the court to which it is transferred.

(As amended, effective July 1, 1981.)

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CHAPTER 2. RULES FOR SUPERIOR COURTS

Rule 1811. Applicability of special rules; withdrawal for cause

(a) Except as otherwise provided in this rule, the rules in this chapter apply to every civil action in which the amount in controversy does not exceed $25,000 filed and heard between January 1, 1978, and December 31, 1982, in the Fresno Superior Court and in those branch courts of the Los Angeles Superior Court designated by the presiding judge of the Los Angeles Superior Court. These rules also apply to any action transferred to any such court by reason of improper venue or lack of jurisdiction in the court in which it was filed, if the action would have been subject to these rules if originally filed in the court to which it is transferred.

(As amended effective July 1, 1981.)

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SMALL CLAIMS RULES FOR DESIGNATED RECORDKEEPING AND EXPERIMENTAL COURTS

Rules 1901–1936. Repealed, effective July 1, 1981

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EXHIBIT K

THE CALIFORNIA ECONOMICAL LITIGATION PILOT PROJECT

AN EVALUATIVE STUDY
February, 1981

Loyola Law School
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I. Summary

A. Background

In 1976, the California legislature authorized an experimental court project designed to reduce the cost of civil litigation, especially in cases where the amount in controversy was small. The proponents of the project were concerned that the high cost of litigation tended to discourage litigants from using the judicial process when the potential recovery was relatively small.[1] By making such litigation more "cost effective", litigants would not be forced to abandon meritorious claims or defenses.

The Judicial Council of California was empowered to select two superior courts and two municipal courts for a three-year experiment.[2] The courts chosen were located in Fresno[3] and in Los Angeles. Because of the size of the Los Angeles Superior Court, only one of the branch courts -- the Southwest Branch located in Torrance, California -- was selected for the project. Except for certain ex parte and other summary proceedings, all cases filed in the Fresno and Los Angeles municipal courts and all cases filed in the Fresno and Torrance superior courts

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1. The project was to take place in municipal court where claims would reach $5,000 and in superior court where the claims would range between $5,000 and $25,000.

2. The project has subsequently been extended through 1982.

3. Fresno, a city of nearly 200,000, is located in the San Joaquin Valley, a major agricultural center approximately equi-distant from San Francisco and Los Angeles.

where the amount in controversy did not exceed $25,000 were to be subject to the experimental rules. Litigation costs were to be reduced by four procedural changes: simplification of pleadings, elimination of demurrers and certain other motions, restrictions on discovery, and modifications of procedures used in court trials.

Since discovery has been thought to be a significant cost of litigation in federal courts as well as state courts, the United States Department of Justice, Office for the Improvements in the Administration of Justice commissioned a study to determine the effectiveness of the ELP discovery changes in reducing litigation costs and the potential applicability of such changes to federal civil litigation.[4]

B. The Empirical Study

Data were collected from court files and records in both superior courts -- Fresno and Torrance and, for comparison, in the United States District Court for the Central District of California. Data collection was divided into several phases. First, data were abstracted from the files of approximately 100 randomly selected cases filed in 1978 in each of the two state courts. These data were evaluated to determine the types of cases being filed in the two project courts. Since many of these cases were not even at issue, a second group of nearly

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4. The study did not evaluate the other ELP improvements primarily because they tracked existing federal practice. Only cases from superior courts were examined as municipal court cases would not have provided a basis for comparison with federal court cases due to the lower jurisdictional amount.

200 cases was examined to determine how much discovery had taken place. Presumably these cases were ready for trial as mandatory settlement conferences had been scheduled.

The next step involved developing data from similar cases with unrestricted discovery for comparison with the ELP cases. Data were collected from similar cases which had been filed in the same two state courts prior to the effective date of the ELP project.[5]

The next phase involved a parallel effort in the federal court. First, data were collected from a random sampling of all cases filed in 1977 to determine to what extent federal cases were similar to those being processed in the state courts. Then data were collected from those federal cases which seemed similar to the state cases and which appeared ready for trial.

The final phase involved the distribution of a questionnaire to counsel for the parties in the 200 ELP cases from Fresno and Torrance. Their responses were then tabulated to determine attorney reaction to the ELP project.

1. The "Typical" ELP Case

The data reveal many similarities between the Torrance and Fresno cases. In both courts, a high percentage of cases (nearly two-thirds in Fresno and more than 80 percent in Torrance) were tort cases -- more than half resulted from

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5. Finding "comparable cases" presented a problem as the amount in controversy does not generally appear in personal injury suits. The researchers were required to make a subjective judgment as to which cases would have been subject to the ELP rules (i.e., had claims under $25,000) had they been filed after the ELP project became effective.

motor vehicle accidents. The remaining cases were contract cases -- most sought to recover a fixed sum of money either based on a loan or promissory note or for goods or services received. Most were brought by a single plaintiff against a single defendant although a substantial percentage involved two defendants. Over 90 percent of the cases were relatively straightforward; very few involved multiple claims or complex issues.[6] Although the plaintiffs commonly sought $10,000 or more -- many sought the $25,000 maximum -- viewed realistically, most claims were for much less. Of those that settled, the majority settled for approximately $5,000.

The second most common category was the contract cases. Here there were bona fide claims of $10,000 or more. But in most there was no real factual dispute and little need for discovery. Many resulted in default judgments.

Thus, a "typical" ELP case could be described as follows: a personal injury and property damage suit resulting from a two car motor vehicle accident with substantial property damage but relatively minor personal injuries; brought by a single plaintiff against either one or two defendants; simple and straightforward claims with trial estimated to last two days or less; and a settlement value of approximately $5,000.

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6. The relative simplicity of these cases was shown by counsels' estimate of trial length: nearly 90 percent of the trials were expected to last two days or less.

This picture of a typical ELP case tended to undercut one of the goals of the project -- an evaluation of the potential applicability of these rules in federal court. Needless to say, the case described above will seldom find its way into federal court as it would be difficult to make a "good faith claim" in excess of the $10,000 jurisdictional amount. Because of the dissimilarity between ELP cases and federal court cases, it was not possible to make a sound recommendation concerning the possible use of ELP type rules in federal courts.

2. Discovery

Given the nature of the lawsuits involved, it is not surprising that relatively little discovery took place in these cases. The ELP rules prohibit interrogatories and non-party depositions.[7] Depositions of parties is permitted but there were few of them, less than one per case.[8]

It was necessary to try to determine the extent that discovery was effected by the ELP rules. Data were collected on similar cases where discovery was not limited as it is under the ELP rules. As mentioned previously, data were collected in both Fresno and Torrance from cases filed prior to the applicability of the ELP rules. As expected, more discovery took place in these "control cases" since

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7. Depositions of non-parties can be conducted with court approval or by mutual consent.

8. There were some differences between the two courts and with respect to use of discovery by plaintiffs and defendants. There was more discovery in Fresno than in Torrance; the defendants made somewhat greater use of discovery than did the plaintiffs.

interrogatories and non-party depositions were permitted. Interestingly, the use of discovery in the two courts was surprisingly similar.

There was a substantial decrease in the use of discovery in ELP cases. The use of interrogatories decreased from 1.5 per control case to zero per ELP case. Similarly, the use of non-party depositions was reduced from 0.7 per control case to zero per ELP case. Surprisingly, in both courts the use of party depositions -- unrestricted by the ELP rules -- was also reduced 30 to 45 percent. Combined, the result was an 80 percent reduction in discovery! The cost of discovery was reduced 70 percent.[9]

3. Effect On Trial Preparation

There are at least three other factors that must be considered in evaluating the success of the ELP project. First there is a question as to whether the absence of some formal discovery devices has made it more difficult, or possibly even impossible, for counsel to properly prepare their cases for trial. Second, there is the possibility that counsel was required to utilize other less formal methods of obtaining the same information at equal or even greater expense. And finally, if the ELP project does actually reduce litigation costs, have these savings been passed on to the litigant?

To obtain information concerning counsel's appraisal of the ELP rules, a questionnaire was distributed

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9. The added cost of the discovery statement or contention statement reduced the net cost saving to approximately 50 percent.

to the 300 attorneys who appeared in the cases that had been sampled in the data collection effort. Usable responses were received from more than half of the attorneys. The reaction of counsel to the project varied substantially depending on location and on whether they typically represented plaintiffs or defendants. For example, 43.6 percent of Fresno plaintiffs' attorneys thought the project should be totally abolished, while only 21.6 percent of Torrance plaintiffs' attorneys favored abolition. The defendants' attorneys were less supportive. While 34.5 percent of the Torrance defendants' attorneys favored abolition, the great majority of the Fresno defendants' attorneys -- 76.9 percent -- favored total abolition of the project.[10]

Approximately half of counsel indicated that the rules did, in fact affect their case preparation; most indicated that they would have used interrogatories had they been permitted. Similarly, most counsel strongly favored modifying the program to permit limited use of interrogatories. Responses to questions dealing with the methods used to obtain information which would normally have been available through discovery were not conclusive. Most plaintiffs' attorneys indicated that they obtained the information either from their

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10. The difference in attitude vis-a-vis the parties may be explained by defendants' typical use of more discovery; they are therefore more significantly affected by the ELP rules. It is more difficult to explain the differences between Fresno and Torrance. One reason may be that the idea for the ELP project originated with two Los Angeles attorneys. Fresno counsel frequently expressed the feeling that this experiment was being forced on them by the Governor's office.

clients, from voluntary disclosures by the opponent or, less frequently, through the use of a private investigators. Less than 25 percent indicated that they were unable to get the needed information. Defense counsel generally were able to get the needed information from the plaintiff's deposition, although about 25 percent indicated that they used a private investigator. Approximately 20 percent indicated that they were unable to get the information.

Responses to questions designed to reveal the effect on ELP cases resulting from counsel's inability to "discover" needed information produced no real pattern. Almost the same number of attorneys indicated that they were unable to try their case because of lack of information and therefore had to settle as indicated that they were unable to settle the case because of the lack of information and therefore had to try it. By far the most common response was that the inability to get the missing information had "no significant effect" on case preparation.

When asked to comment about the effect that the ELP rules had on the outcome of the case, very few provided specific or definitive examples. Some did indicate it was "more difficult" to prepare or to settle the case, but except for a few examples where one party was prevented from presenting its evidence because it has failed to file the required contention statement, there was virtually no indication that the outcome of the case had actually been affected by the ELP rules.

4. Passing on the Reduction in Discovery Costs

Although the empirical data showed a significant reduction in discovery activity and discovery costs, counsels' responses did not reflect an overall reduction in case preparation time or costs. For example, the same percentage of Fresno plaintiffs' counsel found that the ELP rules had substantially decreased case preparation time as found that the rules had substantially increased preparation time. Almost 40 percent concluded the rules had no significant effect on case preparation time. More than twice as many Fresno defendants' counsel concluded that the ELP rules had substantially increased preparation time as thought it had substantially decreased preparation time; again, approximately 40 percent thought the rules had no significant effect.

Over 70 percent of the plaintiffs' attorneys in both cities indicated that the rules had no effect on the attorney fees charged to clients although the majority saw the rules as having a substantial reduction on the costs, other than attorney fees, charged their clients.[11] Most defendants'

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11. This apparent inconsistency undoubtedly results from the percentage or contingent fee arrangement of the personal injury/property damage suits which comprise the majority of these cases.

counsel indicated they have not reduced fees charged their clients. Approximately the same percentage indicated they had raised fees as indicated they had decreased fees. With respect to costs not including attorney fees, defendants' general view was that there was either a slight increase or decrease, with the majority indicating "no effect." These data seem to indicate that, at least from the defendants' point of view, the reductions resulting from reduced discovery are nearly equalled, if not slightly surpassed, by the cost of obtaining the same information from other sources.

One factor tending to increase preparation time and costs may have been counsels' unfamiliarity with the new ELP rules. A major source of irritation to all concerned has been the contention statement.[12] Although questions concerning the contention statement were not distributed to a statistically significant sample of attorneys, there was a general feeling that they were time consuming and not of great value. The contention statement has been substantially modified so that its preparation will no longer be a burden to counsel.

C. Conclusions

Several conclusions can be drawn from this study. The first is that the typical small personal injury or breach of

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12. Although the rules applicable to municipal courts merely required a list of witnesses, the superior court ELP rules require the filing of a document similar to the "final pretrial stipulation" required by many federal district courts and generally disfavored by attorneys. The Torrance court added its own more detailed requirements.

contract/promissory note case involves relatively little discovery and, at least in these two courts, a very low incidence of serious abuse. However, the ELP study shows that even in this type of case more discovery takes place than is actually needed. The ELP rules have significantly reduced the amount of discovery taking place in the cases subject to these rules. Although the reduction in discovery activity in the average case is not great, the potential cost savings, in relation to the typical claims, is quite significant.

Although many counsel found the rules annoying and inconvenient or prefer a program that permitted some limited use of interrogatories, few have reported any significant affect on the outcome of the lawsuit. The one discouraging note, however, is the indication that little if any of the savings have been or will be passed on to the clients. In fact, defendants' counsel indicated that the cost of obtaining information through other devices, as well as the preparation of the contention statement, may cause them to raise their fees.

This does not necessarily mean that the project has failed. While the goal of the ELP project was to reduce the cost of litigation, and there was an implicit assumption that that reduction would be passed on to the litigants, there was also a concern that in many small cases the cost of preparing the case for litigation was so great, in relation to the amount involved, that plaintiffs would be unable

to bring meritorious suits and defendants unable to present meritorious defenses. By reducing the cost of discovery by up to 70 percent, these meritorious claims and defenses may no longer have to be abandoned.

EXHIBIT L

Evaluation of Telephone Conferencing to Conduct Motion Hearings in Civil Litigation: Preliminary Findings

Action Commission to Reduce Court Costs and Delay
and the Institute for Court Management
October, 1980

Summary of Preliminary Findings from Initial Phase I Research

During the initial stage of the Phase I research, the primary focus has been upon developing an understanding of current utilization patterns, using both site visits and telephone interviews. Although the Phase I research has only been underway for three months, it is possible to report some preliminary findings that are directly relevant to the proposed Phase II research. These may be summarized as follows:

(a) Current utilization patterns. Prior to the start of the Phase I project, telephone conferencing had been viewed as a novel idea that had been adopted in a few jurisdictions by pioneering judges. The Phase I research indicates that, although telephone conferencing is used in only a relatively small percentage of courts, the number of courts in which it is used by at least one judge is larger than initially realized. These courts vary widely in terms of their jurisdiction, geographic location, urban/rural setting, and caseload size. For example, Phase I research has produced information on the use of telephone conferences to conduct civil motion hearings and other types of proceedings in civil cases in four federal district courts, two state courts of appeal, twelve state trial courts of general jurisdiciton, and two state trial courts of limited jurisdiction. This fact that the range of courts is so broad (see Figure 1) suggests that civil motions are amenable to telephone conferencing in a variety of judicial contexts.

Yet, while telephone conferencing is used in more courts and by more judges than originally believed, the picture is not one of widespread diffusion. Even within a given state, telephone conferencing may be used in trial courts of general jurisdiction in some judicial districts but not in others. Within a single judicial district where it is used, not all of the judges utilize telephone conferencing. In Wisconsin's 10th Judicial District, for example, four of the sixteen judges use it frequently, six use it occasionally, three use it rarely, and three never use it at all for civil motion hearings. A tentative explanation for this variable-use pattern is that telephone conferencing has been adopted on an ad hoc basis, with limited coordinated effort among judges or by other court officials, and each judge who has utilized the innovation has adapted it to his own case management approach. To the extent that the judges share a similar decision-making style, they use the telephone in a similar manner.

While the Phase I study is focused on the use of telephone conferencing in civil motion hearings, preliminary findings indicate that a very wide range of court business is conducted by telephone. In civil cases, the telephone is used for scheduling conferences, pretrial conferences, motion hearings, and the setting of trial dates. Telephone conference is used less frequently in criminal cases, but its functions in some courts include taking pleas as well as conducting motion hearings. Other uses include taking depositions and obtaining expert witness testimony in child custody cases, commitment proceedings, and small claim cases.

Figure 1

Jurisdictions Where Telephone Conferencing is Used to Conduct Civil Motion Hearings

Jurisdiction	Geographic Area	Urban/Rural	Annual Civil Caseload
Federal District:			
Maryland (Baltimore)	East	Urban	2,688
New Jersey (Newark)	East	Urban	3,688
Pennsylvania (Philadelphia)	East	Urban	5,007
Wyoming (Cheyenne)	West	Rural	397
State Court of Appeals:			
New Mexico (Santa Fe)	West	Rural	517
Washington (Spokane)	West	Rural	2,000
State Trial Courts of General Jurisdiction:			
Arizona (Phoenix)	West	Urban	---
California (Fresno)	West	Urban	9,958
(Los Angeles)	West	Urban	136,819
Florida (West Palm Beach)	South	Urban	12,000
Georgia (Atlanta)	South	Urban	5,500
Massachusetts (Fall River)	East	Urban	2,300
Michigan (Big Rapids)	Midwest	Rural	---
(Pontiac)	Midwest	Rural	21,000
New Jersey (Atlantic City)	East	Urban	4,967
New Mexico First District (Santa Fe)	West	Rural	3,787
Washington (Lincoln County)	West	Rural	---
Wisconsin Tenth District			
(Chippewa County)	Midwest	Rural	331
(Douglas County)	Midwest	Rural	320
(Dunn County)	Midwest	Rural	243
(Eau Claire County)	Midwest	Rural	690
(Pierce County)	Midwest	Rural	291
(Polk County)	Midwest	Rural	332
(Rusk County)	Midwest	Rural	163
(Sawyer County)	Midwest	Rural	153
State Trial Courts of Limited Jurisdiction:			
California (Los Angeles)	West	Urban	36,245
Ohio (Columbus)	Midwest	Urban	---

Telephone conferencing is an alternative to two traditional means of resolving motions. First, motions may be decided strictly on the papers by the judge with no oral presentation by the parties. Briefs, memoranda, points and authorities are evaluated by the judge in assessing the claims made by the moving party. Second an in-person hearing before the court may be held. Usually (though not in every jurisdiction), the lawyers for the parties have filed papers discussing the merits of the motion, so that the purpose of the hearing is for counsel to present oral arguments and for the judge to have the opportunity to gain additional information.

Jurisdictions vary widely in terms of the patterns of utilization of these two types of methods of resolving motions, and there is virtually no information available in any jurisdiction on the percentage distribution of different types of motions heard using the different methods available. In order to gain some sense of the relative frequency of telephone conferences in the jurisdictions where this innovation is now used, the judges were asked how often and in what types of matters they used the telephone. While self-reported estimates are imperfect because of selective perception and fading memories, the preliminary results are useful in two respects. First, they convey the judge's perception and that itself is an important factor. Second, they can be corroborated by more objective measures in the future. Hence, for the present, they provide a useful indicator of utilization patterns.

One relationship that emerges is that telephone conferences are more frequent for certain kinds of motions than others. Generally, motions that may be dispositive of the case (i.e., substantive) are argued less frequently by telephone than those that are procedural or are matters of discovery. Of the motions decided by telephone, substantive motions appear to be the most infrequent, as seen in Table I While procedural and discovery motions are more frequent in absolute terms than substantive motions, judges also claim that a higher percentage of these motions are resolved by telephone than are substantive motions. One of the questions to be explored in this proposal research is the extent to which telephone conferences are used as an alternative to in-person hearings or--equally plausible--as an alternative to resolution of relatively unimportant procedural motions that would otherwise be decided on the papers without any argument by counsel.

(b) Attitudes toward use of the telephone for motion hearings. The Phase I project will ultimately gather information from both judges and lawyers on their attitudes toward telephone conferencing. At this stage, interviews have been conducted only with judges, since they were most accessible and since they are especially relevant sources of information on other topics such as utilization patterns and the innovation process. A current list of the judges that have been interviewed is found in Figure 2. Not surprisingly, all of the judges who utilize telephone conferencing have a favorable opinion of its use in motion hearings. They explain their assessments in terms of time and cost savings that accrue to the court, counsel, and clients, and tend to feel that telephone conferencing has little or no impact—either positive or negative--on the quality of the proceedings.

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1 Areas covered in the interviews with judges who use the telephone conferencing have included the general quality of the phone conferences, possible problems with control of the proceedings, procedures of counsel, ability to ask questions, and length of the proceedings.

TABLE I

Frequency of Civil Motions in

Trial Courts Decided by

Telephone Conference

MOST FREQUENT	To compel discovery
	To consolidate cases
	To intervene
	To join parties
	For leave to amend pleadings
	To sever parties
OCCASIONAL	To dismiss for:
	failure to join a party
	failure to state a claim
	improper venue
	lack of personal jurisdiction
	For definite statement
RELATIVELY INFREQUENT	To strike the pleadings
	Summary judgment
	For default judgment

Figure 2

INDIVIDUAL JUDGES CONTACTED AND INTERVIEWED DURING PHASE I OF THE TELEPHONE CONFERENCING PROJECT

JURISDICTION	COURT	JUDGE
Federal District Court:		
Maryland (Baltimore)	U.S. District Court for MD	Judge Joseph Young
Maryland (Baltimore)	U.S. District Court for MD	Judge Alexander Harvey, II
Maryland (Baltimore)	U.S. District Court for MD	Judge Frank Kaufman
New Jersey (Newark)	U.S. District Court for NJ	Judge Frederick B. Lacey
Pennsylvania (Philadelphia)	U.S. District Court for PA, Eastern District	Judge Alfred L. Luongo
Wyoming (Cheyenne)	U.S. District Court for WY	Judge Clarence A. Brimmer
State Court of Appeals:		
New Mexico (Santa Fe)	New Mexico Court of Appeals	Judge William R. Hendley
Washington (Spokane)	Washington Court of Appeals, Div. III/Dist. II	Chief Judge Dale M. Creen
	Washington Court of Appeals, Div. III/Dist. III	Judge Ray E. Munson
	Washington Court of Appeals, Div. III/	Commissioner Michael F. Keyes
State Trial Courts of General Jurisdiction:		
Arizona (Phoenix)	Superior Court of AZ, Maricopa Cty., Phoenix	Judge Thomas C. Kleinschmidt
California (Los Angeles)	Superior Court of CA, LA Cty., Torrance	Judge Kenneth Andreen
California (Fresno)	Superior Court of CA, LA Cty., Fresno	Judge August J. Goebel
Florida (W. Palm Beach)	Florida Circuit Court, XV Judicial Circuit	Judge John Beranek
	Florida Circuit Court, XV Judicial Circuit	Judge Daniel T.K. Hurley
	Florida Circuit Court, XV Judicial Circuit	Judge Timothy Poulton
Georgia (Atlanta)	Georgia Superior Court, Atlanta Judicial Circuit	Judge Charles L. Weltner
Massachusetts (Cambridge)	Superior Court of MA	Judge Thomas R. Morse, Jr.
Massachusetts (Fall River)	District Court of MA, Briston Cty./2nd Dist.	Chief Judge Milton R. Silva
Michigan (Pontiac)	Michigan Circuit Court, VI Judicial Circuit	Judge Gene Schnelz
Michigan (Big Rapids)	Michigan Circuit Court, 48th Judicial Circuit	Judge Lawrence Root
New Jersey (Atlantic City)	New Jersey Superior Court, Vicinage I	Judge Philip A. Gruccio
New Mexico (Santa Fe)	New Mexico District Court--	
	First Judicial Dist./Div. I	Judge Thomas A. Connelly
	First Judicial Dist./Div. III	Judge Lorenzo Garcia
	First Judicial Dist./Div. IV	Judge Bruce E. Kaufman
Washington (Davenport)	Superior Court of Washington, Lincoln City, Davenport	Judge Willard Zellmer

Figure 2 (Continued)

INDIVIDUAL JUDGES CONTACTED AND INTERVIEWED DURING PHASE I OF THE TELEPHONE CONFERENCING PROJECT

JURISDICTION	COURT	JUDGE
Wisconsin	Wisconsin Circuit Court, Tenth Judicial District	
	Chippewa County	Judge Robert Pfiffner
	Chippewa County	Judge Richard Stafford
	Douglas County	Judge Arthur A. Cirilli
	Dunn County	Judge Donna J. Muza
	Eau Claire County	Judge Thomas H. Barland
	Eau Claire County	Judge William D. O'Brien
	Eau Claire County	Judge Karl F. Peplau
	Pierce County	Judge William E. McEwen
	Polk County	Judge Robert Weisel
	Rusk County	Judge Donald J. Sterlinske
	Sawyer County	Judge Alvin L. Kelsey
State Trial Courts of Limited Jurisdiction		
California (Los Angeles)	Los Angeles Municipal Court	Judge Leon Emerson
Ohio (Columbus)	Franklin County Municipal Court	Judge James C. Britt, Sr.

All of the judges interviewed to date regard telephone conferencing as reducing the time and costs of civil litigation. The time of the court is thought to be saved in several ways, primarily by shortening the length of the hearing, facilitating scheduling, and moving cases faster. In geographically large judicial districts, telephone conferencing is said to result in less need for travel by the judge and court staff to outlying areas. The judges also believe that lawyers save time, especially in travel to the court, by telephone conferences. Most of the judges assume that the lawyers pass these savings on to their clients, but they have no evidence on this point.

Significantly, the judges who utilize telephone conferencing report no serious difficulties in conducting the conferences. Technical problems--e.g., disconnected parties, static on the line, inadequate amplification, difficulty in identifying the speaker--seem to be rare occurrences. In terms of arranging the hearings and conducting them, none of the judges experienced problems serious enough to warrant holding counsel in contempt for failure to be present at the scheduled time or for inappropriate behavior during a conference.

(c) Economic costs and potential savings. Few of the judges interviewed in the Phase I study have been familiar with the costs of telephone conferencing equipment. Data on how much it costs to operate a conferencing system in different court settings must still be developed, but should be ascertainable from the financial records of courts that use the system and from the tariffs of the respective regional operating units of the American Telephone and Telegraph Company, which generally provide the telephone equipment used by courts.

In most of the jurisdictions that utilize telephone conferencing, the court bears the costs of the conference calls for several reasons. First, the court's telephone equipment is generally connected to a WATS line. While the judges are not certain about the exact cost of the calls, they perceive that the WATS line service makes the calls relatively inexpensive. Second, the judges view the cost of calls as a reasonable expenditure of public resources, because of the savings to counsel and clients. Third, they view the conference call as benefiting the court by reducing the length of hearings, facilitating scheduling, and thereby moving cases through the system more quickly.

The savings resulting from telephone conferencing are more speculative, and involve a wide range of different kinds of potential benefits for different participants in the process, including judges, court support staff, lawyers, and litigants. The preliminary research indicates that there may be savings in terms of reduced expenditures for time spent at several different stages--including scheduling future appearances, travelling to and from the court site, waiting for the case to be called, and participating in the proceedings. Additionally, there may be gains to the justice system in terms of reduced overall case processing time.

(d) The innovation process. Virtually all of the judges who use telephone conferencing say that they thought of the idea themselves and implemented it with minimal discussions with other parties such as court officials and members of the bar. Most of them had had some experience with conference calls during their years

in private law practice. After coming on the bench, they began using telephone conferencing for various types of court business because they thought it was a good idea that would save time and money. The innovation has been adopted with limited suggestions or technical assistance from a state court administrator's office, independent organization, or judicial training institution. To some extent, especially in rural areas, necessity may be the mother of this innovation--when distances are very long, use of the telephone (especially for relatively minor matters) is seen by some judges to be an essential aspect of sound judicial administration. Once the judges have initially adopted it, the extent to which they use telephone conferencing seems to depend on the length of time they have used it. Those who have had greater opportunity to explore various applications appear to use it more extensively.

The judges who use telephone conferences report that the innovation has wide support among the bar. It is not clear, however, to what extent any type of mandatory telephone conferencing procedure, substituted for in-person hearings, would be acceptable to lawyers. Although the evidence is fragmentary, there are indications that some judges tend to encourage telephone conferencing in cases where they have a high degree of confidence that the lawyers will like this idea.

THE PETRIFIED FOREST : LITIGATION IN AMERICA

EXHIBIT M

By STEPHEN J. FRIEDMAN

Washington is well-known as a city of lawyers, but it is also a city of economists. While there are surprising similarities between those professions that are often too little appreciated, there is also a friendly rivalry. In particular, my economist friends are sometimes heard to mutter, "There are too many lawyers — and too much litigation." That is a not uncommon complaint, and it has some basis. As of the end of 1980, there were 574,810 lawyers in the U.S., 31 per 12,000 people. In Japan there is only one lawyer per 12,000 people.

But, in an unaccountable lapse, those same economists forget that lawyers, like everyone else, function in a labor market which responds to supply and demand, and that the flood of young men and women into the legal profession has met a swelling demand. We ought not to disregard their counsel, however, for economics has a useful perspective to offer in its focus on the overall effects of certain kinds of activity and in the trade-offs that attend the pursuit of any single set of values to the exclusion of others.

In that context, I would like to share with you some thoughts about our common responsibility to assure that the legal system continues to perform its vital social functions — to help order human affairs, in both private and public law, and to provide a method for resolving disputes and declaring rights.

We have, of course, an extraordinarily rights-oriented and litigious society. For better or worse, Americans believe it is essential to have a forum to have their rights determined. We place great importance on an independent judicial check on the exercise of governmental power. In pursuit of that end, government agencies, like the SEC, are required to go to court to enforce their policies. I deeply fear that in many ways our litigation system is not performing its basic functions adequately. In particular, litigation has become so lengthy, expensive and burdensome that it no longer offers an effective forum for the determination of rights or the implementation of public policy. While the petrification of the legal system has received much attention in the context of criminal justice, its implications for the civil system are at least as important.

There is substantial evidence of this judicial gridlock. During the year ended June 30, 1980, almost 169,000 civil cases were filed in the U.S. District Courts — 327 per judge. This is an increase of over 93.3 percent since 1970; during that same decade, the economy grew by 36 percent in real terms and the population by 9 percent.

Even more important than the numbers are some trends that suggest strongly that the litigation system is no longer doing its job. The most dramatic is the volume of settled cases. Civil cases in the Federal district courts that were terminated without court action reached an all-time high in 1980 of 44.4 percent (compared with 39.1 percent in 1970). Even more extraordinary is the fact that the percentage of cases reaching trial declined to 6.5 percent in 1980 from 10 percent in 1970. Consider the SEC enforcement program. Almost 90 percent of our enforcement actions are settled. This makes sense for the commission as a matter of resource allocation. Private parties also think it makes sense for them — as the large percentage of settlements proves. But it raises significant questions about the role of the courts in the process of resolving disputes over legal rights and principles.

Moreover, many settlements come on the eve of trial after the expenditure of significant resources in time and money for pretrial discovery and pretrial motions. Newspaper reports estimate that AT&T spent $250 million to prepare for its defense in the government's antitrust case and expected to call 400 witnesses. The government spent approximately $10 million to ready the case for trial. Recently, the trial date was deferred to give the parties time to reach a settlement, (before resuming Wednesday). The discovery period in the Justice Department's antitrust action against IBM lasted 10 years.

Is this trend toward settlement positive or negative? Of course, it is far preferable for people to settle their disputes by agreement rather than through the coercive order of a court. But it strains the imagination to call a settlement after discovery — after the expenditure of hundreds of thousands of dollars, or millions, in legal fees and countless hours of executive time in what has become a very formal discovery process — as settlement by agreement rather than litigatin. The discovery process has clearly become a weapon in modern litigation strategy. You are all well aware of the breadth of requests for documents, the endless pages of interrogatories and the extensive depositions that are commonplace, and the great burden of time and expense that they impose. There are many companies, and certainly many individuals, that simply do not have the resources to engage in that kind of exercise.

Moreover, we have to ask ourselves why parties settle at that stage when so much time and expense has already been consumed? The conventional wisdom holds that it is because discovery has enabled both sides to see the likely outcome. There are other possibilities: that, for example, the additional expense of a trial is not worth the satisfaction of vindication to the defendant when the same expenditure in settlement will buy immediate respite; or that, even with discovery completed, the legal principles are sufficiently vague that the result is still highly uncertain for the parties.

I fear that the burden discovery and litigation, and particularly the time involved, is a substantial impediment to the implementation of public policy. Whatever one thinks about the merits of the civil antitrust proceedings against IBM and AT&T — and I am certainly not expressing any opinion about them here - can't help feeling that the time and resources required to obtain a judgment make it very difficult for an antitrust policy to have the required effect on the structure of the economy or the amount of competition in our markets. Some cases take so long that they are overtaken by changes in the marketplace. The result is a pressure for settlement that may often blur the edge of the original policy objectives being sought. I have used the antitrust cases as examples because they are the most dramatic examples, but the same pattern is found in the administration of the securities laws.

The classic response to these problems has been to add more judges and employ more informal administrative procedures. That approach may only defer, rather than solve the problem. The number of judges has not kept pace with the volume of litigation, and the result has been increased pressure for settlement from judges with hopelessly overburdened calendars. Administrative agencies have turned to administrative law judges. That may result in some cost savings, but still creates substantial delays. The average time to try and complete the 11 most recent litigated SEC administrative proceedings was 35 months. The longest proceeding took 72 months (clearly an aberration), and the shortest 18 months.

While the petrification of the legal system has received much attention in the context of criminal justice, its implications for the civil system are at least as important.

The use of administrative law judges suggests another trend which is worthy of some note: the significant movement away from the judicial system as a method of resolving disputes in a contested forum. For example, in recent years, there have been many articles in the press about extrajudicial minitrials, a variant on arbitration. In the securities industry, the use of voluntary arbitration to settle small claims disputes between securities firms and their customers has increased significantly. Between 1978 and 1980 the number of small claims arbitration filings grew from 75 to 229, largely as a result of securities industry educational efforts and SEC encouragement. The average time to resolve these claims is two to four months, and the majority are decided by a single arbitrator.

It is my impression that these are generally regarded as healthy developments. I do not necessarily agree. They are healthy for the judicial system, in the sense that they relieve some of the caseload. But they reflect a rejection of that system as an effective way to resolve disputes. That is a clear indication of trouble.

I would like to speculate with you about the reason of this development, because I think they suggest some of the directions in which change might be useful. In an ironic twist, these problems arise from the very strength of our system. The genius of the common law, and the more elaborate legal system that grew out of it, has been its recognition of the importance of the factual context of each case in the search for justice. In turn, that central thrust requires flexible legal rules that are capable of accomodating varying fact patterns. Such rules have in fact been major forces in American law. For example,

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Stephen Friedman is a commissioner with the Securities and Exchange Commission. These remarks were made before the 1981 Northwest Securities Institute, Seattle, Wash.

"PETRIFIED FOREST" (CONTINUED)

(2)

Litigation in America

• materiality in securities law;
• fiduciary obligations in corporate law;
• negligence in the law of civil wrongs.

These two attributes — a commitment to the importance of factual differences in applying the coercive force of the law, and a set of legal concepts that accommodates the differences, have brought us many benefits. In the securities laws, for example, we have avoided a rigid set of rules divorced from an ever-shifting reality.

But we have also paid a price. Out of a desire for flexible rules, we have adopted concepts that are sometimes so uncertain that the possibly relevant facts often seem endless. Out of a desire to seek out all the facts in a search for truth, we have produced a civil discovery system that many believe is out of control.

One can see a microcosm of this development in the Freedom of Information Act. Adopted in 1974, it was intended to provide more access for citizens to information held by the government. Instead it has become a substitute for investigative efforts by the private sector and a way of obtaining information about competitors that was first secured by governmental compulsion, formal or informal. Moreover, it is probably the best example of the costs and burdens of overregulating the government. In 1975, the SEC processed 638 FOIA requests; in 1980 the number jumped to 1,317. In 1980 our estimated cost of compliance was $451,900.

One of the best examples of the administrative problems created by the FOIA involves a request by reporters for the Wall Street Journal and the Washington Post for access to the Commission's files on approximately 550 corporations that made voluntary disclosure of questionable payments. The first request was filed late in 1976. The commission released a limited number of files before the Justice Department requested that we not turn over any more records until Justice had completed its investigations. Nevertheless, between 1976 and 1979, we estimate that the SEC spent approximately 5,000 persons hours processing this one request. In 1979, the SEC was sued by Dow Jones — the owner of the Wall Street Journal — under the FOIA. The court ordered us to process the request in an expedited fashion. Since mid-1980, the SEC has spent approximately 5,000 additional hours on this matter — committing the resources of a substantial number of personnel in the Divisions of Corporation Finance, Enforcement and the General Counsel's Office, including 5 full-time paralegals, 2 lawyers, and 2 part-time law students. The Division of Enforcement alone has $20,000 in its budget for overtime work on this one matter.

That development, like the luxuriant growth of discovery in private litigation, is the result of single-minded attention to the benefits of "truth seeking" without recognizing the costs, burdens and potential for abuse on the other side. Moreover, in giving paramount weight to the desire to ascertain all of the facts and to administer flexible rules, we have neglected other values. The result has been a judicial system that grows more ponderous every year, in which the pressure for settlement, and the expense and burden of litigation all combine to impede the search for justice and exactitude.

The other leg of this analysis, the flexible standard, also deserves attention. Flexible standards, like materiality and fraud, serve an important purpose in the securities laws. They substitute for a far more rigid regulatory approach. They permit an enforcement program to adopt to the inventiveness of the markets. And they leave room in the law for an element of "I can't define it, but we all know it when we see it."

If judges are to control the discovery process more tightly, the standards of permissible inquiry must be narrowed somewhat and they must be given the power to impose discipline on the discovery process.

On the other hand, there are positive values in drawing tighter lines. When the law is clear, self-regulation is more meaningful, and the bar assumes a greater part of the policing function. When lines are drawn with clarity, the litigation process is simplified, a narrower range of facts is relevant, and the fact-finding process is less burdensome.

There are many indications of developments in response to this concern in various areas of the law. The appearance of no-fault automobile insurance and no-fault divorces represent a judgment that the system was not serving its ends in an effective way. They were both designed, among other things, to reduce the cost, delays and burdens of litigation. Note that they do so at some cost in the exploration of the "justice" of the claims. Indeed, the whole concept of "insurance" is somewhat at odds with questions of fault.

In antitrust, the development of merger guidelines is playing an important role in permitting firms to structure their affairs, although the guidelines probably have little direct impact on litigation.

Similar responses are discernible in the evaluation of the securities laws. The elaborate folklore of the private placement exemption gave way, first to the regulatory laticework of Rule 146, and then to the far more simple — and limited — approaches of Rule 242 and new Sec. 4(6) of the Securities

Please turn to Page 6

Petrified Forest

Continued from Page 4

Act of 1933. For resales of restricted securities, the arcane lore about when a purchaser had proved his "investment intent" or had a "change in circumstances" was largely replaced by Rule 144. As our experience with Rule 144 grew, the regulatory aspects of that rule have been reshaped into a far more simple rule of wide applicability.

EXHIBIT N

LOS ANGELES COUNTY

ECONOMY AND EFFICIENCY COMMISSION

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

December 10, 1981

Honorable Elihu M. Harris, Chairman
Assembly Committee on Judiciary
Room 6031, State Capitol
Sacramento 95814

Dear Assemblyman Harris:

Thank you for inviting us to testify at your hearing today on subjects related to trial court efficiency.

I will base my testimony on the report and recommendations our commission issued in October, 1981. The commission advises the Board of Supervisors on action to improve the effectiveness, efficiency and economy of local government operations. I chaired the subcommittee on courts which produced our study of court congestion. In November, the Board of Supervisors adopted our recommendations for implementation planning. We have supplied your staff with copies of the report.

In our study, we touched on two of the subjects you are considering today: appearances by telephone (AB 1209) and the Economical Litigation Project. In both cases, we encourage legislation which would enable local authorities to implement new technologies, new procedures, and new methods designed to take local conditions into account.

1. Telephone Conferences. The recommendation in our report states:

   We recommend that the Board of Supervisors and the Judiciary place top priority on obtaining legislation permitting increases of courtroom technology applications.

We include the use of telephone conferencing and appearances among those applications. From the information we had on experiments which are underway, the use of telephones has significant potential for saving time and money.

However, we are concerned that the design of a statewide system could become so detailed and cumbersome that any potential savings would merely be replaced by new systems maintenance cost. We were concerned that detailed rules designed to perpetuate traditional procedural controls, to provide for the tactical needs of lawyers, and to cover every acoustical contingency would detract from and possibly destroy the practical cost-effectiveness of the technology.

Therefore, we stress the issue of state constraints. We would urge the legislature in considering the enabling law and the Judicial Council in promulgating rules to maximize the degree to which the system can be designed locally, by the bench and bar, to deal with the protection issues in the framework of local conditions.

We support AB 1209, provided that its implementation provides primarily for local design, with minimum impact of state-wide detail.

2. Economical Litigation Project. The statement of our recommendation is the following:

   We recommend that the Board of Supervisors and the Judiciary continue to evaluate and support the Economical Litigation Project.

We based our conclusion on testimony and discussions which convinced us of the need for the design and evaluation of experiments -- pilot projects -- to determine to what extent simplified procedures can relieve pressure on the system within constraints imposed by the local legal community. We did not conduct an extensive analysis of the effectiveness of the project. The Judicial Council is conducting an evaluation. You are hearing today from Judge Norman Epstein and from Professor McDermott, who can supply you with current information on substantive questions of project performance.

We were impressed at the willingness of bench and bar to experiment. Accomplishing change in our large, complex public bureaucratic systems will require experimentation. We do not know in advance enough about how these systems actually operate, or about the details of measuring their performance, to design and implement replacements with any assurance that they will produce more benefits than problems. In the courts, we have the further complications of the potential impact on people's rights, the need for historical continuity in decisions, the requirements of the legal profession, and the enormity of potential social effects.

Under those circumstances, we need continuing use of small-scale pilot projects which are well-designed experimentally and from which we can learn enough to introduce changes with a reasonable empirical basis for expecting them to work. Careful evaluation, preferably of pre-stated performance measures, is crucial to the effective use of this kind of experimentation.

Therefore, we support the continuing implementation and evaluation of the Economical Litigation Project. We further support the implementation of design changes based on the results of evaluation, and the eventual broad-scale implementation of the detailed design shown by evaluation to be most effective.

Very truly yours,

Thomas F. Kranz

Thomas F. Kranz, Chairman
Task Force on Courts

TFK:JC:caf

EXHIBIT O

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 of realistic means to increase system resources, we can anticipate a breakdown of 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 non-violent 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 Propostion 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, and 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 programs 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.

BACKLOG ELIMINATION PROJECT

October 30, 1981 Progress Report

County	Start of Project	Judicial Positions	At-Issue Awaiting Trial: Total Start	Total Now	Per Jud. Position Start	Per Jud. Position Now	Over One Year Start	Over One Year Now	Lag At-Issue to Trial in Months: Short Cause Start	Short Cause Now	Long Cause Start	Long Cause Now
Butte	1-77	3	580	180	193	60	241	2	24	1½	39	5
Sonoma	1-79	7	1575	576	225	75	565	22	14	1½	36	6
Marin	4-80	7	1014	565	148	80	242	3	13	1½	21	4
Kern	5-80	10	1185	835	118	83	243	85	9	1½	22	6
Placer	6-80	4	573	429	143	107	6	0	5	1½	13	6
Sacramento	4-80	25	3325	1860	133	74		71	9	1½	13	7
Humboldt	11-80	3	472	314	157	105	162	106	14	1½	48	6
Alameda	3-81	33	3835	3753	117	113	480	473	14	8	15	21
Ventura	6-81	10	1785	1361	178	136	386	392	9	2	25	18
San Bernardino	6-81	25	4134	3329	165	133	1093	1357	8	2	25	30
L.A. Family Law	6-81											
Pomona	6-81	15	3385	1650	225	110	967	0	22	2	33	12
Long Beach	10-81	10	2954		295		436		22		39	

EXHIBIT P