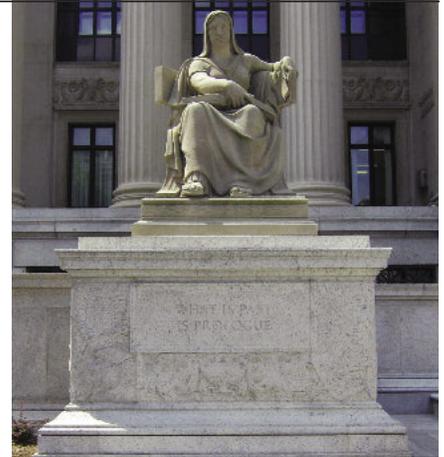




Hon. Mary Ann Murphy

Future (1935,
Robert Aitken)
National Archives,
Washington, D.C.



“The past is prologue”

The courts are caught in a Catch 22; budget cuts may bring back the days of routine five-year waits to get to trial

This article describes nearly 20 years of budget cuts to Mosk civil unlimited courts, culminating in the June, 2012 budget cuts that have compromised the court’s ability to comply with the mandates of the *Trial Court Delay Reduction Act of 1986*. Current resources must be preserved, as further budget cuts may usher a return to master calendar, the calendar congestion of the 1970’s, 1980’s and early 1990’s and five years to trial.

Master Calendar

In 1990, Los Angeles Superior Court was the nation’s largest trial court and one of the most delayed. (Kakalik, *et al.*, *Averting Gridlock: Strategies for Reducing Delay in the Los Angeles Superior Court* (Rand Institute for Civil Justice 1990) at vi.) Delays in getting civil cases to trial had been building for 20 years, since 1970. (*Id.* at 54.) In 1990, litigants waited an average of five years from filing to trial. (*Id.* at v.) In 1989, the backlog of at-issue civil cases awaiting trial in the Los Angeles Superior Court was more than 30,000. (*Id.* at 12-13.) The Rand Institute for Civil Justice estimated that in 1991, there was a shortage of 106 judicial positions in the Los Angeles Superior Court. (*Id.* at 63.)

The long wait to trial caused a “profound crisis” that impeded access to justice in the Los Angeles Superior Court. (*Id.* at 1.) Delays may cause deterioration of evidence, fading memories and increase the cost of litigation. Frustrated litigants may accept a settlement rather than wait for an open courtroom and may lose faith in the court’s ability to resolve disputes. (*Id.* at v.)

Until the early 1990’s, civil cases in Los Angeles Superior Court were handled on a master calendar system. No judge was responsible for managing the case and ensuring that the case went to trial within a reasonable time. The time

to trial in civil cases was four to five years or more. Lawyers cued up in Department 1 for trial courts and were placed on beepers to wait for an open trial court. To avoid a “five year rule” dismissal, courts made findings to extend the time for trial beyond five years after the commencement of the action against the defendant. (Code Civ. Proc., §583.310.)

Fast Track

The *Trial Court Delay Reduction Act of 1986* (Assembly Bill 3820), Gov. Code, §§ 68600, *et seq.* mandated delay reduction and required judges to “assume and maintain control over the pace of litigation,” “actively monitor, supervise and control the movement of all cases” and “actively manage the processing of litigation from commencement to disposition.” (Gov. Code, § 68606.) The Act mandated statewide standards for timely disposition of cases. (Gov. Code, § 68603.)

Initially, half of the civil cases in the Mosk Courthouse (then known as the County Courthouse) were assigned to 25 fast track or independent calendar (I/C) courts as a pilot project. In the fast track I/C courtrooms, one judge was assigned to the case for all purposes, including motions and trial. Later, all remaining civil cases were assigned to 25 additional fast track courts. The law and motion departments were closed. There were 50 I/C unlimited fast track civil courts in the Mosk courthouse. The AB 3820 Committee of judges and bar leaders met every month. With the help of the bar, Mosk I/C judges actively managed cases and broke the logjam. Soon, civil cases went to trial within 12 to 18 months.

Two decades of budget cuts

Two decades ago, each Mosk I/C judge had one full-time research attorney, and four full-time courtroom staff

members, including a court reporter. At the time, bankers’ box-sized summary judgment motions were uncommon. Employment cases, wage and hour cases, class actions and asbestos trials were rare. Many more automobile accident and trip and fall cases were filed than are filed today.

As cases assigned to I/C courts increased in complexity and volume, resources were cut. Sheriffs’ deputies were removed from the 50 Mosk I/C courtrooms *before* weapons screening was instituted in the Mosk courthouse. The court’s staff was cut from one full-time research attorney to one-half research attorney. Each judge was allotted 20 hours a week research attorney time for all motions on calendar during a one-week period. No research attorneys are provided for trials.

Courtroom staff was further reduced from four to three full time employees, including the court reporter and excluding the research attorney.

A tipping point was reached in 2005, when three I/C courts were closed, reducing the number of Mosk I/C courts from 50 to 47. The cases in the three closed courtrooms were distributed to the remaining 47 I/C courts. Each month, the 47 Mosk I/C courts were assigned more new cases than could be disposed of per month. For the first time in recent memory, unlimited civil case inventories began to climb without any hope of ever stabilizing.

In 2010, four of seven long cause courts were closed, leaving only three long-cause civil trial courtrooms. In 2010, Department 59, the eminent domain department, was closed and Mosk I/C judges were assigned all eminent domain and condemnation cases.

In the complex courts, one complex court was closed in 2010, reducing the

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total number of complex courts from seven to six. Later, one court was added to complex. Although the complex courts remain stable with seven judges, in response to 2011 budget cuts, the Los Angeles complex courts began to handle all pretrial proceedings in asbestos cases in Los Angeles, San Diego and Orange Counties, with the Mosk judges handling the asbestos trials in those cases. The June, 2012 budget cuts caused the assignment of all newly filed class action cases to the complex courts.

Even before the June, 2012 budget cuts take effect, the Mosk I/C judges' workload had increased steadily.

Increased workload

Asbestos cases from San Diego and Orange counties are now coordinated in Los Angeles County. From 2006 to 2011, asbestos case filings increased 206 percent, from 105 per year to 216 per year. Trials of priority asbestos cases may cause previously set trials to be continued.

From 2006 to 2011, the number of employment cases filed per year increased 53 percent, from 2322 to 3564. Employment cases are work intensive. They may generate bankers' box summary judgment motions and telephone book-sized separate statements and objections.

From 2007 to 2011, there was a 198 percent increase in the number of bench trials in Mosk unlimited I/C courts. Bench trials may involve complex commercial transactions. Judges are often required to write proposed statements of decision for bench trials.

From 2007 to 2011, there was a 48 percent increase in jury trials in Mosk unlimited I/C courts.

June, 2012 budget cuts

Courtrooms are closed because courtroom staffs are laid off to bring the court operations within the new budget. The June, 2012 budget cuts include the closure of 56 courts countywide and the reassignment of that work to other courts. The 56 courtroom closures include 24 civil courts, 24 criminal courts, three family law courts, one probate court and four delinquency courts. All Mosk family law

I/C courts will be converted to modified master calendar courts.

Countywide, 24 civil courts were closed. Within the Mosk courthouse, two more I/C unlimited civil courts were closed, reducing the number of Mosk unlimited I/C civil courts to 45 courts, down 10 percent, or five courtrooms, from the original 50 courts. The cases from those courtrooms have been distributed to the 45 remaining I/C courts. The two judges displaced by the closures have been assigned to settlement courts at Mosk, bringing the total number of settlement courts to an unprecedented seven settlement courts in the Mosk courthouse. There will be an additional writs and receivers department courtroom due to another courtroom closure, bringing the total number of writs and receivers departments to an unprecedented three courts in the Mosk courthouse.

The three remaining Mosk long cause courts will share only two courtroom staffs.

Department 44 will be closed. Department 44 handled limited civil trials, including unlawful detainer trials. The 45 Mosk I/C courts will be required to handle overflow unlawful detainer trials, which have statutory priority.

Department 97 has been closed. That department was a special proceedings courtroom that handled service by publication and other matters. Service by publication is now handled in Department 90.

Department 12 will be closed. That department is a special-proceedings courtroom that handles writs of attachment and other matters. Writs of attachment will be handled by the three Writs and Receivers departments.

Department 1A and Department 90 will continue as two departments, designated as Departments 90 and 90A. However, Departments 90 and 90A will share one staff. Department 1A will be renumbered Department 90A. Department 90A will handle fee waivers and post judgment enforcement and other matters. (Local Rule 2.7). Department 90A will be in session on Thursday and Friday. Department 90 will continue to handle small claims cases.

Department 90 will be in session on Mondays, Tuesdays and Wednesdays.

Requests for entry of default are presented in Room 118. They are no longer presented in Room 111.

It is anticipated that the Los Angeles Superior Court Local Rule 2.7 will be amended to reflect these changes.

Due to the closure of 24 criminal courtrooms, there is the possibility that Mosk unlimited civil judges may be required to do overflow criminal matters.

Court reporter cutbacks

As of this writing, it appears that the Court will fire approximately 60 full-time court reporters and convert an additional 50 full-time court reporters to 3/5 time positions.

Parties in civil cases, including the indigent, do not have a constitutional right to a court reporter. (See, *Los Angeles Superior Court Policy Regarding Normal Availability of Official Court Reporters and Privately Arranged Court Reporters*, posted on the court's Web site. (www.lasuperiorcourt.org/courtreporter/ui/).

Beginning on May 15, 2012, the Los Angeles Superior Court no longer provides court reporters for civil trials.

Beginning on June 18, 2012, each unlimited civil court will be provided a court reporter only for 2 half days per week, on a matrix, for matters other than trials. No reporters will be available on Monday. There will be a Tuesday-Thursday matrix and a Wednesday-Friday matrix. Each judge will be provided one morning and one afternoon of court reporter's services from Tuesday through Friday. The matrix for each department is posted on the Court's Web site. (www.lasuperiorcourt.org/courtreporter/ui/)

Collectively, judges may hear law and motion all day, four days a week, from Tuesday through Friday. These law and motion calendars will begin at either 8:30 a.m. or 1:30 p.m. Judges should *not* be expected to halt trials so counsel can argue a law and motion matter in another court.

The judges hearing law and motion on half days will be available for trial on

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non-matrix days and half-days. Jurors may perform 3 full days of jury service and 2 half days of jury service per week. Previous court policy disfavored inefficient partial days for jury service.

With all law and motion hearings compressed into two half days, oral argument may be severely curtailed. Counsel should be prepared with short and to the point argument, as all counsel must now share scarce resources.

Ex parte applications are heard at 8:30 a.m. on Monday through Friday. Court reporters will be present at 8:30 a.m. on only one of those days. Court reporters will not be present in any Mosk unlimited court on Mondays.

Court reporters employed by the court are familiar with court of appeal deadlines and transcript formatting requirements. They are experienced in handling court hearings with numerous lawyers, including barely audible lawyers calling from cell phones on Court Call. They have real time software compatible with the judges' software and know how to connect to the judges' real time.

Beginning on May 15, 2012, counsel were expected to bring reporters for trial. Parties may arrange for privately retained reporters by stipulation and order. The approved stipulation and order is posted on the court's Web site. (www.lasuperiorcourt.org/courtreporter/ui/).

Approved list of reporters

Absent a stipulation regarding a court reporter for trial, beginning on July 2, 2012, the court may appoint a court reporter for trial from the court's approved court reporter list at the expense of the party or parties requesting the reporter.

Initially, the Los Angeles Superior Court reporters who were laid off or converted to 3/5 time will be placed on the approved list. For example, as of this writing, one group of displaced Los Angeles Superior Court reporters has announced the formation of CCROLA, Coalition of Court Reporters of Los Angeles. The court reporter fees and transcript charges for some reporters may be the same or similar to the fees

and charges lawyers are accustomed to paying for court reporters who are employees of the Los Angeles Superior Court.

After July 1, 2012, outside reporters will be eligible to take a test to be placed on the approved list.

The absence of reporters will be the most visible evidence of the June, 2012 budget cuts. The increase in the judges' and staff workload may not be as visible, but is important to bear in mind in utilizing court resources.

[Editor's note: An addenda describing the Los Angeles Superior Court policy regarding privately arranged court reporters is available on caala.org]

Impact of June 2012 budget cuts

Judges and staff will once again be called upon to do more with less. The increasing volume of cases and trials and reduction of resources will prevent judges from providing services to which lawyers and clients have become accustomed.

Delays will increase because case-loads have increased and staff has been reduced. Lawyers will have to wait longer to have motions heard. Counsel will have to abbreviate law and motion oral argument, as court reporters' time will be limited. Restating what is in the papers will not be an effective strategy. A concise argument addressing the tentative ruling will be required. Cases will take longer to go to trial. Lawyers will be required to bring court reporters for trial.

That is how we will function under the June, 2012 budget cuts. The possibility of future budget cuts looms. How would the civil courts function under further budget cuts?

Future budget cuts

Further budget cuts may cause the unthinkable – a return to the master calendar. Master calendar is a highly inefficient utilization of court resources. A return to master calendar would likely cause a return to five years to trial. Under a master calendar system for civil cases, the court and its judges may be unable to comply with the mandates of the *Trial Court Delay Reduction Act of 1986*. (Gov. Code, §§ 68600, *et seq.*)

The courts' inherent power of self preservation

California courts are established by the Constitution without any special limitations. (*Brydonjack v. State Bar of California* (1929) 208 Cal. 439, 442.) California courts have the power of self-preservation, that is, the power to remove all obstructions to their successful and convenient operation. (*Millholen v. Riley* (1930) 211 Cal. 29, 33.) The court's inherent power of self preservation arises from the fact that the court is part of and belongs to one of three independent branches of government. (*Id.* at 34.) The legislature may aid the courts and may even regulate their operation, so long as the courts' efficiency is not impaired. (*Ibid.*)

The courts have and should maintain vigorously all the inherent and implied powers necessary to properly and effectively function as a separate branch in the scheme of our state government. (*Brydonjack, supra*, 208 Cal. at 442; *Millholen, supra*, 211 Cal. at 34.) The Legislature may put reasonable restrictions on constitutional functions of the courts provided they do not defeat or materially impair the exercise of those functions. (*Ibid.*)

Los Angeles County Bar Association v. Eu

The Los Angeles County Bar Association tried and failed to obtain additional resources by instituting an action against state officials. In November 1987, the Los Angeles County Bar Association filed an action against the Governor, Secretary of State and the Speakers of the Assembly and House in the United States District Court for the Central District of California. The bar association challenged the constitutionality of the California statute that prescribed the number of judges on the Los Angeles Superior Court, contending that the shortage of judges caused inordinate delays in civil litigation and violated equal protection because the time to trial in Los Angeles County was longer

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than in other counties. (*Los Angeles County Bar Association v. Eu* (9th Cir. 1992) 979 F. 2d 697, 699-700.)

The district court granted summary judgment against the bar association. The Ninth Circuit affirmed the summary judgment. The court held that the bar association had standing, the case was justiciable and the state officers were not entitled to Eleventh Amendment immunity. (*Id.* at 700-704.)

The court held that there is no right to judicial determination of a civil claim within a prescribed period of time and trial delays in civil cases did not violate the fundamental right of access to the court. (*Id.* at 706.) The bar association had not provided evidence that the length of civil proceedings in Los Angeles led to inaccurate decisions, ineffective relief or that delay had ever deprived any Los Angeles resident of the ability to vindicate important rights. (*Id.* at 707.) The court was unable to determine how much of the delay was due to the state's administration of the judicial

system and how much was attributed to the litigants themselves. (*Ibid.*) The Court noted that the bar association failed to cite to any instance in which court congestion caused delays leading to dismissal under the five year statute. (*Ibid.*)

The bar association also asserted an equal protection violation because delays in Los Angeles County were worse than in other California counties. The court applied a rational relation test and found that “. . . in distributing limited funds, the state could rationally decide that longer delays can be tolerated in the large urban centers in order to ensure that each county has at least a courthouse and minimal judicial facility.” (*Id.* at 708.) The court held that the problem of litigation delay can be addressed in ways other than adding more judges, such as the Trial Court Delay Reduction Act, which was already reducing the state's civil backlog. (*Id.* at 708.) The court rejected the bar association's equal-protection argument.

Conclusion

Fast track independent calendar courts provided the way out of the court congestion that characterized the 1970's, 1980's and early 1990's and allowed the court to comply with the *Trial Court Delay Reduction Act*. The bench and bar must be vigilant in preserving resources to maintain the fast track independent calendar courts or we may return to master calendar and the court congestion we eliminated nearly two decades ago.

[**Ed. Note:** The title of this article is from Shakespeare, *The Tempest*, Act 2, scene 1.]

Judge Mary Ann Murphy has served on the Los Angeles Superior Court for 18 years. She was an Associate Editor of Weil, Brown, Civil Procedure Before Trial, for seven years. Judge Murphy is actively involved in educating judges and lawyers and is a frequent speaker.

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