*From Hon. Jacqueline Connor (ret.)*

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# EXPEDITED JURY TRIAL LEGISLATION: AN UNUSUAL AGREEMENT BETWEEN THOSE WHO USUALLY DISAGREE

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On April 30, 2009, a most diverse collection of organizations met, under the cloud of California's fiscal crisis and budget cuts, at the Administrative Office of the Courts in San Francisco to discuss the increasing backlog in state civil trials.

The group heard from a representative of the National Center on State Courts and a New York state judge. But most interesting was the message from a plaintiffs' attorney and a defense attorney, both from South Carolina. The two were poles apart in their practice of law, but on that day they were on the same page.

The organizations they spoke to were also poles apart, having openly displayed their opposition and, at times enmity, towards one another in seasons of battles in the Legislature and the courts, at the ballot box, and in the media. Foremost in this regard were the Consumer Attorneys of California (CAOC) and the Civil Justice Association of California (CJAC).

Other prominent and important participants that day were the California Defense Counsel, the CalChamber, Consumers Union, and members of the Bench. Taking their seats that morning, the participants had exchanged guarded pleasantries and sat, much as in a court room, with CAOC representatives on one side, and CJAC and allies on the other, with judicial officers in the middle.

Anyone familiar with the three decades of confrontation between CJAC and CAOC knows we each truly believe that we are fighting for the very soul of the civil justice system. CAOC, an association of thousands of contingent fee plaintiffs' lawyers, is committed to "preserve and protect access to justice for all by preserving the constitutional right to trial by jury and by seeking to resist any effort to curtail the rights of Californians to seek redress for injury." CJAC, a coalition of insurance, oil, high-tech and pharmaceutical companies, hospitals and physicians, realtors, builders, banks, and local governments, is committed to "working to reduce the excessive and unwarranted litigation that increases business and government expenses, discourages innovation, and drives up the cost of goods and services for all Californians."

One might have safely predicted that these two groups, given their combative history, could never work together on anything as significant as a step toward reshaping the face of litigation in California. But on that day, that prediction would begin to be wrong.

Today, 16 months later, their cooperation has placed on the Governor's desk a new, unanimously-

supported expedited jury trial program, embodied in Assembly Bill 2284 - a new tool that holds great promise in time and cost savings for everyone involved in the civil justice system.

The South Carolina plaintiffs' and defense lawyers (whose travel costs were shared by the plaintiffs' and defense attorneys' organizations) had described their system of stipulated one-day jury trials in which both small and large cases were being expeditiously and economically resolved. Each expounded the benefits the system provided for their clients: reduced time and expense for both sides, relief on stressed judicial resources and on the jury pool, certainty of trial dates, and finality of decisions.

By the end of the presentation, everyone seemed to recognize that the project offered potential benefits to clients, the courts, and attorneys. Most significantly, before the meeting ended the California participants agreed to set up a working group to explore whether a model suitable for California could be designed.

This was not the first look at the expedited jury trial concept. The CAOC had earlier brought the South Carolina model to the Judicial Council's attention. Staff at the Administrative Office of the Courts had, some years before, tracked a federal attempt to implement an expedited trial system based on a mandatory court order and a non-binding opinion - a combination that proved to be a fatal handicap.

Soon after the April 30 lunch, working groups facilitated by Judicial Council Senior Attorney Daniel Pone and Los Angeles County Superior Court Judge Mary Thornton House, a former member of the Judicial Council's Civil and Small Claims Advisory Committee, began meeting regularly. The California Expedited Jury Trial Program was shaped and defined through numerous meetings and conferences. At one point, business groups funded a return trip to Sacramento by the South Carolina attorneys to give a large group of business representatives an opportunity to learn and ask questions about that state's experience. From the beginning of the process, the California Defense Counsel was a strong, contributing participant, sharing co-sponsorship of the bill with the CAOC and the Administrative Office of the Courts.

As our work ended, we found ourselves somewhat awkwardly expressing agreement - awkward also in the anticipation of appearing together before the Legislature's judiciary committees to encourage a yes vote on a significant piece of legislation.

Over the years we had, unexpectedly, found ourselves advocating for the same piece of legislation, but helping build something together from the ground up is another story entirely. That seemed an event as rare as spotting a shooting star in daylight.

Nearly as remarkable as the consensus between CJAC and CAOC, was the joining of Democrats and Republicans in late August to vote unanimously to send AB 2284 to the Governor.

The goal of the expedited jury trial process is to complete a trial in one day. The bill provides, through stipulation, the following: a jury trial utilizing eight instead of 12 jurors, with no alternates; one hour for voir dire, with each side having three peremptory challenges; and three hours for each side's presentation of evidence. A verdict requires at least six jurors, unless the parties stipulate to a lesser number. The process, while preserving the rules of evidence and civil procedure, encourages the parties to stipulate in advance to the admission of certain evidence and encourages the use of pretrial high-low agreements with

the high typically being insurance policy limits. The process achieves finality by making the verdict binding and not subject to post-trial motion or appeal, except in very limited circumstances.

From CAOC's perspective, the expedited jury trial option will provide broader access to justice and expand the right to a jury trial to more citizens. It will make the handling of many small to mid-size cases economically feasible. Many plaintiffs who would otherwise be unable to obtain counsel because of the economics associated with a contingency fee practice will now be able to obtain representation. The art of advocacy will be advanced as expedited jury trials will provide more opportunities for new lawyers - both plaintiff and defense - to get jury trial experience. The efficiencies of the trials themselves will help relieve the backlog of civil trials, allowing cases with more complex issues, and requiring more judicial resources, to advance more expeditiously to trial. Additionally, in cases where liability is not contested, or where a limited issue is impeding settlement, the expedited jury trial option will provide a forum for swifter and more economic resolution of discrete issues, thereby promoting settlement.

From CJAC's perspective, the expedited jury trial offers an up-to-now missing option, a middle ground between mediation and arbitration and a full blown jury trial. It provides for vigorous advocacy and the efficient presentation of information while reducing the costs of a lengthy jury trial. For CJAC and its allies, expedited jury trials can advance the goal of reducing the economic burden on California businesses and public agencies associated with the defense of minor or meritless claims. It sends a modest but genuine signal that California *does* want to reduce unnecessary business costs, improve the state's business climate, and reduce the costs of goods and services to Californians.

We urge that lawyers, legal seminar groups, consumer organizations, the business community, and government all strive to make consumers of legal services aware of the expedited jury trial option. This tool will not produce results if it is not recognized and used.

We hope that for lawyers, the judiciary, and lawmakers, AB 2284 and the process that created it demonstrate a commitment to openly consider, and work together wherever possible, to explore options that promote efficiency and economy without sacrificing parties' rights to fully and fairly litigate their claims.

We do not suggest that this consensus means an end to the significant differences between our organizations or reduce the vigor with which each advances its ideals and objectives. But it does signal a willingness and ability to explore opportunities on common ground in the grand chasm between us.

How can we proceed from here? Four thoughts:

First, recognize that we *do* have a mutual goal of neutral efficiency in the civil justice system. At a time of exceptional stress in funding the judicial system, gains in this area will be appreciated by all Californians and, we hope, make the work of all attorneys more productive and satisfying. Observers at the initial expedited jury trial meeting noted that participants' interest picked up when the South Carolina lawyers said in their state's experience with the process, outcomes did not swing pro-defendant or pro-plaintiff.

Second, emphasize mutual benefits to all clients - plaintiffs and defendants. People who come to attorneys for representation want a fair solution that involves the most efficient use of their time and money - and

then lets them get on with their lives. Everyone benefits from our helping to make that happen. Recall the Judicial Council's 2005 survey, which found that the cost of an attorney was the most commonly stated barrier to access to the courts, no matter what the respondent's income level.

Third, try to include everyone in the legal community at the beginning stage of exploring an idea. Dan Pone, with the Administrative Office of the Courts, said this about the process that led to AB 2284: "The best thing we did was involve everyone from the get go."

Fourth, focus on areas that require forward-looking creativity and untested or overlooked options. In an Aug. 11 *Daily Journal* opinion article, Sanford Jossen, an arbitrator and mediator for the Los Angeles County Superior Court wrote: "While the evolution of the law will continue to be based on precedent by nature and design, the administration of justice must be focused on the future if it is to continue serving the public."

In these difficult days for California, we should not set aside our principles and goals, but we should join in focusing our strengths toward creatively solving challenges facing those responsible for the fair and efficient administration of justice.

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