IAALS Fourth Civil Justice Reform Summit
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The courthouse where I have my chambers is one of 38 courthouses in the largest trial court system in the country – the Los Angeles Superior Court. It is a court of both general and limited jurisdiction. We have 550 judges and commissioners, and we hear every case type – from small claims to coordinated cases with thousands of plaintiffs; from traffic cases to death penalty cases.

I work in the largest courthouse in the country. Every day I walk the two-block length of the second floor, going to my chambers, and I see real people who come to our Court with real problems that cannot be solved anywhere else. [slide]

As I walk this one floor, there are people waiting outside the Restraining Order Center for their turn to ask the Court to protect them from threatened harm in their homes, their neighborhoods or their workplaces. I see people who are old or who look confused waiting outside the Probate courtrooms for a conservatorship hearing, people who need the Court to make a wise judgment about who will protect them when they cannot protect themselves. I see people waiting outside the Family Law courtrooms and waiting for child custody evaluations, people who need the Court to ease the circumstances of a broken family.

These are people with a profound need for the justice and protection only a Court can provide. Yet most of these people are attempting to navigate the American legal system without a lawyer. As stated in the excellent "Civil Justice Initiative" report of the National Center for State Courts: "The idealized picture of an adversarial system in which both parties are represented by

competent attorneys who can assert all legitimate claims and defenses is an illusion." What a tragedy.

Like many state courts, the Los Angeles Superior Court was devastated by budget cuts in the wake of the Great Recession. [slide] This graph illustrates our revenue losses. To absorb these cuts we closed 8 courthouses, closed 79 courtrooms and decreased our staffing by 25 percent between 2010 and 2013. Since then, we have been able to grow back only incrementally. [slide] We are still down 56 courtrooms.

We continue to have unreasonably heavy caseloads in our family law, misdemeanor, dependency (that is child abuse) and probate courts. But it is fair to say that our civil courts bore the brunt of the budget downsizing.

At the worst of the budget crisis, some people said we should just shut down our civil operations. We did not do that. One of the ways we kept going was to use a concept that we had learned from our experience in the Complex Litigation Program: differentiated case management.

This evening, I would like to tell you a bit about our experiments in innovative case management. First, I will explain some of the principles of case management we learned from our Complex Litigation Program. Second, I will describe how we applied those principles in courtrooms created to address particular case types. And finally, I want to urge that further procedural reform is needed to assist self-represented litigants, reform that also might be applicable to larger cases.

In 2000, the California court system initiated a pilot program for specialized Complex Litigation courts. [slide] One of the key goals of the Complex program courts was reducing litigation costs. We believe we were successful. In a survey of Complex Court users in 2007, 94% agreed that the case management techniques used in the complex departments <u>reduced</u> litigation costs.

A principal case management technique we use is "differentiated case management" – which I define as tailoring court processes and procedures to address the needs of a particular case or case type. In Complex Litigation this case management is judge-directed. Numerous case management techniques have been developed. But in general, complex case management is guided by 3 principles:

- First, early disclosure or discovery of key facts favors case resolution.
- Second, early resolution of key legal issues favors case resolution.
- Third, management of case activity must in fact create an even playing field and be perceived as creating an even playing field.

You may well ask: "How can this hands-on judicial management be used in small or high-volume cases? A judge can't possibly have time to tailor processes to individual cases in high volume cases?" And you would be right – you can't take large numbers of cases with low monetary value and have judges figure out on an individual case basis what facts and law are relevant for each case.

But by dividing cases according to substantive case type, one can create a case management path for a whole group of cases. Placing the litigation of cases within the framework of a body of governing law – for example, the law governing eviction cases or the law governing collections cases – can allow court procedures to be crafted so as to draw out relevant issues of fact and law more efficiently.

In order to give you a few examples of how differentiated case management has worked in the Los Angeles Superior Court, let me take you back to my courthouse. [slide]

So we're back on the second floor, inside the Restraining Order Center I mentioned earlier. And here we have created a

specialty court that actually crosses over traditional lines between case types. Here we handle the requests of people seeking protection from threatened violence wherever or however threatened. We have combined domestic violence restraining orders, typically handled in family law courts; civil harassment restraining orders, typically handled in civil courts; and elder abuse restraining orders, typically handled in probate courts.

Now under California law, each of these restraining order types has slightly different standards of proof and evidentiary requirements – but the commissioners who review the requests for relief are well aware of the governing legal principles of each type of requested relief. What these cases have in common is a need for expedited consideration – the matters are initiated by ex parte petitions and then must be set for hearing within 21 days.

In the environment of the Restraining Order Center, we are able to provide appropriate security, expert staff and self-help services for litigants. Pleadings are sent immediately to commissioners who are expert in the subject area. If a restraining order issues, the order is immediately provided to the petitioner. Staff schedules each matter for the required expedited adversary hearing, separating out petitions that relate to other pending cases.

Differentiated case management in the Restraining Order Center uses staff and judicial time efficiently. It avoids interrupting a scheduled family law calendar with important but unpredictable requests for immediate relief.

Now let's go up to the 7th floor of the courthouse, to a large courtroom at the end of the hallway. [slide] This is a very sad place, and a difficult assignment for our judicial officers. It is the Central District unlawful detainer court – the landlord-tenant eviction court. Most of the defendant tenants are self-represented, and many small landlord plaintiffs are self-represented as well.

We have 2 judicial officers, a judge and a commissioner, working together in this courtroom. On a typical day there will be about 75 matters on calendar.

In California, unlawful detainer matters are required to proceed on an expedited schedule, with a right to trial within 20 days. There are other procedures unique to this case type, such as a requirement that the Court serve the complaint on the defendant. Differentiated case management allows us to have a staff that deals consistently with the statutory requirements for this case type.

The judicial officers also become expert in the law and, using differentiated case management, they have organized the flow of courtroom events to conserve the Court's and the parties' time. For example, in the morning the commissioner typically attempts to mediate cases set for trial while the judge handles the morning calendar. In the afternoon, one judicial officer prepares the next day's motions, while the other handles court trials. Jury trials are sent to other courtrooms to be tried.

Prior to the budget crisis, we heard unlawful detainer matters in <u>un</u>differentiated courtrooms with all types of cases under $25K as well as small claims and traffic cases. We heard these matters at 23 locations throughout Los Angeles County. [slide] After we closed 8 courthouses and 79 courtrooms, we handled more than 70,000 unlawful detainer filings per year in just 5 courtrooms. [slide] A tragedy in lost geographic access for the public we serve – but differentiated case management got us through. We have since split the resources at 3 of the locations you see here in order to add 3 additional locations.

Continuing on our courthouse tour, I'm going to take you to 4 courtrooms on the 6th floor. [slide] Five judges work in these 4 courtrooms, handling about 29,000 personal injury cases, including all medical malpractice cases, from all over Los Angeles County. With over 10 million residents, Los Angeles County is larger than 42 of the 50 states. The 5 judges manage all

personal injury cases over $25K for all purposes up to trial. Cases are sent out for trial through a master calendar.

Why do we handle personal injury cases separately? Due to the budget crisis, we had to severely cut courtroom staff. Hands-on judicial management requires more staff – staff to schedule case management conferences, to prepare calendars, to create minute orders, and on and on. The experiment in the consolidated PI courts is to use differentiated case management by reducing hands-on judicial management. We had data suggesting that minimal case management might still allow PI cases to move toward resolution. Therefore, we handle these cases with trial dates set at the filing window and without case management conferences.

We do, however, use one technique derived from our experience in the Complex Litigation program. We require an informal discovery conference before any motion to compel further discovery responses can be filed. By using informal discovery conferences, we estimate we have cut the number of discovery motions by at least three-quarters.

Does reduced case management work for personal injury cases? We are still adjusting the procedures to reduce time to trial and we need more courtroom resources so that motions can be heard more promptly. But we have met our goal of assuring available trial courts on the date set for trial. The system likely *increases* average time to trial but *reduces* litigation costs. It's an experiment in differentiated case management that deserves further work and study.

We also created specialized courts for collection cases under $25K. There are only 2 collections courtrooms each with 2 judges and they are at compass points in the NW and SE quadrants of Los Angeles County. [slide] Again, differentiated case management allows staff and judges to handle the large volume of these cases, many of which resolve through default judgments, but most of which, under California law, require

judicial review before a default judgment can be entered. Are these collections courts working? Last year there were more than 38,000 collections cases filed in these 2 courts. The pending caseload is about 30,000 - substantially less than the number of cases filed last year. Those statistics tell me the staff and judges are doing a great job of moving these cases to resolution.

[slide] In the courtrooms I have described – restraining order center, unlawful detainer, personal injury, limited jurisdiction collections – differentiated case management makes procedure the servant of substance. We are managing heavy caseloads with fewer resources. We did this without any statutory procedural reform (although I will admit, in requiring an informal discovery conference before the filing of a discovery motion, we did stretch the existing rules of court just a teeny bit – but we have not been challenged in even one case because it works so well).

So imagine what differentiated case management could do, if we could wave a magic wand and achieve procedural reform by court rule or statute. Working with smaller cases provided insight into the ways existing procedural rules disadvantage self-represented litigants.

Rules of civil procedure, as we have allowed them to evolve, now create barriers to economical representation and to effective self-representation. We need to begin to ask questions about the procedural rules we take for granted.

For example, why do we allow litigation to be commenced with the filing of a complaint? A complaint ordinarily provides no evidence, even when a plaintiff likely possesses most of the evidence needed to establish the claim alleged.

In an eviction case or a debt collection case, a plaintiff ordinarily could supply all evidence needed for his claim at the time the lawsuit is filed. Why wait? Why require the defendant –

often a self-represented litigant – to ask for information everyone would agree is central to the claim?

Imagine if, in an eviction case or debt collection case, a plaintiff had to fill out a "Turbo-tax-like" form that also would require attaching relevant documents. If the forms and documents were served on the defendant, the defendant could contact a legal services provider (perhaps an online provider) with a substantial amount of the information relevant to the case. The legal services provider, or a self-help program, could quickly work through a set of questions to address potential defenses. Transaction costs certainly would be reduced. Perhaps representation might become economically feasible.

The idea of a case-type specific requirement to provide evidence with a complaint could also have utility outside the realm of small cases – perhaps even in some complex litigation. We know there are certain types of mass tort litigation in which claims are filed by some litigants without any colorable basis for the claim. Why not require some type of factual submission specific to the nature of the claim at the time the complaint is filed?

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You are here tonight because you care about the survival and the future of the civil justice system in this Country. Some of you come from the realm of small cases and self-represented litigants. Some of you come from the world of large, expensive litigation. We need to learn from each other, just as insights from Complex Litigation helped us understand how differentiated case management might expedite other case types – and insights from thinking about the problems of self-represented litigants suggest procedural reforms that might also expedite complex cases.

We need to thank IAALS for their 10 years of work, culminating in this remarkable conference. I feel so privileged to be here. IAALS has rung the alarm bell. Justice Kourlis had the

courage to tell all of us in her introduction to the IAALS "Culture Change" Report: "Bit by bit, we have allowed [the civil justice system] to be eroded into gamesmanship. We let that happen. And now we can reverse course." And I would add only: Let's be bold. We can do this. We can save the civil justice system – but we have to consider radical procedural reform.

Thank you for the privilege of speaking to you tonight.