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EDITORIAL PAGE

## When Justice Runs Out of Gas

■ **The Courts:** To end the megatrial syndrome, we need limits on what some regard as untouchable legal liberties.

By ROYAL F. OAKES

Marathon jury trials are spectacular reminders of the failures of our legal system. The public's frustration with these endless jurisprudential jousts—the McMartin Pre-school and Night Stalker cases are prime examples—is like the American reaction to a cricket match. We have no idea what's happening, we just know it seems to go on forever.

The solution to the megatrial syndrome lies in imposing reasonable limits on what some regard as untouchable legal liberties: the right to a trial by jury, the right to present your case in court and the right to appellate reversal where the trial court erred. In fact, none of these rights are absolute. By pretending that they are, we curtail everyone's right to a fair, efficient judicial system.

By the time the McMartin trial winds up, maybe by the end of the year (assuming a mistrial isn't declared), it will have consumed more than 3½ years at a cost of at least \$15 million. It took more than 13 months and more than \$1.5 million to find Richard Ramirez guilty and sentence him to death for the Night Stalker murders.

To those who say you can't rush justice, or that a price shouldn't be put on a fair trial, the words of Judge William R. Pounders, who presides over the McMartin trial, are a cold blast of reality: "None of us really remembers what has happened in this case. . . . Both sides are being denied a fair trial by its length."

The parties involved in the mammoth cases aren't the only victims of the endless trial syndrome. For every trial day consumed by a lengthy case, the start of another trial must be put off that much longer.

One popular solution has been to urge judges to expedite trials. Politely encouraging judges to move things along is like applying a bandage when the patient needs brain surgery. Real progress toward expediting the delivery of justice requires the recogni-

tion that some hallowed rights have limits.

Either through legislation or a change of judicial attitude, we should remove the sword of Damocles hanging over the head of every judge who presides over a criminal trial. Some appellate courts across the country have developed the notion that every defendant is entitled to not just a fair trial but a perfect trial. As a result, trial judges have learned that to avoid reversal, they must indulge virtually every whim of defense counsel when it comes to marginally relevant evidence, testimony, objections and argument. Let's send a message to trial judges that they should be fair but also mindful of the fact that judicial resources are not boundless; that the time and money devoted to trials should be considered as major factors in the day-to-day management of a case.

Alongside the notion of the jury trial as an inviolable right has been the idea that lawyers are free to turn the jury selection process into endless get-acquainted sessions. Judges should afford attorneys some opportunity to question jurors, but it should be minimal. The vast majority of the queries should be contained in questionnaires and in the judge's face-to-face encounters with prospective jurors.

Finally, restricting the right to a trial by jury, by routing more civil cases into the arbitration pipeline, would cut down on the number of lengthy trials. Parties currently pay financial penalties if they lose at arbitration, demand a trial, then fail to do better in front of a jury. More cases should be funneled into this system and the financial penalties should be dramatically increased.

Our Legislature, as we all know, is crisis-driven. Sacramento's finest wouldn't dream of tackling the assault-rifle controversy without a schoolyard of children first coming under fire; and maybe, just maybe, the Legislature will do something about insurance in the wake of Proposition 103. Perhaps the completion of the McMartin and Night Stalker trials in the same calendar year will motivate our lawmakers to make some hard decisions about solving the problem of the megatrial.

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