

President's Column by R. Christian Hulburt, Esq.

I'M SORRY, WE'RE CLOSED TODAY

In grammar school, I remember I pondered that great philosophical question: Does a tree falling in the woods make a sound if no one is there to hear it? Today, there is a much more practical and immediate question we must ask: **Does a lawsuit make a sound if there is no clerk to file it, no courtroom to try it in, no judge to hear it?**

By now, we are all painfully aware that the California state budget is upside down. The daily news focuses on the genuine concern that funding for essential government services, like police, fire, schools, and roads, may be cut. Missing from the headlines, though, is the imminent crisis in statewide court funding. Throughout the state, courtrooms, even courthouses, are closing. Court hours are being shortened. Court employees are being cut. Hiring freezes have been imposed. And the budget proposed by Gov. Schwarzenegger for court funding for the coming year will force even more drastic cuts.

I also learned as a child that the Judiciary is the third branch of government, co-equal with the Executive and the Legislative branches. However, the adult version, and political reality, is that the Judiciary depends entirely on the Executive and Legislature for its very existence, since those branches control the money. As state Senator Joseph Dunn, a trial lawyer himself, explained at our Annual Awards Dinner, **court funding is about to reach a crisis deficit**. If the governor is not convinced to substantially revise his proposed budget, the San Diego Superior Court will be forced to take immediate and dramatic cost-cutting measures.

We know from past court funding crises that the civil justice system is the most

vulnerable to cuts. The criminal and juvenile justice systems both have constitutional demands to move at a certain pace and to provide substantial resources for the accused. Those constitutional rights must be preserved. Thus, we must anticipate that the impact will be felt largely on the civil side. Indeed, on the table as a possible response to budget deficits in San Diego is the suspension of Fasttrack.

Senator Dunn invited me to testify at hearings he is holding throughout the state regarding court funding. He is doing everything he can to build a case in Sacramento to preserve as much of the court budget as possible. He and Senator Denise Ducheny took testimony last month from virtually every stakeholder – judges, prosecutors, public defenders, civil defense lawyers, court reporters, law enforcement, court interpreters, and more.

Justice Delayed is Justice Denied

In my short time with the committee I spoke in defense of Fasttrack, a system created and perfected in San Diego. No change in the law in my career has had as much benefit to my clients as Fasttrack which eliminated a five-year wait for trial and replaced it with a real trial date in one year. I told the stories of two cases: one, a tragedy of justice delayed; the other, a triumph of the efficient and fair administration of justice.

Lupe Olivas was a hardworking husband and father of young children. He was severely burned over about 50% of his body as a result of a defective product. His hand were literally burnt down to stumps. His face was horribly disfigured. Mr. Olivas and his family were represented by Vincent Bartolotta, at least 20 years ago, before Fasttrack. Vince worked the case up exhaustively. He completed his investigation, took depositions and gathered documents, and fully completed the “litigation” of the case. He prepared and provided to the defense a demand package as thick as a phone book, complete with photos, reports, and exhibits on all issues in the

case. And they ignored him. There was no trial date and the insurance company on the other side knew there would be no trial date for several more years. There was simply no business reason for them to consider paying Mr. Olivas then.

The delay was devastating to the Olivas family. They were soon destitute. Unable to get a real job because of his disability and disfigurement, Mr. Olivas joined the day laborers in the fields of North County. With no real hands, he couldn't pick strawberries, but he did try to pick watermelons. Of course, he destroyed the paper thin skin grafts on his hands and came home bloodied and bandaged in the evening. His children, too young to work, tried to contribute to the home also. They regularly rummaged through trash cans and dumpsters, looking for food, clothes, and household items -- things they might use or things they might sell. The wait for justice was literally destroying the family's dignity, but they would not give up.

Finally, toward the end of the fifth year of the lawsuit, the court's trial date was approaching. Then, and only then, the insurance company was interested in negotiation. It had sat on the money it owed the Olivas family for more than five years for the injury, and finally was going to be forced by a trial to pay. The case settled and the family received substantial compensation. At the time, one might even have been tempted to call it a "victory", but no one could argue that justice was served.

The contrasting story is that of Christopher Spencer, a 40-year-old single father of two teenagers that John Rice and I represented in 1999. Mr. Spencer's doctors negligently ignored his medical condition for years until he passed out at work one day and was rushed to the hospital. It was discovered that his lungs were permanently destroyed by the lack of treatment and he would likely die in three years unless he had both lungs transplanted. Sharp Rees-Stealy Medical Group refused to authorize the lung transplants and refused to make any settlement offer

on the case. The only way Mr. Spencer could get the money he needed for his lifesaving medical care, the only way he could get the lost wages he needed to care for his children, was trial. If he had to wait 5 years, like Mr. Olivas, all doctors agreed he would probably die.

But Mr. Spencer had the benefit of Fasttrack. He would not have to wait five years. His case went to trial in 14 months and resulted in a truly lifesaving verdict. In fact, tonight, after I write this column, I will join Mr. Spencer to watch his daughter lead her team in the high school basketball championship game. Justice was done for Christopher Spencer and his family because the judge and jury were there to hear their case in a timely manner.

Court funding is not the usual topic of discussion at a seminar or a cocktail party or on the ListServe. The truth is most of us don't even have the slightest idea how the court is funded. I am quickly learning that what you don't know can, and most definitely will, hurt you. I urge you to deliver the message in every way you can that the civil justice system must be protected. This is an issue that we need to be excited about now, before it is too late, or we will have nothing left but to reminisce about the good ol' days of Fasttrack.