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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,	
Plaintiff and Appellant,	E048848
v.	(Super.Ct.No. SWF018101)
CHARLES ALEXANDER BOYD,	O P I N I O N
Defendant and Respondent.	

APPEAL from the Superior Court of Riverside County. Edward D. Webster, Judge. Affirmed.

Rod Pacheco, District Attorney, and Alan D. Tate, Deputy District Attorney, for Plaintiff and Appellant.

Patrick J. Hennessey, Jr., under appointment by the Court of Appeal, for Defendant and Respondent.

I. INTRODUCTION

The People appeal from an order dismissing an information charging defendant Charles Alexander Boyd with two misdemeanors, after the court determined there were no courtrooms available to try the case on May 18, 2009, the last day it could have been tried without violating defendant's speedy trial rights. (Pen. Code, §§ 1050, subd. (a), 1382.)[1] The People claim the court violated section 1050, subdivision (a) and therefore necessarily abused its discretion in applying an "inflexible policy," namely, a written "dismissal policy," adopted by the court on October 10, 2008, which provides that the court will not, under any circumstances, assign criminal jury trials to temporary judges designated to conduct civil trials, or to departments designated to hear family law, juvenile, probate, guardianship, and master calendar matters.

The People argue the court acted arbitrarily in adhering to its dismissal policy and in refusing to "truly consider the use of many civil or non-criminal courtrooms and judges in order to prevent the dismissal of this last-day criminal case." The People maintain the court should have checked with all departments handling noncriminal matters on May 18, 2009, and determined whether any of the matters being heard in those departments would have been *actually prejudiced* by interrupting or suspending them, and assigning defendant's misdemeanor case for trial in that department.

For the reasons we explain, the court did not violate section 1050, subdivision (a) and did not abuse its discretion in refusing to assign defendant's case to a courtroom

[1] All further statutory references are to the Penal Code unless otherwise indicated.

previously designated to hear civil or other noncriminal matters. The court's dismissal policy is not arbitrary, and that is all that section 1050, subdivision (a) requires. We therefore affirm the order dismissing the charges.[2]

II. STATEMENT OF FACTS[3]

On August 29, 2006, California Highway Patrol Officer Hector Barragan stopped defendant following a report by a Caltrans worker that defendant failed to stop for ongoing construction. It was later determined that the vehicle defendant was driving was stolen, and defendant had given Officer Barragan false information concerning his identity.

III. PROCEDURAL BACKGROUND

On September 15, 2006, a complaint was filed charging defendant with unlawfully driving or taking a vehicle, a felony (Veh. Code, § 10851, subd. (a)), driving on a suspended license, a misdemeanor (Veh. Code, § 14601, subd. (a)), and providing false information to a police officer, a misdemeanor (Pen. Code, § 148.9, subd. (a)).

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[2] The People acknowledge that in *People v. Wagner* (2009) 175 Cal.App.4th 1377 (Fourth Dist., Div. Two) (review granted Sept. 30, 2009, S175794) and *People v. Flores* (2009) 173 Cal.App.4th Supp. 9, this court and the appellate department of the superior court, respectively, rejected claims identical to the claims the People raise here. (See also *People v. Cole* (2008) 165 Cal.App.4th Supp. 1.) The People argue, however, that the reasoning of *Wagner* and *Flores* is erroneous and should be reconsidered. On October 14, 2009, we denied the People's request to stay the present appeal pending the state Supreme Court's review of the *Wagner* decision.

[3] Because the charges against defendant were dismissed before he could be brought to trial, this statement of facts is based on the evidence taken at the January 23, 2008, preliminary hearing.

Defendant pled not guilty. Following a preliminary hearing on January 23, 2009, defendant was held to answer all charges.

On February 6, 2008, an information was filed alleging the same charges, and defendant again pled not guilty. On May 8, 2009, the court granted the People's motion to dismiss the felony charge in the interests of justice. (§ 1385.) A jury trial on the two misdemeanor charges was set for May 15. The last day to commence trial was May 18.

On May 15, the matter was trailed to May 18 pursuant to the People's motion. On the morning of May 18, the parties appeared in department S62B of the Southwest Justice Center in Murrieta and announced ready for trial. They were then ordered to appear at 3:30 p.m. in department 62 of the Riverside Hall of Justice in Riverside. When they appeared in department 62, counsel on two other criminal cases, in addition to defendant's case, announced ready for trial, and no courtroom was available to try any of the three cases.

The court told the prosecutor, who was representing the People on all three cases, that: "[A]s you well know, it's been a struggle, and we've looked high and low, and we've found cases to stipulate to the next day, and there's no courtroom available. I didn't call Judge Tranbarger, because I know that you still would be in the position that you'll be affidaviting Judge Tranbarger. As far as I know, Judge Trask is not here today, so she will not be available. Judge Hopp is in a civil trial. And I know you do have objections, but he's been designated by Judge Cahraman, but he's the only traditional civil department available for trial. I'll let you make your statement at this time. Again,

I'm incorporating the dismissal script prepared by Judge Hernandez, on October 10th of 2008, into each of the three cases.[4] [The prosecutor's] objections and statements will also be incorporated into each of those three cases as well."

The prosecutor told the court: "It is the position of the People [that section 1050] sets forth a preference for criminal cases over any civil matter or proceedings. The Court currently has one designated courtroom, Judge Hopp in Indio, that is designated to solely do civil cases here today. We believe that expressly goes against [section 1050] and object to that here. We believe that the Court should also be looking to family law, probate, guardianship, and other specifically designated non-criminal departments for a home for these jury trials. We disagree with the Courts' policy of not checking those courtrooms to determine if any of them are available to hear one of these jury trials.

"The People believe that the judicial counsel [*sic*] cannot order this Court to deviate from [section 1050]; therefore, we believe that any Hawthorne and Palm Springs court judges that are not currently hearing criminal cases should be hearing one of those cases. They can use one of our courtrooms, if necessary, for security. Finally, it is the position of the People that if the Court has done everything required of it to find a courtroom and none appear available, then that constitutes good cause and these cases should be continued for one day. The People object to any dismissals that occur on these cases because of what is termed a lack of available courtrooms. Thank you."

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[4] A copy of Judge Hernandez's October 10, 2008, "dismissal script" is included in the record and is attached to this opinion as exhibit A.

The court then scheduled motions to dismiss the three cases on the following day, May 19. On May 19, the People opposed defendant's motion to dismiss based on the comments the prosecutor made in court on May 18. The court granted the motion and dismissed the misdemeanor charges against defendant on the ground trial was not commenced on or before the last day it could have commenced without violating defendant's speedy trial rights. The People appeal from the order of dismissal and seek reinstatement of the charges.

IV. ANALYSIS

A. *Standard of Review*

"The right to a speedy trial is a fundamental right. [Citation.] It is guaranteed by the state and federal Constitutions. [Citations.] The Legislature has also provided for '"a speedy and public" trial as one of the fundamental rights preserved to a defendant in a criminal action. [Citation.]' [Citation.] To implement an accused's constitutional right to a speedy trial, the Legislature enacted section 1382. [Citation.]" (*Rhinehart v. Municipal Court* (1984) 35 Cal.3d 772, 776.)

"Section 1382 provides statutory deadlines for bringing a criminal defendant to trial. If these deadlines are not met, and no good cause is shown, then a defendant has a statutory right to have the claims against him dismissed." (*Baustert v. Superior Court* (2005) 129 Cal.App.4th 1269, 1275.)

Here, the court dismissed defendant's misdemeanor case because it had not been brought to trial within the time required under section 1382. As indicated, the case was

not timely brought to trial because the court determined there were no courtrooms available on May 18, 2009, the last day it could have been timely tried pursuant to section 1382. The court also implicitly determined that the lack of a courtroom to try the case did not constitute good cause to continue the case, indefinitely, until a courtroom became available. Thus, the issues to be decided on this appeal are (1) whether the court erroneously determined there were no courtrooms available to try defendant's misdemeanor case (§ 1050, subd. (a)), and (2) whether the court should have granted the People's request for a continuance until a courtroom became available (§ 1382).

The People argue the court's determination that there were no courtrooms available to try defendant's case on May 18, 2009, was not a matter of judicial discretion subject to review for an abuse of discretion, but a question of law subject to de novo review. They point out that, in the present case, the court's determination that no courtrooms were available was based on undisputed facts concerning the uses of Riverside County courtrooms on May 18, 2009. (*People v. Waidla* (2000) 22 Cal.4th 690, 730 [an appellate court applies the independent or de novo standard of review to a trial court's resolution of pure questions of law and mixed questions of law and fact that are predominantly legal].) The People concede, however, that a court's determination that there is no good cause to continue a case beyond the statutory speedy trial period is generally reviewed for an abuse of discretion. (*People v. Memro* (1995) 11 Cal.4th 786, 852; *People v. Baustert, supra,* 129 Cal.App.4th at p. 1275.)

As will appear, section 1050, subdivision (a) afforded the court ample discretion to determine whether any courtrooms were available to try defendant's case. We therefore review the court's determination that no courtrooms were available for an abuse of discretion. (§ 1050, subd. (a).) We then address whether the court abused its discretion in determining that the lack of an available courtroom on May 18, 2009, did not constitute good cause to continue the case, indefinitely, until a courtroom became available. (§ 1382.)

B. *Section 1050, Subdivision (a) Afforded the Court Ample Discretion to Determine Whether a Courtroom Was Available to Try Defendant's Criminal Case*

Section 1050, subdivision (a) states, in pertinent part, that criminal cases "shall be set for trial and heard and determined at the earliest possible time," and expedited "to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence over, and set for trial and heard *without regard to* the pendency of, any civil matters . . . ."[5] (Italics added.) Despite the statute's use of

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[5] Section 1050, subdivision (a) states in full: "The welfare of the people of the State of California requires that all proceedings in criminal cases shall be set for trial and heard and determined at the earliest possible time. To this end, the Legislature finds that the criminal courts are becoming increasingly congested with resulting adverse consequences to the welfare of the people and the defendant. Excessive continuances contribute substantially to this congestion and cause substantial hardship to victims and other witnesses. Continuances also lead to longer periods of presentence confinement for those defendants in custody and the concomitant overcrowding and increased expenses of local jails. It is therefore recognized that the people, the defendant, and the victims and other witnesses have the right to an expeditious disposition, and to that end it shall be the duty of all courts and judicial officers and of all counsel, both for the prosecution and the defense, to expedite these proceedings to the greatest degree that is consistent with the ends of justice. In accordance with this policy, criminal cases shall be given precedence

[footnote continued on next page]

the phrase "without regard to," the language of the statute as a whole does not evoke an absolute rule that criminal trials must *always* take precedence over pending noncriminal matters *regardless of the circumstances*. (*People v. McFarland* (1962) 209 Cal.App.2d 772, 777, citing *People v. Osslo* (1958) 50 Cal.2d 75, 106 (*Osslo*).) As the court in *McFarland* observed: "It is obvious that these provisions do not impose an arbitrary standard because the purposes to be achieved expressly are subservient to the 'ends of justice.'" (*People v. McFarland, supra,* at p. 777.)

Osslo illustrates that section 1050, subdivision (a) affords courts ample discretion in determining whether to give a criminal case trial preference over noncriminal matters. The defendant in *Osslo* objected to his criminal case being continued beyond its original trial date when civil cases were being tried in other departments. (*Osslo, supra,* 50 Cal.2d at pp. 104-105.) In response, the court indicated that its "general policy" was to give precedence to criminal trials when the defendant was in custody and could not make bail. (*Id*. at p. 105.) The defendant in *Osslo* was free on bail, however. The court further explained that, but for the fact that attorneys were willing to serve as judges pro tem, the court would "simply be bogged down with nothing but a number of these short jury trials where the defendants are in jail awaiting trial." (*Ibid*.) Finally, the court indicated that

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[footnote continued from previous page]
over, and set for trial and heard without regard to the pendency of any civil matters or proceedings. In further accordance with this policy, death penalty cases in which both the prosecution and the defense have informed the court that they are prepared to proceed to trial shall be given precedence over, and set for trial and heard without regard to the pendency of, other criminal cases and any civil matters or proceedings, unless the court finds in the interest of justice that it is not appropriate."

the trial of a person confined as mentally ill was being held in one department, and the juvenile calendar was "'very congested.'" (*Id*. at pp. 105-106.) The court thus implied that civil cases, other noncriminal matters, and criminal cases involving incarcerated defendants were, at least generally, entitled to some degree of consideration or precedence in assigning cases for trial.

On appeal, the defendant in *Osslo* argued that the continuance of his case beyond its original trial date violated former sections 681a and 1050, subdivision (a).[6] (*Osslo, supra,* 50 Cal.2d at p. 106.) The state high court interpreted the statutes as requiring that criminal trials not be "deprived of precedence over civil cases for any *arbitrary reason*," and further observed that, under the statutes, "[t]he precedence to which criminal cases are entitled is not of such an absolute and overriding character that the system of having separate departments for civil and criminal matters must be abandoned." (*Ibid.*, italics added.)

The *Osslo* court concluded that "the policy" of former sections 681a and 1050, subdivision (a) had not been "disregarded" in the defendant's case, in view of the reasons

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[6] At the time *Osslo* was decided in 1958, section 1050, subdivision (a) provided only that "[c]riminal cases shall be given precedence over all civil matters and proceedings." (See *Osslo, supra,* 50 Cal.2d at p. 106.) Section 681a then provided that: "The welfare of the people of the State of California requires that all proceedings in criminal cases shall be heard and determined at the earliest possible time. It shall be the duty of all courts and judicial officers and of all district attorneys to expedite the hearing and determination of all such cases and proceedings to the greatest degree that is consistent with the ends of justice." (*Osslo, supra,* at p. 106.) In 1959, the Legislature repealed former section 681a and amended section 1050, subdivision (a). (Stats. 1959, ch. 1693, §§ 1, 2, pp. 4092-4093.) The full text of section 1050, subdivision (a), in its current form, is set forth in footnote 5, *ante*.

the calendar judge gave for not giving the defendant's case trial precedence over civil case and other noncriminal matters. (*Osslo, supra,* 50 Cal.2d at p. 106.) More generally, the court concluded that the statutes did not evince an absolute rule that criminal trials must *always* be given precedence over civil matters and all other noncriminal matters, *regardless of the circumstances*. This is the clear import of the court's observation that: "The precedence to which criminal cases are entitled is not of such an absolute and overriding character that the system of having separate departments for civil and criminal matters must be abandoned." (*Ibid*.)

Osslo is still good law, and illustrates that section 1050, subdivision (a) does not evoke an absolute rule that criminal cases must always be given trial preference over noncriminal matters, regardless of the circumstances. Instead, the statute affords courts ample discretion to determine whether a criminal case should be given trial preference over noncriminal and other criminal matters, in view of the court's overall workload and the relative interests of both criminal and noncriminal litigants having cases pending before the court. The court must not exercise its discretion in an arbitrary manner, however. (*Osslo, supra,* 50 Cal.2d at pp. 104-106.)

C. *The Court Did Not Abuse Its Discretion in Determining There Were No Courtrooms Available to Try Defendant's Case*

The People further argue that, *if* the court had discretion under section 1050, subdivision (a) to determine there were no courtrooms available to try defendant's case, then it necessarily abused that discretion because it "refused to even consider"

transferring this last-day criminal case to a courtroom hearing family law, juvenile law, probate, or guardianship matters, to any of the temporary courtrooms at the Hawthorne Elementary School designated to handle civil trials, or to Judge Hopp in Indio who was also handling civil matters. Instead, the People argue, the court erroneously relied on its "inflexible" dismissal policy and the "general importance" of noncriminal matters pending before the court in refusing to assign defendant's case for trial.

As discussed, section 1050, subdivision (a) affords courts ample discretion to determine whether a criminal case should be given trial preference over noncriminal matters and other criminal matters, in view of the court's overall workload and the interests of both criminal and noncriminal litigants having cases pending before the court. In addition, section 1050, subdivision (a) does not require courts to abandon their practice of designating separate departments to handle criminal and noncriminal matters. The court must not exercise its discretion in an arbitrary manner, however. (*Osslo, supra,* 50 Cal.2d at pp. 104-106.)

The court's "dismissal policy" is neither arbitrary nor inflexible as the People maintain. Instead, the policy reflects a well-reasoned and well-considered exercise of the court's discretion in view of its overall workload and the general importance of noncriminal matters pending before the court at any given time. (*Osslo, supra,* 50 Cal.2d at pp, 104-106.)

The policy first provides that criminal jury trials will not be assigned to the family law, juvenile, guardianship, probate, or master calendar courts, under any circumstances,

and explains why. Each of these courts conducts important business that affects the lives of children or other members of the public. The judges in the family law court, for instance, have "full calendars" and protect the needs of children of divorcing families. If a family law judge is required to handle a criminal jury trial, there is no one to replace that judge in family law court. The policy states similar reasons for not requiring the juvenile or probate court judges, or the sole judicial officer handling guardianships, to abandon their busy calendars in order to conduct criminal jury trials. Nor will the court assign criminal jury trials to its calendar courts, because these courts "handle hundreds of cases each day," and the cases would be dismissed if the calendar judge were not there to handle them.

There is nothing arbitrary about these aspects of the court's dismissal policy. As discussed, section 1050, subdivision (a), as interpreted in *Osslo*, allows superior courts to designate separate departments for civil and other noncriminal matters, and use those departments solely to hear those matters. The policy also explains in detail why the business of the family law, juvenile, probate, guardianship, and calendar courts must not be interrupted or suspended in order to conduct criminal trials, and demonstrates that the court's designation of separate departments to hear these matters is not arbitrary.

The policy further states that there are four "visiting Judges" assigned for the sole purpose of conducting civil jury trials in two temporary facilities, one at Hawthorne Elementary School in Riverside and the other in the "desert area," apparently meaning Judge Hopp in Indio. The policy provides that these four judges and two facilities will

not, under any circumstances, be used for criminal jury trials because the facilities have inadequate security; hence, conducting criminal jury trials in them would be unsafe for jurors, the district attorney, defense counsel, and witnesses. And, although one of these four judges could "theoretically" be moved to a secure courtroom in the Riverside Hall of Justice, the court would not do so because the Administrative Office of the Courts had assigned all four of the judges to Riverside County "for the specific purpose" of conducting civil trials. Thus, unless ordered to do so, the court would not use any of the four judges or two temporary facilities to conduct criminal jury trials.

There is nothing arbitrary about this aspect of the policy either. As indicated in *People v. Flores, supra,* 173 Cal.App.4th Supp. at page 22, very few civil cases were being tried in Riverside County before the Hawthorne judges were appointed. In addition, the court had already given "extraordinary precedence to criminal trials over traditional civil matters," and still lacked the resources necessary to try all criminal cases in a timely manner. (*Id*. at p. 23.) In view of the ongoing backlog of civil cases in the county and the lack of permanent judges and facilities to try them, the court's policy of designating the temporary Hawthorne and Indio judges and facilities *solely* to try civil cases was reasonable and well considered.

Lastly, the policy states that the court's civil courtrooms—apparently courtrooms other than the Hawthorne and Indio facilities—are "frequently" made available for criminal jury trials, and most civil courtrooms are used for civil and criminal matters. The policy also states: "*We will not interrupt an ongoing civil jury trial except in the*

rarest and most exigent of circumstances." (Italics added.) This aspect of the policy is certainly not arbitrary. Interrupting an ongoing civil jury trial will almost certainly waste the civil litigants' resources to their detriment or "actual prejudice." Still, this aspect of the policy is flexible because it allows for the possibility that an ongoing civil trial may be interrupted so that, for example, an important last-day criminal case could be sent to that courtroom for trial. It is reasonable, however, for the court to require that an ongoing civil jury trial will be interrupted only "in the rarest and most exigent of circumstances."[7]

The People assert that section 1050, subdivision (a) requires the master calendar court to inquire, on any given day, whether noncriminal matters being heard in any of the county's courtrooms would be *actually prejudiced* if a criminal trial were assigned to that courtroom that day. Not so. This is an insurmountable task and is not required by section 1050, subdivision (a). Moreover, the court's dismissal policy demonstrates that the court reasonably determined that noncriminal matters would generally be prejudiced if interrupted or suspended so that a criminal jury trial could be conducted in courtrooms previously designated to handle those matters.

In sum, the court's dismissal policy is not arbitrary; it is well considered and reasonably accounts for the interests of criminal defendants and all other persons having

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[7] The policy further states there is "one [c]ivil [j]udge," apparently Judge Tranbarger, whom the Riverside district attorney routinely "papers" or peremptorily challenges pursuant to Code of Civil Procedure section 170.6 every time a criminal case is assigned to him. The policy states that if a criminal case is assigned to this judge and he is peremptorily challenged, "an additional 'last day' is not created," meaning there will not be good cause to continue the case to another day. The People do not challenge this aspect of the policy, so we do not address it here.

business before the court or interests the court is charged with protecting. The policy is also flexible in at least one respect: it allows for the possibility that an ongoing civil jury trial in a permanent and secure courtroom may be interrupted to conduct a criminal jury trial, albeit "in the rarest and most exigent of circumstances." Here, however, the prosecutor made no effort to argue that "rare and exigent" circumstances required the court to interrupt a civil jury trial so that defendant's misdemeanor case could be tried.

D. *The Court Did Not Abuse Its Discretion in Determining Good Cause Had Not Been Shown to Continue Defendant's Case*

As indicated, on May 18, 2009, the last day to try defendant's case, the prosecutor argued to the court that the lack of an available courtroom constituted good cause to continue the case, indefinitely, until a courtroom became available. At the dismissal motion on May 19, the People submitted the matter based on the prosecutor's argument made on the previous day. On this appeal, the People suggest that the lack of an available courtroom on May 18 constituted good cause to continue the case, indefinitely, until a courtroom became available. Not so.

"Court congestion will constitute good cause [to deny a section 1382 motion to dismiss] only when the congestion is 'attributable to exceptional circumstances.'" (*People v. Rhinehart, supra,* 35 Cal.3d at p. 782, fn. omitted, citing *People v. Johnson* (1980) 26 Cal.3d 557, 571-572.) Defendant's case was dismissed due to the chronic congestion of the Riverside County Superior Court. These were not exceptional circumstances. Thus, the court property determined that the lack of an available

courtroom to try defendant's case on May 18, did not constitute good cause to continue the case, indefinitely, until a courtroom became available.

V. DISPOSITION

The order of dismissal is affirmed.

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/s/ King
J.

We concur:

/s/ Richli
Acting P.J.

/s/ Miller
J.

S-06-018101 ALA
Boyd
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE
MAY 18 2009
MAY 19 2009

Dismissal Script, Riverside Superior Court

HJH – 10/10/08

It is now 4:00 p.m. and we have criminal case(s) that have answered ready for trial and are on their last day. We have checked civil and criminal courts countywide and we have no available courtrooms to send a criminal jury trial. There are some types of courts where we will not send a criminal jury trial; Family Law Court, Juvenile Court, Guardianship Court, Probate Court.

The Judges in Family Law have full calendars. The public focuses on their job of handling dissolutions, but one of their most important jobs is to protect young children. The children of divorcing families are frequently in need of protection from some of the emotional things that parents who are in divorce situations are doing to each other. If a Family Law Judge is required to handle a criminal jury trial, there is no one to replace that Judge in Family Law. Taking away the Judge that protects these children would be very unfortunate for the children and for society. We will not reallocate a Family Law Judge to do a criminal jury trial.

The Judges in Juvenile Court have full calendars. They have two very important jobs. One is under 602 Welfare and Institutions Code and the other is under 300 of the Welfare and Institutions Code. Under 602, the Judge handles youths who have committed crimes. The time deadlines are strict. If a Judge is not available to conduct the hearings the youth is released. Some youth commit very serious crimes such as carjackings, robberies, etc. If these youth are released this would be a public safety issue. We would be exposing the public to unnecessary danger. Under 300, a Judge handles children from homes where they are abused or neglected. If the Judge were not available to oversee these children, they would be in great danger. If a Juvenile Court Judge is required to handle a criminal jury trial, there is no one to replace that Judge in Juvenile Court. Taking away the Judge that protects these children and society would be very unfortunate for the children and for society. We will not reallocate a Juvenile Court Judge to do a criminal jury trial.

The Judicial Officer who handles Guardianships is not available. Guardianships are for children or the severely disabled who have no one to care for them, for example, the parents have passed away and there are no available relatives. We are not going to abandon those least able to care for themselves. If the Guardianship Judicial Officer is required to do a criminal jury trial, there is no one to replace that person. We will not reallocate the Guardianship Judicial Officer to do a criminal jury trial.

The Judicial Officer who handles Probate is not available. Probate Court handles cases where the assets of those who have passed away or are disabled are

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Exhibit A

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protected. We are not going to abandon those unable to tend to their own assets or those who have passed on but have relied on the Courts to handle their assets appropriately. If the Probate Judicial Officer is required to do a criminal jury trial, there is no one to replace that person. We will not reallocate the Probate Judicial Officer to do a criminal jury trial.

Civil Courtrooms are frequently available for criminal jury trials. We use most civil courtrooms for both civil and criminal matters. We will not interrupt an ongoing civil jury trial except in the rarest and most exigent of circumstances. The civil departments that volunteer for criminal jury trials still handle a full load of civil matters. Thus, their scheduling needs must be taken into account.

There are four visiting Judges assigned to do civil jury trials in temporary facilities. One of those facilities is the Hawthorne Elementary School. Another such facility is in the desert area. These facilities have insufficient security. It would be unsafe for jurors, for the DA, for the defense counsel and for the witnesses, if criminals and criminal trials were assigned to these facilities. Theoretically, one of these Judges could be moved to a secure courtroom in the Hall of Justice. But, the Chief Justice and the Administrative Office of the Courts assigned these Judges to Riverside County for the specific purpose of doing civil trials. We will not change the assignment parameters unless the Chief / AOC or the Court of Appeals orders us to do so. We will not assign a criminal trial to these temporary facilities or take a Judge from these facilities to move elsewhere to do a criminal trial.

We have one Civil Judge who is available to do criminal trials. If he is not in a civil jury trial, criminal cases are assigned to him. The District Attorney files a 170.6 CCP against him every time that a criminal case is assigned to him. This is not unexpected since the DA's Office has announced publicly that they will "paper" that particular Judge at every opportunity. Therefore, if a case is assigned to him, and if he is "papered", an additional "last day" is not created.

We have Calendar Courts, each of which handle hundreds of cases, each day. If the Judicial Officer were not there, then cases would be dismissed. We have no spare Calendar Judges. If they are not present, no one will be available to do the Calendar. We will not reallocate a Calendar Judge to do a criminal jury trial.

We have informed the Chair of the Judicial Counsel, pursuant to section 1050 of the Penal Code, that we are in danger of dismissing cases.

Therefore, we have done everything possible to find a place for the last remaining case(s). No courtroom is available. The defense motion to dismiss will be heard on the next business day at 8:30 a.m. Each defendant is ordered back to this courtroom at 8:30 tomorrow morning. Each defendant and defense counsel and prosecutor is ordered to stay in this courtroom until 4:30 p.m. today, just in case a courtroom becomes available for jury trial.

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