

# Effect of the O.J. Trial on the Access to Justice

by Eric Johnson

## Executive Summary



*People v. Simpson*, dubbed by many as "the trial of the century," was an expensive court case that taxed Los Angeles County's coffers. Many creative, and occasionally unconstitutional, proposals were suggested to lessen the county's hardship, but none were implemented. While the Simpson case may have captured the nation's attention, it was a poor justification to radically alter how the courts' costs are distributed. *Simpson* was but one trial in a system heavily predisposed to pretrial settlement and greatly burdened by systemic factors such as the "three strikes" legislation.

The concern over *Simpson's* costs touches ultimately upon a much more complex issue: how the state funds the trial courts. While there is much criticism over the current method--the state in theory responsible for funding a specific percentage, but in actuality appropriating much less--none of the proffered solutions are seen as viable alternatives for California. The most obvious solution, 100% funding by the state, would place an extraordinary burden on the state in an era of the ever shrinking government dollar. And it must be remembered that trial court funding is but one issue in the never-ending county-state battle over dividing the cost of government services.

## Facts

On June 12, 1994, Nicole Brown and Ron Goldman were found murdered outside Ms. Brown's residence. O.J. Simpson, Ms. Brown's ex-husband, was arrested and charged with the two murders on June 17, 1994. Superior court proceedings began September 24, 1994. A jury panel (with 12 alternates) was fully constituted and sequestered on January 18, 1995. The case went to the jury for deliberations on September 29, 1995. Mr. Simpson was found not guilty on October 4, 1995 after four hours of deliberations.

Los Angeles County spent over \$9.2 million in total prosecuting Simpson. [1] Over \$3 million was incurred by the sheriff's office, with \$1.8 million related to jury sequestration. [2] The district attorney's office spent slightly over \$4 million on the 40 people working on the case. [3] The court incurred \$2.1 million in costs, with \$835,000 being related to jury sequestration. [4] Sheriff Sherman Block suggested that the trial was so cutting into the sheriff's budget that the county might have been forced to release other inmates early. [5]

The county charged the media for expenses related to the case, including \$300,753 in rent on the parking lot occupied by "Camp O.J.," [6] as well as the costs for wiring cable, [7] telephones, [8] and electricity and garbage service for the media encampment. [9]

Other high-profile cases in Los Angeles County have included:

Case	Year	Cost
McMartin Preschool case	1990	\$13.2 million
Richard Ramirez ("Nightstalker")	1989	\$1.8 million
Charles Manson	1971	\$768,838
Sirhan Sirhan	1969	\$592,806

In addition, Los Angeles County reimbursed Ventura County \$224,588 for the trial for the four officers charged in the 1992 Rodney King beating. [10]

Homicide cases routinely cost \$8000 a month; the Simpson trial averaged \$325,000 a month. [11] In response, Los Angeles County sought to diffuse the costs of the trial. As Elizabeth Smith of the sheriff's department stated, "We feel that in [Los Angeles] County, we're providing the state and the United States with such entertaining trials, we need to look at some creative ways to recoup some of those costs." [12]

## Legislative Responses

### 1. Bill the media.

Assembly Member Paula Boland (R-Granada Hills) introduced AB 1733 on February 24, 1995 to force the media to reimburse the

county in future trials. [13] Under the bill, the county could solicit bids for any case with estimated costs over \$1.5 million. [14] The winning bidder would pay half of the trial expenses, including prosecution, jury, and security costs; in turn, the winning bidder could sell its coverage to other media. [15] She noted the government routinely requires franchise fees for services, from leases on federal lands to the cost of ambulances. [16] The bill was killed 10-3 in the Assembly Judiciary Committee. [17] Professor John Sims testified against the bill, stating, "It is an unprecedented proposal [that], . . . without a doubt, is unconstitutional." [18]

Los Angeles County Board of Supervisors voted 3-2 in support of the bill. [19] Supervisor Michael Antonovich, who introduced the resolution, stated, "All we are asking for is fair play." [20] Supervisor Antonovich noted one network was charging \$24,000 for a 30 second commercial while the county faces a \$1.2 billion deficit for fiscal year 1995-96. [21]

The media did not react favorably. Vic Biondi of the California Broadcasters Association stated, "You're selling justice to the highest bidder." [22] Radio-Television News Directors Association president Dave Bartlett argued, "You can't sell tickets to a public trial . . . Press access to public trials cannot be conditioned on the payment of court costs." [23] Professor Rick Marks noted, "As journalists, we're performing a public service in covering that trial. . . . Journalism evolved as the watchdog of government and therefore can't be forced into paying that most basic function." [24] Media lawyer Bruce Sanford stated, "It is only in the celebrated, excessive, or heinous cases that our First Amendment laws and our commitment to the free flow of information get tested." [25] Television industry lobbyist Gene Erbin noted, "Other people are profiting, too as a result of this proceeding . . . . I'm also told that hot-dog vendors are having a record year as a result of this trial." [26]

## 2. Seek reimbursement from the state.

State Senator Richard Mountjoy (R-Arcadia) introduced on February 24, 1995 a bill to have the state reimburse the county for the costs, but it was held in the Senate Judiciary Committee. [27] Supervisor Antonovich supported the bill, stating, "Because this case is being tried under state laws, which we have no control over in the county, the state should bear its tremendous costs." [28] The state in the past has picked up the costs for high-profile cases in rural areas in the past, such as the trials of Charles Ng and the Chowchilla bus kidnapping. [29] This was the first request by a major urban center for such reimbursement. [30]

## 3. Order costs through the judicial process.

The board of supervisors also requested the courts to order the media to pay some of the trial's expenses, but this was rejected by Presiding Judge Gary Klausner. [31] The board argued the costs of the trial were attributed to sequestration, which in turn it attributed to the media; Presiding Judge Klausner disagreed: "There is no specific indication that would lead to the conclusion that the sequestration is the result of cameras in the court." [32] The county's legal counsel contended there is no constitutional right to televise the trial; accordingly, it was within the courts' discretion to pass the costs along. [33]

# Relevant Factors

## 1. High pretrial settlement and conviction rates.

Trials are the exception, not the norm, in the criminal justice system. Fewer than 5% of criminal trials in metropolitan areas actually go to trial. [34] Despite the justice system's presumption of innocence, the state has a remarkably high conviction rate. In fiscal year 1993-94, for example, 93.7% of the 147,269 felony filings resulted in a guilty plea or conviction. [35] Of the 9348 cases resulting in acquittal or dismissal, 305 were acquitted by a court trial and 932 by jury trial. [36]

## 2. Examples of other top-down costs imposed on judicial system.

### A. Orange County bankruptcy.

Due to the bankruptcy crisis in Orange County, the county slashed the judicial budget \$20 million, leaving the courts \$41 million short of the \$161 million the courts claim is necessary to adequately operate the county's courthouses. [37] (The other \$20 million of the shortfall is due to recent costs restructuring, which forced the courts to pay for courthouse security.) [38] In contrast, the sheriff's department and district attorney's office had less than 3% of their budgets cut. [39] The judges indicated to the board of supervisors they might be forced to impose a judicial order to secure adequate funding. [40] Only a few courts have ever sued the county for more funding, but the action is allowed under state law. [41]

### B. Trial courts' funding problems.

In California, trial courts are funded by both the state and counties. As their funding stems from two sources, the courts are vulnerable to budget shortfalls on either level. Despite legislative assurances, state support has been declining in absolute terms; [42] moreover, the state has siphoned fees and fines slated for county funds to the state's general fund. [43] This lack of secure funding has undermined the judicial branch's independence. [44]

As an alternative to split funding of the courts, but requiring counties to absorb some costs, other states have funded only: specific trial court functions, certain counties, to a baseline level, or certain level of courts. [45] The current proposals for California include: the state funding 70% of expenditures, which would cost the counties \$241 million; tying the level state funding to the amount of AFDC grants received, which would cost the counties \$75 million; 100% state funding, which would shift \$1.1 billion in costs to the state, but would be lessened by the state charging counties for the statewide justice services (i.e. prison space) used; and 100% state funding for the nineteen smallest counties, with the remaining counties funded at 78%. [46]

On October 4, 1995 -- the day of the Simpson verdicts [47] -- Presiding Judge Klausner requested Governor Pete Wilson to call a special legislative session to address Los Angeles County's funding shortfalls as well as the issue of trial court funding. [48] Due to the State's failure to provide \$243 million of the \$432 million promised to the county, the courts in Los Angeles will run out of money by April 1996. [49]

### C. Three Strikes

Prior to the "three strikes" legislation, more than 90% of cases were settled without a trial; now there is an incentive for defendants to avoid a strike. [50] Over 75% of "third-strikers" (and over 50% of first- and second-strike defendants) are exercising their right to jury trials. [51] Three strikes takes resources away from targeting violent and large-scale criminals by forcing the state to focus (and spend money) primarily on petty criminals who could be dealt with in cheaper and more effective ways. [52]

The state has yet to feel serious fiscal impact of three strikes, as the logjam is currently at the county level. [53] County jails are filled with defendants who normally would plead guilty and be sent to state prison. [54] Jails are forced to release misdemeanor defendants and police are told simply to not arrest petty offenders; "[t]he people who used to be in county jail are on the streets . . . . The people who used to be in state prison are in the county jail." [55] As Merced County Sheriff Tom Sawyer noted, "the easiest way to get out of jails is going to be to get sentenced." [56]

Similarly, civil cases are being settled for less than fair amounts as the delay in court dates increase litigation (transactional) costs. [57] As Presiding Judge Klausner stated, "Without those resources . . . courts will begin to fail those who need civil justice: small businesses, tenants and landlords, spouses seeking restraining orders and more." [58]

### D. Systemic crime-fighting problems.

Prosecutors complain recent federal and state spending on crime has focused primarily on increasing the number of officers and prisons, with little attention to prosecution; [59] as Assistant District Attorney for Los Angeles County Michael Tranbarger stated, "If there are more police, that requires more elsewhere, in courts and prisons." [60] Prosecutors admit that they routinely figure the associated costs of a trial, such as flying in an out-of-state witness, when determining whether to plea bargain. [61] With comparatively low pay and small raises, attorney turnover is high in district attorney offices. [62]

A related phenomenon is the increased focus on drug crimes. [63] With federal funding focused towards prosecuting drugs, it "burden[s] DAs with caseloads higher than a lot of them feel comfortable with. The war on drugs skews the system away from . . . anti-personal crimes." [64] As a result, violent crimes become the remaining priority, with other crimes being essentially decriminalized. [65] From 1986 to 1991, drug offenders went from 9% to 22% of California's prison population; there was no noticeable effect on drug use. [66]

### 3. Recent proposals.

California Supreme Court Justice Malcom Lucas, concerned about the increasing costs of the judicial system, proposed a variety of cost-saving measures to the Legislature on August 28, 1995, which included: suspend juror compensation; reduce municipal court juries from 12 to 8; suspend payment for court arbitrators; and contract privately for administrative services. [67] Senate Leader Bill Lockyer (D-Hayward) shot the proposal down, stating, "What is being proposed is a radical reform of the whole justice system. They would sacrifice justice for economy . . . . I think, if there's one branch of government that should not do that, it's probably the judiciary." [68] No legislator was willing to sponsor a bill of Justice Lucas' proposals. [69] In fiscal year 1995-96, the judicial system received \$663.3 million from the state, \$592 million less than it requested. [70]

## Conclusion

The California criminal justice system is torn by two competing forces: complex budget problems due to legislative gamesmanship, minimum standards of constitutional fairness, and inadequate and incomplete funding reforms; and the O.J. Simpson case, which created a public perception of an overspending on trials, where the public is paying too much while the media is paying too little. The problem is that the Simpson trial was unique by many standards, yet it is being used as the basis for reforms that will affect a huge number of *average* trials.

It is the counties that feel the brunt of such contending factors. As courts may order the counties to pay the funds necessary to maintain minimal operating standards, and the state government has been deliberately underfunding its share of trial courts costs, the counties are powerless to stop the squeeze. Despite the legal maneuvers and cries for help, Los Angeles County will be forced to absorb the costs of the Simpson trial. There is little political incentive for the state to step in; any attempt to slash the judiciary's budget can lead to court orders that provide for funding.

The solution, heralded by many, is to have the state fund all levels of all courts. While the Legislature has reluctantly acknowledged this as the most viable solution, it is looking for methods to defray the costs of the additional expenditures. The counties are afraid the state will draw off other funds required at the county level, such as user fees, welfare payments, and incarceration costs. While such proposals would repair the problems of split-source funding, they are opposed by the counties as not being revenue neutral. The state, naturally, claims it cannot to absorb additional expenditures while the number of agencies clamoring for government dollars increases.

Trial court funding is but one aspect of the fight between the state and counties in dividing revenue and costs. While it may be possible to improve the structure of the judiciary, the funding feud has existed almost as long as the state has.

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## Notes

[1] *L.A. County Spent \$9.2 Million on Simpson's Murder Trial*, S.F. Chron., Dec. 2, 1995, at A7 [hereinafter, *L.A. County Spent \$9.2 Million*]. Through August, the total was over \$8 million. Jean Heller, *Simpson trial now tops \$8 million*, St. Petersburg Times, Sept. 21, 1995, at 1A. This figure did not include Judge Ito's salary, which was paid by the State. *Id.* Much of the costs, however, such as the salaries of the county employees and court costs, are fixed costs which the county would have incurred regardless of the trial. Gloria Goodale, *Dollars and Sense of the Simpson Trial*, Christian Sci. Monitor, May 16, 1995, at 4.

It has also been suggested that the money coming into the Los Angeles economy--through higher occupancy rates, consultant fees, and increased television advertising--indirectly offset the costs created by the trial. James Flanigan, *Trial's Benefits May Offset Costs*, L.A. Times, Mar. 8, 1995, at D1. ([return to text](#))

[2] *L.A. County Spent \$9.2 Million*, *supra* note 1, at A7. Sequestration was estimated to cost \$3446 a day. William Carlsen, *No Gag Order in Simpson Case*, S.F. Chron., Sept. 3, 1994, at A3. ([return to text](#))

[3] *L.A. County Spent \$9.2 Million*, *supra* note 1, at A7; see *Bill on TV Rights for Trials Rejected*, Fresno Bee, May 25, 1995, at B4 (\$3.6 million through August 1995). ([return to text](#))

[4] *L.A. County Spent \$9.2 Million*, *supra* note 1, at A7; see *Bill on TV Rights for Trials Rejected*, *supra* note 4, at B4. Other significant costs included \$100,000 by the coroner and \$20,000 by the auditor-controller. *Id.* It cost the county \$46.25 a day to incarcerate Simpson. Goodale, *supra* note 1, at 4.

The cost, for example, of the jury tour of Simpson's mansion, the murder scene, and the restaurant where Ms. Brown last ate cost the county \$114,617. Vincent J. Schodolski, *Taxpayers digging deep for O.J.'s trial*, Calgary Herald, Feb. 19, 1995, at A2. Los Angeles Police Department also spent \$136,000 providing security and air support. *L.A. Wants Help Paying O.J. Bills*, S.F. Chron., Mar. 6, 1995.

Employers of the jurors continued to pay their salaries, despite not working for over a year. Thomas D. Elias, *Many on Simpson Jury Are Still Drawing Full Pay, Benefits*, Detroit News, Sept. 10, 1995. In return, the jurors turned over the \$5 a day the county paid them to sit as jurors. *Id.* ([return to text](#))

[5] *Council Members Decline to Add Fuel to the William Flap Fire*, L.A. Times, May 26, 1995, at B5 [hereinafter *Council Members Decline*]. ([return to text](#))

[6] *L.A. County Spent \$9.2 Million*, *supra* note 1, at A7; see M.L. Stein, *Request to Have Media Pay Part of O.J. Trial Bill is Rejected*, Editor & Publisher, Apr. 15, 1995, at 15. ([return to text](#))

[7] Darrell R. McGeorge, *Profiting from Murder*, Fresno Bee, Mar. 3, 1995, at B6. ([return to text](#))

[8] Dion Nissenbaum, *Trial Court Coverage Bill Defeated*, UPI, May 24, 1995, available in LEXIS, News Library, Curnws File. ([return to text](#))

[9] Michael Arkush, *Charging the Media for O.J. Trial Coverage*, L.A. Times, Mar. 3, 1995, at B3. ([return to text](#))

[10] Geoff Fein, *County Reimbursed for Police Trial Costs*, L.A. Times, Oct. 6, 1992, at B2. As with all change-of-venue cases, the originating county can be billed for any costs, such as extra security, court costs, equipment rental, and utilities maintenance. *Id.* The City of Simi Valley, however, was not reimbursed for the costs it incurred. *Id.*

More recently, shifting venue costs has also been an issue in Richard Davis's upcoming trial for the abduction and murder of Polly Klaas. Tyra Mead, *Klaas Trial to Move to San Jose*, S.F. Chron., Nov. 21, 1995, at A1. While Sonoma County will pay the expenses incurred by Santa Clara County, there has been concern over the indirect burdens, such as office space, computer time, and the expected large crowds. *Id.* "I did not promise to provide a judge for this case, because we don't have any," stated Presiding Judge Joseph Biafore, Jr. *Id.* ([return to text](#))

[11] Hallye Jordan, *L.A. County Dealt Blow on Bill to Require Bids for TV in Court*, San Jose Mercury News, May 25, 1995, at 3B.

In contrast, the State of Georgia spends approximately \$16.5 million annually on defense lawyers for its 98,000 indigent criminal cases, approximately \$184 a defendant. Dave Kindred, *Money, Time Tight at Trial*, Atlanta J. & Const., Sept. 13, 1995, at 3C. Court-appointed lawyers work for \$35 an hour, with limits on trial-related expenses. *Id.* ([return to text](#))

[12] *Id.* ([return to text](#))

[13] *Id.* ([return to text](#))

[14] *Bill on TV Rights for Trials Rejected*, *supra* note 3, at B4; Susan Karlin, *Media Balk at Paying Court Fees*, Electronic Media, Apr. 3, 1995, at 56. ([return to text](#))

[15] Karlin, *supra* note 15, at 56. ([return to text](#))

[16] *Id.* ([return to text](#))

[17] Jordan, *supra* note 12, at 3B. ([return to text](#))

[18] *Id.* ([return to text](#))

[19] *County Wants its Cut of Media Cover Trials*, San Diego Union-Trib., May 17, 1995, at A4. ([return to text](#))

[20] *Id.* ([return to text](#))

[21] *Board OKs Bill to Ease Burden of Costly Trials*, L.A. Times, May 17, 1995, at B2. The deficit has also been estimated at \$640 million. *L.A. County Seeks to Cash in on Simpson Trial*, Reuters Bus. Rep., Feb. 28, 1995, available in LEXIS, News Library, Curnws File.

Court TV sold its feed at \$35 per second. *Council Members Decline*, *supra* note 5, at B5. Supervisor Antonovich estimated the media's profit from the trial to be \$500 million; "[t]hat's bigger than the gross national product of Grenada," he noted. *Id.* The *Wall Street Journal* estimated "O.J.'s 'gross domestic product'" to be near \$200 million. See *O.J., Inc.*, S.F. Examiner, Oct. 4, 1995, at B1.

Notable expenditures in the O.J. economy include: possible pay-per-view interview (estimated at \$12 million); Simpson's *I Want to Tell You* (\$1 million in sales; \$3-4 million in royalties); telephone cards with Simpson's photograph and autograph (\$5 million); trading cards and recorded telephone messages (\$200,000); Simpson's lawyers (\$3 million); increase in Los Angeles tourism (\$3 million); CNN profits during trial coverage (\$45 million); and Simpson-related books. *Id.* Simpson has applied to trademark his name and football nickname, "Juice," for future products such as comic books, calendars, toys, sporting goods, clothing, and electronic games. *Id.* ([return to text](#))

[22] *Bill on TV Rights for Trials Rejected*, *supra* note 3, at B4. ([return to text](#))

[23] Karlin, *supra* note 15, at 56. As one commentator wryly noted, "Who would get the residuals?" McGeorge, *supra* note 7, at B6. ([return to text](#))

[24] Arkush, *supra* note 9, at B3. ([return to text](#))

[25] Harriet Chiang, *Free Press vs. Fair Trial*, S.F. Chron., July 3, 1995, at A1. ([return to text](#))

[26] Jordon, *supra* note 12, at 3B. ([return to text](#))

[27] *State Criticized for Not Paying for Simpson Trial*, L.A. Times, Apr. 6, 1995, at B2. ([return to text](#))

[28] *Id. But cf. infra* note 41. ([return to text](#))

[29] *State Could Pick up Simpson Trial Costs*, UPI, Feb. 24, 1995, available in LEXIS, News Library, Curnws File. ([return to text](#))

[30] See *Bill Would Make California Pay for Simpson Trial*, Reuters, Feb. 24, 1995, available in LEXIS, News Library, Curnws File. ([return to text](#))

[31] Stein, *supra* note 6, at 15; Carla Rivera, *L.A. County Moves to Ease Trial Costs*, L.A. Times, Mar. 1, 1995, at A11. ([return to text](#))

[32] Rivera, *supra* note 32, at A11. Supervisor Antonovich disagreed: "There is no question that the broadcast media has increased the cost of the trial. The attorneys are often performing for the camera and are therefore increasing the length of the trial." Jonathan Davies, *Simpson Trial at No Charge*, Hollywood Rep., Mar. 17, 1995.

It has been noted that a more effective method to reduce such costs would be to ban television cameras from the courtroom, a power the courts already have. See Jordon, *supra* note 12, at 3B. ([return to text](#))

[33] Rivera, *supra* note 32, at A11. California law allows judges to ban cameras "on the nebulous standard that it interferes with the dignity of the courtroom." See Chiang, *supra* note 26, at A1. ([return to text](#))

[34] See Goodale, *supra* note 1, at 4. ([return to text](#))

[35] Judicial Council of Cal., 1995 Annual Report 93 (1995). Approximately 2% of those filings resulted in misdemeanor rather than felony convictions. *Id.* ([return to text](#))

[36] *Id.* Similarly, only two percent of the 762,000 civil cases in the 75 most populous counties in the nation were decided by juries; plaintiffs won 52% of the time. Richard C. Rueben, *Plaintiffs Rarely Win Punatives*, *Study Says*, A.B.A. J., Oct. 1995, at 26 (citing recent Department of Justice study). ([return to text](#))

[37] Rene Lynch, *Top O.C. Judge Warns of Legal Clash*, L.A. Times, Sept. 14, 1995, at A1 [hereinafter Lynch, *Warns of Legal Clash*]. The county has sought to offset its deficit by contracting to import trash from other counties. Rene Lynch, *County Court*

*Systems Have Extra Trying Times Ahead*, L.A. Times, Aug. 31, 1995, at B5. Orange County is slated to receive \$140,349,000 in fiscal year 1995-96 from the state, second only to Los Angeles County as a percentage of the courts' budget. Administrative Office of the Courts, Judicial Council of Cal., Issue Meeting on Trial Court Funding 26 (July 13, 1995). ([return to text](#))

[38] Rene Lynch, *O.C.'s Top Judge May Order More Funds for Courts*, L.A. Times, Sept. 1, 1995, at A1 [hereinafter Lynch, *May Order More Funds*]. Budgetary shortfalls are not confined only to Orange County. See, e.g., *infra* notes 49-50 and accompanying text. Inadequate trial court funding were public political battles in New York in 1991 and Vermont in 1990 as well. See Letteau, *infra* note 41, at 561; see also Don J. De Benedictis, *Budget Ax Hits Justice*, A.B.A. J., May 1991, at 16, 18 (nation-wide court funding problems prevalent since 1985). ([return to text](#))

[39] Lynch, *supra* note 39, at A1. ([return to text](#))

[40] *Id.*; Lynch, *Warns of Legal Clash*, *supra* note 38, at A1. Courts can order expenditures necessary in case of an emergency, and the county cannot be relieved of its duty to pay. *Ross v. Superior Court*, 569 P.2d 727 (Cal. 1977); *County of L.A. v. Payne*, 66 P.2d 658 (Cal. 1937); *accord* 15 Ops. Cal. Atty. Gen. 259, 263 (1950). Courts may force counties to incur expenses to fulfill state-mandated duties. *People v. Otto* 18 P. 869, 870 (Cal. 1888). *But cf.* text accompanying *supra* note 29.

"Therefore, the California trial courts may act independently of the board of supervisors to fulfill state-mandated duties. . . . [W]here the county has appropriated insufficient funds for the courts to operate in their official capacities, count board of supervisors may be compelled to release monies to the judiciary." G. Tracey Letteau, Note, *Crisis in California: Constitutional Challenges to Inadequate Trial Court Funding*, 22 Hastings Const. L.Q. 557, 573-74 (1995); see *People v. Bird*, 300 P. 23 (Cal. 1931). Through the "inherent powers" doctrine, while the judiciary can compel funding, it can do so only to level necessary to perform its judicial function. See Gary D. Spivey, Annotation, *Inherent Power of Court to Compel Appropriation of Expenditure of Funds for Judicial Purposes*, 59 A.L.R. 3d 569 (1974 & Supp. 1994). ([return to text](#))

[41] Lynch, *May Order More Funds*, *supra* note 39, at A1. A county budget may be modified to respond to emergencies or court orders. See Cal. Gov't Code 29122 (West 1994). The board's authority to reallocate resources may be limited by the court. *Brandt v. Board of Supervisors*, 84 Cal. App. 3d 598 (1978); *Hicks v. Board of Supervisors*, 69 Cal. App. 3d 228 (1977).

Counties may be forced to absorb extraordinary but justified expenses. *Nickley v. County of Madera*, 111 Cal. App. 731 (1931). In *Nickley*, the sheriff hired additional detectives to arrest a suspected cattle thief and murderer; the board refused to pay for the expenditures, as they were not anticipated in the original budget. *Id.* at 733. The court held that the predecessor to California Government Code 29122 does not make a board's budget final, as the budget is always subject to modification by court order. *Id.* at 735.

Through the state Constitution, California courts have "the power of self-preservation . . . to remove all obstructions to its successful and convenient operation." *Millholen v. Riley*, 293 P. 69, 69-70 (Cal. 1930). The Legislature, however, may adopt "reasonable restrictions." *Id.* at 71. ([return to text](#))

[42] State funding for the courts in fiscal year 1994-95 was \$37 million less allotted than the fiscal year 1993-94, which had been slashed by \$79 million from the previous year; the 1993-94 budget was 16% below the statutory required minimum percentage of funding. See Letteau, *supra* note 41, at 559-60; Cal. Gov't Code 77200 (1995).

The legislative funding shortfall is a form of retaliation. After the California Supreme Court upheld Proposition 138, which imposed term limits and cut the Legislature's funding by 38%, the Legislature responded by cutting courts' funding by 38%. *Id.* at 598 & nn.335-36; Bill Ainsworth, *Battle of the Branches*, Cal. J., Jan. 1, 1993, at 21-22; see also *Legislature of Cal. v. Eu*, 816 P.2d 1309 (Cal. 1991), *cert. denied*, 112 S. Ct. 1292 (1992).

All appellate courts are completely funded by the state. Letteau, *supra* note 41, at 566. Counties are unable to raise the necessary money due to procedural and structural impediments such as Proposition 13. *Id.* at 568. ([return to text](#))

[43] Administrative Office of the Courts, *supra* note 38, at 9. ([return to text](#))

[44] *Id.* at 14. At the same time the trial courts' budget have been cut, superior courts filing increased 38% from 1981 to 1993. Letteau, *supra* note 41, at 560 (citations omitted). Notably, only 21.4% new judgeships were created in the same time period. *Id.* ([return to text](#))

[45] Administrative Office of the Courts, *supra* note 38, at 22-26. While other states have adopted a variety of approaches, there is no consensus on the issue. See David B. Rottman et al., U.S. Dep't of Justice, No. NCJ-148346, *State Court Organization 1993*, at 136-65 tbl. 17 (1995) (detailing each state's source of trial court funding). Some states, of course, fund 100% of their trial courts' expenditures. *Id.* ([return to text](#))

[46] Administrative Office of the Courts, *supra* note 38, at 31-36. The counties are opposed to any funding realignment proposal that, although clarifies funding sources, is not overall revenue neutral. *Id.* at 33. That is, the counties are wary of any trial court funding proposal that has the ultimate effect of reducing the amount of money that flows to the counties.

Other cost saving measures that have been suggested are: assign administrative duties to the state, promote performance-based goals, and implement a funding dispute resolution program. *Id.* at 27-28. ([return to text](#))

[47] Or, as Herb Caen says, "V-OJ Day." Herb Caen, *The Moving Finger*, S.F. Chron., Oct. 4, 1995, at A14. ([return to text](#))

[48] Jeffrey L. Rabin & Josh Meyer, *Antonovich Calls for Pay Cuts for All County Workers*, L.A. Times, Oct. 4, 1995, at B3. ([return to text](#))

[49] *Id.* ([return to text](#))

[50] Joseph D. McNamara, *Runaway Crime and the End of Dreams*, Cal. J., Oct. 1, 1995. Not known (or perhaps not remembered) by most of the public, California already had a sentence enhancement scheme for repeat violent and serious felons: Proposition 8 (passed in 1982). Sandra Michioku, *Regional News*, UPI, May 18, 1982, available in LEXIS, News Library, Arcnws File. ([return to text](#))

[51] *Three Strikes After One Year*, Cal. J., Oct. 1, 1995. In Los Angeles County, for example, three strike cases were 23% of the cases filed, but nearly 80% of the felony trials. *Id.* Los Angeles County fears that Three Strikes will exhaust its jury pool. Harriet Chiang, *Lousy Pay, Tedious Work*, S.F. Chron., Nov. 14, 1995, at A1. "'The demand is in danger of outstripping the supply of available jurors in the state of California,' said Ken Martone, executive officer and jury commissioner for San Diego County." *Id.* ([return to text](#))

[52] McNamara, *supra* note 51; Administrative Office of the Courts, *supra* note 38, at 6. ([return to text](#))

[53] *Three Strikes After One Year*, *supra* note 52. ([return to text](#))

[54] *Id.* The effect is that jail populations begin to resemble the prison population, i.e. more violent felons. *Id.* Facing a prospect of life in prison, there is little deterrence in following the jail's internal rules; the result is the need for increased security measures, which incur greater costs. *Id.* ([return to text](#))

[55] *Id.* A related problem is having the available housing, but insufficient funds to meet the operating costs necessary to keep the jails open. See *id.* ([return to text](#))

[56] *Id.* ([return to text](#))

[57] *Id.* ([return to text](#))

[58] *Id.* ([return to text](#))

[59] This is due partially to Proposition 172, which set funding percentages. Administrative Office of the Courts, *supra* note 38, at 6. ([return to text](#))

[60] Andrew Blum, *Prosecutors Say Money Squeeze Pinches Justice*, Nat. L.J., Jan. 30, 1995, at A1. ([return to text](#))

[61] *Id.* ([return to text](#))

[62] See *id.* ([return to text](#))

[63] See Administrative Office of the Courts, *supra* note 38, at 6. ([return to text](#))

[64] Blum, *supra* note 61, at A1 (quoting David Kopel of the Cato Institute). ([return to text](#))

[65] See *id.* ([return to text](#))

[66] McNamara, *supra* note 51 (citing 1993 Future of the California Courts report). ([return to text](#))

[67] Bill Ainsworth, *Legislature Ignores Lucas' Plea for Cost-Saving Moves*, Recorder, Sept. 12, 1995, at 2. *Contra* Harriet Chiang, *Jury System Reviewed by State Panel*, S.F. Chron., Oct. 31, 1995, at A13 (noting proposal to increase juror pay to lessen impact of jury service). ([return to text](#))

[68] *Id.* ([return to text](#))

[69] *Id.* ([return to text](#))

[70] Lynch, *May Order More Funds*, *supra* note 39, at A1. ([return to text](#))