Memorandum 93-55

Trial Court Unification: General Issues

The Commission's study of SCA 3 does not involve consideration of or recommendations to the Legislature concerning the wisdom or desirability of trial court unification. The study is limited to implementation of trial court unification See discussion in Memorandum 93-53 (introduction—SCA 3). The question facing the Commission is how may unification best be implemented in light of the problems it will pose?

The unification debate and general policy arguments pro and con nonetheless reveal a number of general issues the study should take into consideration. To the extent the general problem or concern can be mitigated, we should make an effort to do so. This will also improve the prospects of the unification measure at the polls, an objective that the staff believes is inherent in the Commission's mandate to forward recommendations to the Legislature "pertaining to the appropriate composition" of the constitutional amendment. 1993 Cal. Res. Ch. 96.

The main arguments we have seen against trial court unification are summarized below. Other concerns directed to specific problems of trial court unification are addressed in other memoranda. The general concerns are:

(1) Lower court judges have less experience and ability and should not hear superior court cases.

(2) Lower courts are needed as a training or proving ground for future superior court judges.

(3) If superior court judges are required to hear lower court cases, it will cause morale problems for existing judges.

(4) If superior court judges are required to hear lower court cases, it will make it difficult to attract good personnel to serve as judges in the future.

(5) Assignment of superior court judges to lower court cases wastes valuable judicial resources.

(6) The lower courts are "people's courts". They are local and accessible and deal with concerns of ordinary people. Unification and centralization would destroy this and result in a degradation of judicial attention to small matters.

(7) Bigger is not better, and unification will only create greater judicial management problems and further bureaucratization.

(8) Unification will result in greater costs, certainly in the short run and perhaps in the long run as well. This is particularly a problem for county government which is going through a very difficult economic period.

There are several noteworthy points about this listing of general problems.

First, the list is heavily biased toward concerns expressed by the judiciary. This is because much of the published information available on trial court unification is generated by or focused on the judiciary. It is the hope of the staff that in the course of this Law Revision Commission study we will be able to include other perspectives.

Second, some of these issues may not be real problems. They are concerns that may or may not be addressable. But to the extent the concerns can be alleviated in some way within the context of court unification, we should make the effort.

Finally, we must recognize that some of these concerns are simply an inherent consequence of unification and part of the price paid for its benefits.

The concerns are analyzed below.

(1) Lower court judges have less experience and ability and should not hear superior court cases.

The 1971 Booz, Allen & Hamilton study on trial court unification summarized the concern most commonly expressed by persons involved with the judicial system, including superior court judges, attorneys, and county officials:

> Some individuals and groups have expressed the opinion that there is a difference in the level of experience and degree of competence between the Superior Court and lower court judges. Many persons believe that it would be impractical to elevate all Municipal Court judges and attorney Justice Court judges to the Superior Court bench where they might be handling cases beyond their existing capacities and experience. It should be noted that Superior Court judges must be members of the Bar for at least ten years and Municipal Court judges must be members for five years. There is no Bar membership requirement for Justice Court judges. Some people feel that newly elected judges to the Superior Court are more experienced than new judges on the Municipal Court.

Of course there is no way to gauge the accuracy of this concern. However, municipal court judges commonly sit by assignment on the superior court, and in

fact most municipal court judges are as experienced as superior court judges. See discussion in Memorandum 93-61 (qualifications of judges).

If the concern is real, it is only a transitional concern affecting existing sitting judges. Long term under a unified court we can expect the same standards and qualifications of all judges. In the interim, there are several possible ways to deal with the matter such as by structuring the court, categorizing causes, making appropriate judicial assignments, or providing for judicial education to take account of variances in experience and abilities of existing judges. These matters are discussed in Memoranda 93-61 (qualification of judges) and 93-63 (transitional provisions).

(2) Lower courts are needed as a training or proving ground for future superior court judges.

About half of the superior court judges come through the municipal court. And it is possible that the Governor may in fact make appointments to the municipal court as a way to test judicial temperament or for political reasons. It is even conceivable that loss of the municipal court as a stepping stone could hurt the prospects of persons underrepresented in the judiciary such as women and minorities.

On the other hand half the superior court judges are appointed or elected directly to the bench with no prior municipal court experience, and many become well-respected judges. Loss of the intermediate step may also improve both the appointment process and the quality of the judiciary by encouraging more careful initial screening of appointees to begin with. And as the 1975 Cobey Commission Report notes, "under unification a judge can leave the training ground for the more difficult cases whenever, in the opinion of the presiding judge, the judge is ready, and does not have to await election to a higher court or gubernatorial elevation. This makes for a much more flexible system, with better immediate utilization of all judges."

Again, the "training ground" can be replaced by appropriate judicial education and control of assignments. In addition, the training ground function of the municipal court can be served somewhat by the temporary judge system, whereby lawyers are appointed to sit as judges with the consent of the parties. Experience as a temporary judge could be emphasized as a qualification for judicial appointment. This is discussed further in Memorandum 93-61 (qualifications of judges).

(3) If superior court judges are required to hear lower court cases, it will cause morale problems for existing judges.

There is a strong apprehension among the great majority of superior court judges that it would be inappropriate to assign them to lesser judicial duties or to serve an outlying branch court. The 1971 Booz, Allen & Hamilton study found that, "Many Superior Court judges feel it would be both demeaning and a waste of their judicial expertise to handle typical municipal court cases. It should also be noted that many municipal court judges also express concern over the use of trained judges to handle minor traffic matters and small claims." The report also found that traffic cases and small claims cases are least preferred among municipal court judges as well.

These concerns are real. One suggestion has been to blanket in existing superior court judges so that they would only be required to hear cases of a type that were within the superior court jurisdiction at the time of unification. This approach has not found much favor since it destroys one of the main advantages of unification—the flexibility to assign any judge to any appropriate cause. This and other possible solutions are addressed in Memorandum 93-63 (transitional provisions).

(4) If superior court judges are required to hear lower court cases, it will make it difficult to attract good personnel to serve as judges in the future.

This assertion is speculative. Probably some qualified persons would refuse appointment because of the types of cases the person could be required to hear. On the other hand, many highly qualified persons today accept appointment to the municipal court where the cases heard are exclusively of the smaller type. The 1975 Cobey Commission Report concludes that not only will there be no significant reduction of qualified attorneys willing to accept judicial appointment in a unified court system, but in fact the opposite is like to happen. "A prospective appointee will know that, following initial rotational training and assignments, assignment to cases will be commensurate with ability and experience and that generally, therefore, any assignment to so-called minor matters will be temporary and comparatively brief."

The staff has no immediate suggestions to deal with the concern expressed, except possibly to consider greater use of Commissioners for some matters. See discussions in Memoranda 93-59 (original jurisdiction) and 93-66 (commissioners).

(5) Assignment of superior court judges to lower court cases wastes valuable judicial resources.

Even "minor" matters are important to the people involved in them, however unexciting they may be to a particular judge. Attention to minor matters and assurance of justice is not viewed as a waste by the participants.

The 1993 Judicial Council Report states:

> Disputes are initially decided (and in the vast majority of cases, finally decided) by the trial courts, which makes the work of the trial courts of paramount importance to the public and to the judiciary. For most Californians, their only direct contact with the Judicial Branch occurs at the trial court level. Although one traffic infraction may appear to the courts little different from the 6 million other traffic infractions processed during the year, from the defendant's perspective, that one traffic infraction may be an important case and may be that person's only contact during the year with the Judicial Branch.
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> The trial courts are responsible for giving each case the process and attention it is due and for rendering a correct decision on the merits. Public confidence in the judicial system requires nothing less. The ultimate goal must be to make the justice system accessible and responsive to all persons, whether the case involves $500 or $50,000, and whether the criminal penalty is a $100 fine or many years in prison. Trial courts must have the flexibility to respond appropriately to each case, allocating the right amount of judicial resources to render correct decisions. Judicial resources are a scarce commodity and must be efficiently allocated. If too little is allocated to particular cases, there is a higher risk of an incorrect decision. And, if too much is allocated to particular cases, other cases are likely to be squeezed by the system.

One approach to the problem of proper allocation of judicial resources is to remove judges from some of the smaller matters such as traffic cases and assign less costly Commissioners to them. This concept is discussed in Memoranda 93-59 (original jurisdiction) and 93-66 (commissioners).

In any case, it is conceived that in a unified court system the more capable judges can be assigned to the more demanding cases and less capable judges to less demanding cases. Judicial resources would be more, rather than less, efficiently distributed than under the existing scheme where less capable superior court judges may be sitting on complex matters and more capable municipal court judges may be sitting on simple matters.

Since the concept of control and assignment of judges responds to a number of the concerns expressed about trial court unification, the Commission should consider whether there is some way it might be embodied in the constitution in a conceptual form. This is discussed in Memorandum 93-57 (district court).

(6) The lower courts are "people's courts". They are local and accessible and deal with concerns of ordinary people. Unification and centralization would destroy this and result in a degradation of judicial attention to small matters.

A number of judges have expressed concern that some important matters, particularly family law cases, that are currently within the jurisdiction of the superior court will be demoted in a unified system and lesser resources assigned to them. And some smaller criminal matters may be demoted even further down the line than they are now. Unification could reduce or eliminate any concept of a local, identifiable "people's court" for the adjudication of low level criminal violations.

The argument is also advanced that as the court becomes centralized and physically more remote, justice will become less accessible to the people. This would affect not only the litigants, but also witnesses, jurors, etc. Judges who now run for election by district and serve the district would no longer be responsible to the voters. The concept of a local court would be destroyed.

The staff thinks it is quite possible there would be a degradation of the quality of justice for smaller matters. The potential is certainly there if we assume that in a unified court there would be greater flexibility to assign the better more experienced judges to the bigger or more complex cases and less capable judges to smaller or easier cases. Of course that probably happens right now to a limited extent within each trial court system, the less experienced municipal and superior court judges being assigned to the lower priority cases within their own jurisdictions. Unification could magnify this phenomenon.

The concept of a local people's court, with the judge responsible to the local electorate, has been said to be inconsistent with the concept that a judge should be impartial and apply statewide legal principles and standards. The judicial branch differs from the legislative branch in this respect; elected officials in the judicial branch are supposed to be even-handed and not to "represent" their constituency. But even at the lowest level a judge constantly makes common law policy decisions and interprets statutes from a particular perspective. Whether that perspective should be local or statewide is a matter of debate.

In any event, the feeling that there should be a local people's court with a judiciary locally accountable and that justice should be physically accessible at the local level, might be addressed by use of divisions and branch courts within each trial court district. These issues are discussed in Memoranda 93-57 (district court) and 93-62 (elections).

(7) Bigger is not better, and unification will only create greater judicial management problems and further bureaucratization.

A major component of the argument for unification is that there will be an economy of scale. Centralized management for all the trial courts in the county will save substantial court administration costs throughout the state, and will add flexibility in assignment of judges, resulting in more efficient use of existing resources.

At some point, however, the economy of scale may break down if the administrative unit becomes too large. Some would argue that the Los Angeles County Superior Court is already unmanageable, and to add the Municipal Court to the system will collapse it.

An obvious way to address this concern is through use of divisions and branch courts within the trial court district. But should the branches be independent of or subordinate to central management? Who decides when branch government is called for—the Legislature, the Judicial Council, the county, the court administration? These issues are addressed in Memorandum 93-57 (district court).

(8) Unification will result in greater costs, certainly in the short run and perhaps in the long run as well. This is particularly a problem for county government which is going through a very difficult economic period.

Proponents of unification suggest that there will be long term savings as a result of unification despite short term costs. It seems generally to be acknowledged that there will be short term costs, and this fact appears to have caused defeat of the 1982 ballot measure to allow trial court unification by county option.

The Legislature has enacted as part of the 1993 budget package the following determination:

> The Legislature finds and declares that the efficiencies that would result from the enactment and adoption of Senate

> Constitutional Amendment 3 of the 1993-94 Regular Session would yield substantial savings to both counties and the state. 1993 Cal. Stat. ch. 70, § 10.

The statistics either for short term or long term costs and savings are not very good. The 1993 Judicial Council Report recites some statistics from consolidation and unification efforts in a few counties, but whether those can be projected statewide is not clear. The report concludes that a fiscal study is needed:

> In sum, the information presently available to the [Judicial Council] is insufficient to allow precise calculation of the overall fiscal impact of trial court unification. If the experience of counties that have most fully consolidated is repeated statewide, unification will result in significant statewide fiscal savings. In order to more precisely calculate the overall fiscal impact, we [plan to] engage the consulting services of a national expert such as the National Center for State Courts.

Most trial court unification proposals in the past have provided state funding to operate the unified court system. The reasons for this are:

- It avoids underfunding in counties having marginal financial resources and counties unwilling to devote limited resources to the court system.
- It ensures that expenditures for salaries, retirement, training, etc. are uniform throughout the state.
- It places responsibility with the state to finance the changes and standards it mandates.

The major trial court expense left to the counties in most unification proposals is the physical facility. This is because the building typically has a multipurpose function and houses other county offices and operations. However, some judges have indicated that the counties are under economic duress and have no funds to build new or upgrade existing facilities to the extent that may be necessary for unified court purposes. SCA 3 provides that each preexisting superior, municipal, and justice court location is retained as a district court location.

The implication of state funding is that the unified trial court would be a state court rather than a county court. The state would be responsible for and control the trial court system and the counties would be responsible for and control the physical facilities. Court personnel would be state employees rather than county employees. Court-generated revenues would go to the state rather than the county. If the Legislature is correct that trial court unification will save money, unification would benefit the state financially.

The state is currently moving in the direction of state funding of trial courts. Other options, if additional funding is necessary to unify the trial courts, include increases in filing fees to implement a user-funded system.

These matters are discussed in Memorandum 93-57 (district court).

Respectfully submitted,

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