Study J-1000 January 3, 1994

First Supplement to Memorandum 94-1

Trial Court Unification: Comments on Tentative Recommendation

This supplementary memorandum transmits comments arriving after December 30, 1993 concerning the tentative recommendation on trial court unification. The comments are attached as an Exhibit, numbered sequentially beginning where the Exhibit to Memorandum 94-1 ends. The comments are from the following persons:

Daniel E. Lungren, Attorney General (Exhibit pp. 19-22)
Judge Jane A. York, Justice Court, Sanger Judicial District, Fresno County (Exhibit pp. 23-24)
Craig G. Riemer, Attorney, Riverside (Exhibit pp. 25-26)
California Association for Superior Court Administration (Exhibit pp. 27-28)

General Principles in Formulating Recommendations Concerning SCA 3

The preliminary part of the tentative recommendation at page 9 indicates the basic approach to defer statutory implementation of trial court unification until after establishment of the constitutional principle. Mr. Riemer believes the statutory details should be spelled out before the constitutional amendment goes on the ballot, so people will know exactly what they are voting for. Exhibit p. 25.

The staff thinks that would be ill-advised, and agrees with the point made by Senator Lockyer (and others) on several occasions at the interim hearing:

> I've been trying to persuade people that every time we get drawn into a debate about the details, it makes it less likely for the concept to get adopted. And emphasizing detail is really an indirect way of saying let's not do anything. Most people that want certainty aren't really saying that. But I think as a practical matter that what we as legislators can contribute to this discussion more than some from the different world of the judicial branch is a greater sensitivity to or understanding of what the electorate does and why. It's simply asking for defeat to demand that all these things be understood with great specificity and detail. Every detail brings new support and opposition, and it gets magnified every time there's a new decision that gets made. So mainly what I've been saying is if you think this is fundamentally a good idea, you have to just trust yourselves to go forward. If you have to know all

> the details, you might as well just stop and not bother and stay in the current system because that's where you'll wind up anyhow. Interim Hearing Transcript at p. 71.

Qualifications of Judges

The discussion of qualifications of judges at page 21 of the preliminary part of the tentative recommendation notes that it is likely municipal court judges are more qualified than justice court judges to handle superior court matters due to more rigorous screening. Judge York, a justice court judge, takes exception to this statement. Exhibit pp. 23-24. Judge York believes that justice court judges are fully as qualified as municipal court judges, based on their selection process, backgrounds, and breadth of judicial experience derived from assignments to other courts. She suggests that the pejorative discussion in the tentative recommendation be deleted. **The staff has no problem with deleting the offending language, and plans to do so.**

Court Employees

The California Association for Superior Court Administration notes that experience with court/county clerk mergers should be useful in developing a transitional process for unification. But they question the statement in the preliminary part of the tentative recommendation that the objective in transition should be to get persons who are in the same class on the same pay and benefit scale. Exhibit p. 28. The staff acknowledges that this comment is gratuitous, and **we would delete it** from the last paragraph on page 42 of the tentative recommendation.

Cal. Const. Art. V, § 13. Authority of Attorney General

The Attorney General refers to the following provision of Article V, Section 13 of the California Constitution:

> Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the **superior court** shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney.

The Attorney General notes that if the name of the unified court is changed, this provision should be amended. The Commission's tentative recommendation recognizes this in the Note on page 63.

The Attorney General also notes that, whether or not the name of the unified court is changed, unification will expand the jurisdiction of the superior court and thereby would also expand the authority of the Attorney General under this provision. The Attorney General agrees with the comment of the 1993 Judicial Council Report that such an expansion would be appropriate. The Attorney General believes that there should be an express acknowledgment in the Commission's Comments that the Attorney General's current authority over criminal violation within the jurisdiction of the superior court will be extended to misdemeanors that presently fall within the jurisdiction of municipal and justice courts. "The Attorney General now handles recusals for misdemeanors at the request of District Attorneys. This new authority would be a logical extension of what we are presently doing." Exhibit p. 21.

This is not a matter the Commission has previously considered. The staff agrees that it should be made clear whether it is intended that trial court unification expands the Attorney General's authority.

As a matter of principle, the Commission has sought to limit constitutional changes to those necessitated by trial court unification. Expansion of the Attorney General's local enforcement authority is not necessitated by trial court unification, and it would be possible to amend Article V, § 13 to maintain the status quo by limiting the Attorney General's local enforcement authority to matters that are currently within the superior court jurisdiction.

It would be easier, and perhaps make more sense, simply to expand the Attorney General's authority, if that appears politically unobjectionable. Both the Attorney General and the 1993 Judicial Council Report state that the Attorney General's powers would be "slightly" increased, and that there is no reason in principle why the Attorney General should not be responsible to see that all of the criminal laws are properly being enforced.

The staff believes that the increase in authority would apply to civil as well as criminal enforcement. But we have no concern about doing so, if no one has any objection to it. We are seeking to ascertain whether there are any concerns about expansion of the Attorney General's authority. We also agree with the Attorney General that any expansion of the Attorney General's authority should be noted in a Comment.

Cal. Const. Art. VI, § 10 (amended). Original jurisdiction

Comment. Section 10 is amended to reflect unification of the superior courts, municipal courts, and justice courts in a county-

based system of superior courts of general jurisdiction. See Section 4 (superior court) and former Section 5 (municipal court and justice court). **As a result of trial court unification, the superior court has original jurisdiction of all causes. This has the effect of expanding the authority of the Attorney General to enforce violations of law in misdemeanors and other causes formerly within the jurisdiction of the municipal and justice courts. See Art. V, Section 13 (Attorney General's authority to prosecute violations of law "of which the superior court shall have jurisdiction").**

Cal. Const. Art. VI, §1 (amended). Judicial power

The Attorney General agrees with the tentative recommendation that the unified court be named the superior court rather than the district court. Exhibit p. 20.

Mr. Riemer (Exhibit p. 25) believes that "superior court" is preferable to "district court" because of the potential confusion. But he is concerned that the name "superior" implies the existence of an inferior court. He likes "county court" best because it is least confusing and most descriptive. He finds silly the objection that the court is state-funded. **The staff will augment the tentative recommendation** with some of the other objections to the name "county court"—it belies the statewide process of the court and implies provinciality.

Cal. Const. Art. VI, § 4 (amended). Superior court

The California Association for Superior Court Administration agrees with the Commission that there should be no change in the existing constitutional structure of the unified court as it affects court employees. Exhibit p. 28.

CASCA also agrees with deletion from the constitution of the reference to the county clerk as the court clerk. Exhibit p. 28. They note that statutory references will require further amendment.

Cal. Const. Art. VI, § 16 (amended). Election of judges

The Attorney General agrees with the Commission's proposed revision of SCA 3 to require countywide elections, "because the unified courts will have countywide jurisdiction". Exhibit p. 20.

The Attorney General also agrees with the Commission's tentative recommendation that the Legislature be authorized to modify the method of selection of judges if a violation of federal law is found, "inasmuch as possible issues may arise under the Voting Rights Act of 1965". Exhibit p. 20.

Gov't Code § 68122 (added). Preclearance of trial court unification

The Attorney General agrees with the provision of the tentative recommendation that would require the Attorney General to seek preclearance of trial court unification. "As the state's chief legal officer, I feel it appropriate for my office to assume this responsibility." Exhibit p. 21.

Gov't Code § 69898. Court administrator

The California Association for Superior Court Administration strongly recommends that the existing statutory provisions for appointment of superior court administrators be applied in the unified court. Exhibit pp. 27-28. We will take up this recommendation in connection with our statutory review.

Operative Date

The Commission's tentative recommendation adopts SCA 3's operative date of July 1, 1995. This would allow one year after approval of SCA 3 by the voters in which to implement the change.

The Attorney General is concerned that this will not allow sufficient time for appropriate legislation to be enacted and appropriate court rules to be promulgated. The Attorney General states that, "given the complexity and importance of the issues involved, I doubt whether forcing the Legislature to act through urgency legislation by July 1, 1995 provides sufficient time." Exhibit p. 22.

The Attorney General suggests that it may be desirable to give the Legislature a full session in which to act. This would indicate a January 1, 1996, operative date. But we have tried to stick with a July 1 date to avoid fiscal chaos.

The staff thinks a January 1, 1996, date would not be unreasonable—it would allow a little more time to get all the pieces of the puzzle in place while still maintaining the pressure cooker atmosphere we think is necessary for the statutory implementation. But the departure from the fiscal year scheme could cause substantial problems. The staff would stick with the July 1, 1995, date unless we can confirm with interested persons that an added six month delay is acceptable, and with the courts that a January 1 date is fiscally feasible.

Respectfully submitted,

Nathaniel Sterling
Executive Secretary

State of California

Office of the Attorney General

Daniel E. Lungren
Attorney General

December 30, 1993

VIA FACSIMILE TRANSMISSION
ORIGINAL TO FOLLOW

Sanford Skaggs, Chairperson
California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

RE: Trial Court Unification

Dear Chairperson Skaggs:

I wish to thank the Commission for requesting my comments on Senate Constitutional Amendment No. 3 (Lockyer) (hereafter "SCA 3") and on the tentative recommendations made by the Commission itself. My staff and I have reviewed the text of SCA 3, the Warren Committee Report (adopted by the Judicial Council on September 29, 1993), the Tentative Recommendation of the Commission (dated November 1993) and the various memoranda accompanying these reports.

While I generally agree with the Commission that SCA 3 would adequately accomplish the objective of trial court unification, I feel several changes are appropriate. Items 1 and 2 involve amendments to the Constitution, item 3 addresses a new statute, and item 4 concerns the timetable for enactment of implementing legislation.

1. The judges of the unified trial court should be elected countywide with a provision in the Constitution to permit the Legislature to provide for alternative methods of election in order to comply with the Voting Rights Act of 1965.

Article VI, section 16(b) of the Constitution presently provides that judges of superior, municipal and justice courts shall be elected in "their counties or districts." SCA 3 provides for them to be elected in "their districts or branches." The Commission tentatively recommends that all judges under unification be elected in "their counties." The Commission further provides "except as otherwise required to comply with

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federal law, in which case the Legislature may provide for election by the system prescribed in subdivision (d) [retention elections] or by other arrangement."

I agree with the Commission that elections under trial court unification should be on a countywide basis because the unified courts will have countywide jurisdiction.

However, inasmuch as possible issues may arise under the Voting Rights Act of 1965 (42 U.S.C. § 1973 et seq.) if all trial judges are selected by county, express provision should be made for the Legislature to modify the selection method if a violation of federal law is found. I agree with the Commission's recommendation in this regard.

2. Clarification of the impact of unification on the Attorney General's authority under Article V, section 13 is needed.

Article V, section 13 of the Constitution is not addressed by either SCA 3 or the Commission. Article V, section 13 defines the constitutional powers of the Attorney General as the chief law officer of the state and provides, in part, as follows:

> "Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violations of law of which the superior court shall have jurisdiction, and in such cases the Attorney General shall have all the powers of a district attorney." (Emphasis added.)

SCA 3 names the unified courts "district courts". The Commission's tentative recommendation is to name the unified courts "superior courts".

(a) If the new unified courts are called "superior courts" as recommended by the Commission, no change is required in the Constitution.

I agree with the Commission's recommendation to use the name "superior court". If this terminology is used, no constitutional amendment to Article V is required. However, there is need for language in the ballot argument and in the Commission's comments which explains that the constitutional powers of the Attorney General will be slightly increased after unification because misdemeanors would be brought within the enforcement power of the Attorney General.

(b) If the unified courts are called "district courts" as SCA 3 is currently drafted and, as assumed by the Warren Committee, Article V, section 13 requires amendment.

The Warren Committee Report (page 9) indicated that unification would require replacing the word "superior" by the word "district" in section 13. The Committee concluded that this amendment "slightly increases" the authority of the Attorney General because trial court unification will bring misdemeanors, presently within the jurisdiction of municipal and justice courts, within the enforcement power of the Attorney General. The Committee Report states that "there is no reason in principle why the Attorney General should not be responsible to see that all [emphasis in the original] of the criminal laws are properly being enforced." I agree with the comments in the Warren Committee Report.

In summary, regardless of the terminology ultimately decided upon for the unified courts, there should be a corresponding amendment (if "district" court is selected) to Article V, section 13 and express acknowledgement that the Attorney General's current authority over criminal violations within the jurisdiction of the superior court will be extended to misdemeanors that presently fall within the jurisdiction of municipal and justice courts. The Attorney General now handles recusals for misdemeanors at the request of District Attorneys. This new authority would be a logical extension of what we are presently doing.

3. The Attorney General should be required by statute to seek administrative preclearance of SCA 3 with respect to any county subject to administrative preclearance.

The Commission has recommended that Gov. Code § 68122 be added to require that the Attorney General seek preclearance pursuant to 42 U.S.C. § 1973c for four counties for which preclearance is now required. (Tentative Recommendation, p. 31, fn. 68.) I agree with this recommendation. Section 1973c provides for a procedure whereby the chief legal officer of the state may apply to the Attorney General of the United States for what is known as "administrative preclearance" of any change in election practices that are subject to the Act. As the state's chief legal officer, I feel it appropriate for my office to assume this responsibility. Administrative preclearance does not eliminate the threat of litigation. However, it does provide for an orderly procedure by which the risks of a court enjoining the results of an election can be substantially reduced. See, for

example, Clark v. Roemer (1991) -- U.S. ---; 111 S.Ct. 2096; 114 L.Ed2d 691, in which the Supreme Court upheld the voiding of a number of judicial elections in Louisiana for failure of the state to seek administrative preclearance.

4. The effective date of July 1, 1995 of SCA 3 may be too early to enact and promulgate implementing laws and regulations.

I am concerned that the effective date, July 1, 1995, contemplated for SCA 3 may not give the Legislature sufficient time to pass the legislation and the Judicial Council to promulgate the Rules of Court necessary to implement this fundamental change in our court system. SCA 3 is to be placed upon the June 1994 ballot with an effective date of July 1, 1995. That date, I understand, was chosen in order to have trial court unification begin with the start of the state fiscal year. Nevertheless, if SCA 3 is passed as a ballot measure in June 1994, the Legislature will not have the full year session in which to act upon implementation.

The Commission has taken the tentative position that "to the extent issues can be dealt with by statute rather than in the Constitution, the Commission recommends that this be done." I agree with this recommendation. However, given the complexity and importance of the issues involved, I doubt whether forcing the Legislature to act through urgency legislation by July 1, 1995 provides sufficient time. I understand that implementing legislation can be introduced in anticipation of the passage of SCA 3 and that the Judicial Council can formulate regulations in expectation of passage also. Nevertheless, it may be desirable to give the legislature a full session in which to act.

Sincerely,

DANIEL E. LUNGREN
Attorney General

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December 29, 1993

Members of the California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, Ca. 94303-4739

Re: Trial Court Unification Report

Dear Members:

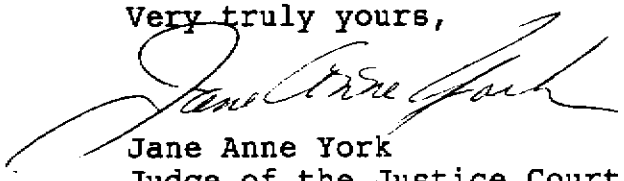
I am writing in response to your solicitation of comments on the November 1993 Tentative Recommendation of the California Law Revision Commission on Trial Court Unification.

I take great exception to your generalization on page 21 that "It is likely that municipal court judges are generally more qualified than justice court judges to handle cases now within the jurisdiction of the superior courts". This sentence is based on some generalized statements with regards to differences in the appointment process. While theoretically the governor's appointment process may be more "rigorous", you neglect to realize that in many rural areas the candidates are much more well known to the persons making the appointments as well as to the legal community in general. Thus, while the selection process may differ, I do not believe that less qualified persons are necessarily appointed. I am a justice court judge and have been so for 10 years. I know most of the other justice court judges very well as well as numerous municipal court judges. I find no differences in our academic backgrounds, professional backgrounds, or community involvement than those of any other trial court judge. These are relevant objective criteria from which you might want to evaluate "qualifications" but don't do so on the basis that differing selection processes provide differing qualifications.

One additional point I would like to make you aware of is that almost all justice court judges do sit or have in the past sat on assignment throughout the State of California. Since 1990 this has been required for justice court judges whose caseloads are less than full time. As a result, justice court judges have had a broader base of judicial experience at both levels of the trial courts throughout the state as well as experience in many, many of the trial courts throughout the state. Justice court judges are regularly found providing judicial education and leadership through service on the Judicial Council, California Judges Association, and Center for Judicial Education and Research. I believe that the high visibility of many justice court judges is as a result of the unique breadth of judicial experience that they have had and this makes them at least as qualified as any other trial court judge to sit on a unified court bench.

I would hope and suggestion you delete the entire paragraph on page 21 I have referenced above.

Very truly yours,



Jane Anne York
Judge of the Justice Court

CRAIG G. RIEMER

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December 29, 1993

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Re: Trial Court Unification

Dear Sirs:

I am attorney with 13 years of practice in California, a research attorney for the Court of Appeal, and the chairman of the Riverside County Bar Association's Judicial Liaison Committee. I have the following two comments to your tentative recommendation regarding trial court unification, issued in November 1993.

1. As a general principle, you limited your recommendations "to those immediately required to implement trial court unification." (P. 9.) You justified this in part on the basis that it would "help focus the election debate over the constitutional amendment on the overall merits of unification rather than on incidental details." (Ibid.)

I question this approach. There is nothing particularly controversial about a unified trial court in the abstract. Controversy arises only when one considers the specific means by which that would be accomplished. As in so many things, "the devil is in the details." Those details should be fleshed out before any election on SCA No. 3, so that everyone is voting on the detailed statutory reality as well as the more generalized constitutional concept. If the details cannot be worked out in time to be voted on in June of 1994, then the election should be postponed. There is no need to rush into a change of this magnitude.

2. Regarding the name of the unified court, I concur in your observation that "district court" is unnecessarily similar to, and is likely to be confused with, the United States District Courts. While your recommendation, "superior court," is preferable to district court, it incorrectly implies the existence of inferior trial courts, which will no longer exist. The least confusing and most descriptive name is "county court." Your objection, that the name would connote funding exclusively by the county as opposed to the state, strikes me as silly. The typical member of the public would not draw that inference, and would not find that to be significant even if he or she did.

Thank you for the opportunity to comment on this important issue.

Please send me a copy of your final recommendation when you forward it to the Legislature.

Sincerely,

Craig G. Riemer

CALIFORNIA ASSOCIATION FOR SUPERIOR COURT ADMINISTRATION

December 30, 1993

California Law Revision Commission
4000 Middlefield Road, Suite D-2
Palo Alto, CA 94303-4739

Subject: Comments on Tentative Recommendation on Senate Constitutional Amendment (SCA) 3

Honorable Commission:

Thank you for the opportunity to comment on the Tentative Recommendation of the California Law Revision Commission on SCA 3 dated November, 1993.

The comments contained herein represent the position of the California Association for Superior Court Administration (CASCA). The membership of CASCA consists of Superior Court Executive Officers/Administrators from 48 of the 58 Superior Courts in California.

The Commission recommendation relative to "Court Administrator" on page 39 of the report, is that the office of court administrator not be mandated. The vast majority of superior and municipal courts currently employ a professional administrator. Since unification of the trial courts would result in larger courts than currently exist, we believe virtually every unified court would require a professional administrator to be properly managed. Even if courts are not mandated to employ an administrator, it is critical that the court have authority to appoint and have sole authority over the court administrator.

Existing Government Code section 69898 (a) provides:

> "Any superior court may appoint an executive officer who shall hold office at the pleasure of the court and shall exercise such administrative powers and perform such other duties as may be required of him by the court. The court shall fix the qualifications of the executive officer and may delegate to him any administrative powers and duties required to be exercised by the court. He shall supervise the secretaries of the judges of the court and perform, or supervise the performance of, the duties of jury commissioner. The salary of the executive officer shall be fixed by the court and shall be paid by the county in which he serves. Each such position shall be exempt from civil service laws. Any superior court may appoint the county clerk as executive officer, who shall hold office as such executive officer

at the pleasure of the court and shall exercise such administrative powers and perform such other duties as may be required of such person by the court."

The elements of this code section which provide exclusive authority of the court to employ an executive officer are critical to the independence of the court as the third branch of government and to maintain the necessary separation of powers. We strongly recommend that this code section be amended to authorize the unified court to provide for the court executive officer under the same terms as the existing statute.

We agree with the Commission's recommendation with regard to the county clerk constitutional provisions. Statutory references to the county clerk as clerk of the court will require further amendments.

With regard to court employees (pages 41-43 of the Commission report), we agree that there should be no change in the existing constitutional structure for the unified court. The questions posed in the "transitional process" of the report include issues that are currently being considered and managed as superior courts merge clerk of the court functions with the executive officer. Seniority rights, retirement plans, accrued benefits, layoff procedures, assignments and compensation are currently subject to court personnel rules, procedures, and in many jurisdictions, collective bargaining agreements. These issues have been addressed in the court-county clerk mergers and the experience from the mergers will be useful in a unification process. A committee of judges and court officials appointed by the Chief Justice is currently working with labor organizations on potential strategies for effective labor relations and collective bargaining in the courts. The work of this committee should be completed in early 1994.

The Commission's statement that, "The ultimate goal (regarding court employees) should be to get all persons who are in the same class on the same pay scale and with the same benefits", should be reconsidered. With the tremendous diversity in demographics, economics, organization size, personnel skills and court requirements found in California, strict uniformity of responsibilities and compensation of court employees may not be reasonable or desirable. A committee of the Judicial Council is currently reviewing this matter as well.

Thank you again for the opportunity to provide these comments. Should you wish additional comments or have further questions, please do not hesitate to contact me.

Very truly yours,

Ronald G. Overholt
President

RGO:mk

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