Study J-1150 February 4, 1994

First Supplement to Memorandum 94-12

**Trial Court Unification: Authority of the Attorney General (Agreement of Attorney General and California District Attorneys Association)**

Attached to this Supplement as Exhibit pp. 1-15 is a letter from the Attorney General regarding Article V, Section 13, the provision of the California Constitution describing his powers. The Attorney General opposes the amendment of Article V, Section 13 that the Commission proposed in its report to the Legislature on trial court unification. The Attorney General also opposes the alternative amendment that the staff recommended in Memorandum 94-12. He "believe[s] that leaving Article V, section 13 as it is currently written (so long as the new courts are called 'superior courts') will preserve the status quo with respect to the Attorney General's role as the chief law officer of the state."

Attached to this Supplement as Exhibit p. 16 is a joint letter from the Attorney General and the California District Attorneys Association, which also advocates leaving the language of Article V, Section 13 unchanged:

> We acknowledge that current Constitutional language is not crystal clear; however the present language, complemented by common law and statutes, has permitted law enforcement agencies in California to coordinate their efforts to protect the public. This cooperative relationship is essential and is founded in the Attorney General's respect for local control and sharing of resources and expertise. This delicate balance between the Attorney General and the district attorneys has evolved over many years, forged by practicality and necessity, and will be upset by any change in language of section 13.

Our recommendation to the Legislature is that the status quo should be preserved. The Attorney General and the District Attorneys Association have reached agreement that the status quo would best be preserved by making no change in the constitutional language concerning the Attorney General's prosecutorial power. In light of the unanimity of opinion between the affected parties regarding how best to define the Attorney General's authority, the staff recommends that the Commission adopt their joint suggestion to leave the language of Article V, Section 13 unchanged upon trial court unification.

This will require the Commission to supplement its report to the Legislature on SCA 3. The supplemental report should, as suggested by the Attorney General and District Attorneys Association, indicate in commentary that unification of the trial courts is not intended to effect any change in the Attorney General's authority, which should remain the same as it was before unification. This is necessary in order to avoid adding further murk to an already murky area, and to defuse any implication that might be drawn from the Legislature's non adoption of the Commission's original recommendation.

The staff suggests the following supplemental report to the Legislature on SCA 3.

AUTHORITY OF ATTORNEY GENERAL

The Commission's report to the Legislature on SCA 3 notes that trial court unification would expand the jurisdiction the superior court, which could result in an expansion of the Attorney General's authority under California Constitution Article V, Section 13 to prosecute violations of law "of which the superior court shall have jurisdiction." *Trial Court Unification: Constitutional Revision (SCA 3)*, 24 Cal. L. Revision Comm'n Reports 1, 57 (1994). The report recommends revision of Article V, Section 13 to preserve the status quo with respect to the Attorney General's authority. *Id.* at 86.

The Commission has made further study of this matter. The meaning of the language relating to the Attorney General's prosecutorial authority is unclear, whether from an historical, case law, constructional, or policy perspective. Under this language the affected parties — the Attorney General and the district attorneys — have coordinated their efforts and arrived at a working balance of authority. The affected parties agree that any change in the existing language of Article V, Section 13 would upset the current balance. See joint letter from Daniel E. Lungren, Attorney General, and Greg Totten, Executive Director, California District Attorneys Association, to Sanford Skaggs, Chairperson, California Law Revision Commission (February 2, 1994), on file in the Commission's office.

In light of this consensus, the Commission believes that the status quo would best be preserved by leaving unchanged the existing

language of Article V, Section 13 relating to the authority of the Attorney General. The Commission's Comment to California Constitution Article VI, Section 10 (original jurisdiction) should be revised to make clear that the expansion of the jurisdiction of the superior court as a result of trial court unification is not intended to change the existing authority of the Attorney General under Article V, Section 13.

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

SEC. 10. The Supreme Court, courts of appeal, superior courts, and their judges have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition *, but a superior court may not exercise that jurisdiction in such proceedings directed to the superior court except by its appellate division*.

Superior courts have original jurisdiction in all causes ~~except those given by statute to other trial courts~~ .

The court may make such comment on the evidence and the testimony and credibility of any witness as in its opinion is necessary for the proper determination of the cause.

**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).

The first paragraph is amended to limit the former jurisdiction of superior courts to issue extraordinary writs to compel or prohibit action by the municipal and justice courts and their judges. Only the appellate divisions of superior courts (together with the Supreme Court and courts of appeal) may issue extraordinary writs for review of proceedings in the superior courts.

Although the superior court has original jurisdiction of all causes, nothing in this section limits the ability of the superior court, or of the judicial branch by court rule, to establish or provide for divisions or departments within the superior court dealing with specific causes such as probate, juvenile, or traffic matters, or the authority of the Legislature to prescribe special procedures or divisions for specific causes. *Cf.* Section 4 & Comment.

**Expansion of the jurisdiction of the superior court to all causes is not intended to alter the meaning of language in Article V, Section 13 relating to the authority of the Attorney General to prosecute violations of law of which the superior court has jurisdiction. Trial court unification should not result in any change in the Attorney General's authority and that authority remains the same as it was before unification.**

Respectfully submitted,

Barbara Gaal
Staff Counsel

EXHIBIT



State of California

# Office of the Attorney General

Daniel E. Lungren
Attorney General

February 1, 1994[1]

**VIA FACSIMILE TRANSMISSION, 2/3/94**
**ORIGINAL TO FOLLOW**

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

RE: SCA 3 -- Article V, section 13

Dear Chairperson Skaggs:

The Attorney General agrees with the Commission's stated goal of making only those changes to the state Constitution that are absolutely necessary for the implementation of trial court unification. We believe that leaving Article V, section 13 as it is currently written (so long as the new courts are called "superior courts") will preserve the status quo with respect to the Attorney General's role as the chief law officer of the state. Stated another way, the Attorney General's authority will remain unchanged because that provision's identification of the Attorney General's powers by reference to the jurisdiction of the superior courts will continue to receive the same construction placed upon it in the past if no change is made to section 13. On the other hand, the Constitutional language adopted by the Commission at its January 6, 1994 meeting, could be interpreted to conflict with the broad common law and statutory language defining the Attorney General's powers and might result in narrowing[2] the Attorney General's current authority.

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1. This letter was drafted a week ago, before we received staff memo 94-12. We believe that the arguments raised in support of current Constitutional language apply equally well to the staff's latest proposal as reflected in memo 94-12. Footnotes 2, 7, 8 and 10 have been added in response to the staff's memo.

2. Indeed, the staff memo concludes that the language adopted by the Commission at its January meeting was "unduly restrictive". Memo 94-12, p. 14.

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I. The Attorney General currently enjoys broad authority to enforce the laws of the State and to protect the public interest. The Commission's recommendation would narrow[3] this broad grant of authority.

The sentence at issue in Article V, section 13, currently reads:

> "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.)

This sentence, if read alone, could be interpreted to limit the Attorney General's authority to violations of law within the jurisdiction of superior courts. However, the only official interpretation of this sentence is one that interprets the Attorney General's authority to extend to matters within the jurisdiction of justice courts. (9 Ops. Atty. Gen. 74) This is probably the proper interpretation of section 13 given the dispute over the exact extent of the jurisdiction of superior courts at the time the constitutional language was adopted in 1934.[4] Furthermore, there is a long history of common law which predates the constitutional grant of authority to the Attorney General. There are also statutes (see Gov. Code § 12550; Bus. and Prof. Code §§ 17200 and 17500 *et seq.*) which have traditionally been interpreted to give the Attorney General wide authority in enforcing laws to protect the public interest.

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3. "... it shall be the duty of the Attorney General to prosecute violations of law other than causes of which the superior court shall have appellate jurisdiction, ..."

The Commission's recommendation with respect to "Appellate jurisdiction" is that the appellate jurisdiction of the superior court includes criminal causes other than felonies and civil causes prescribed by statute. (Article VI, section 11.)

4. "Effect upon jurisdiction of superior courts of statutes vesting jurisdiction in municipal or inferior courts," 21 C.L.R. 42 (1932). The author points out that the jurisdictional amounts of municipal and inferior courts of the state did not reach a common level. Moreover, there was ambiguity as to whether the fact that a municipal or inferior court had jurisdiction over a case excluded superior courts of *other counties* from jurisdiction.

A. Article V section 13 of the California Constitution has been interpreted broadly to give the Attorney General full authority to enforce all the laws of the State.

Language that is now in section 13 duplicates its predecessor provision, section 21, which defined the powers of the Attorney General as the state's chief law officer.[5] Section 21 was added to the Constitution by initiative in 1934 in order to "enlarg[e] the duties of the Attorney General so as to give him that supervision [over county law enforcement agencies] and make him responsible for the uniform and adequate enforcement of law throughout the State."[6] Indeed, the Background Study prepared for the 1965 Constitutional Law Revision Commission viewed the section as a response to the need for "unification of state law enforcement with every law enforcement officer responsible to a common authority, the attorney general". The current language in Article 13 remains there today because of fierce opposition in 1965 to the suggestion that the Attorney General's powers could be made statutory.[7]

The only authority construing the extent of the Attorney General's power under Article V, section 13, relies on traditional rules of statutory construction in interpreting the Attorney General's authority to extend to matters within the jurisdiction of justice courts. 9 Ops. Atty. Gen. 74 (1947)[8].

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5. The only way in which current section 13 differs from its predecessor is that the following clause was deleted: "He shall also have the powers and perform such duties as are or may be prescribed by law and which are not inconsistent herewith." The California Constitution Revision Commission for the 1966 Constitution Revision indicated in its "Comment" to its "Proposed Revision" that the clause was deleted as unnecessary. Thus, this deletion did not affect any of the Attorney General's powers.

6. Ballot argument in favor of Proposition 4, an initiative Constitutional Amendment to add section 21 to Article V, by Earl Warren, District Attorney of Alameda County, and W.C. Rhodes, sheriff of Madera County.

7. Chief Deputy Attorney General Charles O'Brien's October 14, 1965 letter to the Constitutional Law Revision Commission. (A copy is attached to this letter.)

8. Staff appears to rely on *People v. Brophy*, 49 Cal.App.2d 15 (1942) for a "narrower view of the Attorney General's power to assist district attorneys". Memo 94-12, p. 7. This reliance is misplaced. In *Brophy*, the issue was whether the Attorney General had the authority, by way of a letter, to request a phone company to cancel its service to a customer on the grounds that the telephone service allowed the customer to furnish information to book-making establishments. The court found that the Attorney General did not have the authority to invade the affairs of public utility companies which were regulated

This opinion points out that each sentence in section 21 must be interpreted so as to harmonize with all others in Article V. It finds that limiting the Attorney General's power only to matters within the superior court's jurisdiction would not allow the previous and following sentences to be given full effect ... *viz*, "It shall be the duty of the Attorney General to see that all the laws of the State are uniformly and adequately enforced", "the Attorney General shall have direct supervision over every district attorney ... in all matters pertaining to the duties of their respective offices", and "when required by the public interest ... , the Attorney General shall assist any district attorney in the discharge of the duties of that office."

B. The common law gives the Attorney General broad authority to act in the public interest.

The Attorney General has traditionally enjoyed broad common law authority as the state's chief law officer who "possesses not only extensive statutory powers but also broad powers derived from the common law relative to the protection of the public interest." *D'Amico v. Board of Medical Examiners* (1974) 11 C. 3d 1, 14; *Pierce v. Superior Court*, (1934) 1 Cal.2d 759, 761-762. Indeed, the high court of this state has referred to the "long-standing rule that in the absence of any legislative restriction the Attorney General has a common law power to bring any proceeding deemed necessary to enforce state law". *Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 440.

Thus, if the Commission's language defining the scope of the Attorney General's authority in the context of appellate review is allowed to remain, the Attorney General's historically broad authority to protect the public interest would arguably be curtailed.

C. The Attorney General's statutory authority supports a broad interpretation of his constitutional powers.

Government Code section 12550 was enacted in 1945. Its language tracks Political Code section 740 which was enacted in 1925. In addition to reinforcing the Attorney General's constitutional duty to exercise direct supervision over district attorneys and his duty to assist any district attorney in

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by the railroad commission. It held that "the law vests no authority in the office of the Attorney General to order a telephone company to discontinue its service". 49 Cal.App.2d 15, 29.

discharge of his duties when the AG deems it advisable or in the public interest, the statute gives him the additional power, where he deems it necessary, to take full charge of any investigation.

Under Bus. and Prof. Code §§ 17200 and 17500, the Attorney General has broad statutory authority for bringing civil actions for violations of law involving unfair business practices and misrepresentation.[9] We are aware of no statute that limits the Attorney General's power to prosecute civil matters to those in superior court.

Hence, the Legislature has, in certain instances, provided for potential points of interaction and cooperation between the Attorney General and district attorneys. It would be improvident to destroy this complex and careful balance between the two entities by hastily changing the terms of Article V, section 13, and its accepted interpretation.

II. Conclusion

The Attorney General's office does not wish to alter its existing complex relationship between with the district attorneys. This balanced relationship has developed over the years in response to a variety of situations. We believe that the Commission's new language, as well as that which has been recently proposed by staff in Memo 94-12[10], will do more to upset the existing relationship between the two law enforcement entities than would merely keeping section 13 as is.

While not perfectly clear, the current constitutional grant of authority is workable and has resulted in cooperation between law enforcement agencies throughout the state. The Attorney

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9. Bus. & Prof. Code §§ 17206 and 17536 permit enforcement of these various consumer protection laws by the filing of a civil action in the name of the people of the State of California by the Attorney General, district attorney, and in certain cases by county counsel, city attorney or city prosecutor "in any court of competent jurisdiction".

10. The proposed language which defines the Attorney General's duty to prosecute violations of law in the appellate jurisdiction of the supreme court or courts of appeal is unacceptable. The staff acknowledges that this violates the status quo by decreasing the Attorney General's authority. Additionally, the final paragraph of the "Comment" which states that "the authority of the Attorney General to prosecute violations of law is generally limited by this section" appears to place a restriction on the Attorney General's authority which, for the reasons stated above, does not necessarily exist at present.

General's law enforcement relationship is a very delicate one that has evolved over many years. This delicate balance should not be upset by changing the language of section 13.

Sincerely,

DANIEL E. LUNGREN
Attorney General

STATE OF CALIFORNIA

CHARLES A. O'BRIEN
Chief Deputy Attorney General

OFFICE OF THE ATTORNEY GENERAL

# Department of Justice

STATE BUILDING, SAN FRANCISCO 94102

October 14, 1965

Mr. Richard T. Petsey
Special Counsel
California Revision Commission
Office of Legislative Counsel
3021 State Capitol
Sacramento, California 95814

Dear Mr. Petsey:

On September 27, 1965, you wrote to us enclosing a proposal by the Committee on Executive Powers which would drastically revise the functions of the Attorney General's Office and profoundly affect the basic concept of law enforcement in the State.

Since this was the first that we knew of this revolutionary proposal, it caught us quite unawares and, indeed, has caused a certain amount of consternation in a wide variety of concerned agencies. I enclose our initial reaction to these proposed revisions which sets forth some of the history of the 1934 constitutional amendment as well as some comments relating to its success.

If necessary, we should appreciate an opportunity to discuss this matter further with the committee and/or the commission at a convenient date.

Yours very truly,

CHARLES A. O'BRIEN
Chief Deputy Attorney General

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encl.





OCT 15 1965

# COMMENTS ON PROPOSED REVISION OF CONSTITUTIONAL POWERS OF THE ATTORNEY GENERAL

On September 27, 1965, a preliminary staff report to the Committee on Executive Powers of the Constitution Revision Commission was made public. Proposed changes in Article V of the Constitution, including section 21 concerning the powers of the Attorney General, were set forth for the Committee on Executive Powers, to be studied by that Committee and recommended to the entire commission at some later date.

The thrust of the proposed revision may be stated very simply: All of the powers conferred upon the Attorney General by virtue of the initiative passed by the people in 1934 would be removed from the Constitution and left to the vicissitudes of legislative control. While there are serious shortcomings to the matters in section 21 concerning the Attorney General's salary and his power to obtain additional operating funds from the Governor and the Controller, by far the most serious proposal is the one to strip the Attorney General of constitutional authority and supervision over law enforcement throughout the State. With the announced goal of "cleaning up" our Constitution, the drafters of this proposed change would excise with one stroke of the pen the wisdom and foresight of some of the foremost organizations and leaders in this State in the early 1930's. A great debate raged among public officials, and particularly those

ncerned with law enforcement, throughout the decade of the 920's. This debate concerned itself with the emergence of a ew kind of criminal, one taking full advantage of technological ivances in communication and transportation to murder, extort, ob and cheat the public.

The focus of the concern was the inability of localized nd often under-staffed sheriffs departments and police agencies o deal with this type of new criminal.

The National Conference of Attorneys General had ebated the possibility of centralizing law enforcement for everal years. See 30 Nat'l. Assoc. Attys. Gen. Proceedings 5-92 (1936). Several alternative solutions were proposed, anging from complete centralization of all law enforcement in Department of Justice headed by the Attorney General, encom- assing detention, apprehension and prosecution, to a modified entralization proposal where a State police force would be reated to enforce the law with prosecutors working directly nder the Attorney General. Many other variations were discussed and debated.

However, the American Bar Association and the Commis- sioners on Uniform State Laws favored a different plan. The State Department of Justice would have general supervisory power over the sheriffs and police but not over prosecutors. Moreover, the Department would encompass a criminal identification bureau to assist local agencies in the technical aspects of crime detection and prevention. That proposal would have added to most state governments a completely new departmental structure with all of the attendant expenses and reorganization inherent

in such a plan. See First Tentative Draft of Uniform State Department of Justice Act, 1935 Handbook and Proceedings of the National Conference of Commissioners on Uniform State Laws, pp. 249-61.

Out of this atmosphere of study and change emerged the existing California constitutional provision. A series of dramatic events in California in 1933 triggered the change. Several instances of violence and kidnapping dramatically illustrated the impotence of strictly local police agencies to deal with essentially statewide law enforcement. Unlike the criminals involved in these particular acts, those agencies had very definite boundaries, artificial, but nonetheless effective to circumscribe them in their law enforcement activities. Political considerations arising out of jealousy, for whatever purposes, resulted in federal officials having to be called in to solve what was essentially a state problem.

Prior to 1934, every state in the Union, including California, had an attorney general or a similar counterpart and some had a nominal Department of Justice. However, the powers of the attorneys general were limited primarily to civil matters and some nominal law enforcement duties. In 1933, the impotence of local California law enforcement to deal with crime on a broad scale set into action one of the most comprehensive and widespread studies of any problem in the history of the State.

Led by law enforcement itself through the Peace Officers' and District Attorneys Associations, the people of California began to search for a solution. It was quickly apparent that some kind of centralization was essential. However, the

alternatives of complete centralization in a state the size of California or the creation of a state police force, with the inherent repugnancy that such a proposal generated, were quickly discarded. In their place, a proposal unmatched in both governmental efficiency and economy was settled upon.

Without the necessity of creating a new bureaucratic device, and within the existing framework of California government, the foundation for a State Department of Justice in the truest sense of the word was laid.

The State Chamber of Commerce, the Commonwealth Club of San Francisco, the California State Bar Association, Judges' Associations, the California Federation of Women's Clubs, the California League of Women Voters, and most importantly, the State's Peace Officers' and District Attorneys' Associations, combined their tremendous intellectual resources and hammered out the present constitutional provision. For a concise history of this movement, see Earl Warren, A State Department of Justice, 60 Am. Bar Assn., Repts. 311 (1935), and the Report of the Hon. William A. Beasly, Chairman of the Subcommittee on the Administration of Justice of the State Bar of California, 20 Am. Bar Assoc. J. 757-59 (1934). See also, Joseph R. Knowland, California Girds for War on Crime, 24 Calif. J. Development 11 (1934); 10 Transactions 147, Commonwealth Club of California (1934); Argument in Favor of Initiative Proposition No. 4, Report of Secretary of State (1934); Professor A. M. "Captain" Kidd, The Work of the California State Bar Committee on Crime, 14 Oregon Law Review 165 (1934-35).

Initiative No. 4 was passed on November 2, 1934. This was not an ordinary initiative in the pattern of current abuses of that legislative device. Some of the foremost citizens and scholars of the State studied and supported it, and it had the complete blessing of those to be supervised, that is, local law enforcement agencies and district attorneys.

The obvious question then becomes: Has this structure fulfilled its promise? The answer unequivocally is in the affirmative. California today is the only state in the United States with an effective and efficient Department of Justice in the literal sense of that word. Perhaps the greatest measure of its success is the continuing efforts of local law enforcement agencies to guarantee cooperation. The Attorney General's law enforcement relationship is a very delicate one. A very strong policy against state intervention in local affairs underlies his entire approach.

On the other hand, attorneys general since 1934 have constructed a Department of such scope and magnitude that local police can have access (1) to a file of millions of fingerprints within a matter of minutes, (2) the services of an expert, full-time criminalist for detecting and prosecuting criminals, (3) the inestimable value of current and comprehensive statistics on crime, and (4) the expertise and long experience of narcotic agents with no other mission but to aid local communities to ferret out and prosecute narcotics violators.

The wisdom of the framers of this initiative is readily apparent when instances of corruption in local law enforcement or other administrative offices come to the surface. Payoffs by criminal elements to the sheriff in Del Norte County and an accusation

of misconduct in office against the District Attorney of Santa Cruz County in recent years are vivid examples of the need for State supervision of local law enforcement agencies. In addition, without this framework of responsibility and power, the prosecution of judges in Mendocino County for conspiracy to obstruct justice in 1963 would have been far more difficult. And, of course, the vital role being played by the Attorney General in the current assessor scandals is absolutely indispensable, since these corrupt practices spread over many of the 58 counties in this state as well as other states in the country. No single county law enforcement officer could possibly investigate and coordinate this type of situation without the power and prestige residing in the Attorney General by virtue of his constitutional mandate.

Moreover, on the date of this writing, the Attorney General's office is actively trying five criminal cases. These cases arose in Orange, Los Angeles, Kings and Lassen counties. Three of these cases are murder cases. The fourth case involves a vice conspiracy and the fifth involves a prosecution of a judge for misappropriation of public funds. For brief comments on the effectiveness of the Department of Justice in this state see Report of the Committee on State Reorganization, Griffenhagen and Associates, Report No. 30, July 12, 1937; Crouch, McHenry, Bollens and Scott, California Government and Politics 155 (1964).

Notwithstanding this background, the authors of this report recommend the drastic step of deletion of constitutional language solely because California is the only state having

such detailed provisions in its Constitution. The report merely states that, in contrast, about half the states merely provide that the Attorney General shall have the powers and duties prescribed by law, and concludes, "It would seem that this lengthy provision could be transferred to the statutes."

The Attorney General's salary was tied to that of an associate justice of the Supreme Court by the framers of the 1934 initiative. They felt that the Attorney General was basically a quasi-judicial officer meriting a salary second only to the Chief Justice of the State Supreme Court.

This report makes a very critical change in this provision in that it provides that the Attorney General's compensation shall not be increased or diminished during his term of office.

The report's justification for this departure ignores the view of the Attorney General as a quasi-judicial officer. The author of the report sees that salary provision only as a deterrent to the Attorney General engaging in private practice.

As lawyers, we do not deem it unreasonable to expect that sound justification accompany proposed change. This precept takes on even more importance when the expressed will of the people is under attack. Certainly, the unsupported conclusory statement that this constitutional language could be transferred to the statutes provides no justification at all. No reasons are given in support of the conclusion that legislative control is essential; no discussion, either legal or political, is tendered other than the equivocal and vague opinion of the Legislative Counsel that this shift might be legal, or might with some patching be sufficient. See Ops. Leg. Counsel, Nos. 103 and 104 (1965).

The obvious question we ask is why embark on a tenuous and uncertain course when an unequivocal and positive framework exists within the Constitution? In sharp contrast to the vagueness of the reasoning behind this proposed change, we feel that the historical considerations set out above provide positive, affirmative support for the present constitutional provision.

2/4/94 VIA FACSIMILE TRANSMISSION
ORIGINAL TO FOLLOW

February 2, 1994

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

FEB 0 4 1994

Re: SCA 3 -- Article V, section 13

Dear Chairperson Skaggs:

The District Attorneys Association and the Attorney General's Office both wish to preserve the status quo with respect to the powers and duties of the Attorney General. We believe this can be accomplished by leaving the language of Article V, section 13 unchanged. Although unification of the trial courts may alter the jurisdiction of the superior courts as it exists today, we believe that unification should not have an effect on the Attorney General's authority as set forth in the first two sentences of section 13.

We have been working cooperatively with one another for the past sixty years -- since passage of Proposition 4 in 1934 which added section 21, the predecessor to Article V, section 13. We acknowledge that current Constitutional language is not crystal clear; however the present language, complemented by common law and statutes, has permitted law enforcement agencies in California to coordinate their efforts to protect the public. This cooperative relationship is essential and is founded in the Attorney General's respect for local control and sharing of resources and expertise. This delicate balance between the Attorney General and the district attorneys has evolved over many years, forged by practicality and necessity, and will be upset by any change in language of section 13.

If there is any lingering doubt on the part of the Commission, we would urge it to provide guidance in its Comment, *i.e.*, trial court unification should not result in any change in the Attorney General's authority and that authority remains the same as it was before unification.

Sincerely,

Daniel E. Lungren
Attorney General

Greg Totten, Exec. Director
California District
Attorneys Association