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# Another Look: Trial Court Unification in California in the Post-Proposition 13 Era

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# ANOTHER LOOK: TRIAL COURT UNIFICATION IN CALIFORNIA IN THE POST-PROPOSITION 13 ERA

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Andrew Schepard\*

## INTRODUCTION

One of the most beneficial aftershocks of the Proposition 13<sup>1</sup> earthquake, which shook the fiscal foundations of state and local government in California, is a growing willingness to examine the structure of government from top to bottom to see if it is providing services efficiently and competently. The kind of searching reexamination of government operations called for in the aftermath of Proposition 13 must include a new look at an old idea in judicial administration—trial court unification. The purpose of this article is to take that look and to argue that a unified trial court system can best meet the challenge of providing judicial services in California in the post Proposition 13 era.

This article is divided into five parts. The first provides a summary and necessarily selective overview of the structure of California's trial court system. The second part defines unification in the context of the current California trial court system. Third, the history of court unification, nationally and in California, is summarized, in the hope of reflecting the adage that a page of history is worth a thousand pages of logic. Next, this article summarizes and analyzes the principal arguments for and against unification and concludes that unification is the optimum administrative structure for the trial courts. Finally, this arti-

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Research for this article began while the author was a Consultant to the Special Committee on Trial Court Improvements of the State Bar of California. The views expressed here are the author's own and not those of the State Bar.

1. CAL. CONST. art. 13a, §§ 1-6 (West Supp. 1980).

cle identifies some unanswered questions about unification and analyzes currently pending unification legislation.

## I. THE TRIAL COURTS OF CALIFORNIA: A SUMMARY OVERVIEW

Before one considers radically changing California's trial court system, it is helpful to have some basic understanding of the current court structure. Any summary description of so complex an enterprise, however, will necessarily be somewhat oversimplified. Nonetheless, it is included here to provide a common factual base from which to analyze the unification issue.

### *A. Jurisdictional Divisions Between Trial Courts*

The California Constitution places the state judicial power in the California Supreme Court, the courts of appeal, and three levels of trial courts—the superior, municipal, and justice courts.<sup>2</sup> Superior courts are trial courts of general jurisdiction.<sup>3</sup> They hear civil suits when the amount in controversy exceeds \$15,000,<sup>4</sup> domestic relations, and probate matters. In the criminal departments, superior courts hear felony charges and juvenile cases.<sup>5</sup>

Municipal and justice courts have, for all practical purposes, identical jurisdictions. They are empowered to hear civil suits when the amount in controversy is \$15,000 or less, including small claims cases.<sup>6</sup> On the criminal side, municipal and justice courts handle misdemeanors, felony preliminary hearings,<sup>7</sup> and traffic cases (both misdemeanors and infractions).<sup>8</sup>

Each county in California must establish a superior court.<sup>9</sup> Counties must be divided into districts for purposes of establishing municipal and justice courts. Districts with over 40,000 people must have a municipal court. No city, other than those in San Diego County, may

2. CAL. CONST. art. 6, § 1 (West Supp. 1980).

3. CAL. CONST. art. 6, § 10 (West Supp. 1980).

4. CAL. CIV. PROC. CODE §§ 1141.10-.32 (West Supp. 1980). In civil suits when the amount in controversy is under \$15,000, superior and municipal courts have concurrent jurisdiction. A recently enacted statute, operative July 1, 1979, mandates arbitration of civil suits where the amount in controversy is \$15,000 or less in superior courts with ten or more judges. CAL. CIV. PROC. CODE § 1141.12(a) (West Supp. 1980).

5. CAL. CIV. PROC. CODE § 73e (West Supp. 1980).

6. Legislation generally equating the jurisdiction of municipal and justice courts became effective January 1, 1977. This law is effective until January 1, 1983, unless re-enacted by subsequent legislation before that date. CAL. CIV. PROC. CODE §§ 83, 86 (West Supp. 1980).

7. See CAL. PENAL CODE §§ 976-90, 1281a (West Supp. 1980).

8. CAL. PENAL CODE § 1462 (West Supp. 1980).

9. CAL. CONST. art. 6, § 4 (West Supp. 1980).

be divided into more than one court district.<sup>10</sup>

### *B. Superior Courts*

The legislature determines the number of superior court judges a county may have and through fiscal year 1977-78 had authorized 551 superior court judgeships statewide.<sup>11</sup> In fiscal year 1977-78 the superior courts also received the equivalent of 126 additional full-time judges through assistance rendered by commissioners,<sup>12</sup> referees<sup>13</sup> and temporary judges.<sup>14</sup> Superior courts range in size from one and two judges in some counties to the 171-judge, multi-commissioner Los Angeles County Superior Court, the world's largest trial bench.<sup>15</sup>

The legislature usually creates new judgeships in response to a request from a county board of supervisors, and almost never without the board's approval.<sup>16</sup> This is principally because counties pay a large share of the costs for new superior court judgeships.<sup>17</sup> In order to qualify for an appointment to the superior court bench a person must be a member of the State Bar and have been in practice for ten years.<sup>18</sup> Most superior court judges are appointed by the governor to fill vacancies or newly created positions.<sup>19</sup> Superior court judges must run for election on a countywide basis.<sup>20</sup> Traditionally, judicial elections were low budget, low visibility affairs with incumbents rarely being challenged or defeated. That trend has been changing in recent years. Average expenditures by candidates in contested superior court elections

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10. CAL. CONST. art. 6, § 5 (West Supp. 1980).

11. JUDICIAL COUNCIL OF CALIFORNIA, ANNUAL REPORT OF THE ADMINISTRATIVE OFFICE OF THE CALIFORNIA COURTS 60 (1979) [hereinafter cited as 1979 JUDICIAL COUNCIL REPORT]; TASK FORCE III-18 REPORT, ANALYSIS AND RECOMMENDATIONS AS TO POTENTIAL ECONOMICS—COURTS 9 (1978) (Task Force Report to Commission on Governmental Reform, "Post Commission") [hereinafter cited as POST COMMISSION TASK FORCE REPORT].

12. CAL. CIV. PROC. CODE §§ 259, 259a (West 1954).

13. CAL. CIV. PROC. CODE §§ 638-645 (West 1976 & Supp. 1980).

14. See 1979 JUDICIAL COUNCIL REPORT, *supra* note 11, at 112.

15. *Id.* at 126. A recent substantial increase in the size of the Los Angeles Superior Court occurred due to the enactment of S.B. 53, signed by Governor Brown in late September of 1979. That court will receive twenty-five new judges of the fifty-three statewide positions created by the bill. L.A. Daily J., Oct. 1, 1979, at 1, col. 2. As of the date of this writing, however, implementation of S.B. 53 in Los Angeles County has been delayed by wrangling within the Los Angeles County Board of Supervisors concerning the economic cost that would be imposed to pay the county's share of the expense for the new judges. See L.A. Times, Jan. 28, 1980, Part II at 1, col. 4.

16. *Our Congested Courts*, L.A. LAW., April 1978, at 21 (Statement by J. Anthony Kline, Governor Brown's Legal Affairs Secretary).

17. See notes 98-120 *infra*.

18. CAL. CONST. art. 6, § 15 (West Supp. 1980).

19. POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 9.

20. CAL. CONST. art. 6, § 16(b) (West Supp. 1980).

doubled in 1978 over 1976 levels.<sup>21</sup> Much of the increased spending and level of activity appears to be the result of promotion of challenges to incumbents by prosecution-oriented groups, and increasing sophistication of campaign techniques.<sup>22</sup>

Personnel expenses are the primary expenditures for the superior courts.<sup>23</sup> The state presently pays a major portion of superior court judges' annual salary<sup>24</sup> and fringe benefits, and annually reimburses the counties' expenses for each superior court judgeship created after January 1, 1973.<sup>25</sup> Since the amount of the county contribution to superior court judges' salaries is limited by law,<sup>26</sup> the state pays for any salary increase. In fiscal year 1978-79, the state paid over \$3.2 million towards the costs of running superior courts. The remainder, over \$136 million, is paid by the counties.<sup>27</sup> Clerical staffing for the superior courts is provided by the county clerk.<sup>28</sup> Bailiffs are provided by the sheriff,<sup>29</sup> an independent countywide elected official.<sup>30</sup>

Many superior courts, particularly those in urban areas, have administrative officers to help manage their nonjudicial business. These officers function under authority delegated by the presiding judge of the court.<sup>31</sup>

### C. Municipal Courts

In fiscal year 1977-78, there were 456 authorized municipal judgeships in California.<sup>32</sup> In addition, the municipal courts received the equivalent of 94 additional full-time judges through assistance from commissioners, referees, and temporary judges.<sup>33</sup> Municipal courts range in size from twenty-four courts with one or two judges to the Los Angeles Municipal Court, which has sixty-four judges and a multitude

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21. For a discussion of the results of a study by Dr. Larry Berg, Director of the University of Southern California's Institute of Politics and Government, see L.A. Times, Dec. 6, 1979, Part I, at 22, col. 3.

22. See L.A. Daily J., Dec. 18, 1979, at 1, col. 5.

23. POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 9.

24. A yearly base pay of \$49,166 in 1977 with required yearly cost of living increases not to exceed five percent. See CAL. GOV'T CODE §§ 68202, 68203 (West 1976 & Supp. 1980).

25. POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 9-10.

26. CAL. GOV'T CODE § 68203 (West Supp. 1980).

27. POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 13.

28. *Id.* at 11.

29. CAL. GOV'T CODE § 26603 (West Supp. 1980).

30. CAL. CONST. art. 11, § 4(c) (West Supp. 1980).

31. CAL. GOV'T CODE § 69508 (West 1976). The presiding judge of the court is elected by his or her colleagues.

32. POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 10.

33. 1979 JUDICIAL COUNCIL REPORT, *supra* note 11, at 113.

of commissioners.<sup>34</sup>

In order to qualify for appointment to the municipal court bench a person must be a member of the State Bar and have been in practice for five years.<sup>35</sup> Municipal court judges are selected through the same general process as their superior court counterparts. Municipal court judges, however, are elected on a district or city basis, rather than by county.

Counties pay the operating expenses of the municipal courts, as well as most of the salaries of municipal court judges.<sup>36</sup> The state's principal contribution to municipal court financing is to the judges' retirement fund.<sup>37</sup> Revenues generated by the municipal courts (usually from fines) are shared by counties and cities according to a complex formula.<sup>38</sup> The municipal court has its own clerk.<sup>39</sup> Bailiff services are provided by the county marshal, a nonelected official.<sup>40</sup>

#### D. Justice Courts

Justice courts in California are largely a vestige of a less complex, less litigious, less urban period of our history when due process standards were less precisely defined and it was believed that a layperson could adequately apply legal doctrines. Originally, justice courts were established to bring judicial services to more remote, less populated areas lacking the services of a lawyer.

In 1974, however, the California Supreme Court held that a criminal defendant had a due process right to a preliminary hearing before a lawyer-magistrate,<sup>41</sup> thus numbering the days of the justice court. The number of justice courts in California is gradually declining, and the percentage of justice court judges who are attorneys is gradually rising.

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34. *Id.* at 154.

35. CAL. CONST. art. 6, § 15 (West Supp. 1980).

36. CAL. GOV'T CODE § 25351 (West 1968); CAL. GOV'T CODE §§ 68073 & 71002 (West 1976).

37. POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 11.

38. *Id.* at 11, 15.

39. *See* CAL. GOV'T CODE § 71280 (West Supp. 1980).

40. *See* CAL. GOV'T CODE § 71264 (West 1976). Apparently, there has been movement toward resolving controversy over whether the sheriff or the marshal should provide bailiff services for the courts, at least in Ventura County. A merger has been agreed to whereby the Office of the Marshal will be abolished and its functions transferred to the Sheriff's Office. The Sheriff will, however, create a court security department to be supervised by the former county marshal. Job security for former marshals is guaranteed in various creative ways. Proponents estimate the merger will save the county \$750,000 annually by its third year. Legislative approval of the merger is required. L.A. Daily J., Jan. 14, 1980, at 1, col. 2.

41. *Gordon v. Justice Court*, 12 Cal. 3d 323, 525 P.2d 72, 115 Cal. Rptr. 632 (1974).

In fiscal year 1966-67 there were 263 justice courts and 74 attorney-judges, representing 28% of the total number of justice court judges.<sup>42</sup> In fiscal year 1977-78, there were 107 justice courts and 108 authorized judgeships. Approximately 50% of the justice court judges were attorneys.<sup>43</sup> The gradual decrease in the number of courts has been caused by both the consolidation of various justice courts and the creation of new municipal courts. The increase in the number of attorney-judges has been caused by lay judges being phased out at the end of their terms.

Justice courts are entirely county-funded. Justice court judges are selected by county boards of supervisors.<sup>44</sup>

### *E. Overall System Administration*

In theory, the Judicial Council is the apex of the California judicial system. The Council comprises the chief justice and one other supreme court justice, three court of appeal justices, five superior court judges, three municipal court judges, two justice court judges, four members of the State Bar, and one member of each house of the legislature.<sup>45</sup> The Council's function is to improve the administration of justice by surveying judicial business, making recommendations, conducting demonstration projects, and adapting court rules.<sup>46</sup> The Judicial Council has a staff, the Administrative Office of the Courts, to aid its work.

In fact, the Judicial Council exercises comparatively little administrative control over the trial courts, which function largely as autonomous, locally based units. The Judicial Council's main task in relation to the trial courts is essentially to provide central planning and research.<sup>47</sup>

The chief justice is, however, mandated to "seek to expedite judicial business and to equalize the work of the judges."<sup>48</sup> This task is principally accomplished by assignment of active or retired judges to assist in courts other than their own.<sup>49</sup>

There is really no strong central authority governing the adminis-

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42. 1979 JUDICIAL COUNCIL REPORT, *supra* note 11, at 93.

43. *Id.*

44. CAL. GOV'T CODE § 71180.3 (West 1976).

45. CAL. CONST. art. 6, § 6 (West Supp. 1980).

46. *Id.*

47. See generally Booz, Allen & Hamilton, Inc., LOWER COURT STUDY 30-32 (1971) [hereinafter cited as LOWER COURT STUDY].

48. CAL. CONST. art. 6, § 6 (West Supp. 1980).

49. POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 13.

tration of the California trial court system. Rather, it is a loosely knit confederation of largely self-governing units, each delivering judicial services to overlapping jurisdictions and each with its own support services structure. Each unit is independently administered and sets its own operating policies, except as mandated by constitution, statute, or Judicial Council rule.<sup>50</sup>

## II. WHAT IS TRIAL COURT UNIFICATION?

The principle underlying trial court unification is that these numerous, fragmented, and overlapping providers of judicial services should be replaced with a system "wherein the courts are organized and managed in such a way as to provide, as nearly as possible, a uniform administration of justice throughout the state."<sup>51</sup> A basic tenet of a unified trial court system is a larger degree of centralized direction for delivery of judicial services. "[A] state's trial courts should function wherever possible under similar sets of guidelines, rules and working conditions."<sup>52</sup> At bottom, a unified trial court system is just that—a *system* for organizing and delivering judicial services on a statewide basis, as opposed to a series of loosely connected, locally oriented units.

Mechanisms and models for creating a unified trial court system vary. Several key criteria for evaluating the extent to which a system is unified include the degree to which: (1) the trial court structure has been simplified; (2) rulemaking authority has been centralized; (3) court management has been centralized; (4) budgeting has been centralized; and (5) the state has assumed financing of the courts.<sup>53</sup>

This article focuses only on the first feature of a unified court system, trial court structure. It is important, however, to keep the other features in mind when considering the court structure problem. All the elements of unification are part of the same "seamless web" and have the same basic goal of creating a statewide court system more uniform in quality and procedure.<sup>54</sup>

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50. [1972] JUDICIAL COUNCIL OF CALIFORNIA REPORT, at A-9, A-10.

51. Ashman & Parness, *The Concept of A Unified Court System*, 24 DE PAUL L. REV. 1, 2 (1974) [hereinafter cited as Ashman & Parness].

52. *Id.* at 30.

53. Berkson, *The Emerging Ideal of Court Unification*, 60 JUDICATURE 372 (1977) [hereinafter cited as Berkson]; see [1976] CALIFORNIA JUDICIAL COUNCIL, REPORT ON TRIAL COURT UNIFICATION IN THE UNITED STATES [hereinafter cited as CALIFORNIA JUDICIAL COUNCIL REPORT].

54. Indeed, the California Commission on Government Reform, established by Governor Brown to make recommendations on government structure in the wake of Proposition 13 and headed by former Legislative Analyst A. Alan Post, ignored trial court structure entirely but recommended full state financing of the trial courts. See L.A. Daily J., Feb. 6, 1979, at 1, col. 5.



In California, two major different approaches for trial court unification have been proposed: (1) merger of municipal and justice courts into a single countywide "lower" court; and (2) merger of the justice, municipal, and superior courts into a single countywide trial court of general jurisdiction.<sup>55</sup>

There are also variants within unification proposals. Some propose merging all of the trial courts for administrative purposes, but retaining a distinction between municipal and superior court judges and jurisdiction.<sup>56</sup> Other unification proposals call for eliminating the jurisdictional distinctions, but retaining the distinction between types of judges.<sup>57</sup>

This article, however, will use the term "unification" in what is probably its purest sense—the creation of a single countywide trial court of general jurisdiction with a single class of judge. This definition provides a simple and clear conceptual base from which to analyze the virtues and vices of unification, along with its alternatives and permutations.

### III. HISTORY OF UNIFICATION

Before considering the virtues and vices of unification, one should understand that those attributes have been articulated over a long period of time, both nationally and in California.

#### *A. National History of Court Unification*

The court unification movement in the United States essentially began with Roscoe Pound's famous 1906 address to the American Bar Association entitled "The Causes of Popular Dissatisfaction with the Administration of Justice."<sup>58</sup> Pound vehemently attacked the "multiplicity of courts as characteristic of archaic law."<sup>59</sup> According to Pound, rigid distinctions between courts resulted in a waste of judicial power because "business may be congested in one court while judges in another are idle."<sup>60</sup> Pound spoke favorably of the English Judicature Act of 1873, which consolidated five appellate and eight trial courts

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55. See LOWER COURT STUDY, *supra* note 47; Booz, Allen & Hamilton, Inc., UNIFIED TRIAL COURT FEASIBILITY STUDY (1971) [hereinafter cited as FEASIBILITY STUDY].

56. POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 37.

57. See Cal. S.B. 974, Reg. Sess. (1979-80).

58. 29 ABA REPORTS 395 (1906).

59. *Id.* at 409.

60. *Id.* at 412.

into a single court with a trial and an appellate division.<sup>61</sup>

Pound's address caused a furor within the legal establishment of the time. Opposition to Pound's proposal was led by the now otherwise forgotten James Andrews of New York, who defended the existing system of civil justice as "the most refined and scientific system ever devised by the wit of man."<sup>62</sup> Pound, however, had unloosed ideas not easily cabined. In the somewhat hyperbolic words of James Wigmore:

The great result [of Pound's speech] was that the soul of the profession had been touched. For many ensuing years the St. Paul speech was the catechism for all progressive-minded lawyers and judges. Slowly the doctrines spread. Many other forces—most notably the American Judicature Society—organized their efforts. And so the white flame of Progress was kindled.<sup>63</sup>

Translating Pound's spirit into concrete programs for court simplification, however, proved more difficult than kindling the "white flame of Progress." "Every scholar, jurist and commission member since Pound has agreed the number of trial courts must be reduced, but they have disagreed over the exact number that should exist."<sup>64</sup>

Pound originally suggested there be only one trial court, but in 1940 revised his thinking to provide for a county court to handle minor causes and a superior court of general jurisdiction. The model developed by the American Judicature Society, at the request of the National Municipal League in 1920, advocated a two-tier trial court. The American Bar Association endorsed the two-tier concept in 1962. New Jersey Chief Justice Arthur Vanderbilt, a noted judicial administration expert, advocated a two-tier trial court as late as 1963.

More recent national commissions and studies have generally rejected the two-tier idea. In 1971, the prestigious National Conference on the Judiciary prescribed only one level of trial court.<sup>65</sup> The following year the National Advisory Commission on Criminal Justice Stan-

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61. *Id.* at 409-10.

62. Quoted in WIGMORE, *Roscoe Pound's St. Paul Address of 1906*, in RESOURCE MATERIAL FOR THE NATIONAL CONFERENCE ON THE CAUSES OF POPULAR DISSATISFACTION WITH THE ADMINISTRATION OF JUSTICE 29 (1976).

63. *Id.* at 31.

64. Berkson, *supra* note 53, at 373, provides the material for the national historical discussion.

65. National Conference on the Judiciary, *Consensus Statement* in JUSTICE IN THE STATES: ADDRESSES AND PAPERS OF THE NATIONAL CONFERENCE ON THE JUDICIARY 266 (1971). The National Conference on the Judiciary was a United States Justice Department funded conference on judicial administration that was held in Williamsburg, Virginia in March of 1971. It was attended by then President Nixon, Chief Justice Burger, Attorney General Mitchell and forty chief judicial officers of the states. Out of the Conference also came a resolution which led to the creation of the National Center for State Courts.

dards and Goals agreed.<sup>66</sup> The Commission on Standards of Judicial Administration of the American Bar Association concurred in 1974.<sup>67</sup>

Thus, despite general agreement on the need to simplify court structure, national experts do not agree that a unified court system is the ideal form. The trend of recent and prestigious authority favors unification.

### *B. Status of Trial Court Unification in the United States*

Despite the trend of expert thinking, it cannot fairly be said that unification has swept the United States. In 1976, the California Judicial Council completed a survey of trial court unification in the United States.<sup>68</sup> That survey reported four states with only one level of trial courts.<sup>69</sup> Several of those states, however, had more than one class of judge. Sixteen states reported two-level trial court systems and five states had three-level systems. The Judicial Council survey described twenty-five states (including California) as "minimally unified," based on a combination of criteria including the number of trial courts, centralization of management, uniformity of rules of practice, and freedom of assignment of judges at every level of the system.

The reasons for the lack of progress in court unification are many, but lie largely in the politics of court reform. A strong interest in preserving existing arrangements develops among judges, support staff, and other local government officials who are comfortable with the way things are. Higher court trial judges often consider lower court work unimportant.<sup>70</sup> Judicial change is usually not a priority item on the agenda of the state legislature, which is "more susceptible than any

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66. NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, COURTS 164 (1973). The Commission was appointed by the Administrator of the Justice Department's Law Enforcement Assistance Administration to formulate national criminal justice system standards and goals for crime control at the state and local level.

67. ABA STANDARDS RELATING TO COURT ORGANIZATION 17 (1974). The ABA's standards were formulated by its Commission on Standards of Judicial Administration whose membership included Judge Carl McGowan of the United States Court of Appeals for the District of Columbia; Griffin Bell, who was then a United States Circuit Judge and subsequently Attorney General of the United States; Louis Burke, former Associate Justice of the California Supreme Court; and Wade H. McCree, Jr., then a United States Circuit Judge, who currently is Solicitor General of the United States.

68. CALIFORNIA JUDICIAL COUNCIL REPORT, *supra* note 53.

69. Illinois, Idaho, Iowa, South Dakota.

70. Judge G. Dennis Adams of the San Diego court, who was the author of the legislation creating the El Cajon court unification experiment described in the text accompanying notes 109-11 *infra*, recently stated: "I've never heard a good reason opposing court consolidation from any Superior Court judge anywhere in this state. They're all very personal and very petty reasons." L.A. Daily J., Feb. 19, 1980, at 1, col. 3.

other government forum to the interests and pressures of local officials.”<sup>71</sup> Public opinion plays very little role in court reform issues, as “[k]nowledge of the courts is so slight that the public is unlikely to understand the complex problems that plague the courts or to hold well formulated views on what ought to be done about them.”<sup>72</sup>

Given the political inertia and the array of interests allied against unification, it is surprising that the concept has made as much progress as it has over the years. It is an issue with no readily identifiable constituency, except perhaps lower court judges who desire elevation to the higher court.<sup>73</sup> The impetus for unification usually originates with the bar and public interest organizations that do not have the political staying power of their opposition.

### C. *Unification in California*

The origins of California's state trial court system were described by a state commission as an outgrowth of the need to provide residents of outlying areas with judicial services.<sup>74</sup>

The result was a locally-based system with a confusing multiplicity of courts. Prior to a major court reorganization in 1950,<sup>75</sup> California

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71. D. ADAMANY, *THE IMPLEMENTATION OF COURT IMPROVEMENTS 5* (1978) (Paper published for the National Center for State Courts Conference, *State Courts: A Blueprint for Change*).

72. *Id.* at 10.

73. Progress on court unification may, however, be made when a politically powerful governor supports the idea. *Id.* For example, Governor Carey of New York has recently vigorously advocated enactment of a comprehensive court unification and merit selection trial court reform package. See N.Y. Times, Apr. 2, 1979, at 1, col. 3.

74. The first Constitution of California created the Supreme Court, district courts (equivalent, roughly, to superior courts in jurisdiction but not organized along county lines), county courts (one in each county, handling probate matters, appeals from justices' [sic] courts, and other cases as the Legislature might prescribe), and justices' courts. The county and district courts were replaced by the present superior courts in our second and current Constitution.

Although the court of general jurisdiction was located at the county seat, there still existed a need for courts in outlying areas to accommodate residents who could not easily travel to the county seat. Yet trained personnel, particularly judicial officers, were sufficiently rare as to necessitate limiting such outlying courts to the less serious matters. Thus the justice courts were created, an outgrowth of the judicial system provided for the provinces of Mexico wherein the *alcaldes* (whose courts roughly corresponded to our present municipal courts) and justices of the peace were also responsible for the good order and public tranquility of their places of residence, with authorization to ask for assistance from the military *commandante* for that purpose. They could levy and collect fines, and impose sentences to prison or hard labor, for minor offenses. It was a system not only already in use in early California but also designed to meet the judicial needs of that day, and so was adopted.

ADVISORY COMMISSION TO THE CALIFORNIA LEGISLATURE'S JOINT COMMITTEE ON THE STRUCTURE OF THE JUDICIARY, *TO MEET TOMORROW: THE NEED FOR CHANGE 5-6* (1975) (footnote omitted) (emphasis in original) [hereinafter cited as 1975 COBEY COMMISSION REPORT].

75. The reorganization was operative in 1952 and 1953.

had six different types of courts that were inferior to the superior courts, and that exercised their authority under various constitutional, statutory, and county and city charter provisions. Some 767 lower courts existed, many using part-time lay personnel.<sup>76</sup> For example, prior to the 1950 reorganization, Gardena township in Los Angeles County comprised six cities of varying population, each of which had its own court and courtroom.<sup>77</sup>

The 1950 lower court reorganization reduced the number of lower courts from six to two. Each city with a population of 40,000 received a full-time municipal court judge.<sup>78</sup> Judicial districting authority was taken away from cities and vested solely in counties.<sup>79</sup>

Under the 1950 reorganization, however, justice courts retained their part-time positions and their lay judges.<sup>80</sup> Cities continued to receive a substantial portion of revenues generated by the courts.<sup>81</sup> The 1950 reorganization also failed to create an administrative mechanism to promote uniformity of procedures among the lower courts.<sup>82</sup>

Very little trial court reorganization activity occurred at the state legislative level for twenty years following the 1950 reorganization. In 1970, Assemblyman James A. Hayes of Long Beach introduced a unification bill.<sup>83</sup> In the 1971 legislative session, a bill was introduced to merge the superior and municipal courts, but to retain the justice courts.<sup>84</sup> Although both of these bills were unsuccessful, they revived interest in unification. In April 1970 the Judicial Council commissioned the nationally known management consulting firm of Booz, Allen & Hamilton to conduct major management studies of the organization of the lower courts and the feasibility of a unified system. The firm's principal recommendations were summarized in the Judicial Council's 1976 Report as follows:

(1) that a single type of lower court be established to replace the present municipal and justice courts; (2) that an area administrative structure be created for the consolidated lower courts; and (3) that all operating expenses of the new lower court system, excluding the cost

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76. LOWER COURT STUDY, *supra* note 47, at 2.

77. Nelson, *Should Los Angeles County Adopt A Single Trial Court Plan?*, 33 SO. CAL. L. REV. 117, 119 (1960) [hereinafter cited as Nelson].

78. LOWER COURT STUDY, *supra* note 47, at 3.

79. *Id.*

80. *Id.* at 4.

81. See CAL. GOV'T CODE § 71006 (West 1976); CAL. VEH. CODE § 42200 (West 1971); *id.* § 42201 (West Supp. 1980).

82. See note 62 *supra*.

83. Cal. A.B. 1400, Reg. Sess. (1971).

84. Cal. A.B. 1401, Reg. Sess. (1971).

of furnishing and maintaining court facilities, be paid by the state.<sup>85</sup>

Following the Booz, Allen & Hamilton studies, many different court reorganization bills were considered in the 1972-73 legislative sessions. The Judicial Council sponsored a bill proposing consolidation of municipal and justice courts only, and establishment of an area administrative structure supervised by the Judicial Council.<sup>86</sup> The American Board of Trial Advocates sponsored a bill to consolidate the lower courts, but omitted the area administrative structure.<sup>87</sup> The Select Committee on Trial Court Delay<sup>88</sup> sponsored a bill embodying the Booz, Allen & Hamilton recommendations.<sup>89</sup> Assemblyman Hayes renewed his previous proposal.<sup>90</sup> All proposed court reorganization bills, however, failed.<sup>91</sup>

The most seriously considered court reorganization bill in the 1973-74 legislative session was introduced by Assemblyman Fenton. This bill would have allowed, but not required, counties to adopt court unification. It too failed.<sup>92</sup>

In early 1974 the Court Management Committee of the Judicial Council developed a court reorganization plan that would have unified the trial courts for administrative purposes, but mandated two perma-

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85. In the Unified Trial Court Study, the consultant concluded that a single-level trial court with one type of judge was ultimately the most desirable form of trial court organization for California, but that it was not feasible to establish a completely unified single trial court system immediately in all California counties. The consultant therefore recommended a three-stage approach to complete unification, as follows:

1. Establish an area administrative structure for all three trial courts (superior, municipal and justice courts);
2. After voter approval of the necessary constitutional amendment, enact implementing legislation to (1) provide state financing, effective one year later, for salaries and fringe benefits for lower court judges and commissioners; and (2) provide state financing, two years later, for all operating expenses of a completely unified single trial court system with two levels of judges, but with capital costs to remain an obligation of the counties in which the courts are located;
3. Gradually convert all two-level courts into completely unified single level courts, when an adequate base of subordinate judicial officers (commissioners) has been built up in each court, or when the second level judicial position (associate judge) has disappeared in a particular court by attrition due to elevations, resignations or retirements.

[1976] JUDICIAL COUNCIL OF CALIFORNIA, REPORT TO THE GOVERNOR AND THE LEGISLATURE, 14 [hereinafter cited as 1976 JUDICIAL COUNCIL REPORT].

86. Cal. S.B. 296, 297, Reg. Sess. (1972); Cal. S.C.A. 15, Reg. Sess. (1972).

87. Cal. S.B. 1152, Reg. Sess. (1972); Cal. S.C.A. 57, Reg. Sess. (1972); Cal. S.B. 852, Reg. Sess. (1972); Cal. S.C.A. 41, Reg. Sess. (1972).

88. The commission consisted of nine members appointed by Chief Justice Wright of the California Supreme Court: three judges, three lawyers, and three lay people.

89. SELECT COMMITTEE ON TRIAL COURT DELAY, REPORT 6 at 19 (June 1, 1972).

90. Cal. A.B. 159, 160, Reg. Sess. (1972); Cal. A.C.A. 20, Reg. Sess. (1972).

91. 1976 JUDICIAL COUNCIL REPORT, *supra* note 85, at 14-15. See note 70 and accompanying text *supra*.

92. 1976 JUDICIAL COUNCIL REPORT, *supra* note 85, at 15.

nent separate operating divisions of the new superior court corresponding to present jurisdictional divisions between the municipal and superior courts. Two classifications of judges also would have been retained.<sup>93</sup>

In 1974 the legislature created a joint committee on the structure of the judiciary to study the subject. An advisory committee chaired by court of appeal Justice James A. Cobey supervised the necessary staff work, conducted hearings, and on October 18, 1975, produced a major report. A majority of the committee recommended trial court unification and state financing of the trial courts. A minority, consisting mostly of superior court judges, vigorously opposed the recommendations.<sup>94</sup>

In the 1975-76 legislative session, Senator Alfred Song introduced a major court reorganization bill embodying the Cobey Commission recommendations.<sup>95</sup> The bill was subsequently amended to incorporate the Judicial Council's plan for administrative unification with two divisions of courts and two classes of judges. This bill caused additional concern among the judiciary by putting a five percent limit on judicial salary increases once all judges in the unified court were at parity. Sheriffs also objected to Song's bill because of its blanket requirement that marshals serve as bailiffs to the unified court. Amid a gaggle of competing interests, amendments, and compromises, the Song bill failed.<sup>96</sup>

Senator Song introduced another reorganization bill in the 1977-78 session embodying the concept of two divisions and two classes of judges. The two divisions would, however, have existed only for five years. A unified court would then have been created.<sup>97</sup>

Senator Song's defeat at the polls passed the mantle of leadership on the unification issue to Assemblyman Fenton and Assemblyman Bob Wilson, who sponsored bills in the 1977-78 legislative session embodying aspects of the unification idea.<sup>98</sup>

This brief history of the unification debate in California does not begin to convey the full extent of the controversy over the manner in which the trial court system should be organized. Numerous interested

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93. *Id.*

94. *See* note 74 *supra*.

95. Cal. S.B. 1500, Reg. Sess. (1975).

96. L.A. Daily J., May 13, 1976, at 1, col. 2.

97. Cal. S.B. 1313, Reg. Sess. (1977-78); Cal. S.C.A. 52, Reg. Sess. (1977-78).

98. Cal. S.B. 974, Reg. Sess. (1979-80); Cal. S.C.A. 22, Reg. Sess. (1979-80); Cal. A.B. 650, Reg. Sess. (1979-80); Cal. A.C.A. 27, Reg. Sess. (1979-80).

groups and individuals have taken positions on the issue.<sup>99</sup> A number of reports and scholarly articles have also contributed to public discussion.<sup>100</sup> The debate about court organization is "political" in its truest connotative sense—messy, disorganized, special interest-oriented and intense. Much is perceived to be at stake by all those concerned.

#### IV. THE COSTS AND BENEFITS OF UNIFICATION

This section will analyze the major advantages and disadvantages of unification. The discussion will not consider transition costs that would result from moving from the current trial court system to unification.<sup>101</sup>

##### A. *The Advantages of Unification*

The major advantages of unification are: (a) substantially increased administrative flexibility in allocating judicial and nonjudicial resources; (b) elimination of expense and delays resulting from two different trial court systems processing aspects of the same case; (c) upgrading the public perception of the quality of justice in the "lower" courts; and (d) increasing procedural uniformity throughout the trial court system.

##### 1. Administrative flexibility

The ability to allocate available resources without regard to distinctions between kinds of judges and courts is probably the single greatest advantage of unification.<sup>102</sup> Unification would also eliminate single judge courts and merge smaller municipal and superior courts

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99. See, e.g., LOS ANGELES MUNICIPAL COURT, RESOURCE MATERIALS ON COURT CONSOLIDATION (effective Oct. 18, 1973) (on file with Southwestern Law Review) [hereinafter cited as MUNICIPAL COURT RESOURCE MATERIALS]; 11 JUDGES, MARSHALS AND CONSTABLES MAGAZINE 8, 11, 15, 18 (1978).

100. See, e.g., 1975 COBEY COMMISSION REPORT, *supra* note 74; Nelson, *supra* note 77.

101. This omission does not denigrate the importance of transitional costs, which opponents of unification emphasize. There undoubtedly would be significant personnel and management problems in a transition to a unified system. Problems of "grandfathering in" present lower court judges and court personnel come prominently to mind. In considering the ideal organization of a court system, however, it is important to separate the proverbial forest from the trees. If the idea of trial court unification is acceptable the transitional problems are worth addressing in the spirit of looking for humane and equitable solutions. Positive reorganization of any service system—indeed any well established institution—would never occur if the transitional costs were the only consideration.

102. See, e.g., FEASIBILITY STUDY, *supra* note 55, at 61; 1975 COBEY COMMISSION REPORT, *supra* note 74, at 11; Note, *Trial Court Consolidation in California*, 21 U.C.L.A. L. REV. 1081, 1107 (1974) [hereinafter cited as *Trial Court Consolidation*].



into judicial units of a size that would allow economies of scale in administration.

Presently, the only mechanism to balance workloads among courts is temporary assignment by the chief justice.<sup>103</sup> Even though there may not be enough work in a small court to occupy its personnel full time, the work does require attention. It is, therefore, difficult to assign an underworked judge to another court full time. In a multi-judge court, however, the work of the judge assigned to another division could be absorbed by those who remain. Additionally, the status concerns that often prevent or inhibit assignments of judges from one level of trial court to another would be reduced or eliminated by unification.

There is little doubt that the workload of the superior court would benefit most from the flexibility of assignment resulting from unification. The Booz, Allen & Hamilton study identified "[t]he increasing backlog of cases in the superior courts as the primary workload problem in the trial courts today."<sup>104</sup> The number of new cases filed in superior court increases each year, and the backlog of cases awaiting trial grows proportionately.<sup>105</sup> Municipal courts have experienced a much smaller percentage increase in filings;<sup>106</sup> their backlog of cases awaiting trial decreased between 1973 and 1977.<sup>107</sup> A recent jurisdictional increase of the municipal court in civil cases from \$5,000 to \$15,000<sup>108</sup> is premised on the idea that there is unused capacity in the municipal courts.

In an experiment in the El Cajon Municipal Court, the chief justice made a blanket order allowing the six El Cajon Municipal Court judges to hear cases ordinarily limited to the San Diego County Superior Court.<sup>109</sup> By giving municipal court judges the power to handle felony preliminary hearings, cases adjudicated in the El Cajon system were resolved an average of twenty-eight days faster than similar cases processed in the bifurcated system. The number of preliminary hearings was substantially reduced and negotiated settlements were encouraged. All the defense attorneys, prosecutors, and judges who participated in the experiment agreed that the rights of the defendants were not adversely affected. In its first year of operation, the El Cajon

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103. CAL. CONST. art. 6, § 21 (West Supp. 1980).

104. FEASIBILITY STUDY, *supra* note 55, at 20.

105. POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 23a-b.

106. *Id.* at 23a.

107. *Id.* at 23b.

108. Cal. S.B. 1155, Reg. Sess. (1979).

109. 19 CAL. ST. B. REP. NO. 3 at 1-2 (June 1979) (summary of evaluation report of first year of El Cajon Project); L.A. Daily J., Feb. 5, 1979, at 1, col. 3; *id.*, Nov. 26, 1979, at 1, col. 5.

project saved one superior court judge year, a substantial savings. "No civil case had to be continued for lack of a courtroom, and not one civil department had to take an overflow criminal case." Even more of the superior court caseload could be relieved if litigants and lawyers would become more willing to file civil and family law cases in the El Cajon Court.<sup>110</sup>

It is that very unwillingness of litigants and lawyers to treat the municipal court on a par with the superior court that is one of the prime arguments for *full* unification, rather than the El Cajon patchwork approach. The halfway measures already taken toward superior-municipal court workload reallocation indicate that there is a critical need to distribute existing judicial trial business among available judges. Fulfillment of that need is thwarted by the jurisdictional distinctions between the municipal and superior court, and lawyer and litigant perception that only the "higher" superior court is suitable for certain types of "important" matters. Roscoe Pound's criticism of jurisdictional distinctions between courts<sup>111</sup> remains valid today in California. Until there is a single level trial court, maximum efficiency and fairness in judicial workload allocation cannot be achieved.

In addition to more effective workload allocation, unification would allow more judges to specialize in particular subjects. Larger courts would mean that more courts could have family law, probate, juvenile law, and other divisions staffed by judges who are substantive experts in their assigned areas. This development would be in line with what generally is acknowledged to be a desirable trend away from using specialized courts to using judges who, for a period of their careers, specialize in a particular area of the law.<sup>112</sup>

Unification offers administrative flexibility to nonjudicial personnel as well. As judicial districts become larger, it becomes economically viable to hire a court administrator for the district. Unification eliminates the need for each level of court to maintain separate jury lists and recordkeeping facilities. Utilization of existing physical facilities would also be maximized.<sup>113</sup>

Many of these administrative efficiencies can be, and in some counties are, achieved by voluntary contract arrangements between superior and municipal courts. Egos and bureaucratic rivalries, however,

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110. L.A. Daily J., Feb. 19, 1980, at 1, col. 3.

111. See note 62 and accompanying text *supra*.

112. 1975 COBEY COMMISSION REPORT, *supra* note 74, at 12-13; *Trial Court Consolidation*, *supra* note 102, at 1108.

113. 1975 COBEY COMMISSION REPORT, *supra* note 74, at 13-17.

prevent maximum efficiency and cooperation within the trial court system. This problem will only be overcome when all concerned feel they are part of the same judicial "family." Only unification can maximize the necessary feeling of togetherness.

## 2. Elimination of inefficiencies and delays in case processing

In many instances, superior and municipal courts handle aspects of the same case. When a matter is transferred between court systems, because the "lower" level of court is not empowered to dispose of the entire case, expense and delay are the inevitable result.

Preliminary hearings in criminal cases are a prime example. Many criminal defendants, particularly in Los Angeles County, submit their cases for decision on the transcript of the preliminary hearing.<sup>114</sup> At present, a municipal court judge conducts the preliminary hearing but is not empowered to sentence the defendant, because the municipal court judge is not empowered to impose felony penalties.<sup>115</sup>

Thus, to dispose of such a case: (1) the transcript must be prepared; (2) the case must be transferred to the superior court; (3) the defendant must be arraigned in superior court (he already was arraigned once in municipal court); (4) a superior court judge must read the transcript; and (5) the defendant's sentence must be pronounced.<sup>116</sup> "[B]ecause the municipal court judge has no jurisdiction to dispose of the case forthwith on submission of the transcript, the defendant is subject to delay in the ultimate disposition of his case, a delay which is expensive to the court as well."<sup>117</sup>

Los Angeles County Supervisor Kenneth Hahn has estimated that if the same judge who presided over the preliminary hearing could sentence the defendant without having the transcript of the hearing prepared, the County would save two million dollars annually.<sup>118</sup> There seems to be little countervailing social benefit in having two judges review the same material, unless one believes that sentencing by a superior court judge who does not see live witnesses is better than sentencing by a municipal court judge who does.

Numerous other "friction costs" result from having aspects of a

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114. D. NELSON, JUDICIAL ADMINISTRATION AND THE ADMINISTRATION OF JUSTICE 146 (1974) [hereinafter cited as D. NELSON].

115. *Id.* at 141.

116. See Graham & Letwin, *The Preliminary Hearing in Los Angeles: Some Field Findings and Legal-Policy Observations*, 18 U.C.L.A. L. REV. 636 (1971).

117. D. NELSON, *supra* note 114, at 129.

118. Hahn, *The Urgent Need for Court Reform*, L.A. Daily J. Report, Nov. 18, 1977, at 4, 6.

single criminal case handled in different trial court systems. Defendants must be arraigned in both courts and counsel for indigents must be appointed twice. Motions to set bail, to limit pretrial publicity, and for discovery can be made in both courts. If a defendant pleads not guilty by reason of insanity to a misdemeanor, that aspect of a municipal court case must be tried in superior court.<sup>119</sup>

Civil cases, too, present numerous intersystem friction points. If a case is filed in municipal court claiming less than \$15,000 in damages, a cross complaint for an amount in excess of \$15,000 requires that the entire case be transferred to superior court.<sup>120</sup> The plaintiff can thus easily be deprived of his choice of the municipal court forum by a cross complaint with an overstated damage claim. Similar problems occur when there is a request for declaratory relief, which cannot be granted by the municipal court.<sup>121</sup>

Any administrator viewing two different and relatively uncoordinated service delivery systems dealing with aspects of the same problem would probably want to merge the two systems, absent extremely important countervailing considerations.<sup>122</sup> Whether the superior-municipal court division is based on such countervailing justifications will be considered in subsequent sections of this article.

### 3. Upgrading the perception of the quality of justice in the "lower" courts

In 1967, the President's Commission on Law Enforcement and Administration of Justice wrote:

No findings of this Commission are more disquieting than those relating to the condition of the lower criminal courts. These courts are lower only in the sense that they are the courts before which millions of arrested persons are first brought, either for trial of misdemeanors or petty offenses or for preliminary hearing on felony charges. Although the offenses that are the business of the lower courts may be "petty" in respect to the amount of damage that they do and the fear that they inspire, the work of the lower courts has great implications. Insofar as the citizen experiences contact with the criminal court, the lower criminal court is usually the court of last resort. While public attention focuses on sensational felony cases and on the conduct of

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119. CAL. PENAL CODE § 1429.5 (West 1970); see *id.* §§ 1026, 1026a.

120. CAL. CIV. PROC. CODE § 86 (West 1980).

121. *Id.*

122. See FRIESEN, INTERNAL ORGANIZATION AND PROCEDURES OF THE COURTS 4 (1978) (prepared for the National Center for State Courts, March 1978 Conference, *State Courts: A Blueprint for the Future*) [hereinafter cited as FRIESEN].

trials in the prestigious felony courts, 90 percent of the Nation's criminal cases are heard in the lower courts.<sup>123</sup>

Similar statements could be made about civil proceedings in the lower courts. While small claims, landlord-tenant disputes, and civil cases claiming damages under \$15,000 may not seem of much moment to some lawyers, they are vitally important to the affected citizens. The lower courts are the principal forum for structuring the perceptions of people who come into actual contact with the judicial system.

To reduce the problems of the quality of justice in the lower courts, the President's Crime Commission recommended:

All criminal prosecutions should be conducted in a single court manned by judges who are authorized to try all offenses. All judges should be of equal status. Unification of the courts will not change the grading of offenses, the punishment, or the rights to indictment by grand jury and trial by jury. But all criminal cases should be processed under generally comparable procedures, with stress on procedural regularity and careful consideration of dispositions.<sup>124</sup>

The Crime Commission's indictment of the overall quality of lower trial courts is probably not as applicable to California, with its tradition of judicial excellence, as it is to other jurisdictions. It does stress, however, the stigmatizing effect of maintaining the superior-municipal court distinction.<sup>125</sup> The concept of an "inferior" trial court creates the unfortunate, but probably inevitable, perception in the lay public and legal community that an inferior quality of justice is rendered there. Unification attacks that basic perception.

#### 4. Uniformity of Rules

A final argument in favor of unification is that attorneys who practice in various courts today must know different rules for practice and procedure for each court.<sup>126</sup> By reducing the number of districts to one for each county, the advantage of local attorneys over other attorneys would be greatly diminished.<sup>127</sup>

#### *B. The Disadvantages of Unification*

The opponents of unification principally cite the following reasons to support their position: (a) the value of "local control" of the courts;

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123. PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND ADMINISTRATION OF JUSTICE, TASK FORCE ON THE ADMINISTRATION OF JUSTICE, REPORT: THE COURTS 29 (1967).

124. *Id.* at 33.

125. See FRIESEN, *supra* note 122, at 124.

126. 1975 COBEY COMMISSION REPORT, *supra* note 74, at 18.

127. *Id.*

(b) the virtues of decentralization in court administration; and (c) concern about the quality of judicial services that will be rendered in a unified trial court.

### 1. Local control

Attitudes toward "local control" of trial courts have heavily influenced the progress of unification. For example:

[P]ublic opinion in many areas of the country generally is sympathetic to the idea of local control, and associates centralization of any governmental power with such evils as massive bureaucracy, red tape, and corruption. Effectuating unification principles . . . may be easier to accomplish in states with less of a tradition of local government independence from state government.<sup>128</sup>

[C]hanges that have occurred over the years have destroyed the rationale which earlier dictated a multi-tiered system. No longer do we have such a shortage of people trained in the law that lay judges must be utilized. And modern transportation and our system of highways have not merely made it possible to travel to court facilities at more centralized locations, but in fact have generally made it a trip of only a few minutes. The historical concept that every town and community had to have its own court is no longer valid, and structural judicial reforms nationally have very often involved consolidation of small judicial districts into larger units, serving more than one community on a full-time rather than part-time basis.<sup>129</sup>

Decrease of local control of the courts is often asserted as a principal argument against unification. Ritualistic invocation of direct democracy and small town America do not, however, take one very far in understanding what "local control" means in the context of a massive, largely urban based service delivery system like the trial courts of California. Further and more refined inquiry is required, particularly in light of the massive shift of financial responsibility for government operations from local to state government caused by Proposition 13.<sup>130</sup>

At least two different arguments seem to run through the "local control" value asserted against unification. The first is a normative argument that a locally administered trial court system is best because it is accountable to the people it is supposed to serve. The second argument, relating to court administration, is that better judicial services can be delivered in a locally administered system.

One conceptual problem with the normative argument is that

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128. See Ashman & Parness, *supra* note 51, at 35.

129. 1975 COBEY COMMISSION REPORT, *supra* note 74, at 6-7.

130. See note 1 *supra*.

many people use the trial courts in districts other than the one in which they live. A 1963 survey determined that, on the average, 49% of municipal court traffic defendants lived in districts outside the one in which their case was heard. In the Compton and East Los Angeles municipal courts, the figures for out-of-district defendants were even higher, 87.5% and 72.2% respectively.<sup>131</sup> If the survey were replicated today, the figures for out-of-district defendants may well be even higher, given the legendary mobility of California's population.<sup>132</sup>

The present court structure thus raises a normative problem that is the direct converse of the normative argument for local control: why should residents of a particular district elect a judge whose principal job will be to decide disputes of out-of-district residents who had no voice in his selection?

Another practical question about the normative local control argument is that, in reality, trial court judges are appointed by the governor, a statewide elected official. While there is a trend toward more competitive trial court elections and more expensive campaigns, the general rule remains that incumbent judges are rarely challenged and rarely defeated.<sup>133</sup> Additionally, even when there is a contested election, judicial candidates are forbidden by the relevant canons of ethics to comment on the issues voters care most about—"disputed legal or political issues."<sup>134</sup>

In any event, some degree of local elections would remain with a unified court system. While city elections would be eliminated, all judges would run on a countywide basis. All that unification would mean is that the local electorate the judge would be ultimately responsible to would be larger in number.

Finally, as a normative matter, the argument that local courts are best suited to meet local needs is a two-edged sword. A substantial moral question is raised when we say judges should be responsive to a purely "local" constituency. Local communities sometimes exhibit intolerant attitudes toward minorities and "outsiders." An extension of the sphere of interests to which a decision-maker must be responsive

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131. *Trial Court Consolidation*, *supra* note 102, at 1108.

132. "The mobility of the population leads to challenge of a fundamental concept in much of our public administration; that is the assumption that each person can be associated with a precisely defined piece of the nation's territory, such as the usual place of residence or the legal residence." TAEUBER, CURRENT POPULATION DEVELOPMENTS 5 (1978) (prepared for the National Center for State Courts, March 1978 Conference, *State Courts: A Blueprint for the Future*).

133. J. HOLBROOK, A SURVEY OF METROPOLITAN TRIAL COURTS LOS ANGELES AREA 44-49 (1959).

134. ABA, MODEL CODE OF JUDICIAL CONDUCT, Canon 7B(1)(c) (1979).

may assure fairer, more uniform decisions for all.<sup>135</sup>

## 2. Virtues of decentralized administration

Recently, scholars have put the "local control" argument in a broader and more persuasive administrative and practical context. Basically, these scholars argue that a decentralized judicial system provides better service because it allows judges more participation in managing the environment in which they work and is more compatible with the decentralized nature of the overall justice system.<sup>136</sup>

These advocates of the virtues of decentralization begin with the premise that judges are highly skilled professionals. Studies of the administration of organizations that must mobilize the skills of talented but individualistic people (*e.g.*, university faculties, law firms, hospitals) indicate that such people resist hierarchial control and perform better if granted operational autonomy. Collegial decision making, persuasion, and consensus, rather than detailed rules and centralized direction, are the preferred management style for professionals.<sup>137</sup> "The authoritarian imposition of rules on professionals or a demeaning central clearance requirement, undermines respect for the judiciary's professional capacity, and may lead to alienation and dissatisfaction on the bench."<sup>138</sup> Consensus judgments and a general "open system" approach to administration, it is argued, are far more feasible in small, decentralized administrative units. Unification's very purpose is to the contrary, these critics argue, as it seeks to enlarge the role of administration and provide more central control of the courts.

A second perceived virtue of decentralized administration is that it enables courts to respond quickly, effectively, and with initiative to changing conditions in the essentially locally-based justice system. The district attorney, public defender, law enforcement officers, members of the private bar, and the legislature all vitally affect court operations, but are largely beyond court control. As a result: "Negotiation, consensus and compromise, rather than power, are the essential instruments of management in this environment . . . . As a matter of practicality, can central headquarters effectively or even adequately

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135. See MADISON, FEDERALIST NO. 10 (1787).

136. Saari, *Modern Court Management: Trends in Court Organization Concepts* 1976, 2 JUST. SYS. J. 19 (1976) [hereinafter cited as Saari]; Gallas, *The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach*, 2 JUST. SYS. J. 35 (1976) [hereinafter cited as Gallas].

137. Saari, *supra* note 137, at 22-23; Gallas, *supra* note 137, at 41.

138. Saari, *supra* note 137, at 25; see FRIESEN, *supra* note 122, at 8.



control operations in local, county-based justice systems?"<sup>139</sup> This "small is beautiful" perspective on judicial administration does not necessarily rule out unification, but it certainly calls its key values—uniformity of procedure and centralization of administration—into question.

[A] single trial court assumes that centralization of administrative power is an unqualified blessing. Whether it is or is not desirable to have a single trial court would depend on many environmental factors such as size, and geographic dispersion or compactness. The decision to organize courts should be based upon assessment of objective data regarding the court's environment, not abstract doctrine that a single trial court is desirable.<sup>140</sup>

What the "objective data" are, however, that might lead one to conclude unification is desirable is not articulated by these advocates of decentralization. The present tripartite California trial court system has significant costs and disadvantages, that are not addressed by advocacy of the virtues of a decentralized system for its own sake. One need not take the position that unification is an "unqualified blessing" to argue that, totalling up all the costs and benefits, it is better than the uncoordinated trial court system that presently exists.

The advocates of decentralization, however, point out important benefits of the current decentralized system that should not be lost in planning for unification. A unification plan can be devised that maximizes its uniformity and centralization benefits and still protects the values of decentralization. Indeed, rational decentralization can only proceed if there is a central locus of power in the court system. Devising an appropriate unification plan is largely a matter of carefully defining the elements of court administration that should be placed under centralized control. "The goal should be to have a rationally centralized organization structured to force self-renewal while accommodating local differences."<sup>141</sup> Trial judges, of course, must remain free to run their trials as they see fit. To date, however, no effort has been made to develop an administratively sensitive plan for a unified system, as the principle of unification is still not accepted. The opposing camps have remained polarized, each talking past the other.

### 3. Quality of judicial services

Probably the single greatest obstacle to unification is the fear of its

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139. Gallas, *supra* note 137, at 39.

140. Saari, *supra* note 137, at 25.

141. FRIESEN, *supra* note 122, at 10.

effect on the quality of trial court justice. This fear can be broken down into three components, some of which are more explicitly articulated than others by opponents of unification: (1) concern that municipal and justice court judges are simply not of the same calibre as superior court judges and, therefore, should not be elevated;<sup>142</sup> (2) belief that lower courts are needed as a testing and training ground for determining which judges should be elevated to the superior courts; and (3) belief that it will be difficult to attract well-qualified attorneys to serve on a unified bench because they will not want to handle the more routine, high volume matters handled by the lower courts.<sup>143</sup>

Before delving into the specifics of each argument, it is important to address an attitudinal undertone previously identified, which sometimes (but not always) colors those arguments. That undertone is an assumption that the matters handled by lower courts are less important than those handled in superior courts. Numerous unarticulated political and social value choices go into making such a judgment, not all of which are acceptable in a society dedicated to equal justice under law. And, as will be discussed subsequently, the distinction between lower and superior court cases is often very blurred. But most importantly, public support for the courts and understanding of the American justice system ultimately depend on the lower courts, where most of the public comes into contact with "the system."

Those who work in the court system may tend to be more sanguine than the people the courts serve about how well the system is perceived to work. In a recent nationwide public opinion poll conducted for the National Center for State Courts, 63% of the judges and 45% of the lawyers surveyed expressed confidence in the operations of state and local courts.<sup>144</sup> In contrast, only 22% of nonlawyer community leaders and 23% of the general public had the same feeling.<sup>145</sup> The public's confidence in state and local courts is lower than that in doctors, the police, business, and the public schools.<sup>146</sup>

If public confidence in the courts is to be improved, the view that

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142. 1975 COBEY COMMISSION REPORT, *supra* note 74, at D17-18 (minority report).

143. *Trial Court Consolidation*, *supra* note 102, at 1125.

144. YANKELOVICH, SKELLY & WHITE, INC., THE PUBLIC IMAGE OF COURTS: HIGHLIGHTS OF A NATIONAL SURVEY OF THE GENERAL PUBLIC, JUDGES, LAWYERS AND COMMUNITY LEADERS 46 (1978) (prepared for National Center for State Courts, March 1978 Conference, *State Courts: A Blueprint for the Future*). The author is unaware of any survey assessing public attitudes toward the California state courts. There is no reason, however, to think California would be much different from the nation in this respect.

145. *Id.* at ii.

146. *Id.*

lower court work is less important must be eliminated, root and branch. This is not to say that the same amount of judicial time and effort should be devoted to a traffic infraction as to a complex antitrust action. Rather, it is to say that the challenge of satisfying the public's core expectations of the courts—protection of society, equality and fairness in treatment, and quality performance by court personnel<sup>147</sup>—is not dependent upon a judge's perception of what is at stake. The litigants' perceptions are the key to improving public attitudes toward the courts. The methods used to satisfy public expectations of the justice system may vary, but the satisfaction of those expectations must remain the paramount goal of that system. It is unacceptable for public servants to believe that the primary part of the public business they conduct is unimportant. With the attitudinal underbrush at least identified, if not cleared away, the quality of services issue can be addressed.

a. The quality of the lower court bench

There is, quite simply, no generally acceptable way to measure judicial quality. Length of membership in the State Bar probably has some, but not overwhelming, relevance to how good a particular lawyer will be as a judge. Many municipal court judges do, however, meet the present superior court experience requirement.<sup>148</sup> It is also important to note that approximately one-half of the superior court judges began on the municipal court.<sup>149</sup>

Implicit in the assumption of a distinction in the quality of municipal and superior court judges is an assumption that they presently perform distinctly different kinds of work. The facts do not support this bright line distinction between municipal and superior court cases, as one might expect when one concedes the premise that the municipal and superior courts are interrelated portions of a single trial court service delivery system. In 1973, for example, 36.5% of all felonies filed in Los Angeles County were disposed of in the municipal and justice courts.<sup>150</sup> In that same year, 50.4% of felony defendants in superior court received misdemeanor penalties.<sup>151</sup> A survey of Los Angeles

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147. *Id.*

148. In 1973, the Los Angeles Municipal Court reported that all of its judges would meet the ten year experience requirement by the end of the year. *See* MUNICIPAL COURT RESOURCE MATERIALS, *supra* note 99, at A-6. That statement may not be as true today since many judges have been appointed since 1973. It is, however, a point that remains valid.

149. *See Trial Court Consolidation*, *supra* note 102, at 1115-17.

150. *See* MUNICIPAL COURT RESOURCE MATERIALS, *supra* note 99, at C.

151. *Id.*

County Superior Court civil cases in the first six months of 1972 indicated that 33% of the money verdicts were under \$5,000, the municipal court civil jurisdictional limit at the time. A sample taken in February 1973 showed that fifty percent of the civil cases settled in Los Angeles County settled for \$5,000 or less.<sup>152</sup> In California between 1970 and 1976, 78% of all tort awards were under \$15,000 and 73% were under \$10,000.<sup>153</sup> Thus, the recent modest increase of municipal court civil jurisdiction to \$15,000 potentially will bring most tort cases into that court's ambit.

Thus, if the current municipal court judges are of less quality than the current superior court judges, the municipal court judges are doing a bad job on many cases the superior court judges should be handling.

Overall it is hard to come to grips with the judicial quality argument, which is asserted as an article of faith by many unification opponents. There are good and bad judges in both levels of court. It is impossible, however, to base broad social policy judgments on the performance of individual judges or war stories of attorneys. The Cobey Commission stated that "no system should be designed on the basis of existing personalities or improvements could never be made."<sup>154</sup>

Additionally, judges' assignments in a unified court would be governed by the presiding judge, who could assign judges on the basis of their performance and capabilities. "The objection that lower court judges are unqualified to serve on the superior court . . . is at most applicable, if at all, only on a one-time basis (at the time of the initial reorganization), is clearly of a transitory nature and may be simply resolved by proper administrative action . . . ."<sup>155</sup>

#### b. Lower courts as a training ground

One anomaly in the training ground argument is that many superior court judges are appointed directly to that bench without prior judicial experience.<sup>156</sup> In a unified trial court, a rational training program for new judges could be devised under which they could be assigned by the presiding judge to more complex cases when they demonstrated their ability, without waiting for the fortuity of election to the superior court or gubernatorial elevation.

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152. *Id.* at C, E and F.

153. CALIFORNIA CITIZEN'S COMMISSION ON TORT REFORM, RIGHTING THE LIABILITY BALANCE 143 (1977).

154. 1975 COBEY COMMISSION REPORT, *supra* note 74, at 27.

155. *Id.* at 27-28.

156. *See* FEASIBILITY STUDY, *supra* note 55, at 55.

A rational distribution of judicial work would ignore subject matter labels and would consider degrees of difficulty that would put the most experienced judges on the most difficult cases and the beginners on the easier cases. Such a process would look at the case and not an arbitrary historical classification before assigning each case to a judge.<sup>157</sup>

### c. Recruiting problems

The "recruiting problems" argument is essentially inconsistent with the "training ground" argument. The former argument alleges that highly qualified lawyers will not want to handle the more routine, high-volume work of the municipal courts. The "training ground" argument, in contrast, alleges that handling such work is a necessary prerequisite to assuming the superior court bench.

In any event, the number of lawyers who will be deterred from seeking a seat on a unified superior court bench is highly speculative. There has been no reported shortage of qualified candidates for the municipal court bench. In addition, in a unified system, judicial assignments would be based on ability and temperament, rather than on arbitrary jurisdictional distinctions. Thus, any new superior court recruit could quickly leave the allegedly uninspiring municipal court work if he could convince the presiding judge that he was ready for bigger and better things.<sup>158</sup>

## V. THE FUTURE OF UNIFICATION

The arguments for unification have gained strength in the wake of Proposition 13<sup>159</sup> and the demonstrated success of the El Cajon experiment.<sup>160</sup> Proposition 13 mandates a new look at the issue and El Cajon shows that unification organizes the California court system to maximize economy and efficiency.

But unification advocates should, in fairness, also recognize two significant unknowns in a transition to a unified system, both of which will be briefly discussed. First, there is no guarantee, though there is a likelihood, of significant short term monetary savings in a unified court system. Data to make such projections is simply not available. Second, there will be significant but not insurmountable problems in the transition to a unified trial court system.

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157. FRIESEN, *supra* note 122, at 3.

158. 1975 COBEY COMMISSION REPORT, *supra* note 74, at 28-29.

159. See note 1 *supra*.

160. See notes 109-10 *supra*.

*A. Cost Estimates*

No generally accepted analysis of the economics of court unification in California has yet been made. In conjunction with its recommendation for unification, the Cobey Commission recommended state financing of the courts. Based on that assumption, the Commission estimated a net annual increase (in 1975 dollars) of \$6,008,378 in total expenditures for a unified court system, mostly resulting from increases in salary and benefits for elevated lower court judges. The Commission emphasized that the \$6,000,000 figure was transitional only, and that substantial savings ultimately would result from increased administrative efficiency.<sup>161</sup> The Cobey Commission minority, however, vigorously criticized the majority's financial projections as not taking into account various other transition costs.<sup>162</sup>

Data on cost savings from unification in other jurisdictions is not easily transposed to a California context, given the enormous differences in court systems and in procedures for recording court administrative data. In 1974, a Minnesota Select Committee on the Judicial System surveyed opinions of court administrators on the fiscal results of unification in various states whose judicial systems it deemed unified.<sup>163</sup> The Committee found itself unable to generate line item budget data because of differences in state budgeting systems and record-keeping. Consequently, the Committee solicited subjective opinions and warned that its data was "highly unreliable and is almost certainly a rough guess on the part of the respondents."<sup>164</sup> It is, however, the only data close to constituting a nationwide survey of the costs of unification that has been located. The summary findings of the Minnesota survey on cost savings are offered here:

Six SCA's [State Court Administrators] could not answer the question about whether unification saved money at all but offered no explanation for this inability. Seven SCA's believe that unification is more expensive than non-unification. It is important to note, however, that two of these seven attribute some of the increased cost to inflation. Almost all of these seven believe that judicial salaries, among other items, contributed to this increase. Two SCA's estimate that the cost is about the same as under the old system.

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161. 1975 COBEY COMMISSION REPORT, *supra* note 74, at 64-71. Others have indicated a belief that California taxpayers would save money with a unified court system, but have presented no detailed data in support. POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 35-37.

162. 1975 COBEY COMMISSION REPORT, *supra* note 74, at D5-D10 (minority report).

163. MINNESOTA JUDICIAL COUNCIL, SELECT COMMITTEE ON THE JUDICIAL SYSTEM, A SURVEY OF UNIFIED COURT ORGANIZATIONS 10 (1974).

164. *Id.*

Five SCA's gauge the unified system to be less expensive than the prior system. The decrease in cost is attributed to various economies of scale such as centralized purchasing and other factors.<sup>165</sup>

A detailed, high-level California study of the costs and savings of unification would be an extremely valuable addition to public discussion of the issue, and particularly appropriate in the post-Proposition 13 era.<sup>166</sup> Either the Governor's office or the Judicial Council, or some combination thereof, could establish a broad based study commission consisting of lawyers, judges, management experts and accountants, cost analysts, etc. to develop the assumptions under which a projection of the dollar costs and benefits of unification should proceed.

The assumptions that go into making fiscal projections for a yet unimplemented service delivery system are, however, extremely complex; proponents and opponents simply may never be able to agree on them. Nevertheless, a debate on the issue would be a valuable addition to public discussion of court reform in California.

The alternative to a detailed and time consuming economic analysis is simply to rely on existing data and an intuitive assumption that unification will, in the long run, save taxpayers money. No one has presented a truly convincing case that the current trifurcated trial court system is an economically superior service delivery system to a unified one. The El Cajon experiment presents substantial evidence that case processing will be more efficient in a unified system. On the basis of the El Cajon data, Santa Clara County is apparently considering unification.<sup>167</sup> Most other efficiency groups that have looked at the unification issue have also concluded that it would save money. In a world where knowledge is imperfect, and nothing is ever absolutely certain, the available data may be enough to make an ultimate judgement that unification will save money.

### *B. Implementation Problems and Pending Legislation*

Assuming that unification is supported in principle, numerous practical implementation problems would still have to be resolved. The expectations of present superior court judges about the kind of work they would perform would have to be met. The proper role of commissioners would have to be defined. The issue of "grandfathering" the remaining nonattorney justice court judges into the new sys-

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165. *Id.* at 10-11.

166. *Cf.* POST COMMISSION TASK FORCE REPORT, *supra* note 11, at 21-22 (need for research on trial court administrative efficiency).

167. 19 CAL. ST. B. REP. NO. 3 at 1-2 (June 1979).

tem would have to be addressed. A personnel system for the nonjudicial employees of a unified court would have to be developed. The question of which unit of government would provide ancillary court services, such as service of process, would have to be addressed. Forms, record-keeping, and rules in different court systems would have to be standardized.

Two major unification proposals are currently pending in the California legislature and deal with these problems in distinctly different ways. Each proposal consists of a bill and an accompanying constitutional amendment. Senate Bill 974 and Senate Constitutional Amendment 22<sup>168</sup> are modeled largely after the El Cajon experiment. Senate Bill 974 provides for two divisions of the superior court. Division 1 would be the old superior court and Division 2 would comprise the old municipal and justice courts. Division 2 judges could be assigned to Division 1 on a temporary basis. The presiding judge of Division 1 could assign to Division 2 any non-death-penalty case presently in superior court jurisdiction. Senate Constitutional Amendment 22 strikes references to municipal and justice courts from the California Constitution, and makes five years membership in the State Bar a requirement for all trial court judges.

Assembly Bill 650 and Assembly Constitutional Amendment 27,<sup>169</sup> in contrast, are full unification bills calling for a complete merger, over a five-year period, of justice, municipal, and superior courts into a single level trial court.

The major functional difference between the two bills relates to consolidation of court support staffs. Under the Senate Bill and Senate Constitutional Amendment, the support staffs of Division 1 and Division 2 remain separate. The major reason for this approach is that full court unification is actively opposed by the marshal's office in Los Angeles County, since service of process and bailiffing services for the unified trial court would be vested in the Sheriff's office.<sup>170</sup> Veteran marshals might then lose seniority and rank. The marshal's offices apparently carry enough political clout, when combined with the opposition to unification of many superior court judges, to defeat the concept in the legislative process.<sup>171</sup>

From a theoretical and practical standpoint, Assembly Bill 650

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168. Cal. S.B. 974, Reg. Sess. (1979-80); Cal. S.C.A. 22, Reg. Sess. (1979-80).

169. Cal. A.B. 650, Reg. Sess. (1979-80); Cal. A.C.A. 27, Reg. Sess. 1979-80).

170. See note 30 *supra*. At the time of this writing, the necessary legislation had won Assembly approval but faced uncertain prospects in the California Senate.

171. See note 30 *supra*.



and Assembly Constitutional Amendment 27 ultimately would create a vastly superior trial court organizational model than the Senate proposal. The Senate proposal retains many vestiges of the unnecessary and stigmatizing distinction between upper and lower trial courts that unification seeks to eliminate. The Senate proposal also prevents consolidation of support services and attainment of the resulting economies and efficiencies. Its very attempt to placate the marshal's office (when, instead, the rationality of having two different government agencies perform the same service of process and bailiffing functions should be questioned) indicates that it is a compromised approach to unification.

The only argument that can be made for Senate Bill 974 and Senate Constitutional Amendment 22 is a purely practical, political one—it steps on less toes than the full unification approach of Assembly Bill 650 and Assembly Constitutional Amendment 27. Senate Bill 974, in effect, enacts part of the agenda for court unification in California, but still leaves a great deal of work to be done. Since both the Assembly and Senate Bills require substantial and expensive approval by the voters, unification advocates should actively work for passage of the more significant Assembly bill; if that bill fails, and no new proposal emerges, the Senate bill should not be rejected. The partial unification offered by Senate Bill 974 is better than no unification at all.

A unified trial court is ultimately the most efficient and flexible court organization for California. The resilience of the concept over many years, despite numerous defeats, is a testament to its staying power. It is an organizational structure worth fighting for, particularly in this post-Proposition 13 era.