Part 2
The Golden Era

Between 1950 and 2000 the momentum of improvement accelerated. By century's end the administration of justice had both matured and achieved new plateaus. The most prominent milestones in this era marked achievements that spanned the half-century and impacted the entire system: creation of governance institutions, dynamic governance, trial court reorganization and unification, stable trial court funding, a system of judicial discipline, and delay reductions.

Chapter 2

The Golden Era: 1950 to 2000

Overview

The tenure of Chief Justice Donald R. Wright (1970–1977) was once described as a "golden era of court administration in California."[1] The phrase aptly can be applied to the entire half-century commencing in 1950 and concluding with the end of the millennium. While progress was neither continuous nor consistently monumental, the cumulative achievements during these fifty years are remarkable. A catalog of achievements large and small, even if feasible, would be voluminous. The focus here and in the following chapters is on the more notable improvements in the administration of justice. Those achievements include:

- The creation of governing institutions
- The dynamics of governance resulting in planning and policymaking
- The reorganization and unification of the trial courts
- State funding of the trial courts
- A system for judicial discipline
- The reduction of delay in the trial courts

In Chapter One, we compared the United States in 1850 and in 1950. Now we can take a look at the nation at the millennium, followed by a comparison of California courts in 1950 and in 2000.

The Beginning and End of the Era: Comparisons

The United States at the Millennium

By the year 2000, America had grown from 151 million to approximately 275 million. In the intervening fifty years since midcentury:

- The Korean War is fought to a truce.
- Racial segregation in public schools is prohibited by judicial decision.
- The Union of Soviet Socialist Republics (USSR) successfully launches "Sputnik," the first earth-orbiting satellite in outer space.
- The United States fights and loses a prolonged war in Vietnam and adjoining countries.
- President Kennedy is assassinated and President Reagan is shot in an attempted assassination.
- The era of the flower children and the Beatles arrives and passes.
- The United States becomes the first nation to land a man on the moon.
- The use of illegal drugs has grown dramatically, prompting a continuing "war on drugs" by the government.
- The USSR fractures and along with it the Iron Curtain.
- Governmental and private satellites circumnavigate the earth for an array of scientific, commercial, and military purposes.
- The use of computers is widespread both at home and at work.
- The Internet evolves, accompanied by a revolution in techniques of communication, research, and marketing.
- Biotechnology emerges with genetic mapping, cloning, and bioengineering.
- Americans are reading the best-selling adventures of young Harry Potter and his life at the Hogwarts School of Witchcraft and Wizardry.

- The average life span in the United States increases for women from 71.1 years to approximately 80 and for men from 65.6 years to approximately 74.
- California's population grows from 10 million to more than 34 million during these fifty years, with no ethnic majority. One out of every nine Americans now resides here.

California Courts in 1950

It is January 1, 1950, and in the California courts:

- The system consists of the Supreme Court, four district courts of appeal, superior courts in each of the fifty-eight counties, and an array of 767 limited jurisdiction courts.
- There are 203 superior court judges, 83 municipal court judges, and apparently 736 judges of various "inferior courts."
- Total filings in 1950 are 222,207 for the superior courts and 2,249,205 for the municipal courts. Filings in city and township courts are so voluminous that the Judicial Council declines to print them.
- Funding is furnished by local government for all aspects of the trial courts except for the salaries of judges in the superior courts.
- Appellate court costs are paid by the state.
- The Judicial Council exists, but there is no Administrative Office of the Courts (AOC) and the trial courts are administratively autonomous.

California Courts at the Millennium

It is the year 2000, and the following groundbreaking changes have occurred in the intervening fifty years in the California court system:

- There is a single-level trial court system consisting exclusively of the superior court as the only court of general jurisdiction.
- There are 440 court locations and 1,980 judicial officers consisting of 1,579 judges and 401 commissioners or referees.
- During 1999, matters of judicial business filed in the trial and appellate courts total 8,649,552—approximately one filing for every four persons in California and 4,368 matters for every judicial officer.

- All operating expenses of the court system are the responsibility of the state with fixed contributions by larger counties to a statewide trust fund for court support.
- During this past half-century, the state is served by six different Chief Justices.
- The first trial court administrator position in the nation is created in 1957 for the Los Angeles Superior Court.
- The position of Administrative Director of the Courts is created in 1960, and four incumbents serve between 1961 and 2000.
- The AOC is created in 1961 by the Judicial Council.
- Every trial court jurisdiction in California has an administrator and administrative staff by the year 2000.
- The Commission on Judicial Performance is independently established in 1976 after evolving from the Commission on Judicial Qualifications.
- The Center for Judicial Education and Research is created in 1973 to train and educate judges and court staff and ultimately becomes the Education Division of the AOC.
- Alternative dispute resolution programs emerge.
- Special court divisions are formally established in trial courts with responsibility for litigated matters involving probate, families, juveniles, and drugs.
- Planning becomes an integral part of administering justice.

Comparing California Courts: 1950 and 2000

	1950	2000
NUMBER OF COURT LOCATIONS	830	440
TRIAL COURT STRUCTURE	Superior courts Municipal courts Township courts City justice courts City courts Police courts	Superior courts
FILINGS	2,473,282 (appellate, superior, and municipal)	8,649,552 (superior and appellate)
JUDGES/JUDICIAL OFFICERS	1,056	1,980
FUNDING	City, county, and state	State
STATE-LEVEL ADMINISTRATION	Judicial Council	Judicial Council Administrative Office of the Courts
TRIAL COURT ADMINISTRATION	Presiding judges County clerks and officials Court clerks	Presiding judges Executive officers Administrative staff County officials
JUDICIAL DISCIPLINE	Legislative impeachment, voter recall, defeat at a regular election, or retirement for disability by the governor with consent of the Commission on Qualifications	Legislative impeachment, voter recall Code of Judicial Ethics by the Supreme Court By the Commission on Judicial Performance: disqualification suspension retirement (for disability) censure admonishment

	1950	2000
JUDICIAL EDUCATION	No program	AOC's Center for Judicial Education and Research California Judges Association Private organizations
JUDICIAL SELECTION	Retention elections for appellate courts; contested elections for trial courts; gubernatorial appointments to fill vacancies with unexpired terms	No change except the governor fills vacancies by appointment for periods linked to general elections
ALTERNATIVE DISPUTE RESOLUTION	No court-annexed programs	Court-sponsored programs at both the trial and appellate levels including arbitration, mediation, conciliation, and evaluation
PLANNING	Not a part of judicial administration	Strategic and other types of planning are integral to judicial administration and drive budget, rules, and legislative priorities

Note

1 Ralph N. Kleps, "Tribute to Chief Justice Donald R. Wright," *Hastings Constitutional Law Quarterly* 4 (1977), p. 683.

Chapter 3

The Creation of Governing Insitutions

Overview

he Judicial Council matured and began to fulfill its potential as the policymaking institution for the judicial branch of government.

Membership expanded repeatedly over the years, growing to almost double the original eleven members, who were all judges. By century's end membership included representatives of the legislature, State Bar, and court administrators.

The organization of the council also expanded, from nine committees consisting primarily of council members to four standing committees for internal administration and twenty-eight advisory bodies with more than 300 members.

Creation of the position of Administrative Director of the Courts in 1960 was indispensable to the Judicial Council and the courts. Establishment of the Administrative Office of the Courts (AOC) shortly thereafter completed a structure of governance institutions at the state level.

The AOC furnished a new ability for the Judicial Council to delegate, obtain information, and implement policy. By the end of the century the AOC's more than 400 staff members were supporting the needs of the Judicial Council as well as responding to needs in the trial courts ranging from human resources to technology.

Governance at the trial court level is opaque—not because it didn't exist, but because it has not been documented. Suffice to say that the presiding judge system, often supplemented by executive or other governing committees, prevailed.

The major development was establishment of court executive officer positions to administer nonjudicial aspects of the trial courts. The first such position was in the Los Angeles Superior Court in 1957. Court executive officers were universal by 2000.

Governance ranks high among the significant changes in the judicial branch during this half-century. While there are explicit provisions for governance of the judicial branch in California, much must be inferred from constitutional provisions pertaining to the Judicial Council.

The Judicial Council: A Fifty-Year Snapshot

Constitutional Provisions

The duties and powers of the Judicial Council, as originally adopted in 1926, were constitutionally intact as of 1950. At the core were surveying business in the courts to improve the administration of justice, reporting to the governor and legislature with recommendations, and adopting rules of practice and procedure consistent with statutes.[1]

The formally prescribed role of the Judicial Council was substantially the same throughout the period 1950 to 2000, although rephrased more concisely on recommendation of the Constitution Revision Commission in 1966 and refined by a specific amendment in 1996 regarding the relationship between rules and statutes:

> To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, practice and procedure, and perform other functions prescribed by statute. The rules adopted shall not be inconsistent with statute.[2]

Leaders

Chief Justice Phil S. Gibson served as chair of the Judicial Council from 1940 until his retirement in 1964. He brought an interesting background to these responsibilities. He was a successful attorney in Los Angeles but was persuaded in 1938 to serve as director of finance in the new administration of Governor Culbert Levy Olson. Within less than two years he was appointed an associate justice of the California Supreme Court and shortly thereafter elevated by Governor Olson to the position of Chief Justice.

Chief Justice Roger J. Traynor followed and served as chair of the Judicial Council from 1964 to 1970. Chief Justice Traynor brought to the position a span of distinguished experience in academia and government. For most of his career, he had served as a faculty member of the Boalt Hall School of Law at the University of California at Berkeley. In 1940 he

was appointed to the Supreme Court by Governor Olson, assuming the associate justice position left vacant when Justice Gibson became Chief Justice. In 1964, Traynor became Chief Justice by appointment of Governor Edmund G. "Pat" Brown, and he retired in 1970.

In 1970, Chief Justice Donald R. Wright assumed office and became chair of the Judicial Council following his appointment by Governor Ronald Reagan. He was the first Chief Justice in this era with experience as a trial judge. Indeed, Chief Justice Wright had served at all levels of the California court system: municipal court (1953–1961), superior court in Los Angeles County (1961–1968), and Court of Appeal, Second Appellate District (1968–1970). He retired in 1977.

Chief Justice Rose Elizabeth Bird was appointed in 1977 by Governor Edmund G. "Jerry" Brown, Jr., and chaired the Judicial Council for almost a decade. Prior to becoming Chief Justice, she had served in the cabinet of Governor Jerry Brown as secretary of the Agriculture and Services Agency. Prior to that, she had held a series of positions in the Public Defender's Office of Santa Clara County. After almost ten years of service, Chief Justice Bird failed to receive a majority of affirmative votes in the retention election of 1986 and left the Supreme Court at the conclusion of her term in January 1987.

Chief Justice Malcolm M. Lucas was appointed by Governor George Deukmejian and was sworn in on February 5, 1987. Like Chief Justice Wright, Chief Justice Lucas brought extensive judicial experience to his new position. He had served for four years on the Los Angeles Superior Court, which he left in 1971 to accept a lifetime appointment as a judge on the U.S. District Court for the Central District of California in Los Angeles. After thirteen years of service in that position, he was appointed in 1984 to the California Supreme Court by Governor Deukmejian and served for three years as an associate justice prior to being appointed Chief Justice. He retired in 1996 after chairing the Judicial Council for almost a decade.

Chief Justice Ronald M. George was appointed by Governor Pete Wilson in 1996. For the second time in this half-century, California acquired a Chief Justice who had served at every level of the court system, with the added distinction of service on the Supreme Court prior to becoming Chief Justice. From 1972 to 1977, he served on the Los Angeles Municipal Court, followed by ten years of service on the Los Angeles Superior Court. In 1987, he was elevated to the court of appeal, where he served until 1991 when he was appointed to the Supreme Court as an associate justice by Governor

Wilson. Chief Justice George continued to preside over the Judicial Council as the century concluded and a new millennium began.

Membership

Just as the original duties of the Judicial Council were unchanged as of 1950, so was the membership. As originally composed, the Judicial Council consisted of eleven members: the Chief Justice, one associate justice from the Supreme Court, three justices of the district courts of appeal, four judges of the superior courts, one judge of a police or municipal court, and one judge of "an inferior court." All were "assigned" by the Chief Justice for two-year terms. From the beginning and continuing through the 1950s, the clerk of the Supreme Court was secretary to the Judicial Council.[3]

Revision of the judicial article of the California Constitution was proposed by the Judicial Council in 1959 and enacted in 1960. Among the specific proposals was a broadening of the Judicial Council's membership from eleven to eighteen in order "to include representatives of all groups directly concerned with improvement of the administration of justice."[4] The courts of limited jurisdiction gained additional representation by provision for two judges of municipal courts rather than one. The major expansion, however, occurred in new areas. Provision was made for four members of the State Bar, appointed by its board of governors, and for one member from each house of the legislature, designated by the Assembly and Senate.[5]

Thanks to further amendments in 1966 and 1994, membership was expanded again to equalize trial court participation at five members each from superior and municipal courts.

The next expansion occurred by constitutional amendment in 1996, which provided for "2 nonvoting court administrators, and such other nonvoting members as determined by the voting membership of the council."[6] The 1996 amendment also expanded the term of membership on the Judicial Council from two years to three years. With the prospect of trial court unification, a 1998 amendment provided: "Vacancies in the memberships on the Judicial Council otherwise designated for municipal court judges shall be filled by judges of the superior court in the case of appointments made when fewer than 10 counties have municipal courts."[7]

Throughout this fifty-year era all Judicial Council members were appointed by the Chief Justice except for legislators and State Bar representatives. But in 1992 the process was strengthened and enriched by formal processes of application and nomination.

Organization

The story of Judicial Council organization is one of expansion that parallels that of Judicial Council membership.

The minutes of the Judicial Council from the early 1950s indicate the existence of the following committees, each created by motion and approval of the council, with members appointed by Chief Justice Gibson as chair:

- Committee on Rules on Appeal
- Committee on Superior Court Rules
- Committee on Municipal Court Rules
- Pretrial Committee (with North and South Subcommittees)
- Extraordinary Legal Remedies Committee
- Committee on Legal Forms
- Committee on Extraordinary Writs
- Committee on Traffic
- Juvenile Committee (also referred to at different times as the Juvenile Court Committee, Juvenile Justice Committee, and Committee on Juvenile Courts and Procedure)

By the 1960s, the organization of the Judicial Council had become more complex as reflected by the committee structure. In 1962, the above committees were supplemented by new committees to address judicial statistics, administrative procedure, automobile accident litigation, opinion writing and publication, and cooperation with the State Bar and the Conference of California Judges. While there was significant representation on each of these committees by members of the Judicial Council, the occasional practice of utilizing nonmembers to serve on committees had become a trend.[8]

By 1970, the core committees had been reduced to an Executive Committee, chaired by the Chief Justice, and committees on appellate courts, superior courts, court management, and municipal and justice courts. The number and breadth of special committees, however, accelerated. For example, there were now special committees on fair trial and free press, juvenile courts and family law, and Public Utilities Commission decisions. There were also advisory committees for the courts of appeal workshop, domestic relations institute, sentencing institute, and municipal and justice courts institute.

By 2000, the Judicial Council's standing committees had been rigorously streamlined into four important bodies for internal governance of the council. The Executive and Planning Committee directs and oversees the conduct of business and operating procedures of the Judicial Council and the AOC, oversees the implementation of the council's long-range strategic plan, develops and conducts the council's annual planning sessions, ensures that the judicial branch budget is tied to the long-range plan, and serves as the nominating committee for vacancies on the Judicial Council and advisory bodies.

The Rules and Projects Committee oversees the advisory bodies and development of proposed rules of court, standards of judicial administration, and statewide forms for use in court proceedings.

The Policy Coordination and Liaison Committee represents the Judicial Council with other branches of government and the State Bar, oversees the progress of legislation sponsored by the Judicial Council, and formulates and advocates policy positions on proposed legislation.

The Litigation Committee monitors lawsuits involving the courts, judges, or court personnel.

Advisory Committees and Task Forces

Although the standing committee structure was simplified, the universe of advisory entities expanded. At the close of the century, the relationship between the advisory committees and task forces and the Judicial Council was described as follows: "To provide leadership for advancing the consistent, impartial, independent, and accessible administration of justice, the Judicial Council must be aware of the issues and concerns confronting the judiciary, as well as appropriate solutions and responses. The council carries out this mission primarily through the work of its advisory committees and task forces."[9]

As the 1900s ended, there were twenty-eight of these advisory bodies with more than 300 persons serving on them. Membership is by application or nomination, review and recommendation of the Executive and Planning Committee, and appointment by the Chief Justice. In 1999 alone, more than 600 persons were considered for such appointments. In addition to subject matter expertise, Chief Justice George, with assistance from the Executive and Planning Committee, considers gender, racial, geographic, and professional diversity in selecting advisory body members. (While this statement of procedure and the following list of entities were current at the time of

writing, it is anticipated that both will be regularly reviewed and revised by the committee, Chief Justice, or council.)

These twenty-eight entities are divided into two categories. Advisory committees are responsible for monitoring specified areas of continuing significance and making advisory recommendations to the Judicial Council. Task forces are responsible for particular projects or proposals.

The Administrative Office of the Courts: A Forty-Year Snapshot

Birth of an Institution

From its creation in 1926 until 1960, the Judicial Council enjoyed few resources beyond the knowledge and prestige of its members. By 1950, several attorneys and a statistical staff were available for routine assistance, but that was the extent of support. The council lacked the capacity to conduct large-scale research on a regular basis, oversee ongoing programs, or be extensively involved in external relationships with such organizations as bar associations, the legislature, and executive branch departments such as the Department of Finance.

Two notable exceptions, previously described, occurred when the legislature in the 1940s requested the Judicial Council to study and present recommendations regarding judicial review of decisions by administrative agencies and to do the same regarding lower court reorganization. These were substantial endeavors for which special, temporary staffing was arranged. These were, however, ad hoc exceptions rather than the rule.

The Judicial Council's restricted capacity was not lost on Chief Justice Gibson nor was he willing to accept this and various other aspects of the status quo. In an effort closely orchestrated with the legislature, Chief Justice Gibson led the way in promulgation of a revision of the judicial article of the California Constitution, an effort that began with Judicial Council discussions in 1953 and culminated in 1960.[10]

Six amendments were proposed by the council in 1959 as part of the revision of article VI of the constitution. The major parts of the revision as proposed by the Judicial Council expanded council membership and added representatives from the State Bar and legislature; granted to the council control over rules of practice and procedure; created the position of Administrative Director of the Courts; provided for assignment of retired judges, with their consent, to any level of court; expanded the already-existing Commission on Qualifications and renamed it the Commission on Judicial

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Advisory Committees

ADMINISTRATIVE PRESIDING JUSTICES ADVISORY COMMITTEE, TRIAL COURT PRESIDING JUDGES ADVISORY COMMITTEE, AND COURT EXECUTIVES ADVISORY COMMITTEE

Membership in these committees is determined by the positions of the members: administrative presiding justices of the courts of appeal, presiding judges of the superior courts, and executive officers of the superior courts, respectively. These committees strengthen access to and participation in the Judicial Council decision-making process by reviewing rules, forms, standards, studies, and recommendations relating to court administration that are proposed to the council by advisory committees or task forces; identifying issues of concern to the courts, including legislative issues, that might be addressed by the council or its advisory committees or task forces; and improving communication with the council. Membership in these committees is determined by the positions of the members: administrative presiding justices of the courts of appeal, presiding judges of the superior courts, and executive officers of the superior courts, respectively. These committees strengthen access to and participation in the Judicial Council decision-making process by reviewing rules, forms, standards, studies, and recommendations relating to court administration that are proposed to the council by advisory committees or task forces; identifying issues of concern to the courts, including legislative issues, that might be addressed by the council or its advisory committees or task forces; and improving communication with the council.

ACCESS AND FAIRNESS ADVISORY COMMITTEE

This committee monitors issues and proposes policy direction related to access to the judicial system and fairness. The committee's five subcommittees address racial and ethnic fairness, sexual orientation fairness, gender fairness, and access for persons with disabilities, as well as education and implementation.

APPELLATE ADVISORY COMMITTEE

Representing the appellate courts, this committee advises the Judicial Council on matters relating to procedures, forms, standards, practices, and operations.

CIVIL AND SMALL CLAIMS ADVISORY COMMITTEE

This committee identifies issues and suggests solutions regarding civil procedure, practice, and case management, including small claims.

COURT INTERPRETERS ADVISORY PANEL

This panel works to improve the number and quality of interpreters in the courts and advises the Judicial Council on standards, training, and legislation.

Appointments; provided for approval of gubernatorial appointees to municipal and superior courts by the renamed Commission on Judicial Appointments; created a new mechanism for removal of judges by the Supreme Court on recommendation of a new entity to be called the Commission on Judicial Qualifications; created a new path for review of inferior court decisions; and made the State Bar a constitutional entity.[11]

The specific proposal regarding governance and resources for the Judicial Council added a new constitutional provision: "The Council may appoint an administrative director of the courts, who shall hold office at its pleasure and shall perform such of the duties of the council and of its chairman, other than to adopt or amend rules of practice and procedure, as may be delegated to him."[12]

In support, the Judicial Council cited the fact that the federal government and at least ten other states had created administrative director positions for courts.[13] The council argued its position to the legislature and governor.

> The need for an Administrative Director of a court system as large as that of California is self-evident. Working under the direction of the Judicial Council and its committees, he would be of great assistance in maintaining an efficiently operating judicial system and in freeing the Council Chairman from a mass of administrative detail. He would be in a position to direct research, statistical, and assignment functions for the Council and the Chairman, assist the committees of the Council, and represent the Council in cooperative work with the State Bar and other organizations.[14]

This and several other components of the Judicial Council proposal were approved by the legislature and appeared as Proposition 10 on the ballot of the general election held on November 8, 1960. There was no opposing argument in the voter pamphlet, and the supporting argument by Senators Edwin J. Regan and Joseph A. Rattigan asserted that the amendment strengthened the Judicial Council by authorizing "it to appoint a Court Administrator to supervise the administrative work of the courts. Some 18 other States and the Federal Government have learned that such a Court Administrator performs an important function in increasing the efficiency of the courts and equalizing the workload of the judges."[15] Proposition 10 was approved by the voters.

Following creation of the position of Administrative Director of the Courts in 1960, Judicial Council funding was supplemented in 1961 by the legislature to provide resources for the establishment of the Administrative Office of the Courts.

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Advisory Committees

COURT TECHNOLOGY ADVISORY COMMITTEE

This committee promotes, coordinates, and facilitates the application of technology to the work of the courts, including standards for technological compatibility; proposed rules, standards, or legislation to ensure privacy, access, and security; and assistance for the courts in acquiring and developing useful technology systems.

CRIMINAL LAW ADVISORY COMMITTEE

The charge of this committee is to identify issues and suggest solutions regarding criminal procedure, practice, and case management.

FAMILY AND JUVENILE LAW ADVISORY COMMITTEE

In a similar fashion, this committee identifies issues and suggests solutions regarding procedure, practice, and case management for cases involving marriage, family, or children.

GOVERNING COMMITTEE OF THE CENTER FOR JUDICIAL EDUCATION AND RESEARCH (CJER)

The governing committee determines and administers the operating policies, funding, staffing, and programs of the Center for Judicial Education and Research and makes recommendations to the Judicial Council or California Judges Association for action.

TRAFFIC ADVISORY COMMITTEE

This committee works toward improving adjudication of traffic and bail-forfeitable offenses and recommends rules or model procedures to promote statewide consistency in processing.

TRIAL COURT BUDGET COMMISSION

In the all-important area of budgeting, the commission develops annual trial court budget requests to the governor and the legislature and allocates and reallocates state funds appropriated for the operation of the trial courts.

TRIAL COURT COORDINATION ADVISORY COMMITTEE

This committee reviews and makes policy recommendations regarding trial court coordination issues, including reviewing for the Judicial Council the progress of coordination implementation and coordination plans for the trial courts.

At the December 8, 1961, meeting of the Judicial Council, the following resolution was adopted:

> *Be It Resolved* that, pursuant to the authority vested in it by the Constitution of the State of California, the Judicial Council does hereby delegate authority to the Administrative Director of the California Courts, under the supervision of the chairman, to employ, organize, and direct a staff which shall be known as the Administrative Office of the California Courts and which shall be operated as the staff agency to assist the Council and its chairman in carrying out their duties under the Constitution and laws of the State.[16]

Leaders

From creation of the position in 1960 until 2000, four persons served as Administrative Director of the Courts. Similar to the varied backgrounds of the incumbent Chief Justices during this period, each Administrative Director brought to the position a unique background and assets.

Ralph N. Kleps was appointed by the Judicial Council as the first Administrative Director in November 1961. Mr. Kleps was no stranger either to government service or to the Judicial Council. He had interrupted his law practice in 1943, at the request of Chief Justice Gibson, to temporarily serve as the Judicial Council's research director overseeing the survey of administrative procedure requested by the legislature—one of the exceptional occasions when Judicial Council resources were enhanced. That survey led to the creation of the state Office of Administrative Procedure and Mr. Kleps was selected to serve as the first director, which he did for five years, until in 1950 he was appointed legislative counsel. He served for eleven years until he became the first Administrative Director of the Courts. A small but interesting facet of Mr. Kleps's selection is the fact that, as legislative counsel, he was one of the officials responsible for preparation of voter pamphlets. The last voter pamphlet to bear his name is the one for November 1960 containing Proposition 10, which created his new position. During his sixteen-year tenure as Administrative Director, he served with Chief Justices Gibson, Traynor, Wright, and Bird, retiring in 1977 shortly after Chief Justice Bird assumed office.

Chief Justice Bird appointed Ralph J. Gampell as the second Administrative Director. Mr. Gampell, a native of Great Britain and a physician, also was a member of the California Bar, practicing in San Jose. He was serving as president of the State Bar when appointed Administrative Director in 1977. Mr. Gampell retired following the election in 1986 at which Chief Justice Bird was not retained in office.

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Task Forces

APPELLATE INDIGENT DEFENSE OVERSIGHT ADVISORY COMMITTEE

This is really a task force though it is named an advisory committee. It develops recommendations and administers programs to ensure adequate assistance of counsel to indigent defendants in criminal cases.

APPELLATE MEDIATION TASK FORCE

This task force oversees an experimental mediation program in the Court of Appeal, First Appellate District.

APPELLATE PROCESS TASK FORCE

Also concerned with the appellate courts, this task force recommends ways to enhance the efficiency of the appellate process with emphasis on court organizational structures, workflow, and technological innovations.

BENCH-BAR PRO BONO PROJECT

The project works to increase pro bono activity by attorneys by educating the bar and the judiciary about the crisis in legal services funding, developing proposals to deal with the growing numbers of pro per litigants, identifying ways the judiciary can encourage pro bono work, and studying other models for system changes to streamline processing of legal services cases.

COMMUNITY-FOCUSED COURT PLANNING IMPLEMENTATION COMMITTEE

This task force links planning and budget development, provides a clearinghouse of planning resources, oversees compliance with grant requirements, and supports efforts to institutionalize community outreach programs in the courts.

COMPLEX CIVIL LITIGATION TASK FORCE

The responsibility of this task force is to work to improve management of complex cases by defining complex litigation, helping to identify complex cases, preparing a resource manual to help state judges, and recommending appropriate amendments to statutes and the California Rules of Court to permit flexible management of complex cases.

EXECUTIVE LEGISLATIVE ACTION NETWORK

The network solicits and forwards the views of judges and court administrators about legislative or policy issues, communicates the Judicial Council's position on legislative and policy issues, and establishes and maintains a local network of judges and court staff who are responsible for ongoing relationships with legislators and their staffs to ensure the ability of the judiciary to communicate council positions in a coordinated, timely manner.

Shortly following the oath of office by Chief Justice Lucas in February 1987, William E. Davis was appointed Administrative Director by the Judicial Council. Mr. Davis also was a member of the California Bar and, like Ralph Kleps, was no stranger to the Judicial Council, having served under Mr. Kleps as a staff attorney at the AOC from 1973 to 1975. During the time between his initial employment with the AOC and his return, Mr. Davis served as the director of the Administrative Office of the Courts in his home state of Kentucky (1975–1979). In addition, between his service in Kentucky and his appointment as Administrative Director in California, Mr. Davis served as circuit executive of the U.S. Court of Appeals for the Ninth Circuit in San Francisco (1981–1986). With his return to the AOC, he became one of the pioneers in judicial administration with experience as the administrative head of court systems in more than one state. He resigned in 1991.

Following a nationwide search, the Judicial Council announced in 1992 the appointment of William C. Vickrey as the fourth Administrative Director of the Courts and the first non-attorney to be appointed. Previously, Mr. Vickrey's career had been in the Utah justice system. When appointed by the Judicial Council of California, he was serving as the state court administrator of Utah, so Mr. Vickrey also brought to bear the rare qualification of having served as the chief executive of another state court system. While in Utah and prior to becoming the state court administrator, Mr. Vickrey had worked extensively in youth and adult corrections and was serving as director of the Department of Adult Corrections when he accepted his appointment with the Utah court system.

Mr. Vickrey served during the remaining tenure of Chief Justice Lucas, continued following the appointment of Chief Justice George, and was the incumbent Administrative Director as the century closed.

Organization

Prior to establishment of the AOC, the Judicial Council, as described above, had maintained a statistical staff to collect, analyze, and report statewide court data. For approximately twenty years, the council also had a legal research staff dealing primarily with changes in rules and proposed constitutional or statutory amendments. When the AOC was established, this staff consisted of eighteen persons divided about equally among legal, statistical, and clerical functions.

At the threshold, Administrative Director Kleps reorganized this staff "in accordance with principles which have proved themselves in other areas of government, and its structure will resemble other major departments of state

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Task Forces

TASK FORCE ON JURY INSTRUCTIONS

This task force concentrates on drafting jury instructions that accurately state the law and are understandable by jurors.

TASK FORCE ON JURY SYSTEM IMPROVEMENTS

Also concerned with the jury system, this task force encourages excellence by conducting a pilot project to screen jurors before their arrival and studying improved one-day or one-trial implementation, one-step summons processes, a statewide jury list, and a jury orientation video.

OVERSIGHT COMMITTEE FOR THE CALIFORNIA DRUG COURT PROJECT

This committee oversees the California Drug Court Project, which encourages the development of drug courts in the state.

PROBATE AND MENTAL HEALTH TASK FORCE

The duty of this task force is to assist with probate and mental health issues in the courts, including developing proposed uniform statewide probate rules and revising the *Handbook for Conservators.*

TASK FORCE ON THE QUALITY OF JUSTICE: SUBCOMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION AND THE JUDICIAL SYSTEM

This task force was made up of two subcommittees. This subcommittee studies and makes recommendations on the effect of the increasing use of private alternative dispute resolution procedures; ethical standards governing retired judges, attorneys, and nonattorneys acting as arbitrators and mediators; and standards governing the referral of disputes by courts to private judges or attorneys.

TASK FORCE ON THE QUALITY OF JUSTICE: SUBCOMMITTEE ON THE QUALITY OF JUDICIAL SERVICE

This subcommittee addresses and makes recommendations to ensure that judges remain on the bench for full careers, older judges who are healthy and fit have the option to remain on the bench, judges who are no longer fully able to serve retire at an appropriate time, and highly qualified attorneys from all areas of legal practice are attracted to judicial service.

government."[17] Characterizing the Judicial Council as a policymaking board of directors, Mr. Kleps characterized himself as equivalent to the director of a department of state government with a deputy director to supervise the legal staff, an assistant director to supervise research and statistics, and an assistant director for management.[18]

Approximately fifteen years later, the staff had grown to forty persons with more interdisciplinary diversity: lawyers, statisticians, management analysts, business officers, and researchers. This expanded staff continued to operate under a deputy director and two assistant directors. The major management change in the intervening years was the addition of a third assistant director for legislation. The budget was $12 million per year with an additional infusion of $2 million in federal funds used for court-related projects.[19]

The AOC maintained communications with the Chief Justice that were "daily, if not hourly, occurrences."[20] The AOC also furnished all staffing for Judicial Council committees, which at the time consisted of Executive, Appellate Court, Superior Court, Court Management, and Municipal and Justice Courts Committees. In addition, there was a growing number of advisory committees.[21]

Although the size of the AOC staff had grown from eighteen to forty members during the years since establishment of the AOC in 1961, it is interesting to note that the dozen or so professional positions as of 1961 had increased to only fifteen by 1974.[22]

By the end of the century, major growth had occurred, leading the AOC to note that its "staff of 408 provides varying levels of services to approximately 20,000 judges and judicial branch employees of the trial and appellate courts in more than 75 courts at over 390 locations. . . . AOC staff work with 15 Judicial Council advisory committees and 13 task forces, with more than 600 representatives from the courts and bar helping the council to shape policies and create programs to address the many challenges facing the California court system in the 21st century."[23]

At the close of the century there were, in addition to the Administrative Director, a deputy director and four major departments with external focuses: the Trial Court Services Division, the Education Division, the Council and Legal Services Division, and the Office of Governmental Affairs. Internally, the support services for the AOC, appellate courts, and increasingly the trial courts included the Human Resources Bureau, the Information Systems Bureau, the Finance Bureau, the Administrative Support Unit, the Office of Court Security, and Appellate Court Services.[24]

Trial Court Governance

If the judicial branch of government is history's stepchild, the trial courts are history's orphans. This is not to say that governance of the trial courts is unimportant. Indeed, it arguably comes closer than state-level governance to the public served by the judicial system. Nonetheless, two facts are inescapable. First, reliable information regarding administration at the trial court level is scattered, anecdotal, episodic, or nonexistent. Second, for much of the era from 1950 to 2000 the trial courts of California operated autonomously with relative freedom from interference or direction by the Judicial Council. Little of trial court stewardship during this period has been documented. Of course it is known that the presiding judge, often assisted by an executive or other governing committee, was the centerpiece of governance, but beyond that the picture is rather opaque.

Having said that, it is equally important to acknowledge that administration of the trial courts exploded during the latter part of the century in both quality and quantity. There was not a single trial court administrator in California until the year 1957 when the Los Angeles Superior Court created the position of administrator, beating the Judicial Council to the proverbial punch three years prior to creation of the position of Administrative Director of the Courts at the state level. Between that time and the end of the century, every superior court and most courts of limited jurisdiction with multiple judgeships acquired administrators or executive officers. By the end of the century, every trial court jurisdiction had such a position.

Generalizations are risky in a state as diverse as California, particularly with a long and strong tradition of local variations. Nonetheless, it seems safe to observe that the trial court judges, acting collectively or by committee, have firmly retained control over local policy and procedure. The permissible and accepted nonjudicial administrative functions performed in trial courts by the executive officers may be generalized:

> In courts having an executive officer or court administrator selected by the judges of the court and under the direction of the presiding judge, the officer or administrator shall. . . .
>
> (1) supervise the court's staff and . . . draft for court approval and administer a court approved personnel plan or merit system for court-appointed employees, which may be the same as the county personnel plan, that provides for wage and job classification, recruitment, selection, training, promotion, discipline, and removal of employees of the court;
>
> (2) prepare and implement court budgets, including accounting, payroll, and financial controls;

(3) negotiate contracts;

(4) supervise and employ efficient calendar and caseflow management, including analyzing and evaluating pending caseloads and recommending effective calendar management techniques;

(5) analyze, evaluate, and implement automated systems to assist the court;

(6) manage the jury system in the most cost effective way;

(7) support and encourage court participation in community outreach activities to increase public understanding of and involvement with the justice system and to obtain appropriate community input regarding the administration of justice . . . ;

(8) plan physical space needs, and purchase and manage equipment and supplies;

(9) act as a clearing house for news releases and other publications for the media and public;

(10) create and manage uniform recordkeeping systems, collecting data on pending and completed judicial business and the internal operation of the court, as required by the court and the Judicial Council;

(11) identify problems, recommending procedural and administrative changes to the court;

(12) act as a liaison to other governmental agencies;

(13) act as staff for judicial committees; and

(14) perform other duties as the court directs.[25]

Notes

1 California Constitution (1950), article VI, section 1a.

2 California Constitution, article VI, section 6.

3 California Constitution (1959), article VI, section 1a.

4 Judicial Council of California, *Seventeenth Biennial Report [of the] Judicial Council of California to the Governor and the Legislature* (1959), p. 15.

5 Id., pp. 15–16.

6 California Constitution, article VI, section 6

7 Ibid.

8 Judicial Council of California, *Nineteenth Biennial Report to the Governor and the Legislature* (1963), p. 6.

9 Judicial Council of California, California Courts Web site, *www.courts.ca.gov/advisorybodies.htm.*

10 See, for example, Judicial Council of California, minutes (October 6, 1953), pp. 1–2.

11 Judicial Council of California, *Seventeenth Biennial Report* (1959), pp. 15–26.

12 California Constitution (1960), article VI, section 1a

13 Judicial Council of California, *Seventeenth Biennial Report* (1959), p. 18, n. 17.

14 Id., pp. 18–19.

15 Senators Edwin J. Regan and Joseph A. Rattigan, Argument in Favor of Proposition 10, Senate Constitutional Amendment No. 14, submitted to California voters on November 8, 1960.

16 Judicial Council of California, minutes (December 8, 1961).

17 Ralph N. Kleps, "The Judicial Council and the Administrative Office of the California Courts," *Journal of the State Bar of California* 37 (1962), p. 333.

18 Id., pp. 333–35.

19 Ralph N. Kleps, "Courts, State Court Management and Lawyers," *California State Bar Journal* 50 (1975), p. 47.

[20] Id., p. 48.

[21] Id., p. 49. Advisory committees in 1974 included Selective Publication of Appellate Court Opinions, Superior Court Judges Sentencing Institute, Fair Trial and Free Press, Comparative Study of ABA Standards of Criminal Justice, Superior Court Calendar Management Workshop, Institute for Juvenile Court Judges and Referees, Municipal Court Calendar Management Workshop, Judicial Reporting of Criminal Statistics, Judicial Weighted Caseload Study, National Center for State Courts' Court of Appeal Study, Master-Individual Calendar Study, Branch Court/Nonjudicial Staffing Study, and Governing Committee of the Center for Judicial Education and Research; Judicial Council of California, *Annual Report to the Governor and Legislature* (1974), pp. 6–7.

[22] Judicial Council of California, *Annual Report of the Administrative Office of the California Courts* (1974), p. 70.

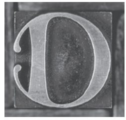
[23] Administrative Office of the Courts, *People and Programs* (July 2000), section 3-1

[24] Administrative Office of the Courts, *A Guide to AOC People and Programs* (1999), section 4-3.

[25] California Rules of Court, rule 207.

Chapter 4
The Dynamics of Governing the Judicial System

Overview



During the 1940s the Judicial Council began to establish itself as a problem solver. This budding reputation was enhanced by sweeping reform of the courts of limited jurisdiction in 1950 as proposed by the Judicial Council, passed by the California Legislature, advocated by the Chief Justice, and approved by the voters.

The Administrative Office of the Courts (AOC), founded in 1961, promptly established itself as the administrative arm of the Judicial Council, responsible for implementing policies adopted by the Judicial Council and assisting with the council's constitutional duties including simplifying and improving the administration of justice.

In addition to crafting solutions to specific problems, the council and AOC were drawn into planning in the governance process. A major instigator was the federal government through the Law Enforcement Assistance Administration (LEAA), created in the late 1960s and endowed with substantial funds for grants to state and local government.

This external introduction of planning among California's courts was followed by voluntary Judicial Council and AOC use of contingency planning in the 1970s, annual planning in the 1980s, and futures planning in the early 1990s. All of these strengthened and deepened the dynamics of governance.

Strategic planning by both the Judicial Council and the AOC moved governance to a new level by the late 1990s. Forging, revising, and committing to missions for the council, courts, and AOC were the heart of this undertaking. The missions were reinforced by major goals, guiding principles, and steps toward implementation.

The role, size, and organization of the AOC have been transformed to fulfill its original responsibility for implementation of council policy, as well as new responsibilities flowing from unification of the trial courts and state funding of the courts.

The institutions of governance tell an important story. The creation of the AOC and the expansion and refinement of the Judicial Council's superstructure are vital pieces of justice administration from 1950 to 2000.

Equally impressive are the dynamics of governance during this period. The judicial branch evolved from a passive and reactive entity to a responsive and proactive entity. By century's end the Judicial Council, in tandem with the AOC, had crafted a vision for the judicial branch and reinforced it with articulated missions, strategic goals, and plans for implementation. Initial links were forged to tie allocation of resources to mission fulfillment and goal achievement. In effect, the foundation was laid for self-governance within our system of separate but interdependent branches of government. The judicial branch, for the first time really, was charting its own course rather than following an itinerary and map thrust upon it.

The 1950s: The Judicial Council Emerges as a Problem Solver

For the first quarter-century following its creation in 1926, the Judicial Council was diligent in its efforts. Judge Harry A. Hollzer's 1929 report to the Judicial Council on the business of California courts is a good example, but it also is a good example of the reactive posture of the judiciary.[1] The effort probably never would have been undertaken at the time but for the constitutional mandate directing the newly created Judicial Council to "survey the condition of business in the several courts" coupled with the requirement to "report to the Governor and Legislature at the commencement of each regular session."[2]

Although still reactive, the role of the Judicial Council began to change subtly in the 1940s, culminating in the 1950 reorganization of the courts of limited jurisdiction. This event is explored in detail in Chapter Five, but it is important here because it illustrates the emerging role of the Judicial Council as a problem solver. While it is true that the Judicial Council undertook examination of the so-called lower courts at the direct request of the legislature and thus was in a reactive posture, the greater truth is that the Judicial Council with very meager resources rose to the occasion with a solution that was bold for the time. This established credibility as a problem-solving resource, which was reinforced by the active part played by Chief Justice Phil S. Gibson in developing public support for approval of the constitutional amendment needed to implement the solution.

During the latter part of the 1950s, the Judicial Council enlarged its role as a repository for problems and a source of solutions by preparing for consideration by the legislature and governor a proposed revision of the judicial article of the state constitution. This was still a reactive endeavor since it was undertaken in large part at the legislature's request, but it established an important precedent for favorable consideration of major institutional change initiated by the Judicial Council.

From a governance perspective, the most important of these changes, by far, was creation of the position of the Administrative Director of the Courts, which in turn led to establishment of the Administrative Office of the Courts. The addition of that vital resource to the policymaking capacity of the Judicial Council is the story of the decade, beginning in 1960.

This achievement was consistent with the observation that "when Chief Justice Phil Gibson began his term in 1940, the Judicial Council was essentially an untapped resource for purposes of both central administration of the courts and reform of the judicial system . . . Under Gibson, the Council began a methodical overhaul of the judicial system, using powers that had been at its disposal since 1926."[3]

The 1960s: The Administrative Office of the Courts Is Created as a Resource

The story of the Administrative Office of the Courts begins with the creation of the position of Administrative Director of the Courts, who, at the outset in 1960, had only such "duties . . . as may be delegated to him" by the Judicial Council or chairman.[4] That was significantly clarified a year later when the Judicial Council appointed Ralph N. Kleps to the position and shortly thereafter delegated to him authority to establish the AOC "to assist the Council and its chairman in carrying out their duties."[5]

The initial scope of AOC activity was expressed as follows by Administrative Director Kleps: "[T]he range of activity and interest for the new Administrative Office of the Courts is as broad as the authority vested in the Judicial Council itself."[6] Within that range, this was the governing operational principle articulated at the time:

> The major point which should be made in connection with the creation of an Administrative Office is that, for the first time, the Judicial Council and its chairman have available to them the vital power to delegate. In the absence of such a power to delegate duties it is apparent that only general decisions, involving primarily

> broad policy questions, could result from the Council's deliberations. The use of a qualified staff as agents to carry out the details of Council policy is the important new factor in the establishment of an Administrative Office of the Courts.[7]

The importance of this new power to delegate was poignantly underscored in 1951 when all members of the Judicial Council, prior to having an Administrative Director, concurred in "the view that the Chairman [Chief Justice] had done an amazing job in connection with the preparation, passage and effectuation of Proposition 3" (relating to lower court reorganization) and suggested "that the Chairman, in the interests of his health, should cut down on the amount of work he has been doing."[8]

Administrative Director Kleps further answered the rhetorical question "How is the administrative office related to the Judicial Council itself?" by stating that "[c]reation of an Administrative Office of the Courts means that there is now an administrative arm for the Council, through which continuous and effective action can be taken to carry out the policies adopted by the Council. Its work in the field of legal and statistical research will continue, and at an increased tempo, but those efforts will be followed by staff action to implement both the rules and policies adopted by the Council for the improvement of judicial administration and statutes adopted by the Legislature in that field."[9]

This meant, from the outset, that the mission as envisioned by the first Administrative Director of the Courts, presumably with concurrence by Chief Justice Gibson, was for the AOC to engage, on behalf of the Judicial Council, in surveying "the condition of business in the several courts with a view to simplifying and improving the administration of justice"; submitting "suggestions to the several courts as may seem in the interest of uniformity and the expedition of business"; reporting "to the Governor and Legislature . . . such recommendations as it may deem proper"; submitting to the legislature the Judicial Council's "recommendations with reference to amendments of, or changes in, existing laws relating to practice and procedures"; and supporting the Judicial Council's adoption of "rules of practice and procedure for the several courts."[10]

It is clear that the major focus of the AOC during the 1960s was direct support of and reporting to the Chief Justice and Judicial Council. Administrative Director Kleps noted with pride in the mid-1970s that "[a]ll staff work, except routine correspondence, is approved by one or more of these [Council] committees before it sees the light of day. 'Not for release' is stamped on every piece of staff work and on most committee reports until

after Council approval is obtained. Even then, the Judicial Council's standard practice is to give tentative approval to committee work, leaving a six-month period for distribution and comment prior to final action."[11]

All of this began to expand as the phenomenon of planning was thrust upon the courts, beginning late in the 1960s and continuing throughout the 1970s.

Another interesting development pertaining to both the Judicial Council and governance occurred during the 1960s. The mandate to adopt rules for "court administration" was inferred during the Judicial Council's formative years but made explicit by the Constitution Revision Commission recommendations in 1966.[12] Another noteworthy change effected by the 1966 revision involved the "administration of justice." As originally enacted, this phrase appeared in connection only with the Judicial Council's obligation to "survey the condition of business in the several courts with a view to simplifying and improving the administration of justice."[13] However, the Constitution Revision Commission made this the guiding imperative by providing that the Judicial Council in performing all its mandated duties should do so "to improve the administration of justice."[14]

The 1970s: Planning Comes to the Courts

The governance story of this decade revolves around planning. During the latter part of the last century, various planning mechanisms that had existed for some time in the private and other governmental sectors migrated to the courts: annual plans, strategic plans, planning by objectives, contingency planning, crisis planning, master plans, and future planning with multiple variations of each one. They in turn spawned galaxies of goals, objectives, tasks, scenarios, preferred futures, and action plans, to name but a few.

By the year 2000, examples of most, and perhaps all, variations of planning existed in court contexts throughout the nation.[15] Nonetheless, planning within individual courts or court systems is a recent phenomenon. Moreover, the stimulus to engage in planning was primarily external to the courts, and it all began around 1970.

The most explicit external nudge began in the late 1960s and came from the federal government. The vehicle generally was the federal war on crime, and the specific vehicle was the Omnibus Crime Control and Safe Streets Act of 1968.[16] Before delving into this legislation and its con-

sequences, it will be useful to consider conditions in California and other state courts at the time of enactment.

The Judicial Council's posture of reactive problem solver was very much in the mainstream of other state courts systems and certainly was in tune with that of local courts in California, which also tended to focus on specific problems.[17]

Following establishment of the Administrative Office of the Courts in 1961, the scope and pace of problem solving accelerated, but planning was not an explicit part of AOC activities, either on its own or in support of the Judicial Council. This fact brings us, the California court system, and the state courts of the nation to the federal response to crime. War was declared by Congress and President Lyndon B. Johnson in 1968 through the Safe Streets Act.

It is necessary to tell the story of this federal program in fair detail because it lays the foundation for the story of court planning and its impact on governance in California and elsewhere. The concerns, objectives, and strategies were disclosed with surprising clarity in the "Declarations and Purpose" section of Title I of the Safe Streets Act.

> Congress finds that the high incidence of crime in the United States threatens the peace, security, and general welfare of the Nation and its citizens. To prevent crime and to ensure the greater safety of the people, law enforcement efforts must be better coordinated, intensified, and made more effective at all levels of government.
>
> Congress finds further that crime is essentially a local problem that must be dealt with by State and local governments if it is to be controlled effectively.
>
> It is therefore the declared policy of the Congress to assist State and local governments in strengthening and improving law enforcement at every level by national assistance. It is the purpose of this title to (1) encourage States and units of general local government *to prepare and adopt comprehensive plans based upon their evaluation of State and local problems of law enforcement;* (2) authorize grants to States and units of local government in order to improve and strengthen law enforcement; and (3) encourage research and development directed toward the improvement of law enforcement and the development of new methods for the prevention and reduction of crime and the detection and apprehension of criminals. [Emphasis added.][18]

The mechanism was federal money to be distributed through and by a new agency, the Law Enforcement Assistance Administration, established in the U.S. Department of Justice. At the core of the program were annual block grants to be made by the LEAA to each state with the statutory requirement that a substantial percentage of the funds be passed through to local units of government.[19] To receive and administer these block grants, each state was called upon to create a state planning agency (SPA) within the executive branch of government.

In practice, each state created a criminal justice council served by its SPA. Together they were responsible for developing and approving comprehensive statewide criminal justice plans and distributing the federal fun as by grants to other entities. within state and local government.

California was ahead of the curve. In 1967, in anticipation of the federal funding legislation, the legislature created the California Council on Criminal Justice (CCCJ). As originally enacted, there were twenty-five members.[20] The composition of the CCCJ set or at least shared the national pattern of heavily weighting the compositions of the criminal justice councils in favor of law enforcement and corrections agencies with nominal, if any, representation from the courts.

The legislature empowered the CCCJ to develop crime-related plans and encouraged coordination among law enforcement and criminal justice agencies, but its true mission as a receptacle for federal funds was clearly revealed: "[T]he council may develop plans to fulfill the requirements of any federal act providing for the adoption of comprehensive plans to facilitate the receipt and allocation of federal funds for planning research, demonstration and special project grants."[21]

Subsequent to the creation of the CCCJ, the legislature established the California version of the SPA, titled the Office of Criminal Justice Planning (OCJP). The executive director was appointed by, responsible to, and served at the pleasure of the governor. The director's primary duty was developing, with the advice and approval of the CCCJ, 'the comprehensive statewide plan for the improvement of criminal justice throughout the state."[22]

Over the life of the LEAA the federal government distributed hundreds of millions of dollars. When the federal funds began to flow from the LEAA to California and the CCCJ, they rapidly grew from $2.4 million in 1968 to $46.5 million in 1972.

Planning clearly was an explicit theme in both the Safe Streets Act and the California statutes creating the CCC] and the OCJP. Indeed, without an approved statewide criminal justice plan, neither California nor any other state would have secured LEAA funds. As stated at the time by a recent official of the U.S. Department of Justice, federal "funds must be wisely and effectively used." One way to ensure this proper utilization of funds is to insist on thorough planning.[23]

Reactions among state court officials in the early days of the LEAA ranged from indifference at one end of the spectrum to the Chief Justice of one state at the other end, who this author remembers bearing crusade against permitting "the federal eagle to scream above state courthouses."

Several realities emerged that changed the dynamics. State courts, with rare exceptions were receiving little or none of the LEAA money. Even in states where the judicial system at the state level or individual courts were willing to compete for and accept federal money, they were non permitted to share significantly in the financial bonanza. The first reason was they were dealing with an executive branch agency. The second reason was the voting membership of the criminal justice councils, which for the most part, heavily favored police and related law enforcement agencies. The final reason was that the LEAA had unilaterally and arbitrarily defined "courts" to include prosecutor and defense functions with the result that a grant, for example to expand the number of prosecutors was classified as benefiting courts. California was no exception in any of these realities.

Another reality soon caught up with both the LEAA and the state criminal justice councils and state planning agencies. State plans were required to be "comprehensive" in order to achieve LEAA approval and release of funds. This meant that state plans bad to include courts. Judicial institutions, however, had little incentive to participate in the development of plans since in their view they were not being given a place at the banquet table or a fair share of the federal block grants.

Reality was reinforced by principles that were well summarized by the resolution of the Conference of State Chief Justices in 1973:

> 1. It is incompatible with and injurious to the traditional common-law role of the state judiciary for it to compete before an agency of the executive branch for its "rightful" share of federal block grant funds.

2. For different courts or levels of courts in a state Judicial system to be in competition for federal block grant funds, with such competition to be decided by an agency of the executive branch, is destructive of the dignity of the judiciary and inimical to its improvement and to the public interest.

3. Present and proposed programs of federal assistance to state courts should require that some appropriate percentage of a state's block grant funds be allocated directly to the judiciary, as distinct from law enforcement, prosecution, defense, corrections, or other criminal justice components; and that funds so allocated be expended in accordance with a plan developed and programs approved by the Supreme Court or other judicial entity of the state with rulemaking powers or administrative responsibility for the state's judicial system.

4. Provisions in present and proposed programs for federal financial assistance to state courts which restrict or limit the amount of a state's block grant funds which can be spent for personnel or which require a percentage of such funds to be spent by local units of government, unnecessarily impede and are inimical to the improvement of the judicial system of a state.[24]

An additional reality was that the LEAA could not restrain itself to oversight. The impulse to direct and control proved irresistible.

In the early days, LEAA officials recognized there were "almost no validated models of good comprehensive planning in crime control."[25] In addition, the federal role was described as "advisory," and it was stated that "a dominant purpose of comprehensive criminal-justice planning is to permit jurisdictions to select, adapt, and apply general measures and concepts of improvement to the context and needs of a particular state, city, or metropolitan area."[26] That was in 1968 and near the dawn of the LEAA.

It look only three years for the LEAA to abandon self-restraint and local discretion. On October 20, 1971, the administrator of the LEAA created the National Advisory Commission on Criminal Justice Standards and Goals with the mandate "to formulate ... national criminal justice standards and goals for crime reduction and prevention at state and local levels."[27] In other words, federal strings were being woven and would soon be affixed to state block grants and pulled.

This commission produced six reports on various components of the criminal justice system, including a volume on courts, which was released in January 1973. In considerable detail, the commission set standards for how criminal cases should flow, including screening, diversion, and negotiated pleas. Other aspects of criminal justice also were addressed in similar detail, such as the size and composition of the jury, sentencing, and appellate review. The scope and depth of the commission's prescriptions for state courts in the section "Personnel and Institutions" ranged from calling for unification of state court systems to insisting on a chief court administrator in each state.[28]

Should one mistakenly think that these standards were generalizations or nonprescriptive, consider the segment of Standard 8.1 regarding unification:

> State courts should be organized into a unified judicial system financed by the state and administered through a statewide court administrator or administrative judge under the supervision of the chief justice of the State supreme court.
>
> All trial courts should be unified into a single trial court with general criminal as well as civil jurisdiction.[29]

Many knowledgeable and distinguished people participated in the promulgation of the standards. The substance of the standards, including the foregoing standard on court organization, was attractive. Those facts did not overcome the greater fact that the federal government through the LEAA was promulgating standards prescribing state court structure staffing and methods of operation.

Not surprisingly, the next step was creation by the LEAA of another commission to assess the extent to which each state court system was in conformity with the LEAA's standards. Predictably, state comprehensive criminal justice plans, including the court sections, were increasingly expected to promote and conform to the LEAA's standards.

It is tempting to suggest that the LEAA's standards and goals were the straw that broke the camel's back for California's court system. We will never know, but 1973 was apocalyptic. As the LEAA standards and goals for courts were being finalized and published early in 1973, the Judicial Council and AOC directly denounced the California arrangement, and by implication denounced the LEAA, on multiple counts: "In California, the

judicial system has a statewide structure created under the Constitution and implemented by state statutes and rules of court, with the Judicial Council as the constitutionally established state agency having rulemaking powers and administrative responsibility for the operation of that structure." In creating the CCCJ and the OCJP, the legislature failed to recognize "the primary role to be played by the judiciary as an independent branch of government in criminal justice planning for California's courts."[30]

"The several judges who have served on the CCCJ by appointment of the speaker [of the Assembly] or the senate rules committee, however, did not have any direct relationship to the Judicial Council." Until 1971, the designated representative of the Judicial Council was merely one of the legislators serving on the Council and those legislators "could not effectively represent the Council or its Chairman as a spokesman for the judiciary."[31]

The Judicial Council calculated that of the 139.3 million federal dollars given to California during the initial five years of five LEAA, only 5 percent went to the judicial system, and that included grants made to prosecution and defense services, since LEAA definitionally lumped courts, prosecution, and defense into a single category.[32] The Judicial Council reported that "[d]uring the 1969–1973 period not only have the funds for the judiciary been low, but the statewide nature of the California judicial system has not been adequately recognized in the operational procedures of the CCCJ structure. . . . The court system has, as a result, been treated by the CCCJ in much the same way as is the police function or the correctional function. Under these circumstances, California's statewide system of 355 trial courts tends to be treated as are its 400-plus local police agencies. The difference between the two groups, of course, is that the court system is a statewide system, regulated by state law and state policy decisions, with an independence that is guaranteed by the constitutional separation of powers clause."[33]

These grievances led the Judicial Council, supported by the AOC, to strike back in 1973. Exercising its constitutional prerogative to make recommendations to the governor and the legislature, the Judicial Council proposed and successfully obtained legislation restructuring the CCCJ and creating a separate role for the judicial system in criminal justice planning. At the council's request, the legislature created a seven-member Judicial Criminal Justice Planning Committee whose members were appointed by and held office at the pleasure of the Judicial Council. The statute further required that "any grant of federal funds made or approved by the office [OCJP] which is to be implemented in the California court system shall be

submitted to the Judicial Criminal Justice Planning Committee for its review and recommendations."[34] The OCJP was further required to consult with and seek the advice of the new committee before carrying out any functions that affected the courts. The new committee was also directed to report independently to the governor and legislature on the status of LEAA-funded projects affecting the judicial system.[35]

To drive home the point that the courts now had an independent voice, the legislature also directed thatthe expenses of the new judicial review committee should be paid by the OCJP from federal funds.[36]

It is interesting to note that the first chair of the Judicial Criminal Justice Planning Committee was Justice Winslow Christian from the court of appeal, who recently had completed a two-year tour as the first full-time director of the fledgling National Center for State Courts. Also, the chief staff person assisting the committee was an attorney assigned from the AOC by the name of William E. Davis, later to become Administrative Director of the Courts.

The Judicial Criminal Justice Planning Committee worked diligently and cooperatively for more than seven years, terminating its activities in March 1982 with the demise of the LEAA and the termination of federal funding for the committee's activities. During those years, the committee reviewed and evaluated hundreds of court projects proposed for funding, stimulated and strengthened planning among courts at both the local and state levels, and facilitated a collaborative but independent role for the court system in the midst of California's response to the LEAA and federally imposed criminal justice planning.

The legacy of the LEAA in many respects is murky, debatable, lamentable, and laudable. However, it seems indisputable that planning within the courts, both in California and throughout the nation, is a part of that legacy. Numerous national efforts support this conclusion. A prominent and good example is *State Courts: A Blueprint for the Future*, which was formulated by the second National Conference on the Judiciary in 1978, conducted by the National Center for State Courts and funded in large measure by the LEAA.[37]

Within California, it seems fair to conclude that the Judicial Criminal Justice Planning Committee appointed by the Judicial Council and operat-ing de facto as an adjunct entity of the Judicial Council, both for itself and for the courts of the state, paved the way for planning within the judicial branch of government.

Perhaps the most compelling tribute to the planning impact of the LEAA came from Ralph N. Kleps, the first Administrative Director of the Courts. He acknowledged in 1975 that "[t]he idea of mandated comprehensive planning for state judicial systems has attained wide acceptance recently under the stimulus of federal criminal justice funding."[38] He also observed at the same time that "[c]omprehensive criminal justice planning . . . has also become overstated, oversold and underachieved."[39]

While taking swipes at the LEAA and mandated criminal justice planning, Kleps also broke new ground by explicitly acknowledging the role of planning in a court context independent from the LEAA and criminal justice planning. The context was the impact of the 1974 decision in *Gordon v. Justice Court*,[40] which is explained in Chapter Five. Suffice to say here that the decision invalidated procedures that had long been in use in the justice courts.

Kleps's theme was that the California court system was dependent on annual budgets at both the state and local levels and concurrently at the mercy of unanticipated crises. This led him to conclude that "[i]n such an environment, it may be that the most needed resource of a state judicial system is the capacity for contingency planning."[41] In his view, the response of the Judicial Council and the AOC to the decision in *Gordon* and the resulting solution of creating a new cadre of law-trained judges in the justice courts was an exemplary act of contingency planning.

One could quibble about whether the Judicial Council or the AOC response to the *Gordon* crisis was planning or merely a continuation of the tradition of reactive problem solving. One cannot argue, however, with the importance of the fact that the solution was perceived and described by the Administrative Director of the Courts as the fruit of planning.

Acknowledgment and use of planning terminology and, perhaps, techniques by Administrative Director Kleps did not, however, appear at the time to lead to systemic planning by the Judicial Council or the AOC. Indeed, the formal process of planning within California's judicial branch is not discernable during the balance of the tenures of Administrative Director Kleps and Chief Justice Donald R. Wright, or those of their successors, Chief Justice Rose Elizabeth Bird and Administrative Director of the Courts Ralph J. Gampell.

The 1980s: Planning and Policymaking Merge

That all changed in 1987 when Malcolm M. Lucas became Chief Justice and William E. Davis became Administrative Director of the Courts.

It was clear from the outset that this new leadership would chart a new course. The Judicial Council made the following bold announcement in its 1988 *Annual Report:* "In 1987, the Judicial Council of California reasserted its leadership role as a policy-making agency for the state's court system."[42]

The statement was based on several factors:

- The annual "flood of new bills designed to solve perceived problems in the courts" and the increasing tendency of the legislature "to regard the Judicial Council as just another state agency whose primary role is to carry out its directions."
- The imbalance between using the council's limited resources to implement legislative mandates at the expense of "planning and policy-making functions for which the council was originally created."
- Review of recent council agendas indicating the danger "that the council was becoming almost entirely reactive."[43]

In an explicit assertion of its leadership role, the Judicial Council for the first time developed an annual plan for its activities. At the heart of this plan was identification of major issues confronting the court system, followed by assigning priorities for addressing these problems.

The process was twofold. First, the council enunciated five general principles: reducing delay, improving funding, encouraging uniformity, improving public access to and understanding of courts, and ensuring fair and equal treatment for all participants. The second step was to direct each of the Judicial Council's standing committees to develop a list of priorities to be addressed during 1987 and 1988. As an example of the responses from standing committees, the Court Management Committee in 1987 established the following four key planning priorities: seek to reduce delay in the trial courts, implement state funding of the trial courts, improve the method used to prepare weighted caseload studies and judgeship needs reports, and increase the use of automation in the trial courts.[44]

From no planning at midcentury, the Judicial Council and the AOC thus moved to annual plans by the latter part of the 1980s. It seems reasonable to suggest that this new commitment to planning was made easier by several years of experience in the LEAA context as well as the experience brought to bear by Administrative Director William E. Davis as the first staff director of the California Judicial Criminal Justice Planning Committee.

The 1990s: Strategic Governance

In a very short time, annual plans became an integral part of endeavors by the Judicial Council and the AOC. Citing one of many examples, the action plan for 1991 included as an approved priority a "plan for the future of the California court system" consisting in large part of developing and integrating "the planning process in the judicial branch" and appointing a committee "to develop future-related issues and options for courts."[45]

This was a natural evolution from Chief Justice Lucas's statement in 1990 in an address to the State Bar board of governors: "We need to anticipate change and plan for action. We need to lead and not wait to be led into the next millennium."[46]

The Judicial Council implemented one of these planning priorities in 1991 by creating the Commission on the Future of the California Courts, whose forty-five members were appointed by Chief Justice Lucas. The chair was Dr. Robert R. Dockson, founder and former dean of the graduate school of business at the University of Southern California and the chairman-emeritus of CalFed, Inc., a financial institution.

> What the Chief Justice and the Judicial Council contemplated was a planning process fairly novel in the nation's courts at that time, one known as "alternative futures planning." Embracing conventional forecasting, trend analysis, and scenario construction, alternative futures planning allows policy and decision makers better to anticipate what the future might be, in order to propose what it should be. That "preferred future" then becomes the target at which subsequent planning efforts are aimed.[47]

Two years later the Commission on the Future of the California Courts concluded its labors. During the intervening twenty-four months, a prodigious effort had been successfully carried out that included securing federal and private grants for supplemental funding; a broad survey of public opinion regarding courts in California; a "Delphi study" involving hundreds of interviews, surveys, and meetings; a comprehensive forecast of California's demographic, economic, sociological, and technological futures; extensive outreach efforts including a statewide symposium and public hearings; and finally production of massive documentation with the final report *Justice in the Balance*, 2020 as the flagship. Based upon radically different future demographics and economics in California, the commission addressed the major subjects of multidimen-

sional justice, access to justice, equal justice, public trust and understanding, information technology and justice, children and families, civil justice, criminal justice, the appellate courts, governing the judicial branch, and financing of future justice.[48]

Although Hawaii, Virginia, and Arizona had previously undertaken programs regarding the future of courts, the California effort was at the time the most ambitious of its kind. It also was able to draw upon the information and momentum created by the National Conference on the Future of Courts, held in May 1990 in San Antonio, Texas.

While the futures commission was laboring, the Judicial Council and AOC stepped up to a new level of governance. Annual planning gave way to strategic planning.

This was far more than a mere evolutionary step in planning sophistication. It involved reexamination of the Judicial Council's responsibilities as well as those of the AOC. Responsibilities were reexamined internally in relationship to the entire judicial system and externally in relation to the other branches of government, participants in the judicial process, and the public served by that system.

The original justifications for creation of the Judicial Council in 1926 were revisited to determine whether and to what extent those early promises were being fulfilled. Was the Judicial Council performing as a "board of directors" for the system? Were the Judicial Council and AOC discharging the "duty of seeing that justice is being properly administered"? Was the Chief Justice performing the duties that "a general superintendent fills in any ordinary business"? Was the Chief Justice serving as "the real as well as the nominal head of the judiciary of the state"? Were the Judicial Council and the AOC assuring that the work of the courts is "correlated" and that "the machinery of the courts is working smoothly"? Apparently the answers to these and many other questions on penetrating issues of governance were less than affirmative.[49]

The council responded by engaging in an unprecedented endeavor of self-governance, which resulted in an equally unprecedented "Strategic and Reorganization Plan," adopted on November 9, 1992. The plan included adoption of mission statements and principles regarding the roles of both the Judicial Council and the judiciary as well as approved goals, objectives, and strategies to pursue during the following five years.[50]

The reorganization portion of the plan involved a new system of internal committees with a new group of standing advisory committees. Close to the heart of the reorganization was a fundamental change in the manner by which the Chief Justice exercised the power of appointment to the council and to its advisory bodies. While the constitution confers upon the Chief Justice the unrestricted power to make such appointments, Chief Justice Lucas agreed to a new nominating procedure designed to broadly solicit applicants and nominees. From these the executive committee would offer candidates to the Chief Justice after screening applicants and nominations, and then the Chief Justice would make appointments with consideration given to experience as well as gender, ethnic, and geographic diversity.[51]

What accounted for this sea change? Had the process of annual plans become moribund or routine? Was a new and bolder drive needed to reassert the Judicial Council's "role as a policymaking agency for the state's court system"[52] as promised in the late 1980s? The likely answer is "all of the above." But most compelling was the determination of the Judicial Council to function as a board of directors by "steering not rowing."[53] And the likely catalyst for confronting these issues and reaching these conclusions was the arrival in 1992 of William C. Vickrey as the new Administrative Director of the Courts.

Prompt steps were taken to institutionalize and disseminate the fruit of the Judicial Council's efforts. In February 1993 a two-stage meeting was convened in Sacramento. The first phase was attended by members of the Judicial Council and chairs of the various advisory bodies to the council as well as key staff of the AOC and the Center for Judicial Education and Research. Led by Chief Justice Lucas and Administrative Director Vickrey, this assembly, through plenary and small group sessions, delved into the new structure, direction, and responsibilities generated by the strategic plan as well as the role of the Judicial Council in policy development.

During the second phase, the assembly was increased to include members of the Judicial Council's advisory bodies, including the advisory committees made up of presiding judges of the trial courts and court administrators. The program also was expanded to address trends affecting policymaking for the judiciary, enhancing relations with the executive and legislative branches, and governing the affairs of the judiciary.[54]

This was the first gathering of the leaders in California's court system devoted to self-governance, and it was propelled by the Judicial Council's mission statements, principles, goals, objectives, and strategies.

Appropriately, the first strategic plan in 1992 was a beginning and not an end. The strategic planning process has continued to be dynamic and the contents of strategic plans continuously refined and modified. In 1997, the council renamed its strategic plan *Leading Justice Into the Future.* Following further review and evaluation, the Judicial Council in April 1999 embraced the following mission of the judiciary: "The judiciary shall, in a fair, accessible, effective, and efficient manner, resolve disputes arising under the law; and shall interpret and apply the law consistently, impartially, and independently to protect the rights and liberties guaranteed by the Constitutions of California and the United States."[55]

This was supplemented by the mission of the Judicial Council: "Under the leadership of the Chief Justice and in accordance with the California Constitution, the law, and the mission of the judiciary, the Judicial Council shall be responsible for setting the direction and providing the leadership for improving the quality and advancing the consistent, independent, impartial, and accessible administration of justice."[56]

In addition, the council adopted a set of guiding principles and six major goals.

> **Goal I. Access, Fairness, and Diversity** All Californians will have equal access to the courts and equal ability to participate in court proceedings, and will be treated in a fair and just manner. Members of the judicial branch community will reflect the rich diversity of the state's residents.
>
> **Goal II. Independence and Accountability** The judiciary will be an institutionally independent, separate branch of government that responsibly seeks, uses, and accounts for public resources necessary for its support. The independence of judicial decision making will be protected.
>
> **Goal III. Modernization of Management and Administration** Justice will be administered in a timely, efficient, and effective manner that utilizes contemporary management practices; innovative ideas; highly competent judges, other judicial officers, and staff; and adequate facilities.
>
> **Goal IV. Quality of Justice and Service to the Public** Judicial branch services will be responsive to the needs of the public and will enhance the public's understanding and use of and its confidence in the judiciary.

> **Goal V. Education** The effectiveness of judges, court personnel, and other judicial branch staff will be enhanced through high-quality continuing education and professional development.
>
> **Goal VI. Technology** Technology will enhance the quality of justice by improving the ability of the judicial branch to collect, process, analyze, and share information and by increasing the public's access to information about the judicial branch.[57]

The AOC has engaged in its own process of strategic planning, resulting in commitment to a set of values designed to "earn and maintain the trust of the public, bar, judicial community, and court staff" as well as commitment to the following mission: "The Administrative Office of the Courts (AOC) shall serve the Chief Justice, the Judicial Council, and the courts for the benefit of all Californians by advancing leadership and excellence in the administration of justice that continuously improves access to a fair and impartial judicial system."[58]

Strategic planning as part of the process of governing was not confined to state-level institutions. In 1997, the Judicial Council initiated a statewide program to introduce and support strategic planning in the trial courts of California. By December 1999, most of the state's trial courts had submitted their first strategic plans. Clearly this aspect of strategic planning is well on its way to becoming embedded in both governance and administration of the judicial branch. This is illustrated by the Judicial Council's adoption in 2000 of a framework and guidelines "to institutionalize and integrate state and local planning activities."[59]

Before leaving the 1990s and the dynamics of governance, the transformation of the AOC compels acknowledgment. As noted previously, staff numbered more than 400 individuals by century's end, with important internal and external responsibilities. But numbers and recitation of duties do not capture the vital role of the AOC in the new dynamics of governance.

The flavor of that multifaceted role is suggested when the AOC in its mission statement, after renewing the pledge of service to the Chief Justice and Judicial Council, continues by committing to (1) serving the courts, (2) "advancing leadership and excellence in the administration of justice," and (3) improving "access to a fair and impartial judicial system."[60] This is well beyond merely carrying out the "details of Council policy" as articulated by Ralph N. Kleps at the birth of the AOC.[61]

Manifestations of this broadened mission can be found throughout the AOC but can be illustrated by several examples. The AOC, of course, had no formal representation in the Capitol in 1961; by the year 2000 it had an Office of Governmental Affairs based in Sacramento with a staff of fourteen. In addition to active involvement in the legislative process, this staff maintains ongoing relations with pertinent agencies within state government and with representatives of city and county government while supporting the efforts of the Administrative Director and other AOC staff in dealings with the legislature, the governor's office, and key executive branch agencies such as the Department of Finance.

In the early years of the AOC, support services to trial courts were implicitly beyond the AOC's role. By century's end the AOC was a significant and growing resource for trial courts, with services ranging from legal opinions to budget preparation, technology acquisition and utilization, and labor relations and other areas of human resources. With the advent of trial court unification, presented in the next chapter, this service dimension of the AOC undoubtedly will grow.

While advancing improved administration of justice can be detected throughout the AOC, the effort is nicely captured in the creation and works of the unit for research and planning. With a staff of thirteen, this unit strives to enrich efforts throughout the AOC by systemic information gathering, analysis, and proposal development. By the year 2000 it had made contributions in several important areas such as the adequacy of judicial and nonjudicial staffing.

Judicial and staff education furnishes an insight into AOC efforts to improve access and fairness. As discussed more specifically in Chapter Ten, there was no judicial or nonjudicial education at midcentury. That was corrected as the century progressed, and by 2000 the bulk of education within the courts resided with the AOC, aside from private commercial vendors. In addition to staples such as courses on substantive and procedural law, the AOC's Education Division offered such training programs for judges or staff as "Fairness in the Courts" and "Beyond Bias: Assuring Fairness in the Workplace."

Notes

1 Judge Harry A. Hollzer, “Report of the Condition of Judicial Business in the Courts of the State of California Together with a Summary of Research Studies of Judicial Systems in Other Jurisdictions,” in Judicial Council of California, *Second Report of the Judicial Council of California to the Governor and the Legislature* [1929], part 2, pp. 11–69.

2 California Constitution (1926), article VI, section la.

3 Preble Stolz and Kathleen Gunn, “The California Judicial Council: The Beginnings of an Institutional History,” *Pacific Law Journal* 11 (1979–1980), pp. 884–85.

4 California Constitution (1961), article Vl, section la.

5 Judicial Council of California, *Nineteenth Biennial Report* (1963), part 2, Annual Report of the Administrative Office of the Courts (1961–62), p. 115.

6 Ralph N. Kleps, “The Judicial Council and the Administrative Office of the California Courts,” *Journal of the State Bar of California* 37 (1962), p. 332.

7 Id., p. 331.

8 Judicial Council of California, minutes (April 10, 1951), p. 5.

9 Kleps, “Judicial Council and the AOC,” pp. 330–31.

10 California Constitution (1960), article VI, section la.

11 Ralph N. Kleps, “Courts, State Court Management and Lawyers,” *California State Bar Journal* 50 (1975), p. 48.

12 California Constitution Revision Commission, Proposed Revision of the California Constitution (February 1966), pp. 87–88; California Constitution (1966), article VI, section 6.

13 California Constitution (1960), article VI, section 1a.

14 California Constitution Revision Commission, Proposed Revision (February 1966), pp. 87–88.

15 See, for example, Donald C. Dahlin, “Long–Range Planning in State Courts: Process, Product, and Impact,” *Justice System Journal* 17 (1994), pp. 171–92.

[16] Omnibus Crime Control and Safe Streets Act of 1968, Public Law 90–351 (June 19, 1968), 82 Statutes 197, 1998 U.S. Code Congressional and Administrative News, pp. 237–85.

[17] See, for example, Dorothy W. Nelson, “Should Los Angeles County Adopt a Single Trial Court Plan?,” *Southern California Law Review* 33 (1959–60), p. 117.

[18] Safe Streets Act of 1968, p. 237.

[19] Charles Rogovin, ‘’The Genesis of the Law Enforcement Assistance Administration: A Personal Account,” *Columbia Human Rights Law Review* 5 (1973), p. 12.

[20] California Statutes 1967, chapter 1661, pp. 4042–4–3; former section 13800 of the California Penal Code. The attorney general was automatically a member. Twelve members were appointed by the governor and among those the following three were specified in the statute as mandatory appointees: commissioner of the highway patrol, director of corrections, and director of the youth authority. The governor was further directed to include among his appointments a police chief, district attorney, sheriff, public defender, representative of the Commission on Police Officers Standards, an academician with pertinent qualifications in the field, and an expert in systems technology. Six members were appointed by the Senate Rules Committee with the requirement that two appointees were senators. Six members were appointed by the speaker of the Assembly, to include two Assembly members, The remaining eight legislative appointees had to include a representative of the Judicial Council, a judge, a representative of cities, and a representative of counties.

[21] California Statutes 1967, chapter 1661, p. 4044.

[22] California Statutes 1973, chapter 1047, section 13823(a)(1), p. 2073.

[23] Richard L. Braun, “Federal Government Enters War on Crime,” *American Bar Association Journal* 54 (1968), p. 1164.

[24] Resolution of the Conference of Chief Justices (August 1973, Columbus, Ohio), quoted in Judicial Council of California, *Annual Report to the Governor and the Legislature* (1974), p. 13.

[25] Daniel L. Skoler, “Comprehensive Criminal Justice Planning–A New Challenge,” *Crime and Delinquency* 12 (1968), p. 200.

[26] Id., pp. 202–3.

[27] National Advisory Commission on Criminal Justice Standards and Goals, *Report on Courts* (Washington, D.C.: Government Printing Office, 1973), p. v.

[28] Id., pp. 145–286.

[29] Id., p. 164.

[30] Judicial Council of California., *Annual Report to the Governor and the Legislature* (1974), p. 14.

[31] Ibid.

[32] Ibid.

[33] Id., p. 15

[34] California Statutes 1973, chapter 1047, section 13832, p. 2074.

[35] Ibid.

[36] Id., section 13834, p. 2074.

[37] National Conference on the Judiciary, *State Courts: A Blueprint for the Future: Proceedings of the Second Annual Conference on the Judiciary* ([Denver]: National Center for State Courts, 1978).

[38] Ralph N. Kleps, "Contingency Planning for Stale Court Systems," *Judicature* 59 (1975), p. 63.

[39] Ibid.

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

[41] Kleps, "Contingency Planning," p. 64.

[42] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1988), part 1, p. 1.

[43] Id., p. 2.

[44] Id., pp. 2–4.

[45] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1991), volume l, p. x.

[46] Quoted in Judicial Council of California], Commission on the Future of the California Courts, *Justice in the Balance, 2020: Report of the Commission on the Future of the California Courts* (1993), p. 2.

[47] Judicial Council, *Justice in the Balance*, p. 2.

48 Id., p. vii.

49 Quotations from Senators M. B. Johnson and J. M. lnman, Argument in Favor of Proposition 27, Senate Constitutional Amendment No. 15 (1925 Regular Session), submitted to voters on November 2, 1926.

50 Judicial Council of California, *Annual Report to the Governor and the Legislature* (1993), volume 1, pp. 2–3.

51 Id., p. 3.

52 Judicial Council, *Annual Report* (1988), part l, p. 1

53 Judicial Council of California., Strategic Plan Dinner Meeting (November 12, 1992), presentation outline, p. 8.

54 Judicial Council of California, Administrative Office of the Courts, "Judicial Council Orientation" [conference materials] (February 25–26, 1993), [San Francisco].

55 Judicial Council of California, *Leading Justice Into the Future: Long-Range Strategic Plan* (updated April 29, 1999), p. 2.

56 Ibid.

57 Id., pp. 4–11.

58 Administrative Office of the Courts, *People and Programs* (July 2000), section 1-1-2.

59 Judicial Council of California, *Leading Justice Into the Future: Strategic Plan* (March 2000) appendix A, p. 17.

60 Administrative Office of the Courts, *People and Programs* (July 2000), section 1-1.

61 Kleps, "Judicial Council and the AOC," p. 331.

Chapter 5

Reorganization and Unification of the Trial Courts

Overview

This half-century began and concluded with major trial court reorganizations. Important evolutionary steps occurred in between.

The 1950 reorganization established municipal courts for more populous areas and justice courts for less populous areas as the only courts of limited jurisdiction. This swept away hundreds of preexisting courts that had crept into existence along an array of different constitutional, statutory, and charter routes.

The Judicial Council and the Administrative Office of the Courts (AOC) launched serious efforts in the 1970s to further improve structure—first by examining lower court consolidation and next by examining unification of all trial courts. The several proposals that emerged died in the California Legislature.

Ferment continued, however. The decision in the *Gordon v. Justice Court* case in 1974 disqualified non-attorney justice court judges from presiding over most criminal matters, sowing the seeds for the advent of

a completely law-trained judiciary. In 1977 the superior court in San Diego County and the El Cajon Municipal Court launched the successful "El Cajon experiment" by arranging for municipal court judges to hear matters within superior court jurisdiction.

The success was not enough to gain voter approval of a constitutional amendment in 1982 that would have permitted consolidation of a county's superior and municipal courts with legislative and voter approval.

A step forward was achieved, however, in 1988 when the significant differences between municipal and justice courts were eliminated.

Shortly thereafter, the legislature in 1991 imposed "coordination" upon the judicial branch. All trial courts in each county were compelled to submit for Judicial Council approval a plan to achieve maximum utilization of judicial and other trial court resources within the county and to reduce statewide costs. Many regarded coordination as an essential prelude to unification.

The legislature next passed a Judicial Council proposal to create a single category of limited jurisdiction court—municipal courts—by eliminating justice courts. The voters approved in 1994.

Following a substantial but unsuccessful legislative effort from 1992 through 1994, a new push for trial court unification began in 1995 with Senate Constitutional Amendment (SCA) 3 and culminated in ballot Proposition 220 in 1998. Voters approved by a margin of almost two to one.

The decision whether to unify was at the option of each county and became effective only upon a majority vote of the municipal court judges and a majority vote of the superior court judges in the county. Within two months of passage of Proposition 220, fifty counties had created a single trial court. The remaining eight counties did so over the following twenty-five months.

Court structure and court funding often are inseparable. Certainly they intertwined in California. Both were transformed between 1950 and 2000. They are discussed in this chapter and the next as monuments of major significance in the improved administration of justice. With respect to structure, it is interesting to note that this fifty-year era began and concluded with major reorganizations in the trial courts.

Courts of Limited Jurisdiction: The 1950 Reorganization

A constitutional amendment was approved by California voters in 1950, dramatically reorganizing the "inferior courts" or courts of limited jurisdiction. The story of that amendment, of course, preceded its culmination in 1950. For much of the 1940s, there was agitation from several quarters for improvements in California's lower courts. The State Bar, the Commonwealth Club, and the Justices' and Constables' Association all proposed changes at various times.[1]

These pressures produced a concurrent resolution of the California Legislature in 1947 requesting that the Judicial Council "make a thorough study of the organization, jurisdiction and practice of the courts in California exercising jurisdiction inferior to the superior court, and to make recommendations for the improvement of the administration of justice therein."[2]

The Judicial Council responded in 1948 that:

> [T]he principal defect in our present inferior court system is the multiplicity of tribunals and their duplication of functions, a defect inherent in the court structure. There are six separate and distinct types of inferior courts, totaling 767 in number, created and governed under varied constitutional, statutory and charter provisions. The jurisdiction of those courts overlaps, since in almost every instance each court serves a locality which is also served by at least one other court. Conflict and uncertainty in jurisdiction is one result of such multiplicity and duplication. Another result is that many courts are operated on a part-time basis and are presided over by laymen engaged in outside businesses or by lawyers engaged in private practice.[3]

This structure was so complex that Chief Justice Phil S. Gibson remarked: "The average layman would, I am sure, assume that all lawyers are thoroughly familiar with the organization and jurisdiction of all of our

courts. I have found, however, that there are very few lawyers who can correctly name all the types of trial courts in the state, much less give the sources and extent of their jurisdiction. This, in itself, is some evidence of the complicated and confusing nature of our inferior court structure."[4]

It is no surprise that Chief Justice Gibson and the Judicial Council further concluded that these structural problems were compounded by operational problems, resulting in a system that was inefficient, confusing, and wasteful. Major contributors were the overlapping geographic and subject matter jurisdiction, part-time operations, widely varying methods of selecting judicial officers, and widely varying qualifications of those officers.[5]

The solution proposed by the Judicial Council was to create only two limited jurisdiction courts below the superior court: municipal courts and justice courts.[6] Each county would be divided into judicial districts by the board of supervisors, and each of those districts would have a single court of limited jurisdiction. Any district with more than 40,000 in population would have a municipal court. Justice courts would be established in each district of lesser population. The municipal courts would have civil jurisdiction in cases involving $2,000 or less and countywide jurisdiction for misdemeanors. Justice court jurisdiction would be limited to $500 or less in civil cases and include "low grade misdemeanors."[7] All municipal and justice court judges would be elected. Elaborate provision was made for grandfathering incumbents of the assorted existing courts of limited jurisdiction.

The Judicial Council's proposal required amending the constitution. It was adopted by the legislature and became Proposition 3 in the statewide general election on November 7, 1950. In anticipation of the proposed amendments, the legislature adopted the Court Act of 1949 enacting implementing statutes recommended by the Judicial Council.[8] These implementing statutes were to take effect only upon voter ratification of the proposed constitutional amendment. The Court Act of 1949 and companion amendments to the Penal Code and Code of Civil Procedure effectively prescribed jurisdiction for the new municipal and justice courts and divided between them jurisdiction over the galaxy of matters previously handled by the preexisting courts of limited jurisdiction.[9]

Chief Justice Gibson referred to this reorganization as "the most significant reform that has taken place in the judicial department of our state government since it began to function nearly 100 years ago."[10] Knowledgeable commentators subsequently endorsed this view.[11]

Proposition 3 was passed by the voters, sweeping into history the patchwork of limited jurisdiction courts that had grown by increment during the first hundred years of statehood.

Gordon v. Justice Court

A quarter-century passed before the next major change in the courts of limited jurisdiction. It was precipitated by the decision of the California Supreme Court in the 1974 *Gordon v. Justice Court* case.[12] At issue was whether it was constitutionally permissible under the due process clause of the federal constitution to allow justice court judges who were not attorneys to preside over criminal trials if the offense was punishable by a jail sentence.

The court, in a unanimous opinion, held: "We have decided that this practice does violate the due process clause of the Fourteenth Amendment of the United States Constitution, and that henceforth defendants in such courts are entitled to have an attorney judge preside over all criminal proceedings involving charges which carry the possibility of a jail sentence, unless such right is waived by the defendant or his counsel."[13]

The *Gordon* decision had a "bombshell effect."[14] At the time of the decision, California's justice courts had jurisdiction over approximately 13,000 preliminary felony proceedings and 130,000 misdemeanors each year. Since non-attorney judges presided over 127 of these justice courts, the decision in *Gordon* created a true crisis in judicial administration. The AOC concluded that the caseload within the scope of *Gordon* and the justice courts presided over by non-lawyer judges required twenty-two new full-time, law-trained judges.

The author of the unanimous opinion in *Gordon* was Justice Louis Burke, a fact that furnishes a noteworthy facet of the decision. Justice Burke at the time was a national leader in judicial administration, having served as a founding member of the National Center for State Courts (NCSC) and as president of its board of directors, chair of the Section on Judicial Administration of the American Bar Association (ABA), and chair of the ABA Commission on Standards of Judicial Administration. It is inconceivable that he or the other justices of the Supreme Court were unaware of the bombshell dropped by the *Gordon* decision on judicial administration in California.

The response to *Gordon*, orchestrated by the Judicial Council and adopted by the legislature, was to create a new class of temporary circuit

justice court judges, all of whom would be lawyers and serve full time. These positions were filled by elevating incumbent lawyer judges of the justice courts to full-time judicial office and adding lawyers as full-time judges to several existing lay judge districts. These positions were temporary because the California Attorney General had petitioned the U.S. Supreme Court to review and reverse the *Gordon* decision. Such a reversal would eliminate the need for change in the justice court system.

Early in 1975, the U.S. Supreme Court declined to review the decision of the California Supreme Court in Gordon, and the twenty-two new circuit justice court judges began work.[15]

Steps subsequently were taken to require that all new justice court judges be attorneys. Aside from this, there were no further significant changes in the courts of limited jurisdiction until justice courts were eliminated entirely in 1994.

Early Efforts to Unify the Trial Courts

The 1950 reorganization of limited jurisdiction courts may have been, as Chief Justice Gibson said, the most significant reform in the judicial branch since statehood, but even before the *Gordon* decision efforts were under way to achieve another significant reform: unification of all trial courts into a single-level court of original jurisdiction in each county.

The concept was endorsed by the State Bar as early as 1946, but it was not until 1970 that unification received serious attention. Interestingly, it began as a new effort to further improve the courts of limited jurisdiction.

In 1970, the Judicial Council retained the consulting firm of Booz, Allen & Hamilton to study and prepare recommendations for improvements in the lower courts of California.[16] Following an extensive effort, Booz Allen recommended in 1971 that California "[e]stablish a single type of lower court, with a uniform countywide jurisdiction, to be called the county court, to replace present municipal and justice courts."[17]

While the lower court study was in progress, Chief Justice Donald R. Wright and Administrative Director of the Courts Ralph N. Kleps established the Select Committee on Trial Court Delay with nine members: three appointed by the Chief Justice, three appointed by the governor, and three appointed by the State Bar board of governors. The Select Committee had a one-year charter, a mandate to investigate the causes of

and recommend solutions for delay, and a full-time legal staff. At approximately the same time, Booz Allen's assignment was expanded to examine the possibility of unifying all trial courts.

The work on trial court structure of the Select Committee, Booz Allen, and the Judicial Council became closely interwoven.[18]

The ultimate conclusion and recommendations of Booz Allen were supported by extensive empirical research in the form of field visits, organizational and statistical analyses, questionnaires, and interviews. In addition, the scope of research was substantial, including, probably for the first time, a respectable attempt to document the total cost of operating California's trial courts. With barely concealed astonishment, the consultants identified the major organizational or managerial differences among the three types of trial courts:

> The financial burden of the Superior Court judges' salaries has been largely assumed by the state, while the salaries of Municipal and Justice Court judges are financed entirely by the counties in which these courts are located.
>
> The state financially supports and administers the retirement system for Superior and Municipal Court judges, while Justice Court judges, if members of any retirement system, are members of a county system.
>
> The sheriff supplies bailiffing to the Superior Court and, sometimes, to the lower courts, although the lower courts are more commonly served by marshals or constables.
>
> The county clerk is ex officio clerk of the Superior Court in most counties. The lower courts generally have their own court-appointed clerks. . . .
>
> The Legislature determines the salary levels of Superior and Municipal Court judges, while the compensation of Justice Court judges has been left to the decision of county Boards of Supervisors.
>
> The Governor appoints judges to fill Superior and Municipal Court vacancies, while Justice Court vacancies are filled by the Boards of Supervisors.[19]

After assessing alternative forms of organization, Booz Allen concluded and recommended to the Judicial Council that "a single-level trial court with one type of judge is ultimately the most desirable form for a unified trial court organization."[20] To implement this recommendation, the consultants proposed a three-stage approach commencing with creation of an

area administrative structure and unification of the justice and municipal courts. This was to be followed by establishment of the unified trial court system and conclude with the final stage, which would involve phasing counties in to a system of a single-level trial court with one level of trial judge assisted by subordinate judicial officers as needed.[21]

Traveling on a parallel track, the Select Committee on Trial Court Delay, drawing upon the information and recommendations generated by Booz Allen and its own research, "concluded that a unified trial court system is necessary in California and so recommends."[22] Key features of the Select Committee's recommendation were:

- Creation of a single trial court in each county with provisions for the position of associate superior court judge, to be filled by municipal court judges and justice court judges who have been members of the bar for at least five years
- Central administration with appointment by the Chief Justice of a chief judge in each county
- Regional administration with appointment by the Chief Justice of an administrative judge to supervise and assist the courts within the region, assisted by an area court administrator appointed by the Administrative Director of the Courts
- Provision for assignment of matters currently within the jurisdiction of municipal courts to associate superior court judges subject to the power of the chief judge to assign any matter to an associate superior court judge and the power of the area administrative judge to assign associate judges to serve as acting superior court judges for longer periods of time[23]

In support of these proposals, the Select Committee noted the jurisdictional differences among the three existing levels of trial courts and commented that "each unit in the trial court system generally determines its own managerial and operational policies" and functions independently of the others. It was also noted that "each judge is relatively autonomous in matters of court management" and that "the administrative direction of a presiding judge can be ignored by individual judges who feel that, as elected officials, they are entitled to operate with complete independence on such matters as working hours or work assignments."[24]

In further support, the Select Committee noted the trial court system was fragmented into 58 superior courts, 75 municipal courts, and 244 justice courts, 74 percent of which were single-judge courts. The

result of this large number of administratively separate judicial units was unnecessary expense, underutilization of existing judicial and nonjudicial manpower, the difficulties of coordinating over 360 separate units, limited opportunity for achieving economies of scale, fragmentation of financial resources, insufficient uniformity in procedure and practices, and uncoordinated use of the court facilities.[25]

The Judicial Council acknowledged these recommendations. The council also reviewed the 1950 reorganization of the courts of limited jurisdiction, the 1961 proposal of the legislative analyst to completely revise the trial court system by dividing the state into superior court districts, and various recommendations by national bodies to create single-level trial courts.[26]

The Judicial Council then joined in the indictment of the existing system.

> Historically, California has had a trial court system consisting of a multiplicity of relatively uncoordinated tribunals, nearly autonomous in administration, with duplicate administrative and judicial support structures. This fragmented system has generally resulted in a serious lack of uniformity in the administration of the various trial courts and in local court procedures and practices. More importantly, it has prevented the maximum utilization of judicial manpower to meet the modern problems of growing judicial workloads and of increasing congestion and delay in many trial courts. Additionally, the present system has fragmented the financial resources available to the courts and, at the same time, it has permitted a needless duplication of judicial functions. It has also resulted in the relatively uncoordinated use of available court personnel and related facilities, thus precluding economies that could be achieved in an integrated judicial system.[27]

The council, however, deferred formulating recommendations pending an opportunity for study and comment and recommended tentatively:

- Creation of a "Judicial Code" to contain future statutes regarding reorganized judicial structures
- Legislation to establish an area administrative structure for court administration
- A constitutional amendment and implementing legislation to create a system of unified county courts that would supersede and encompass the existing municipal and justice courts[28]

These measures proposed by the Judicial Council were rejected by the legislature.[29]

Included in the mandate to the Select Committee on Trial Court Delay was the direction to report to the "Judiciary, Governor, Legislature and people of California."[30] Since its reported recommendations proposed change that was both more extensive and more immediate than that proposed by the Judicial Council, the Select Committee, as part of its mandate, sought legislative action to enact a single-level trial court system but also was unsuccessful.[31]

Why did these several proposals die in the California Legislature? Later history in this area teaches that major change in court structure involves political forces both varied and powerful. However, it is fair to surmise that in the 1970s there were at least two insurmountable forces opposing change.

First, many superior court judges objected for an array of reasons, stated and unstated. In fact, an ad hoc council of presiding judges from the larger superior courts was cobbled together for the sole purpose of defeating the proposals of the Judicial Council and Select Committee. The second source of opposition centered around the governor's office but probably also involved considerable legislative sentiment. The primary source of this opposition was the threat posed to the system of judicial appointments. With two levels of trial courts, the governor could fill a superior court vacancy by appointing a municipal court judge, thus creating a municipal court vacancy and the opportunity for a second gubernatorial appointment. In crude vernacular, every superior court vacancy gave the governor "two pops" of patronage instead of just one, as would be the case with a single level of trial court.

Legislative rejection of the proposals by the Judicial Council and Select Committee, whatever the reason, effectively terminated consideration, although there were subsequent unsuccessful salvage efforts.[32]

Trial court reorganization lay fallow following these efforts. However, this field revived and again began to produce in the late 1970s.

The first sign of revival was the "El Cajon experiment." Legislation proposed in 1977 authorized a five-year experiment in the El Cajon Municipal Court in San Diego County to test the desirability of permitting a municipal court to hear certain matters within the jurisdiction of the superior court.[33] Concerns about the proposal's constitutionality

led the presiding judge of the superior court to request that Chief Justice Rose Elizabeth Bird assign the El Cajon Municipal Court to hear superior court matters, which she did, using the Chief Justice's powers of assignment.[34]

Although the proposed legislation passed effective January 1, 1978, it was never central to the experiment, which actually began in 1977 and was expanded in 1978 and 1979 to other municipal courts in San Diego County.

By 1982, the Judicial Council concluded that the experiment had assisted the superior court at a level roughly equivalent to three or four judicial positions without adversely affecting the municipal court calendars. The council noted but did not seem deterred by objections by some attorneys that consent of the parties should be required before a municipal court judge hears a superior court matter. The council concluded by recommending that counties with conditions similar to those in San Diego County should replicate the program.[35]

Close on the heels of the Judicial Council's endorsement of the El Cajon experiment was a legislatively proposed constitutional amendment that had the potential to significantly alter trial court structure,[36] appearing on the November 1982 ballot as Proposition 10. If passed, it would permit the legislature to authorize a county to unify the municipal and superior courts with the approval of a majority of county voters. Justice court judges also could become superior court judges if not prohibited by the legislature.

Supporters argued this would enhance efficiency, improve accessibility, and reduce costs. They relied on the El Cajon experiment for support and claimed endorsements by the County Supervisors Association and California Trial Lawyers Association, among others. Voter control at the county level was emphasized.

Opponents responded that costs would be increased by awarding the salary of a superior court judge to hundreds of lower court judges and that the municipal courts would be destroyed as the "people's court." They claimed they were joined in opposition by the State Bar and California District Attorneys Association.[37]

The voters of California rejected the proposal by a margin of almost two to one.

Thanks to a series of constitutional and statutory changes proposed by the Judicial Council and promulgated a few years later, improvements

continued notwithstanding the rather resounding defeat of Proposition 10. Principal among these enactments was Proposition 91 in 1988, which effected the following changes:

- Made the jurisdiction of justice courts equal to that of municipal courts
- Subjected justice court judges to the same rules of judicial conduct and discipline as municipal court judges
- Provided for identical terms of office and elections for justice and municipal court judges

Proposition 91 further declared justice courts to be courts of record, required justice court judges to have the same minimum experience as municipal court judges, and prohibited justice court judges from practicing law. Minimum experience in this context was defined as being a member of the State Bar or having served as a judge in a court of record in California for five years immediately preceding selection.[38]

Following adoption of Proposition 91, judges in part-time justice courts were granted the option of participating in the Judicial Council's Certified Justice Court Judge Program. Participants received full-time salaries in exchange for full-time work. Certified judges were required to be available to serve on assignment whenever their services were not needed in their home courts. Judges appointed or elected after January 1, 1990, were required to be certified and to serve full time.[39]

Coordination

Coordination is a subplot in the unification story but an important one that begins with the Trial Court Realignment and Efficiency Act of 1991 by Assembly Member Phillip Isenberg, chair of the Assembly Judiciary Committee. It has been suggested that coordination was the phoenix risen from the ashes of Proposition 10 in 1982. Whether or not that is accurate, it is difficult to deny that coordination was an important, perhaps vital, prelude to unification.

After a series of findings regarding the financial plight of government and the fiscal aspects of court funding, the legislature declared in the act its intention to "improve the coordination of trial court operations through a variety of administrative efficiencies, including coordination agreements between the trial courts, and thereby achieve substantial savings in trial court operations costs."[40]

Concurrent with a promised increase in state funding for trial courts, the act further provided: "On or before March 1, 1992, each superior, municipal, and justice court in each county, in consultation with the bar, shall prepare and submit to the Judicial Council for review and approval a trial court coordination plan designed to achieve maximum utilization of judicial and other court resources and statewide cost reductions in court operations. . . ."[41]

The act also directed the Judicial Council to adopt standards applicable to coordination, specifying in detail the topics to be covered by these standards, and further directed the trial courts to submit reports to the Judicial Council on progress toward achieving the cost-reduction goals associated with coordination plans.[42]

Enactment of this legislation precipitated a flurry of activity within the judicial branch of government. It started with adoption by the Judicial Council of Standards of Judicial Administration 28 and 29 suggesting, among other things, techniques for implementing coordination in areas such as judicial resources, calendaring and case processing, court support staff and services, and facilities.[43] These standards were developed by the Advisory Committee on Trial Court Coordination Standards, appointed by Chief Justice Malcolm M. Lucas. The Chief Justice also appointed an Advisory Committee on Trial Court Coordination Plan Review to develop criteria for approval as well as a plan to review the more than 200 anticipated court coordination plans required by the act.[44] These efforts, of course, were staffed by the AOC.

By November 1992 the Judicial Council had approved all but one of the initial coordination plans submitted by the trial courts, and that last one was approved early in 1993.[45] But the road to full coordination meandered and was bumpy. Although the Judicial Council repeatedly stated that it "unequivocally supports coordination,"[46] implementation was easier said than done.

Two additional Judicial Council entities subsequently were required because of the varying levels of coordination compliance by trial courts and the resulting frustration of the Judicial Council: the Trial Court Coordination Evaluation Committee and the Select Coordination Implementation Committee. With the benefit of "almost four years of study and assessment by scores of judges, administrators, and outside consultants,"[47] the Select Coordination Implementation Committee, working against a ninety-day deadline imposed by the Judicial Council, recommended for

council approval in 1995 a package of proposed rules, standards, and statutes that significantly revised and refined coordination. Among the proposed "minimum levels of coordination in each county" were required creation of a coordination oversight committee responsible for planning and governance in each county, compulsory adoption of a rule in each county "to coordinate judicial activities in order to maximize the efficient use of all judicial resources," integration of "all direct court support services for all courts within a county," uniform local rules, unified budgets for all trial courts in a county, and a single executive officer with countywide responsibility.[48]

The ultimate result was that in 1996 the Judicial Council was able to report that all fifty-eight counties had coordination plans that met council standards and guidelines and that those plans had been approved by the Judicial Council without exception.[49]

Unification Revived

As coordination was introduced, and that story within a story began to unfold, there were contemporaneous efforts to resurrect the subject of trial court structure. The most prominent effort at the time was Senate Constitutional Amendment 3, proposed in 1992 by Senator Bill Lockyer, which would have unified all trial courts. Following introduction of this proposal, Senator Lockyer invited comment by the Judicial Council, which, in turn, referred the matter to its advisory committees composed respectively of trial court presiding judges and court administrators. In addition, the Judicial Council, anticipating development of recommendations on trial court unification, conducted an extensive program of soliciting comment from and promoting consideration by a wide range of stakeholders in the California judicial system. Input was also sought from judges in other states with unified trial courts.

The presiding judges and court administrators warmed to their tasks. They created a joint subcommittee, chaired by Roger Warren, presiding judge of the Sacramento Superior and Municipal Courts and later to become president of the National Center for State Courts, to identify issues regarding unification and to seek consensus on addressing those issues. The subcommittee submitted to the respective bodies and ultimately the Judicial Council a report titled *Trial Court Unification: Proposed Constitutional Amendments and Commentary,* dated September 11, 1993. That report contained recommendations that would, among other things:

- Merge superior, municipal, and justice courts into one level of trial court called the district court
- Direct the legislature to divide the state into district courts with one or more counties per district
- Provide for districtwide election of judges
- Confer on the Judicial Council "power to promulgate rules of court administration" whether consistent with statutes or not
- Provide for assignment of judges to other courts if the caseload of that judge's court did not support the number of judicial positions[50]

This report subsequently was presented on behalf of the two advisory bodies at the Judicial Council's 1993 Strategic Planning Workshop. Without taking a position on whether to support SCA 3, the council informally adopted the amendments to SCA 3 proposed in the report along with a couple added by the council. It endorsed seeking legislative actions to implement the amendments as well as referring the amended version for review by the California Law Revision Commission, which is a statutory entity that assists the legislature to keep the law up to date and in harmony with modern conditions.[51] The council subsequently deferred action on the merits pending assurances that the requested amendments had been made and until further information could be gathered regarding fiscal and other impacts of unification.[52]

The Judicial Council's request for further assessment of impacts led to an analysis by the National Center for State Courts of the financial and policy consequences of trial court unification.[53] The overall conclusion of the NCSC was that unification offered net savings of at least $16 million and that "[i]t is impossible to systematically consider the financial and operational impact of unification and not come to the conclusion that SCA 3, if adopted, will lead to major improvements in the California court system."[54] In support of this broad conclusion, the NCSC observed that beneficial financial effects would flow from cost avoidance and more coherent management. Dividends from unification predicted by the NCSC included more efficient allocation of judicial officers, more uniformity in rules, improved caseflow management, improved financial management of court resources, one management policymaking structure, melding court personnel in one system, and maximizing the use of existing facilities.

The Law Revision Commission, at the behest of the Judicial Council and the request of the legislature, examined the proposed SCA 3 for the

purpose of developing recommendations concerning implementation of trial court unification. The commission found that the structure of SCA 3 was "basically sound to accomplish its objective of trial court unification."[55]

The commission also recommended a series of revisions while disclaiming any opinion regarding "the wisdom or desirability of trial court unification."[56] The tone of the commission's report, however, was positive and at times reinforcing. For example, the commission expressed the belief "that elevating municipal and justice court judges to the unified court bench, as contemplated in SCA 3, would not pose a serious threat to the quality of judicial decisionmaking in California."[57] This rebutted the critics of unification who thought that municipal court judges lacked the experience, and perhaps the skill, to be entrusted with the presumably more important or complex cases in the superior courts.

As the quest for more information and analysis continued, opposition in various forms surfaced in the legislative process. By May 1994 it was reported that an Assembly member had continuing concerns about the effects of countywide elections on candidates for judicial office who were from ethnic minority backgrounds. Appellate judges had an array of objections.[58] The governor's staff opposed SCA 3 due to concerns around the federal Voting Rights Act and possible reduction of the pool of applicants for judicial office. They also favored coordination.[59]

SCA 3 ultimately was approved by the Senate but failed in the Assembly. It is appropriate, however, to acknowledge the contribution of the debate around SCA 3. It laid important groundwork and provided a forum within the court family to air issues and exchange viewpoints. It also took the momentum and success of coordination to the next logical step of unification. SCA 3 performed another important role by proving, yet again, that compulsory unification was not politically feasible.

A Step Toward Unification

In 1994 the California Legislature proposed and voters passed Senate Constitutional Amendment 7, which finally created statewide a single level of limited jurisdiction courts by converting justice courts to municipal courts. Noting that the measure "neither increases nor decreases the current number of judges, courts, or judicial districts," proponents of the measure successfully argued that justice courts had become identical with municipal courts in everything but name.[60] This appeared to be settling for half a loaf but proved to be another important step toward unification.

Unification Achieved

In 1995 Senator Lockyer introduced Senate Constitutional Amendment 4, another measure that would open the door to unification of California's trial courts into a single level. SCA 4 proposed numerous conforming or implementing changes in the California Constitution, but at the heart of the measure was a remarkably simple provision: "[T]he municipal and superior courts shall be unified upon a majority vote of superior court judges and a majority vote of municipal court judges within the county. In those counties, there shall be only a superior court."[61]

This provision for local option reflected the lesson from SCA 3 that compulsory unification was doomed. Placing the destiny of unification on a local, county basis and placing control of that decision in the hands of a majority of the judges in both the municipal and the superior courts served the further important purpose of alleviating the concern of Chief Justice Ronald M. George that immediate and universal unification of all trial courts would be inappropriate and thus enabling him to support the measure. This provision apparently was persuasive with the legislature, which adopted SCA 4 and made it Proposition 220 at the June 1998 general election.

The battle for voter approval or rejection of the measure was interesting. Proponents embraced California's recent three-strikes law in criminal sentencing and argued that unification would make judges available to handle the explosion in criminal litigation under that law. They went on to argue that it would save taxpayer money, citing the NCSC's analysis that unification of the trial courts in California would save a minimum of $16 million by reallocating judicial resources. These arguments were buttressed by assuring voters of increased efficiency and flexibility in utilizing the resources of the trial courts.[62]

Opponents responded that the supporters of Proposition 220 actually had opposed the three-strikes law and that, in any case, "three strikes" had not increased criminal litigation. They further argued that Proposition 220 would increase the cost of the court system by increasing municipal court judges' salaries by $9,320 per year when they were elevated to superior court judgeships, reduce judges' accountability since superior court judges are elected countywide rather than from smaller districts, and destroy the existing two-tier system and with it cause the loss of municipal courts as the "people's court."[63]

It is noteworthy that the Judicial Council formally endorsed Proposition 220 and Chief Justice George and Administrative Director of the Courts William C. Vickrey were in active support.

While traditionally not viewed as a source of advocacy on ballot propositions, the legislative analyst was remarkably supportive in the analysis of Proposition 220:

> The fiscal impact of this measure on the state is unknown and would ultimately depend on the number of superior and municipal courts that choose to consolidate. To the extent that most courts choose to consolidate, however, this measure would likely result in net savings to the state ranging in the millions to the tens of millions of dollars annually in the long term. The state could save money from greater efficiency and flexibility in the assignment of trial court judges, reductions in the need to create new judgeships in the future to handle increasing workload, improved management of court records, and reductions in general court administrative costs. At the same time, however, courts that choose to consolidate would result in additional state costs from increasing the salaries and benefits of municipal court judges and employees to the levels of superior court judges and employees. These additional costs would partially offset the savings.[64]

Apparently, a great many voters were persuaded, and Proposition 220 passed by a margin of almost two to one—the same margin by which Proposition 10 lost in 1982.[65]

The formalities of implementing unification at the county level were provided by the Judicial Council.[66] The legislature prescribed that a properly executed vote to unify constituted an irrevocable choice that could not be rescinded or revoked.[67] This fulfilled one of the stated purposes of SCA 4, which was to "permit the Legislature to provide for the abolition of the municipal courts," and it was constitutionally prescribed that upon a vote to unify "the judgeships in each municipal court in that county are abolished."[68]

The vast majority of California trial judges apparently favored and were ready for unification. Fifty of the fifty-eight counties voted to unify their trial courts into a single countywide superior court by December 31, 1998, less than two months after passage of Proposition 220.[69] By the end of the year 2000, five of the remaining eight counties also had voted to

unify. Among the remaining three counties, Monterey and Kings Counties were unable to act until approval could be obtained by the U.S. Department of Justice that unification would comply with the terms of the federal Voting Rights Act of 1965. By June 2000, Kern County also unified, followed by Monterey and Kings Counties before the end of 2001.[70]

Although a bit beyond the year 2000 perimeter of this history, the final step in unification occurred on February 8, 2001, and is worth noting. On that date, Chief Justice George administered the oath of office to the last four municipal court judges in California, who thereby became judges of the Superior Court of California, County of Kings. That court thereby became the fifty-eighth and last to unify.

The high level of acceptance should not camouflage the fact that unification was in many jurisdictions a hard-fought battle. Generally, municipal court judges overwhelmingly favored unification and the issue turned on whether a majority of the superior court judges in each county could be persuaded to vote in favor of unification.

Nowhere was the question of unification more complex or intense than in Los Angeles County. Consider the size of the task. The superior court, already reputed to be the largest trial court in the world, had 238 judges, 62 commissioners, and 15 referees prior to unification. Headquartered in downtown Los Angeles, the court also had eight branch courts scattered around the county with several locations situated many miles from the main court. The farthest branch, in Lancaster, was eighty miles from downtown Los Angeles. Judges ran for office and were elected countywide.

There were twenty-four separate and autonomous municipal courts in the county, staffed by 190 judges and 76 commissioners. Judges ran for office and were elected from the districts served by their respective courts.

The combined superior and municipal courts would have 650 courtrooms situated in more than sixty buildings throughout the county. Of course, unification of the courts would also require merging hundreds of support staff members.

Among the many issues permeating the unification debate in Los Angeles was whether a single court with 428 judges and 153 subordinate judicial officers operating in dozens of locations could function effectively. Resolution of this issue and its extended family of issues stretched over many months, multiple analyses, protocols between the courts, and sev-

eral ballots before a majority of judges on both levels voted to unify by a vote in the superior court of 153 to 75 and in the municipal court of 165 to 16. This was a result strongly sought and advocated for by the Judicial Council and the Chief Justice.[71]

This cursory description does little justice to the endless details and anecdotes regarding the creation of California's single largest court, but it does provide dramatic evidence of the challenge in merging the trial courts in the fifty-eight counties of California.

Unification, as a result of the often-divisive process of unifying, carries heavy baggage in terms of calamities predicted by opponents and dividends promised by proponents. For example, more than twenty-five years prior to the adoption of SCA 4, it was argued that unification would be "a major step toward combating the existing problems of trial court structure, management, organization, size, caseload, backlog, and distribution of judicial resources."[72] Unification, it was further asserted, would deliver a simplified court structure, comprehensive countywide jurisdiction, improved administration, maximum utilization of judicial resources, and increased uniformity.[73] Later supporters of unification also argued there would be substantial fiscal savings as a result of increased efficiencies achieved through unification.

By the year 2050, whether these aspirations are fulfilled should be clear. In the meantime, it appears likely that proponents of unification will be vindicated. To cite one of several encouraging assessments, Chief Justice George, addressing a joint session of the California Legislature early in 2001, advised that:

> The speed and enthusiasm with which unification was embraced by the trial courts has been more than justified by the benefits that it has brought. The prime anticipated benefit of unification was the flexibility it would afford in using available judicial and administrative resources. Not only has this flexibility turned out to be tremendously useful in expanding existing services, but another benefit has emerged as well: it has permitted a great amount of innovation, allowing the public's needs to be met by new and previously unavailable means.
>
> What often has been striking has been that the apprehension in some quarters that countywide unification would lead to less responsiveness to local concerns not only has proved unfounded, but the opposite has occurred.[74]

An independent assessment of the impacts of unification, commissioned by the AOC, also has reported favorable results:

> Participants in this study overwhelmingly agreed that unification of the trial courts has been a positive development for the California judicial system—one that has benefited the communities the courts serve as well as the judiciary and court staff. The most often cited improvements that have resulted from or been facilitated by trial court unification are:
>
> - Greater cooperation and teamwork between the judiciary, other branches of government, and the community.
> - More uniformity and efficiency in case processing and more timely disposition of cases.
> - Enhanced opportunities for innovation, self-evaluation and re-engineering of court operations.
> - More coherence to the governance of the courts and greater understanding by other branches of government and the public.
> - Courts becoming a unified entity and speaking with one voice in dealings with the public, county agencies, and the justice system partners.
> - Greater public access and an increased focus on accountability and service.[75]

The Distance Traveled

Before leaving the subject of structure and the promise of unification, it is appropriate to pause and reflect on the progress made during the last fifty years of the twentieth century. Thanks to the culminating efforts of Chief Justice George and Administrative Director Vickrey, acting in concert with a large host of contributors, California concluded the era with fifty-eight superior courts vested with authority and responsibility for all matters of general jurisdiction. By contrast, on January 1, 1950, we had fifty-eight superior courts with limited jurisdiction and a collection of other trial courts as described at the time by Chief Justice Gibson:

> There are 768 courts in this state which exercise jurisdiction inferior to that of the superior court. They may be divided into two groups—city courts and township courts, the basis of the classification being the political subdivision for which the court is organized, that is, whether it is organized in a city or in a judicial township. Each of these two groups may in turn be divided into

types of courts. There are six kinds of city courts: municipal courts of the San Francisco type, a second kind of municipal court such as is established in San Jose and Tulare, two kinds of police courts, city justices' courts, and city courts. There are, as you know, two types of township courts: Class A justices' courts and Class B justices' courts. Thus, there are eight different types of courts below the superior court.

Municipal courts of the first type mentioned, established pursuant to section 11, article VI of the Constitution, are found in San Francisco, Sacramento, Los Angeles, Long Beach, Santa Monica, Pasadena, Compton, Inglewood and San Diego. Although the organizational basis of the municipal court is a city, that court exercises exclusive jurisdiction within the county in certain cases and is generally supported by the county.

There are two municipal courts in the state organized pursuant to section 8½ of article XI of the Constitution, which are very different from those named above. One is established in San Jose and the other in Tulare. Neither of these courts, however, is called a municipal court, both being designated in the city charters as police courts. Accordingly, when I mention municipal courts hereafter, I will be referring to the type established in cities such as San Francisco and Los Angeles.

Police courts are established in 45 cities in this state. The source of the jurisdiction of 43 of those courts is generally found in city charters, and the authority to create them is found in section 8½ of article XI of the Constitution. The jurisdiction of the police courts in the various cities therefore differs according to the charter provisions of each particular city. A second kind of police court has been created by the Legislature pursuant to its general authority to establish inferior courts in incorporated cities. Such courts are located in the cities of Alviso and Gilroy, which are incorporated under special legislative acts.

In four cities, Berkeley, Oakland, Alameda and Stockton, there are city justices' courts authorized by statute, and they, of course, are not to be confused with township justices' courts.

The most numerous kind of city court is called a "city court." There are 243 of these courts in fifth and sixth class cities, and they are successors of the old recorders' courts.

The township courts, as you know, are called justices' courts. They are divided into Class A and Class B courts. The classification is, of course, dependent upon population, and the difference between the courts is largely one of jurisdiction. There are 42

> Class A township justices' courts and 423 Class B township justices' courts. The Class A justice's court may also exercise exclusive county-wide jurisdiction in certain cases, although its organizational basis is a judicial subdivision of the county.[76]

Fifty years later Chief Justice George placed the progress during this half-century into appropriate perspective when, upon completion of unification, he remarked: "Rather than concluding that Kings County's unification primarily signifies an ending, now that this day has arrived, I suggest instead that the proper image is that of a phoenix—of a rebirth of California's court system."[77]

Notes

[1] Judicial Council of California, *Twelfth Biennial Report of the Judicial Council of California to the Governor and the Legislature* (1948), p. 14.

[2] California Statutes 1947, chapter 47, p. 3448.

[3] Judicial Council, *Twelfth Biennial Report* (1948), p. 15.

[4] Chief Justice Phil S. Gibson, Reorganization of Our Inferior Courts, speech to the Stanislaus County Bar Association (October 28, 1949), reported in *Journal of the State Bar of California* 24 (1949), p. 384.

[5] Judicial Council, *Twelfth Biennial Report* (1948), p. 15.

[6] Id., pp. 17–20.

[7] Id., p. 18.

[8] California Statutes 1949, chapter 1286, pp. 2268–71.

[9] William Wirt Blume, "California Courts in Historical Perspective," *Hastings Law Journal* 22 (1970–1971), pp. 181–85.

[10] Chief Justice Gibson, Reorganization of Our Inferior Courts, p. 382.

[11] For example, Dorothy W. Nelson, "Should Los Angeles County Adopt a Single-Trial-Court Plan?" *Southern California Law Review* 33 (1960), p. 119.

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

[13] Id., p. 326.

[14] Ralph N. Kleps, "Contingency Planning for State Court Systems," *Judicature* 59 (1975), p. 64.

[15] Id., pp. 64–65.

[16] Booz, Allen & Hamilton Inc., *California Lower Court Study: Final Report* (September 15, 1971).

[17] Id., p. 50.

[18] For example, the Select Committee on Trial Court Delay's Subcommittee on Court Management, including Judge Homer B. Thompson, judge of the Superior Court of Santa Clara County and chair of the Select Committee,

served as the advisory body for the Booz Allen unified court study, along with Ralph N. Kleps, Administrative Director of the Courts, and Larry L. Sipes, the author of this chronicle, who was at the time director of the Select Committee.

19 Booz, Allen & Hamilton Inc., *Unified Trial Court Feasibility Study: Final Report* (December 3, 1971), pp. 3–4.

20 Id., p. 60.

21 Id., pp. 68–111.

22 [California] Select Committee on Trial Court Delay, *Report 4* (February 1972), p. 9.

23 Id., pp. 9–25.

24 Id., pp. 15–16.

25 Id., pp. 17–18.

26 Judicial Council of California, *Annual Report to the Governor and the Legislature* (1972), pp. 14–15.

27 Id., p. 13.

28 Id., pp. 17–21.

29 The Judicial Council was instrumental in arranging introduction of proposed legislation to create the countywide courts of limited jurisdiction and administration of the court system (Senate Constitutional Amendment 15 and Senate Bill 296, Senator Grunsky) but these measures also failed in the legislature.

30 [California] Select Committee on Trial Court Delay, *Report 1* (July 1971), p. 3.

31 To achieve this goal, Senate Constitutional Amendment 41 and Senate Bill 852 by Senator Holmdahl and companion measures by Assembly Member Hayes were introduced during the 1972 legislative session to implement the Select Committee on Trial Court Delay's recommendations. None of these measures received favorable action by the legislature.

32 For example, the *Report of the Advisory Commission to the Legislative Committee on Structure of Judiciary* (1974), a report by the Judicial Council's Management Committee recommending a single, unified superior court with two levels.

33 Senate Bill 1134 (1977, effective January 1, 1978); California Statutes 1997, chapter 1051, pp. 3180–86.

[34] California Constitution, article VI, section 6.

[35] Judicial Council of California, Reports and Recommendations (May 1, 1982), tab 7; Court Management Committee, *Report and Recommendations Concerning the "El Cajon Experiment"* (April 22, 1982).

[36] Assembly Constitutional Amendment 36 (1982).

[37] *California Ballot Pamphlet, General Election* (November 2, 1982), pp. 38–41.

[38] Limited exemptions extended to incumbent justice court judges who held office on January 1, 1988, but this exemption expired on January 1, 1995. See *California Ballot Pamphlet, General Election* (November 8, 1988), pp. 52–55.

[39] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1994), p. 8.

[40] California Statutes 1991, chapter 90, section 2(b)(3), p. 406.

[41] California Statutes 1991, chapter 90, section 6, p. 407, adding section 68112 to the California Government Code.

[42] Id., pp. 407–9.

[43] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1992), volume 1, pp. 7–10.

[44] Id., p. 8.

[45] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1993), volume 1, p. 18.

[46] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1996), p. 21.

[47] Id., p. 19.

[48] Id., pp. 19–20.

[49] Judicial Council of California, *Year in Review* (1996), p. 16.

[50] Judicial Council of California, Joint Subcommittee of Trial Court Presiding Judges and Court Administrators Advisory Committees, "Trial Court Unification: Proposed Constitutional Amendments and Commentary" (September 11, 1993), pp. 4–6, in *Reports and Recommendations* (September 23, 1993), tab 3.

[51] Judicial Council of California, "Report on Trial Court Unification: Senate Constitutional Amendment No. 3 (Lockyer)" in *Reports and Recommendations* (September 23, 1993), tab 3.

[52] See, for example, Judicial Council of California, minutes (September 23, 1993), pp. 3–5.

[53] Judicial Council, *Annual Report* (1994), p. 6.

[54] Robert W. Tobin et al., *California Unification Study* (Denver: National Center for State Courts, 1994), p. 4.

[55] California Law Revision Commission, "Trial Court Unification: Constitutional Revision (SCA 3)," *California Law Revision Commission Reports, Recommendations, and Studies* 24 (1994), p. 5.

[56] Ibid.

[57] Id., p. 35.

[58] For example, California Legislature, *Joint Hearing on Trial Court Unification Under SCA 3* (October 8, 1993), pp. 31–41.

[59] Judicial Council of California, "Trial Court Unification: Senate Constitutional Amendment No. 3 (SCA 3)" in *Reports and Recommendations* (May 17, 1994), tab 5; *Annual Report to the Governor and the Legislature* (1995), p. 21.

[60] *California Supplemental Ballot Pamphlet, General Election* (November 8, 1994), p. 16.

[61] California Constitution, article VI, section 5(e).

[62] *California Voter Information Guide and Ballot Pamphlet, Primary Election* (June 2, 1998), pp. 10–11.

[63] Ibid.

[64] Id., p. 9.

[65] California Secretary of State, *Statement of Vote* (June 2, 1998), p. viii.

[66] California Rules of Court, rules 701–709.

[67] California Government Code, section 70201.

[68] California Constitution, article VI, section 23(a) and (b).

[69] Judicial Council of California, Administrative Office of the Courts, *Invested in Justice: 1999 Annual Report*, p. 4.

[70] Judicial Council of California, Administrative Office of the Courts, *Special Report—Proposition 220* (June 12, June 29, and July 16, 1998).

[71] Judicial Council of California, Resolution of July 15, 1999, urging unification.

[72] Select Committee on Trial Court Delay, *Report 4*, p. 20.

[73] Ibid.

[74] Chief Justice Ronald M. George, State of the Judiciary Address, California Legislature (March 20, 2001), p. 5.

[75] American Institutes for Research, *Analysis of Trial Court Unification in California—Final Report* (September 28, 2000), p. vii.

[76] Chief Justice Gibson, Reorganization of Our Inferior Courts, pp. 384–85.

[77] Administrative Office of the Courts, Public Information Office, "California Courts Make History, as Last County Unifies Trial Courts Today," Press Release Number 14, February 8, 2001.

Chapter 6
Stable Funding of the Trial Courts

Overview

The story of court funding is a story of trial courts. The state traditionally has paid the expenses of the appellate courts, Judicial Council, and Administrative Office of the Courts (AOC) and continues to do so.

Court funding also is a story of both revenue and expenses.

As of 1950, the California Legislature controlled both the revenues and expenses of trial courts. In general, the state paid most of the compensation of superior court judges and took a relatively small slice of the revenues. The balance of the expenses for the superior, municipal, and justice courts fell with minor exceptions upon counties and cities, which also divided the lion's share of the revenues.

The proposals for unification in the 1970s were accompanied by proposals for full state funding of the courts. Although these proposals were unsuccessful, the seeds were planted.

Proposition 13 in 1978 limited property taxation by local government, which quickly began to pinch budgets. The search for ways to reduce local expenses nourished the seeds of state funding for the courts.

Beginning in the mid-1980s, there was a series of measures in the legislature to increase the state's contribution to payment of trial court expenses. In 1988 the legislature took the first serious step in this direction by appropriating $300 million in the form of block grants to counties. The underlying philosophy was that all citizens of the state should enjoy equal access to the courts free from disparities in justice that might flow from local funding.

By this time, counties were paying almost 90 percent of all trial court costs but receiving only 50 percent of the revenues with a shortfall of approximately $250 million of expenses over revenues.

For the next several years, state funding was a dance of one step forward and two back, due for the most part to economic recession in the early 1990s.

The Judicial Council took the initiative by, among other things, creating in 1990 an advisory body on trial court funding. Concurrently, the legislature enacted the Trial Court Realignment and Efficiency Act of 1991, which introduced trial court coordination and a statewide search for reductions in court costs.

The Judicial Council advanced matters by establishing the Trial Court Budget Commission (TCBC) in 1992. This in turn enabled the Judicial Council and AOC in 1994 to present to the governor and legislature the state's first consolidated trial court budget. The process of budget refinement by the judicial branch continued, as did the failure of the legislature and governor to fulfill promises of increased trial court support.

Matters changed course dramatically with passage of the Lockyer-Isenberg Trial Court Funding Act of 1997, which consolidated all court funding at the state level and conferred responsibility on the Judicial Council to allocate state funds to the courts.

Revenues, of course, were not ignored. The legislature increased civil filing fees, commandeered a larger share of all revenues, and compelled the larger counties to continue contributing based on 1994 trial court expenses.

Two issues were unresolved by the shift to state funding, but substantial progress was being made toward resolution by century's end. First was the status of court personnel, who had been employees of local government. Second was responsibility for court facilities, which traditionally had been vested in local government.

The ultimate fruit of state funding appears attributable in fair measure to governance of the judicial branch in the 1990s. The judicial commitment, through strategic planning, to improving access, fairness, and diversity suggests that the other branches of government were reassured that the realignment in funding would modernize judicial administration practices, as promised by the Judicial Council and AOC.

By the close of the last century, state funding of the entire judicial branch was substantially achieved. There are many reasons this is a monument to the improved administration of justice, but the heart of the matter was captured by Chief Justice Ronald M. George in a March 2001 State of the Judiciary address to the California Legislature:

> The pre-existing system, with funding bifurcated between the counties and the state, bred uncertainty for the courts and discouraged a sense of commitment by either funding partner. Disparities in the quality of justice dispensed across the state were common and erratic. Local courts were on the verge of closing, with staff cutbacks and unfunded payrolls, facilities in a state of dangerous disrepair, services to the public drastically curtailed, and, ultimately, the entire administration of justice at risk.
>
> Why does a funding source matter? Quite simply, state funding allows courts to cope in coordinated fashion with change and the public's needs. But stable state funding has done far more than relieve current anxiety and uncertainty: it has given us room to think ahead and to plan, and it has promoted consistency.
>
> Instead of bracing to react to emergencies and shortfalls beyond their control, our courts can look at current circumstances, project future needs, and decide how best to meet them in orderly fashion. And we also are better positioned to deal with the inevitable crises that occasionally confront our court system.[1]

Similar to unification, the struggle with funding revolves around the trial courts since the appellate courts, the Judicial Council, and the Administrative Office of the Courts traditionally have been supported by the state. Also similar to unification, local interests were prominent and nowhere more so than in issues of revenue.

Revenues

Acquiring the funds with which to operate is only one part of the financial picture of the courts. Revenues and the distribution of those revenues are the remainder of the picture. Leaders within the judicial branch of government traditionally have objected to and resisted efforts to treat courts as revenue-generating mechanisms. Nonetheless, policymakers in the legislative and executive branches, at both state and local levels, have kept a keen eye on the moneys collected by the courts and have had a great deal to say about the use of those moneys.

There are three main revenue streams for courts:

- *Fines* imposed on persons guilty of violating criminal statutes or committing infractions. Penalties for traffic violations, including parking infractions, are the largest source of fines.
- *Fees* charged by the court for initiating legal proceedings or key steps in legal proceedings, such as filing an appeal after an adverse trial court judgment.
- *Forfeitures* of funds deposited with the court to secure action by a litigant. Upon failure to perform that act, the litigant's deposit is forfeited to the court. The most common example of forfeiture is failure to appear at a scheduled court event in criminal proceedings with the result that bail, or a bail bond, is forfeited to the court.

There are additional sources of revenues such as charges for photocopying and certifying court records, but these are minor when compared to the three main revenue streams.

Trial Court Funding in 1950

Before plunging into the thicket of court finance at the midpoint of the last century, it is useful to recall that prior to reorganization of the lower courts in 1950 there were more than 700 judicial entities operating under various titles, as vividly described by Chief Justice Phil S. Gibson.[2] At the beginning of 1950, according to the Judicial Council, there was a close correlation between the provisions made for the financial support of these "inferior courts" and for the disposition of fines and forfeitures collected by them. The council reported that "revenue from misdemeanors is distributed to, or divided between, cities and counties largely according to whether the city or county employs the officer making the arrest or drawing the complaint or bears the expense of court maintenance."[3]

While accurate, this summary of conditions obscured the bewildering complexity of lower court financing.

- A municipal court was principally supported by the county in which the court was located, subject to partial reimbursement from the city in which it was situated.
- A township justice court was maintained by the county alone.
- A city justice court was supported by the city in which it was established unless the city charter also established a police court, in which case the cost of the city justice court was borne by the county.

- A police court or city court was supported by the city in which it was established.

Provisions for support of this array of judicial entities were relatively simple compared to provisions for distribution of the revenues, which are generally described as follows with the caveat that the detailed provisions contained exceptions or other qualifications that need not be presented here since even a broad description illustrates the complexity.

- In a municipal court, fines and forfeitures in criminal cases were paid to the city if the complaint was drawn by a city officer or employee and to the county if drawn by a county or state officer or employee.
- In a township justice court, fines and forfeitures were paid to the county if the offense involved a state law or county ordinance and to the city if the offense involved a city ordinance. The city also retained the proceeds from state Vehicle Code violations unless the arrest was made by a state or county officer, in which case the proceeds belonged to the county.
- In a city justice court, fines and forfeitures were paid to the city maintaining the court or to the county if the county provided that support.
- In a police court or city court, the city maintaining the court retained fines and forfeitures unless the violation was of the Vehicle Code and the arrest was made by a county officer, in which case 50 percent of the fine or forfeiture had to be paid to the county.[4]

In proposing reorganization of the array of lower courts into justice and municipal courts, the Judicial Council apparently tampered little with the existing formulas for distribution of fines and forfeitures. It did, however, clarify that the expenses of the justice and municipal courts under the reorganization plan primarily were to be county expenses.[5]

The superior court financial picture was somewhat simpler but only because the system was simpler. As required by the California Constitution, there was a superior court in each county. The legislature had broad authority over funding for and distribution of revenues from these courts. For either the superior courts or the lower courts, the ratio of expenses to revenues at midcentury is not readily available.

As enacted in 1950, Proposition 3 retained the power of the legislature to prescribe the number, qualifications, and compensation of lower court judges, officers, and attaches, thus preserving legislative control over the most significant items of cost in lower court operations.

Early Efforts to Achieve State Funding

The first significant proposals for state financing of trial court operations were made in the early 1970s by the same two entities that called for a single-level trial court: the consulting firm of Booz, Allen & Hamilton, retained by the Judicial Council to recommend improvements in the lower courts, and the Select Committee on Trial Court Delay. The Select Committee presented the following snapshot of the existing funding system:

> The present methods of financing our trial courts are a patchwork. The counties bear all capital costs. Salaries for Superior Court Judges are primarily state expenses, while Municipal and Justice Court Judges are paid entirely by the counties in which they sit. The Legislature prescribes the salaries of Superior and Municipal Court Judges but each county determines the salaries for its Justice Court Judges. Likewise, the counties finance any retirement benefits for Justice Court Judges but the State financially supports and administers the retirement system for Superior and Municipal Court Judges. And, as noted above, the counties bear the expense of all non-judicial court personnel.[6]

The supporting reasons for adopting state funding were articulated by Booz Allen and endorsed by the Select Committee:

> It provides an opportunity to use the state's broader revenue base to avoid underfunding of courts in counties with marginal financial resources for supporting judicial services or in counties which are unwilling to provide adequate financing.
>
> It provides a vehicle for insuring that court expenditures for such items as salaries, retirement and training are uniform throughout the state. As a result, opportunities are increased for upgrading the caliber of both judicial and non-judicial personnel.
>
> It provides an approach for the state to unify, strengthen and assert its expanded policy-making and management role over California's trial courts. It also fixes financial responsibility with the state to fund the decisions it makes regarding judicial policies and management.
>
> It reinforces the fact that judicial services, although provided locally, are of statewide importance.
>
> It can be used as a financial subvention to county governments, depending on how court revenues are used, at least in avoiding future court cost increases.

> Without state financing, it is doubtful if a unified trial court concept will receive the impetus needed to insure its eventual implementation.[7]

The Judicial Council adopted the more cautious approach of recommending only that "the state assume the costs for salaries and fringe benefits of all judges and court-related personnel in the county court system" (which was intended to supersede the justice and municipal courts).[8]

To further place these proposals in context, it is important to note that prior to the Booz Allen reports in 1971 advocates and opponents were sparring without financial data. In fact, the first comprehensive attempt to assess the total statewide cost of operating any level of trial court apparently was made in connection with the 1971 studies by Booz Allen of lower and unified courts. For fiscal year 1969–1970, the estimated total cost for operating the justice and municipal courts was $61,048,847 and superior court operating costs totaled $57,627,500.[9]

The combined expenses of operating all three levels of trial courts at the time approached $119 million, a figure that Booz Allen estimated would increase to $137 million following unification.[10] Even so, these actual and projected costs were both less than the estimated annual revenues of $161 million from the trial courts.[11]

Approximately $122 million, or almost 80 percent, of these revenues flowed from justice and municipal courts and were distributed among cities, the state, and an array of county funds (general, road, fish and game, and law library). Of this amount the state took approximately 15 percent and the remainder was divided equally among counties and cities.[12]

As with the various proposals for trial court reorganization during the early 1970s, the proposals for a major increase in state funding failed for lack of legislative approval.

The Catalyst: Proposition 13

Serious consideration of state funding for trial courts probably would not have occurred for many more years but for Proposition 13, proposed through the initiative process and adopted by the voters in 1978.[13] The effects of Proposition 13 have been documented, debated, litigated, praised, and cursed in a variety of venues during the intervening years and

will not be repeated here. The important fact is that Proposition 13 limited the ability of local governments to increase revenues through increases in property taxes, which were their primary source of funding.

Within a relatively short time, limitations on property taxes began severely to pinch the budgets of counties and other agencies of local government. All expenditures and alternative sources of revenue were closely scrutinized. Among those expenses were the costs for operation of the superior, municipal, and justice courts, which, aside from partial judicial compensation paid by the state, were a responsibility of the counties. Among the revenues were the filing fees, fines, forfeitures, penalties, and other charges imposed by the courts and remitted, in part, to the counties. However, as explained a bit further on in this story, the counties' expenses exceeded the counties' share of revenues.

There was and is considerable merit to the policy position asserted at various times by the Judicial Council that court resources should be equalized throughout the state and that access to justice should not vary from county to county due to variations in resources. The subject of trial court funding, however, was a blend of policy and practicality and should not be considered without also acknowledging the financial predicament of local government created by Proposition 13. The efforts of local government, particularly the counties, to escape the burden of funding court operations were a catalyst in the move toward state funding.

A Second Effort

At the midpoint of the 1980s, the state had responsibility for funding most of the salaries and health and retirement benefits of superior court judges. That had been the extent of state fiscal support since 1955. With the minor exceptions of state subsidies for rural trial courts and modest state reimbursement for mandated programs, the counties were responsible for funding the remainder of trial court operations. The state's contribution equaled approximately 5 percent of the total trial court operating costs.[14]

New stirrings on the subject of increased state funding began in 1984 when Senator Barry Keene, who also was one of the legislative members of the Judicial Council, introduced the Trial Court Funding Act of 1984 (Senate Bill 1850; Assembly Bill 3108 [Robinson]), which included a notable list of legislative findings:

- The trial of civil and criminal actions is an integral and necessary function of the judicial branch of state government.
- All citizens of this state should enjoy equal and ready access to the trial courts.
- Local funding of trial courts may create disparities in the availability of the courts for resolution of disputes and dispensation of justice.
- Funding of trial courts should not create financial barriers to the fair and proper resolution of actions.
- This legislation is enacted to promote the general welfare and protect the public interest in a viable and accessible judicial system.[15]

The proposed legislation introduced the concepts of local option in the context of funding and block grants.

Counties could elect whether or not to participate. In those counties exercising the option, the state would pay a set sum per year, adjusted for inflation, for every superior court and municipal court judgeship and for sub-ordinate judicial positions. These state funds could only be used for court operations. In return, the counties would relinquish to the state the great bulk of the revenues received by the courts from filing fees, fines, and forfeitures. The bills were joined and passed by the legislature but vetoed by Governor George Deukmejian.

SB 1850 and AB 3108 are important for several reasons. They renewed debate on state responsibility for financial support of the trial courts. Introduction of the mechanism of block grants, as well as the concept of local option, also was significant. And the proposed measure embraced several principles important to Chief Justice Rose Elizabeth Bird and by implication to the Judicial Council:

1. The trial courts are part of a single state court system;

2. State funding should pay for trial court operations while retaining local administrative control;

3. A cap should be placed on escalating civil filing fees limited to a cost-of-living type adjustment to avoid restricted access to the courts by middle class litigants, or the development of a user fee funded court system.[16]

Onward Toward State Funding

The efforts of Senator Keene and Assembly Member Richard Robinson bore modest fruit in 1985. The Trial Court Funding Act of 1985 was enacted but without implementing appropriations.

Real fruit was harvested in 1988 with enactment of the Brown-Presley Trial Court Funding Act.[17] Incorporating the earlier, dual concepts of local option and state block grants to counties based upon the number of judicial positions, the 1988 legislation was funded with approximately $300 million. Philosophically, the bill embraced the legislative findings proposed in 1984 with explicit acknowledgment that "[a]ll citizens of this state should enjoy equal and ready access to the trial courts" and that "[l]ocal funding of trial courts may create disparities in the . . . dispensation of justice."[18]

The act also created a Trial Court Improvement Fund for Judicial Council grants to improve trial court efficiency and management, but it was not funded.[19]

It is interesting to compare the level of support enacted in 1988 with the known revenues and expenses of trial courts. As of 1982[20] the total estimated cost of operating all trial courts, excluding capital or physical expenses, was $526,276,851 per year.[21] The total estimated revenues for the same period were $429,839,354.[22] These revenues were distributed among the counties, cities, and state with approximately one-half ($211,748,909) to counties, more than 30 percent ($144,536,607) to cities, and less than 20 percent ($73,553,838) to the state.[23]

A compelling historical fact is pertinent here. A mere decade earlier, the best estimate that Booz Allen could make of the cost of trial court operations was $119 million, accompanied by an estimate that revenues exceeded costs by 25 percent. By 1983, costs were estimated with presumably better accuracy as almost five times greater than $119 million. Revenues were estimated at less than expenses, instead of more than expenses.

Although the counties received the lion's share of revenues, they were bearing 81 percent of superior court costs, 97 percent of municipal court costs, and 100 percent of justice court costs for a total of 88.5 percent of all trial court costs. The state, by contrast, paid for only 11.5 percent. The counties' share of revenues ($211,748,909) fell considerably below the counties' share of trial court expenses ($465,900,000).[24]

The Trial Court Funding Act of 1985 was a breakthrough both in state funding for trial court operations and in relief for counties, but it obviously was not assumption of full responsibility, either in concept or reality. However, the momentum in that direction had begun. By 1989, the first year of full funding under the terms of the Brown-Presley Trial Court Funding Act of 1988,[25] all counties had opted to participate. The state appropriated $527 million to the counties to support trial court operations.[26]

Implementing a Local Option

The 1988 legislation introduced a new ingredient that was destined to play a significant future role. The Brown-Presley Trial Court Funding Act required that a county's election to participate, and its eligibility to receive state block grant funds for trial court operations, had to be documented annually by a resolution signed by the chair of the county board of supervisors, the presiding judge of the superior court, and the presiding judge of the municipal court (or, in the absence of a municipal court, the justice court judge serving in the county seat). This signing of the resolution indicated the concurrence by a majority of the supervisors and the judges of each court.[27]

Obstruction: The Recession of the Early 1990s

If Proposition 13 in 1978 was a catalyst for state funding of trial courts, the national economic recession that began in 1990, with particularly harsh impact in California, was an obstacle.

As noted, the state furnished block grants and other appropriations to each county for trial court expenses in the total amount of $527 million during 1989. However, that defrayed only 44 percent of total trial court costs and, due to fiscal problems created by recession, the amount was reduced to 38 percent the following year.

The Judicial Council succinctly summarized as follows the status of trial court funding by the state in 1990, which was the second full fiscal year of trial court funding under the Brown-Presley Trial Court Funding Act of 1988. The 1990 state budget provided $398.2 million to fund the program into which all counties opted for 1990. Components of the act were:

- Counties would receive quarterly block grants averaging $50,562 per judicial position ($202,248 annually). The 1990 state budget included $340.7 million for these block grants.

- Counties would receive supplemental block grant amounts equal to municipal and justice court judges' salaries, based on the existing formula of state participation in superior court judges' salaries. The 1990 state budget contained $51.7 million for this purpose.[28]
- The state budget again included no money for the Trial Court Improvement Fund.
- The state budget did, however, include $109.5 million for assistance to the trial courts for ongoing programs existing prior to the act. This included $69.2 million for the state's share of superior court judges' salaries and $36.4 million for superior, municipal, and justice court judges' retirement.
- Finally, about $3.9 million was budgeted for continuing court-related local assistance programs such as payments to counties for costly homicide trials.

To summarize, for 1990 the state budgeted an estimated $507.7 million in assistance to the trial courts, comprising $109.5 million for preexisting programs and $398.2 million provided under the act.[29]

These conditions led the judiciary to reaffirm the view that the quality of justice in the state's courts neither could nor should be dependent on the financial health or discretion of the counties. Instead, it was necessary to move toward adequate state funding of the courts.

The Trial Court Budget Commission

The first step in this new endeavor was to create a Judicial Council Advisory Committee on State Court Funding. Contributing to creation of this committee was continuing friction between county officials and trial judges over the requirement that a majority of the judges in each trial court approve the county decision to participate in the state funding program. In 1990, this friction had reached the point that a committee of county administrative officers requested and were granted a meeting with key officials in the AOC to discuss removing the requirement for judicial approval.

The counties argued that judges were extracting from the counties enhanced fringe benefits as the price of consent to county participation in the state funding program. The judges in response expressed the concern that the removal of judicial concurrence as a condition of opting into the program would negate the courts' ability to receive an equitable share of funds.[30] This was one of the first items referred to the new committee for consideration and recommendation.

At this point Assembly Member Phillip Isenberg joined the cast in a leading role on both state funding and trial court structure. One of his first actions was to introduce the Trial Court Realignment and Efficiency Act of 1991 (Assembly Bill 1297), which was adopted as described in Chapter Five.

It is interesting to note that Assembly Member Isenberg, as of 1990, had become one of the two legislative members of the Judicial Council. Equally significant is the fact that the other legislative member was Senator Bill Lockyer.

In some respects, the legislative findings in the Trial Court Realignment and Efficiency Act are as notable as the substantive provisions. The legislature recited that the state faced an unprecedented fiscal crisis, requiring the participation of every branch of government in the search for a solution. The legislature also reiterated the findings from past legislation that state funding of trial court operations is the most logical approach for a variety of reasons, including achieving "a uniform and equitable court system" and "increased access to justice for the citizens of California."[31] The legislature further conceded that state assumption of trial court funding had diminished, forcing counties to fund a larger share of the growing costs of trial court operations. This led to a renewed legislative declaration of intent to provide one-half of the funding of trial court operations in 1991 and to increase that share by 5 percent per year until the trial courts were 70 percent funded by the state.

The other half of the picture of court funding was not forgotten, by any means. Revenues were increased by the legislature through increased fines. A larger share of such revenues was acquired by the state. However, the heart of the act, from both fiscal and operational perspectives, compelled "each superior, municipal, and justice court in each county" to "prepare and submit to the Judicial Council for review and approval a trial court coordination plan designed to achieve maximum utilization of judicial and other court resources and statewide cost reductions in court operations of at least 3 percent" in 1992–1993 and a further 2 percent in each of the two following years.[32]

Due to the recession of the early 1990s, the legislatively declared commitment of achieving 70 percent state funding of trial court costs by 1995 was not only fading; it was shriveling. State funding provided for 51.4 percent of such costs in 1991 and declined to 50.6 percent in 1992. The governor's proposed budget for 1993 actually decreased the trial court appropriation by another 6.1 percent to cover approximately 44 percent of costs.[33]

Confronted with the gap between legislative promises and the reality of declining state funding, the Judicial Council began seeking new approaches to court funding. The most prominent result was creation of the Trial Court Budget Commission, proposed by the Judicial Council and sanctioned by the legislature—thanks, again, to the efforts of Assembly Member Isenberg.[34] The legislation directed the Judicial Council to provide for the TCBC by rule and in turn directed the TCBC to prepare annual budget submittals for the trial courts with concurrent authority to "allocate and reallocate funds appropriated for the trial courts" to the extent authorized by the annual budget. The TCBC also was empowered to establish deadlines and procedures for submission of material by the trial courts.

In the meantime, the percentage of trial court expenses funded by the state continued to decline.

The Judicial Council announced establishment of the TCBC in November 1992 as an advisory committee to the Judicial Council. Membership consisted of twenty-six trial judges from ten geographic regions. Each region had two commission members—one judge from a superior court and one from a municipal or justice court. Because of its size, the Los Angeles region had eight members. Six advisory members were appointed—four court administrators and two county administrators.[35]

The TCBC hit the ground running. It created eleven functional categories for trial court budget purposes, to replace block grant funding, and utilized the AOC and the accounting firm of Ernst & Young to establish baseline budget requests for each trial court.[36] These processes were embodied in rule 810 of the California Rules of Court.

Based upon this work and for the first time in state history, the judicial branch through the TCBC presented a consolidated trial court budget proposal to the governor and legislature. Trial court needs were projected at $1.75 billion in 1994, although it is not clear that either the courts or the counties could substantiate the actual costs of trial court operations. Governor Pete Wilson and the TCBC differed on estimated trial court expenses, but the governor proposed a $400 million increase in state support for trial courts for a total of $1.017 billion, which represented 58 percent of total statewide trial court expenditures as approved by the TCBC.[37]

Also in 1994, Assembly Member Isenberg successfully sponsored legislation that, among other things, declared the intent of the legislature

to create a budgeting system for the judicial branch that protects the independence of the judiciary while preserving financial accountability (Assembly Bill 2544). The act, adopted by the California Legislature and approved by the governor, also implemented the transition from block grant funding to function funding consistent with the recommendations of the TCBC and rule 810 of the California Rules of Court.

The ensuing two years were a period of dichotomy. The judiciary refined budget justification and accountability. The legislative and executive branches failed to deliver promised financial support for trial courts. As part of budget refinement, the TCBC in 1995 submitted its *Final Report on the Initial Statewide Minimum Standards for Trial Court Operations and Staffing*. The Judicial Council subsequently adopted and forwarded these standards to the legislature. Concurrently, the Judicial Council Task Force on Trial Court Funding endorsed the TCBC budgeting approach and urged the Judicial Council to seek the full funding recommended by the TCBC for 1996 even though the governor's proposed budget was $120 million less. The Judicial Council also accepted these recommendations.[38]

Meanwhile, in Sacramento the financial fate of the trial courts continued to deteriorate. The state provided only 34 percent of trial court funding in fiscal year 1994–1995. The legislature was forced to enact emergency legislation, signed by the governor, to provide $25 million in supplemental state funding, matched by the counties, to avoid trial courts in several counties terminating operations prior to the end of the fiscal year for lack of funds.

In 1996 a valiant effort by Assembly Member Isenberg (Assembly Bill 2553) to achieve full state responsibility for court funding achieved approval in both houses of the legislature—only to fail at the last minute due to conflicts between Assembly Member Isenberg and Senator Lockyer and opposition from Governor Wilson and several Assembly members, based upon provisions relating to collective bargaining by employees working in the courts. This collapse of an emerging consensus was particularly painful. The crisis continued into 1997.

State Funding Achieved

Passage of trial court funding by the Assembly and Senate was finally achieved primarily because of a collaborative search for politically and financially acceptable solutions. The key collaborators were the AOC on behalf of the Judicial Council, the council's Trial Court Presiding Judges

and Court Administrators Advisory Committees, the California State Association of Counties, the governor's Department of Finance, and key legislative members and staff.[39]

By September 1997, the roller coaster ride was smoothed by passage of Assembly Bill 233, the Lockyer-Isenberg Trial Court Funding Act of 1997, which significantly restructured trial court funding.[40] This was a giant stride toward resolving major problems plaguing the judiciary.[41]

This legislation was signed by Governor Pete Wilson in October with an effective date of January 1, 1998. It effected major changes and broke considerable new ground in the process by:

- Consolidating all court funding at the state level, giving the legislature authority to make appropriations and the Judicial Council responsibility to allocate funds to the state's courts
- Capping counties' financial responsibility at the 1994 level, to be paid quarterly into a statewide trust fund
- Requiring the state to fund all future growth in the cost of court operations
- Authorizing the creation of forty new judgeships, contingent on an appropriation made in future legislation
- Requiring the state to provide 100 percent funding for court operations in the twenty smallest counties beginning July 1, 1998
- Raising a number of civil court fees to generate about $87 million annually for trial court funding[42]

The broad thrust of the legislation was to shift from the counties to the state the primary responsibility for and the burden of funding the trial courts. In effect, counties were relieved from open-ended financial responsibility for "court operations."[43] Since the appellate system already was state-funded, this meant, for all practical purposes, that the Judicial Council's philosophical and practical goal of state-supported courts throughout the state at long last had been achieved.

Financial cords among the state, counties, and trial courts were not totally severed, nor did counties escape the cost of funding court operations without paying a price. Each county was required, for example, to pay to the state annually a sum equal to the amount paid by that county for court operations in 1994.[44] This burden subsequently was eliminated for the smaller thirty-eight counties but preserved for the twenty largest.

Another price paid was the requirement that each county annually remit to the state a sum equal to the amounts of fines and forfeitures shared with the state in 1994 as well as one-half of all future growth in fines and forfeitures.[45] Even at the end of the funding saga, revenues figured as prominently as expenses.

The transition, however, was rocky. There were cashflow shortfalls. Court revenues declined to levels below those projected. Counties attempted to further shift costs from county to court budgets. Both courts and counties appealed for relief at various critical points in the process. Nonetheless, it seems evident that new directions were charted. Fiscal stability began to prevail. Policy and strategic plans began to drive funding. Finally multiyear strategic efforts were possible in critical areas ranging from technology to assisting small courts to jury reform to protecting children in court processes.

Two issues were unresolved by the Lockyer-Isenberg legislation. The most prominent was the status of the county employees working for the trial courts. Would they remain county employees, become employees in a statewide judicial personnel system, or be given a new status crafted for the occasion? The other major issue involved courthouses and related facilities. They remained local responsibilities pending deferred consideration of further state assumption.

The balance of the century (1998 and 1999) was devoted to implementing and digesting both state funding and trial court unification. The status of employees has been a matter of extensive negotiations, and the recommendations of a special Judicial Council Task Force on Trial Court Employees were under consideration as the century closed.[46] Resolution of the facilities question is a longer-term proposition, but the search was well under way for a permanent solution. For example, the Judicial Council, in response to legislative direction,[47] created a Task Force on Court Facilities with the hope that it would facilitate appropriate and adequate facilities for all court operations to the satisfaction of both the courts and the counties.

These are not idle hopes. Shortly following the close of the century, important legislative steps were taken, with Judicial Council support, toward state responsibility for facilities and court responsibility for persons employed in the courts, as discussed in Chapter Fifteen.

In addition to major issues regarding employee status and facilities, implementation of state funding requires a multifaceted transformation in

the relationships among the counties, courts, and AOC. At the heart of this transformation is the question of how to acquire for trial courts the support services previously provided by counties, which counties are no longer obliged to perform in the absence of compensation. In the view of one knowledgeable observer, these administrative issues "will ultimately have a bearing on whether the Lockyer-Isenberg Trial Court Funding Act of 1997 is hailed as a success or chastised as a failed attempt of the Legislature to 'get its hands around' the funding and public access issues of the trial courts."[48]

An Advocate: The Judicial Council and the Quality of Justice

Before leaving the subject of court funding, it is imperative to address the vital role played by Judicial Council endorsement and adoption of values regarding the quality of justice. If Proposition 13 was a catalyst and recession was an obstacle, Judicial Council advocacy in this area was a facilitator.

This evolved as part of the Judicial Council's maturation in planning. A critical product of that evolution, discussed in Chapter Four, deserves revisiting. That product is the Strategic and Reorganization Plan adopted by the Judicial Council in 1992 with five explicit goals, including a commitment "to improve access, fairness, and diversity in the judiciary," and "to modernize judicial administration practices."[49]

If the Judicial Council had not committed to these qualitative goals and reaffirmed that commitment, the funding quest could well have remained a repetition of the old refrain that courts need more money and a more reliable source of money. The goals of the new strategic plan raised deliberations to a new level. This was not just renewing the traditional plea for additional funding. Instead, the judicial branch through its governing body was offering assurance that present and future funds would be dedicated to improvement—including improved access, fairness, and diversity—as well as modern judicial administration. Likewise, this commitment propelled the shift from the TCBC to the Judicial Council and the AOC as the primary entities in the funding process.

This obviously struck a responsive chord with the legislature. Similar aspirations had appeared in preambles to various legislative proposals for increased state funding for courts, beginning in the mid-1980s with those introduced by Senator Keene and Assembly Member Robinson. The council's explicit goals in 1992 appeared, for the first time, to create a shared vision.

That vision found its way into various segments of Assembly Bill 233, the ultimate legislation providing for full state funding of California's courts. For example, the Judicial Council is directed to allocate funds from the Trial Court Improvement Fund "to ensure equal access to trial courts by the public, to improve trial court operations, and to meet trial court emergencies."[50] Another example is explicit authorization for Judicial Council rules providing for fairness training of judges and other judicial officers in "racial, ethnic, and gender bias, and sexual harassment."[51] As part of overall state funding, the legislature created and funded the Judicial Administration Efficiency and Modernization Fund with authorization for the Judicial Council, or the AOC as its designee, to expend the fund "to promote improved access, efficiency, and effectiveness in trial courts. . . ."[52]

It was in this spirit and in this manner that state funding as a major monument to the improved administration of justice was achieved during the last half-century.

Notes

1 Chief Justice Ronald M. George, State of the Judiciary Address, California Legislature (March 20, 2001), *www.courts.ca.gov/7565.htm.*

2 Judicial Council of California, *Twelfth Biennial Report to the Governor and the Legislature* (1948), p. 15.

3 Id., p. 35.

4 Id., pp. 35–37.

5 Id., p. 54.

6 [California] Select Committee on Trial Court Delay, *Report 4* (February 1972), p. 22.

7 Booz, Allen & Hamilton Inc., *Unified Trial Court Feasibility Study: Final Report* (December 3, 1971), p. 104; Select Committee on Trial Court Delay, *Report 4*, p. 23.

8 Judicial Council of California, *Annual Report to the Governor and the Legislature* (1972), p. 21.

9 Booz, Allen & Hamilton, *Unified Trial Court Feasibility Study*, Appendixes A–B.

10 Id., p. 105, Appendix F.

11 Id., p. 106.

12 Booz, Allen & Hamilton Inc., *California Lower Court Study: Final Report* (September 15, 1971), Appendix A.

13 California Constitution, article XIII A.

14 Kim Turner, *Administrative Implementation of Changes in Intergovernmental Relations Defined in the Lockyer-Isenberg Trial Court Funding Act of 1997: A Summary Report*, March 1999 ([San Rafael, Calif.]: Marin County Superior Court, 1999), p. 3.

15 Judicial Council of California, *Annual Report to the Governor and the Legislature* (1985), part 1, p. 6.

16 Id., p. 3.

17 The Brown-Presley Trial Court Funding Act, California Government Code, section 77000 and following.

[18] Id., section 77100(b)–(c).

[19] At one point, moneys were placed in this fund but earmarked by the legislature to pay county and other costs incurred in implementing new technology known as STATSCAN.

[20] All references are to the first segment of the fiscal year.

[21] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1983), part I, p. 39.

[22] Id., p. 42.

[23] Ibid.

[24] Id., pp. 39, 43.

[25] Brown-Presley Act, California Government Code, section 77000 and following.

[26] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1990), volume I, pp. 44–45.

[27] Government Code, section 77301; Judicial Council, *Annual Report* (1990), volume I, p. 46.

[28] A county received a supplemental block grant fund if the number of new trial court judgeships in that county created by 1987 legislation exceeded ten positions. This applied to Los Angeles, San Diego, and Santa Clara Counties. The state budgeted $5.8 million for this purpose.

[29] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1991), volume 1, p. 51.

[30] Id., pp. 52–53.

[31] Trial Court Realignment and Efficiency Act of 1991, California Statutes 1991, chapter 90, section 2(a)(4)(B), p. 405.

[32] Government Code, section 68112 (1991); Trial Court Realignment and Efficiency Act of 1991, section 6, p. 407.

[33] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1993), volume 1, p. 10.

[34] California Assembly Bill 1344 (1992); Government Code, section 68502.5.

[35] Judicial Council, *Annual Report* (1993), volume 1, p. 11.

[36] Judicial Council of California, *Annual Report to the Governor and the Legislature* (1994), part 1, p. 5.

[37] Id., p. 6.

[38] See Judicial Council of California, *Annual Report to the Governor and the Legislature* (1996), p. 12; minutes (May 17, 1996), pp. 14–16; Task Force on Trial Court Funding, *Final Report to the Judicial Council* (May 3, 1996), p. 3.

[39] To the extent this collaboration could be said to have a beginning date, it appears to be June 2, 1995, when Administrative Director of the Courts William C. Vickrey sent to an array of county and state officials a blueprint titled *State/County Partnership Trial Court Funding Proposal.*

[40] California Statutes 1997, chapter 850.

[41] Judicial Council of California, Administrative Office of the Courts, *Trial Court Funding Resource Manual*, 2d ed. (1998), tab 5, p. 3.

[42] Government Code, sections 77200–77213.

[43] Id., section 77003; California Rules of Court, rule 810.

[44] Government Code, section 77201(b)(1).

[45] Id., section 77201(b)(2).

[46] Id., section 77600.

[47] Id., section 77650.

[48] Turner, *Administrative Implementation of Changes in Intergovernmental Relations Defined in the Lockyer-Isenberg Trial Court Funding Act of 1997*, p. 73.

[49] Judicial Council, *Annual Report* (1993), volume 1, p. xii.

[50] Government Code, section 68502.5(a)(6).

[51] Id., section 68088.

[52] Id., section 77213(a) and (b).

Chapter 7
A System for Judicial Discipline

Overview

The quest for ways to remedy unacceptable behavior by judges, without compromising judicial independence, was quite successful during the latter half of the last century.

The techniques available in 1950 for disciplining judges were ineffective: impeachment and conviction by the California Legislature, a recall election, defeat at a regular election, or removal by the governor for disability.

This changed significantly in 1960 when the voters approved a measure proposed by the legislature and endorsed by the Judicial Council to create a Commission on Judicial Qualifications. Under rules of procedure adopted by the Judicial Council, the commission was authorized to recommend to the Supreme Court the retirement of an impaired judge with permanent disabilities or the removal of a judge for misconduct, failure to perform his or her duties, or habitual intemperance. In 1966 public censure was added as a sanction and an additional ground for removal was approved by the voters—conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

Over the years the commission conducted numerous investigations, but it was not until 1973 that the Supreme Court removed a judge on its recommendation.

In 1976 the commission was renamed the Commission on Judicial Performance and its powers expanded to include private admonishment.

The two most prominent proceedings of the commission were recommendations that led to the retirement of a Supreme Court justice and an investigation (without recommendations) of the entire Supreme Court, requested by Chief Justice Rose Elizabeth Bird.

From the beginning and continuing into the 1990s, commission proceedings were, with minor exceptions, private and confidential until such time as a disciplinary recommendation was made to the Supreme Court. This all changed in 1994 when voters approved a legislative proposal to confer independent status on the commission, to reconfigure membership so that a majority were public members, to make formal proceedings public, to grant to the commission the right to promulgate its rules of procedure, and in several ways to expand the commission's jurisdiction and authority.

The work of the commission has been closely linked first with the Code of Judicial Conduct adopted in 1974 by the California Judges Association (CJA) and later with the Code of Judicial Ethics adopted by the Supreme Court.

Both the volume of work and the size of commission operations have grown steadily from inception.

As the first judicial disciplinary body of its kind in the nation, the commission has had a salutary effect on judges' conduct and has inspired establishment of similar entities in every state.

The phrase "judicial performance" implies behavior both positive and negative. In the context of justice administration, however, the phrase had its origin in historical efforts to punish unacceptable actions by judges and judicial officers. From 1950 to 2000, the terminology evolved from judicial removal to judicial discipline to judicial conduct and, at the close of the century, to judicial performance. The actions of judges and judicial officers that came under scrutiny ranged from the contents of an appellate opinion to the solicitation of prostitutes.

Status as a monument in the administration of justice is based upon the great strides made over the past half-century. Those improvements successfully resolved the tension between preserving judicial independence and remedying unacceptable actions by judges and judicial officers. The topic is commendable for the further reason that progress in this area has reflected the philosophy expressed in the 1950s by Chief Justice Phil S. Gibson: "Surely the people have the right to expect that every judge will be honest and industrious and that no judge will be permitted to remain on the bench if he suffers from a physical or mental infirmity which seriously and permanently interferes with the performance of his judicial duties."[1]

Judicial Performance at Midcentury

As of 1950, there were four ways to remove from office a judge whose behavior was unacceptable: impeachment and conviction by the legislature, a successful recall election, defeat at a regular election, or removal by the governor for disability. Each method was flawed. Impeachment had occurred only twice in the state's hundred-year history, and only one of those instances resulted in conviction and removal.[2] Removal by a successful recall election was regarded as cumbersome and expensive, and it apparently had not been successfully used. Defeat at a contested election was likewise rare and expensive, and the outcome was always speculative. The California Constitution[3] and implementing statutes[4] provided that the governor could retire a judge without his or her consent for permanent physical or mental disability. As of 1950 this option had never been exercised and, in the opinion of reputable authorities, probably was unconstitutional.[5] In short, the legislative conclusion at the time was that "present methods for the removal or compulsory retirement of judges are either too cumbersome, too expensive or too time-consuming to be very useful."[6]

The Commission on Judicial Qualifications

Matters changed dramatically in 1960 with creation of the Commission on Judicial Qualifications. The commission was the culmination of coordinated efforts among the Judicial Council, the State Bar, and the legislature. The idea gained serious momentum in 1948 when the State Bar Committee on Administration of Justice approved an earlier recommendation by the Los Angeles Bar Association recommending the establishment of a court to try judges for misconduct or failure to perform the duties of office.[7] Upon approval of that recommendation and principle, the State Bar recommended that the matter be studied by the Judicial Council. Following several years of study, the State Bar and Judicial Council jointly recommended the adoption of a constitutional amendment specifying several causes for removal of judges and a process of investigation and consideration of charges by a Commission on Judicial Qualifications.[8]

The legislature responded by creating in 1957 the Joint Judiciary Committee on Administration of Justice, chaired by Senator Edwin J. Regan. Its reports were filed in 1959 with the most important, for present purposes, being the partial report encompassing the removal of judges. The joint committee introduced its report to the legislature with the observation:

> This committee did not begin its study—nor end it—with the feeling that California judges are a group seriously in need of renovation. The quality of the state judiciary, as a whole, has a high reputation both within the California borders and across the country.
>
> But there is room for improvement.
>
> This fact became increasingly clear to the committee as it undertook to investigate, one after another, complaints made to it by individual attorneys, by bar associations, and by other members of the judiciary. These complaints were directed at certain judges who failed in one way or another to render the service required by their position. Some delayed decisions for months or even years. Some took long vacations and worked short hours, despite backlogs of cases awaiting trial. Some refused to accept assignment to cases they found unpleasant or dull. Some interrupted court sessions to perform numerous marriages, which they made a profitable sideline by illegally extracting fees for the ceremonies. Some tolerated petty rackets in and around their courts, often involving "kickbacks" to court attaches. Some failed to appear for scheduled trials because they were intoxicated—or they took the

> bench while obviously under the influence of liquor. Some clung doggedly to their positions and their salaries for months and years after they had been disabled by sickness or age.
>
> It is the eradication of conditions like this that the committee has in mind when recommending improved methods of screening the appointment of judges, more effective procedures for the removal of judges guilty of serious misconduct, and a closer administrative supervision over judges.[9]

The findings and recommendations of the joint committee were that a new Commission on Judicial Qualifications should be created composed of judges, lawyers, and prominent citizens with the power to recommend to the Supreme Court the removal of a judge for cause. Cause was defined as "willful misconduct in office or willful and persistent failure to perform his duties."[10] The joint committee also recommended that the commission be empowered to recommend to the Supreme Court compulsory retirement of a judge if the commission found that the judge was suffering from a disability seriously interfering with the administration of his duties and that the condition was or was likely to become permanent.[11]

This proposal was approved by the legislature and placed before the voters in November 1960 as Proposition 10, part of an overall revision of the judicial article of the California Constitution. The revision was endorsed by the Judicial Council. There were no ballot arguments in opposition, and Senators Regan and Joseph A. Rattigan were able to state that the proposal had been formulated with assistance from the Judicial Council, the State Bar, and the Conference of California Judges as well as having been overwhelmingly approved by both houses of the legislature. In further support of the measure, they asserted that it would "assure real protection against incompetency, misconduct, or non-performance of duty on the Bench."[12] The voters approved the measure, thus formally establishing the Commission on Judicial Qualifications.[13]

As directed by the newly enacted constitutional provisions, the Judicial Council in 1961 adopted rules of procedure for the commission. Likewise, the legislature passed implementing legislation and in the process added another function for the commission. Under this legislation, the commission was authorized to require a medical examination when a judge under sixty-five years of age voluntarily retired due to disability. If the commission determined that a judge was no longer incapacitated, it could conclude that he was subject to assignment to a court by the chair of the Judicial Council.[14]

The implementing constitutional amendment added new sections 1b and 10b to article VI of the constitution. The commission was composed of five judges named by the Supreme Court, two lawyers named by the board of governors of the State Bar, and two citizens named by the governor with the consent of the Senate. This body was authorized to conduct investigations and hear charges against any judge of a California court and to recommend to the Supreme Court removal of a judge for willful misconduct in office, willful and persistent failure to perform duties, or habitual intemperance. The commission also could recommend retirement for permanent disability seriously interfering with the performance of duties. None of the proceedings before the commission were public until and unless it recommended to the Supreme Court the removal or retirement of a judge. In that case, the record filed with the court became public.[15]

The Commission on Judicial Qualifications was busy from the outset. Members took their oaths of office on March 24, 1961, and held meetings in March, June, July, September, and December. The Judicial Council's rules for removal or retirement of judges became effective August 1, 1961. In August the commission appointed Executive Secretary Jack E. Frankel, who in turn employed a stenographer and opened an office in the State Building at 350 McAllister Street in San Francisco. Mr. Frankel was destined to serve the commission as its chief executive for almost thirty years.

Commission High Points

After ten years of operations and with 1,087 authorized judicial positions in California, the commission proposed and the Judicial Council concurred in a general revision of its procedural rules. During 1971, the tenth anniversary year, 217 complaints were filed with the commission of which 162 were closed as unfounded or without merit. In another 54 instances, extensive investigation or inquiry occurred, resulting in 42 written communications to judges. However, no formal hearings were held during the year and no recommendations were made to the Supreme Court.

During that first decade, the California Constitution Revision Commission, in its proposed revision of the judicial article of the constitution, later approved by both the legislature and voters, broadened both the grounds for removal and possible sanctions. The revisions repealed original section 10b and added new section 18, reading in part:

> (c) On recommendation of the Commission on Judicial Qualifications the Supreme Court may (1) retire a judge for disability

> that seriously interferes with the performance of his duties and is or is likely to become permanent, and (2) censure or remove a judge for action occurring not more than 6 years prior to the commencement of his current term that constitutes wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.[16]

This had the effect of adding as a ground for removal "conduct prejudicial to the administration of justice that brings the judicial office into disrepute." It also added the intermediate disciplinary option of public censure. Removal from office was the only discipline available prior to this change.

During the 1960s the commission recommended disciplinary action only once, but its recommendation of removal from office was rejected by the Supreme Court.[17] However, matters accelerated in the 1970s following the 1966 expansion of the commission's jurisdiction and available sanctions. Between 1970 and 1973 the Supreme Court approved commission recommendations that a judge be publicly censured for conduct prejudicial to the administration of justice that brings the judicial office into disrepute. In 1973 the Supreme Court, for the first time in history, in the case of *Geiler v. Commission*, removed a judge from office following a recommendation of removal by the commission.[18]

Since this was the first occasion in which removal actually occurred, the *Geiler* case is important for procedure as well as result. The Supreme Court used this occasion to establish precedent in the following important areas:

- Burden of proof: "[P]roof by clear and convincing evidence sufficient to sustain a charge to a reasonable certainty."[19]
- Special masters: If the investigation has involved utilization of special masters to make findings of fact and conclusions of law, the commission has the ultimate power to recommend to the Supreme Court, and the commission therefore is "free to disregard the report of the masters and may prepare its own findings of fact and consequent conclusions of law."[20]
- Supreme Court review: The court must make its own independent evaluation of the record and evidence, and "it is to be our findings of fact and conclusions of law, upon which we are to

> make our determination of the ultimate action to be taken, to wit, whether we should dismiss the proceedings or order the judge concerned censured or removed from office."[21]

The Supreme Court then proceeded to conduct an independent review of the record, ultimately concurring in all respects with the findings of fact and conclusions of law reached by the commission. Specifically, the court concurred that Judge Leland W. Geiler was guilty of misconduct constituting "wilful misconduct in office" and "conduct prejudicial to the administration of justice that brings the judicial office into disrepute" as a result of indiscreet use of vulgar, injudicial, and inappropriate language directed toward court attaches and lawyers and crude and offensive conduct in public places. In addition, it was concluded that the judge had acted in bad faith by interfering with the attorney-client relationship due to petty animosities toward public defenders.[22]

The Commission on Judicial Performance

In 1974, after fourteen years of experience, the commission asserted that "the people of the state are ready for a higher standard of judicial fitness" and as a result recommended to the Judicial Council that "private admonition and Commission reprimand be added to the California Rules of Court as alternative disciplinary measures."[23] The council replied that a constitutional amendment would be required to add these powers.

During the following two years, extensive efforts by the Judicial Council, commission, State Bar, and legislature produced Proposition 7, which was overwhelmingly approved by voters at the November 1976 election.

Proposition 7 changed the commission's name to the Commission on Judicial Performance and expanded its powers.

- The phrase "habitual intemperance" was refined as a ground for discipline by adding "in the use of intoxicants or drugs."
- Private admonishment by the commission was authorized if a judge engaged in an improper action or a dereliction of duty.
- One of the grounds for censure or removal was changed from "wilful and persistent failure to perform his duties" to "persistent failure or inability to perform the judge's duties."[24]

The same amendment also provided for a special tribunal of seven court of appeal justices to be drawn by lot for the purpose of considering any recommendation by the commission for the censure, removal, or retirement of a Supreme Court justice.

McComb v. Commission on Judicial Performance

The ink barely was dry on the constitutional provision for a special tribunal for proceedings involving a Supreme Court justice when it became necessary to consider charges against Justice Marshall McComb. The commission conducted an investigation and hearing on the fitness of the eighty-two-year-old associate justice of the Supreme Court to continue in office. The commission ultimately found that Justice McComb, who had served fifty years as a judge, was suffering from chronic brain syndrome or senile dementia that was detrimental to the performance of his judicial duties, had shown willful and persistent failure to perform such duties, and that his disability was or was likely to become permanent. The commission therefore recommended that he be retired or removed from office.

The special tribunal of seven court of appeal justices convened, considered an array of procedural and substantive objections by Justice McComb, and concluded after an independent evaluation of the evidence that there was clear and convincing evidence that Justice McComb was suffering from a disability that rendered him unable to perform his judicial duties and that the disability was or was likely to become permanent. The tribunal, however, rejected the commission recommendation that Justice McComb be removed from office for conduct prejudicial to the administration of justice. Rather, the tribunal found that his behavior was not willful but symptomatic of senility and ordered the retirement of Justice McComb with the proviso that the retirement be regarded as voluntary.[25]

Investigation of the Seven Justices of the Supreme Court

Less than two years following the proceedings by which Justice McComb was retired from the Supreme Court, all seven justices of the Supreme Court became the objects of an investigation by the Commission on Judicial Performance. The circumstances surrounding this unprecedented investigation of all the members of a single court, let alone the Supreme Court, and the outcome make this the most notorious matter conducted by the commission during the forty years between its creation and the conclusion of the century.

On November 24, 1978, Chief Justice Rose Elizabeth Bird wrote to Justice Bertram Janes, chair of the commission and an associate justice of the Court of Appeal, Third Appellate District, in Sacramento, requesting an investigation. She referred to accounts in the press charging that the Supreme Court had deferred announcing the decision in *People v. Tanner*, a notorious criminal case, until after the November 7, 1978, election. These reports had been accompanied by the suggestion or allegation that announcement of the decision was delayed for fear of adverse effects on the retention elections of Chief Justice Bird, Associate Justice Frank C. Newman, and Associate Justice Wiley W. Manuel, who were on that November ballot for voter approval or rejection.

Chief Justice Bird continued in her letter to Justice Janes that "this charge is totally false." She added that "the deliberative process in *Tanner* was without question incomplete prior to November 7, and indeed remains incomplete to this day."[26]

Acknowledging speculation that the commission might investigate these allegations, Chief Justice Bird preemptively requested that "the Commission undertake an investigation of the charge that the Supreme Court improperly deferred announcing a decision in the *Tanner* case. . . . I further request that if, after investigation, the Commission finds that circumstances warrant, it consider the issuance of a public report under the authority of rule 902(b)(2), describing the Commission's factual findings and conclusions in sufficient detail to address all issues which have been raised."[27]

Chief Justice Bird also transmitted a twelve-page description of the decision-making process entitled *Description of California Supreme Court Procedures*, which had not previously been made public. She promised "my full cooperation and assistance, and that of my office, in conducting your investigation."[28]

Following the Chief Justice's request for a commission investigation, a storm broke within and outside the Supreme Court.[29] Apparently there were several additional requests for a commission inquiry and, after due consideration, the commission decided to proceed.

One of its first actions was to retain Seth Hufstedler and his law firm to serve as special counsel to the commission in the conduct of the investigation. Mr. Hufstedler was a former president of the California State Bar and a highly respected attorney nationally and in California.

Another early step by the commission was to request on December 18, 1978, that the Judicial Council modify rule 902 of the California Rules of Court, which required confidentiality in most aspects of commission proceedings, to confer upon the commission substantial discretion to make public disclosures about these specific proceedings. In January 1979, the Judicial Council adopted rule 902.5, applicable only to these proceedings, authorizing the commission in its discretion to make appropriate public disclosures. More importantly, however, the new rule 902.5 compelled the commission to conduct a public hearing and restricted the commission by requiring that any decision be based "solely upon evidence presented at the public hearing."[30]

In April 1979, the commission, in effect, ordered public hearings based upon the following findings of fact:

> (1) The subject matter is generally known to the public;
>
> (2) There is broad public interest;
>
> (3) Confidence in the administration of justice is threatened due to lack of public information concerning the status and conduct of the proceedings; and
>
> (4) The public interest in maintaining confidence in the judicial office and the integrity of the administration of justice requires that some or all aspects of such proceedings should be publicly conducted or otherwise reported or disclosed to the public.[31]

The procedural scope of the commission's investigation was prescribed by the Judicial Council, chaired by Chief Justice Bird, as follows:

> This rule [rule 902.5 of the California Rules of Court][32] shall apply to any investigation or proceeding of the Commission on Judicial Performance relating to any possible improper conduct of any Justice of the Supreme Court of California arising out of (1) any irregularities or delays in handling the *Tanner* case; (2) any irregularities or delays in handling any other case or cases pending before the Supreme Court prior to the election of November 7, 1978, caused or instituted for the purpose of delaying the filing of the Court's decision in any such case until after the date of the election, and/or (3) any unauthorized disclosure of confidential information regarding any of the above pending cases prior to the public release of the decision.[33]

Mr. Hufstedler initiated his investigation on December 27, 1978, and on June 11, 1979, submitted his *Background Report of Special Counsel* in anticipation of a preliminary investigation hearing. The investigation was extensive and included sixty-two depositions under oath, including depositions of all seven justices of the Supreme Court.

The investigative hearing by the commission began on June 18, 1979. Prior to the hearing all seven justices of the Supreme Court were served with subpoenas to appear as witnesses at this public hearing. The commission proceeded, and five Supreme Court justices as well as a number of court personnel testified in public. The proceedings received extensive media coverage.

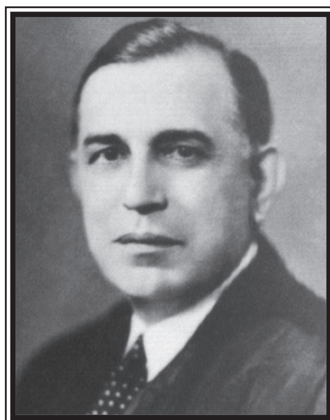
Justice Stanley Mosk was the last justice on the list of witnesses; he was scheduled to appear before the commission on July 9. Prior to that time, Justice Mosk sought a writ of mandate to quash the commission's subpoena to appear and testify. The issues raised by his petition ultimately were resolved by the Supreme Court, which for this purpose was composed entirely of justices from various courts of appeal sitting pro tem since all the regular justices of the Supreme Court had been recused or disqualified due to conflict of interest.

At the heart of the proceedings was Justice Mosk's position that the Judicial Council did not have constitutional authority to enact rule 902.5 authorizing the public hearing. Rather, he asserted, the constitutional provision that "the Judicial Council shall make rules implementing this section and providing for confidentiality of proceedings" compelled rules guaranteeing confidentiality and did not permit the council to authorize or mandate public hearings.[34] The acting Supreme Court agreed and directed that "Justice Mosk cannot constitutionally be compelled to testify at a public hearing before the commission."[35]

This decision plugged the flow of public information regarding commission proceedings involving the Supreme Court except for a concluding comment by the commission. Following the decision in *Mosk v. Superior Court,* the commission expressed regret at the limitations imposed and stated that "the Commission hereby reports that the status of the investigation is that it is now terminated and the result hereby announced is that no formal charges will be filed against any Supreme Court justice. . . ."[36] What we will never know is whether the commission exercised its power to "privately admonish a judge . . . found to have engaged in an improper action or dereliction of duty."[37]

CHIEF JUSTICES OF CALIFORNIA
Chairs of the Judicial Council
1926–1970

William H. Waste
1926–1940



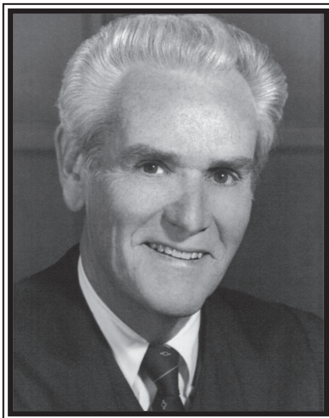
Phil S. Gibson
1940–1964

Roger J. Traynor
1964–1970

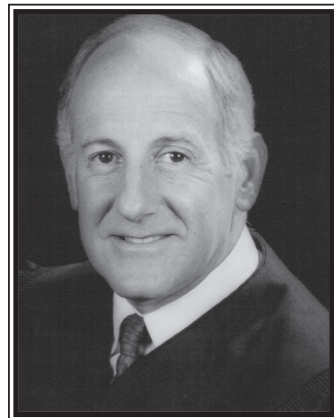
CHIEF JUSTICES OF CALIFORNIA
Chairs of the Judicial Council
1970–Present

Donald R. Wright
1970–1977

Rose Elizabeth Bird
1977–1987

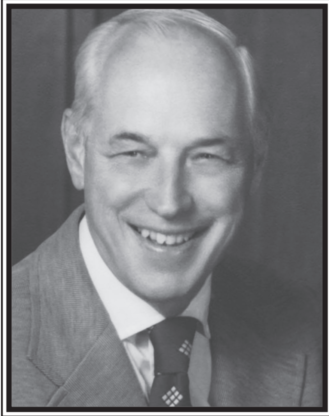


Malcolm M. Lucas
1987–1996

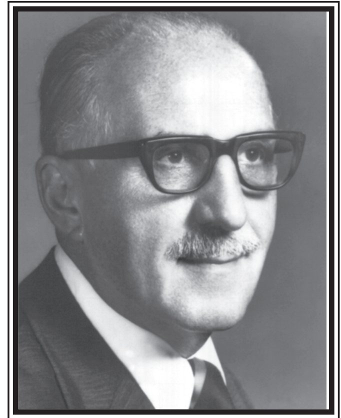


Ronald M. George
1996–Present

ADMINISTRATIVE DIRECTORS OF THE COURTS
1961–Present

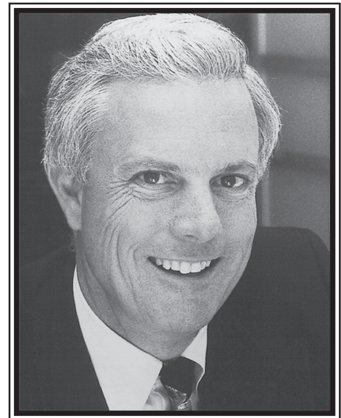


Ralph N. Kleps
1961–1977

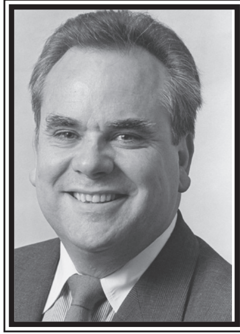


Ralph J. Gampell
1977–1986

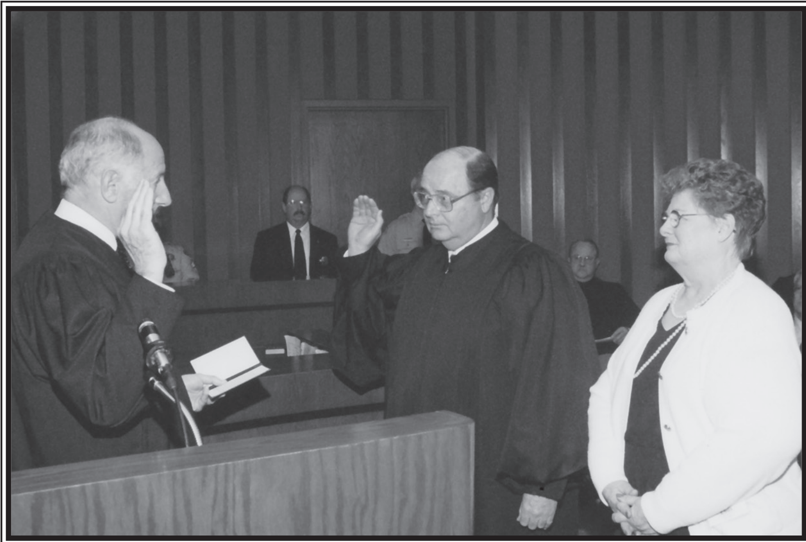
William E. Davis
1987–1991



William C. Vickrey
1992–Present



State funding achieved. State funding of the trial courts was accomplished through the creativity and cooperation of the judicial, legislative, and executive branches; local governments; and bar groups. Senator Martha M. Escutia (left), former Senator Bill Lockyer (center), and former Assembly Member Phillip Isenberg (right) (all current or former Judicial Council members) were key figures in passage of the Lockyer-Isenberg Trial Court Funding Act of 1997.



Photograph by Leticia Heafey

Judges voted to unify in all fifty-eight counties. Unification of each county's superior and municipal courts into one countywide superior court system was designed to improve services to the public by consolidating court resources, offering greater flexibility in case assignments, and saving taxpayer dollars. The last trial courts were unified on February 8, 2001, when Chief Justice Ronald M. George swore in the four remaining municipal court judges as superior court judges in Kings County. (Shown: Judge Charles R. Johnson.)

Photograph by Jason Doiy

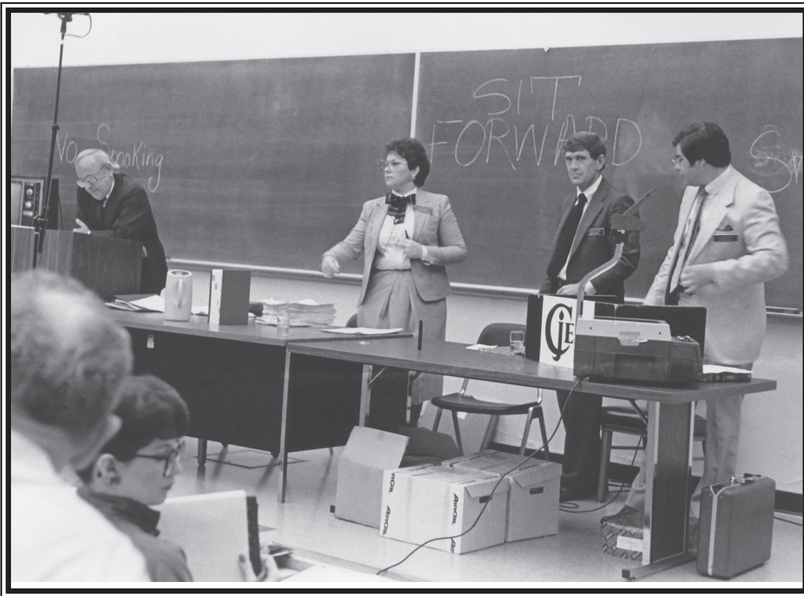
The Malcolm M. Lucas Board Room is the symbolic center of the administration of justice in California. The twenty-seven–member Judicial Council convenes in the board room to determine policy for the state judicial branch.

Photograph by Jonathan Alcorn

Courts statewide are focused on improving the quality of justice and services to meet the diverse needs of children, youths, and families. Chief Justice Ronald M. George presided over "Adoption Saturday" in the Superior Court of Los Angeles County in 1999.

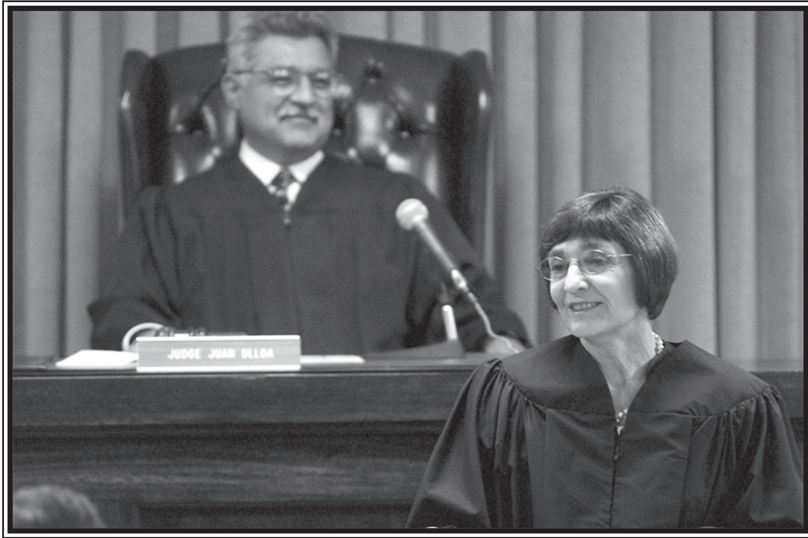
Photograph by Jason Doiy

Courts provide a myriad of support services outside the courtroom. The family law facilitator program offers free education, information, and assistance to parents with child support issues. (Shown: Superior Court of Riverside County.)



Photograph courtesy of the Center for Judicial Education and Research

Professional development and continuing education are mandatory for judicial officers and employees of the judicial branch. A session of the California Judicial College in the mid-1980s provided training for judges.

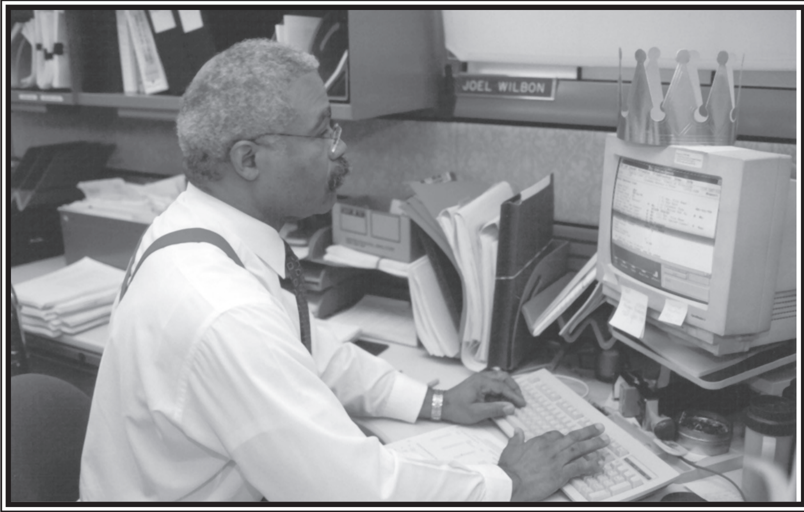


Photograph by Cuauhtemoc Beltran, courtesy of the Imperial Valley Press

A Judicial Council goal is that "members of the judicial branch community will reflect the rich diversity of the state's residents." Presiding Judge Juan Ulloa looked on as Annie M. Gutierrez was installed as a judge in the Superior Court of Imperial County.

Photograph by Jason Doiy

In California, the most linguistically diverse state in the nation with more than 224 languages spoken, court interpreters fill a constitutionally mandated function in the efficient operation of the trial courts. An interpreter assists in understanding court proceedings in the Superior Court of Butte County.



Photograph by Jason Doiy

While protecting privacy rights, the judicial system is working toward integration of court technology systems for more effective information sharing and maximum efficiency. Computers play a vital role in tracking court calendars and the thousands of documents that arrive in a courthouse every day.

Photograph courtesy of the Seaver Center for Western History Research, Los Angeles County Museum of Natural History

In 2002 the state assumed governance, ownership, and maintenance of court facilities, contributing to the goal of access for all residents to safe, secure, and adequate facilities. The Mariposa County Courthouse, completed in 1854, is the state's oldest courthouse in continuous use. It is listed on the National Register of Historic Places.

In all, the Commission on Judicial Performance devoted forty-five days to the Supreme Court investigation between December 1, 1978, and November 2, 1979. Hearings consumed twenty-nine of those days and the remaining sixteen were devoted to meetings.[38]

The resolution of this investigation requested by Chief Justice Bird apparently created frustrations within the commission that led to proposed constitutional changes regarding the review of judicial conduct.

> Based upon its experience and mindful of its role as a watchdog to improve judicial performance and enhance standards of conduct, the Commission early in 1980 will propose to the Legislature changes in Article VI, Sections 8 and 18, of the California Constitution. These changes will deal primarily with the rule-making power for the Commission's proceedings, limited exceptions to confidentiality, and the role of the Supreme Court in reviewing disciplinary actions taken by the Commission.[39]

If these proposals were submitted to the legislature, they apparently were not enacted. The next major constitutional changes concerning the commission occurred nine years later in 1988.

The Commission's Silver Anniversary

Before further changes, however, the commission celebrated its twenty-fifth anniversary in 1985. By this time, the commission had referred a total of twenty-two cases to the Supreme Court for disciplinary action. During the five years leading to the silver anniversary, the commission could point with justified pride to handling an average of 336 complaints and 60 investigations per year, resulting in an annual average of five admonishments, two resignations or retirements while under investigation, and two public censures or removals.[40]

Also by the twenty-five-year mark, the commission had developed a solid set of declarations detailing its policies, procedures, and practices. These were neither duplicative of nor inconsistent with constitutional mandates, statutes, or Judicial Council rules. However, as a public document, they served the beneficial purpose of clearly outlining the commission's investigation procedure, process for formal proceedings, and applications for disability retirement.[41]

Toward Public Proceedings

In November 1988, the people of California passed Proposition 92, as proposed by the legislature, making important changes in the direction of commission openness by allowing:

> [T]he judge to require that a formal hearing be public, unless the commission finds "good cause" for a confidential hearing. . . .
>
> [T]he commission to hold a hearing in public if the charges involve moral turpitude, dishonesty or corruption. . . .
>
> [T]he commission, with the judge's consent, to issue a "public reproval." This is a new level of discipline, more severe than a private admonishment (which the commission can issue by itself), but less severe than a public censure (which requires a formal hearing, argument before the commission, a recommendation by the commission to the Supreme Court, and full review in the Supreme Court). . . .
>
> [T]he commission to issue appropriate press releases in limited circumstances.[42]

Independence and Public Proceedings

The Commission on Judicial Performance became a standalone institution within the judicial branch of government in 1994, and its proceedings shifted dramatically from confidential to public. Proposition 190, proposed by the legislature and approved by the voters in November, provided for major changes that were in effect at the close of the century.[43]

> *Membership*—The membership of the Commission increased from nine to eleven members. The composition of the Commission changed from five judges, two lawyers and two public members to six public members, three judges and two lawyers. The Supreme Court remains responsible for the appointment of the judge members. The Speaker of the Assembly appoints two of the public members; the Senate Rules Committee appoints two public members; and the Governor appoints the remaining two public members as well as the two lawyers. The State Bar Board of Governors no longer appoints lawyer members.
>
> *Open proceedings*—In cases in which formal proceedings are instituted after March 1, 1995, the notice of charges and all subsequent papers and proceedings will be public, including hearings and appearances. Previously, formal proceedings

were confidential except the Commission had discretion to open hearings in cases involving charges of moral turpitude, corruption or dishonesty when an open hearing was in the interests of justice and in the pursuit of public confidence.

Rulemaking—The Commission now has the authority to promulgate its own rules regarding procedures and confidentiality. Previously, rules regulating the Commission were made by the Judicial Council.

Disciplinary determinations—The Commission has the authority to make censure and removal determinations. . . . Previously, the Commission made recommendations for such action to the Supreme Court, which was responsible for determinations regarding censure and removal.

Review of Commission decisions—The Supreme Court has discretionary review of Commission disciplinary determinations; the Court may make an independent review of the record. If the Court does not review the Commission's determination within 120 days after granting a petition for review, the Commission's decision will be final. Previously, censure and removal determinations were made by the Supreme Court, upon recommendation by the Commission, after an independent review of the record.

Public admonishment—The public reproval has been replaced by the "public admonishment." The judge's consent is no longer required.

Interim suspension—The Commission has the authority to suspend a judge, with pay, upon notice of formal proceedings charging the judge with misconduct or disability.

Jurisdiction over former judges—The Commission has the authority to censure and admonish former judges for actions occurring not more than six years prior to the commencement of the former judge's last term in office. A judge's retirement or resignation will not prevent the Commission from completing an investigation or disciplinary proceeding.

Censured former judges barred from assignments—The Commission may "bar" a former judge who has been censured from acting as a judge by assignment, appointment or reference from any California state court.

Supreme Court jurisdiction in proceedings involving the Commission—The Supreme Court has exclusive jurisdiction over proceedings brought by a judge who is a respondent in a Commission proceeding. Requests for injunctive relief or other provisional

remedies in these proceedings must be decided by the Supreme Court within 90 days.

Immunity—Commission members and staff have absolute immunity from liability for their conduct in the course of their official duties. In addition, no civil action or adverse employment action can be taken against any individual based on the individual's statements to the Commission.

Disclosure to appointing authorities—The Commission shall provide to any Governor or to the President private admonishments, advisory letters or records of other disciplinary action with respect to any individual under consideration for a judicial appointment.

Budget independence—The Commission's budget is separate from the budget of any other state agency or court.[44]

The Code of Judicial Ethics

This subject is important to the Commission on Judicial Performance, but it has a distinct and somewhat separate lineage.

The first Code of Judicial Conduct was adopted for California judges in 1974 by the California Judges Association. Although the CJA was and is a private membership organization, the Code of Judicial Conduct for many years enjoyed quasi-official status. This status derived in large measure from the Supreme Court, which on one occasion made the following strong supporting statement regarding the code:

> While the canons do not have the force of law or regulation, they reflect a judicial consensus regarding appropriate behavior, and are helpful in giving content to the constitutional standards under which disciplinary proceedings are charged. . . .
>
> We therefore expect that all judges will comply with these canons. Failure to do so suggests performance below the minimum level necessary to maintain public confidence in the administration of justice.[45]

The existence of formal standards of judicial conduct neatly coincides with the past half-century. The original Canons of Judicial Ethics were promulgated by the American Bar Association (ABA) and adopted with modifications in 1949 by the Conference of California Judges, a predecessor to the CJA. In 1972 the ABA substantially revised the canons and adopted them as the Code of Judicial Conduct. These revisions were

based in large measure on the work of a special committee headed by former Chief Justice Roger J. Traynor. During the interim, the Conference of California Judges had become the CJA. Effective January 5, 1975, the CJA adopted a new California Code of Judicial Conduct adapted from the ABA's 1972 model.

The ABA model code was further revised in 1990, and a modified version was adopted by the CJA in 1992.

This evolution and the role of the CJA changed dramatically in 1994. As a result of Proposition 190, approved by the voters in November 1994, the Supreme Court was directed to "make rules for the conduct of judges, both on and off the bench, and for judicial candidates in the conduct of their campaigns. These rules shall be referred to as the Code of Judicial Ethics."[46]

In response, the Supreme Court adopted, as an interim measure, the CJA's 1992 Code of Judicial Conduct. This was followed by formal Supreme Court adoption of a Code of Judicial Ethics effective January 15, 1996.

As adopted and modified by the Supreme Court, the code at the end of the century directed each judge to uphold the integrity and independence of the judiciary (Canon 1), to avoid impropriety or the appearance of impropriety in all activities (Canon 2), to perform the duties of judicial office impartially and diligently (Canon 3), and to so conduct the judge's quasi-judicial and extrajudicial activities as to minimize the risk of conflict with judicial obligations (Canon 4). In addition, judges and judicial candidates were mandated to refrain from inappropriate political activity (Canon 5). The Supreme Court made clear that all judges must comply with the code, as must any officer of the state judicial system, including but not limited to magistrates, court commissioners, referees, court-appointed arbitrators, judges of the State Bar Court, temporary judges, and special masters (Canon 6).

The clear implication is that failure by a judge to comply with the Code of Judicial Ethics would constitute grounds for disciplinary proceedings before the Commission on Judicial Performance. This connection between the Code of Judicial Ethics and disciplinary action is echoed in the expectations of the commission. "The Commission's authority is limited to investigation and discipline of judicial misconduct. Judicial misconduct usually involves conduct in conflict with the standards set forth in the Code of Judicial Ethics. . . ."[47]

Resources and Volume

From a part-time executive director and stenographer in 1960, the commission staff, by the year 2000, had grown to twenty-seven authorized positions including sixteen attorneys. The title of the chief executive officer had changed to director–chief counsel, and the remaining staff members were organized into four groups: office of trial counsel, investigation staff, office of commission counsel, and administrative staff. The annual budget for staff and all commission activities was approaching $3 million.[48]

While this growth might surprise some, it is hardly surprising when considering that by 1999 the commission was receiving in excess of 1,000 new complaints per year and producing in excess of 1,000 dispositions annually. For those investigations that warranted disciplinary actions, the commission in 1999 issued thirty advisory letters, three private admonishments, four public admonishments or reprovals, and three public censures; recommended and achieved removal of one judge; and precipitated the resignation or retirement of three additional judges.

Impact of the Commission

The Commission on Judicial Performance clearly has had an impact far beyond the number of formal disciplinary actions it has undertaken. The mere existence of the commission with its clear powers of investigation and array of graduated disciplinary sanctions inevitably must have exercised commendable preventive influence on judges who might otherwise have strayed into areas of misconduct. In addition, there is documented evidence that the mere existence of commission proceedings has over the years served as the catalyst to lead erring judges to either resign, retire, or modify their behavior.

These are the dividends for the citizens of California. The commission has also made an important national contribution. California's commission was the first of its kind. Thanks to its good example and success as an experimental alternative to the cumbersome processes of impeachment and its kin, every state in the union now has a similar judicial disciplinary body. All of them have borrowed in substantial measure from some aspect of California's Commission on Judicial Qualifications and successor Commission on Judicial Performance, whether it be in membership, process, or sanctions. For all of these reasons, the commission has played a major role in establishing judicial performance as a component of the improved administration of justice.

Notes

1 Phil S. Gibson, "For Modern Courts," *Journal of the State Bar of California* 32 (1957), p. 735.

2 California Legislature, "Partial Report of the Joint Judiciary Committee on Administration of Justice on the California Judiciary" (1959) in *Appendix to the Journal of the Senate* (1959 Regular Session), volume 2, [section 1], p. 48.

3 California Constitution, article XXIII, section 1.

4 California Government Code, section 75060.

5 California Legislature, "Partial Report of the Joint Judiciary Committee on Administration of Justice," p. 48.

6 Id., p. 51.

7 Gibson, "For Modern Courts," p. 733.

8 Id., pp. 733–34.

9 California Legislature, "Partial Report of the Joint Judiciary Committee on Administration of Justice," p. 7.

10 Id., p. 51.

11 Ibid.

12 Senators Edwin J. Regan and Joseph A Rattigan, Argument in Favor of Proposition 10, Senate Constitutional Amendment No. 14, submitted to California voters on November 8, 1960.

13 As noted in Chapter Three, the long-standing Commission on Qualifications was continued in existence by Proposition 10, but its name was changed to the Commission on Judicial Appointments in order to avoid confusion with the new disciplinary commission.

14 Government Code, sections 68701–68755 and 75060.

15 Jack E. Frankel, "The Commission on Judicial Qualifications," *Journal of the State Bar of California* 36 (1961), p. 1008.

16 California Constitution (1967), article VI, section 18.

17 *Stevens v. Commission* (1964), 61 Cal.2d 886.

[18] *Geiler v. Commission* (1973), 10 Cal.3d 270.

[19] Id., p. 275.

[20] Ibid.

[21] Id., p. 276.

[22] Id., pp. 285–86.

[23] California Commission on Judicial Qualifications, *1974 Annual Report*, pp. 2–3.

[24] California Constitution (1976), article VI, section 18; California Commission on Judicial Performance, *1976 Annual Report*, p. 1.

[25] *McComb v. Commission on Judicial Performance* (1977), 19 Cal.3d Special Tribunal Supplement 1.

[26] Chief Justice Rose Elizabeth Bird, Letter to the Honorable Bertram D. Janes, Associate Justice, California Court of Appeal (November 24, 1978), in California Commission on Judicial Performance, *In the Matter of Commission Proceedings Concerning the Seven Justices of the Supreme Court of California, Appendix to Background Report of Special Counsel* (June 11, 1979), volume II, exhibit 365.

[27] Ibid.

[28] Ibid.

[29] See, for example, California Commission on Judicial Performance, *In the Matter of Commission Proceedings Concerning the Seven Justices of the Supreme Court of California, Background Report of Special Counsel* (June 11, 1979), exhibits 441–464.

[30] Id., p. 19.

[31] Id., p. 20; volume II, exhibit 659, "Rule 902.5, California Rules of Court."

[32] Repealed effective July 1, 1982.

[33] California Rules of Court, former rule 902.5.

[34] California Constitution (1976), article VI, section 18(f).

[35] *Mosk v. Superior Court* (1979), 25 Cal.3d 474, 499.

[36] California Commission on Judicial Performance, *Report of Status and Announcement of Results Regarding Investigation of California Supreme Court Justices* (Novem-

ber 5, 1979), p. 2 (text and attachments provided by staff of the commission in response to the author's request).

37 California Constitution, article VI, section 18(d)(3).

38 California Commission on Judicial Performance, *1979 Annual Report*, p. 2.

39 Id., p. 3.

40 California Commission on Judicial Performance, *1985 Annual Report*, Appendix 2.

41 California Commission on Judicial Performance, *1987 Annual Report*, Appendix 4(C).

42 California Commission on Judicial Performance, *1988 Annual Report*, p. 3; California Constitution (1988), article VI, sections 18(f)(1)–(3) and 18(g).

43 California Constitution (1994), article VI, sections 8, 18, and 18.5.

44 California Commission on Judicial Performance, *1995 Annual Report*, pp. 7–8.

45 *Kloepfer v. Commission on Judicial Performance* (1989) 49 Cal.3d 826, 838 n. 6.

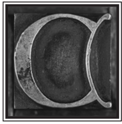
46 California Constitution (1994), article VI, section 18(m).

47 California Commission on Judicial Performance, *1997 Annual Report*, p. 1.

48 California Commission on Judicial Performance, *1999 Annual Report*, pp. 29–30.

Chapter 8
Reduction of Delay in Resolving Cases

Overview



onfirming the emerging reputation of the Judicial Council as a problem solver, the California Legislature in 1949 requested a study of pretrial conferences and their potential to reduce delay and facilitate dispositions. Following research and experimentation, the council reported a favorable conclusion. The legislature, in response, authorized the Judicial Council to adopt rules governing pretrial conferences in civil cases. Pretrial conferences became mandatory in most superior court cases, but attorney opposition ultimately led to repeal of the authorizing legislation.

The Judicial Council returned to the fray in the early 1970s through the Select Committee on Trial Court Delay. This committee issued six reports and, in addition to recommendations on unification and state funding (discussed in Chapters Five and Six), made numerous recommendations ranging from reduced jury size to arbitration. These were considered and partially adopted by the council in the ongoing search for delay reduction.

In the late 1970s, the thinking about delay and the responses to it changed following multistate research that contradicted popular notions about the causes of delay. Experimentation to alter the "local legal culture," as a report of the National Center for State Courts (NCSC) called it, succeeded in reducing delay, which further changed thinking and dialogue.

Time standards for the processing of cases, from filing to disposition, were a tangible product of this new thinking. The standards rested on the premise that it is the responsibility and prerogative of the judge and court, not the attorneys, to control the pace of litigation from commencement to disposition.

Both the standards and premise were attacked by attorneys and judges favoring the traditional view that attorneys should control their cases. However, the new approach continued to gain favor and was widely accepted by the century's end.

The national ferment came home to California with enactment of the Trial Court Delay Reduction Act of 1986. Substantial efforts by the Judicial Council and the Administrative Office of the Courts (AOC) were required to meet the act's provisions for adopting criminal and civil time standards, measuring and reporting compliance, establishing exemplary delay reduction programs in nine superior courts, and training participating judges.

Within three years the Judicial Council reported that among participating courts case processing time had improved dramatically, jury trials had been shortened, and pending cases were younger.

Based upon these results, the Judicial Council recommended early in the 1990s, and the legislature concurred, that the council should undertake a comprehensive and continuing program of delay reduction. Among the

specific steps were broadly applicable time standards, improved case-management systems, addressing existing laws that impede delay reduction, and mechanisms for monitoring success. The program explicitly embraced the view that litigation should be managed by the court, from beginning to resolution, within a reasonable time frame. This program became institutionalized and effective even as the Judicial Council, the AOC, and the courts digested unification and the shift to state funding.

Delay has long been an ogre in justice administration, and rightly so. Everyone has heard the lament that "justice delayed is justice denied" or that, when it comes to justice, "delay is the most effective form of denial."

Indictments of delay were as virulent as ever during the past half-century. In 1958, Earl Warren, Chief Justice of the U.S. Supreme Court, decried the ravages of delay on justice in an address before the American Bar Association (ABA). "Interminable and unjustifiable delays in our courts are today compromising the basic legal rights of countless thousands of Americans and imperceptibly corroding the very foundations of constitutional government in the United States. Today, because the legal remedies of many of our people can be realized only after they have sallowed with the passage of time, they are mere forms of justice."[1]

Concern about delay in California's judicial processes was pervasive throughout all but a small segment of the period from 1950 to 2000. Significant progress was made in eliminating or reducing delay, thus creating another milestone in improved administration of justice.

California profited from and contributed to national programs. Refining the concepts of delay was a significant component of the national endeavors during this half-century. In prior decades, "delay" had been used rather indiscriminately with the result that an implication evolved that any time consumed in the preparation or prosecution of a pending lawsuit was delay and therefore unacceptable. Matters were clarified in the 1970s by explicit recognition that litigation is not an instantaneous process and that time is required to adequately prepare and to achieve appropriate resolution. The most explicit statement and generally accepted standard was articulated by the American Bar Association: "From the commencement of litigation to its resolution, whether by trial or settlement, any elapsed time *other than reasonably required* for pleadings, discovery, and court events, is unacceptable and should be eliminated." (Emphasis added.)[2]

The Judicial Council of California explicitly embraced this standard as the measure of an acceptable pace of litigation.[3]

In the following discussion, "delay reduction" and "reducing delay" are used since they are the phrases commonly applied in this area. In substance, however, the progress in California has revolved around more refined concepts of instituting case management, expediting the pace of litigation, and eliminating lapses in any significant phase of criminal or civil litigation.

Pretrial Conferences in the 1950s

The California Legislature, in 1949, requested that the Judicial Council "make a study of the subject of pretrial practice, including procedures employed in other jurisdictions, with a view to ascertaining whether the adoption of a pretrial system in California would facilitate the disposition of civil cases. . . ."[4] This request was based in part on the legislative determination that "the increased volume of litigation in California has resulted in . . . delay in the disposition of civil cases."[5]

The Judicial Council responded in its 1954 biennial report to the governor and legislature. While some might say that this was a delayed reply on the subject of delay, that would be an unfair assessment. Two facts should be revisited before reaching judgment. The first is that the Judicial Council was extensively engaged with implementation of the lower court reorganization achieved by constitutional amendment in 1950. Second, the legislature's request preceded by more than a decade the creation of the AOC and the position of Administrative Director of the Courts, thus requiring the Judicial Council to undertake a rather substantial program without the assistance of appropriate staff. Nonetheless, the scope of the Judicial Council's efforts was impressive:

- Appointment of two pretrial committees, through the Chief Justice—one for the northern part of the state and the other for the southern part—to study the subject of pretrial hearings
- Publication in June 1950 of the results of an examination of all available reports and publications relative to pretrial usage in state and federal courts, titled *Pretrial Procedure Study—Preliminary Report*
- Appointment of a special committee, through the Chief Justice, to conduct local experiments in pretrial usage for the purpose of knowing the reception and results of using pretrial procedures in selected courts in California
- Launching of an out-of-state survey regarding the operation and conduct of pretrial conferences in leading jurisdictions in the United States
- Establishment by 1952 of a program of pretrial conferences in various parts of the state[6]

In these efforts, the Judicial Council focused on the use of pretrial conferences and acknowledged that the principal objectives were "to reduce the trial to a determination of the basic factual and legal issues that are actually in dispute . . . [which] usually results in a speedier, more efficient

trial with a great saving of both time and expense to litigants, witnesses and the courts."[7]

With this explicit commitment to reducing delay, the Judicial Council made the following recommendation to the legislature:

> After careful consideration and discussion of the foregoing findings and recommendations of its Committee on Pretrial Procedure, of the usage and operation of the pretrial system in other states, of the workings of pretrial conferences on an experimental and voluntary basis in this State in the last few years, of the views of various members of the bench and bar, of the work and findings of the Committee on Pretrial Procedure of the State Bar, of the above mentioned action of the Conference of State Bar Delegates, and of the text of the above bill, *the Judicial Council: (1) reports and finds in favor of pretrial conferences, and that the adoption of an effective pretrial system in California, through rules promulgated by the Judicial Council in order to insure and permit of the requisite flexibility as above discussed, should serve to facilitate the disposition of civil cases, to relieve congested court calendars, and otherwise to improve the administration of justice; and accordingly (2) reports and recommends to the Governor and Legislature the enactment into law of the above quoted bill relating to the establishment of pretrial conferences in the state by rules of this council.*[8]

The legislature embraced this recommendation and in 1955 enacted legislation authorizing the Judicial Council to promulgate rules governing pretrial conferences in civil cases in both the superior and municipal courts.[9]

These rules mandated pretrial conferences in every superior court civil case in which a memorandum-to-set-for-trial had been filed by one of the parties. Short causes, with an estimated trial time of less than two hours, were exempted.[10]

Then followed a stormy period of implementation. The resistance of lawyers ran high. Notwithstanding formal support and participation from the State Bar prior to enactment of the pretrial rules, the Judicial Council found itself in continuous conflict with the broader membership of the bar with the result that, after a few years, the Judicial Council acceded and the legislation authorizing control over pretrial conferences was repealed.

Delay Reduction in the 1960s

Aside from continuing efforts to impose pretrial conferences, delay reduction as an explicit Judicial Council priority apparently was dormant during this decade. Certainly, the Judicial Council's plate was full. At the beginning of the decade was the campaign to revise the judicial article of the California Constitution and thereafter implement the changes achieved, such as creating the Commission on Judicial Qualifications and establishing the Administrative Office of the Courts. Later, the Judicial Council also followed closely and contributed to further revision of the judicial article during the work of the Constitution Revision Commission in the latter 1960s.

The Select Committee on Trial Court Delay

Delay reduction returned to an explicit spot on the Judicial Council's agenda in 1972 by creation of the Select Committee on Trial Court Delay. As noted previously in Chapters Five and Six in connection with court organization and funding, this committee made extensive recommendations. However, those were only two of many topics touched on by the committee, which issued six reports during its year of existence. Other recommendations covered a broad range of topics including compulsory establishment of administrators in larger superior courts, prescribed duties of presiding judges, compulsory settlement conferences, limited oral argument, restricted disqualification of judges, sanctions for failure to appear at trial or court conference, reduction of jury size, reduction of peremptory challenges, majority verdicts in selected criminal cases, no-fault automobile insurance, and arbitration in civil cases.[11] This array of proposals was considered and partially adopted by the Judicial Council during ensuing years.

The work of the Select Committee, for the most part, was gathering and sifting the universe of ideas regarding proposed cures for court delay. The resulting proposals were those adopted by the committee after analysis by staff and deliberations by committee members. What was missing from these efforts, both in the Select Committee on Trial Court Delay and in Judicial Council proceedings, was a crucible for determining the real-life efficacy of specific proposals. This all changed in the latter part of the 1970s as a consequence of empirical research and experimentation that furnished the missing crucible.

Delay in State Courts Nationally

Until the 1970s, efforts to reduce delay consisted of advocating and, in some cases, implementing favorite theories in the hope that they would in

fact achieve the desired goal of expediting litigation. These were exercises in logic guided more by the principle that "they should work" than by proof that "they would work." Judicial Council adoption of mandatory pretrial conferences was a good example, as was the recommendation of the Select Committee to create a single-level trial court.

In California and throughout the nation, favored theories and proposals were episodic or anecdotal, or both, and lacked reliable, supporting empirical data.

This all began to change in 1978 with a report from the National Center for State Courts titled *Justice Delayed: The Pace of Litigation in Urban Trial Courts.*[12] This report was based on unprecedented empirical measurement of the pace of litigation in urban courts of general jurisdiction in larger states throughout the nation. Among the facts that emerged were these:

- Comparable state trial courts processed comparable cases at widely varying speeds and numbers of dispositions per judge.
- The time from commencement to disposition was three times longer in some courts than in others; the number of dispositions per judge was three times greater in some courts than in others.
- Criminal cases were consistently processed more quickly than civil cases.
- Civil cases moved significantly faster in courts with individual calendars.
- Neither processing time nor judicial productivity appeared to be improved by extensive settlement programs.[13]

Two broader conclusions of the research were particularly notable. First, the NCSC team stated: "We are persuaded that few of the traditional explanations of trial court delay differentiate faster from slower courts. Delay—or comparatively tardy disposition of civil and criminal cases—does not emerge as a function of court size, judicial caseload, 'seriousness' of cases in the caseload, or the jury trial rate."[14]

Second, the NCSC team advised:

> It is our conclusion that the speed of disposition of civil and criminal litigation in a court cannot be ascribed in any simple sense to the length of its backlog, any more than it can be explained by court size, caseload, or trial rate. Rather, both quan-

> titative and qualitative data generated in this research strongly suggest that both speed *and* backlog are determined in large part by established expectations, practices, and informal rules of behavior of judges and attorneys. For want of a better term, we have called this cluster of related factors the "local legal culture." Court systems become adapted to a given pace of civil and criminal litigation. That pace has a court backlog of pending cases associated with it. It also has an accompanying backlog of open files in attorney's offices. These expectations and practices, together with court and attorney backlog, must be overcome in any successful attempt to increase the pace of litigation. Thus most structural and caseload variables fail to explain interjurisdictional differences in the pace of litigation. In addition, we can begin to understand the extraordinary resistance of court delay to remedies based on court resources or procedures.[15]

Interestingly, these research findings appeared to fit California although the overall situation in California was not an explicit focus of the research.[16]

The next stage in national efforts was to determine empirically whether the "local legal culture" could be modified to improve the pace of litigation. For this purpose, experiments were undertaken in several state trial courts around the nation. After these experiments had been in existence for an appropriate period of time and had been subjected to reliable evaluation, the conclusion was announced that delay in litigation is not inevitable and that the following package of ingredients in a delay reduction plan could, and did, both alter the local legal culture and improve the pace of litigation:[17]

> First there must be a commitment by the court to control caseflow, followed by identification of the major events in the litigation process which the court must control and measurement of the present pace of litigation between these events. This enables the court to determine whether the time between steps is acceptable and, if not, to specify the maximum permissible time in the typical case, with allowance for exceptional cases. This produces time standards which govern the overall pace of litigation as well as each stage in the process. The court can then implement the plan, with emphasis on monitoring completion of pleadings, early identification of cases subject to alternate dispute resolution processes, monitoring filing of trial readiness documents, development of realistic trial setting policies, and application of a firm continuance policy. This last step is critical in establishing firm trial dates and assuring that cases be tried when scheduled. To execute the

> plan successfully the court should also have or develop a system to produce the information needed to manage the processing of cases and should, at an appropriate point in the process, consult with the trial bar and other affected public officials, such as the prosecuting attorney.[18]

A new generation of thinking and examination of court delay was prompted by these early efforts. Subsequent assessment and experimentation confirmed, in refined form, the initial findings and conclusions.[19]

Tangible dividends resulted from these national efforts. The most prominent was the adoption of time standards for case processing. The first standards were promulgated by the Conference of State Court Administrators in 1983. These standards basically provided for the conclusion of most felony cases within 180 days of arrest and of misdemeanor cases within 90 days of arrest. Civil cases in which a jury trial was requested were to be tried, settled, or disposed of within eighteen months from the date litigation commenced and, in nonjury cases, within twelve months.[20] In 1984 the American Bar Association adopted similar standards proposed by its Conference of State Trial Judges. These standards provided that 90 percent of all general civil cases should be concluded by settlement or trial or otherwise within twelve months from the date the case was filed. Ninety-eight percent of these cases should be concluded within eighteen months of filing and the remainder within twenty-four months of filing, barring exceptional circumstances.[21]

Also in 1984, the Conference of Chief Justices, consisting of the chief justice from each state supreme court, collectively endorsed the establishment of time standards for case processing in each state judicial system for all categories of civil and criminal cases. In addition, the chief justices endorsed the establishment of monitoring procedures and effective enforcement procedures for time standards.[22]

The time standards were based upon the new premise that the judge and the court have a duty to control the pace of litigation from beginning to disposition and the further responsibility to eliminate any lapse of time in the litigation process other than that reasonably required for court events and preparation. Of course, this flew in the face of the traditional view that the courts were passive receptacles for lawsuits and that the attorneys, not the judge or court, would decide when events occurred and govern the pace of those events. Attorney opposition to both the time standards and the underlying philosophy was virulent. For that matter, opposition among judges who favored that status quo also was vigorous.

Ultimately, the new approach prevailed—thanks in large measure to a group of courageous trial judges and attorneys from around the country who aggressively defended and advocated time standards and the corollary responsibility of judges. They were aided by the empirical research that demonstrated fallacies in past theorizing about delay and the proven success of the new approach in expediting litigation.[23]

California's Trial Court Delay Reduction Act of 1986

This national ferment came home to California in 1986 in the form of the Trial Court Delay Reduction Act.[24] By this act, the California Legislature mandated an exemplary delay reduction program and directed the Judicial Council, on or before July 1, 1991, to report on the results and to recommend whether it should be applied to all superior and municipal courts.[25]

This legislation was based upon the premise that "[d]elay in the resolution of litigation . . . reduces the chance that justice will in fact be done, and often imposes severe emotional and financial hardship on litigants."[26] Sponsored by Attorney General John Van de Kamp, the implementing bill was introduced and endorsed by Speaker of the Assembly Willie Brown. For reasons that are not apparent, the Judicial Council, Chief Justice Rose Elizabeth Bird, and Administrative Director of the Courts Ralph J. Gampell did not take an official position while this legislation was under active consideration by the legislature.

It appears that the legislation was inspired by Attorney General Van de Kamp's participation in an advisory committee of the National Center for State Courts through which he learned of the successful efforts of other states to reduce court delay. The impact of national developments is further reflected by the fact that the legislation he subsequently sponsored contained the generally accepted definitions promulgated by the ABA: "[L]itigation, from commencement to resolution, should require only that time reasonably necessary for pleadings, discovery, preparation, and court events, and that any additional elapsed time is delay and should be eliminated."[27]

Almost coincidentally with enactment of the delay reduction legislation, leadership of the judicial branch of government changed with appointment of Justice Malcolm M. Lucas as Chief Justice and William E. Davis as Administrative Director of the Courts. They both embraced the goals and obligations of the 1986 act. This was an important change from the preceding Judicial Council neutrality because the act imposed major burdens on both the Judicial Council and the courts of California. The new law:

- Required the Judicial Council to adopt case processing time standards for the processing and disposition of civil and criminal actions
- Mandated that the Judicial Council collect, maintain, and publish statistics on superior courts' compliance with the time standards
- Directed the Judicial Council to select nine superior courts that were to establish exemplary delay reduction programs[28]
- Required that the exemplary programs start by January 1, 1988, and continue for three years
- Directed the Judicial Council to train judges participating in the program
- Gave judges who were selected to serve in the pilot programs the responsibility for eliminating delay with authority to assume control over the pace of litigation by actively managing cases from start to finish
- Allowed the presiding judge of any superior court to voluntarily establish an exemplary delay reduction program[29]

The Judicial Council and the AOC, working with the National Center for State Courts, promptly swung into action. Time standards were adopted effective July 1, 1987; the mandatory pilot courts were designated by December 1986; ten voluntary delay reduction programs in other courts were established shortly thereafter; and participating judges in mandatory pilot courts undertook the legislative obligation to "actively monitor, supervise and control the movement of all cases assigned to the program from . . . filing . . . through final disposition."[30] In addition, rules were adopted to implement new procedures, and the pilot programs were evaluated on an ongoing basis.

By 1991, it was possible for the Judicial Council to report that:

- *Case processing time had improved dramatically:* Ninety percent or more of case dispositions in 1990 were achieved within two years of filing in all nine mandatory pilot courts, compared to 1987, when it took more than three years. For the cases disposed of most quickly (the fastest 50 percent), all nine pilot courts showed improvement; four pilot courts cut the median time to disposition in half.
- *Trial time for jury trials had been shortened:* Seven of the nine pilot courts had cut the length of jury trials, and five had completed at least half of their jury trials in one week.

- *Pending cases were younger:* Five of the pilot courts cut in half the percentage of cases pending more than two years. In all nine mandatory pilot courts, the age of cases pending was substantially less than the age of cases pending before the program began.[31]

Judicial Council Charter for Delay Reduction

In response to the Trial Court Delay Reduction Act of 1986, the Judicial Council reported to the legislature in 1991 the following groundbreaking recommendations, which were substantially enacted during the 1990s and which are set forth in some detail at this point to underscore the importance of delay reduction as a milestone in the improved administration of justice. The Judicial Council advocated for taking the following steps:

1. Adopt rules or standards that would furnish courts with supportive delay reduction guidance, including:
   - Litigation should be managed by the court, from beginning to resolution, within a reasonable amount of time.
   - Expeditious and timely resolution of cases is the goal, after full and careful consideration of the facts and consistent with justice.
   - Delay could reflect a failure of justice and undermine the public's confidence in the courts.
   - A continuous delay reduction effort in California is in the public interest.
   - Trial courts have the responsibility to manage their caseloads to reduce delay.
2. Adopt standards or rules that give trial courts flexibility in developing case-management systems, which should have the following characteristics:
   - Early and continuous case monitoring from the point of filing
   - Assignment of cases to different case-management tracks depending on their characteristics and monitoring needs
   - The use of sanctions
   - Firm trial dates
   - Trial proceedings management
3. Ask the Chief Justice to appoint an advisory committee to review existing statutes and rules to find out which procedures prevent the courts from meeting case-management time standards and to modify those that are prohibitive.

4. Adopt a rule or standard to encourage trial courts to annually assess their compliance with time standards and to identify procedures, rules, California Rules of Court, and statutes that are obstacles to meeting standards.
5. Retain the superior court delay reduction case-management time standards.
6. Adopt Standards of Judicial Administration for trial court presiding judges and court administrators to emphasize new leadership and case-management roles as a result of delay reduction programs.
7. Adopt standards or rules that provide the resources and training needed for trial courts to monitor and manage their caseloads.
8. Develop a municipal and justice court delay reduction program by identifying procedures that prevent trial courts from meeting the case-management time standards and modifying those that are found to be prohibitive.[32]

Notes

[1] U.S. Chief Justice Earl Warren, speech to opening assembly of the American Bar Association annual meeting (1958), quoted in Thomas C. Yager, "Justice Expedited—A Ten-Year Summary," *U.C.L.A. Law Review* 7 (1960), p. 57 n. 1.

[2] American Bar Association, Judicial Administration Division, *Standards Relating to Trial Courts*, Standards of Judicial Administration, volume 2 ([Chicago]: American Bar Association, 1992), section 2.50, p. 76.

[3] California Standards of Judicial Administration, section 2, Caseflow Management and Delay Reduction—Statement of General Principles, adopted effective July 1, 1987.

[4] Assembly Concurrent Resolution No. 92—Relating to requesting the Judicial Council to study pretrial practice and procedure (July 2, 1949), California Statutes 1949, chapter 191, pp. 3406–7.

[5] Id., p. 3406.

[6] Judicial Council of California, *Fifteenth Biennial Report to the Governor and the Legislature* (1954), part 1, pp. 13–14.

[7] Id., p. 15.

[8] Id., p. 21.

[9] California Statutes 1955, chapter 632, p. 1130; California Code of Civil Procedure (1955), section 575. Rules relating to pretrial conferences were adopted by the Judicial Council in 1956, effective January 1, 1957; Judicial Council of California, *Seventeenth Biennial Report to the Governor and the Legislature* (1959), part 1, p. 54.

[10] Judicial Council of California, Amendments to Rules for the Superior Courts (1956), rules 8–9.5, 47 Cal.2d 3, pp. 3–9.

[11] [California] Select Committee on Trial Court Delay, *Report 6* (June 1, 1972).

[12] The underlying research for this study was funded by the federal Law Enforcement Assistance Administration (LEAA) as part of its national initiative to improve state courts. It also was undertaken jointly by the National Center for State Courts and the National Conference of Metropolitan Courts.

[13] Thomas Church, Jr., et al., *Justice Delayed—The Pace of Litigation in Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1958), "Executive Summary," précis.

[14] Id., p. 5.

[15] Id., p. 54.

[16] Larry L. Sipes, "Managing to Reduce Delay," *California State Bar Journal* 56 (1981), p. 104.

[17] Larry L. Sipes et al., *Managing to Reduce Delay* (Williamsburg, Va.: National Center for State Courts, 1980). This study, too, was funded by the LEAA.

[18] Larry L. Sipes, "Reducing Delay in State Courts—A March Against Folly," *Rutgers Law Review* 37 (1985), p. 305.

[19] One of many examples is John Goerdt, *Re-examining the Pace of Litigation in 39 Urban Trial Courts* (Williamsburg, Va.: National Center for State Courts, 1991).

[20] Sipes, "Reducing Delay in State Courts," p. 310.

[21] American Bar Association, *Standards Relating to Trial Courts*, standards 2.50–2.55, p. 76.

[22] Sipes, "Reducing Delay in State Courts," p. 311.

[23] Contrary to the practice elsewhere in this book, the author personally acknowledges the indispensable contribution of Judge Robert Broomfield to reducing trial court delay. At the time of these developments he was the presiding judge of the superior court in Maricopa County (Phoenix), Arizona. He sponsored the most ambitious and successful experiment, in which a group of volunteer judges in his court demonstrated the efficacy of time standards and judicial control over the pace of litigation. As president of the National Conference of Metropolitan Courts, he championed the new knowledge. As chairman of the American Bar Association's Conference of State Trial Judges, he was instrumental in gaining adoption of the association's time standards for case processing. Judge Broomfield was subsequently appointed to the U.S. District Court in Phoenix.

[24] Trial Court Delay Reduction Act of 1986, California Statutes 1986, chapter 1335, p. 4743; California Government Code, sections 68600–68620.

[25] Passage of this legislation was facilitated by the fact that the superior court in San Diego County and a few others had embraced the ABA standards as goals for delay reduction.

[26] Assembly Bill 3300; California Statutes 1986, chapter 1335, section 68601(b), pp. 4743–44.

[27] California Government Code, section 68603(a).

[28] These courts were to be those with the highest numbers of at-issue civil cases, pending more than one year, per judicial position. Four of these courts were to have more than eighteen judges, and five were to have more than eight judges.

[29] Judicial Council of California, Administrative Office of the Courts, *Prompt and Fair Justice in the Trial Courts: Report to the Legislature on Delay Reduction in the Trial Courts* (July 1991), volume 1, p. 3.

[30] Trial Court Delay Reduction Act of 1986, California Statutes 1986, p. 4745.

[31] Judicial Council, *Prompt and Fair Justice in the Trial Courts*, volume 1, p. 7.

[32] Id., pp. 10–12.