Journalistic Retrospective

The following articles from the *California Court Review (CCR): A Decade of State Trial Court Funding* and excerpts from *Committed to Justice: The Rise of Judicial Administration in California* by Larry Sipes provide a good journalistic retrospective of the Judicial Branch prior to and subsequent to the enactment of the Lockyer-Isenberg Trial Court Funding Act.

The articles and excerpts are attached in the following order:

Attachment 1: *Committed to Justice*, pages 14-15
Attachment 2: *Committed to Justice*, pages 23-32
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Attachment 10: *Committed to Justice*, pages 133-146
Attachment 11: *CCR – Recalling the Challenges and Benefits*
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Attachment 13: *CCR – What Have All These Reforms Meant*
Attachment 14: *CCR – Dividing the Pie*

- Adapting to the Soviet Union's successful development and explosion of its first atomic bomb
- Marveling at new technology such as television
- Soon to be reading the bestseller *From Here to Eternity* by James Jones
- Hoping for the success of a young scientist named Jonas Salk, who is on the brink of developing a vaccine for polio

California has an approximate population of 10 million in 1950 with one out of fifteen Americans residing here.

Comparing California Courts: 1850 and 1950

	1850	1950
NUMBER OF COURT LOCATIONS	Unknown; but district courts were organized into nine judicial districts; a special district court existed for San Francisco; county courts were provided for in each county; and justice courts were organized for each township	830
TRIAL COURT STRUCTURE	District courts County courts Justice courts	Superior courts Municipal courts Township courts City justice courts City courts Police courts
FILINGS	Unknown	2,473,282 (appellate, superior, and municipal)
JUDGES/JUDICIAL OFFICERS	Unknown	1,056
FUNDING	Presumed township, county, and state	City, county, and state
STATE-LEVEL ADMINISTRATION	Supreme Court	Judicial Council

	1850	1950
TRIAL COURT ADMINISTRATION	Judges County and court clerks	Presiding judges County clerks and officials Court clerks
JUDICIAL DISCIPLINE	Legislative impeachment, failure to achieve election or reelection	Legislative impeachment, voter recall, defeat at a regular election, or retirement for disability by the governor with consent of the Commission on Qualifications
JUDICIAL SELECTION	Contested elections, gubernatorial appointments to fill vacancies	Retention elections for appellate courts; contested elections for trial courts; gubernatorial appointments to fill vacancies
ALTERNATIVE DISPUTE RESOLUTION	Legislature authorized to create tribunals for conciliation, but they were never enacted	No court-annexed programs
JUDICIAL EDUCATION	No program	No program
PLANNING	Not a part of judicial administration	Not a part of judicial administration

The California Constitution referred to by Congress in the Act for the Admission of California into the Union was adopted in 1849. The first constitution and the context in which it was adopted furnish important ingredients for understanding the administration of justice during the following 100 years.[1]

The Population of California

Congressional and other references to "the people of California" on the eve of statehood should be considered with care. The frequently cited

and ruined others and further undermined public opinion. Location of new routes was decided by bribery, not need, with the knowledge that whole towns could be destroyed if the railroad refused to service them."[29]

During the otherwise tumultuous period between 1849 and 1879, the judicial system was tuned but hardly changed in epic dimensions. The following were the more notable developments:

1850: The Supreme Court asserted that "it will exercise a supervisory control over all the inferior courts of this state. . . ."[30]

1851: The legislature enacted the Court Act of 1851, fleshing out constitutional provisions in the areas of judicial officers, jurisdiction, and the creation of several minor courts of limited jurisdiction. This act was replaced by a more concise version with little substantive change by the Court Act of 1853.

1862: Article VI of the constitution was revised. While dealing in minor respects with the structure and staffing of the trial courts, the major changes were to expand the Supreme Court by the addition of two associate justices; to extend Supreme Court terms to ten years rather than six; and to clarify that the Supreme Court had original jurisdiction, in addition to appellate jurisdiction, to issue writs of mandamus and certiorari, as well as habeas corpus. This was an area that had been in dispute since adoption of the 1849 constitution.

1872: The Code of Civil Procedure was adopted by the legislature.[31]

The Constitution of 1879

The sequence of events leading to the Constitution of 1879 began on September 5, 1877, when the voters of California approved calling a convention to revise the state's constitution. Six months later the legislature adopted the enabling act for the convention, providing for the election of 152 delegates on June 19, 1878, to meet in Sacramento on September 28. The convention adjourned on March 3, 1879, and on May 7 the new constitution was approved by a statewide vote of 77,959 to 67,134.[32]

The most significant changes restricted the power of the legislature and its role in the system of government.[33] The sentiment behind this treatment of the legislative branch was captured in the following excerpt from an address to the people of California, adopted by convention delegates, asking for ratification of the proposed constitution and explaining the legislative provisions:

> For many years the people of this State have been oppressed by the onerous burdens laid upon them for the support of the government, and by the many acts of special legislation permitted and practiced under the present Constitution. Its provisions have been so construed by the Courts as to shift the great burden of taxation from the wealthy and non-producing class to the labourers and producers.
>
> The only restriction upon a Legislature is the Constitution of the State and of the United States. It, therefore, becomes necessary that State Constitutions should contain many regulations and restrictions, which must necessarily be enlarged and extended from time to time to meet the growing demands of the sovereign people.[34]

The judicial branch certainly received attention but apparently without the rancor that had been directed toward the legislature. Abundant proposals to revise court structure were made just prior to and during the convention but not adopted. For example, while the convention's Judiciary Committee was deliberating, the San Francisco Bar Association adopted and arranged to have presented to the committee a plan to create a single-level trial court, with at least one judge in each county, and to abolish all inferior trial courts.[35]

The Judicial System in the Constitution of 1879

The key provisions are summarized in some detail, not because substantive change was extensive, but because they reflected the objective of convention delegates to place considerable restraints on the legislature and to do so by constitutional specifications that would be beyond legislative reach.

Courts and Officers

- Supreme Court—to consist of a Chief Justice and six associate justices, with permission to sit in two three-judge departments and en banc and to be always open for business (not just during court sessions or terms). The justices to be elected statewide for twelve-year terms.
- Superior courts—one for each county or city and county; specified courts to have one judge, others to have two judges, San Francisco to have twelve judges; to be always open (legal holidays and nonjudicial days excepted). Judges to be elected by county,

or city and county, for six-year terms. The legislature may also provide for appointment of one or more superior court commissioners by each superior court to perform chamber business of the judges, to take depositions, and to perform such other business as may be prescribed by law.

- Justices' courts—number and terms to be fixed by the legislature. Justices to be elected by the unit of local government served by the court.
- Inferior courts—to be established at the discretion of the legislature in any incorporated city or town, or city and county, with powers, terms, and duties fixed by statute.

Other Officers

- Clerk of the Supreme Court—the legislature to provide for the clerk's election.
- Supreme Court reporter—the justices to appoint the reporter; the individual to hold office at their pleasure.
- County clerks—to be ex officio clerks of courts of record in the counties or cities and counties.[36]

Jurisdiction

The scope of jurisdiction for each category of court was not particularly notable. What was striking was the level of detail embedded in the constitution rather than statute. Superior courts, for example, were constitutionally granted

> original jurisdiction over all cases in equity, . . . certain cases at law involving title or possession of real property, the legality of any tax, impost, assessment, toll, or municipal fine and demands amounting to $300, . . . criminal cases amounting to felony [or] misdemeanor cases not otherwise provided for, actions of forcible entry and detainer, proceedings in insolvency, actions to prevent or abate a nuisance, all matters of probate, divorce, and for annulment of marriage, and special cases and proceedings not otherwise provided for; . . . power of naturalization; appellate jurisdiction of cases arising in justices' courts and other inferior courts as are prescribed by law; courts and judges to have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus.[37]

A major change, obviously, was the increase in the size of the Supreme Court to seven justices with authorization to sit in three-judge departments. Another significant change also involving the Supreme Court was to require in the determination of causes that all decisions of the court be in writing and the grounds of the decision stated.[38] The reasons were to assure that the law of the state was clear and, in cases of remand to the trial court, to furnish instruction to both the trial judge and attorneys as to the issues resolved by the Supreme Court and the rationale.[39] While there apparently was a fair amount of discussion regarding the methods of selecting Supreme Court justices and the length of their terms, no significant changes were made in this respect.

A change that did not receive majority support was a proposal that all sessions of the Supreme Court be held "at the seat of government," which of course was Sacramento rather than the court's established location in San Francisco.

> In the debate that followed, two principal questions were raised: (1) Which is better, a Supreme Court held at one place (the State capital), or a Supreme Court held at different places in the State, referred to as a "Court on wheels"? (2) If the latter, should the places be fixed by constitutional provision, or left to the Legislature? After extended discussion which included the climate, population, and other features of the three cities mentioned, Byron Waters, a delegate-at-large from the Fourth Congressional District, moved to strike the whole provision, warning, "You had better leave this to the Legislature." His motion was carried by a vote of 64 to 45. This result must have placated those who had suggested that any provision adopted would antagonize many voters, and jeopardize the approval of the constitution.[40]

The remaining notable change was the provision in civil jury cases that eliminated the need for unanimous verdicts and permitted civil verdicts by a three-fourths vote of the jury.[41]

Intermediate Appellate Courts

Apparently the addition of two justices on the Supreme Court and authorization to sit in divisions did not assure prompt appellate justice. By January 1882, approximately three years following adoption of the new constitution, the Supreme Court had a backlog of 790 cases and attorneys

were protesting that a system under which a case must remain on the calendar for two years before a decision was heard was a "positive denial of justice."[42]

This dissatisfaction led the legislature in 1885 to direct the Supreme Court to appoint three commissioners to aid the court in performance of its duties and to clear the backlog of pending cases.[43] In 1889 the number of commissioners was increased from three to five.[44]

While the authority of the legislature to impose a system of commissioners on the Supreme Court appears not to have been legally challenged, the court explicitly declared that commissioners "do not usurp the functions of judges of this court, and do not exercise any judicial power whatever."[45]

Dissatisfaction continued to mount, culminating in a 1904 amendment to the constitution creating district courts of appeal. The amendment also divided the state into three appellate districts, specifying the counties encompassed by each district, with further provision for three elected justices in each district, to hold regular sessions in San Francisco, Los Angeles, and Sacramento.[46] Concurrently, the California experiment of utilizing commissioners to aid the Supreme Court came to an end.[47]

During the following half-century there were numerous constitutional amendments to increase the number of appellate districts and the number of divisions within each district. The need to achieve expansion by constitutional amendment was finally eliminated as part of the work of the Constitution Revision Commission when the voters in 1966 approved an amendment authorizing the legislature to determine the number of districts, divisions, and justices within the intermediate appellate courts.[48]

Municipal Courts

The lower court structure that had evolved since 1849 was a matter of continuing concern. That concern produced a constitutional amendment in 1924 authorizing the legislature to establish a municipal court in "any city and county . . . containing a population of more than 40,000 inhabitants. . . ."[49] Acting under authority of this amendment, the legislature adopted enabling legislation permitting the establishment of municipal courts with detailed specifications regarding matters such as jurisdiction, selection and qualification of judges, and court staff.[50] Although only larger charter cities were authorized to act, most of them did so by the 1940s. By establishing

municipal courts within city boundaries, they succeeded in displacing the existing justice, police, and small claims courts.[51]

Creation of the Judicial Council of California

The role and evolution of the Judicial Council of California are explored in Chapters Three and Four in connection with governance of the judicial branch during the latter half of the twentieth century. The creation of the Judicial Council in the earlier part of the century was achieved by a constitutional amendment in 1926.[52] The extraordinary expectations underlying creation of the council were stated in the supporting ballot arguments by Senators M. B. Johnson and J. M. Inman. There were no opposing arguments.

> The purpose of this amendment is to organize the courts of the state on a business basis. The "judicial council" which the amendment creates is not a commission, but will be composed of judges in office. The chief justice of the state and ten other judges chosen by him from both the trial and appellate courts will meet from time to time as a sort of board of directors, and will be charged with the duty of seeing that justice is being properly administered. No new office is created; the chief justice will act as chairman of the council and the clerk of the supreme court will act as its secretary.
>
> One of the troubles with our court system is that the work of the various courts is not correlated, and nobody is responsible for seeing that the machinery of the courts is working smoothly. When it is discovered that some rule of procedure is not working well it is nobody's business to see that the evil is corrected. But with a judicial council, whenever anything goes wrong any judge or lawyer or litigant or other citizen will know to whom to make complaint, and it will be the duty of the council to propose a remedy, and if this cannot be done without an amendment to the laws the council will recommend to the legislature any change in the law which it deems necessary.
>
> Similar judicial councils have recently been created in Oregon, Ohio, North Carolina, and Massachusetts. The chief justice will fill the position that a general superintendent fills in any ordinary business. He will be the real as well as the nominal head of the judiciary of the state, and will have the power of transferring judges

from courts that are not busy to those that are. This will make it unnecessary to have judges "pro tempore," or temporary judges, as now provided in the constitution.[53]

A "board of directors . . . charged with the duty of seeing that justice is being properly administered"? A Chief Justice filling "the position that a general superintendent fills in any ordinary business"? A Chief Justice who is "the real as well as the nominal head of the judiciary of the state"? A new institution and new role for the Chief Justice with responsibility for assuring that the work of the courts is "correlated" and further responsibility "for seeing that the machinery of the courts is working smoothly"? These reasonably stated propositions were quietly planted seeds of major, perhaps at the time radical, change that blossomed later in the century. The fruit was self-governance of the judicial branch and major growth of the judicial system toward its rightful place as an equal and independent partner in our tripartite form of government.

As originally enacted, the Judicial Council consisted of the Chief Justice or Acting Chief Justice and an additional ten members appointed by the Chief Justice. These consisted of one associate justice of the Supreme Court, three justices of courts of appeal, four judges of superior courts, one judge of a police or a municipal court, and one judge of an inferior court. The council was directed to:

(1) Meet at the call of the chairman or as otherwise provided by it.

(2) Survey the condition of business in the several courts with a view to simplifying and improving the administration of justice.

(3) Submit such suggestions to the several courts as may seem in the interest of uniformity and the expedition of business.

(4) Report to the Governor and legislature at the commencement of each regular session with such recommendations as it may deem proper.

(5) Adopt or amend rules of practice and procedure for the several courts not inconsistent with laws that are now or that may hereafter be in force; and the council shall submit to the legislature, at each regular session thereof, its recommendations with reference to amendments of, or changes in, existing laws relating to practice and procedure.

(6) Exercise such other functions as may be provided by law.[54]

The Chief Justice as chair was also directed to seek to "expedite judicial business and to equalize the work of the judges" by assigning judges to assist "a court or judge whose calendar is congested, to act for a judge who is disqualified or unable to act, or to sit and hold court where a vacancy in the office of judge has occurred."[55] The clerk of the Supreme Court was designated as secretary to the Judicial Council.

The amendment was approved by the voters. In fact, the voters must have been quite favorably disposed toward the judiciary since they also approved measures that increased the state's contribution toward salaries of trial judges (Proposition 16) and provided for judicial pensions (Proposition 19). The proposal to create the Judicial Council passed by a vote of more than two to one.

Early Judicial Council Efforts

The Judicial Council made a fast start under Chief Justice William H. Waste, who had become Chief Justice in January 1926 and served until 1940. Members were appointed on December 3, 1926, approximately one month after the election, and the first meeting was held on December 10 in the chambers of the Supreme Court in San Francisco.[56]

The first report of the Judicial Council was made on February 28, 1927, approximately two and one-half months after the first meeting. The report was as ambitious as the Judicial Council's timetable, covering an array of subjects ranging from court workloads to arbitration to criminal procedure.

However, two aspects of that inaugural report are particularly noteworthy. The first is the importance that the council attached to its own existence. "The members of the council are of the opinion that the adoption of the Judicial Council amendment marks the beginning of the most significant movement in the interests of the administration of justice in California that has been initiated since the inauguration of the state government in 1849. Behind the motive which led the people to approve the amendment was the appreciation of the fact that there should be a coordination of the courts with the resultant speeding up of the judicial business of the state."[57]

Acknowledging that "expectations have been aroused which it will be difficult to satisfy," the Judicial Council nonetheless also acknowledged that "the time has come for a bold advance in the administration of the judicial business of this state. . . ."[58]

The second noteworthy matter was the decision by the Judicial Council at its initial meeting to make its top priority the state of affairs in the superior courts.

> As a result of the deliberations of its initial session, the council reached the conclusion that its first duty was to survey the condition of business in the superior court throughout the various counties of the state—that being the principal trial court, and to ascertain the present condition of the trial calendars in the several courts. It was decided to at once determine in what counties the superior court has a comparatively small amount of business to attend to, and the judge little to do; what courts afford litigants a reasonably speedy hearing; where trials are delayed so long as to virtually amount to a denial of justice; to ascertain where judicial assistance is needed, and to determine from what courts judges can be spared, in order to render such relief. These were matters that seemed to demand urgent attention.[59]

In this endeavor the Judicial Council confronted a reality that was to persist until creation of the Administrative Office of the Courts (AOC) in 1961: the Judicial Council had no supporting staff. This was overcome at the outset by relieving Judge Harry A. Hollzer, a Los Angeles Superior Court judge and council member, from his judicial duties to assume direction of a survey of judicial business throughout the state. He completed a preliminary survey in approximately two months and was able to present his findings to the Judicial Council on February 11–12, 1927. The report was accepted and appended to the first Judicial Council report to the governor and legislature.

With equal measures of pride and criticism, the Judicial Council hailed this achievement: "To appreciate the difficulties involved, it should be borne in mind that, after the lapse of more than three-quarters of a century, the State of California, for the first time, is now engaged in making a scientific study of its judicial system, 'with a view to simplifying and improving the administration of Justice.' No commercial organization could have survived which had delayed for so long a period of time to investigate its methods of transacting business."[60]

Two years later Judge Hollzer submitted to the Judicial Council his "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.[61]

Judge Hollzer's efforts constituted the substance of the Judicial Council's second report to the governor and legislature. Before launching into his methodology, statistics, and conclusions, Judge Hollzer struck an energetic note: "Approximately two years ago, California gave notice to the world that this commonwealth no longer would tolerate antiquated, 'go-as-you-please,' methods in the operation of its courts, but, instead, would insist upon establishing business efficiency and economy in its judicial system, to the end that the disposition of litigation might be expedited and the administration of justice improved."[62]

This report, embraced by the Judicial Council, furnished for the first time a respectable snapshot of the volume of litigation in California, particularly in the superior courts. The conclusions drawn from these data were not timid. The Judicial Council concluded that there was a gross inequality in the amount of work imposed upon various superior courts around the state, in both civil and criminal litigation. This also was true with respect to the number of contested cases around the state. The report stressed that businesslike methods were essential to the efficient and economical administration of the courts. Use of the master calendar in Los Angeles County was cited as a commendable example.[63]

During ensuing years, the Judicial Council institutionalized the gathering and publication of information regarding the volume and disposition of business in the courts of California.[64]

The Judicial Council also on occasion ventured into substantial matters of public policy. For example, the Judicial Council officially recommended against a proposal (Senate Constitutional Amendment 13) presented for voter approval in November 1936 that would have created a separate appellate system for criminal cases and established a court of criminal appeals.[65] The Judicial Council, likewise, in 1946 opposed a proposed constitutional amendment that would have created a separate court of tax appeals.[66]

Judicial Council Projects at Midcentury

As the first half of the twentieth century drew to a close, the Judicial Council launched two major endeavors. The first was a review of procedures in the various administrative agencies of the state. This was undertaken in response to a 1943 request of the legislature. The result was extensive recommendations and proposed legislation in January 1945. In a nutshell, the Judicial Council proposed (1) a uniform procedure for the conduct of formal adjudicatory hearings by forty state agencies engaged in licensing and disciplining of members in various businesses and professions;

- 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

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;

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-

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 multidimensional 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 policy-making 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."

Chapter 5
Reorganization and Unification of the Trial Courts

Overview

his 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.

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 county-wide 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 several

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' court 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]

Chapter 6
Stable Funding of the Trial Courts

Overview

he 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.

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 subordinate 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 multi-year 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.

ATTACHMENT 11

JOCK MCDONALD

Recalling the Challenges and Benefits

Chief Justice Ronald M. George writes for CCR *on 10 full years of state trial court funding.*

In the 10 years since state funding of the trial courts became a reality, the judicial branch has undergone tremendous changes that have enabled it to better meet the needs of the public. At a time when California's economic circumstances dictate difficult choices, it is worth recalling the challenges faced by the trial courts before the advent of state funding—and the benefits it has bestowed since its adoption by the Legislature in 1997 at the urging of the judicial branch. This monumental change was achieved by building on previous efforts to reform the funding mechanism for the courts, and on the realization that half-measures not only were inadequate but also, in some instances, were adding to the problems courts faced in dealing with insufficient and inconsistent funding.

Before state funding was instituted, trial courts were required to seek appropriations from both the board of supervisors in their counties and the state. Frequently, the state and the county operated on different fiscal-year systems and used different budgeting systems. Courts usually had to compete for scarce dollars, and the economic health of their particular communities affected their success. The Trial Court Realignment and Efficiency Act of 1991 initiated a movement toward increasing and stabilizing state funding, but as the state's fiscal situation took a downward turn in the early 1990s, the expectation of increased state support under that provision was not realized. Many courts were finding it difficult to provide necessary services to the public.

I encountered a representative sampling of the problems caused by erratic and inadequate funding during the visits I made to the trial courts in each of the 58 counties of California. This journey began in 1996, shortly after I became Chief Justice, and covered approximately 13,000 miles over a one-year period. William Vickrey, Administrative Director of the Courts, and I met with local judges, court staff, members of the bar, and community leaders. What we observed during those visits served as the impetus for our branch's ensuing efforts to obtain state funding and to improve the judicial branch's service to the public.

We found a wide-ranging variety of courts, court facilities, and court services. Dedication to providing fair and accessible justice to all was a universal value, but the ability to do so differed greatly. In some counties, courts were well funded and operated in facilities that provided an appropriate setting allowing judges and court staff to focus on serving the public effectively. In other counties, insufficient resources resulted in truncated services, insufficient staff, inadequate and even dangerous facilities, poor security, shortened hours of availability in clerks' offices, and incompatible and outdated information-processing systems—or no systems at all. For many courts, the challenge was to stay open until the end of the fiscal year—and their uncertainty about what lay ahead made the idea of planning or long-term development a distant luxury.

In many ways, trial courts operated in isolation. There was no reliable method to communicate from one court to another the best practices and efficiencies that had been developed. We frequently found that "the wheel" had been reinvented at great cost and effort and that proven methods already adopted in other jurisdictions were unknown. In several instances, we put presiding judges or court administrators in contact with their peers in other courts who had faced and resolved similar problems. At the same time, additional judicial positions were needed in many areas, but no effective and balanced means existed to place those needs before the Legislature.

The problems were so severe that, during my first year as Chief Justice, I twice was forced to seek emergency funding from the Legislature to assist several courts facing imminent closure, a breakdown in basic services to the public, and severe layoffs of employees. There were almost daily reminders of the urgent need for a financing system that would provide adequate and stable funding for all courts. Funding for basic services such as court interpreters and dependency counsel often was scarce. Courts were beginning to experience a surge in the number of self-represented litigants but had insufficient means to meet the needs of these individuals. Public access to court information was limited.

Inadequate facilities were falling into disrepair or could not cope with new demands. In one rural court that I visited, the judge had stacked law books in front of his bench as a makeshift shield against bullets after an attempted hostage-taking in his court facility. Happily, these tomes contained the reported decisions of federal rather than California courts. In an urban court, I encountered a commissioner who was working out of a converted storeroom and who himself had built a bench, jury box, and counsel

tables in his home workshop. Jurors in many courts congregated in stairwells, halls, and even on sidewalks. Prisoners were escorted through public hallways to reach courtrooms. In facility after facility, unsatisfactory security arrangements put judges, lawyers, litigants, jurors, court staff, witnesses, and visitors at risk.

We anticipated that state funding would raise the level of services provided across the state to an effective baseline, provide courts with a stable and predictable level of funding, and allow the judicial system to engage in productive planning for the challenges ahead. To a large degree, those expectations have been met. The size of California and the variation among the communities involved—1,200 residents in Alpine County, served by 2 judges, versus more than 10 million residents in Los Angeles County with a bench of almost 600—pose unique challenges. Different courts require different resources, and all courts cannot be expected to offer the exact same services. Nevertheless, the move to state funding for the first time offered a global perspective on how justice was being administered across the state and on what needed to be done to equalize core functions.

This new approach had a positive impact within months after it became effective in January 1998. The first full year's appropriation included a $50 million increase in funding for court operations—a figure far below need but substantial enough to allow allocations to individual courts at a far greater level.

State funding also permitted the judicial branch to seek additional funding through mechanisms such as the Trial Court Improvement Fund and the Judicial Administration Efficiency and Modernization Fund, which are designed to assist courts in improving their services through support of innovative projects and programs, judicial and court staff education, and information systems. In later years, the Equal Access Fund has permitted our branch to improve legal services through worthy programs statewide.

Over the years, fluctuations in the economic health of California have been reflected in the appropriations for the judicial branch. Nevertheless, although the state faced difficult fiscal challenges in 2003 and 2004, the reforms made since state funding began have helped courts cope with reductions in resources and weather the fiscal cycles in far better shape than would have been possible without the budgeting structures that state funding has provided. Last-minute emergencies have not required the infusion of funds to avoid court closures. Court unification, which occurred soon after state funding began, also promoted, through reductions in duplicative systems, greater flexibility in employing administrative and judicial resources, and the sharing of information about best practices. The development of statewide budgeting systems has helped us make the case for additional resources while ensuring accountability to our sister branches of government. We now can discern trends early and seek funding to meet oncoming challenges rather than wait for crises to occur. Greater stability has encouraged ongoing strategic planning for the branch and for individual courts. Presiding judges and court administrators play a significant role in allocating the funding received by our branch, thereby ensuring responsiveness to the needs of individual courts. The ongoing transfer of court facilities to state ownership under the management of the Administrative Office of the Courts, and the recent enactment of a $5 billion revenue bond measure that allows us to start the process of rehabilitating and replacing courthouses that are in dire need of attention, also reflect the benefits of employing a statewide focus.

This brief retrospective would not be complete without mention of our related success in persuading our sister branches in 2004 to extend to the trial courts an annual adjustment to base funding employed by the Legislature in its own budget process. The application of the state appropriations limit to the judicial branch automatically adjusts the trial courts' operating budget based on population and changes in per capita personal income, reflecting the resulting increases in workload. Without question, this accomplishment would have been impossible in the absence of a responsible and accountable statewide fiscal system.

Looking back to the implementation of state funding for the trial courts 10 years ago and the extraordinary changes that have ensued, it is readily apparent that the judicial branch is stronger, in far better financial shape than it otherwise would have been, and in the best position possible to cope with the broad economic fluctuations facing California. There still is much to be done. Funding remains insufficient. New judgeships are critically needed. We need to address the problem of ensuring safe and secure courthouses for all. We must find a way to provide more interpreters in civil actions and to better assist unrepresented litigants in those proceedings. We must fully develop and support a statewide case management system that offers broader access to the public and allow the efficient exchange of information with our justice system partners.

In short, the challenges are many—but the successful results of our actions during the past 10 years prove the value of continuing on the path we have chosen. California's court system has come a long way from being a group of loosely connected individual courts to now constituting a strong judicial branch—in fact and in function, and not merely in theory and in name—with funding adequate to enable it to perform its function.

Looking ahead to the next 10 years, we know that additional resources of every type will be needed. At the same time, we must and shall do our part to mitigate the fiscal crisis now facing the state. Fortunately, the experience of the past decade demonstrates that our branch can and will meet any challenge that lies ahead. I look forward to working productively with all of you during the next 10 years in continuing to provide the people of California with fair and accessible justice for all.

THE LONG JOURNEY

By
Claudia Ortega

"I firmly believe state funding is the best way to go. Stable adequate funding in every court in every county is a responsibility the state as a whole must and should bear."

—Chief Justice Malcolm M. Lucas
Address to California Judges Association, October 1, 1995

"Quite simply, state funding allows courts to cope in coordinated fashion with change and the public's needs.... It has given us room to think ahead and to plan .... 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."

—Chief Justice Ronald M. George
State of the Judiciary Address to the Legislature, March 20, 2001

"Our goal isn't to be comfortable; our goal is to see that the public has access to justice and that the court system can be held directly accountable by our other two branches of government for the fair and effective administration of justice in the state."

—William C. Vickrey
Administrative Director of the Courts

TO STATE FUNDING

For most of California's history, the quality of justice rendered by the trial courts was dependent on the discretion and financial health of the state's 58 county governments. Supplemented by extremely limited state funding, the counties had primary responsibility for major costs of the court system: salaries for municipal and justice court judges; retirement benefits for justice court judges; expenses related to all nonjudicial court personnel; and all operational and facilities costs of the superior, municipal, and justice courts. The state paid the salaries of superior court judges and retirement benefits of superior and municipal court judges, and it also funded the appellate courts, the Judicial Council, and the Administrative Office of the Courts.

As a result of this longstanding disparate funding structure, court services varied by county and the ability of courts to fulfill their mandated mission was at risk. In his 2001 State of the Judiciary address to the California Legislature, Chief Justice Ronald M. George painted this picture:

> 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.

Early Efforts to Achieve State Funding

In May 1969, Chief Justice Roger J. Traynor was faced with a delicate problem. Assembly Member James A. Hayes had introduced a proposed constitutional amendment that would require the state to provide for the "funding, operation and administration" of the trial courts. Hayes, chair of the Assembly Judiciary Committee, an ex officio member of the Judicial Council, and a Long Beach lawyer, had long pushed for the ambitious concept, and the measure, Assembly Constitutional Amendment 66 (ACA 66), was coming up before his committee.

Hayes made it clear that he wanted the council's "specific view" on the measure rather than blanket opposition. Traynor, who had been Chief Justice for five years and was preparing to retire, knew there would be tremendous outcry from California's judges if the state suddenly took over control of the trial courts. So a compromise was reached: the council opposed inclusion of the words "operation and administration" in the proposed measure. The council did support the concept of state *funding* of the trial courts.

The measure did not pass the Legislature that year, but Hayes would be back. By the time Donald R. Wright succeeded Traynor as Chief

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We are indebted to Larry L. Sipes, whose book *Committed to Justice: The Rise of Judicial Administration in California* (Administrative Office of the California Courts, 2002) provided material for this article.

1950
Six types of lower courts reorganized into municipal and justice courts

1977
Jurisdictional and procedural differences between justice and municipal courts eliminated

1978
Proposition 13 approved

1984
Trial Court Funding Act of 1984 vetoed

1985
Trial Court Funding Act of 1985 adopted

1988
Brown-Presley Trial Court Funding Act enacted

Justice, the council had developed a plan. The council had already hired the consulting firm of Booz, Allen & Hamilton to engage in a broad study of the municipal and justice courts. The firm was directed to supplement its work by studying the feasibility of a completely unified trial court system.

The 1971 Booz Allen report recommended total state funding of the trial courts. Calling the current system of funding "a patchwork," Booz Allen concluded that state funding "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 reinforces the fact that judicial services, although provided locally, are of statewide importance," the report added.

Not surprisingly, the Booz Allen report stirred up a hornet's nest of opposition. Nearly 200 members of the Conference of California Judges (the precursor to the California Judges Association) turned out en masse at Los Angeles International Airport on a Saturday to debate the report's recommendations. A plebiscite found judges fairly evenly divided on a proposal to create a single-level trial court: 258 were in favor and 221 against. The judges made it clear that they preferred local control of their courts, voting against the concept of statewide administration of the trial courts by a margin of 387 to 89. But the judges voted overwhelmingly in favor of state financing of all trial court operating costs with a margin of 334 to 134.

At the Judicial Council meeting a month later, council members voted on whether to approve or disapprove the Booz Allen recommendations. Los Angeles Superior Court Judge Joseph A. Wapner, who later gained television fame as the *People's Court* judge, moved to disapprove state funding of the trial courts. His motion failed on a tie vote.

The die was cast. The Judicial Council has supported state funding of the trial courts ever since, and every Chief Justice since then has called for the Legislature to adopt it. Under Chief Justice Wright, the council proceeded cautiously, 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."

However, persuading the Legislature to go along proved difficult, with various proposals for a major increase in state funding failing to obtain legislative approval.

Proposition 13—An Impetus

Had California voters not adopted Proposition 13 in 1978, state funding for trial courts probably would not have occurred for many more years. Proposition 13 reduced the primary source of funding for local governments by limiting their ability to raise property taxes. With new strains on their budgets, the counties could not afford the costs of running the courts. While they received revenue from the local courts—filing fees, fines, forfeitures, penalties, and other charges—the courts' operating expenses had always exceeded revenue. The counties started to look to the state for trial court funding.

The Momentum Shifts

In 1984, Senator Barry Keene introduced the Trial Court Funding Act of 1984 (Senate Bill 1850 and Assembly Bill 3108 [Robinson]). Under this proposed legislation, counties could elect whether or not to participate. If a county chose to participate, the state would provide a block grant (a set sum per year, adjusted for inflation) for every superior court and municipal court judgeship and for each subordinate judicial position. In return, the county would relinquish to the state the great bulk of the revenues it received from filing fees, fines, and forfeitures. The Legislature joined and passed the bills, but Governor George Deukmejian vetoed them. Although the act did not pass, the legislative findings in the proposed bill would lay the groundwork for future debates and policymaking:

ATTACHMENT 12

1991

Trial Court Realignment and Efficiency Act adopted

1992

First branchwide strategic plan approved

Trial Court Budget Commission formed

1993

Publication of *Justice in the Balance: 2020, Report of the Commission on the Future of the California Courts*

1994

First consolidated budget proposal to the Legislature presented by the Trial Court Budget Commission

- 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 promotes the general welfare and protects the public interest in a viable and accessible judicial system.

The dialogue about state funding for the trial courts continued into the next year, during which the Trial Court Funding Act of 1985 (Assem. Bill 19 [Robinson]) was enacted, albeit without implementing appropriations. In 1988, with the enactment of the Brown-Presley Trial Court Funding Act (Sen. Bill 612 [Presley]; Assem. Bill 1197 [W. Brown]), partial state funding for trial court operations was achieved. The act gave the counties the option of participating and guaranteed state block grants if they chose to do so. This legislation was funded with approximately $300 million. The act also established the Trial Court Improvement Fund (TCIF), which would allow the Judicial Council to distribute grants to the trial courts to improve their efficiency and management. However, the Legislature did not fund the TCIF when it passed the bill.

By 1989, all counties had opted to participate under the terms of the Brown-Presley Trial Court Funding Act. That year the state distributed $527 million to the counties in the form of block grants or other appropriations for trial court expenses. While the state was not assuming full responsibility for funding of trial court operations, the momentum had shifted significantly in that direction.

Making a Stronger Case

The $527 million in state funds provided to the counties in 1989 covered only 44 percent of total trial court costs. The recession that began in 1990 reduced the appropriation to 38 percent. In 1991, the Legislature established the goal of achieving 70 percent state funding of the trial courts by 1995–1996. But the recession of the early 1990s and the cumulative effects of Proposition 13 imposed continuing restraints on fulfilling that goal. In 1991, state funding provided 51.4 percent of trial court costs, fell to 50.6 percent in 1992, and returned to 44 percent in 1993.

Recognizing the clear pattern of inadequate state funding, in 1992 the Judicial Council created the Trial Court Budget Commission. The commission's membership consisted of 26 trial judges representing 10 geographic regions. Serving in the capacity of advisory members were 4 court administrators and 2 county administrators. The commission was delegated the new responsibility of preparing annual budget submittals for the trial courts. It was also given the authority to reallocate funds to the extent authorized by the annual budget and determine procedures for submission of budget information by the trial courts.

The commission created 11 functional categories of trial court budget purposes to replace block grant funding and established baseline budget requests for each trial court.

In 1994, for the first time, the judicial branch, through the work of the commission, presented a consolidated trial court budget proposal to the Governor and Legislature. Trial court needs were projected at $1.75 billion, an amount that far exceeded the approximately $526 million estimated in 1982. Although Governor Pete Wilson and the commission had different estimates of trial court costs, the Governor proposed a $400 million increase in state support for a total of $1.017 billion, an amount that represented 58 percent of trial court costs as estimated by the commission.

Also in 1994, with the leadership of Assembly Member Phillip Isenberg, the Legislature passed Assembly Bill

1994 continued

Judicial branch budgeting system and funding based on functions instituted by AB 2544

Justice courts converted to municipal courts by Proposition 191

1997

Lockyer-Isenberg Trial Court Funding Act adopted

Center for Children and the Courts established

1998

Proposition 220 approved

Governor Pete Wilson signs the Lockyer-Isenberg Trial Court Funding Act of 1997 as Senator Martha Escutia (left), Senator Bill Lockyer (behind Wilson), and others who worked for the measure look on.

2544, which declared its intent to create a budgeting system for the judicial branch that would protect its independence while preserving financial accountability. Based on the Trial Court Budget Commission's recommendations, the legislation also implemented the transition from block grants to funding based on specific court functions.

Over the next few years, the judicial branch faced additional reductions in state funding and, along with other state entities, continued to weather the financial storm. In the 1994–1995 fiscal year, the state provided only 34 percent of trial court funding and the Legislature was forced to enact emergency legislation to keep courts operating in several counties. The Judicial Council continued to make the argument for full state funding.

Full State Funding Achieved

Through collaboration with justice system stakeholders—the council, trial court presiding judges and executive officers, the California State Association of Counties, the Department of Finance, and key legislative members—the long-held and monumental goal of full state funding was finally reached. In October 1997, Governor Pete Wilson signed the Lockyer-Isenberg Trial Court Funding Act of 1997 (AB 233). This legislation enacted major systemic changes 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 40 new judgeships, contingent on an appropriation made in future legislation
- Requiring the state to provide 100 percent funding for court operations in the 20 smallest counties beginning July 1, 1998
- Raising a number of civil court fees to generate about $87 million annually for trial court funding.

Trial Court Unification

The effort to achieve full state funding was running parallel with the effort to unify the trial courts. Historically, California's trial courts were made up of numerous lower courts within every county. From 1950 to 1994, the trial courts were made up of superior courts, municipal courts, and justice courts, each with its own staff and operational systems.

The branch undertook an important step toward unification with the Trial Court Realignment and Efficiency Act of 1991 (Assem. Bill 1297 [Isenberg]). The legislation focused on three major areas of change in California's trial court system: administrative and judicial coordination within and across county court systems to share resources, improve public access, and reduce operating costs; realignment of funding; and state funding increases to approximately 50 percent. Judicial Council advisory committees set about developing standards for implementing coordination between superior, municipal, and justice courts in areas such as judicial resources and calen-

ATTACHMENT 12

1999

One-day or one-trial jury service instituted

2000

Trial Court Employment Protection and Governance Act enacted

Strategic plan updated

2001

All courts vote to unify

Online Self-Help Center for self-represented litigants created

AOC Northern/Central and Southern Regional Offices established

daring, and the courts developed coordination plans. By 1996, the Judicial Council had approved the plans of all 58 counties.

Meanwhile, in 1992, proposed Senate Constitutional Amendment 3 (SCA 3) revisited the concept of trial court unification, and it was exhaustively studied by presiding judges, court administrators, and the National Center for State Courts. That measure ultimately failed in the Assembly. Then, in 1994, Proposition 191 (SCA 7), which would create a single level of limited jurisdiction court statewide, came before the voters. Proponents argued that the justice courts had become identical to municipal courts in every aspect except name. The voters agreed, and the result was a trial court system made up of two courts—superior and municipal.

Finally, in 1998, Californians voted to adopt Proposition 220 (SCA 4), which would provide for voluntary unification of the superior and municipal courts of a county. The approval of judges was critical to the implementation of this amendment; a majority vote of the municipal and superior court judges in each county was needed to approve unification. By 2001, all 58 counties had unified their trial courts into a single, countywide superior court.

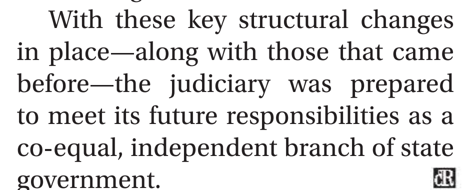
Further Reforms

Of course, the transition from county-level funding to state funding was not without its challenges. Declining revenues and disputes as to what actually were court costs emerged, but over time greater fiscal stability was achieved.

Equally important, the passage of the Lockyer-Isenberg Trial Court Funding Act demonstrated the critical role of strategic planning. The council's 1992 Strategic and Reorganization Plan had lent further credibility to the branch's requests for state funding, and it had contributed significantly to the passage of the act. The judicial branch has continued to refine its vision and goals for the future. The current plan, *Justice in Focus: The Strategic Plan for California's Judicial Branch, 2006–2012,* echoes many of the priorities established in the early 1990s and sets forth new objectives to meet the public's changing needs.

While the Lockyer-Isenberg Trial Court Funding Act allowed for the major shift from disparate county funding to more stable state funding for the trial courts, it did not resolve two significant issues. Should county employees working for the trial courts remain county employees or become court employees? Should the counties continue to own their courthouses, or should ownership transfer to the judicial branch? Over the years, as the system of state funding evolved, these questions repeatedly resurfaced. They were soon answered. In 2000, the Trial Court Employment Protection and Governance Act (Sen. Bill 2140) changed the status of the courts' 17,000 workers from employees of the county to employees of the court. And in 2002, the Trial Court Facilities Act (SB 1732) transferred governance of local courthouses to the judicial branch, which meant that the Judicial Council, through the AOC, was given the responsibility of operating, maintaining, designing, and building courthouses. The task was formidable: 529 court facilities were spread throughout the state, and many buildings had suffered decades of neglect. In fall 2008, the Legislature passed Senate Bill 1407, a $5 billion court construction bond that will fund high-priority facilities projects throughout the state.

With these key structural changes in place—along with those that came before—the judiciary was prepared to meet its future responsibilities as a co-equal, independent branch of state government.



Claudia Ortega is a senior court services analyst in the AOC's Office of Communications.

ATTACHMENT 13

2002

Trial Court Facilities Act enacted

Phoenix Financial System initiated

AOC Bay Area/Northern Coastal Regional Office established

2003

Spanish-language Online Self-Help Center created

***California Civil Jury Instructions (CACI)* adopted**

AOC Office of Court Construction and Management established

What Have All These Reforms Meant?

Priorities, Planning, and Better Service

By Philip R. Carrizosa

What a difference a decade makes.

It has been a full 10 years since California adopted state funding of the trial courts. Starting on January 1, 1998, the Lockyer-Isenberg Trial Court Funding Act became effective and California's courts entered a new era, one in which state government assumed full responsibility for funding the operation and administration of California's trial courts in all 58 counties. It was a gigantic step for California's judicial branch, one that promised to pave the way for resolving the major problems plaguing the courts since the 1950s.

From the broadest perspective, the branch—through the Chief Justice, the Judicial Council, and the presiding judges and court executives—is now truly charting its own course rather than following one set by the Legislature or county governments. Slowly but surely, the state's legislative and executive branches are recognizing the judicial branch as a co-equal, independent, and accountable arm of government instead of simply another state agency like the Department of Motor Vehicles. The judicial branch's new course fulfills a vision held by a long line of Chief Justices and Administrative Directors. As Chief Justice Malcolm M. Lucas offered in his 1990 State of the Judiciary address, "We need to anticipate change and plan for action. We need to lead and not wait to be led into the next millennium."

State funding of the trial courts was foundational for the judiciary's progress, allowing the branch to set priorities, establish long-term planning, and embark on important reforms. Other measures were important as well: trial court unification, transfer of court staff from county to court employment, and the judicial branch's assumption of responsibility for the state's courthouses. But these measures would not have been possible without stabilized state funding.

California Courts Technology Center and Court Case Management System initiated

2004

Court-county working group on collections established; guidelines for comprehensive collections program developed

Model Juror Summons pamphlet issued

2005

Uniform Civil Fees and Standard Fee Schedule Act enacted

Resource Allocation Study (RAS) methodology instituted

More Stable Funding

Before 1998, the effects of resource allocation across courts were largely disconnected from one another. Once state funding became available, the Judicial Council directed the Administrative Office of the Courts (AOC), Office of Court Research to develop workload measures (the Resource Allocation Study) to assist branch leaders in prioritizing funding to assist chronically underfunded courts. State funding has also provided the courts with the opportunity to take advantage of the state appropriations limit (SAL), which has been a part of the State Budget since 1979. Under SAL, adopted by the Judicial Council in 2005, trial court budgets are automatically adjusted based on factors such as changes in the state's population and the cost of living to provide a fair, year-to-year funding adjustment.

In addition, passage of the trial court funding act gave trial courts the ability to carry over funds from one fiscal year to the next, which is unique in California government. Thus, trial courts may use remaining fund balances to meet their current needs rather than returning the funds to the state.

Direct Services to the Courts and Long-Term Planning

The changes in funding meant that the courts could no longer depend on the counties to provide essential business services. Legal services, for example, had been the responsibility of county counsel. Presiding judges asked the Judicial Council to assume this function, and, as a result, the AOC Office of the General Counsel now provides the courts with assistance in litigation management, litigation defense, and transactions and offers legal advice on labor, employment, and judicial administration issues.

As the policymaking body of a unified, unitary branch of government, the Judicial Council has increased the number and variety of other services it provides to local courts. Three regional offices were created in Burbank, Sacramento, and San Francisco to provide operational services directly to the local courts, particularly in the areas of technology, finance, legal matters, and human resources. Other services to the courts include research, communications, jury service improvements, grant administration, and innovative court programs.

The branch's greater fiscal stability paved the way for long-range, strategic planning so that local courts could work toward the judiciary's overall goal of improving access to justice. Two of the first reforms were the one-day or one-trial rule in jury selection and improvements to assist families and children involved in the court system. As part of its strategic plan, the Judicial Council and the Administrative Office of the Courts formed the Center for Children and the Courts in 1997. The center was eventually merged with the Statewide Office of Family Court Services to create within the AOC the Center for Families, Children & the Courts, which provides research, advice, general support, and other services for the superior courts.

Education and Training Standards

An education and training program for trial court employees was made possible by the Trial Court Employment Protection and Governance Act of 2000, which transferred court staff from

ATTACHMENT 13

2005 continued

State appropriations limit (SAL) applied to trial court funding

***California Criminal Jury Instructions (CALCRIM)* approved**

Phoenix Human Resources System initiated

Uniform standards for funding court security instituted

2006

Blue Ribbon Commission on Children in Foster Care created

Domestic Violence Practice and Procedure Task Force established

Strategic plan updated

county to trial court employment. In accordance with its strategic plan, the Judicial Council consolidated the AOC's administrative education unit with the Center for Judicial Education and Research (CJER) to provide coordinated educational opportunities for the state's judges. Starting with mandatory education for new judges in 1996, the council eventually expanded that in 2006 to establish a comprehensive minimum education program for all trial court judges, commissioners, court executives, managers, supervisors, and other court personnel. The program was extended in 2007 to include the justices and staff of the Supreme Court and Courts of Appeal and the entire staff of the AOC.

Improved Collections

With the shift to state funding has come a unified approach for collecting court fees, fines, and forfeitures. To address the overwhelming numbers of uncollected payments, the Judicial Council created a collaborative working group on collections in 2004 composed of representatives from trial courts, county governments, and state agencies. In the first year, collections increased by 27 percent over the previous fiscal year, and more than 25 courts created or improved their collection programs.

Also in 2004, the Judicial Council approved new standards to improve collections of fees, fines, and forfeitures by the trial courts. The new standards are being used to capture funds to be used for improving public services provided by the state, the trial courts, and county governments. Benchmarks of a 34 percent gross recovery rate and a 31 percent success rate were established for collection of delinquent court-ordered debt. As of July 2008, an estimated 80 percent of statewide collection programs were meeting or exceeding those two benchmarks.

State Responsibility for Court Facilities

Reversing more than 150 years of county governance, in 2002 the Legislature agreed to shift ownership and maintenance of court facilities from the counties to the state. With the Trial Court Facilities Act of 2002 the courts could begin solving one of the major issues facing the branch. The AOC Office of Court Construction and Management was established in 2003 to oversee the transfer of courthouses to state governance. While the transition has been complicated and at times slow, the eventual practical effect of this effort will be to achieve the judiciary's goal of providing safe, secure, and adequate court facilities for all Californians throughout the state.

As of October 2008, 208 of the state's 451 court facilities had transferred from the counties to the judicial branch, including the Long Beach courthouse in Los Angeles County. In the words of Chief Justice Ronald M. George, "Our judicial system does not need, want, or expect palaces. But it does deserve facilities that are secure, well maintained, and adequate to serve the public's needs."

Development of Modern, Branchwide Systems

One of the greatest benefits of state funding and trial court unification has been the development of up-to-date technology to assist the courts in their management of cases, calendars, juries, records, exhibits, and statistics as well as in the operation of their financial and human resources systems. These activities previously had been handled by the counties or sent out to private contractors. With the shift to state funding, many courts found themselves lacking the expertise or resources to handle these tasks successfully on their own.

Four technology projects managed by the AOC will bring comprehensive and consistent operational systems to the trial courts. The Phoenix Program consists of a financial system and a human resources system. The Phoenix Financial System provides accounting and financial services, a centralized treasury system, trust accounting services, and core business analysis and support. The Phoenix Human Resources System will eventually allow trial courts to manage their pay-

2007

Commission for Impartial Courts created

2008

Bench-Bar-Media Committee created

Selection of vendors under way to establish Court Case Management System

SB 1407, $5 billion court construction bond approved

roll, employee benefits, time records, and other personnel administration needs. The California Courts Technology Center offers a shared services environment so local courts can provide security for their databases, recover data in case of disasters, manage e-mail, and use virtual private networks and support services.

Still on the horizon is the ambitious Court Case Management System (CCMS), which will unify case management systems in the state's trial courts. A key component of CCMS is its ability to electronically compile, display, update, and exchange case information and associated documents across local jurisidictions. It will enhance the quality of justice by improving the judicial branch's ability to collect and analyze court information and to make it available to the public and the court's justice partners, such as the Department of Social Services and law enforcement agencies.

Responsive and Responsible Service to the Public

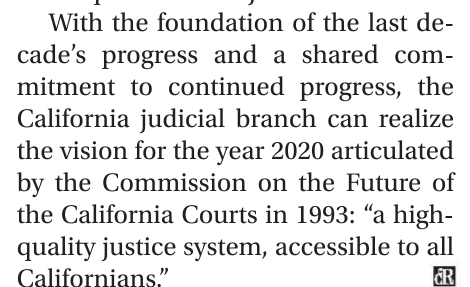
With its ultimate goal of providing equal access to justice, the Judicial Council has relied on stable funding, unity, and long-range planning to tackle formidable problems that affect both the judicial system and society. To be sure, the Judicial Council undertook systemwide reforms before 1998, but those efforts accelerated in quality and quantity with the advent of more stabilized state funding. Those reforms range from jury management to self-help initiatives to substantive reforms in such areas as probate and the treatment of foster children.

The Judicial Council's Domestic Violence Practice and Procedure Task Force, for example, responded to a 2005 report by the state Attorney General's office that pointed out problems in the handling of domestic violence cases. The task force developed 139 new guidelines and practices to improve the way in which the state's trial courts handle such critically important cases.

The Blue Ribbon Commission on Children in Foster Care, created in 2006 and chaired by Supreme Court Associate Justice Carlos R. Moreno, issued 79 recommendations designed to get children out of foster care and into permanent and safe homes where they will be supported and nurtured on the path to becoming productive, responsible adults.

In 2007, Chief Justice Ronald M. George appointed the Commission for Impartial Courts, chaired by Supreme Court Associate Justice Ming W. Chin, to find ways to safeguard the quality, impartiality, and accountability of California's judiciary and avoid the politicization of judicial elections that has plagued many other states. The commission has intensively studied judicial selection and retention, judicial campaign finance, judicial candidate campaign conduct, and public information and education and will make its recommendations to the Judicial Council in 2009. Most recently, the Chief Justice appointed a Bench-Bar-Media Committee, chaired by Justice Moreno, to foster the relationship between three key judicial system stakeholders.

Progress does not always occur in a straight trajectory, but the branch is on a steady path to meeting the needs and goals of the future. Funding stability and the emergence of a unified judicial branch speaking with one voice clearly have led to demonstrable improvements in providing all Californians with equal access to justice.



With the foundation of the last decade's progress and a shared commitment to continued progress, the California judicial branch can realize the vision for the year 2020 articulated by the Commission on the Future of the California Courts in 1993: "a high-quality justice system, accessible to all Californians."

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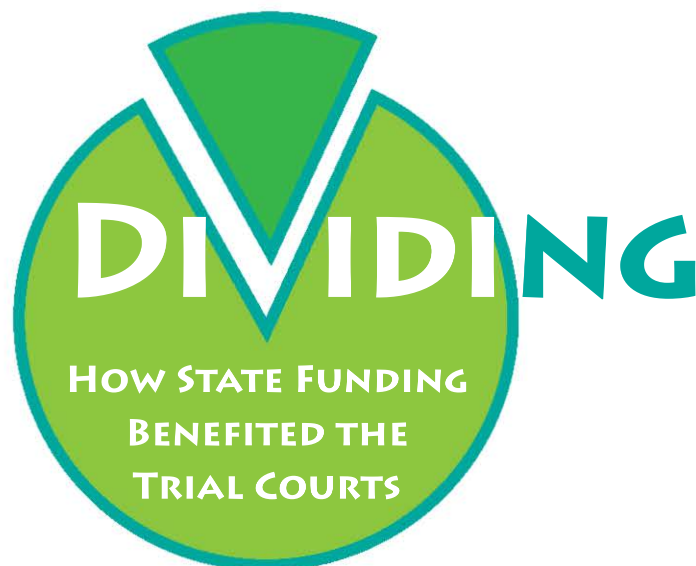


Over the past decade, the California court system has experienced several fundamental changes that have significantly altered the face of the judiciary and the way the courts conduct business. These changes included trial court unification, the Trial Court Employment Protection and Governance Act, the one-day or one-trial jury system, and the Trial Court Facilities Act of 2002. But perhaps none has had a greater impact than Assembly Bill 233, the Lockyer-Isenberg Trial Court Funding Act of 1997.

This landmark legislation resulted in the consolidation of funding for the trial courts at the state level after years of advocacy by bench and bar leaders and, particularly, Chief Justice Ronald M. George. This restructuring of court funding was intended to:

- Provide stable, consistent funding for the courts
- Promote fiscal responsibility and accountability by managing resources in the most efficient and effective manner
- Recognize that the state is primarily responsible for funding the courts, enabling the courts, state, and counties to better engage in long-term planning
- Enhance equal access to justice by removing disparities resulting from the varying ability of individual counties to meet the operating needs of the courts

Have the goals been met? From a simple budgetary standpoint, the numbers speak for themselves. In the past 10 years, trial court funding has nearly doubled, from $1.67 billion in January 1998 to well over $3 billion today. Recent milestones, such as the uniform civil fee structure and the implementation of state appropriations limit (SAL) funding, have further enhanced equal access to the courts and stable, ongoing funding. In addition, because of the trial court funding act, trial courts are unique in state government in that they have the authority to carry over funds from year to year.

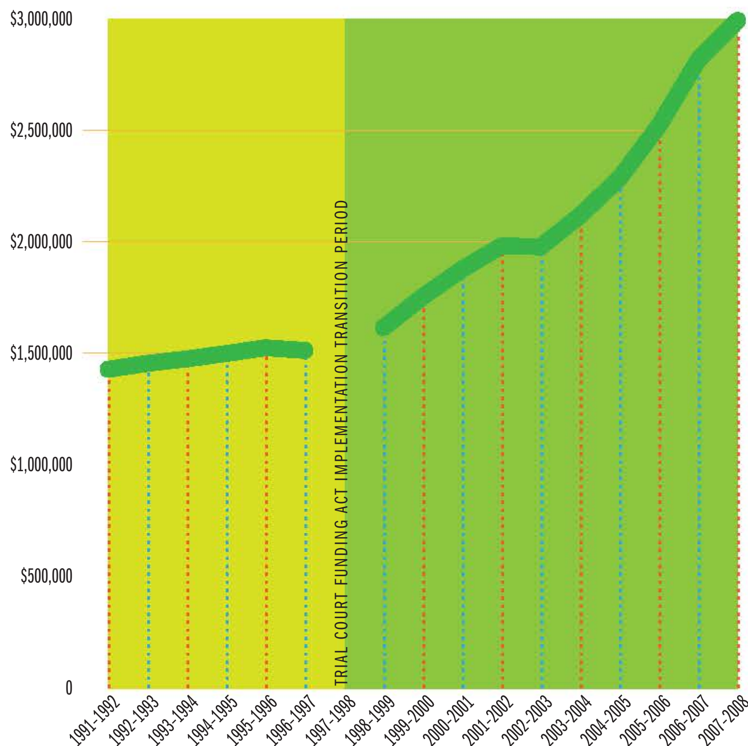
ATTACHMENT 14

THE PIE

By
Robert E. Fleshman

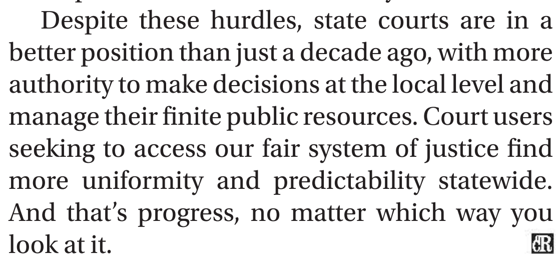
Trial Court Expenditures by Fiscal Year

In thousands of dollars



Sources FY 1991–1992 through FY 1996–1997: Judicial Council/Administrative Office of the Courts, *Legislative Briefing* (Feb. 1997); FY 1998–1999 through FY 2006–2007: prior-year actual expenditures reported in Governor's Budgets; FY 2007–2008: year-end financial statement.

Certain challenges in state funding remain—historical underfunding may still exist for some courts, and being tied to state funding subjects courts to fluctuations in the California economy. Courts recently received a harsh reminder of their reliance on the Governor and Legislature to provide funding for legislative mandates—something that did not occur for new conservatorship laws that took effect in July 2007.



Despite these hurdles, state courts are in a better position than just a decade ago, with more authority to make decisions at the local level and manage their finite public resources. Court users seeking to access our fair system of justice find more uniformity and predictability statewide. And that's progress, no matter which way you look at it. CR

Robert E. Fleshman is a supervisor in the Finance Division of the Administrative Office of the Courts.

79%

Percentage of states that have the state Administrative Office of the Courts prepare judicial branch budgets

78%

Percentage of states that receive more than half of their court budgets from the state governments

Source National Center for the State Courts, 2004 study. *Ed. note*: For the second item, only 32 of 50 states responded. *(www.ojp.usdoj.gov/bjs/abstract/sco04.htm)*

ATTACHMENT 14

Funding the Courts

Trial courts receive both direct and indirect support through a number of funds. Here are the primary ones that support the administration of justice in California.

Trial Court Trust Fund (TCTF)

WHAT IT IS: The primary funding source for court operations.

WHERE IT COMES FROM: State General Fund appropriations, county maintenance-of-effort payments, and fee revenues are the main sources.

WHERE IT GOES: The Judicial Council allocates TCTF monies to courts for court operations, including staffing costs and court security, as well as reimbursement costs for dependency counsel, jury per diems, court interpreters, and judicial compensation. The Assigned Judges Program—which assigns active and retired judges to temporarily cover vacancies, illnesses, disqualifications, and calendar congestion in the trial courts—is also funded from the TCTF.

Trial Court Improvement Fund (TCIF)

WHAT IT IS: Established by the Legislature as part of the Lockyer-Isenberg Trial Court Funding Act of 1997 (Gov. Code, § 77209) and supports ongoing statewide programs and projects.

WHERE IT COMES FROM: The Judicial Council is required to transfer 1 percent of its annual appropriation for support of trial court operations to the TCIF and to set aside at least one-half of that amount as a reserve that may not be allocated before March 15 of each year "unless allocated to a court or courts for urgent needs." (Gov. Code, § 77209(b).) Additional revenue comes from criminal fines, forfeitures, and state penalties. Unused funds are carried over to the next year.

WHERE IT GOES: The fund is available to address deficiencies and other emergencies. Monies deposited into the TCIF also may be used to implement programs and projects that support the courts, as approved by the Judicial Council.

EXAMPLES OF TCIF-FUNDED PROJECTS: The Judicial Council's Litigation Management Program, through which courts, judicial officers, and court employees are defended and indemnified for court-related claims and lawsuits; the council's Judicial Performance Defense Insurance program, through which judicial officers receive legal defense in matters before the Commission on Judicial Performance; support for trial courts' self-help centers provided through the AOC Center for Families, Children & the Courts; the Comprehensive Collections Program managed through the AOC Southern Regional Office; and the several statewide trial court infor-

Helping Underfunded Courts

By Leah Rose-Goodwin

The Judicial Council approved the use of the Resource Allocation Study (RAS) methodology in 2005 to identify historically underfunded courts and to direct supplemental funding to those courts with the greatest need of additional resources.

In three successive budget cycles, between 2005 and 2007, the RAS model was used to allocate approximately $32 million in workload growth and equity (WGE) funding to create more equitable funding across courts. Workload growth and equity funding is earmarked out of state appropriations limit funding. The RAS model works in conjunction with SAL funding to make trial court funding more uniform across courts.

In 2005, there were 18 courts whose budgets were 20 percent or more below their projected funding need (see map at right). These courts were mostly located in the Central Valley, Inland Empire, and Sierra Nevada areas.

RAS **(pronounced "RAZ") Resource Allocation Study.** Used to address funding needs for courts that are historically under-resourced or courts that are experiencing disproportionate workload growth. The RAS model allows for the comparison of resource needs across the state's 58 trial courts. The comparison is based on each court's weighted filings and ratios of courtroom support staff to judicial officers derived from the average levels of court resources used to process filings. Developed after a comprehensive time study and focus groups with 16 trial courts, the methodology may be adjusted in the future to take into account performance and input from the courts.

ATTACHMENT 14

mation technology projects (including the California Courts Technology Center, Phoenix Financial System, Phoenix Human Resources System, California Court Case Management System, and interim case management systems).

Judicial Administration Efficiency and Modernization Fund (Modernization Fund)

WHAT IT IS: Like the TCIF, the Modernization Fund was established by the Lockyer-Isenberg Trial Court Funding Act of 1997 and may be used "to promote improved access, efficiency, and effectiveness in trial courts." (Gov. Code, § 77213(a)–(b).)

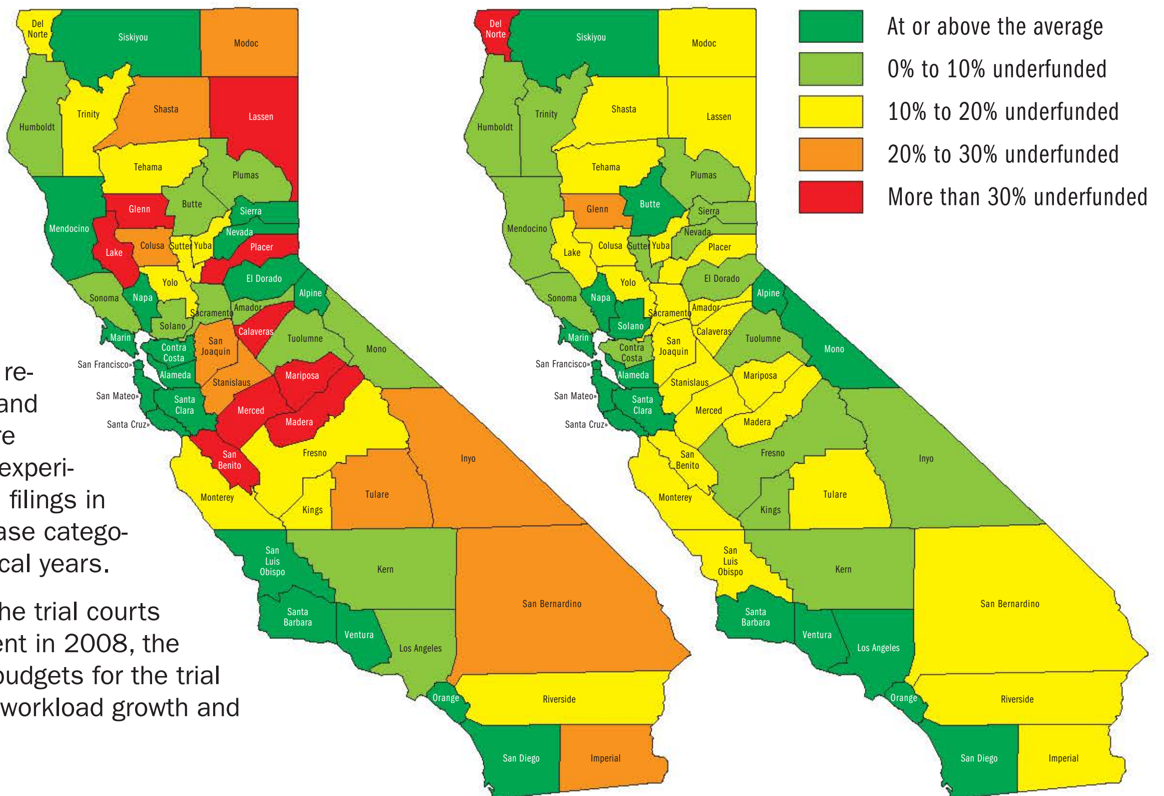
WHERE IT COMES FROM: The state General Fund.

WHERE IT GOES: Programs and projects that support the courts, as approved by the Judicial Council.

EXAMPLES OF MODERNIZATION FUND USE: The Complex Litigation Program, through which the Superior Courts of Alameda, Contra Costa, Los Angeles, Orange, San Francisco, and Santa Clara Counties have received $19.498 million for court-based complex litigation programs; the Civil Mediation and Settlement Program Grants project, which has provided funding and services to 40 trial courts for their alternative dispute resolution programs; educational programs for judges (for example, New Judge Orientation, the Judicial College, mandated family law assignment education, ethics training, and the Continuing Judicial Studies Program) and court staff (for example, the Court Clerk Training Institute and distance learning broadcasts), with the Modernization Fund covering most costs of attendance (including hotel and meal expenses); jury management improvement initiatives; and statewide technology projects.

Courts' Funding Need Relative to Budget

Before Workload Growth and Equity Funding (2005, left) and After Three Annual Distributions of WGE Funding (2007, right)



By 2007, after three years of workload growth and equity allocations, only two courts were considered severely underfunded (with a budget 20 percent lower than projected funding need). Those courts, the Superior Courts of Glenn and Del Norte Counties, had received workload growth and equity allocations in more than one fiscal year but experienced large increases in filings in several work-intensive case categories over two or more fiscal years.

Note: Because none of the trial courts received a SAL adjustment in 2008, the 2008–2009 fiscal year budgets for the trial courts did not include a workload growth and equity component.

Maps by Kevin O'Connell

ATTACHMENT 14

SAL **State Appropriations Limit.** Current law authorizes the budget for trial court funding to be annually adjusted by a factor equal to the annual percentage change in the state appropriations limit. This funding method was created to achieve stable, predictable funding for the trial courts. The calculation of the SAL is based on a formula that includes the annual changes in cost-of-living and population factors (including K–14 education enrollment). The funding increase provided by the SAL adjustment factor is annually appropriated by the Legislature and included in the trial court funding base for determination of the next fiscal year SAL adjustment.

Court Interpreters' Fund

WHAT IT IS: Established by statute (Gov. Code, § 68562(f)).

WHERE IT COMES FROM: The primary revenue (approximately $150,000 annually) comes from fees charged to applicants to take the court interpreter certification examination.

WHERE IT GOES: Used to support administration of the court interpreters' program, including the payment of costs related to test development, test administration, qualification review, and programs for recruitment, training, and continuing education of court interpreters, on appropriation by the Legislature.

Family Law Trust Fund

WHAT IT IS: Established by statute (Fam. Code, § 1852).

WHERE IT COMES FROM: Primarily funded by fees generated by marriage and divorce certificates, approximately $1.8 million a year.

WHERE IT GOES: May be used for purposes specified in statute and for other family law–related activities. Monies unencumbered at the end of a fiscal year are automatically appropriated to the fund for the following year. In order to defray the costs of the collection of these funds, the local registrar, county clerk, or county recorder may retain a percentage of the funds collected (Fam. Code, § 1852(g)).

The Court Security Budget

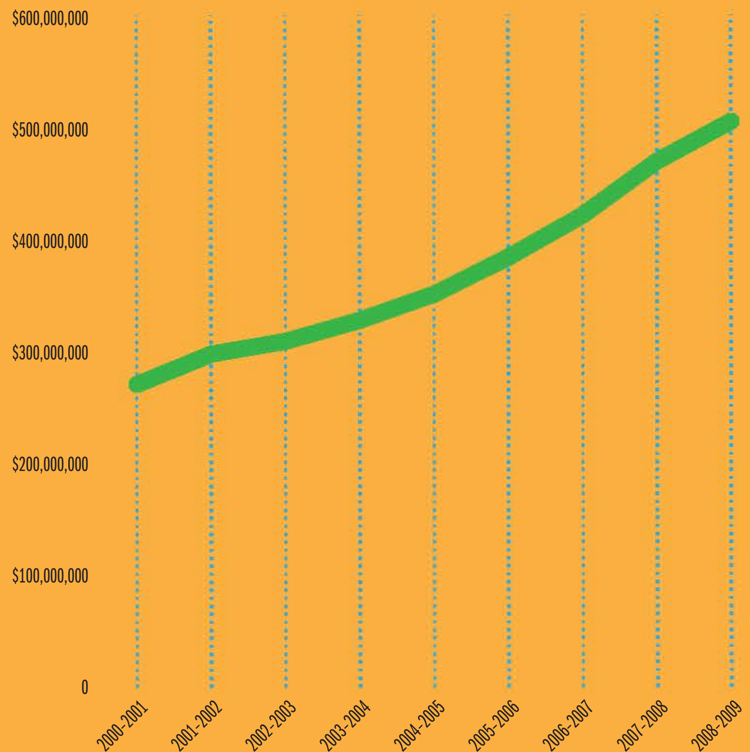
After passage of the Lockyer-Isenberg Trial Court Funding Act of 1997, the state became responsible for court operations, including court security.

The costs of security have soared dramatically since 2001. In 2002, Senate Bill 1396 (Dunn) was enacted, requiring that each of California's 58 trial courts prepare and implement a court security plan and that each sheriff or marshal prepare and implement a law enforcement security plan.

Cosponsored by the California State Sheriffs' Association, the bill clarified allowable and unallowable state costs for court security and required the Judicial Council to establish a Working Group on Court Security.

This group, authorized by rule 10.170 of the California Rules of Court, has worked to identify the courts' various security needs and the associated costs. It remains committed to developing recommendations for achieving operational efficiencies in the provision of court security in order to reduce overall costs.

How Much Is Spent on Court Security?



ATTACHMENT 14

The Trial Court Budgeting Process

Before the arrival of state funding in 1998, funding for trial courts was unpredictable and subject to a county's fiscal health. Court budgets were patched together from county and state contributions. Budget cuts affected municipal and superior courts differently. Municipal courts brought in revenue with filing fees, fines, forfeitures, and other charges, and they could offset the cuts somewhat with their own revenues. The superior courts never had that flexibility.

The current trial court budgeting process is more collaborative. The Trial Court Budget Working Group—made up of presiding judges and court executive officers—advises the Administrative Director of the Courts on budget issues. The Judicial Council and the Administrative Office of the Courts deliver the branch's budget information to the Governor and the Legislature. The Legislature produces an appropriations bill that contains funding for the courts. If the Governor approves it, funding is appropriated to the council, which in turn provides final approval on the allocations and distributes the funding to the trial courts. In addition to any new funding, the trial courts have received an annual baseline funding for their ongoing operating costs since 2005.