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Letter from the Justices of the California Court of Appeal, Third Appellate District, to the California Senate and Assembly Judiciary Committees Regarding Trial Court Unification (SCA 3)*

To: Hon. William Lockyer, Chairman, Senate Judiciary Committee, Hon. Phillip Isenberg, Chairman, Assembly Judiciary Committee, and the members thereof.

From: Hon. Robert K. Puglia, Presiding Justice and Hon. Coleman A. Blease, Hon. Keith F. Sparks, Hon. Richard M. Sims III, Hon. Rodney Davis, Hon. Arthur G. Scotland, and Hon. George W. Nicholson, Associate Justices of the Court of Appeal, Third Appellate District

Date: October 8, 1993

The following comments represent the views of the above-named members of the Third District Court of Appeal regarding SCA 3 and SCA 3 as it is proposed to be amended in Trial Court Unification: Proposed Constitutional Amendments and Commentary of the Presiding Judges and Court Administrators Standing Advisory Committees, dated September 11, 1993, chaired by the Hon. Roger Warren. (hereinafter, Warren Committee Report.) The changes proposed by the Warren Committee Report that are of concern are attached as Appendix A. A proposal to rectify the jurisdictional problems present in these proposals is attached as Appendix B.

There are two areas of immediate concern to us. On the one hand, SCA 3 in its present form causes jurisdictional problems, e.g., it would send all of the appeals from matters within the jurisdiction of the municipal and justice courts to the courts of appeal. On the other hand, the Warren Committee proposal would abolish provisions which safeguard the

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constitutional jurisdiction of the courts of appeal and vest plenary powers over their internal administration in the Judicial Council.

More specifically, the Warren Committee proposal would *repeal* the *constitutional* jurisdiction of the courts of appeal over appeals from causes over which the superior courts presently have original jurisdiction (i.e., the most significant cases) and would abolish thereby the *constitutional* right of litigants to appeal such cases to the courts of appeal. It would vest the power to determine where an appeal should be taken in the Judicial Council, subject to approval by the Supreme Court. (Warren Committee Report, p. 34; revision of art. 6, § 11.)

The Warren Committee proposal would also repeal the Legislature's authority to provide for the officers and employees of the trial courts, and would vest that authority, as well as the power to regulate the employees of the Courts of Appeal, in the Judicial Council and the Chief Justice. (Warren Committee Report; pp. 29-30; revision of art. 6, § 6.)

We are opposed to these proposals. We would support alternative amendments to SCA 3 to cure the jurisdictional problems (see below for the divisions proposal).

We begin by examining the amendments which SCA 3 and the Warren Committee proposal would make to the existing constitutional law. We then ask whether the radical changes in constitutional jurisdiction are justified by the goal of administrative efficiency.

I
The Constitutional Right of Appeal
A. The Existing Law

The California Constitution presently divides causes of action into (essentially) two classes and assigns the more significant to the superior court and the less significant class to the municipal and justice courts. The *jurisdictional* separation of these courts into superior and inferior tribunals together with this assignment of causes has significant consequences. Article 6, section 11 of the Constitution vests "appellate jurisdiction" in the courts of appeal over all causes over which the superior court has original jurisdiction.[1] It creates thereby a constitutional right of appeal in such cases. (See, e.g., *In re Sutter-Butte By-Pass Assessment* (1923) 190 Cal.

1. Section 11 currently provides that "[w]ith that exception [death penalty cases] courts of appeal have appellate jurisdiction when superior courts have original jurisdiction and in other causes prescribed by statute."

532.) This entails resolution of the appeal by a court of broad geographic jurisdiction by means of the traditional appellate review process, including written decisions with reasons stated. (Cal. Const. art. 6, §14.) Causes assigned to the municipal and justice courts are not appealable unless made so by statute and if so may be resolved without a written opinion by a local, county appellate department. (Art. 6, § 11.)[2]

B. SCA 3 As Presently Constituted

If the trial courts are unified, the present means of separating trial courts into superior and inferior tribunals will vanish and, unless replaced by a similar jurisdictional arrangement, so will the constitutional right of appeal which is dependent upon that jurisdictional arrangement. If, as currently provided in SCA 3, a new district court is given jurisdiction over all causes, including those previously assigned to the municipal and justice courts, all causes, however trivial, would be accorded full appellate review in the courts of appeal, significantly raising their workload.[3] If a single trial court is created and vested with all of the powers presently given the multiple trial courts, including appellate powers, there will be no superior tribunal to hear appeals in causes formerly within the jurisdiction of the municipal and justice courts and no superior tribunal to issue writs concerning such causes to an inferior court tribunal. It is conceptually anomalous for a court to hear an appeal from itself or to direct a writ to itself.

If the problem is sought to be resolved by delegating the authority to determine whether and where an appeal should be taken, the appellate jurisdiction of the courts of appeal could be dramatically curtailed, e.g., by sending appeals to the appellate department of the new unified trial court without the costly necessity of written opinions. This presents the appellate jurisdiction problem of SCA 3.

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2. Section 11 currently provides that "Superior courts have appellate jurisdiction in causes prescribed by statute that arise in municipal and justice courts . . . ."

3. SCA 3, as amended in Asseembly July 16, 1993, would amend section 10 of art. 6 to provide that: "[d]istrict courts have original jurisdiction in all causes." It would also amend section 11 to provide that, with the exception of death penalty cases, "courts of appeal have appellate jurisdiction when district courts have original jurisdiction ...." Read together, the courts of appeal would be given appellate jurisdiction over all causes including those presently within the jurisdiction of the municipal and justice courts.

C. The Warren Committee Proposal

The Warren Committee would create a single unified trial court with no *jurisdictional* divisions. It proposes to "solve" the "appellate jurisdiction problem" of SCA 3 by revising section 11 to provide that all causes shall be classified into two categories, categories One and Two, and that the courts of appeal shall have appellate jurisdiction over Category One causes and the district court appellate jurisdiction over Category Two causes.[4] No criteria are given for delineating these classes of causes. They do not mark the jurisdictional boundaries of the existing trial courts. So far as their constitutional status is concerned, they are mere labels. Rather, the Warren Committee proposal would vest the authority to *define* the "classes of causes" within each category, and hence the authority to determine *where* an appeal may be taken or a writ issued, in the Judicial Council, which may act by rule with the approval of the Supreme Court. The Warren Committee Report argues that "[w]hether appeals should be heard by a court of appeal or the appellate department is largely a matter of judicial policy and administration." (Report, p. 38.) Thus, what had been a matter of constitutional right, to appeal to the court of appeal in the significant causes within the original jurisdiction of the superior court, is reduced to a matter of administrative efficiency. The claim is made that a constitutional right of appeal has been preserved because, unlike the present section 11,[5] appeal is made a matter of right in Category Two causes to the district court. But that blinks the reality of the distinction

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4. Section 11 would be amended as follows:

(a) The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal *and district courts* have appellate jurisdiction ~~when superior courts have original jurisdiction and in other causes prescribed by statute~~ as provided in this section. *(b) All causes in the district courts are within Category One or Category Two. Assignment of classes of causes to either of these categories shall be made pursuant to rules adopted by the judicial council which shall become effective when approved by a majority of the Supreme Court. Any causes not assigned to Category Two shall be deemed to be assigned to Category One. (c) Courts of appeal have appellate jurisdiction in Category One causes, cases in which one or more causes within Category One is joined in the same proceeding with one or more causes within Category Two, and in other causes prescribed by statute.* (d) ~~Superior~~ *District* courts have appellate jurisdiction in *Category Two* causes ~~prescribed by statute~~ that arise ~~in municipal and justice courts~~ within their ~~counties~~ *territorial jurisdictions.*

5. Section 11 of article 6 currently provides that "[s]uperior courts have appellate jurisdiction in causes *prescribed by statute* that arise in municipal and justice courts" thus reposing discretion in the Legislature to decide whether an appeal should be accorded in such a cause. (Emphasis added.) The Warren Committee would repeal the italicized language, while substituting "district" for "superior" court, thus making "appeal" to the district a matter of constitutional right. We have elsewhere commented that it makes no sense to talk of appealing a case to oneself, as the Warren Committee would provide.

between appellate review in the courts of appeal and appellate review in the district court.

It must be emphasized that the present constitutional right of appeal is a function of the different *jurisdictions* of the existing tiers of trial courts. The Legislature has no power to preclude an appeal in a cause within the original jurisdiction of the superior courts. It has no power simply to determine where an appeal should be taken. This provides the *only constitutional safeguard* against the temptation to manipulate appellate jurisdiction as attempted in *In re Sutter-Butte By-Pass Assessment.* The proposed classification approach simply surrenders this safeguard.

The Warren Committee proposal for solving the appellate jurisdiction problem also carries with it a change in civil jury size. Section 16 of art. I is proposed to be amended to provide that "[i]n Category One civil causes the jury shall consist of 12 persons, unless otherwise agreed upon," but not so in Category Two cases. (Warren Committee Report p. 8; proposed revision of art. 1, § 16.) It is explained, that "[a]s of the effective date of these amendments, all causes within the jurisdiction of the . . . superior courts will be declared Category One causes," thus, "this amendment will result in no change to the constitutionally provided size of the civil jury." (Ibid.) However, that is misleading since, as a *constitutional* matter, under section 11, the Judicial Council and Supreme Court would decide the content of the categories. What is meant, therefore, is that it is proposed that those bodies make that determination as a matter of judicial policy. That, of course, is subject to the vagaries of time and circumstance. The only value of a constitutional safeguard is that it is *not* subject to administrative or statutory control.

For these reasons we oppose the Warren Committee proposal. It would abolish the constitutional jurisdiction of the courts of appeal and the ancillary right to appeal the significant causes now within the original jurisdiction of the superior courts. Regarding appeals that presently would be taken from causes within the jurisdiction of the municipal and justice courts and writs directed to such courts, it affords no relief for the conceptual headache of a court with jurisdiction over itself.

The Warren Committee Report also gives us independent causes for concern. Among other things, the Report proposes to vest plenary powers

over court administration in the Judicial Council and Chief Justice.[6] This redistribution of powers presently confided in the appellate and trial courts is not required to achieve trial court unification. (Report pp. 29-30.) The Warren Committee also would repeal the existing constitutional provisions which state that the Legislature shall "provide for the officers and employees" of each trial court, leaving (under the amendments to section 6) the Judicial Council and the Chief Justice as the sole repositors of this authority. (Report, p. 25.) It is explained that the purpose of this deletion is that "good management principles require that *courts* have authority to provide for their own employees within the limits of resources provided to the courts." (Emphasis added.) This confuses the "courts" with the Judicial Council and the Chief Justice. As a consequence the courts would be wholly dependent upon them for whatever administrative authority they would be permitted to exercise over their own affairs. We think that sound principles of court management are better served by the present decentralized system in which courts at each level have authority over their own personnel.

Currently, for example, both the appellate and trial courts are given authority by legislation over the selection of their staffs. (See e.g., Govt. Code sections 69141, 19825 [courts of appeal]; 69890 ff. [superior courts].) This authority would be shifted to the Judicial Council and Chief Justice, acting as the "chief executive officer for the courts," under the proposals sanctioned by the Report.

There are further changes that are not necessary to trial court unification. The proposal needlessly forces policy choices in procedural law under the gun of transition. It will make necessary the revision of all of the statutes which turn on the present jurisdictional differences of the trial courts. As related, it poses significant difficulties in extraordinary writ jurisdiction regarding causes presently assigned to the "inferior tribunals," municipal and justice courts.

For the reasons set out above we oppose SCA 3 in its current form and as it is proposed to be amended by the Warren Committee Report.

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6. The proposal is as follows:

The Judicial Council is the policy-making body for the courts. To improve the administration of justice the council shall survey judicial business and make recommendations to the courts, make recommendations annually to the Governor and Legislature, adopt rules for court administration, *adopt rules* for practice and procedure, not inconsistent with statute, and perform other functions prescribed by statute. *The Chief Justice shall be the chief executive officer for the courts and shall implement the rules promulgated by the Judicial Council.*

II
The Divisions Proposal

Our court has proposed the establishment of two divisions of the unified trial court, which would incorporate the bifurcated subject matter *jurisdictions* of the existing trial courts and their procedural regimes (the divisions proposal) in a single administrative unit, called the district court, thus preserving the present constitutional arrangements while permitting whatever efficiencies can be gained from a single class of judges and a single administration. This would preserve the existing constitutional right of appeal in the significant cases now within the jurisdiction of the superior court. It would simplify the transition to a unified court by enabling continued use of the present statutory scheme concerning procedural matters. The divisions proposal would similarly allow extraordinary writ statutes to continue in use by granting to the higher division writ jurisdiction over matters in the lower division as an "inferior tribunal." (See, e.g., Code Civ. Proc., § 1085.) If this approach is not adopted, a Pandora's box of policy choices is opened.

However the divisions proposal has not met with favor by the Warren Committee. (Report p. 24) It objects that it would result in a "somewhat awkward and confused structure." This seems, at best, to be an aesthetic objection entitled to no weight unless a satisfactory alternate solution is supplied. The Report also objects that the creation of departments is a matter that should be "dealt with" by statute or rules of court and that there is no "principled reason" for addressing this basis of division in the Constitution. Obviously, the principled reason for the distinction is to continue the present *constitutional* arrangements concerning appellate jurisdiction while obtaining the benefits of administrative unification.

It has also been asserted that the divisions proposal perpetuates a perceived stigma of "inferior" status judges. This concern about "inferiority" is unreasonable since the proposal contemplates actual equality of trial judges, with the same freedom and presumably rotation of assignments that would exist under any other version of the trial court unification proposal. In our view there are no "inferior" judges, there are only "inferior tribunals," a nonderogatory statutory usage that merely reflects the institutional arrangements necessary for appellate and writ review of questions of law.

It is deep conceptual confusion to think that this "damned spot" of "inferiority" can be washed out of any system that affords appellate and writ review. Such review requires a *separate* reviewing entity that is

"superior" in the sense that it can, in limited circumstances, overturn or reverse the action of the inferior tribunal. If there is no separation of entities, then the system of review is no more than a rehearing and cannot be considered appellate review. Indeed, as noted, without some constitutional recognition of jurisdictional separation, such as that afforded by the divisions proposal, one is left with the Warren Committee Report's proposed solecism of a "fully unified" trial and appellate and writ review court, i.e., an inferior/superior district court with appellate and writ jurisdiction over itself.

III
The Goal of Administrative Efficiency Is Unification More Efficient Than Coordination?

Since the Warren Committee proposal would make radical changes in the constitutional jurisdiction of the courts of appeal and affect the internal administration of the courts, it is proper to inquire whether such changes are justified by the claimed fiscal advantage of administrative efficiency which is the announced goal to be achieved by trial court unification.

We are not told why a constitutional amendment is necessary to achieve administrative efficiency. The courts are presently implementing the trial court coordination plan, authored by Assemblyman Isenberg, which has the same purpose. (Gov. Code section 68112.) Indeed, the Warren Committee Report offers the experience of the Sacramento courts under the statutory coordination plan as support for the claim that savings would be made by the constitutional amendment.[7] (Report p. 22.) The merits of the statutory plan are currently under study by the Judicial Council. (See 1993 Annual Report, Judicial Council of California, pp. 18-19.)

It is not self-evident that a constitutional amendment is necessary to achieve the administrative savings advanced as the reason for SCA 3.

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7. The Report states:

> Based on the experience of those counties which have coordinated the provision of judicial services most fully, these particular increases [in salaries and benefits occasioned by unification 9 (see fn. 2)] will be offset by the costs avoided through reducing the need for additional judgeships. Counties that have already consolidated their superior and municipal court benches report significantly more efficient use of available judicial resources which directly translates into a reduced need to create more judgeships.

(Warren Committee Report, p. 22.)

The appropriate question to be answered is whether SCA 3 could save money over and above that saved by the statutory trial court coordination plan.[8]

Appendix A.

[Editor's Note: As originally presented to the Senate and Assembly Judiciary Committees, Appendix A contained Part 3 of the Warren Committee Report. The Warren Committee Report is reproduced in full in this issue at page 230. Part 3 begins at page 248.]

Appendix B.

The Divisions Proposal
California Constitution

Article I

Declaration of Rights

Section 16, paragraph 2. In civil causes the jury shall consist of 12 persons or a lesser number agreed on by the parties in open court. In civil causes in ~~municipal or justice court~~ *division two of the district court* the Legislature may provide that the jury shall consist of eight persons or a lesser number agreed on by the parties in open court.

8. The question is especially pertinent in view of the facts that SCA 3 would increase the salaries and benefits of all municipal court judges by $10,000 per year, would transmute justice court judges from part time to full time judges at an effective increase of some 18 judicial positions, and would likely increase the retirement benefits of all retired municipal and justice court judges because the terms of the existing municipal and justice court judges, which are used to measure the benefits of retired judges, would continue into their terms as district court judges. (Warren Committee Report, p. 7.)

Article VI

Judicial

Section 1. The judicial power of this State is vested in the Supreme Court, courts of appeal, ~~superior courts, municipal courts, and justice courts~~ *and district courts*. All courts are courts of record.

Section 4. ~~In each county there is a superior court of one or more judges. The Legislature shall prescribe the number of judges and provide for the officers and employees of each superior court. If the governing body of each affected county concurs, the Legislature may provide that one or more judges serve more than one superior court. The county clerk is the ex officio clerk of the superior court in the county.~~

The Legislature shall divide the State into district courts, each consisting of one or more entire counties. The Legislature shall provide for the organization, territorial jurisdiction, number and compensation of judges, and the number, qualifications, and compensation of the officers and employees of the district courts. The district courts shall have two divisions.

Section 5, concerning the municipal and justice courts, is repealed.

Section 10. The Supreme Court, courts of appeal, *their judges, and* ~~superior~~ *division one of the district* courts ~~and their judges~~ have original jurisdiction in habeas corpus proceedings. Those courts also have original jurisdiction in proceedings for extraordinary relief in the nature of mandamus, certiorari, and prohibition. *The jurisdiction of division one of the district courts shall extend to matters arising in division two of the district courts.*

~~Superior~~ *Division one of the district* courts ~~have~~ *has* original jurisdiction in all causes except those given by statute to ~~other trial courts~~ *division two of the district courts. On the effective date of this amendment all causes within the original jurisdiction of the superior courts are within the original jurisdiction of division one of the district courts and all causes within the jurisdiction of the municipal and justice courts are within the jurisdiction of division two of the district courts.*

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

Section 11. The Supreme Court has appellate jurisdiction when judgment of death has been pronounced. With that exception courts of appeal have appellate jurisdiction when ~~superior courts have~~ *division one of the district courts has* original jurisdiction and in other causes prescribed by statute.

~~Superior courts have~~ *Division one of the district courts has* appellate jurisdiction in causes prescribed by statute that arise in ~~municipal and justice courts~~ *division two of the district courts* ~~in their counties~~.

The Legislature may permit appellate courts to take evidence and make findings of fact when jury trial is waived or is not a matter of right.