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Trial Court Unification Under SCA 3

Senate Judiciary Committee

Assembly Judiciary Committee

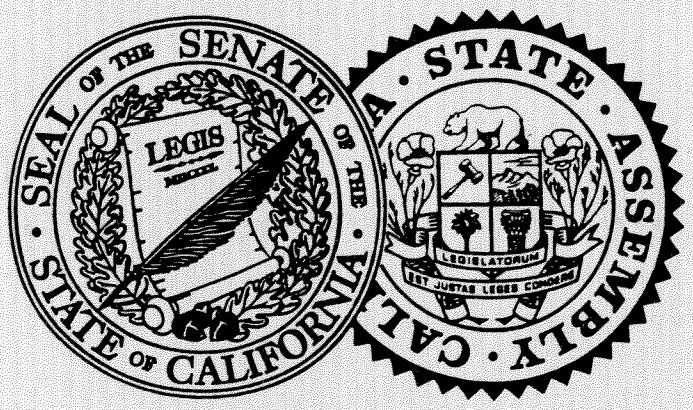
CALIFORNIA LEGISLATURE

SENATE JUDICIARY COMMITTEE
BILL LOCKYER, CHAIRMAN

ASSEMBLY JUDICIARY COMMITTEE
PHIL ISENBERG, CHAIRMAN

JOINT HEARING ON

TRIAL COURT UNIFICATION UNDER SCA 3



OCTOBER 8, 1993
SAN DIEGO CONVENTION CENTER
SAN DIEGO, CALIFORNIA

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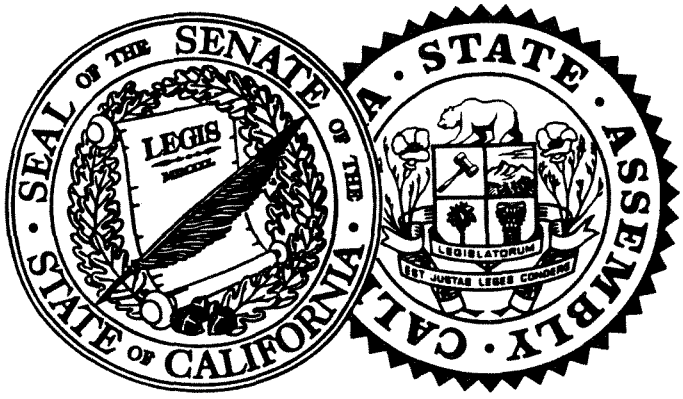

OCTOBER 8, 1993
SAN DIEGO CONVENTION CENTER
111 WEST HARBOR
SAN DIEGO, CALIFORNIA

JOINT HEARING OF THE
SENATE AND ASSEMBLY COMMITTEES ON JUDICIARY

TRIAL COURT UNIFICATION UNDER SCA 3

Senator Bill Lockyer
Assembly Member Phil Isenberg
Chairmen

October 8, 1993
San Diego Convention Center
111 West Harbor
San Diego

9:00 **Call to Order.**

Introductory Comments by the Chairmen.

9:05 **Overview of Recommendations Related to Court Unification**

SCA 3 Summary and Recommendations to Date
The Honorable Roger Warren
Presiding Judge, Sacramento Superior Court

Judicial Perspective and Concerns regarding Unification
The Honorable Patrick Morris
President, California Judges Association

Administration of a Unified Trial Court
Sheila Gonzalez
Chair, Court Administrators Advisory Committee
Ventura Superior/Municipal Courts

10:00 **Potential Procedural Issues in Court Unification**

The Honorable Keith Sparks
The Honorable Coleman Blease
Associate Justices, Third Appellate District

Michael Rothschild, Esq.
California Attorneys for Criminal Justice

The Honorable Norbert Ehrenfreund
San Diego Superior Court

The Honorable Charles Patrick
San Diego Municipal Court

11:00 **Responses of the Bench to Court Unification**

The Honorable David J. Danielsen
San Diego Municipal Court

Louis Boyle, District Attorney's Office

The Honorable James Milliken, Assistant Presiding Judge
San Diego Superior Court

11:30 **Responses of the Bar to Court Unification**

Margaret Morrow, Esq.
President-Elect, State Bar

David Pasternak, Esq.
Beverly Hills Bar Association

Tony Vitelle, Esq.
State Bar

12:00 **Public Comments**

SENATOR BILL LOCKYER: I think we'd like to begin this morning's session. This is an opportunity for both members of the Assembly and the Senate Judiciary Committees to interact and listen to testimony from those most directly affected by the proposal that we call SCA 3, the constitutional amendment of which I am the author.

Let me, I guess, introduce my one colleague from the Senate, and ask Mr. Isenberg to do the same with Assembly members. Senator Marks, Senator Milton Marks, from San Francisco and Marin and parts of Sonoma County, the 5th...

SENATOR MILTON MARKS: The 3rd.

SENATOR LOCKYER: Oh, 3rd.

SENATOR MARKS: It used to be the 5th.

SENATOR LOCKYER: The 3rd Senate District, that is, which runs from Petaluma down through San Francisco. Senator Marks is the Chair of the Democratic Caucus in the Senate as well as the able Chair of the Reapportionment Committee and a long-standing member of the Judiciary Committee.

I'm Bill Lockyer from Hayward, the 10th District, and Chair of the Senate Judiciary Committee.

ASSEMBLYMAN PHILLIP ISENBERG: Thank you. From the Assembly, starting at the left, is Margaret Snyder from Modesto, Mr. Jan Goldsmith from San Diego, Mr. Tom Connolly from San Diego -- Tom is the Vice-Chair of our committee -- and Mr. Bob Epple from Los Angeles. I'm Phil Isenberg.

SENATOR LOCKYER: The current status of SCA 3 is that the proposal has advanced through four votes in the Senate and three in the Assembly. There has yet to be a negative vote cast. The judicial branch is not quite so unanimous in its view, but there's been rather vigorous and healthy debate about the wisdom or consequences of trial court unification. We've stopped forward progress of the measure on the Assembly floor in order to provide this as well as other opportunities for interested parties, particularly those from the Bench and Bar, to share with us their thoughts about the proposal.

With that, I guess we probably should get started and hear from Judge Warren.

THE HONORABLE ROGER WARREN: Good morning, Ladies and Gentlemen. My name is Roger Warren. I serve as the presiding judge of the Sacramento Superior and

Municipal Courts and as Chair of the Judicial Council's Presiding Judges Standing Committee.

With me is Sheila Gonzalez, the Court Administrator for the Ventura Superior and Municipal Courts and the Chair of the Court Administrators Standing Advisory Committee to the Judicial Council; and Judge Pat Morris from San Bernardino County, the President of the California Judges Association.

The Presiding Judge's Standing Advisory Committee consists of some 21 presiding judges of superior and municipal and justice courts throughout the state. The Court Administrators Committee is similarly composed. Between the two committees, there are over 40 presiding judges and court administrators involved on the committees and doing the committees' work.

We are the ones, of course, the presiding judges and court administrators, who have been most challenged by the requirements of the Trial Court Realignment and Efficiency Act of 1991. We are the ones who have been responsible for implementing that act. That act, as you recall, required us to adopt trial court coordination plans designed to achieve maximum utilization of judicial and other court resources and to reduce judicial expenditures. It called for us to use blanket cross-assignments to use, share, or merge court staff and to assign cases to any available judicial officer without regard to jurisdictional boundary and to consider unification of the trial courts to the maximum extent permitted by the constitutional limit. All of us have done that. All of our courts have submitted such coordination of plans.

The features of coordination then, as I've just described them, are very similar to the features of a trial court unification proposal, such as that before you, that is, merging staff, assigning cases without regard to jurisdictional boundaries, et cetera.

The experience of the trial courts under coordination has been diverse but ...<<< **GAP IN TAPE** >>>... who has claimed that the coordination efforts in his or her jurisdiction have set them back. Court administrators and judges around the state recognize that we have moved forward with coordination.

Some of those who are resistant to trial court unification resist trial court unification exactly on the basis that we are being so successful with the experimentation that is going on throughout the state with coordination, why should we impose trial court unification on the court system?

In Sacramento, for example, according to current standards, we need 19 additional judicial officers to do our work. We are notwithstanding that fact current in all of our civil, criminal, and family litigation. We estimate that we have gained three additional judicial positions by the flexibility

authorized by the use of cross-assignments and the cross-utilization of judicial resources. We have eliminated four of the top ten managerial positions in our courts, and we see significant efficiencies in our court system as the result of our coordination activities. We now have a consolidated felony criminal case processing system where one judge handles the felony case from beginning to end. We now do with six judges what we used to do with seven judges in felony case processing. All of our civil law and motion, municipal and superior, is heard by one judicial officer. We have municipal court judges assigned to juvenile court who want to be there, whose aspirations as jurists were to serve in juvenile court some day. We have municipal court judges, including the former President of the California Judges Association, sitting in family because that's where they felt they could best make their contribution in California.

Late last year, in December of last year, Senator Lockyer introduced SCA 3, writing to every judge in California, and every commissioner, I think, too, at the time, inviting us for input, indicating that he felt that SCA 3 was the natural culmination of the coordination activities which I just described. He said in his letter to us that it was not his intention to force a particular structure upon the judiciary but rather to generate a healthy debate regarding unification in the hope of developing a consensus on the nature of the court structure which might ultimately best serve the public. He also said that the Legislature really lacks the experience and the moral prerogative to design a trial court restructuring on its own. "The amendment as drafted simply removes the constitutional impediment to unification. It does not dictate the terms of unification. Whether the proposal truly makes sense or not should be determined by the judicial branch branch itself, by the daily practitioners in the administration of justice.

"What is before the Legislature is out for review and comment. The final contents will reflect the recommendations of judges and the legal community. As the author of the measure, I guarantee it." And so we look forward in accepting that challenge and working with the Legislature and the Bar to draft a sensible trial court unification proposal.

SCA 3 was referred by the Judicial Council to the committees which Sheila Gonzalez and I chair. Our goal was to design an inclusive process, that is, one which received input from all courts in California, large and small, urban and rural, superior and municipal, and justice. We wanted to identify all of the public policy issues which needed to be addressed in order to formulate a reasonable trial court unification proposal. We wanted to reach some consensus

as to how those issues should appropriately be addressed, and should they be addressed by constitutional provision, by statute, or by rule of court. And finally, we wanted to reduce our consensus with regard to the constitutional issues to specific proposed constitutional language.

Those recommendations are contained in the report which was presented by the Judicial Council. And after the chief justice had asked for input from all of the judges and court administrators in California and drafts of the report had on a second occasion been circulated to all of the courts, all of the judges and justices and court administrators in California, the Judicial Council has adopted the recommendations contained in the report.

The Judicial Council has not yet taken a final position on the underlying issue of trial court unification, that is, the Judicial Council has supported the recommendations with regard to the proposed changes in SCA 3 which our committees have proposed. The Judicial Council has engaged the National Center for State Courts and asked them to assist the courts in a further study of the financial implications of trial court unification and some of the major social policy issues presented by trial court unification. When those reports are received by the Judicial Council and the Law Revision Commission has finished its review for the Judicial Council, and in light of whatever action the Legislature takes on the recommendations that are before you today, the Judicial Council will take a position on trial court unification. As you know, we recommended that this matter be referred to the Law Revision Commission, and the Law Revision Commission has already initiated its review of SCA 3.

I wanted to go through with you the recommendations of the Judicial Council which are before you in the document entitled "Executive Summary".

SENATOR LOCKYER: Judge, before you start that, perhaps it would be appropriate for me to slip in another introduction. We've been joined by Senator Diane Watson who's a long-standing member of the Senate Judiciary Committee, chairs the Health Committee from the 26th Senate District.

SENATOR DIANE WATSON: 28th District.

SENATOR LOCKYER: 28th.

SENATOR WATSON: It used to be 26th.

SENATOR LOCKYER: The numbers are all changing. Thank you, Supreme Court. (Laughter) You think you're just subject to our whim, you see. I should just say Los Angeles, but thank you, Senator Watson.

Judge, go ahead.

JUDGE WARREN: Thank you. You have before you in the Executive Summary a summary of the recommendations of the Judicial Council. As you note, there are

ten recommendations with regard to constitutional change and several others with regard to statutory change and change of rule of court. I do not propose to discuss the statutory or rule of court changes today, although we would be happy to answer any questions you may have.

The first recommendation with regard to constitutional change is that the trial court should be merged into one level trial court called the district court whose electoral district and jurisdictional boundaries should be the same as the county within which the district court is located.

I wish to come back toward the conclusion of my presentation and discuss that recommendation in a little more detail because it is one of the more controversial recommendations with regard to the implications of the Voting Rights Act on that recommendation.

The second recommendation is that there be one type or level of trial judge called the district court judge and that all existing judges and courts and court staff be merged into the newly created district court.

The third recommendation is that a judge have ten years of experience in order to qualify for service on the bench, except that existing municipal and justice court judges would be grandparented.

And the fourth recommendation is that the term of office be six years, as it is now; although we are proposing a change in the election process for district court judges. If I could take just a minute to explain this recommendation. Currently, municipal and justice court judges upon appointment by the Governor finish out the balance of that term to which they were appointed before they stand for election. Superior court judges, on the other hand, stand for election at the next general election after their appointment. We needed to do something to reconcile those two provisions. We sought to reconcile the public policies that are involved. On the one hand, the public policy of electoral accountability by judges. The second, as recognized by the appellate courts, the benefit of the current provision with regard to municipal and justice courts, is that it allows a judicial appointee to demonstrate his or her qualifications for office on the job before being evaluated by the electorate. A superior court judge upon appointment can often find himself or herself being evaluated by the electorate immediately; whereas the municipal court or justice court judge has an opportunity to serve for two or three or four years before the electorate takes a look at the performance of the judge. We have tried to come up with a proposal that is roughly compromised between those policy positions and the existing law that would allow a district court appointee to serve for three years before being subject to public review

through the electoral process.

The fifth recommendation is that the court select an executive officer to serve as clerk of the court, the court being free to select a county clerk or any other person to serve as the executive officer. This provision is supported by the County Clerks Association.

An additional change we which we proposed here that is not expressly articulated in number five, is removal of the current language in Section Four that "authorizes the Legislature to provide for the employees of the superior court." There is no similar provision with regard to the Supreme Court or Courts of Appeal, that is, there is no expressed constitutional recognition of an authority by the Legislature to provide for the employees of those courts, presumably because it's not necessary. We also feel that it's not necessary with regard to the superior court. The power has rarely, if ever, been exercised by the Legislature. It is typically delegated to the counties to actually provide for the various job classifications of employees within the court system. And, of course, the manner in which the courts provide for their employees is always subject to the appropriation process and under trial court funding will be very specifically covered by the work of the Budget Commission and subject to review of the Legislature.

The next two recommendations, six and seven, have to do with the appellate process. Currently, matters are appealed from the municipal and justice courts to the superior court. In unifying the trial courts, then, we must come up with a new appellate process. The view of the Judicial Council is that there should be retained at the local level appellate review of those kinds of matters that are now subject to appellate review at the local level rather than shipping all that workload off to the Court of Appeal and disadvantaging the litigants in those cases who are desirous of a speedy, cost-effective appellate remedy not necessarily involving the formality and the formal opinion writing involved in the appellate process at the Court of Appeal and Supreme Court level.

Ultimately, the California Judges Association's Appellate Committee and the Appellate Committee of the Judicial Council arrived at the proposal which you have before you, that is, to create two categories of cases or causes. One category would be those kinds of cases that are now, for example, heard in municipal and justice court. That category of cases would be appealed to an appellate division or an appellate department of the district court; and the other category of cases would be those cases, for example, now heard at the superior court, which would continue to enjoy jurisdiction in the Court of

Appeal and in the Supreme Court.

Number eight regards the California right-to-trial by jury. Currently, this issue is not addressed in the present version of SCA 3 but needs to be addressed, for the Constitution now provides that the Legislature may provide for a jury of less than eight persons in civil cases heard in municipal and justice court. With the elimination of municipal and justice courts, some provision has to be made with regard to whether the Legislature retains the authority to provide for a jury of eight persons in such cases. And our proposal is that in those "Category One" cases, the Legislature retain that authority.

And finally, provisions with regard to the Judicial Council: clarifying the Judicial Council's policy-making role, the role of the chief justice as the chief executive officer for the court, changing the membership of the Judicial Council in accord with the fact that there are no longer municipal and justice court representatives on the council but just the district court representatives on the council and adding two advisory members from the court administrator community; in addition, providing that rules of court administration, that is, rules of court that do not affect litigants or lawyers but direct us within the court system, talk about things like personnel, roles and responsibility of the presiding judge -- auditing, accounting matters, those kinds of rules of court -- be within the exclusive province of the judiciary and not subject to legislative control or overrule.

That then is a summary of our, the Judicial Council's, recommendations, and I would like to close my remarks by focusing on the issue of electoral districting under the Judicial Council's proposals. And we have prepared for you a two-and-a-half-page summary of those proposals which you should have before you.

The Judicial Council believes that, in order to achieve the goal of an independent yet accountable judiciary, electoral districts should be called terminous with the courts' territorial boundaries. That has always been the law in California. The Constitution has always provided that judges of a court run in electoral districts whose boundaries are called terminous with the jurisdiction of that court. We think there is a substantial state interest in retaining that policy.

If you go to sub-districting, we fear that it would result in a semblance of bias and favoritism in the court and undermine judicial impartiality because then you would have a situation where some judge is on the court or elected by particular constituency exclusively and other judges on the same court are

elected by a different and exclusive constituency which would leave litigants to believe that the quality of justice is going to depend on the district from which their judge is elected and a believe that a judge elected from their district is actually going to serve physically in their district as opposed to being subject to assignment elsewhere within the district and will be assigned to cases which arise out of their district as opposed to being assigned to any case within the jurisdiction of the court. Sub-districting therefore would undermine the appearance of the reality of judicial fairness and be inconsistent with the principal purpose of trial court unification which is additional flexibility and the utilization of judicial resources.

The Supreme Court of the United States, in its only decision to date on the subject of the applicability of the Voting Rights Act to trial court elections, has recognized the legitimate state interests in maintaining "terminality" between electoral districts and the jurisdictional boundaries of the court.

We have carefully considered the impact of this proposal on minority voters and judges, giving particular attention to the provisions of the federal Voting Rights Act. It is important to remember that trial judges, unlike the other institutions to which the Voting Rights Act has been applied, are not collegial bodies. Unlike you, for example, we do not as trial judges get together and decide how to decide a case. Each judge has the full independent authority of the institution of the court to make judicial decisions; therefore creating special districts in courts would have a different result than creating special districts in other collegial bodies. Creating special districts in the court would have the result that some judges are accountable to the voters in that particular district that elected that judge, but none of the other judges on the court would have any public accountability whatsoever to that particular group of voters. The precise requirements...

SENATOR LOCKYER: Judge, pardon me. But that assumes that there aren't administrative districts that are coterminous with the electoral district. There are a variety of permutations of electoral districts for accountability and judicial responsibility. If you have people elected from half of a county and their jurisdictional responsibility is the same half, then you perhaps would avoid that particular problem. They'd all hear the same kinds of matters. There wouldn't be that distinction.

You're suggesting that the responsibilities are countywide but the districts, the electoral districts, are a piece of the county. That's not the only way in which those decisions could be made.

JUDGE WARREN: You're suggesting that the district court be split into two

courts, each with its own jurisdictional boundaries within the county. I think that there is virtually no support, as far as I know, within the judiciary for that proposal. I think we all, virtually all of us, agree that the most logical boundaries for the district court are the county boundaries. That has always been the boundary of the court of general jurisdiction in the State of California.

SENATOR LOCKYER: No. Lots of counties have superior courts which have geographic responsibilities less than the county right now.

JUDGE WARREN: Are you referring to in terms of the venue within the district?

SENATOR LOCKYER: Yes. In effect, they have South Bay or East San Bernardino or whatever it might be. And so you could have venues that would be concurrent with the electoral districts if people wanted...

JUDGE WARREN: Yes, you could.

SENATOR LOCKYER: ...to provide for a more decentralized system.

JUDGE WARREN: Yes, you could, Senator. But I think that then you fail to accomplish some of the major purposes you seek to accomplish with trial court unification. You then have a trial court in a county which is broken into various branches, the judicial officers of each branch only serving in that particular branch, and you lose all of the flexibility in the utilization of judges that is the principal benefit of trial court unification.

SENATOR LOCKYER: Well, I don't know if that's the principal benefit or not. But I guess by that logic, there should be one giant pool of judges that someone in the sky -- I guess the chief justice -- dispatches to different parts of the state. That suggestion argues that the county boundaries should be re-examined, which might be a good idea but it's not one that's directly before us.

JUDGE WARREN: We think there are competing values. If the...

SENATOR LOCKYER: That's my only point. I just want to make it clear that it seems to me that the electoral district discussion is an extraordinarily complicated one. And to freeze one particular viewpoint into the state constitution, I'm persuaded at least, tentatively persuaded, is a bad idea. We ought to maintain some flexibility to deal with that in a statutory context rather than in the state constitution.

JUDGE WARREN: If the only value were flexibility and judicial assignments, I guess you could say to the chief, "Here are 18 trial judges; use them where you want."

SENATOR LOCKYER: Well, we already do that, frankly.

JUDGE WARREN: But there are other values, namely, electoral accountability. That would mean that voters on a statewide basis would have to vote for one of 1,800 judges that they've never seen or heard of. And in order to accomplish both public values...

SENATOR LOCKYER: Right now, they're assigned without any accountability basically, under the current system.

JUDGE WARREN: And in order to achieve electoral accountability, you need to compromise. And the compromise which California has always struck in California is countywide electoral districts for their courts of general jurisdiction.

SENATOR LOCKYER: See, I'm concerned about the -- you're right. This is maybe the most difficult issue. It's not the only issue, but certainly one of the most difficult matters with respect to this discussion. The idea of everyone who currently serves on a municipal court and who represents, in effect, neighborhoods or certainly smaller units, let's take Los Angeles most particularly, say that all of the municipal court judges in L.A. County should run countywide doesn't sound like a wise idea to me, just at first reaction. And it -- well, okay.

ASSEMBLYMAN ISENBERG: Judge, let me just pursue that. Because the federal Voting Rights Act is intricately involved in this discussion, does your group consider this request the single most important of all the requests you've made?

JUDGE WARREN: I think it's the most fundamental issue of principle among the recommendations that we've made.

ASSEMBLYMAN ISENBERG: So the principle is that judges have to be elected countywide; they can't be elected in lesser geographic districts; and everything else is a subsidiary of that? It strikes me as an odd declaration of ordering of priorities.

JUDGE WARREN: Well, Assemblyman, I think you have to consider this: There is nothing more important to the judiciary than fairness and impartiality. The quality of justice in this state absolutely requires that the judge who hears the litigant's case is accountable to the law and the facts in the case. Not that this judge was elected by this group of voters over here and the judge next door was elected by that group of voters over there, that those two groups of voters, those two constituencies, differ significantly in their values with regard to the matters before the court and whether the presiding judge assigns the case to this judicial officer or that judicial officer and ends up being viewed as a political decision, not administrative position.

If the people cannot openly trust the fairness and impartiality of the trial court system, you'd have significantly undermined the principal value and goal that we seek to achieve.

ASSEMBLYMAN ISENBERG: So are you suggesting that if this one change cannot occur, then no changes should be undertaken?

JUDGE WARREN: I'm not suggesting that, because the Judicial Council's approach to this has been to work collaboratively with the Legislature and the Bar to accomplish a viable trial court unification proposal. If there are legitimate concerns about this proposal, the Judicial Council would be happy to reconsider this proposal and your concerns about them, just as we would reconsider and consider your concerns about any other recommendation that is before you.

ASSEMBLYMAN JAN GOLDSMITH: Mr. Chairman.

ASSEMBLYMAN ISENBERG: Mr. Goldsmith.

ASSEMBLYMAN GOLDSMITH: Yeah. I have a question. SCA 3 provides for the creation of branches of the district court and under section 16 on page 5 provides that the judges shall be elected in their districts or branches. So it seems to me, if we flushed out what the criteria for a branch would be, we might be able to accomplish election in less than a countywide vote. It would be in branch of the district court.

JUDGE WARREN: The Judicial Council feels that the decision as to where branch courts are located and which matters are tried in that particular branch court, that is, the question of venue within the district which group of jurors hears matters, heard in that branch court, are matters which should properly or decisions which should probably be made by the trial court because of the changing demographics; as time goes on, these branch courts are going to have to be adjusted. And it may be that you need five bench officers in a branch court today but only three next week or next year. There's going to have to be a constant change in the assignment of judges to these branch courts, where they're located, what kind of staff they have. And in order to retain the flexibility necessary to make trial court unification achieve its purposes, you need to have administrative and judicial flexibility in the assignment of facilities, staff, and judges.

If the trial courts are going to be able to meet the challenge which the Legislature has presented to us, that is, managing our own affairs in a just and more cost-effective manner, we feel that we need the opportunity, we need the tools, to be able to do that. If the Legislature can decide that a branch court should be traded here or there and here's the number of judges that need

to be sitting there and here's the district that they need to be elected in and here's where we want you to draw the trial jurors from and here's the kinds of disputes we want heard there, we will never be able to manage the trial courts in a cost-effective manner. Those are the kinds of problems from which trial court unification offers us some escape.

ASSEMBLYMAN GOLDSMITH: Let me just ask a follow-up question. Under Section 16, could you envision any circumstances where a judge would be elected by the branch, the geographical area that's defined as a branch, of the district court rather than the entire county?

JUDGE WARREN: Under our recommendations, the only circumstance in which a judge would be elected by a more narrow constituency than the broad constituency served by that entire district court would be if the Voting Rights Act so required. And if the Voting Rights Act so requires under federal Voting Rights Act law, the federal district court would look to the Legislature for guidance in drawing such a sub-district.

ASSEMBLYMAN ISENBERG: Judge, Senator Lockyer said that he wanted to be a good guy today, and so it's my duty to remind you that you have 18 minutes left on the agenda and you handed me a list of 13 people who have wished in addition to testify in your time. That gives them one minute and, oh, six seconds each. However you would wish to proceed...

JUDGE WARREN: I think I'd better shut up. (Laughter)

ASSEMBLYMAN ISENBERG: No. I was not suggesting that.

JUDGE WARREN: I will, and I'm going to call on Sheila Gonzalez, the Chair of the Court Administrators Committee, and then Judge Morris, the President of the California Judges Association.

Thank you for your attention.

MS. SHEILA GONZALEZ: Good morning, Ladies and Gentlemen. The main issue I wanted to address this morning, and Judge Warren did allude to it, is the provision asking that the language be removed regarding the Legislature providing the staffing for the courts. And I would like to just give you, very quickly, why we think that's important.

The main reason is that presently, as he mentioned, the counties and the courts, through their budget negotiations, determine the number of staff that's necessary to run a court. And then after the fact, the Legislature presently more or less rubber-stamps what we call our staffing, our housekeeping bill. In other words, it is already in effect; then it comes to you; and you approve what is before you. And all of the courts in the state presently do not even have staffing bills. Some superior courts have staffing bills; some do not.

Some municipal courts have staffing bills; some do not.

We really believe that through the Budget Commission we have an opportunity to demonstrate our responsibility, which is to provide appropriate staffing for the courts. I also think we will probably be much more stringent in that area than the Legislature would be because I think the people who are most familiar with the courts and with the new standards that we are going to be putting together will know best how many employees are needed for individual applications of court work.

I would like you to remember that you will have the final say because you do approve our budgets. And with this trial court funding budget, you will have, like I said, the final word. But I think the process is a very important one, to allow us to be good managers and be responsible and demonstrate our capabilities, so we are very interested in seeing that removed.

Thank you.

SENATOR LOCKYER: Perhaps, by way of very brief response: first, with respect to this issue, I think we're always bothered by what seems to be the unnecessary chore of passing a lot of bills that deal with ratification of local staffing decisions. There ought to be a way to get rid of that task. However, eliminating the language, however imprecise it is in the Constitution, may have the indirect effect of reducing our role with respect to collective bargaining issues that affect local trial court environments. I think there might be some sensitivity about that with some members of the Legislature and groups that are involved in that process.

I wanted just to add briefly that most of the recommendations that I've heard from the judiciary during the course of the debate, of the 1993 debate, have essentially been why doesn't the Legislature abdicate whatever current responsibility or role it has, except to give you money? That's the one consistent thing you'd like us to do; and other than that, just leave us alone. Don't do anything. And I must say that I'm losing my enthusiasm for this project, partly because that's a major principal response I've had from members of the judicial branch. "Let's worry about my re-election; let's worry about my salary; let's worry about my retirement; let's worry about my budget; let's worry about my staffing." And it goes on and on and on. And that's been it. I don't say this in a critical way, and perhaps Assemblyman Isenberg spoke too soon when he said I decided to be the nice guy. (Laughter)

ASSEMBLYMAN ISENBERG: I just woke you up.

SENATOR LOCKYER: But I want to give you an honest response to what I've heard, and my colleagues, for the last year.

MS. GONZALEZ: I'm really sorry to hear you say that, and the main reason I'm sorry to hear you say that is because we were so pleased that you gave us the opportunity to participate. And we in good faith are trying to participate and also trying very positively to demonstrate our support for making our system much more efficient and accessible to the public.

SENATOR LOCKYER: I understand that. I'm delighted to give you the opportunity to participate, and you should be the principal, you meaning the collective judicial branch, should be the principal decision makers with respect to a matter of this sort. But laced through all the recommendations and comments are sort of "separation of powers" notions that keep coming up, that the Legislature should withdraw except to give you money. I just make note of it, and how the years' interactions have been affecting my particular enthusiasm. And, of course, there are a lot of other members who have to make decisions about the matter. The judicial branch has done more work, with respect to the issue, than we have. I guess that's probably appropriate. They've had zillions of meetings and discussions and committees and reports, and that's very positive.

MS. GONZALEZ: Please don't lose your enthusiasm, and the reason I say that is because I see it as a positive that we're working together on something instead of everybody off doing their own thing. It's really a step in the right direction, and it's been a difficult process. A lot of hard work has been put into it, to try to come up with the answers to the questions.

SENATOR LOCKYER: There's been a lot of hard work, and I don't want to in any way diminish my regard for those who have worked extraordinarily hard and really given a good effort. Just as a legislator, though, I want to convey, I guess not surprise, but my disappointment that the constant theme is that which I've indicated. My enthusiasm is hanging on by its fingernails at this point, if I can mix metaphors.

MS. GONZALEZ: If anybody else has any questions on this issue, I'd be happy to answer them.

SENATOR LOCKYER: Judge Morris.

THE HONORABLE PATRICK MORRIS: On that same issue, Senator, I just wanted to return to it momentarily because I think Amendment No. 9 that Roger alluded to in his opening remarks is an important part of that. It deals with the Judicial Council and its role in policy studies for the court system.

I think the principles set forth in that amendment are very important in doing the things that you would hope that we would accomplish in the course of unification of the courts, those things described by Judge Warren. The courts

do possess the inherent power as a co-equal branch to make rules that govern their own internal operations, and the current language of the Constitution doesn't make that clear. Opposed amendments clarify that the courts would have that obligation pertaining to internal matters, with the lawmakers having the capacity to regulate practice and procedure. We would retain within the judiciary the right to be responsible for administrative matters. I don't know whether you were alluding to that in your comments, but I think this is good government on the hook. We're talking about important principles that will hold us accountable, make us responsible. Amendment 9, I think, does that with some clarity. Right now it is mottled and confused within the Constitution.

SENATOR LOCKYER: Were you going to add something else to it?

JUDGE MORRIS: Well, I was going to just talk momentarily about CJA's position and share that with you.

In mid-August, the executive board of CJA met and discussed at some length the recommendations of the Presiding Judges and Court Administrators Committee. We retained some concerns about the undrafted statutes that will implement the provisions of SCA 3, with the recommendation that this should go to the process of review by the Law Revision Commission. The board did vote in mid-August to support the recommendations of the Presiding Judges and Administrators Committee.

You are well aware that there are divisions within the court. That was an 11-5 vote after substantial debate. And you'll hear this morning from those in dissent on this issue. However, presently, in the design offered by the Presiding Judges Committee, you have a package that has judicial support, and I would suggest it is strongly there for you within the Council as well as within CJA. But it is conditioned, as has been suggested, on your looking kindly upon the amendments that Judge Warren's committee offers.

SENATOR LOCKYER: I've had personally an opportunity to think about that, and I think we might as well stop the forward movement.

JUDGE MORRIS: Meaning?

SENATOR LOCKYER: Just stop. I don't intend to recommend adoption of most of the amendments to my colleagues. People are at a point where a decision is going to have to be made. My original thought was to keep the constitutional provision as general and non-specific as possible, not continue to clutter the Constitution with these complicated draftings and do most of the implementation work through statute and court work. But it seems that the judicial branch, those who would advocate or perhaps be comfortable with trial court unification, insist on a level of detail that I can't give you. So it's my

view that we ought to just stop, and maybe some future year, future generation, people will want to resume this. That's if I correctly understand the magnitude of the concern and the degree of insistence on the recommendations that are contained in the Warren report and the Judicial Council resolution, and Judge's Association position papers. I don't think those are going to be in the final product.

So the sooner we close on that issue, we can either go forward or not. I'm willing to do either. But my personal opinion, having thought about this, read, debated it with lots of people, is I'm not comfortable with most of the demands for particularity and specificity that are embodied in recent recommendations.

JUDGE MORRIS: Actually, our view was that we've trimmed it down...

SENATOR LOCKYER: You have?

JUDGE MORRIS: ...to a very clean and sparse product.

SENATOR LOCKYER: You've trimmed it down a lot from where it began, I agree. You know, I'm just one legislator, but one who obviously has to decide whether to go forward with my proposal. I'm unable to agree to most of the things that are currently urged on us.

JUDGE MORRIS: Do you want to engage now in dialogue about what are those things that you find most objectionable about the recommendations of the Joint Committee?

SENATOR LOCKYER: Well, that needs to happen. I don't know that this is the right setting. But I just feel some responsibility because this process is ongoing; there're more studies; there's more investment of time and energy. And I feel that I have a responsibility to at least convey some of these concerns.

JUDGE MORRIS: Well, your...

SENATOR LOCKYER: I think they represent my colleagues in many ways too. Though I think they perhaps have been -- it varies. Some have been very involved in the meetings and discussions. Some have just heard more recently or whatever, but there were very serious debates. The electoral district issue, for example, it seems to me, should be a statutory decision, not a constitutional one. You can go down the list.

JUDGE MORRIS: Well, let me just say that the two of you, the leaders of our Judiciary Committees in both houses, have stimulated a great creative process within the judiciary these last several years. We have walked a long way down this road. We have expended a tremendous amount of time and energy in the analysis that Judge Warren presented you with this morning.

SENATOR LOCKYER: I know.

JUDGE MORRIS: And your words are startling in light of what we thought was an ongoing dialogue on the issue.

SENATOR LOCKYER: I don't mean to represent it as not an ongoing dialogue. That's how I feel about it. But I've had the view that mainly I've been listening and not dialoguing. And I'd just like someone to know that I have some views, and I'm sure my colleagues do as well, about each of these issues. While today was designed mostly to take testimony so there'd be an opportunity for more listening, I don't want it to pass without some honest assessment of the current legislative situation.

JUDGE MORRIS: Well, we've had invested in this process all the way along an important member of your staff, as we've talked about these issues, and felt through his good auspices that we were in touch with your thinking. That's how we've come.

SENATOR LOCKYER: No, I understand. Perhaps it would be more politic for me to not say anything and just be a good listener. But we all get surprised, you know. We get letters out of the blue from the Chief Justice or whatever, or decisions that are startling. We have to all accommodate to those things.

JUDGE MORRIS: Let's stay on course. Let's don't scuttle this important crusade.

SENATOR LOCKYER: I haven't dropped it. I just want you to know that what used to be a 90-10 is getting to look closer like a 55-45. Now we all have close-call decisions to make, and you do it every day. You have the unpleasant responsibility to make decisions whereas we can postpone.

JUDGE MORRIS: This morning we have brought with us and have...

SENATOR LOCKYER: A bunch of people.

JUDGE MORRIS: A lot of folks want to talk to you about this, including a professor who has a lot of information and knowledge about this issue of electoral districts, and we might want to proceed now with those folks.

JUDGE WARREN: Could I just conclude with the thought...

SENATOR LOCKYER: Yes, sir.

JUDGE WARREN: ...that it might be productive, in light of the Senator's remarks, if we in the judiciary could respond to those particular areas of concern that you have. There's no sense wasting your time.

SENATOR LOCKYER: I understand.

JUDGE WARREN: You collectively could identify for us those areas of concern. The judicial speakers and bar speakers who follow can address their remarks, can narrow their remarks, to those areas.

SENATOR LOCKYER: The last thing I know, there was a negotiating committee, I believe, that was established or going to be established under the auspices of the Judicial Council to talk about some of these things. Maybe that's not happening. It might have been a constructive exercise before we got to today, and it hasn't. And that's as much my fault as anyone's fault.

JUDGE WARREN: We'd just like to add that we have Professor Katharine Butler here from the University of South Carolina, an expert on the Voting Rights Act, to address any technical concerns you have about the Voting Rights Act.

ASSEMBLYMAN ISENBERG: Senator, I'd like to ask the Professor just to comment briefly on the Voting Rights Act, not on whether it's going to be good or bad but briefly the process used. More importantly, we have to try to figure out whether we want to ask for pre-clearance of a plan or whether we want to submit the proposal to the voters and then wait to post-clearance or some suggestion. That's what we have to do. In general, what's your guess on the best procedure, putting aside the merits of a particular configuration?

PROFESSOR KATHARINE BUTLER: Well, let's start with the pre-clearance issue. California is not covered in its entirety by the pre-clearance provisions of the Voting Rights Act.

ASSEMBLYMAN ISENBERG: But part of the state is.

PROFESSOR BUTLER: Yes. And that's the only part of the state in which the plan has to be pre-cleared. So you're not going to have to pre-clear the entire state merely because -- is it four counties?

SENATOR LOCKYER: Four counties.

PROFESSOR BUTLER: Four counties were covered. So I don't think that the pre-clearance provision should be your major concern at all. Indeed, I probably wouldn't give it much consideration, if I were you.

ASSEMBLYMAN ISENBERG: All right. How about post-clearance or, more appropriately, legal challenges to the change as a whole?

PROFESSOR BUTLER: The change as a whole, as a matter statewide, either by Constitutional Amendment or statewide legislation, is not likely to be challenged on a statewide basis. That's just not the way these challenges shake down. They ordinarily are on a very specific district-by-district basis. If there were to be a statewide challenge, I would certainly not expect it to be successful. It is not a <u>per se</u> violation of the Voting Rights Act to have those large elections or to have countywide elections through the judiciary. And you currently have countywide elections for all of your superior court judges already. And so to the extent that you have possible voting rights

problems, you already have them in the form of these countywide elections for the judges. And I'm not suggesting that you do, but I am suggesting that you've got precisely the same problem already.

ASSEMBLYMAN ISENBERG: Yes, but it is true, is it not, at least in normal electoral politics, that when changes are proposed, and you can suggest ascertainable, practical consequences from those changes, the courts have been more scrupulous in examining those practical changes than this theoretical concept?

PROFESSOR BUTLER: That has not been true in the judicial area. For the most part there have not been electoral changes in the judicial area that have been challenged. The challenges have been to the existing system.

ASSEMBLYMAN ISENBERG: I understand. Is it your read -- I would be amused if it were not the case -- is it your read that the judiciary is likely to find itself so unique a branch and so different from the Legislature that different standards would evolve?

PROFESSOR BUTLER: Absolutely, absolutely. It certainly is my position that ultimately the Supreme Court will adopt different standards for our evaluating judicial elections.

ASSEMBLYMAN ISENBERG: It doesn't surprise me. (Laughter)

PROFESSOR BUTLER: Let me say this, Assemblyman. It occurs to me that, to the extent that you could have Voting Rights Act problems with the election of your superior court judges, the proposal might actually ameliorate some of that because it's my understanding that a considerably greater number of your municipal judges are in fact members of minority groups and that under this particular proposal they would be elevated to superior court judge status. That would certainly be a factor that would, I would think, weigh heavily on any court decision.

ASSEMBLYMAN ISENBERG: Another factor would be if the demographic statistics of current, both branches of the courts, were as close as possible to one another, I assume.

PROFESSOR BUTLER: I'm not exactly sure what...

ASSEMBLYMAN ISENBERG: If the Governor would hurry up and equalize the appointments on the superior court to represent the population equitably, that would remove an argument.

PROFESSOR BUTLER: I certainly assume that that would be helpful in terms of any defense of a specific challenge.

ASSEMBLYMAN ISENBERG: I understand you're doing not only a lot of research but also writing in this area, at least I've been told that. As you produce

things, would you be good enough to give them to Judge Warren, and let us distribute that material to the respective judiciary committees? This is, for me, the most perplexing of all of the structural issues we face.

PROFESSOR BUTLER: Well, I certainly agree with you. It is perplexing. And unfortunately, the notion that somehow you'll be able to deal with it in a way to avoid a challenge is probably unrealistic. No matter what you do, including doing nothing, you're still susceptible to the challenge. There really is nothing you can do, in my opinion, that will avoid the challenge.

ASSEMBLYMAN ISENBERG: No. I understand that. And that's not what we're trying to do.

PROFESSOR BUTLER: Right.

ASSEMBLYMAN ISENBERG: Okay.

SENATOR DIANE WATSON: Mr. Chairman.

ASSEMBLYMAN ISENBERG: Yes, Senator.

SENATOR WATSON: I'm looking at the paper entitled "Electoral Districting" under the Judicial Council's SCA proposal on the last page, the last paragraph, and it deals with the judiciary reflecting the racial and ethnic diversity of the population it serves.

The last line says "the judicial electoral sub-district based on race or ethnicity is not an appropriate way to accomplish that goal."

Did I understand you correctly to say that you think the Supreme Court will eventually deal with this issue a little differently than the Voting Rights Act requires at the current time? And if that is a true statement of what you said, then can you further explain it? What do you see the Supreme Court requiring of the judiciary that it does not require in our electoral process?

PROFESSOR BUTLER: I think the Supreme Court will ultimately recognize different standards for the election of the judiciary than for the Legislature. I think the primary basis for the difference in standard will be the fact that each trial judge is a sole officeholder in terms of exercising the full authority of the office. A legislative body is a collegial body. If we elect the collegial body from segments, we still get a group decision, a decision that presumably represents the electorate as a whole. That will not be true with trial judges. If we end up segmenting the trial judges into smaller districts, then, you know, you end up making the judges look a lot more like representatives in the traditional sense and representatives who are elected by an identifiable constituency. Essentially you would have then a judge from one constituency making all the decisions for that court, a judge from another constituency making all the decisions for that court instead of a collective

decision, the way that the Legislature makes decisions.

Now I certainly don't have any crystal ball as to what the Supreme Court's standards will be, but I do think that they are going to give substantial weight to the interest of the correspondence between a court's judicial authority and its electoral base.

SENATOR WATSON: I don't quite understand how that responds to the racial and ethnic question. I understand what you mean about being elected from a judiciary -- I mean from a judicial district -- but I don't know exactly how that relates to the question of race and ethnicity.

PROFESSOR BUTLER: The statement was Judge Warren's, but my understanding of service on the judicial bench is that it is likely to be through the appointments process. Could you respond to that?

JUDGE WARREN: Yes. The fact is that in California very few judges are initially selected for judicial office through the elective process. They are, 98 percent of them, selected by gubernatorial appointment. And so, in our view, the most constructive way to accomplish greater ethnic and cultural diversity on the bench is change to the appointive process that assures diversity: making sure that the pool of prospective applicants is broad, assuring that prospective minority applicants apply, assuring that there is training and encouragement for judicial applicants.

SENATOR WATSON: Let me just interrupt you for a minute. Let's get down to the proposal at hand. As I understand the proposal at hand, there could be a possibility that the elections for district judges would be coterminous with the county.

JUDGE WARREN: Yes.

SENATOR WATSON: That's what I think we're talking about. If that becomes the case, then how do you take in the consideration the goal of Voting Rights to have a judiciary reflective of the population within that county?

JUDGE WARREN: The purpose of the Voting Rights Act is to recognize the rights of voters. It is not to accomplish a particular composition on any policymaking body. The purpose of the Voting Rights Act is not to assure that there is cultural or racial or ethnic diversity in a Legislature or on an appellate court or a trial court. The purpose of the Voting Rights Act is to make sure that the vote of a minority voter is not diluted by reason of the districting.

SENATOR WATSON: Correct. Absolutely my point. And I'm trying to seek balance if we decide to go this route. This is just a pre-proposal. It's not really in front of us at the current time, but all of us will have a chance, if

the author chooses to put it forward, to debate and to amend and to fashion it so it meets the needs of the people in California. And I am concerned about this statement here -- I guess this is some reflections of your discussion, your debate, and I was just trying to find out from the professor how this would relate to a concept that's already in law. We talk about a jury of your peers, and that's a big issue for those of us in Los Angeles and an issue that I've been involved in over the past year, months, and I'm concerned about it on the bench also.

My question really is, what you think would be the case if we decided to merge all the courts into one? How that would affect racial and ethnic minorities sitting on the bench? That's kind of the bottom line.

SENATOR MILTON MARKS: Can I ask a question.

ASSEMBLYMAN ISENBERG: Senator Marks.

SENATOR MARKS: I don't see how the Supreme Court can adopt different regulations for elections. They're elections. People are elected to office, elected as a judge, elected as a Senator. I see no difference at all whatsoever.

ASSEMBLYMAN ISENBERG: That coming from a former judge and current Senator. (Laughter)

PROFESSOR BUTLER: Is that a question, Senator?

SENATOR MARKS: Yes, it is a question. I don't understand how the Supreme Court can make different decisions on elections. Elections are elections. There's no difference at all.

PROFESSOR BUTLER: But we're talking about what the electoral base is going to be, Senator. And I think that I'll be very much surprised if the Supreme Court doesn't ultimately decide that the state has a substantial interest in seeing that litigants in a particular county, for example, all have the opportunity to ensure political accountability of all their judges and find that a more substantial interest than you would to say that all the voters of a county have some interest in electing all the legislative body.

There's a very clear indication in the only decision the court has handed down thus far on judicial elections; there's a substantial body of case law dealing with the application of the Voting Rights Act to legislative elections. And the court specifically declined to adopt that body of law and its standards to judicial elections and specifically made the point of recognizing that there could be important state interests for judicial elections that might result in different standards. The most important decision to date on the matter has come out of the en banc 5th Circuit, a 128-page opinion on the subject, in

which they recognize some of these very interests and have indeed upheld the district-wide election of judges.

There's a recent panel decision out of the 11th Circuit reversing a trial judge determination on much the same lines as the 5th Circuit en banc decision. But that position has been filed for rehearing en banc on that case, and I would expect that the en banc hearing will be had and that the matter is headed for the Supreme Court.

SENATOR MARKS: You're saying that the Supreme Court will adopt different regulation?

PROFESSOR BUTLER: Standards, your Honor. Yes, standards, Senator. I would think that I would expect some differences, yes.

SENATOR WATSON: If I may just pursue this a little more because I'm obviously very interested in this point. The Constitution requires that you have a jury of your peers. We use that standard when it comes to the finder of fact in the court.

Would you say that the requirement that a person run district-wide would guarantee that we would have an adequate number of those who reflect the population within that district? Now we know that there's something called de facto segregation, just by the fact where people live. And, you know, we move our cases around all over the place to change venue because of pre-trial publicity. You saw it in Los Angeles. In doing that, we run into situations where the people sitting in that venue do not reflect at all what the true population is like. I'm quite concerned about the prospect of the court treating the judiciary different than it would voters, and I'm concerned because it could exclude from the bench people who indeed need to be sitting there. So that's the reason I'm raising that question, and I'm trying to listen very closely to what you're saying. We're all speculating right now, and I know we won't know what the Supreme Court will do but I'm trying to look at your reasoning to see if it makes any sense to me.

PROFESSOR BUTLER: Let me suggest this now to you, Senator. Let's suppose that we've got a particular county that happens to be 10 percent minority and we indeed divide the county into electoral sub-districts. Okay. Now my understanding of electoral sub-districts is we're going to elect judges from a portion of the county that they would then serve countywide. If they don't do that, it seems to me you run into some of your efficiency problems that you're concerned about. If we're going to try to make this system more efficient, then part of that is be able to have judges serve on a countywide basis.

SENATOR LOCKYER: I don't think that's actually ever been urged, that is,

sub-district elections and countywide jurisdiction and responsibility. I've never heard anyone suggest that that was what was being proposed, other than judges who don't like the idea.

PROFESSOR BUTLER: You're telling me, Senator, then...

SENATOR LOCKYER: Right now, we elect municipal court judges from sub-districts, or not countywide, in most instances. And so the question is, is there some value in that more neighborhood-type justice that might reflect the economic and ethnic characteristics of parts of counties, or moreover just make it more convenient to have courts more available and so on? If we create a superior court pool instead, should we still try to balance the old neighborhood justice notions by at least allowing, if not requiring, district courts to be elected in and responsible for judicial matters in a portion of the county?

PROFESSOR BUTLER: I see. This is a proposal that I've never heard before. My understanding was that the debate was whether judicial jurisdiction was going to be countywide, but with electoral sub-districts. Indeed that has been the remedy that several courts have adopted. They've not attempted to change the judicial jurisdiction of the court, but rather have merely sub-districted it for electoral purposes.

SENATOR LOCKYER: There are many permutations before us.

PROFESSOR BUTLER: It seems to me that's a very fundamental question you have to decide. If unification does not mean that you're going to be able to consolidate these individual judicial jurisdictions, then, you know...

SENATOR LOCKYER: Well, you still would have the savings and efficiencies generated from eliminating the two-tier municipal and superior structure and existing separations within the districts, countywide or whatever. For example, when you're talking about Los Angeles County, it is so immense, and probably ungovernable, that having everyone run countywide makes many people think that it's a mistake, that there ought to be some subdivisions yet to be determined for that kind of a county.

PROFESSOR BUTLER: Those are really basic policy decisions that I don't believe the Voting Rights Act addresses at all. But to the extent that you're going to have jurisdiction-wide elections, elections that correspond with judicial districts, that would be an issue that I assumed we were addressing. If you're talking about actually dividing counties in which the superior court judges are now indeed serving countywide and actually breaking them down into smaller units, that's an entirely different matter and it's not really one in which Voting Rights Act implications come into place. You select what the

district is going to be and then decide how you're going to conduct the elections.

SENATOR LOCKYER: Well, it may be an appropriate time to re-mention that one of the things legislators bring to this discussion, as well as some basic values to work from, is some practical sense as to what will pass the Legislature and maybe be adopted by the voters. The last time this proposal was before California voters, it was by then-Senator, now-Judge Larry Stirling from San Diego. I think it lost about 3 to 1. It's these kinds of specific debates that contribute to greater negativity and greater risk of rejection by the voters. I could probably help most by indicating things that might be likely to be adopted by the voters. And I have stated on numerous occasions that the more we get into these kinds of specific debates in terms of the constitutional context, not the statutory rule, the more we increase the likelihood of defeat. That's advice that's generally been ignored, but I restate it.

ASSEMBLYMAN ISENBERG: We've been joined by Assemblywoman Jackie Speier from San Mateo. I think we have to move along.

SENATOR WATSON: Well, just before we leave this subject, if I can address the two chairs. I think this is an issue that hasn't loomed in the press and in the general public as a debate. We should pay particular attention to it and might do some research, ask our staff to look at it in light of the Voting Rights Act and what possibly could be coming from the Supreme Court, so we don't run into problems. I guess this was a recommendation...

SENATOR LOCKYER: Well, no, this was from Judge Warren's committee.

SENATOR WATSON: Okay, yeah.

SENATOR LOCKYER: The staff thought has basically been that the Constitution should be as flexible as possible and that these matters are more appropriately done by statute. And that's what I would rather than having an automatic county-wide electoral base...

SENATOR WATSON: I understand what you're saying.

SENATOR LOCKYER: ...or something of that sort written into the State Constitution...

SENATOR WATSON: Right.

SENATOR LOCKYER: ...which is what's been urged on us and the one which I am personally uncomfortable with.

SENATOR WATSON: I think that's why you said, "stop right here."

SENATOR LOCKYER: Yeah.

SENATOR WATSON: I think that's a good idea. We need to look at this in

terms of statute and to see what best fits the makeup of California in this regard.

SENATOR LOCKYER: Who is going to...

JUDGE WARREN: Senator, I wanted to introduce Aviva Bobb, the presiding Judge of the Los Angeles Municipal Court, to address some of the concerns you had about Los Angeles being ungovernable, and then Justice...

SENATOR WATSON: County. (Laughter)

JUDGE WARREN: And then Justice Norm Epstein, Justice of the Court of Appeal, also from Los Angeles, but to address the appellate issues raised by trial court unification.

SENATOR LOCKYER: Maybe I could start by saying it's been a delight working with both of you during the course of this year; your work has been very constructive.

JUDGE WARREN: Thank you.

THE HONORABLE AVIVA BOBB: I'm also here in my capacity as Vice-Chair of the Joint Oversight Committee of the Administrative Unified Courts of Los Angeles County. I do have to read it when I tell you what the title is.

I wanted to first provide some information in response to Senator Watson's concern which is that larger district elections have produced greater numbers of minority judges in Los Angeles County than smaller districts. It's also the case in larger districts that minorities have had greater success remaining on the bench in Los Angeles than from smaller districts where they tend to be more vulnerable to attack, perhaps because of their ethnicity.

SENATOR WATSON: Question on that. Are you using "larger district" as being the county lines or...

JUDGE BOBB: I'm looking at the 24 municipal courts and our municipal court, which is 45 percent or so of the county. It has more judges on it who came by election and who are from a minority group than the smaller districts. I will provide you that information because it is somewhat counter-intuitive, but that is the way, if you look at it over the past dozen or so years, it has turned out.

I'm here to respond to the inquiry as to whether or not a county-wide system could work in Los Angeles just based on what we have done within the past few months. Last March 83 percent of the judges of Los Angeles County, including the judges of the Los Angeles Superior Court, the Los Angeles Municipal Court, the Santa Monica, Long Beach and Glendale Municipal Courts, voted to administratively unify. In addition, within the last week the Malibu Court has joined in that number. In May an administrator was selected for that

group and has begun the work of unifying the administrations of all those courts. I believe you will find upon inquiry that all of the participating courts are extremely satisfied with the progress that has been made. They feel that the services that they are being provided are much improved. Duplicative functions are being eliminated. Because of the fiscal crisis, we are being forced to live within smaller budgets and we are now able to do that to a great extent. We also believe that the public and litigants will be better served because, for example, clerks' offices will be able to provide services on behalf of all the courts within our organization.

At the present time, there are 26 judicial trial districts in Los Angeles County. If you get a traffic ticket in one and you live 40 miles away, you have to go back to the office of the court 40 miles away to deal with that, or to file a small claims case. One of the major benefits to the public of this unification is the ability to have full service from any court office that is available close to a particular person.

I also want to advise you that supported by Judge Mallano, the presiding Judge of the Superior Court, we are also engaged in a number of voluntary judicial unification efforts countywide. And that is being planned with a great deal of success in the Long Beach-San Pedro area and in the Westside part of the county. Without giving you the details, it clearly has verified what Judge Warren said. It increases our capacity to handle increased workloads and provides an ability for greater access by the local community to the extent that it gives us the flexibility to handle more cases locally. But the one issue that one needs to consider, to the extent that we are now trading cases between districts, is that unification or coordination allows us to move cases within the county where judges are available to try those cases. Unless you have a unification, in fact a judicial unification, this means that cases are being tried by judges who are not elected from the area where the cases are being tried.

For example, right now Santa Monica Superior Court has sent trials down to the central district of the Los Angeles Municipal Court. While that is very helpful in moving the case load of the Santa Monica Superior Court, it means that the Santa Monica constituency is now having their cases decided by judges that they don't have the opportunity to elect or not elect. That is the problem, I think, with having less than a countywide system if one is trying to insure that judges are accountable to the populace for the services that they provide.

I'd be happy to answer any questions.

ASSEMBLYMAN ISENBERG: Thank you. Justice, I guess you're next.

Judge Warren, we're giving you about 90 minutes rather than 55, but I think we have only about eight minutes to go.

JUDGE WARREN: I'll do it in eight.

THE HONORABLE NORM EPSTEIN: I will be very brief.

The aspect that I address is a matter that does require some change in the Constitution. It has to do with appellate jurisdiction. We appreciate that the Senator's initial proposal was a basic skeletal proposal which is a vehicle for people to look at, talk and comment about.

A problem with unification that doesn't address the appellate jurisdiction is a provision of the Constitution that provides that the entire appellate jurisdiction from general jurisdiction courts is in the courts of appeal. The result would be that all those matters that are now considered by municipal and justice courts would be appealed to the Court of Appeal. I don't believe there is anyone who advocates that position. The problem is, how do you resolve that and issues that it presents?

I am chair of the Appellate Court's Committee of the California Judges Association. Our committee was asked to look at this. One proposal which is advocated by my colleagues, I believe from the third district, is to create two divisions within the District Court. One division would handle those matters that are now Superior Court matters and the other division would handle everything else. But the concern was that such a structure is really a surrogate for the two-tier system that we now have. The question was, is there any way short of that in which this problem could be resolved? We looked at it and concluded that there is. And the way to do it, we believe, is to categorize the cases rather than the court or the judges in the court. We have presented a proposal that would do that.

ASSEMBLYMAN ISENBERG: Justices, this is back to Senator Lockyer's point. There's a lot in the Constitution that most of us, in the abstract, think shouldn't be there; whether it's about the system of justice or public education or finance or whatever. How many of these things, and in particular the point you're mentioning here, must be covered in the Constitution as opposed to either statute or rule?

JUDGE EPSTEIN: I think the basic allocation of appellate function has to be in the Constitution and there's a provision there now that would have to be modified in some way.

ASSEMBLYMAN ISENBERG: I understand that. But because there's a provision there now doesn't mean that a provision has to stay there in the future.

JUDGE EPSTEIN: Well, that's true.

ASSEMBLYMAN ISENBERG: For example, the argument that there ought to be Class I and Class II cases could as easily be handled either by rule or by statute. Other than the fact that people wish to guarantee the results of changes by putting it in the Constitution, what's your read on the entire area?

JUDGE EPSTEIN: Our feel is that that distinction is so basic in terms of the matters, that it ought to be reflected we propose in the Constitution. It still leaves some flexibility, changes can be made. There can be some debate about the instrument for making the changes, but changes can be made. We think the basic structure that now exists already in the Constitution in Section 11, I think, of Article 6, is a basic distinction that ought to be retained although it requires some revision.

The principal recommendation our committee made is that this entire matter, not just appellate jurisdiction, but the entire matter of constitutional revision and unification, should be given to the Commission. That has been done; we're delighted to see that. We look forward to seeing the report and we hope they will look critically at the suggestion we made as well as all the others that are before you.

ASSEMBLYMAN ISENBERG: Thank you, Justice.

JUDGE WARREN: Judge Roy Wonder from the San Francisco Superior Court.

ASSEMBLYMAN ISENBERG: The Legislature is particularly fond of Judge Wonder. He probably doesn't like that, but we are. He once delivered a million-dollar check from San Francisco in the midst of a committee hearing to the State General Fund enshrining himself in our memory with favor. From the City and County of San Francisco, from the courts. He was terrific.

THE HONORABLE ROY WONDER: I only wish a had another million-dollar check today.

My background is on the Superior Court and on the Judicial Council. I've served half of my judicial experience on the Municipal Court and half on the Superior Court, two terms on the Judicial Council. And with that background, I make this comment. It's my belief that should the Legislature give to the judiciary the power of its internal management, that the Judicial Council can in its rule-making authority carry out that function very efficiently.

My general remarks are very brief. I see the SCA 3 and the unification process as a part of a management restructuring that has to be undertaken given the declining resources and the increasing workload in our judicial system. We started with the Trial Court Efficiency Act authored by you, Mr. Isenberg, and now this is a logical conclusion, a logical next step that we undertake with

unification of the courts.

We have not, in San Francisco, voted to endorse SCA 3, but I can tell you that we're taking steps that sound like unification. We have unified our administrative structure between our two trial courts as a part of the Trial Court Efficiency Act, the coordination action. There is under discussion presently unification of our presiding judge role in one single presiding judge. There is under discussion unification of law and motion departments. Those two actions alone will free up two trial departments. We must do that.

I'm pleased that the Legislature and Senator Lockyer have endorsed legislation to refer this to the Law Review Commission; I think that's a very objective atmosphere to undertake this discussion.

And finally, if one of you will be kind enough to relate to Senate Lockyer, please don't lose your enthusiasm for this process.

ASSEMBLYMAN ISENBERG: Oh, I think he was just getting everyone's attention. That's what I think.

JUDGE WARREN: Judge Steve Howe, member of the Judicial Council and Judge from the South Butte Municipal Court.

THE HONORABLE STEVE HOWE: Good morning. And I'm taking off my Judicial Council hat and putting on a cowboy hat at this point. I'm the past chair of the Rural Municipal and Justice Court Judges here in California.

ASSEMBLYMAN ISENBERG: A cantankerous lot. But fiercely independent.

JUDGE HOWE: We do have open discussions on things and what I'm here for, just briefly, is to indicate that there is a wide variety in the counties in terms of the implementation of the coordination procedures now available. It runs the full spectrum.

ASSEMBLYMAN ISENBERG: I'm reading about Mendocino County arguing that there's no way to have a furlow of court employees even though they can't find grounds to establish an emergency under the statute. Is that what you had in mind?

JUDGE HOWE: Like I said, there's a lot of discussion that goes on among the rural courts. I think that's Superior Courts. I'm speaking from the rural municipal and justice court perspective, but the overwhelming consensus is that the rural judges feel that if there is unification, it will benefit the public. And that was my purpose for being here today.

ASSEMBLYMAN ISENBERG: Good, thank you very much. Judge Warren.

JUDGE WARREN: And finally, Mr. Chair, the -- speaking on behalf of the California Association of Superior Court Administrators, Ron Overholt, the Executive Officer of the Alameda Superior Court.

ASSEMBLYMAN ISENBERG: Who was attacked by his bench.

MR. RON OVERHOLT: Things are getting rough out there.

ASSEMBLYMAN ISENBERG: Right.

MR. OVERHOLT: Good morning.

CASCA, the Superior Court Administrators Association, has adopted a position in support of the concept of trial court unification and has also adopted a position in support of the report of the Judicial Council on the proposed amendments to the Constitutional Amendment. We're very interested in potential economies. We'd like to see the results of a study that's been initiated by the Judicial Council through the National Center for State Courts to see where the savings occur. And we're also very interested to see the results of the Law Review Commission.

JUDGE WARREN: Mr. Chair, If I could say in conclusion, this is probably the most dramatic proposed change in the organization of the trial courts in the history of this state since 1879. Certainly for the last 50 years. We look forward to a dialogue between the Bench and Bar and Legislature on this issue. No meaningful discussion on an issue this important would be without frustration and discouragement from time to time. We appreciate that you as we suffer from some discouragement, but we look forward to continue the dialogue.

ASSEMBLYMAN ISENBERG: Judge, thank you very much, and also I think you have done a terrific job trying to consolidate not the unanimous judiciary, but a large body of opinion in the smallest number of points, that being a very difficult task indeed.

The next part of this hearing deals with procedural issues and I think we're starting with the Appellate branch. My agenda says Justice Sparks and Justice Blease, in that order, but I don't know whether that's because that's just the way it is, "S" coming before "B" -- I don't know. Who goes first from the Third District Court of Appeal?

THE HONORABLE KEITH SPARKS: Good morning, Assemblyman and distinguished members of the judiciary committees. I'm Keith Sparks, an Associate Justice of the Court of Appeal in Sacramento and I appear this morning with my colleague, Justice Coleman Blease to express the opposition of our Court to the Constitutional Amendment No. 3 as it is presently written as it relates to appellate jurisdiction.

We oppose it both as it's written today and as it's proposed to be revised by the Standing Committee of the Presiding Judges and Court Administrators, chaired by Judge Roger Warren, who was just heard.

Our opposition to the amendment is triggered by its proposed revision of

the Constitution dealing with appellate jurisdiction. As you know, presently Article 6, Section 11 of the Constitution provides with the exception of death cases that Courts of Appeal have appellate jurisdiction when the Superior Court has original jurisdiction in such other cases as prescribed by statute. Thus, if the Superior Court has original jurisdiction over a case, the appellate jurisdiction is constitutionally vested in the Courts of Appeal.

The present amendment as written would radically change this structure. It would abolish the Superior Court, it would abolish the Justice and Municipal Courts and would replace them with a single unified court called a District Court. It would then revise Section 11 or Article 1 of the Constitution to provide, again with the exception of death cases, that "the Court of Appeals have appellate jurisdiction when District Courts have original jurisdiction and in other cases prescribed by statute." This means then that all cases presently filed in the Municipal Courts and Justice Courts, together with those filed in Superior Courts, would all be appealable as a matter of constitutional right to the Courts of Appeal. Consequently all cases, no matter how trivial or routine, would be afforded full appellate review with written records, oral arguments and written statements with reasons stated. Such a proposal in our view would overwhelm the Courts of Appeal and would trivialize the appellate process.

The full dimension of this problem can be seen when one takes into account the fact that the appellate departments at the superior courts presently hearing appeals from Justice and Municipal Courts presently dispose of slightly more appellate cases than do the Courts of Appeal.

The proposal also poses a procedural conundrum with respect to writ review; that is, writs of prohibition, mandate review and the like. Writs are judicial orders issued to a inferior tribunal, but under this proposal there is no inferior tribunal; there's no inferior court; there's simply one court, the District Court. And thus we are presented with the anomalous situation of a court issuing a writ to itself, ordering itself to take or not to take some judicial action.

These are, in our view, the two central defects in the proposal as we see them. First it vastly, and we think improvidently, expands the appellate jurisdiction of the Courts of Appeal. And secondly, it does not take into account the vast jurisprudence of extraordinary writs.

The Warren Committee in its draft of September the 11th of this year undertakes to resolve the appellate jurisdiction problem by revising Section 11 to provide that all cases shall be classified into two categories, category I

and category II, and that the Courts of Appeal shall have appellate jurisdiction over category I cases. But no standards or criteria are given for delineating these classes. Thus the constitutional boundaries of existing trial courts are abandoned and in their place are substituted, in our view, mere labels.

The Warren Committee would thus vest in the Judicial Council, acting with the approval of the Supreme Court, the authority to define the classes of cases within either category I or II; thus the Judicial Council would have the authority to determine where appeal may be taken or where a writ may be issued. For example, the Judicial Council, acting with the approval of the Supreme Court, could decide that all domestic relations cases or all court cases or any kind of cases are category II cases and thus limit the appeals to the appellate department of the District Court in those types of cases and would thereby end the statewide precedential value of the appellate decisions...

ASSEMBLYMAN ISENBERG: Justice, can I just interrupt for a minute?

JUSTICE SPARKS: Yes.

ASSEMBLYMAN ISENBERG: I understand your arguments, but let me just ask you a question. Could the people of California amend the Constitution to do any of the terrible things that you mentioned if they chose to do so?

JUSTICE SPARKS: Yes.

ASSEMBLYMAN ISENBERG: Could they delegate their authority to amend the Constitution?

JUSTICE SPARKS: In what fashion?

ASSEMBLYMAN ISENBERG: Constitutionally, as Senator Lockyer has proposed. I guess what I'm saying is that I can't separate in my own mind clearly whether you're arguing that it's just bad or it's unconstitutional, either on the state or on the federal level. My read is that you don't like the configuration and you'd prefer it be different, but that it is not, per se, unconstitutional either under federal standards or state constitutional standards.

JUSTICE SPARKS: We're not arguing the constitutionality...

ASSEMBLYMAN ISENBERG: Okay. Is it good or bad, who should do it?

JUSTICE SPARKS: We think that the right to appeal ought to be a enshrined in the Constitution as a basic right. If you take it out of there, then you have deprived people...

ASSEMBLYMAN ISENBERG: But as long as there is a right to appeal, the people could say, for example, the Third District Court of Appeal shall be the only court of appeal in California to hear any appeals of any kind whatsoever and it would probably stand. It would drive you nuts, but it would stand. I

mean, the point isn't how it's done. It is merely that there must be a right of appeal.

JUSTICE SPARKS: Our objection is to the way it's currently crafted...

ASSEMBLYMAN ISENBERG: I understand.

JUSTICE SPARKS: ...in our view, by classifying cases instead of courts, you have diminished the constitutional status and it gets determined by bureaucracies, judicial ones to be sure, but bureaucracies nevertheless, rather than by the nature of the cause of action the litigant actually has.

ASSEMBLYMAN ISENBERG: Impartial neutral constitutional amendments drafted by the above-reproach Legislature.

JUSTICE SPARKS: Yes. Our proposal, as you know, is that you create a single unified court as has been proposed, but instead you also have a division which has an upper and lower part to it comparable to the current status, the two-tiered status of the superior and municipal court. The solves the riddle of writ reviews. There is an imperial tribunal to assign writs to it, it keeps the constitutional status of appeals and makes your right to appeal a matter of constitutional rights.

ASSEMBLYMAN ISENBERG: Mr. Goldsmith.

ASSEMBLYMAN GOLDSMITH: Yes, I have a question with regard to the existing language in SCA 3. Under Section 11 on page 4 it reads as follows: "An appellate division shall be created within each District Court. The appellate division has appellate jurisdiction in causes prescribed by statute that arise within that District Court." Now, they are already creating a division, but it's an appellate division. What's your quarrel with that?

JUSTICE SPARKS: Well there is presently an appellate division of the Superior Court and we have no objection to that as such. It's how you determine what kind of cases that appellate department should hear.

ASSEMBLYMAN ISENBERG: They don't want appeals from what are now muni court issues coming to the Court of Appeal on one hand, and there are other more complicated issues beyond that.

THE HONORABLE COLEMAN BLEASE: The problem with the provision you just noted is that you've created two parallel systems. You've created a constitutional system for appealing everything to the Court of Appeal. You've now created a appellate division in which you could also give the same things to the appellate division. The draft, it just doesn't mesh.

ASSEMBLYMAN GOLDSMITH: The Legislature would fill that in through statute and that's...

JUSTICE BLEASE: What I'm saying is the draft is confused. The draft is

confused because it does two things. It proceeds, I think, on the premise that the Legislature could now, under the existing Constitution, determine where an appeal goes. That's not true. So the assumption of the existing draft, if that's the case, that's not true. So what they've done is to create an anomalous situation in which everything would go to the Court of Appeal and everything could go to also to an appellate division if you so decided. I'm only saying that's what it does.

SENATOR LOCKYER: Maybe I could insert a couple of brief comments. The first is, of course, this notion of category I and category II was designed to address the previous objections that the appellate bench or parts of it had raised when that distinction was not provided for. And I thought they were good points. We certainly don't want to increase the case load of appellate courts in our state, and I think it was a good point. And my earlier comments, however, were partly meant to address the recommended solution which I'm uncomfortable with. I don't want to so confer that discretion on the Judicial Council and a majority of the State Supreme Court. Those should be statutorily based distinctions so that there's no danger of currently existing due process guarantees being eroded by causes of action being shifted around from one type of court to another. I think you were helpful in helping flush out this need for a distinction, and it seems to me that there is a need for further refinement.

JUSTICE BLEASE: I appreciate that response. There is one thing that goes back to what Assemblyman Isenberg had made a point of, and that's the fact that we're dealing with the Constitution and whether you remove matters which are not significant cases which now go to the Court of Appeal as a matter of right. The Court of Appeal is a court of statewide jurisdiction. It's required to write opinions. It's required to have reasons stated. It creates a body of law. That is not true with respect to the appellate division of the superior court. So significant cases now which are all those cases which are in the Superior Court and the Legislature determines which are the significant cases -- all those cases go to the Court of Appeal. It's essential for the creation of a statewide body of law. Now if you want to remove all that and make it merely a question of a legislative matter, of course you can do that. We're just questioning the wisdom of doing that because than you could determine, say for efficiency purposes, that it costs too much to take some class of cases and send it to the Court of Appeal, or now send it to an appellate division of the District Court, say, and you can do that by simply a category. The proposed system simply puts a label on it. It's untied to

jurisdiction. It's untied to the significance of the cases. It's untied to the existing structure of things. That's our concern.

Now, the second part of our concern is something that has to do with matters that do not appear to be intrinsically a part of the Trial Court Unification, and that's the question of the powers of the Judicial Council. Currently, the Judicial Council has the power to adopt rules with respect to court administration, but it's subject to judicial overrides so they're not inconsistent with statute. And currently the Constitution provides that with respect to the trial courts the Legislature shall provide for the officers and employees of those courts.

There are four changes in this proposal. The latter one of these would be repealed. The Legislature would have no say with respect to court administration. The Judicial Council would be free if it could get the agreement of the Supreme Court to adopt any rule that it wanted to. The Chief Justice would be given the power of a chief executive, whatever that is, over the courts of appeal and the trial courts. And our concern here is that what you've done is to have a massive shift of authority from where it is now, which is largely legislative. What is now vested in the trial courts and the courts of appeal, the power to select their own employees and their own officers, now would under this proposal be shifted to the Judicial Council and the Chief Justice. We think that's unwise and we would prefer the current system.

SENATOR LOCKYER: As you've seen, the Supreme Court decided also to eviscerate the legislative branch. So, it's not inconsistent with their general perspective to enhance their own power in this state.

JUSTICE BLEASE: Lastly, let me say just one thing, generally. It's not generally our province to, say, to talk about the court efficiency. Generally we would be happy if these other matters were taken care of to go along with trial court unification, but if you're going to make these drastic changes in jurisdiction and drastic changes in shifts of power, then the question arises whether or not this is necessary for court efficiency. I'm in admiration, we're in admiration, of the work that's going on under Judge Warren under the existing consolidation acts and if you look at the report that they made, all the advantages that they've offered in favor of unification of the Constitution are largely being met now under the court coordination acts.

ASSEMBLYMAN ISENBERG: I'm sorry, Justice Blease. Arguably they could be met under the existing law. To suggest that they are is an unduly optimistic view of what is occurring in California.

JUSTICE BLEASE: I'm referring to the report which says here how we deal

with the money thing. If we extend the Sacramento experience to all the courts in the state, we'll save 78 or...

ASSEMBLYMAN ISENBERG: It's a little bit like arguing that because equal rights under the law are arguably possible to us, they exist now. It is a goal honored more in the breach perhaps than in the achievement.

JUSTICE BLEASE: And so you would use then the Constitution to coerce the courts into doing what?

ASSEMBLYMAN ISENBERG: I don't know how else you make people move. There are some courts that are doing marvelous jobs, other courts that are struggling and some that aren't doing anything. And the reality is you sit around, and I think this is the reason Senator Lockyer was interested in this. He said, "Isenberg, you're a woos. Your proposal is voluntary." And I take that criticism as partially valid. Factually accurate and partially valid.

SENATOR LOCKYER: I didn't say the first part.

JUSTICE BLEASE: It's voluntary under your statute.

ASSEMBLYMAN ISENBERG: Yes, sir.

JUSTICE BLEASE: Okay. I take it you could change that.

ASSEMBLYMAN ISENBERG: We could, and I suspect the judiciary would be if not unanimously, almost unanimously opposed to it except with all the various conditions that people begin imposing. The appellate courts have these conditions, the trial courts have those conditions, the superior court has one condition, the municipal court has another. Everybody's in favor of change if they can dictate what the change is. No one's in favor of change that involves any risk.

JUSTICE BLEASE: Look, my only point here is if you want to make these drastic changes here and the reason you advance for doing that is something called "court efficiency", which I take it means money, ultimately, then you have to ask the question, "Is what you propose more efficient than what you're doing now?"

ASSEMBLYMAN ISENBERG: Well, Justice. To call these changes whether Senator Lockyer's legislation or mine, drastic changes is so peculiar to me that I don't know how to respond. These are just internal bureaucratic changes in structures of governments. They do not rise to the level of civil rights acts or anything else as nearly as I can figure out; although Michael may tell me I'm wrong when he speaks next. The point is, a lot of these things should have been done 30 to 50 years ago. They weren't for a whole variety of reasons and we're trying to move into the next century with something like a system that administers justice fairly and equitably and is not tied into incredibly

antiquated provisions.

JUSTICE BLEASE: I see.

SENATOR LOCKYER: Maybe I could just add that while saving money or using limiting resources in the most effective way possible is part of the motivation, hopefully it has something to do with justice as well. Having an efficient court system produces better results for people that have to go there for justice.

JUSTICE BLEASE: Well, I'm only saying that that's a question to be addressed. It's not addressed here, it's assumed. All of these good things that you advance are assumed to be the consequence of this proposal.

SENATOR LOCKYER: Actually, Justice, it's not just assumed. There is at least something between anecdotal and empirical evidence from numerous other states that suggests the savings are rather substantial and there are any number of judges who characterize themselves as reformed opponents to unification after they actually saw it, in whatever state they might be from. So I think there is some evidence, although the Judicial Council correctly has asked for a better, more rigorous proof or better evidence of those potential savings. That's a thought I concur with. Part of the reason I slowed this down was to allow that work to be done.

JUSTICE BLEASE: You mean the study of the coordination program?

SENATOR LOCKYER: Well, not just that, but also to have better information from the National Council on State Courts so that whatever data there may be from other places would be before us.

JUSTICE BLEASE: I think you have to look closely as to whether these other states' systems are really like what you propose.

SENATOR LOCKYER: Sure. Those are the kind of questions we're asking.

JUSTICE BLEASE: Most systems have bifurcated systems. The federal system is headed in that direction even though it has a unified trial court. They have now through magistrates. They are down there giving the magistrates even more work because they have a need to diversify those matters which do not need to be addressed by the district court judge themselves, so that organizationally speaking I think you'll find bifurcated organizations or systems existing where you have theoretically unified courts.

SENATOR LOCKYER: See, my notion was a very simple one. A lot of very sound work had been done in a statutory and budgetary way to try to produce greater efficiencies. The next obstacle to be overcome was just to confer greater flexibility for future discussions by eliminating the constitutional distinction. That would not necessitate anything. The way this amendment was

originally proposed, it could be adopted by the voters and there wouldn't be a thing that would be different. A year or ten or twenty years later, judicial decisions or legislative activity could breathe some detail into the discussion. That's where I started, that the Constitution is the next obstacle that needs to be dealt with. Now this has evolved into a somewhat gratifying, sometimes extraordinary product of studies and drafting exercises and, you know, down to the point -- court rules that are proposed and contemplated. I'm still trying to stay with the sort of very simple, basic constitutional provision that would confer greater flexibility and let the debate continue.

JUSTICE BLEASE: There's a price to be paid depending upon the detail. And that's what we examine. What price are you willing to pay in order to accomplish that? And if the price to be paid is to repeal constitutional protections for significant cases and the right of litigants in those significant cases to go to the Court of Appeal and the development of the statewide law which the courts of appeal do, that's a very heavy price to be paid.

SENATOR LOCKYER: I'm not interested in paying that price. And I think that's...

JUSTICE BLEASE: And are you willing to pay it...

SENATOR LOCKYER: If it's a genuine...

ASSEMBLYMAN ISENBERG: Could I just ask if somebody could tell me a fact? If you include all the cases that are filed in courts, there were what, 13 million this year? How many are appealed?

JUSTICE BLEASE: Roughly 40,000.

ASSEMBLYMAN ISENBERG: I mean, I like the idea of legislating based on the concept that the right to an appeal is there, but the reality is it is little utilized now, and it will be little utilized in the future. We are arguing about which cases, when and where. Now if there were 13 million cases...

JUSTICE BLEASE: Isn't it an odd argument to say that it's unused therefore we maybe ought to abolish it. Where does that argument go?

ASSEMBLYMAN ISENBERG: Justice, all I know is the Judiciary and the system of education I was trained in is full of slogans that are held deeply and passionately and are not applied. Now, it may well be that it's important to have those slogans as a symbol, an emblem of what we do, but the reality is if we want to encourage appeals, then there are other solutions that are out there. We should give appeals as a matter of right in more cases but we don't, and I've heard none suggesting that we should.

JUSTICE BLEASE: I believe you have given them as a matter of right either

through the Constitution or by legislation, in most cases.

ASSEMBLYMAN ISENBERG: Well, it's...

JUSTICE BLEASE: That was the assumption of your argument. I'm not sure where this goes.

ASSEMBLYMAN ISENBERG: We all have a right to sleep under bridges, right? I mean the point is, is the right exercised or is it not? It seems to me that's a fairly meaningful point and the system as it stands now is a small, tiny fraction of cases.

JUSTICE BLEASE: I suppose if you compel courts to unify, we can compel people to appeal.

ASSEMBLYMAN ISENBERG: Justice, the argument I'm merely trying to suggest is that your position sounds as if the world will come to an end, but it seems to me that's contra-indicated by the fact that virtually no one appeals now and the world has not come to an end. It isn't a perfect world. I agree with that. But if the definition of a perfect world is more people appealing, then neither the status quo nor any change discussed today is going to reverse that.

JUSTICE BLEASE: Fine. It's just a peculiar argument.

JUSTICE SPARKS: Thank you very much for permitting us to express our views.

SENATOR LOCKYER: The list we have, Michael Rothschild, Judge...

MR. MICHAEL ROTHSCHILD: Michael. I'm alone. I know some of you personally. I will tell the rest of you who I am and why I am here.

My name is Michael Rothschild, I'm an attorney. I'm not a judge, I'm not a court administrator. I'm the only person on the first page of your long list of people to testify that isn't a judge or a court administrator. I am testifying in capacity of past-President of California Attorneys for Criminal Justice which you may know is the statewide organized Bar of criminal defense lawyers. My personal background is I come from Los Angeles where I was a deputy public defender for numerous years. I'm going to expand on my intended comments and give you this background because I think I'm going to be sucked into some discussion with Mr. Isenberg and with Mr. Lockyer, and I would like to address some of the points that they raised with the justices who just sat here and with Judge Warren. When I was a public defender I was in Los Angeles. And when I was a public defender I tried both felony trials and was in the appellate division, and when I was in the appellate division I litigated in the United States Supreme Court the very jury issues that Senator Watson has raised. So maybe perhaps, from the trenches, I can give you a slightly different perspective of that which we talk about.

I have on behalf of CACJ some concerns and the concerns basically are, and I think that Senator Lockyer has forcefully, as the author of the bill, and candidly acknowledged this morning that this conceivably could be a problem, that SCA 3 needlessly forces policy choices. I'm going to talk about that in terms of the criminal justice system in general and with regard to appellate proceedings, of which we've just had a taste. By needlessly forcing policy choices, it thrusts into the arena of public discussion, and therefore what I would foresee as a decade of heavy litigation and heavy, heavy legislative activity, a questioning of rights and procedures that protect the minorities, politically unpopular and downtrodden -- and I don't mean that in a corny way -- people of the State of California today. Things that we have assumed to be in place to protect those accused of crime and presumed to be innocent will be up for grabs if SCA 3 proceeds as it is now written. The debate ranging within the Judiciary and the different opinions you've seen here today illustrate only the tip of the iceberg. What I'm talking about with regard to the criminal justice system is confirmed, de facto, by what the Judicial Council and what Judge Roger Warren's group has presented to you. Nowhere in those writings is there a discussion of what I'm talking about. Nowhere in those writings is a discussion in detail of the criminal procedure problems that this creates or any proposed solutions.

I would direct your attention, if you have it before you and I don't know what he's going to say about it, but I would acknowledge Judge Charles Patrick who I believe is going to follow who I've never met, who I know his background to be as a prosecutor, has a written a monograph on the very subject I'm talking about. And from his perspective I frankly agree with almost everything he's written.

So what are the specifics of the generalities? Let me give you an example of what I'm talking about. SCA 3 in effect rebuilds this building. It builds the framework of the building by creating one district court and eliminating municipal, justice and superior courts. But in creating the building it pays zero attention to the plumbing, electricity, escalators, carpets or earthquake safety. You don't build a building by erecting the shell and then later piece-meal plug in the details that make it work and protect the health and safety of the occupants. You think about those things first. That's the problem here, because we are doing it backwards.

Here's what I mean. I'm going to discuss first briefly the appellate issue and secondly, and more importantly I think, the due process aspects of our current criminal justice system that are not addressed.

With regard to appeal, we've heard a lot of high talk this morning about power to the Legislature versus the Judicial Council. The bottom line is currently the California Constitution specifies what may be appealed to the Court of Appeals and what may not be, if I understand it correctly. When I read the Judicial Council proposal to fill in a gap that SCA 3 doesn't address, they say the power to decide which cases will go to the Courts of Appeal as opposed to the what they call the appellate division of the Superior Court -- which really isn't an appellate division, it's just a rehearing by a court of equal power, it's not an appeal at all to a higher court -- is to be decided by the Judicial Council.

SENATOR LOCKYER: We're not going to do that.

MR. ROTHSCHILD: Thank you.

SENATOR LOCKYER: We're not going to do that.

MR. ROTHSCHILD: I will speak no more on it because you understand that which I speak. If it should be in the Constitution, it will stay there.

SENATOR LOCKYER: Now, whether there should be an appellate division of the local district courts in the same way that there is currently among the superior courts, I think might be necessary. Otherwise, too much is going to go up that wouldn't currently go to the Courts of Appeal. That's a little bit different problem but the one which you're addressing I wouldn't fret about.

MR. ROTHSCHILD: Thank you and I appreciate that, Senator.

The problem from the criminal procedure perspective, for those of us in the trenches, so to speak, who represent people who are presumed innocent and accused and are awaiting trial, is that the present system of due process and checks and balances is based upon, throughout the Penal Code of California, the assumption that there is a superior and a municipal court. Now, once you remove a superior and municipal court as two distinct entities, then all of the statutes that are based upon the assumption that there is a superior and a municipal court have nothing definitionally to cling to and are therefore up for grabs. What it does, again, is needlessly force policy choices. Having fought the battles pro and con on Proposition 8, having fought the battles pro and con on Proposition 115, I know from experience that what Judge Patrick foresees in his monograph is correct. There will be a debate. Should we have felony preliminary hearings, for example? Should we have Penal Code Section 995 motions? That's a perfect illustration. Let me discuss that for a moment.

Under the current system, if someone is charged with the very serious crimes which are felonies, you have a preliminary hearing before a magistrate or a municipal court judge. The rulings at the end of that hearing go into a

transcript which then goes to the superior court where a superior court judge reviews them and under Penal Code section 995 has an opportunity to review what happened, kind of like a mini-appeal with regard to limited issues. Now that is a check and a balance which was written into the Penal Code to protect those that are presumed innocent, accused of crime and are standing trial. A superior court judge, a judge of a higher jurisdiction, reviews dispassionately some weeks later, in a cold transcript where he or she is not emotionally involved, what happened at the preliminary hearing. Under Penal Code Section 995, he or she in certain situations may reverse what the municipal court judge did. By eliminating the distinction between a superior court and a municipal court, what you do is leave it unanswered -- shall there be preliminary hearings, shall there be motions to review the finding of a preliminary hearing via 995? Similarly, Section 17 of the Penal Code allows a municipal court judge at the end of a hearing to reduce a felony to a misdemeanor. We're not talking hollow academics, because I on multiple times over my career as a criminal defense lawyer both as a public defender and in private practice have had 995 motions granted.

Let me give you an illustration of the practical affect of what I'm talking about. I do a lot of work involving child abuse and sometimes because of the emotionally charged atmosphere of what happens at the preliminary hearing and because -- and would you believe there are a few left in the world who I consider, at least although I'm biased, overzealous prosecutors -- someone is held to answer from the preliminary hearing to the superior court trial on very serious felony child abuse charges. A superior court judge looking at it later might say in reading the transcript, "Well, there should be charges and this person should be in the criminal justice system, but it should be a misdemeanor, it should not be a felony." And they can review that transcript and make that determination.

So, in amalgamating the courts into one district court, and by failing to address the fact that many of these procedural protections that we have for those that are accused of crime are based upon the assumption that there are two tiers of a superior and municipal court, you leave hanging out there unanswered all of these rights. Are you going to have legislation on each and every one? Because if you are there's going to be a battle on each and every one.

SENATOR LOCKYER: And the answer to that is, "Yes, there will have to be." And my thought is that if there are too many of these uncertainties, probably we ought to just go ahead next year and change the 995 double "two-bites at the

apple" reviews, have that one behind us, then we won't worry about that one when the unification issue is before us. Everyone wants a lot of certainty about their particular perspective or role or rights, and wants those to be answered before it's even okay to start the process of trying to unify. Every little nit has to be picked before fundamental change can be suggested. And you know, I've said this to the other side of the issue so I hope it - I don't mean for it to feel assaultive.

MR. ROTHSCHILD: I don't feel assaulted, Senator.

SENATOR LOCKYER: I understand your perspective because I start with some fundamental agreement. But this is very frustrating. I am persuaded that we could not write the Bill of Rights today in this culture. We couldn't do it. "It's too vague, it's too global, we need a lot more details about everything." What magazine can you read or not and what's the role of electronic and news racks, et cetera. We couldn't do it. That's too bad. That's too bad. We've lost that capacity to do anything based on fundamental visions. And so my frustration partly gets worked out by saying I'm putting together a list of these specifics. My daughter lobbies me consistently about this; she works in the Alameda County Public Defenders Office currently and writes 995 motions. I'm ready to get rid of it in a lot of circumstances. Now that's just my view. I don't know if it would get through the Assembly policy committee, but it will get through the Assembly policy committee three years from now because the Assembly policy committee three years from now is going to look like Assemblymember Knowles, probably.

ASSEMBLYMAN ISENBERG: It's going to look like the Senate.

SENATOR LOCKYER: Actually we kill a lot of things in the Senate. You should come over for awhile and see how much bad law we kill. Maybe we should deal with some of these issues now that are bothering people. Then they'll be resolved and we can move on to something else. I just suggest that as one of the possible consequences of this need to have certainty.

MR. ROTHSCHILD: And if I can follow your chain of logic, Senator, and don't read me wrong -- I have the utmost respect for you and will work with you for years -- what you're saying then is that SCA 3 is really a vehicle, up until today at least, to completely restructure the criminal justice system as we see it. Because that's the result.

SENATOR LOCKYER: No, not at all. No, that's not what it is. It's a vehicle to try to provide some court efficiency, use resources in a smarter way and recognize the beginning of an important discussion, not the end. And, yes, there'll be a whole lot of administrative and other issues that need to be...

MR. ROTHSCHILD: Juries do this to me regularly, Senator.

SENATOR LOCKYER: Okay. (Laughter)

ASSEMBLYMAN ISENBERG: Some people say we're always in the dark anyway, so (laughter)...

SENATOR LOCKYER: We're not going to have all of these questions answered. Voting Rights Act is just one example of enormously complicated legal and practical questions. If we wait for the answers to those questions, we'll never do anything. And so in my mind the issue is, do we start the process of moving forward or not. I think we should. We should do it in as simple and basic and clear a way as possible and trust the people in all three branches of government to continue to refine and work out that basic idea over time. But, yes, go ahead. Please...

MR. ROTHSCHILD: Thank you. If I could respond.

SENATOR LOCKYER: You had some other points, I know.

MR. ROTHSCHILD: I'd like to respond to that also, because my other points really do relate directly to that.

You've acknowledged, I think quite candidly and you're to be complimented and I appreciate it, that in the future the political tone or tenor in this state may be that people want to eliminate many of the constitutional and procedural protections existing.

SENATOR LOCKYER: And that could happen with 995s right now, based on statutory changes. There's no constitutional basis for those, at least currently. That's statutory.

MR. ROTHSCHILD: That's just one example of what I'm talking about.

SENATOR LOCKYER: And that I would guess five years from now, writs to suppress are going to be a lot rarer. And it's not because of this, it's because of some fundamental changes in California political culture.

MR. ROTHSCHILD: That being true...

SENATOR LOCKYER: For good or bad.

MR. ROTHSCHILD: That being true and acknowledging your candor on that, all the more reason why, since these are the very things that hold together the fabric of an ordered society which we enjoy today, they should not be accelerated and should not be allowed, across the board, to be decided with one form at one time by wiping out the procedural box they are all contained in.

SENATOR LOCKYER: I don't think that's what happens. What you're really doing is defending judicial balkanization. I think that's a difficult position to defend intellectually. You find some comfort in particular defense motions

allowed under the current system, ones that may be endangered not because of this but because of just general circumstance. Because you care about that motion more than any other thing, you seem to support an inefficient, balkanized system because you can bring a 995 motion.

MR. ROTHSCHILD: I'm not discussing only motions pursuant to Penal Code 995. With all due respect, you use the word "balkanization." I prefer to think that when you have one judge dispassionately reviewing what another judge does, that's a check and a balance which makes our system of justice work. Now, if we're simply going to have efficiency, let's arrest everybody, let's arraign them and let's sentence them. And what some people may call balkanization are the very things that our forefathers have thrown down as logs across the road to say stop, think about what you're doing.

ASSEMBLYMAN ISENBERG: Madison and Jefferson proposed the 995 motion? I mean, Michael, for God's sake. I think Senator Lockyer goes too far in some of the things he says. On the other hand, one of the things that impresses me -- I think this is probably the best time to make a note. As part of the two-year study the Chief Justice commissioned on the futures of the courts, they went out and commissioned Yankelovich's national polling organization to do a poll. Now, there are problems with the methodology of the poll and the questions and so on, but the striking ingredient of the poll is how different the public and practitioners see the system. Ironically, the public attitude about the system was consistent whether it was people who served as jurors or as witnesses or parties or didn't know diddley about the system, and one of the most striking ingredients is how satisfied practitioners were with the status quo and how dissatisfied the public was with the status quo.

Ultimately, I think, you undermine the argument on procedural due process by identifying every procedural stopping point as the barrier against the tides of chaos. Do we do still do 1538.5 anymore? I don't know. When I left the practice we were still fooling around with those, too. Do we still raise some of the same kinds of issues there that we do in 995? I guess we do, I did when I was practicing criminal law many years ago. The point of the matter is, it's the no-risk. Nothing can be done unless that piece of the procedural, financial, structural, decisional aspect every person cares about is satisfied. No changes can be made. God knows the Legislature is hard enough to change, but the judiciary and the judicial system, which gives deference to the traditional and to precedent, is even harder. As we advance into the future, I don't know how you can maintain this social contract that you eluded to in your opening statement. I do not believe the social contract is based on 995

motions. I believe it is based instead on some notion of fundamental fairness, the prevention of arbitrary and capricious decisions: not individual by individual, but in terms of the outcome of the system as a whole. There will always be abuses in every system, no matter what we construct and no matter how we do it. The question is, is our system of justice one that is going to give a concept of real fairness and due process? And I'm not so sure that tying ourselves to the status quo in terms of how we do things now is automatically the right way to guarantee it.

MR. ROTHSCHILD: I agree with much of what you said. But my final comment, and I'm going to defer to the judges that are now sitting here, assuming that these are the judges identified on here, since I don't know them -- I don't know these people...

ASSEMBLYMAN ISENBERG: They're your client, the State Bar.

MR. ROTHSCHILD: Okay. Let me make my point on this. The problem that we see is not 995 or any one nit-picking thing. The problem is that SCA 3 opens up everything that pre-assumes a superior and municipal court for purposes of protecting people's rights to re-enactment, re-crafting, and re-drafting all at once, not 995 next year and something else next year with ordered hearings on each. Everything at once, so there's a re-crafting of the whole system at once. That's the problem.

SENATOR LOCKYER: See, I don't expect that.

MS. _____: What's wrong with it?

SENATOR LOCKYER: If this amendment were adopted, I would guess that there would be over the years some ongoing discussion of different aspects of the system, different issues or areas of policy that are raised by it. It doesn't mean everything gets done in one year or one month or whatever. It does mean that the discussion and debate is ongoing. It may be that you now find comfort in the fact that there's been some benign neglect of certain issues. But I would suggest that those comfort levels aren't guaranteed.

MR. ROTHSCHILD: Which brings me back to my final comment which will tie to my initial comment. You're suggesting with SCA 3 to build the shell of the building, and then delay the debate as to the heat and the wiring. Well, I would suggest that maybe you ought to talk about the heat and the wiring and the escalators and the carpet before you build the the shell of the building, which will unfortunately, from Senator Lockyer's perspective, require a monster bill which includes some of the things that the Judicial Council's talked about. But I would suggest that the more ordered way of doing things is to resolve these issues before you simply take away the structure so that people

aren't left, so to speak, in free-fall: not knowing where they are, resorting to litigation, resorting to the Legislature afterwards.

SENATOR LOCKYER: Well, you want us to hire the electrical contractor and know what kind of wire they're going to use. I'm interested in the architectural work. I think it's more appropriate for us, particularly when we're dealing with our views as they affect a separate branch of government, to stay very basic and simple and in effect hire the architect and not choose the color scheme for the dining room. But I understand why you want to know what the color scheme for the dining room might be. But it just seems to me that that's impossible and inappropriate.

You have a co-counsel.

MR. ROTHSCHILD: I'm surrounded by, I think I'm surrounded by the State Bar.

SENATOR LOCKYER: Well, they have a time problem that needs to get them -- but I want to make sure you've made your points, and I think you have.

Maybe one thing to consider is whether some very general savings clause, with respect to constitutional guarantees in due process, could be part of this. It could be very elegant and simple and address many of these anxieties, including the ones we've already talked about earlier in your testimony.

MR. ROTHSCHILD: And I keep saying final, but I have one last thing. Perhaps there should be a debate, which some of you may feel is appropriate, on all of the criminal justice due process issues that I'm concerned about. Then so be it. But have that debate. Don't do something to create the shell of a building which de facto causes that debate later, after it's done, and people don't really realize that's what you've been talking about. Thank you.

SENATOR LOCKYER: Thank you.

THE HONORABLE NORBERT EHRENFREUND: I'm Judge Ehrenfreund with the San Diego Superior Court. I don't want to talk about details. I want to talk about the big picture. I just go to one central objection I have to the bill. I feel the bill is in effect withdrawing the court from the people, from its responsibility to the people.

The municipal court was set up in 1950 to meet the needs of a growing urban society, to meet a growing mobile society: all the problems of congestion in the cities, the traffic, that was occurring in 1950. The municipal court was set up to meet those needs. The municipal court was set up to meet the needs of the so-called man on the street -- the poor or the homeless, the traffic violator, the mentally ill, the battered woman, which were misdemeanors.

If you eliminate the municipal court and make one court, you are removing

the focus the municipal court should have on those people. I'm talking about our responsibility to the needs of the community, to the so-called man on the street, the average person, the little person who comes into the court, who forms the vast majority of the people who come into our courts. They're not the felons or the people with big lawsuits. They come in for traffic matters; they come in with misdemeanors, the drunk drivers. There's so many problems that they come in with.

We need a court that focuses on those people, but that's what we're losing when you eliminate that court. You eliminate that focus. You need a court that has meetings about it; you need a court that has an executive committee, like a municipal has, that focuses on those problems. And you're eliminating that.

SENATOR LOCKYER: Well, judge, you probably were a very effective lawyer in those years of advocacy rather than referee, but I respectfully disagree. I think we're not eliminating it.

JUDGE EHRENFREUND: You're withdrawing the focus.

SENATOR LOCKYER: Well, the same functions are there, the same responsibilities...

JUDGE EHRENFREUND: Oh, yes.

SENATOR LOCKYER: ...are there. It's just that you don't have to have the same pool of municipal court judges we've got now. If there is, as is true in this county, a crushing workload at the superior court level, you have greater flexibility to use your resources better. So I view it that way, not eliminating...

JUDGE EHRENFREUND: You're acting in the name of efficiency and perhaps cost savings. Those are fine goals, but there are other goals that are much more important, the goals to meet the need to be responsible to the community; the goals of fair trials, the goals of being careful about, having a court that's careful and trained to deal with those special problems. And that's what we lose; we lose the focus. You have one court that's all the same; you lose that kind of focus concentrating on those problems. And that is my point, sir.

SENATOR LOCKYER: I understand, sir. Thank you.

JUDGE EHRENFREUND: This is Judge Patrick, Charles Patrick. You've already heard of him from a previous speaker, a judge of our municipal court, who's written on this subject.

SENATOR LOCKYER: Judge, if you will permit this, I'd like to squeeze the Bar representatives in quickly and then come back to you because they have a

meeting that they also have to attend.

MR. HARVEY SAFERSTEIN: Thank you, Mr. Chair, and good morning. I appreciate your taking us out of order, and I also want to welcome you to our convention, our annual meeting, and thank you for having this joint, historic meeting of the two judiciary committees at our annual meeting.

As you know, the State Bar has long been a fan of consolidation and has supported it. My name is Harvey Saferstein. Until one more day, I'm currently the President of the State Bar of California. And to give the views of the State Bar of California, I have with me our President-Elect, Margaret Morrow, who is also the Chair of our Courts and Legislation Committee. And with that, I'll give you Margaret Morrow. And thank you again.

MS. MARGARET MORROW: Thank you.

SENATOR LOCKYER: It was a pleasure to work with you during this last year.

MS. MORROW: Good morning to all of you. I'll try to be very brief because I know you still have a number of people to hear from. But we did want to come and testify before the committees today to let you know that the State Bar voted in April of this year to support SCA 3 in principle. And we took that vote based upon a long-standing commitment to the concept of a single trial court of general jurisdiction in the State of California.

Three years ago, when Charles Vogel was President of the State Bar, we organized a task force on Trial Court Reorganization. I had the privilege of chairing that task force. And in 1991, after approximately a year's study on the issue of consolidation, we came forward with a report which called for pilot projects to test the concept throughout the State of California. Shortly after that, Assemblymember Isenberg was successful in securing passage of AB 1297. And the coordination projects which had been started under the aegis of that bill around the state we think have had the same effect, of testing the concept that our original notion of pilot projects would have had. What we found out from those coordination plans that have gone into effect around the state is consistent with the data that we were aware of even before AB 1297 passed, the data from Washington, D.C., from El Cajon, right here in San Diego County, from Napa, from Ventura, from other places that had already implemented certain aspects of consolidation in their areas.

What it shows is that the theoretical benefits of consolidation actually play out in reality. There's been a lot of discussion here this morning about the fact that those of us who support consolidation do so only because we think it will save time and money, that it's only an efficiency situation. I'd submit that efficiency at this stage of affairs in California is an

extraordinarily important concern. We all know the budgetary constraints of the courts and all other branches of government are operating under here today. The fact that you'll be able to use your judicial personnel and your facilities in a more flexible manner and reduce the number of judges you actually have to sit on the bench and utilize the facilities that are already built around the state in a fuller fashion is a very important reason to want to have consolidation. It's not the only reason, however.

We've supported consolidation on that basis but also on the basis that it will eliminate duplication between the courts handling the same case, particularly in the criminal area; that it will eliminate procedural duplication, eliminate administrative duplication, eliminate the confusion that comes from having a different set of rules in the municipal court, and in the superior court, which makes practice in the two courts unnecessarily complex.

We also think that it will increase public access to justice by allowing people to file cases in courts nearer their home, by eliminating confusion about which court they're actually supposed to file in and so forth. So I think there are a number of public interest issues involved here as well as efficiency issues.

The State Bar's goal at this point is to achieve consolidation of the court in the State of California. We've had a lot of discussion about whether or not a measure like SCA 3 is necessary, whether coordination plans aren't enough. And I think that Assemblymember Isenberg hit the nail right on the head there. We're in a volunteer situation. We see that some courts have consolidated almost completely. Some courts have done very little. What the Bar is left with and what the litigants are left with is sort of a patchwork of court structures and court procedures around the state which is really not, I think, in the interests of the people of California. You want to have a system that is uniform, and frankly, you want to have a system that is unified.

Most of the debate on the issue of consolidation historically has been about the details of the proposal. Past proposals have arisen or fallen based upon the details. We have only recently received a copy of the Judicial Council's report which discusses in some great detail many of those issues. We're studying that right now. We know that the Judicial Council's spent a tremendous amount of time putting that report together, consulting with a number of different experts, and we intend to look at it very, very carefully. Some of those issues are ones that we studied three years ago. Others, like the voting rights concerns, are new to us and are of concern to us, and we intend to look at those very carefully.

Our goal here is to facilitate dialogue between the Legislature, the courts, other judges and bar associations who have positions on this because we would like to see everybody come together in support of SCA 3 so that we can achieve what is the ultimate goal, and I hope we don't lose sight of it, to consolidate the courts and make our court structure effective and efficient for the 21st Century. And that's the way we've got to look, not backwards, to what was important or useful in 1950. We've got to look forward to the 21st Century and what will work for California now.

MR. SAFERSTEIN: Thank you again for letting us testify out of order. And I think you'll agree with me that you will have a good time this year working with our first woman President, Margaret Morrow. Thank you again.

SENATOR LOCKYER: Thank you.

MS. MORROW: Thank you very much.

THE HONORABLE CHARLES PATRICK: I'd like to stand, if I may have your permission, partly because I've been sitting a long time -- it's more comfortable for me -- and also because of my long years as an advocate in court, I'm used to talking when I stand. It's much more acceptable...

SENATOR LOCKYER: I thought you were a judge.

JUDGE PATRICK: Pardon?

SENATOR LOCKYER: I thought you were a judge.

JUDGE PATRICK: I am.

My name is Judge Charles Patrick. I'm a judge in municipal court here in San Diego. For 24 years, I was a prosecutor first in Santa Barbara County and for the majority of that time in San Diego County. And I'd like to say initially I thank Mr. Rothschild for his very kind words. As he said, I've never met him before. It's rank heresy for me as a long-term prosecutor to say I agree so wholeheartedly with a member of the California Attorneys for Criminal Justice, but I do so agree with every word he has to say.

I'd also like to say I agree very strongly with the words of my colleague, Norbert Ehrenfreund of the Superior Court of San Diego County. I knew him first as a fellow member of the District Attorney's office here in San Diego. Later I had cases against him when he was with the defender's organization here in San Diego. And I've appeared before him in court as a superior court judge. I agree very strongly with his comments as well.

I have very serious and strong reservations about the issue of court consolidation. I must say that I am not at all satisfied that there is to any degree at all the pressing need at this time to push forward with this amendment as it being expressed here in this assembly this morning.

First, we have a very good working court system which has been doing so for the last 40 years. Compared to the other states which allegedly have achieved great benefits by court consolidation, you need to look at where they were before they consolidated, as so called, to see how that compared to our situation in San Diego. Several of those courts have come from the situation that we were in in 1950 where we had all those many, many jurisdictions of lower echelon courts. We abolished that. We got rid of it in 1950. We have since had a two-tier court system which has worked and continues to work very well. And several at least of the so-called consolidated courts we are talking about now are in fact two-tier court systems. There's really only one single-level state-consolidated system that I'm aware of at this time. So you need to compare apples and apples, not apples and oranges or apples and bananas or whatever.

The next point I would like to address is something that was said a moment ago by Senator Lockyer, comparing his viewpoint with that of Mr. Rothschild. You indicated that you wish to be perceived as the architect of the plan. I would submit to you, Senator...

SENATOR LOCKYER: No. I'm hiring an architect.

MR. PATRICK: Pardon?

SENATOR LOCKYER: I'm hiring an architect. I want to see the general design work done, not choose the color scheme for the dining room.

MR. PATRICK: I submit to you what you're doing is not referring to architectural plans. What you're doing, you're saying there shall be a house and there is no plan to determine what that house is going to be.

What the people form the Judicial Council Committee had prepared, that's an architectural plan. But this SCA 3, that's not an architectural plan.

SENATOR LOCKYER: Well, judge, we may be exploring the limits of analogy. (Laughter)

JUDGE PATRICK: The main point I would like to make addresses Assemblyman Isenberg's comment. I think you have sold yourself short by indicating that you have not accomplished what you sought to accomplish by the court coordination bill. For many courts, in maybe the first year or just a little bit more than that, implementation of the coordination plans was slow. They've only now adopted the coordination plans in implementation. Many courts that are implementing them are in the first year or less of that implementation. Many courts nonetheless have made great progress with their coordination.

I think that it is extremely precipitous at this time to say that we have not achieved what was meant to be achieved by those coordination plans.

ASSEMBLYMAN ISENBERG: Judge, if half or more of the courts of California were as far along as Napa or Sacramento or Ventura, that argument would be compelling.

JUDGE PATRICK: I submit to you that in San Diego County, we have been coordinating our court operations for many years even prior to the implementations.

ASSEMBLYMAN ISENBERG: The El Cajon experiment is a good experiment, and that is one of the national examples. But the reality...

JUDGE PATRICK: What was done in El Cajon is in every court in this county now throughout San Diego. I have sat -- in fact, I'm sitting now -- as a full-time superior court judge hearing cases. I've had many superior court cases...

ASSEMBLYMAN ISENBERG: Judge, I came down on Wednesday, and I met with members of the superior court and the municipal court to talk about these and court budgeting and so on. Ironically, I was requested to meet separately with each court. Now I was somewhat amused in front of the judges I met, some of whom are sitting here, about that fact. But no doubt, your coordination is working well. No doubt, everybody loves themselves, each other. It doesn't quite look advanced enough to me, but I may be just not knowledgeable.

JUDGE PATRICK: Well, I submit, sir, that you are not sitting on the court as I do every day and seeing how it actually works.

SENATOR LOCKYER: That's true.

ASSEMBLYMAN ISENBERG: That's true.

SENATOR LOCKYER: And from a distance, it looks like a disaster.

JUDGE PATRICK: Believe me, it's not a disaster.

SENATOR LOCKYER: Okay.

JUDGE PATRICK: And I think the remarks made here today, as well as some of the examples you have given us, show it is not a disaster. We have indications here from Ventura County, for example, with the savings they have achieved administratively. We have illustrations here from Sacramento County, the way they have achieved savings judicially by their coordinating.

All those are being done under existing coordination plans. We do not need SCA 3 to achieve all of the benefits you've talked about here today. Ms. Morrow, President-Elect Morrow, spoke a moment ago about the benefits of being uniform in different places and so forth. We can do all of those things without SCA 3 or any consolidation, every one of those things, every one of those virtues that's encountered here today, the economic savings for the judicial economy, the procedural things that the President-Elect Morrow spoke

of. Every one of those can be done and is being done today...

SENATOR LOCKYER: No. "Can be" is the right thing to say, and in fact about 10 percent of the state's population has been significantly involved in changes. Ninety percent runs from trench warfare resistance to moderate accommodation to an idea they don't like. That's my assessment of the current situation.

JUDGE PATRICK: The point we made is we are in essentially still the first year or the first year-and-a-half of what was at that time a very radical enactment to require many courts in the state to do things that some of us have been doing for years already.

SENATOR LOCKYER: Yeah.

JUDGE PATRICK: And I would submit that we need more time to accommodate not only those changes that are being made but to enable the various counties to pick and choose, to see whether what works in one place would work here.

SENATOR LOCKYER: Well, Judge...

JUDGE PATRICK: You also can determine whether something works and in some other place may not work.

SENATOR LOCKYER: I understand. Judge, that's what SCA 3 is designed to permit. But what I think will be the impetus to further consolidation if this approach is unsuccessful is simply budget cut. We'll start cutting judicial budgets 10 percent a year or some amount, and that will compel rethinking and reorganization in a different manner than this particular approach or the Isenberg measure. I'm prepared to do that. I think we might start that next year or the year after.

JUDGE PATRICK: I'm sure the Legislature would do that. Mr. Isenberg has let that hang over our head ever since he started his work. There's no question about that.

SENATOR LOCKYER: Yes. That's another way to try to produce efficiencies.

JUDGE PATRICK: That brings me to my final point, what I have been most disturbed about in the hearing here today as well as other hearings I've attended. Senator [Assemblyman] Isenberg was kind enough to come down and speak to our County Judges Association meeting a couple, three months ago, and I heard some of the same things expressed there.

The two things that concern me are these: First, the point expressed that "let's keep it simple." Let's not let the judges know, let's not let the public know, what this structure is really going to be about when we get it done. Let's keep it simple so we can get it passed; then we'll fill in the blanks and do what we want to you. I think that just sells the judges short;

it sells the public short. That scares me, frankly.

The second point I'd like to make is this: We have heard expressed here today, we've heard expressed, Senator Lockyer, by yourself in our meeting before, extreme hostility and resentment on the part of the Legislature toward the judiciary as a whole by reason of the Supreme Court decision which upheld the emasculation of the Legislature. That's exactly what it was, an emasculation. We've heard extreme hostility towards the judiciary as a whole, by the Legislature as a whole. And to borrow a phrase of Assemblyman Isenberg: If the judges of this state go for the proposal here, well, let's just remove this little technical impediment in the Constitution to consolidation and then trust us, the Legislature, to fill in the blanks of what's good for the judges. If we as judges would accept that proposal we would be the "wooses" Assemblyman Isenberg spoke of earlier. Thank you.

SENATOR LOCKYER: Well, you don't have any risk of being that, your Honor. And my comment -- I mean there was only one comment made and it was mine -- with respect to the Supreme Court's decision on term limits was in the context of the federalist dynamic that I can see in the current Supreme Court, that is, there's a desire to increasingly consolidate power and to diminish the roles of other co-equal branches of government. That's not hostile, it's an observation of a dynamic. Frankly, I consider myself an advocate for the judicial branch, which is why I introduced this amendment, why I introduced new court bills, bond act for courthouse safety, pay increases for judges. I consider myself an advocate for the judicial branch. I would be wrong in trying to suggest there aren't ongoing tensions; that's part of our system of checks and balances. But dwelling on the particular judicial decision is unfair to people on this side of the panel.

ASSEMBLYMAN TOM CONNOLLY: Senator, may I make a comment.

Sir, I think it's important to know that we're not all speaking here in one voice. I've expressed, and I think Senator Lockyer would agree, the very concerns you've expressed with regard to the idea of the cart before the horse, I too think that we have to know the fill-in-the-blank part before we're asked to vote on SCA 3. So we're not necessarily all in common voice in that regard, and those questions have been expressed. I know I've been called the mouthpiece of the San Diego judges at times but...

SENATOR LOCKYER: No. I just expect that that's where you'll be next year so (laughter)...

ASSEMBLYMAN CONNOLLY: But I think it's important to recognize that those observations, particularly in regard to filling in the blanks, plus having it

noted and will continue to be noted, during future hearings.

ASSEMBLYMAN ISENBERG: Leave my members alone.

JUDGE PATRICK: Okay.

SENATOR LOCKYER: Yes, sir.

THE HONORABLE DAVID J. DANIELSEN: Good morning. David Danielsen. I'm the presiding judge-elect of the San Diego Municipal Court. And as far as Mr. Connolly being the mouthpiece for the San Diego judges, I don't think there is any human being who possesses the talent to be able to speak with one voice for the San Diego judges. As to Judge Patrick and Judge Ehrenfreund speaking before me, I will show that they have a little different point of view than I do, and Judge Milliken after me from the San Diego Superior Court's going to show there's a very different view, all of which may illustrate Mr. Isenberg's point. And it may be that leaving it to the judges to finally decide may not be a very wise choice because it may take forever.

ASSEMBLYMAN ISENBERG: I thought perhaps marriage counseling would be called for rather than anything else, but I don't know.

MS. MORROW: Need a restraining order.

ASSEMBLYMAN ISENBERG: Right, a restraining order, as Ms. Morrow says.

JUDGE DANIELSEN: Let me say by way of historical view on this, we've just gone through a dramatic change. And everything that I had thought about saying has already been said here today, including the remark that you need a view from the trenches. Well, I came from a little different trenches than our other trenchmate. I came from a civil practice, mostly in the superior court. And now I've had the privilege to serve on the municipal court and see a very different part of the world.

Now from my trench point of view, we saw the world change dramatically based upon some vision and courage, telling us that we need to do things more efficiently. And I saw the debate and a hue and the cry that went up, the cries of disaster; the world was coming to an end; the court system was going to be imposing on rights. And I saw people stand up and speak as eloquently as my colleague, Judge Ehrenfreund, spoke on various issues. And based upon that debate, we evolved a new way of practice, certainly in San Diego Superior Court, San Diego Municipal Court, and all of my friends' jurisdictions around the state. And it's because of that intelligent caring, emotional input that we got, with some intelligent priming, that we've ended up making a big difference. Now what has happened, and I think Judge Wonder alluded to this earlier, is we put some more responsibility in the judge's hands to be managers, to care about the efficiency and the quality of what goes on, and I

see this as a logical extension of that approach.

Right now we have an arbitrary dedication of resources. And certainly in my jurisdiction, because of some of the efficiencies that we have accomplished because of trial-delay reduction, we've been able to dedicate judges five at a time, seven at a time, and most recently even more, to doing superior court work to assist our colleagues.

It seems to me that SCA 3 is a challenge to the judiciary to manage and allocate its resources on a countywide basis, and that's all it is. The consumer base isn't going to change. I'm still going to have the same justice consumers that Judge Ehrenfreund so deeply cares about, and frankly so do I. But I'm saying that if, on a countywide basis, we as the judges can't take care of those people, care about those people, and deliver justice to them, then we ought to be ashamed of ourselves. But what this proposal does is say that somewhere off with an arbitrary dollar figure and an arbitrary figure of how many judges go which way, we don't necessarily serve the best interest of justice. And certainly as we've experimented, voluntary though it may be in coordination, I think we've improved the quality of justice and we haven't disenfranchised anybody along the way.

I think we need to trust ourselves, all parts of the government, better to have good motives and that with this broad, creative statement, we could fill in the needs to take care of the people that we all serve.

THE HONORABLE JAMES MILLIKEN: Good morning, Senator Lockyer, Assemblymember Isenberg, Assemblymember Goldstein [Goldsmith], Assemblymember Connolly, and other esteemed members. It's my pleasure to speak on behalf of the San Diego Superior Court here this morning. It's my pleasure to follow David Danielsen. He is a fine -- was a fine -- attorney, is a brilliant judge, and is a member of a very fine court.

Our court, the superior court, takes a position that is opposed to SCA 3. And it's not just a judicial turf war situation. It's not just a situation where we feel that somehow the superior court ought to be superior to the municipal court. And with due respect to the comment, which I hope was not directed at San Diego, I don't think coordination is a disaster in this county. The opposition that I'm expressing comes, I hope, from a court that has been willing to experiment and accept judicial reform, experiment with and accept coordination and cooperation with the municipal court. Our court, and I'm very proud of this, was a leader in delay reduction.

Five years ago, we were 40 months to trial on average, as Mr. Goldsmith knows. Today we're in a situation where we're 14 months on average to trial.

Seventy percent of our cases are decided in 12 months. Ninety-five percent are decided in 18 months, and we're right on the ABA guidelines for delay reduction. We've achieved this by cooperation with the municipal court.

The concern that I and our court have is an organizational one that addresses the organization of the court. It's a question of public policy, and it's a question of cost. I am concerned that suddenly by fiat making all judges in this jurisdiction judges of a court of general jurisdiction, which means they're to hear civil cases without jurisdictional limit and felonies.

I ask rhetorically who is going to try the misdemeanors; who is going to try the traffic tickets; who is going to try the small claims cases; who is going to try the prelims; and who is going to do...

ASSEMBLYMAN ISENBERG: How about everybody?

JUDGE MILLIKEN: Well, I understand. But let me just, by example, propose a question by way of analogy. When a new position is created in a federal district court, does the judge preclude the hiring of a magistrate by the court by doing misdemeanor work? The answer is no. The judge is hired to and wants to do work of general jurisdiction. And what ends up happening is that a magistrate is hired to do the bidding of the federal district judge, and the cost of administration of justice is compounded.

It seems to me that there's a high probability, and I cite the Kelso studies as evidence of this, there's high probability that there's still going to be misdemeanor work. There's still going to be work which is the grist of the judicial system, and that is, the traffic tickets, the deuces, the 502 drunk driving cases, the municipal court work...

ASSEMBLYMAN ISENBERG: Probate, family court services, and other things that the superior court is farming out too.

JUDGE MILLIKEN: Well, let me make my point.

ASSEMBLYMAN ISENBERG: There's nothing wrong with it, Judge.

JUDGE MILLIKEN: Well, this Kelso study says that in the municipal court the workload expanded 12 percent, and the judicial resources expanded 37 percent in the municipal court.

I think there is a tendency to hire commissioners to do municipal court work which has a tendency to compound costs. If my analogy is even partially correct, then more and more commissioners are going to be hired to do the municipal court work. And the judges who have now been made judges of the court of general jurisdiction are going to want to do what they consider to be the more important work, the family law work, the juvenile work, the felony criminal work, and the civil work involving cases...

ASSEMBLYMAN ISENBERG: I'm sorry. What's bad about this?

JUDGE MILLIKEN: Well, it's going to cost more money, and it's also going to create a level of judge between the elected judge and the public that limits access to the court. Those judges aren't elected. Those judges aren't accountable. Those judges are not the judges that had been elected by the people of California to run the court system. It seems to me that there is a very high probability that there are going to be very strong expansionary pressures in the system that you propose. It's going to cost more money, and it's not going to be nearly as accountable as the system we have. It seems to me that we need elected municipal court judges at the municipal court level to do municipal work.

Now that doesn't mean that I'm opposed to court reform. That doesn't mean, if we have too many municipal court judges and not enough superior court judges, we shouldn't re-allocate resources or we shouldn't rethink this thing. But it seems to me that by fiat it's a big mistake to make all of the judges in this jurisdiction judges of a court of general jurisdiction. About half of the legal work, about half of the judicial work that has to be done, is municipal court work. And there's a high probability that a second tier of judges are going to be employed to do that work other than those that are elected. Thank you.

SENATOR LOCKYER: Thank you, sir.

THE HONORABLE RUDOLPH LOCKE: My name is Rudolph Locke. I'm not listed on your agenda. I'd appreciate the opportunity to make a few comments.

I'm in support of SCA 3 for several reasons. And I'd like to start off with the access to justice area that was just talked about. I'm a member of the Judicial Council's Task Force on Racial and Ethnic Bias in the courts. We've conducted hearings from Redding to San Diego and in Los Angeles, Fresno, and Bakersfield. And one of the common themes heard from people who came on their own time to testify to this task force is that the access is limited to people of modest means, people who may not have English as their first language, that access is limited because attitudes of the courts towards them is biased.

I hear this and I'm sitting on the court and I understand what they're saying. The bias is reflected by a person who sits and says I'm a judge and I don't deal with your kind of issues. You're not important enough for me to care about your case. I'm a superior court judge who's going to take a vacation in two days; and of course our cases take more than two days and therefore I can't take anything in. However, I could take a small case, in

your case, but that's not in my jurisdiction; I won't do that.

I think that in Sacramento we've shown that judges who are superior court judges who handle so-called important cases are able to sit on other cases that traditionally, based on long-standing jurisdictional distinctions, are considered unimportant cases, cases of people who are being dispossessed from their homes, cases of small consumers, that type of thing. They're willing to do that in Sacramento County, to their credit.

I'd say that the efficiencies that Roger Warren talked about earlier that can be saved by courts being able to do what comes before them without regard to jurisdictional, artificial jurisdictional, limits are really important. The attitude of the bench is important. They cannot sit up there thinking, hey, IBM is important and Joe Schmoe isn't. And I am a superior court judge. I got elected to that and I don't care about Joe Schmoe. Very few judges, I think, buy into that. And I don't think the debate should be on the level that judges should have that right to sit around thinking that they're too important for a certain kind of case. We don't have that right, I don't think.

SENATOR WATSON: May I ask a question, Mr. Chair.

SENATOR LOCKYER: Yes.

SENATOR WATSON: Judge Locke, you raised an issue that I was very interested in, and that was our task force that looked discrimination in the courts. And I want to go back to a question I raised earlier with the professor, and that is, if we did authorize restructuring of the courts in unification, could it be done in a way that would recognize the fact that I don't think our bench actually represents the changing demographic? I'm concern about how that is, and I do want to get into some of the details of the bill because I think this is the forum in which to do it. So if I can just kind of go back to that issue and get your input. I've known you a long time and we've worked together. I'd like to know how you feel about it.

JUDGE LOCKE: I'm glad you asked that question. Many people view the municipal court as a place to put judges of minority background because, hey, those aren't important cases. They don't set precedents. People who set the precedents that are binding upon other people hear cases that basically arise out of superior court and then go to an appellate level.

I'd say, if I'm responsive to your question, that having all judges of equal dignity is something that will benefit minority access and minority input, minority and women. The precedential law of this state, I think, will benefit. Now of course, because we do have an appointive process, this will require governors to have the fortitude and the willingness to look at the

large body of qualified people among all racial and ethnic backgrounds and to appoint judges from those classes of people.

I don't think that this bill, this constitutional amendment, will in any way harm minority interests. I think the attitudes that some of the opposition might espouse sort of keeps minority issues at a lower level. We don't have contracts over $25,000 generally. Most people come in, their cases are below that. They care just as important as someone who's got a big estate and they've got $280,000 at issue. I'm sorry, but it's no less important. And I think that having a unified court will bring people at all levels to equal dignity under the law.

ASSEMBLYMAN CONNOLLY: May I ask a question. There's some that believe we ought to expand the jurisdiction of small claims court. I assume from your premise that you disagree with that.

JUDGE LOCKE: I think that when you get up to certain numbers, people deserve the opportunity to have a lawyer.

ASSEMBLYMAN CONNOLLY: To avoid the concerns you've expressed, what level would you think we should have small claims court or shouldn't we have them at all?

JUDGE LOCKE: I'm satisfied with the small claims limit at this point. I'm not looking for $25,000 of small claims. That would be ridiculous in my view. I'm not sure what the Legislature is contemplating. If I take a look at something you're contemplating, perhaps I'll be better prepared to answer your question. I think it's a good question, really.

SENATOR LOCKYER: The most recent suggestion is around $10,000 or something of that range, or perhaps higher for auto claims. But there's no current focused discussion of these matters.

JUDGE LOCKE: Let me conclude by mentioning one of my contributions, I think, to my court over the last seven or eight years. I set up a voluntary settlement conference at 4 o'clock in the afternoon. We go to 7:00, 8:00 or 9:00. Lawyers call in, set up a time for my clerk, and they come in on a voluntary basis. And they bring their clients and we get to talk. From a judge's perspective, I get to see the clients in a different atmosphere, sitting in a chair in my chambers talking about their problems. They're interested in access. They're not interested in whether it's superior or municipal or who the judge is. They want to get a fair hearing. And having that opportunity in front of a judge is really important to them. I think your bill does provide that, Senator Lockyer.

ASSEMBLYWOMAN JACKIE SPEIER: Judge, I couldn't agree with you more. As

we've been sitting here just trying to create distinctions between superior and municipal court, I think the average Joe Schmoe, as someone referred to earlier, or Jane Schmoe, really has no understanding of what the distinction really is. They come into court and ask for one thing and that's a judge. And access, which I think is one of the benefits of consolidation. As to the discussion earlier on electoral sub-districting, I'd like your comments on whether that is appropriate or helpful in terms of having a more ethnically diverse bench.

JUDGE LOCKE: Roger Warren and I discussed some of these matters before he made his presentation. It's a complex issue. I'm really not prepared to go beyond what Roger said this morning. I espouse everything he's said.

I don't think it's a danger to municipal court. The bill itself, now how we come up with these electoral districts, I don't think people -- we have the right kind of system. I don't think you're going to find many contested elections in any event. It doesn't happen often. And I think minorities doing a good job will remain on the bench in California, at least urban areas like Los Angeles. There might be problems elsewhere.

SENATOR LOCKYER: Thank you, Judge.

MR. LOUIS BOYLE: Good morning.

SENATOR LOCKYER: You might want to grab that mike.

MR. BOYLE: Thank you. I'll be very brief. My name is Lou Boyle, San Diego D.A.'s office. I'm here for the District Attorney, Edwin L. Miller, Jr., and myself.

My experience, since you don't know me, includes working in a federal court as a research law clerk, prosecutor for 17 years, and I also served on both the municipal and the superior court benches as a judge.

My focus here is very narrow. My focus is on people and not any perceived need for reform of administration, the geographic layout, the political creation of judges, and so on. I focus on the people that are currently sitting in the state. Everything I say is meant with respect for this panel and, of course, for every sitting judge, commissioner, and referee. However, we recognize those of us that work in the courts that there is a system that has been in existence for a long time. And people have gotten to their current places in that system.

We know that everything done by a productive judge is important, regardless of level of current assignment; however, there has been a division of labor in the past, as there has been throughout society. The current two-tier -- it's actually a multiple-tiered system -- at the trial level does take into account

a wide variety of functions and a tremendous difference in a ability and talent and inclination of individuals.

The commissioner phenomena, I call it, which was referred to by Judge Milliken, is of great concern to me, both professionally and as a citizen. We have seen in recent years the hiring of many commissioners to do work traditionally done by municipal court judges. What is of interest to me is the municipal court judges who hire the commissioners under state law do not go away. They free themselves up, to use their own words, to do more important things, and I think that is a mistake. It's a mistake in perception and philosophy.

What I'm saying is that the creation of a single district judge level will mean that every single existing judge by the stroke of a pen and the will of the people, if they vote for it, becomes the same and therefore more important. And as much as we wish everybody were egalitarian and democratic in view, that's not the case, as we're all painfully aware. So I think a single district judge creation at a single moment will increase the numbers of commissioners and the numbers of people that are doing important work that are not subject to election, be it recall or initial appointment by an elected governor.

ASSEMBLYMAN ISENBERG: Mr. Boyle, let me just ask you a question. You didn't say it, but inherent in your comments, it seems to me, is that superior court judges are better than municipal court judges. Is that your opinion?

MR. BOYLE: That's a tough thing to say and judges can't say it, but I can say it. Judges are...

ASSEMBLYMAN ISENBERG: You used to be a judge, right?

MR. BOYLE: That's right.

ASSEMBLYMAN ISENBERG: Okay. Superior court judge.

MR. BOYLE: And a municipal court judge.

ASSEMBLYMAN ISENBERG: Okay. And let me ask you, give me a fact, give me a fact to support that conclusion.

MR. BOYLE: Well, a fact, I really don't understand what you mean by a fact.

ASSEMBLYMAN ISENBERG: Pretend we're in court and you're pleading your case and you have to meet the lowest standard of evidence possible, preponderance. Prove to me -- in San Diego County, how many municipal court judges are shlunks and how many superior court judges are shlunks?

MR. BOYLE: Let me put it this way: I don't know what a "shlunk" is, but I think it's not good to be one.

ASSEMBLYMAN ISENBERG: You can guess.

MR. BOYLE: And I'm going to make a statement here I may regret later, but we've got shlunks on the superior court and shlunks in the municipal court.

ASSEMBLYMAN ISENBERG: Exactly what I was trying to drive at. Now you say, however, that there is a -- do you say there is a quantifiable difference between municipal court and superior court judges?

MR. BOYLE: Yes, I say that. And if you'll let me conclude my comment, I have a suggestion to you and your job to figure out how to fix which you perceive to be a problem. So if I may just continue.

ASSEMBLYMAN ISENBERG: Could you quantify the differences while you go ahead and conclude. I mean I'd like to know, other than the ten years in practice, or 90 percent...

MR. BOYLE: Well, let me just give you a practical example in our existing two-tier system. I spent two years on the municipal court, all right? And then I was -- and by the way, I hate that term, "elevated" -- I was appointed to the superior court. That means I must have done okay. And there are many people, and I'm included, that feel that maybe a person, I'm talking about history now, should spend time in a municipal court before they go to the superior court. There are difficulties in attracting certain types of very successful people because again it's their perception they're only going to superior court. That's a problem. But there's nothing wrong with the system that has a trial assignment in a court that does not handle cases in general, of the equal importance, of superior court cases. That's just a fact of history.

ASSEMBLYMAN ISENBERG: Is there any objection to the presiding judge arranging the calendars of the person under him or her so that the judges with talent hear the cases that are complex and those with less talent don't? Isn't that what happens now?

MR. BOYLE: No. I don't have any objection to that...

ASSEMBLYMAN ISENBERG: No?

MR. BOYLE: ...as long as...

ASSEMBLYMAN ISENBERG: No, it doesn't happen now in San Diego?

MR. BOYLE: Sure. Restate your question.

SENATOR LOCKYER: How are assignments chosen -- let's take this -- the pool of superior court judges, is it mainly a question of seniority, who gets to select which trial assignments they'll get, or to what extent does the PJ move people around?

MR. BOYLE: Well, the PJs vary throughout the judicial system, even within

counties. Sometimes it's in fact a rotation so you go from the good to the not so good. That's a problem. PJs have very limited power. They govern by consent.

We've been very lucky, by the way, and I know I've detected somewhat of a rejection when somebody says they think the system's working okay. I think it's been working fair. I can already see the looks. I think it's been working very well in San Diego because of the overall quality of the judiciary, and we've avoided certain problems. To be frank, speaking now as a prosecutor, certain types of cases don't get assigned to certain judges. That's a fact of life.

ASSEMBLYMAN ISENBERG: Right now.

MR. BOYLE: Right now.

ASSEMBLYMAN ISENBERG: And what's wrong with the system that treats, what, 140 judges...

MR. BOYLE: Lots.

ASSEMBLYMAN ISENBERG: ...down here?

MR. BOYLE: Lots.

ASSEMBLYMAN ISENBERG: You have a lot of judges. What's wrong with a system that allows those kinds of discretionary assignments but without this arbitrary distinction -- I perceive arbitrary distinction -- between superior and municipal?

MR. BOYLE: There's nothing wrong with that kind of a system if you have the right people running it. All systems work with good people, which will lead me to my final point.

What you're concerned with, the way I read SCA 3 at this point, is a dramatic revision, and it would be instantaneous that everybody is a -- every judge is a judge of general jurisdiction.

SENATOR LOCKYER: Actually, that's not accurate.

MR. BOYLE: Well, I'm sorry for misstating it. It seems to be the perception.

SENATOR LOCKYER: Well, there are those that want it to be immediately effective on some date, July 1st, '95, or what have you. At least in my mind, we would eliminate the constitutional barrier and then shift to the statutory discussion which would determine what would be the appropriate distribution of resources in a particular area and responsibilities and so on. It's a debate but don't presume there's an answer one way or the other.

MR. BOYLE: I understand. And actually it pleases me that it is not, perhaps not going to end up an instantaneous thing because that is the point.

My professional and personal objections would not be great if you were creating a new system for the judiciary in the State of California that was prospective. Existing municipal court judges, superior court judges, referees, commissioners, could apply, compete, seek appointment into it and feed into it. You know, none of us last as long as we'd like to, and it would be a new system. I'm just concerned about dramatic overnight change.

SENATOR LOCKYER: Well, we do grandmother the existing assignments. That's the most recent thought from Judge Warren's group, to try to accommodate those that don't want to get transferred.

MR. BOYLE: I see.

SENATOR LOCKYER: Thank you for your comments.

MR. BOYLE: Thank you very much.

SENATOR LOCKYER: Okay.

MR. TONY VITELLE: Senator Lockyer, good afternoon. It is unfortunately afternoon.

SENATOR LOCKYER: Wait. Don't tell us.

MR. VITELLE: Chairman Isenberg, Assemblypersons, Senator Watson, my name is Tony Vitelle. I'm the President-Elect of the Beverly Hills Bar Association. To my right are Kathy Meyers, the President-Elect of the Santa Clara County Bar Association, and Dave Paternak, the Chairman of the Beverly Hills Bar Committee on the Judiciary. I have also been asked, or so deputized, to speak on behalf of Karen Kadush and the President of the Bar Association of San Francisco who was called away to testify at another hearing this morning.

At this point, I'd like to turn the mike over first to Mr. Pasternak who will also be speaking on behalf of the L.A. County Bar Association.

MR. DAVID PASTERNAK: If I can, I'll try and be brief. I should have brought lunch with me, I suspect.

As Tony said, I'm here on behalf of the Beverly Hills Bar. I've also been authorized to tell you the position of the Los Angeles County Bar Association.

The Beverly Hills Bar has some 3,000 members who are very concerned about the operation of the courts in our district. Our district, happily, the west district of the Los Angeles County, is very far along in terms of court coordination today. The Beverly Hills Bar incidentally, last year, contributed over $30,000 to refurbish a courtroom in Beverly Hills so that we now have superior court judge sitting in Beverly Hills for the first time.

The Beverly Hills Bar has examined SCA 3 and has voted to supported in concept. Some members of the Bar have expressed a concern about maintaining a diverse bench. The Los Angeles County Bar Association has also taken the same

position. It too has examined SCA 3. It has voted to support SCA 3 with the expressed concern about maintaining diversity on the bench. The Los Angeles County Bar is the largest voluntary bar association, not only in the state but in the country, with over 20,000 members.

Margaret Morrow, who spoke to you a few minutes ago on behalf of the State Bar, has really gone over the financial concerns. I'm sure all of you are familiar with the financial concerns that really are in part, at least, behind SCA 3. But I want to express another concern, and that's on behalf of clients and lawyers.

In Los Angeles County, we have something like 25 different trial courts right now, if you consider the justice courts, the municipal courts, and the superior court. There are more local rules than any lawyer in the county can possibly know. There's not one lawyer who knows all the local rules. As a result of that, we have a situation where lawyers are constantly forced to look up the rules and bill their clients for that time. It increases legal expenses for clients unnecessarily and it results in mistakes. Lawyers invariably make some mistakes and fail to comply with all the local rules. It results in a more inefficient judicial system.

It's the hope of both bar associations that I'm representing that through one consolidated court system, we will have a more simplified system in terms of the local rules. It will be more efficient for everyone and less costly for clients. With that, I'd like to turn it over to Kathy Meyer.

MS. KATHY MEYER: Thank you and good afternoon. I've been introduced as President-Elect of the Santa Clara Bar Association. We will be taking a position on SCA 3, hopefully in November or December. We've been waiting specifically for this hearing today to get some sense of where the Legislature was heading with the proposed amendments of the Judicial Council, as well as receiving a report from the National Center for State Courts. We actually have commissioned and paid for a study that's being done in our courts, and it will address, we believe, in a comprehensive fashion the costs associated with making consolidation consistent with Senator Isenberg's, Assemblyman Isenberg's, proposals.

We anticipate that that report is going to recommend an SCA 3 type proposal, and I had come today fully expecting to get the ammunition I needed to go back to my bar association and frankly back to my superior court bench and say, "You've got to get on board; this thing is moving; and we need to be a part of whatever changes are made so that this can be a workable solution for all of us."

I am concerned that there may not be a debate any longer. Thousands of hours have been devoted by the Judicial Council and respective committees as well as many hours by the local bar associations and the CAL, which is the California Association of Local Bars, in working with the Legislature to make this a workable amendment. And if the response back in the Legislature is that those amendments will not be accepted, I'm afraid there is going to be some retrenching of support which may be somewhat tenuous at this point.

I'm looking forward to seeing what the specific proposal will be and what the amendment will look like, what will be accepted by way of the proposed amendments. I had come here to urge you that you adopt all of the amendments recommended by the Judicial Council, simply because they did hone them down to the very essential changes that we think are necessary. And although I'm somewhat tired of that building analogy myself by the end of the day today, I think it's important that we look at the whole picture first because at least in our county, we have a very efficiently running court system. We're very pleased with the way things have come as a result of fast track. Consolidation efforts have begun. Our court calendar is current. And so for us to justify the need to make these changes, to make L.A. County or other counties perhaps that are not working so well to work well, then we need to look for other efficiencies as well that really mean financial efficiencies. How is this going to save money and make it more workable and more accessible? And I think in order to get a true assessment of those dollar figures, as you were talking about, Senator, to get some number before all of us that is a realistic number, you need to have all the parts in place. You do need to know maybe not the color of the paint but who the electrician is going to be and how those things are going to be worked through so that we have a meaningful figure, a meaningful assessment, of what the cost throughout the entire system is going to be. Thank you.

SENATOR LOCKYER: If I were to say you can't begin, you can't file a complaint, until you know what the outcome of the proceeding is going to be in the trial, would that make any sense to you?

MR. PASTERNAK: Depends on whether you win or lose. (Laughter)

MS. MEYER: I don't want to abort the question. I don't think that it needs to get down to the fine-tuning. I know that you were making a comment earlier, Senator, about the fact that we're down to the rules of court. But those things cost money. And I think that it's wonderful. And I think the best way to handle this is to come in, take a picture in time, and develop everything that can be developed at one time so that we do it efficiently,

effectively.

Senator Lockyer, you may be around for another hundred years but you may not, and there has to be someone there.

SENATOR LOCKYER: That's already been determined. (Laughter)

MS. MEYER: Exactly.

SENATOR LOCKYER: It's five, max.

MS. MEYER: Five, max, that we can't count...

MR. PASTERNAK: Yeah, but they're going to be heavy-duty five years. (Laughter)

MS. MEYER: I figured that you might rear your head somewhere else, Senator. But I thought that given that circumstance, we need to do this while we have...

SENATOR LOCKYER: I thought I'd run for the bench in Santa Clara County.

MS. MEYER: We'd be glad to have you.

SENATOR LOCKYER: Wait and see. (Laughter)

MS. MEYER: That we do do this at a time when all of us, with the maximum amount of information and education, try to address as many problems as possible. That's the only intelligent way to handle this. And we're trying to do this, I think, in a concerted effort where we now look at all the possible ramifications, make the changes now, and move together to try to resolve this, so that we can have a workable amendment that really does meet the needs that I think that you were looking for when you started, Senator.

SENATOR LOCKYER: And I hope we'll be able to provide, for all of us, as clear a fiscal analysis as possible. It'll never be obviously as detailed as people would wish. But hopefully that will be more information than we currently possess.

SENATOR WATSON: I just wanted to ease your thinking right at the current time that the Senator put this SCA 3 out in front of all of you. And believe me, it will get thorough debate; it will be amended. I am sure a lot of the work that has been done will be considered because those of us who sit on that policy committee in both houses will certainly look at every aspect of a major change. And so don't think that because we're not dealing with all the details now that these details will not become public and be discussed. They certainly will be. And some of the members will have concerns like I do about certain aspects of the bill and we will continue to raise those.

So this bill will be up at the -- I don't know if the author's going to go forward. We go back in January, and we have long hearings. We have witnesses like yourself that will come to present their position. If the work is already

done, and we have seen it, you're ten miles ahead of everyone else. So just know that what you've done will not be in oblivion. We definitely will pay attention to it; we'll debate these provisions. And I'm sure when a bill gets out of our committee, it will be thoroughly debated.

SENATOR LOCKYER: I should mention that what Senator Watson's indicated is particularly true of whatever the statutory implementation issues are, which probably will involve literally dozens of bills that deal with voting rights acts and court administration and salaries and a whole bundle of things that have been mentioned, 995 motions, whatever. There's a whole bunch of things. But at least as a matter of general legislative expression, with respect to the SCA, it's had seven votes; it's awaiting its last vote, and there has never been a dissenting vote cast. I think that speaks to the general feeling in the Legislature that the concept at least is a sound one.

I've been trying to persuade people that every time we get drawn into a debate about the details, it makes it less likely for the concept to get adopted. And emphasizing detail is really an indirect way of saying let's not do anything. Most people that want certainty aren't really saying that. But I think as a practical matter that what we as legislators can contribute to this discussion more than some from the different world of the judicial branch is a greater sensitivity to or understanding of what the electorate does and why. It's simply asking for defeat to demand that all these things be understood with great specificity and detail. Every detail brings new support and opposition, and it gets magnified every time there's a new decision that gets made. So mainly what I've been saying is if you think this is fundamentally a good idea, you have to just trust yourselves to go forward. If you have to know all the details, you might as well just stop and not bother and stay in the current system because that's where you'll wind up anyhow. Please.

MR. VITELLE: If I can make an observation, Senator, having a shared experience, at least with those of us here at the table with the representatives of the State Bar who spoke earlier, who have worked with these two committees over the years and know the extent to which both committees have reached out to the Bar to request input and assistance and study and the like to help move this process along. I think there is a misperception on the part of many of the witnesses who've testified earlier in opposition to the concept who seem to fear that some terrible vehicle will be visited upon them from afar, sort of like the emperor is all powerful and far away in Sacramento. That isn't really the dynamic or the reality. This is a participatory process. There has been an ongoing dialogue. We appreciate that fact. I speak, I

think, on behalf of everybody who's participated from the Bar side in this exercise. I appreciate the commitment that you and inferentially Chairman Isenberg have given, that that dialogue will continue over time. We have thousands of person-hours invested in working on this particular issue, some of us in multiple capacities -- local Bar, Committee on the Administration of Justice, CAL, Bench Bar Coalition. And we want to offer to to the committees our commitment to continue that dialogue and to continue providing support to the exercise to try to design the best damn system we can design for our state and for our population.

To that end, as I've said earlier, Karen Kadush who couldn't be here asked me to make a few comments on behalf of San Francisco. Although the San Francisco courts have not yet officially taken a position, the committee's heard from Judge Wonder earlier this morning. And as far as BASF is concerned -- again, BASF, like Beverly Hills, like L.A. County, like Santa Clara -- has voted to support SCA 3 in concept. BASF concurs in the Warren report and its suggested amendments. The committee's heard some of the reasons why there is perhaps some need for some of those amendments, particularly, for example, in the appellate review area. So it's not a matter of trying to fine-tune it in the Constitution because I think all of us concur generally with the idea that the Constitution should be simple and implementation should be done legislatively rather than by initiative.

With that, unless the committee has further comments, in the interest of trying to expedite and get us out of here, I thank you on behalf of all of us for your time and your consideration.

SENATOR LOCKYER: Thank you for your ongoing helpfulness.

Are there others that either are on our list or who are provoked to comment that weren't on the list but would wish to speak? Are members desirous of making any concluding comments of any sort?

SENATOR WATSON: I just wanted to say that last speaker capsulized what I was trying to say, and I think what you've been trying to say. And I wanted to ease the minds of those who think that we're going to visit upon them something that is dark and sinister. We won't. It's just that we know there'll be hundreds of bills defining what we meant by the initiative. That's the way it is. That's the way it always has been. I do want to assure everyone out there that there will be an opportunity to raise the issues, and we will hear them. Certainly I don't think the chairs were trying to preclude people from raising these details. It's just that what goes in the SCA 3, or the Constitutional Amendment, might not deal with these exact details. They might be dealt with

in follow-up legislation that truly will elaborate upon what is passed in a constitutional amendment.

SENATOR LOCKYER: Yes.

ASSEMBLYMAN GOLDSMITH: Just several things, Mr. Chair. On behalf of Tom Connolly and myself, I'd like to thank my colleagues for coming to San Diego and joining us and for having us here in this, in our community.

SENATOR LOCKYER: It's a Senate tradition. We like San Diego and always try to come here.

ASSEMBLYMAN GOLDSMITH: We're fortunate to have you here, and I really appreciated hearing from the San Diego bench.

I have an interesting anecdote. I happen to be co-authoring a bill with Senator Lucy Killea to create a unicameral Legislature which, of course, is a consolidation of our Legislature. And in talking with various members, we got down to details as to where people would sit on the floor. It is not unusual to want to know the entire picture before you buy into something. I think that's very understandable.

The key here is a direction. And I think that one of the things that I'd like to see as this concept progresses is the ability for the regions to have some flexibility, and that does support what Senator Lockyer is talking about, as far as keeping the Constitution a little bit less encumbered with the details, for example, the concept with branch courts within a district. If we had a very rigid set of where the branch courts would be and it's established in the Constitutional Amendment itself, we would limit the ability to San Diego County, for example, to maintain branches in various areas in a little bit different scenario administratively. I think there needs to be built into there some flexibility. And as far as the direction is concerned, I think there is very strong support within the Legislature for this concept.

SENATOR LOCKYER: Just to conclude, I would add that the comment I hear most often from judicial officers and administrators is "why don't you folks in the Legislature give us greater authority and ability to manage our own affairs?" That's fundamentally what this proposal is; it confers greater flexibility for you to manage your own affairs.

Now when it's suggested that the Legislature shouldn't care or be involved, then I think you're going to find some resistance from a co-equal branch. But at essence this amendment is meant to be supportive of your efforts. I have a profound respect for the judicial branch and the individuals who are conscientious servants within it. I know that this discussion will continue.

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