

Supplement to the  
Appendix to the Journal  
of the Assembly

LEGISLATURE OF THE STATE OF CALIFORNIA  
1969 REGULAR SESSION

REPORTS

January 6, 1969–September 10, 1969



HON BOB MONAGAN  
*Speaker*

HON W CRAIG BIDDLE  
*Majority Floor Leader*

HON CHARLES J CONRAD  
*Speaker pro Tempore*

HON JESSE M UNRUH  
*Minority Floor Leader*

JAMES D DRISCOLL  
*Chief Clerk of the Assembly*



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Committee Report

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Problems in the Administration of Justice in California

Problems in the Management of the Courts of California



R E P O R T  
OF THE  
SELECT COMMITTEE ON CAMPUS DISTURBANCES

May, 1969

MEMBERS

Victor V. Veysey, Chairman	Carlos J. Moorhead
Frank Murphy, Jr., Vice Chairman	Newton R. Russell
Willie L. Brown, Jr.	Leo J. Ryan
Bill Greene	John Stull
Jerry Lewis	John Vasconcellos

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PUBLISHED BY THE  
ASSEMBLY  
OF THE STATE OF CALIFORNIA

Hon. Bob Monagan, Speaker	Hon. Charles J. Conrad, Speaker pro Tempore
Hon. W. Craig Biddle, Majority Floor Leader	Hon. Jesse M. Unruh, Minority Floor Leader
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LETTER OF TRANSMITTAL

May 12, 1969

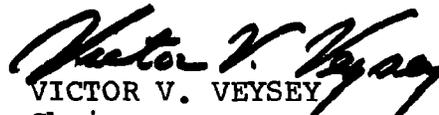
Honorable Bob Monagan  
Speaker of the Assembly  
California Legislature  
State Capitol, Sacramento

Dear Mr. Speaker:

In accordance with your direction, the Select Committee on Campus Disturbances, appointed by you on March 5, 1969, has made findings and agreed upon recommendations which it believes will be effective in minimizing the symptoms and remedying the causes of campus disorders in state educational institutions in California.

The attached document, which I respectfully submit, constitutes the report of the Select Committee. We believe our assignment has been completed.

Sincerely yours,

  
VICTOR V. VEYSEY  
Chairman

VVV:tsr



## FOREWORD

Events involving extreme violence and strong public reaction generally elicit differing viewpoints from responsible people. The Select Committee on Campus Disturbances, in studying the vexing and controversial disruptions to education in California, has indeed found several viewpoints.

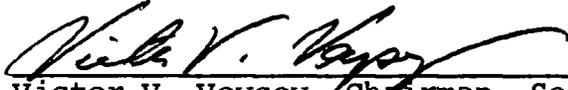
As members of the Committee, we represent varying segments of the public of California and represent both the Education and Criminal Procedure Committees of the Assembly. We have differed, yet we find ourselves able to agree, in an overall sense, with the tenor of the report. California must undertake, simultaneously, two projects: (1) minimization of violence and disruption in our educational institutions, and (2) correction of the causes of unacceptable behavior. Neither effort alone can succeed.

Greatest thanks goes to Assemblyman John Stull for leading his Subcommittee on Educational Environment in the intensive study which developed the facts and evidence for this report. Assemblyman Frank Murphy, Chairman of the Assembly Committee on Criminal Procedure, and the members of his Committee brought fine legal thinking and expertise to the project.

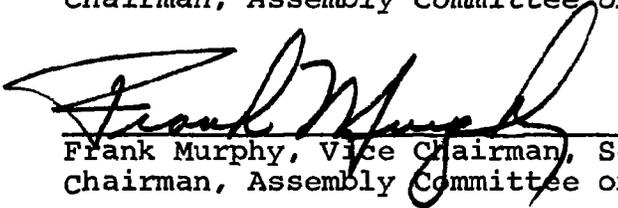
John Mockler, Consultant to the Assembly Committee on Education, has headed the competent staff work. Tom Carroll, Consultant to the Assembly Committee on Criminal Procedure, has made extensive contributions to the model bills. Vivian Nance has contributed countless hours organizing this report and serving as Committee Secretary.

Our thanks goes to Jerry Evans and Joan Gibson Reid for editorial assistance, to Legislative Counsel, Assembly Committee on Education staff, and the Assembly Steno Pool for preparation of the manuscript. Above all, we thank the many persons from the field of education who came forward with information and opinions.

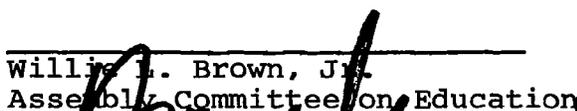
The signatures below indicate our individual acceptance and endorsement of the report. Each of us would state some sections with different emphasis, and some find points on which we dissent. That dissent is expressed in separate comments included in the appendices.



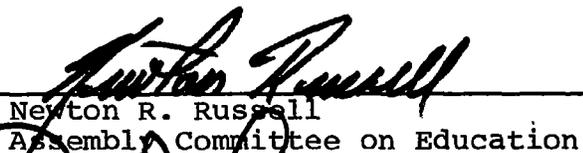
Victor V. Veysey, Chairman, Select Committee  
Chairman, Assembly Committee on Education



Frank Murphy, Vice Chairman, Select Committee  
Chairman, Assembly Committee on Criminal Procedure



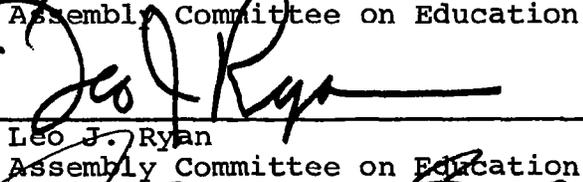
Willie L. Brown, Jr.  
Assembly Committee on Education



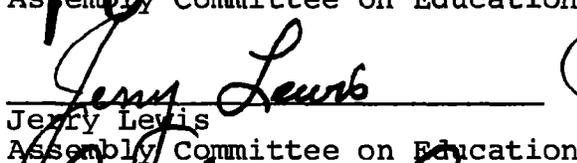
Newton R. Russell  
Assembly Committee on Education



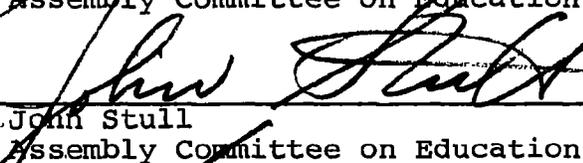
Bill Greene  
Assembly Committee on Education



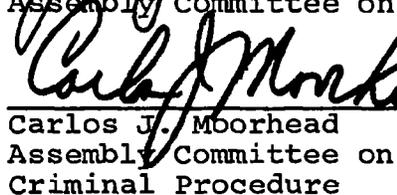
Leo J. Ryan  
Assembly Committee on Education



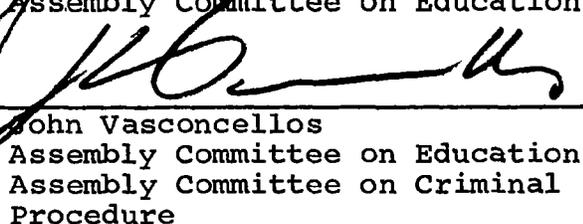
Jerry Lewis  
Assembly Committee on Education



John Stull  
Assembly Committee on Education



Carlos J. Moorhead  
Assembly Committee on  
Criminal Procedure



John Vasconcellos  
Assembly Committee on Education  
Assembly Committee on Criminal  
Procedure

## FINDINGS

The Select Committee on Campus Disturbances finds that:

1. In California as well as across the nation the institutions of higher education and the public schools are in a state of crisis. The level of public confidence in state-supported educational institutions has diminished significantly.
2. The low level of public confidence appears to relate to disorder and disruption of the campuses characterized by overt acts of violence, walk-outs, sit-ins, strikes and physical intimidation of students, faculty, and administrators. The failure of those in charge to cope with violent offenders, and to respond to the legitimate need for change has diminished public confidence.
3. The pursuit of reason, truth and justice in higher education cannot co-exist with violence, intimidation, coercion and threats. Those who engage in violence have no place on campus.
4. Acts of overt violence which occur in campus disruptions are declared illegal by the Penal Code. Analysis of the law by the Legislative Counsel and the Attorney General indicates that such laws are generally sufficient if properly utilized. The existing laws of the state have not been used in a judicious, uniform and expeditious manner.
5. Tactics used by those engaged in confrontation situations can best be controlled by judicious application of campus rules, regulations and the law based upon prior knowledge

of possible confrontations. Campus officials need clear authority to protect educational institutions from individuals who have engaged in illegal campus disturbances and who return with the intention of illegally disrupting the campus.

6. Academic discipline, properly implemented, is preferable to law enforcement action on campus in dealing with students and faculty. Law enforcement personnel should be used on campus when academic procedures are not used or cease to be effective. The campus must not be a sanctuary for law violators.
7. Those in positions of responsibility as well as the general public must distinguish between: a) lawful forms of dissent and social protest protected under the Constitution, and b) unlawful activities involving the use of violence or the threat of violence to force concessions from properly constituted authority.
8. Administrative procedures dealing with campus problems and disruptions have often been slow, cumbersome, and relatively ineffective. The governing boards, administrators, and faculty must share responsibility for failure to:
  - a) anticipate and respond effectively to legitimate proposals for important educational reforms, and
  - b) utilize campus rules and statutory authority to deal quickly and decisively with those who perpetrate illegal acts on campus.
9. Some faculty members in certain instances have either covertly supported or openly participated in illegal actions designed to force concessions from the administration.

Such actions are in opposition to the concept of free, open, and legitimate discussion of ideas and dissenting opinions.

10. Administrators and the governing boards of the University of California and the California State Colleges have frequently failed to develop effective two-way channels of communication with students, faculty and the public. Students and faculty feel they have been unable to obtain a full hearing for their opinions on curriculum, administrative processes, and disciplinary procedures. Students and faculty often have been unreceptive to and disdainful of public opinion, and the financial and procedural problems facing campus officers and their governing boards.
11. The majority of students do not agree with the extreme tactics of militant students; however, by failing to support legitimate policies and by failing to exercise peer restraint on those who create disruptions, the majority has allowed extremists to foment disorder and to damage the cause of higher education.
12. Students and others feel that the quality of instruction is inadequate. Too little emphasis is placed on the needs of students. Too much emphasis is placed on faculty prerogatives, research activities, and institutional status.
13. College and University admission standards are generally rigid. Student counseling has failed to meet the needs of many students.  
  
Students from low-income backgrounds who wish to go on to higher education are inadequately prepared. Educational

opportunity programs developed by the University of California, the California State Colleges and several junior colleges, though relatively new and experimental, hold promise of meeting some of these problems by expanding educational opportunities for disadvantaged students.

14. Sustained disorders have forced local government to pay substantial sums for law enforcement. Costs to the City and County of San Francisco for a period of three and a half months exceeded \$700,000. No method of reimbursement other than local taxes is now available to local jurisdictions for this unforeseen and unbudgeted expense.
15. Campus administrators, faculty and students at several state colleges, University campuses and junior colleges successfully avoided outbreaks of violence or serious disturbances which have plagued other campuses. They have succeeded because of a willing response to real grievances, effective communication among the various segments of the academic community, broad participation in campus policy decisions, and enforcement of campus rules and laws of the state.

The Select Committee on Campus Disturbances recommends that the following statutes, administrative actions and legislative studies be acted upon as soon as possible. Where noted the Committee has included in the appendix of this report model legislation to accomplish the purposes of its recommendations.

Legislation: Penal Code

1. Legislation which would make returning to campus a misdemeanor if a student has been suspended and as part of his suspension told not to return to campus without the permission of the Chief Administrative Officer. (See Appendix A 1)
2. Legislation which after the declaration of an emergency would allow the exclusion of those who in the opinion of the Chief Administrative Officer were intent on committing a disruptive illegal act (See Appendix A 2) or:
  - 2a. Legislation which would allow the exclusion of those who had committed an illegal act likely to interfere with operation of a campus. (See Appendix A 2 A)
3. Legislation clarifying misdemeanor disruptive acts already in the code to make them apply directly on campuses. This would include mandation of penalties for repeat offenders. (See Appendix A 3)
4. Legislation which would equate the penalties for assaults against campus police officers with the penalties for similar acts committed against regular law enforcement officers. (See Appendix A 4)

5. Legislation restricting, under reasonable conditions, the use of specific sound amplification devices to certain areas. (See Appendix A 5)

Legislation: Education Code

6. Legislation which would provide that state scholarships, loans and grants for education be withdrawn after appropriate hearing from students convicted of crimes arising out of campus disturbances. Such students would be ineligible for such funds for two academic years. (See Appendix A 6)
7. Legislation requiring that any student or faculty member who has been convicted of a crime arising out of a campus disorder shall have a prompt hearing and have appropriate penalties assigned by the educational institution. A report of the disposition of such cases shall be made promptly to the statewide governing boards of such institutions. (See Appendix A 7)
8. Legislation that would require the University, state colleges, and junior colleges to set forth specific rules and regulations along with specific academic penalties for violations of such rules and provide each student with such materials prior to entrance into such institutions. (See Appendix A 8)
9. Legislation which would provide partial state subventions to local government for law enforcement costs directly associated with sustained emergency action necessitated by

campus disturbances. Such subventions would be available on a 50 per cent matching basis in emergency conditions after the costs to local government exceeded \$100,000 per quarter. (See Appendix A 9)

General Recommendations:

10. Governing boards, campus officials and school administrators should be promptly and fully informed of all existing laws relevant to the maintenance of order on the campuses, (including the new laws enacted at this session of the Legislature) and the most effective means of enforcing such laws. An immediate effort should be made by statewide governing bodies to inform local school boards of their authority to adopt and enforce rules and regulations under Penal Code Section 602.9. (Appendix A 10)
11. Governing boards and campus officials should establish effective communication among students, faculty, administrators and members of the governing boards. Special emphasis should be given to the transmission of ideas and attitudes concerning proposed curriculum changes, student participation in campus policy decisions and student and faculty grievances. Students should be represented on campus decision-making bodies. (Appendix A-11)
12. Identifiable state support should be provided for Educational Opportunity Programs. Such programs should have as their objective the elimination of economic, educational, geographic and motivational barriers to higher education for low-income and minority group

students. Particular attention should be given to the major role of the junior colleges in this regard, consistent with reasonable freedom of choice for the students. All such support should be budgeted on a program basis, with annual evaluations as to the cost and success of each project.

13. The Regents of the University of California and the Trustees of the California State Colleges should strengthen the importance and quality of undergraduate instruction on each campus of the University and state colleges in relation to graduate instruction and research, and outside activities of staff.

Areas For Further Legislative Study:

1. Faculty tenure laws
2. Teacher strikes
3. Procedures for faculty and students to communicate with governing boards
4. Procedures for governance of the higher education system
5. The relationship of size of institutions and depersonalization of the educational process
6. Alternatives to the line item budget for the California State Colleges (Appendix A-12)
7. State subventions to local government for law enforcement expense for controlling disturbances on state college and University campuses

REPORT OF THE SELECT COMMITTEE ON CAMPUS DISTURBANCESThe Growth of Campus Disturbances

During the past five years California's extensive system of public and private higher education has been assailed by a series of violent disorders. Beginning in 1964 with the Free Speech Movement on the Berkeley campus of the University of California, disorders have since spread, in one form or another, to most of the major University and state college campuses, and to several private colleges and universities. The most serious disorders have occurred on the Berkeley campus and the campus of San Francisco State College. Several other state colleges, junior colleges and University campuses have been the scene of intermittent disorders which have flared into violent clashes between students, administrators, faculty and police, resulting in physical injuries and serious property damage.

It is easy to exaggerate what has happened on specific occasions. It cannot be denied, however, that violence and the threat of violence have rocked the very foundation of higher education in this state. Moreover, unrest, and disorder have begun to spread to the high schools and junior high schools in several metropolitan areas.

California is not alone in this trouble, yet this state has been the scene of several of the most violent, disruptive and prolonged outbreaks of campus disorder. The governing boards, administrators, and faculties of our colleges and universities have generally been unprepared for these events. In the absence of previous experience, their response to the internal and

external assaults on their institutions has been confused. It is not surprising that the people of the state have grown impatient with apparent disorder and lawlessness and that they demand prompt and effective action on the part of state officials.

### Background and Characteristics of Campus Disorder

Colleges and universities have a long history of turbulence despite their generally peaceful image. In American history there are examples of violent clashes between students and townsmen and between students and police, as well as sustained efforts by students to close down campuses in connection with one cause or another.

California's institutions of higher education have had no monopoly on disorder and challenges to authority in recent years. Few major institutions across the country have been exempt, whether they are public or private, large or small, liberal or conservative. A primary characteristic of the present campus turbulence is that it is nationwide and worldwide in its scope and impact.

Nevertheless, it is on California's campuses that serious clashes have occurred, and it is for California's institutions of higher education that we seek effective means of ending disorder and violence.

It has been estimated that 65% to 70% of all high school graduates in California go on to some form of higher education. Total enrollment in higher education has risen from just over 1% of total civilian population 40 years ago to approximately 5%

today. Total enrollment in higher education as a percentage of the 18-24 age group has risen to nearly 47% in California as compared with a figure of 33% nationwide. Obviously, the rapid growth and extensive opportunity which these figures suggest have also created serious stresses and strains for California's colleges and universities.

The rapid growth in facilities and manpower to run these institutions has placed unprecedented demands on our educators in terms of effort, imagination, flexibility and foresight. When we add the vast increase in specialized knowledge during the same period, it is obvious that merely keeping pace has been difficult. At the same time, students, faculty and society have increased their expectations as to the output and benefits of higher education.

The tax-paying public finds great difficulty in reconciling the rapid expansion of higher educational opportunity in California, which has been achieved only by a vast drain on tax resources, with the violent rejection and disruption of that opportunity by groups of students.

It is also evident that student protests have occurred as part of a deep social unrest affecting much of our world. Student activists design their actions specifically to shock and anger a complacent society. Some do not stop at shocking the public. They use violent actions to indicate their displeasure, yet they capitalize on general student concern. Even though the majority of students do not differ from the majority of adults in deploring disruption, violence and coercive tactics, a large percentage appear to believe in many of the causes espoused by

campus activists. At the base of most of the disturbances there are causes with which many students identify -- opposition to the war in Viet Nam, the ending of racial discrimination both on and off campus, the fight against poverty, and greater participation in decisions which affect each individual.

#### The Response of the California State Assembly

At the outset of the 1969 Session of the Legislature, Assembly Speaker Bob Monagan and the new Chairman of the Assembly Committee on Education, Victor V. Veysey, appointed a special Assembly Education Subcommittee to initiate public hearings on the causes of campus disorders and effective measures to bring such disorders to a halt. This Subcommittee on Educational Environment, led by Chairman John Stull, held seven public hearings, at which representatives of all factions concerned were invited to state their views concerning the problems of campus stability. In nearly forty hours of testimony, members of the Subcommittee, joined by numerous other legislators from both houses of the Legislature, heard from the chief administrators of the University of California, the California State Colleges and the California Community Colleges, students, representatives of faculty groups, law enforcement officials, and representatives of local school boards. Representatives of the Board of Trustees of the California State Colleges and the Regents of the University of California also appeared before the Committee.

Because legislative remedies appeared to include both Education Code and Penal Code responses, Speaker Monagan formed

a Select Committee on Campus Disturbances, made up of the members of the Education Subcommittee on Educational Environment, and three members of the Assembly Committee on Criminal Procedure, led by Assemblyman Frank Murphy. Assemblyman Veysey was designated chairman of the Select Committee. The task of the Select Committee has been to carry forward the work of the Subcommittee on Educational Environment, and, with the benefit of the expertise and experience of the members of the Criminal Procedure Committee, to deal with the large number of bills which had been introduced concerning this subject. Specifically, the Select Committee was charged with the responsibility of recommending the approaches necessary to solve the problem of campus disorders. This charge goes beyond legislation designed for disciplinary purposes to include a review of possible long-range policy matters necessary to bring true order to the campuses of the colleges and universities of this state.

#### Dissent versus Criminal Disorder

The lines between legitimate protest, confrontation and violence are often vague but must necessarily be defined. Dissent is frequently expressed by students and faculty in the form of demonstrations. There is no limit to the forms that such demonstrations take--a picket line, parade, march or silent vigil. Demonstrations sometimes result in disruptions, at which point administrators, governing boards, and police are confronted with serious decisions. Demonstrations which have the highest potential of disruption are well-known to the average television viewer -- the sit-in, mill-in, lock-in and chain-in. These can

take place without disruption of the normal educational routine; however, major demonstrations usually become disruptive and violent.

While the immediate decision on where to draw the line in a particular situation must be made by those administrators directly concerned, it is important to know the constitutional limits of expression.

These limits can be broadly stated by the following principles:

- 1) Our Constitution protects the right of protest and dissent within broad limits; it protects the right to organize people for protest and dissent; it protects the right to assembly, to picket, or to stage mass demonstrations if these activities are peaceable and if the protesters comply with reasonable regulations designed to protect the general public without substantially interfering with effective protest.
- 2) If any of the rights to dissent are exercised with the intent to cause unlawful action (a riot, or assault upon others) or to cause injury to the property of others (such as a stampede for exits or breaking of doors or windows) and if such unlawful action or injury occurs, the dissenter is not protected. He may be arrested and properly charged and convicted of law violation.
- 3) If the right to protest, to dissent, or to assemble peaceably is exercised so as to violate valid laws reasonably designed and administered to avoid interference with others, the Constitution's guarantees will not shield the protester. For example, he may be convicted for engaging in marching or picketing which blocks

traffic or for sitting in an official's office or in a public or private place and thereby preventing its use by the occupant or others.

It would appear, then, that confrontation, which is the starting point of the massive sustained disorders on campuses, is a valid concept only if it does not deny the protected rights of others.

Disruption on campus is not a simple problem. A protest may begin as a rally against racism on campus and escalate to the destruction of a campus building. Students who may have been in favor of the original intent of the rally may be swept up in the latter action.

There is no doubt that all forms of violence are forbidden by campus regulation and by statutory law. Nor is there any doubt that dissent and demonstration within legal bounds are constitutionally guaranteed rights. Unfortunately, students who are impatient for change often begin with dissent and end in violence.

#### Testimony as to the Immediate Causes of Campus Disorder

Each group which testified before the Subcommittee and the Select Committee offered a different perspective on the causes of recent campus disorders.

Because of the multiplicity of causes, various solutions were proposed by the persons concerned with such disorder. Students, faculty, governing boards, administrators, law enforcement officials, the Legislature and the public have all made differing responses to the challenge.

Procedures for controlling campuses, including cooperation with law enforcement, curriculum changes, student and faculty discipline and student involvement, have been the concern of all sectors.

#### Response of Faculty

Faculty groups appearing before the Educational Environment Subcommittee noted that it was more important to attack the underlying causes of disorder than the symptoms which had been exhibited through confrontations. They agreed that in many instances their own lack of action had been a cause of many confrontations. They asked for more funds for innovative programs and for more flexible use of present funds. In addition, faculty groups stated that many problems had been caused by the lack of an effective faculty voice in campus governance. Each of the faculty organizations suggested that if its particular approach were used less disorder would occur. Their suggestions ranged from direct collective bargaining for faculty, to revisions in the State College Academic Senate and University Board of Regents.

#### Response of Students

The students from whom testimony was obtained summarized the principal causes of campus unrest as follows:

1. The institutions of higher education do not meet the needs of today's students in their quest for knowledge which will enable them to help their less fortunate fellowmen.

2. Although educational institutions are supposed to be critics of society and to propose change, they are reluctant to change themselves. For many students, this reluctance to change in higher education has resulted in their receiving an impersonal and irrelevant education.
3. Higher education in California has offered scant opportunity for certain minority groups and little is done to correct this.
4. While vast sums are being spent on hard sciences for new technology, much of it for military use, for lack of knowledge, our country cannot cope with the technology we have. The higher educational institutions are not willing to spend corresponding amounts in the social science area to solve this pressing problem.
5. Students feel they deserve a strong voice in policies which directly affect their lives.
6. The students say that results show that at the lower levels of education, children are not even provided with basic literacy standards.
7. Students believe their grievance procedures are archaic, unfair and frustrating.

#### Response of Law Enforcement Officials

Law enforcement officials testifying before the Subcommittee on Educational Environment indicated four major areas of concern:

1. That the costs of their involvement in sustained disorder have been high and that such costs should be paid by state subventions rather than by local taxpayers.
2. That legislation should be enacted which would make assaults against campus police officers carry the same penalties as assaults against regular law enforcement officials.
3. That additional support for campus law enforcement programs for personnel and equipment would be helpful.
4. That college campuses not become sanctuaries where laws cannot be enforced.

In addition, law enforcement officials expressed a desire for additional legislative tools which would allow exclusion of students and non-students from the campus as a preventive measure to the commission of illegal acts.

Law enforcement officials directly concerned with the disruptions at the University of California at Berkeley and San Jose State College stated that while they felt administrators had serious difficulties in controlling the first series of disruptions, it was their opinion that administrators were now serious about controlling such disruptions.

#### The Response of Governing Boards

After the 1964 FSM disruption at Berkeley, the Regents of the University of California adopted new procedures to deal with students. Among these was decentralization of authority subject to

general University-wide guidelines. Each Chancellor was to have more specific control over his campus. Since this 1964-65 action, the Regents have generally not determined particular regulations concerning campus behavior by faculty, staff or students. This held true until February of 1969 when the Regents, on the advice of the President, authorized a change in the interim suspension procedures. Until this time, administrators had the power of interim suspension, a procedure to disallow a student the privilege of attending classes pending the disposition of charges. Such a student, however, was still allowed to be present on campus. The 1969 changes allow administrators to forbid a student from being on campus for any reason unless he obtains specific permission. If a student violates such a suspension, he is subject to dismissal. According to administrators, this action has been effective in controlling the disruptive actions of students on campus.

The State College Trustees also responded to the crisis. In December, 1967, they set forth emergency regulations on the discipline of those interfering with educational activities. In January of 1968, these regulations were amended to provide that students found to have disrupted the educational program could be suspended, dismissed or otherwise disciplined as provided by law or campus regulations at the discretion of the president of each college.

In February of 1968, the Trustees promulgated general guidelines for the maintenance of the educational process. Academic freedom was not to include disruptive actions; the president was given full authority to work with other members of the academic

community to prevent such actions; students should participate in policy formulation of disciplinary procedures; formal hearing mechanisms should be developed and the president should develop working relationships with local police authorities.

On November 18, 1968, the Board of Trustees, by a resolution requested the President of San Francisco State College to open the college immediately, stated that all negotiations should be conducted through the ordinary channels of communication and decision-making, and reiterated that interference with the educational process could not be tolerated. Disciplinary action would be immediately instituted against anyone who used disruptive tactics.

Disturbances on the community college campuses have been treated in most cases as entirely local matters. The Board of Governors of the California Community Colleges, however, has acted to insure that all local boards are cognizant of laws and their power to initiate regulations under law to control overt student disorders. In addition, various junior college boards have responded with preventative measures, such as involving students in new programs and working with community groups to use the manpower of the junior college in a positive fashion. Other junior colleges have established specific rules and regulations concerning overt behavior. An example of local action can be found in the work done by the Imperial County Counsel (see Appendix D).

While the overwhelming majority of local public school boards have not experienced overt, disruptive behavior, certain large school districts have had sporadic outbursts of student

disturbances. It was not until March of 1969 that the Los Angeles Unified School District adopted new policies concerning student behavior. Under provisions of Penal Code Section 602.9, added to the statutes in 1968, local board regulations carry the weight of misdemeanor acts. Thus the regulations adopted by local school boards can carry significant weight in controlling student disruptions. Generally, this important fact is either not known by school boards and administrators or has not been used to advantage.

#### Response of Administrators

Testimony received from college and university administrators before the Subcommittee on Educational Environment indicated that they felt they had the basic tools to handle campus disruptions. They felt that campus discipline was preferable to legal penalties, and admitted to an initial but perhaps declining reluctance to call on police to control disruptions.

Statistics from Berkeley show the effects on students of campus discipline. Of 369 students who have been cited for violation of University regulations since the fall quarter of 1967, 332 were not cited again, 32 were cited one additional time, and 5 were cited twice more. Of these five, two have been dismissed, one has been suspended, and two hearings have not yet been completed.

Administrators stressed the underlying causes of such disorders and requested new funds for special programs to solve these problems. They indicated that they were not prepared for the intensity of the present campus disorders. Noting that it

was only in the recent past that such massive disorders had directly affected them, they indicated that new policies on student activities and student discipline, which are being formulated and put into action, would make the job of maintaining order much easier.

At San Francisco State, for example, at the onset of the disturbance, the campus had been in the middle of formulating a new student-faculty disciplinary procedure. When the disruption broke out, these policies had not been adopted, and consequently disciplinary proceedings were not instituted in a swift, judicious manner.

Other actions designed to meet the legitimate grievances of faculty and students were also slow in coming according to administrators. They attributed this in part to limitations on funds. According to some administrators, the stringent line item budget for the state colleges allows limited flexibility in re-allocating funds to immediate needs. Clearly, the state college budget is more restrictive than the University's single item budget, but the colleges have on occasion significantly departed from their approved budget (e.g., the EOP Program).

#### University of California and State Colleges Disciplinary Activities

Both the University of California and the California State Colleges presented detailed rosters of those who have been disciplined and/or arrested in the course of campus turmoil. An examination of some of these figures may provide a better understanding of the scope of the problem and of the active

disciplinary response of the institutions themselves.

From the text which follows and from Appendix E, it is evident that there is considerable delay between citation of a student for violation of law or rules, his conviction and any subsequent institutionally applied penalties. At the University of California at San Diego, for example, students who participated in actions in violation of campus rules had not been disciplined by the University nearly three months after such actions. While due process must be observed, such delays in imposing institutional sanctions diminish the public's confidence in the ability of higher education to maintain its own house.

At the University of California as a whole, between September, 1967, and December, 1968, there was a total of 455<sup>1</sup> academic disciplines and 200 arrests resulting in 190 legal convictions. Twenty-two of the arrests and 16 of the convictions were of non-students. Among the 455 academic disciplines, 279 were at Berkeley, 96 were at U.C.L.A., 50 were at San Diego, 25 were at Santa Barbara, four were at Santa Cruz, three were at Davis. San Francisco had one, and Irvine and Riverside had none. Eight of the academic disciplines were dismissals, 71 were suspensions (31 of these received suspended sentences), 159 were disciplinary probations and 220 students were reprimanded, censured or warned.

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<sup>1</sup>/ The data used in both the text of this section and in Appendix E relates only to the time span mentioned. Subsequent actions of the University and state colleges are not reflected in these figures.

Berkeley had most of the U.C. disturbances. In October of 1967, during "Stop the Draft" week, 81 students were cited for violating University rules. Sixty-three of these were judged guilty, resulting in 7 students suspended (5 suspended sentences), 10 disciplinary probations and 46 students reprimanded, censured or warned. In November, 34 students were cited for incidents related to the appearance of Dow Chemical Company and Central Intelligence Agency representatives on campus. Fifteen were found guilty, and the cases were resolved with one dismissal, 4 suspensions (3 suspended sentences) and 10 students who were reprimanded, censured or warned. Students protested these disciplinary actions with "mill-ins," during which 41 more students were cited and 30 were disciplined, 9 were suspended (4 suspended sentences), 11 were given disciplinary probations, and 10 were reprimanded, censured or warned.

Almost a year later, in October of 1968, there occurred the notorious Moses and Sproul Hall incidents following the Regents' action on the experimental course, Social Analysis 139 X. Academic discipline resulted in 7 dismissals, 31 suspensions, and 133 disciplinary probations. Legal action included, at Sproul Hall, 118 arrests and convictions of students, and 3 arrests of non-students, one of whom was convicted. At Moses Hall, action included 56 arrests with 53 convictions (one case was dismissed and two were still pending at the time of the report) and 19 arrests of non-students with 16 convictions. (One case is pending and 2 individuals were drifters who disappeared). Sentences for the Sproul Hall incident were \$125

finers and 30-day suspended sentences. At Moses Hall, sentences were 90 days in jail with 80 days suspended, one year of probation and a \$300 fine, which was to go to the University for the restitution of damages.

Further action has been taken this year at Berkeley as disorders have continued. Between January 1 and April 9, 1969, 174 arrests had been made. Between January 28 and March 6, the administration had taken action in 155 cases. The 35 completed cases have included 10 dismissals, 5 disciplinary probations, one case continued, 14 censures and 5 charges dismissed. The history of disorders at the other campuses at the University is included in the Appendix to this report.

At the state colleges, since September of 1968, there have been no "days of disorder" at a number of campuses. "Disorder" in this context, according to representatives of the Trustees, implies the presence of uniformed police other than on a stand-by basis, and/or the disturbance of college routine sufficient to attract an unruly crowd, disrupt classes, or cause property damage. There have been no "days of disorder" at the state colleges at Dominguez, Fullerton, Los Angeles, San Bernardino, Cal Poly at Pomona, Cal Poly at San Luis Obispo, Chico, Humboldt, Sacramento, San Diego, Sonoma and Stanislaus. Among those campuses which did experience disorder, San Francisco had 41 days; San Jose, 12; San Fernando Valley, 7; Long Beach, 3; Fresno, 1; and Hayward, 1. (The latter two were single, brief incidents).

At the state colleges as a whole, between January, 1968, and February, 1969, there were 64 academic disciplines (62 suspensions and 2 expulsions) and 1030 arrests including 6 faculty

members). By campus, there were 6 academic disciplines at San Francisco State (5 were lifted); none at San Jose; 16 at Cal State, Long Beach; 40 at San Fernando Valley State (all were reinstated pending hearings); 1 at Fresno State and one at Cal State, Hayward.

Regarding arrests, 584 occurred at San Francisco, 19 at San Jose, 347 at San Fernando Valley, 79 at Long Beach, one at Fresno and none at Hayward. Taking academic disciplines by campus, Long Beach had 14 suspensions, 2 expulsions and 79 legal arrests. San Francisco had 6 suspensions and 584 arrests; San Jose had 19 arrests; San Fernando Valley had 40 suspensions and 347 arrests; Fresno had one suspension and one arrest and Hayward had one suspension.

These disorders arose from varied causes--illegal demonstrations, protests of disciplines of fellow students, student and faculty strikes, sit-ins and "mill-ins," Black Students Union demands and the occupation and damage of buildings. Many of the students cited, both academically and legally, are still being processed, and final figures await the outcome of more conclusive action.

In general, it would appear from these figures that the administrative authorities at the state's educational institutions have taken some steps. It should be noted that the incidence of legal action does not correspond with the incidence of academic discipline; hence, the higher figures for arrests than for campus disciplinary action. It appears that administrators, while professing confidence in and a preference for

academic discipline over police action, have, in fact been unable or unwilling to control early and small disturbances, resulting in eventual massive police effort. Moreover, college and University disciplinary hearings, in many cases, await the resolution of court proceedings.

The University and state college authorities have made an effort to supply the Legislature with pertinent information and the most updated figures possible on these actions. Tables 1, 2, 3, 4 and Appendix E indicate in more detail the disciplinary actions taken, as well as arrests.

#### State Action on Equal Opportunity Programs

From the testimony of witnesses and other evidence presented to the committee, it is clear that the issue of equal opportunity in higher education will continue to be an important ingredient in the discontent expressed on many of the campuses. This occurs not only because many of our institutions have been slow to provide expanded opportunities, but also because the institutions have not made adequate preparations for doing an effective job. In some cases they have promised much more than they were able to deliver.

The matter of providing true equality of opportunity in higher education is a separable issue among the various causes and ingredients in campus disorders. There is a need for positive state action to ensure equal opportunity for students from all backgrounds who have the desire and ability to obtain a college education.

Existing programs at state colleges and the University

should be financially identified and evaluated for results. The California Community Colleges appear to be the logical facility to provide the maximum opportunity for the available funds.

Appendix G indicates the justification and results of current Educational Opportunity Programs.

APPENDIX A  
MODEL LEGISLATION



## TENTATIVE DRAFT

An act to add Section 602.6 to the Penal Code, relating to trespass on college or university property.

The people of the State of California do enact as follows:

Section 1. Section 602.6 is added to the Penal Code, to read:

602.6. (a) Every person who has been suspended, after a proper hearing, from a public junior college, state college, or the University of California, and as a condition of the suspension has been denied access to the campus or facilities, or both, of the institution for the period of the suspension, and has been so notified in writing, who knowingly enters upon any campus or facility of the public junior college, state college, or University of California to which he has been denied access, without the express written permission of the chief administrative officer of the campus or facility, is guilty of a misdemeanor.

(b) As used in this section, "chief administrative officer" means the principal, superintendent, president, or chancellor of the institution or his designated representative.

Req. #10219

TENTATIVE DRAFT

An act to add Section 22508 to the Education Code, to amend Sections 602.7 and 602.9 of, and to add Section 602.8 to, the Penal Code, relating to college or university property.

The people of the State of California do enact as follows:

Section 1. Section 22508 is added to the Education Code, to read:

22508. (a) As used in this section:

(1) "State university" means the University of California, and includes any affiliated institution thereof and any campus or facility owned, operated, or controlled by the Regents of the University of California.

(2) "State college" means any California state college administered by the Trustees of the California State Colleges.

(3) "Junior college" means any school established pursuant to Chapter 3 (commencing with Section 25500) of Division 18.5 of the Education Code.

(4) "Chief administrative officer" means the president of a state college, or the officer designated by the Regents of the University of California or pursuant

to authority granted by the Regents of the University of California to administer and be the officer in charge of a campus or other facility owned, operated, or controlled by the Regents of the University of California, or the superintendent of a junior college district or a school district maintaining a junior college.

(5) "Civil disturbance" means any occurrence of human origin on the campus or environs of a state university or state college or junior college which in the opinion of the chief administrative officer and the chief of campus police is beyond the capabilities of the college officials and campus police to effectively control and which unreasonably disrupts the orderly conduct of academic business or instruction.

(b) The chief administrative officer of any state university, state college, or junior college may issue a proclamation declaring a "state of emergency" whenever he finds that any of the following conditions exists on or near the campus or other facility in such magnitude that is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of the campus or other facility:

(1) Extreme peril to the safety of persons or property.

(2) Sabotage.

(3) Fire.

(4) Flood.

(5) Epidemic.

(6) Riot.

(7) Earthquake.

(8) Civil Disturbance.

Whenever the chief administrative officer finds that the conditions which constituted the basis for his declaration of the "state of emergency" have ceased to exist, he shall issue a proclamation terminating the "state of emergency."

Sec. 2. Section 602.7 of the Penal Code is amended to read:

602.7. (a) In any case in which a person who is not a student or officer or employee of a junior college, state college, or state university, and who is not required by his employment to be on the campus or any other facility owned, operated or controlled by the governing board of any such junior college, state college, or state university, enters such campus or facility, and it reasonably appears to the chief administrative officer of such campus or facility or to an officer or employee designated by him to maintain order on such campus or facility that such person is committing any act likely to interfere with the peaceful

conduct of the activities of such campus or facility or has entered such campus or facility for the purpose of committing any such act, the chief administrative officer or officer or employee designated by him to maintain order on such campus or facility may direct such person to leave such campus or facility, and if such person fails to do so, he is guilty of a misdemeanor and shall be punished upon a first conviction by a fine not exceeding five hundred dollars

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(\$500) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. If the defendant has been previously convicted of a violation of this section, Section 415.5, or of Section 602.9, then he shall be punished by imprisonment in the county jail for not less than 90 days and not more than six months, or by both such imprisonment and fine of not exceeding five hundred dollars (\$500), and shall not be released on probation, parole, or any other basis until he has served not less than 90 days.

(b) For the purpose of determining the penalty to be imposed pursuant to this section, the court may consider a written report from the Bureau of Criminal Identification and Investigation containing information from its records

showing prior convictions; and the communication is prima facie evidence of such convictions, if the defendant admits them, regardless of whether or not the complaint commencing the proceedings has alleged prior convictions.

(b) (c) As used in this section:

(1) "State university" means the University of California, and includes any affiliated institution thereof and any campus or facility owned, operated or controlled by the Regents of the University of California.

(2) "State college" means any California state college administered by the Trustees of the California State Colleges.

(3) "Junior college" means any school established pursuant to Chapter 3 (commencing with Section 25500 of Division 18.5 of the Education Code.

(4) "Chief administrative officer" means the president of a state college or the officer designated by the Regents of the University of California or pursuant to authority granted by the Regents of the University of California to administer and be the officer in charge of a campus or other facility owned, operated or controlled by the Regents of the University of California or the superintendent of a junior college district or a school district maintaining a junior college.

Sec. 3 Section 602.8 is added to the Penal Code, to read:

602.8. (a) The chief administrative officer of a campus or other facility of a junior college, state college or state university, as defined in Section 22508 of the Education Code, or an officer or employee designated by him to maintain order on such campus or facility, may, during the period of a "state of emergency" declared pursuant to Section 22508 of the Education Code, notify a person that consent to remain on the campus or other facility under the control of the chief administrative officer has been withdrawn whenever there is reasonable cause to believe that such person intends by unlawful means to disrupt the orderly operation of such campus or facility.

(b) Whenever consent is withdrawn by any authorized officer or employee other than the chief administrative officer, such officer or employee shall immediately submit a written report to the chief administrative officer. Such report shall contain:

(1) The name and description of the person from whom consent was withdrawn, including, if available, the person's address and phone number.

(2) A statement of the facts giving rise to the belief that reasonable cause existed to believe that

the person from whom consent was withdrawn intended to disrupt the orderly operation of the campus or facility by unlawful means.

If the chief administrative officer, upon reviewing the report, finds that there was reasonable cause to believe that the person from whom consent was withdrawn intended to disrupt the orderly operation of the campus or facility by unlawful means, he may enter written confirmation upon the report of the action taken by the officer or employee. If the chief administrative officer, or his specific designee for such purposes, does not confirm the action of the officer or employee within 24 hours after the time that consent was withdrawn, or by the commencement of the next day on which classes are regularly scheduled, whichever is later, the action of the officer or employee shall be deemed void and of no force or effect, except that any arrest made during such period shall not for this reason be deemed not to have been made for probable cause.

(c) Consent shall be reinstated by the chief administrative officer whenever he has reason to believe that the presence of the person from whom consent was withdrawn will no longer constitute a substantial and material threat to the orderly operation of the campus or facility. In no case shall consent be withdrawn for longer than two weeks from the date upon which consent

was initially withdrawn. The person from whom consent has been withdrawn may request a hearing on the withdrawal within the two-week period. The chief administrative officer shall grant such a hearing not later than five days following the request for the hearing.

(d) Any person who has been notified by the chief administrative officer of a campus or other facility of a state college or state university, or by an officer or employee designated by the chief administrative officer to maintain order on such campus or facility, that consent to remain on the campus or facility has been withdrawn pursuant to subdivision (a) and who has not been notified that such consent has been reinstated, and who willfully and knowingly enters or remains upon such campus or facility during the period for which consent has been withdrawn, is guilty of a misdemeanor. This subdivision does not apply to any person who enters or remains on such campus or facility for the sole purpose of applying to the chief administrative officer for the reinstatement of consent or for the sole purpose of attending a hearing on the withdrawal.

(e) This section shall not affect the power of the duly constituted authorities of a state college or state university to suspend, dismiss, or expel, any student or employee at such university or college.

Sec. 4. Section 602.9 of the Penal Code is amended to read:

602.9. (a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of such school or disrupt the school or its pupils or school activities, and who remains there, after being asked to leave by the chief administrative official of that school or any designated agent of the chief administrative official who possesses a standard supervision credential or a standard administration credential or who carries out the same functions as a person who possesses such a credential or, in the absence of the chief administrative official, the person acting as the chief administrative official, is guilty of a misdemeanor and shall be punished upon a first conviction by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. If the defendant has been previously convicted of a violation of this section, Section 415.5, or of Section 602.7, then he shall be punished

by imprisonment in the county jail for not less than 90  
 ✓days and not more than six months, or by both such  
 imprisonment and fine of not exceeding five hundred dollars  
 (\$500), and shall not be released on probation, parole,  
 or any other basis until he has served not less than 90 days.

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(b) For the purpose of determining the penalty to be imposed pursuant to this section, the court may consider a written report from the Bureau of Criminal Identification and Investigation containing information from its records showing prior convictions; and the communication is prima facie evidence of such convictions, if the defendant admits them, regardless of whether or not the complaint commencing the proceedings has alleged prior convictions.

(c) As used in this section:

(1) The term "school" ~~as used in this section~~ means any elementary school, junior high school, or senior high school, ~~or junior college.~~

(2) The term "lawful business" as used ~~in this section~~ means a reason for being present upon school property which is not otherwise prohibited by statute, by ordinance, or by any regulation adopted pursuant to statute or ordinance.

TENTATIVE DRAFT

An act to amend Sections 602.7 and 602.9 of, and to add Section 602.8 to, the Penal Code, relating to college or university property.

The people of the State of California do enact as follows:

Section 1. Section 602.7 of the Penal Code is amended to read:

602.7. (a) In any case in which a person who is not a student or officer or employee of a junior college, state college, or state university, and who is not required by his employment to be on the campus or any other facility owned, operated or controlled by the governing board of any such junior college, state college, or state university, enters such campus or facility, and it reasonably appears to the chief administrative officer of such campus or facility or to an officer or employee designated by him to maintain order on such campus or facility that such person is committing any act likely to interfere with the peaceful conduct of the activities of such campus or facility or has entered such campus or facility for the purpose of committing any such act, the chief administrative officer or officer or employee designated by him to maintain order on such campus or facility may direct such person to leave such campus or facility, and if such person fails to do so, he is guilty of a misdemeanor and shall be punished upon a first conviction by a fine not exceeding five hundred dollars

(\$500) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. If the defendant has been previously convicted of a violation of this section, Section 415.5, or of Section 602.9, then he shall be punished by imprisonment in the county jail for not less than 90 days and not more than six months, or by both such imprisonment and fine of not exceeding five hundred dollars (\$500), and shall not be released on probation, parole, or any other basis until he has served not less than 90 days.

(b) For the purpose of determining the penalty to be imposed pursuant to this section, the court may consider a written report from the Bureau of Criminal Identification and Investigation containing information from its records showing prior convictions; and the communication is prima facie evidence of such convictions, if the defendant admits them, regardless of whether or not the complaint commencing the proceedings has alleged prior convictions.

~~(b)~~ (c) As used in this section:

(1) "State university" means the University of California, and includes any affiliated institution thereof and any campus or facility owned, operated or controlled by the Regents of the University of California.

(2) "State college" means any California state college administered by the Trustees of the California State Colleges.

(3) "Junior college" means any school established

pursuant to Chapter 3 (commencing with Section 25500) of Division 18.5 of the Education Code.

(4) "Chief administrative officer" means the president of a state college or the officer designated by the Regents of the University of California or pursuant to authority granted by the Regents of the University of California to administer and be the officer in charge of a campus or other facility owned, operated or controlled by the Regents of the University of California or the superintendent of a junior college district or a school district maintaining a junior college.

Sec. 2. Section 602.8 is added to the Penal Code, to read:

602.8. (a) The chief administrative officer of a campus or other facility of a junior college, state college or state university, as defined in Section 602.7, or an officer or employee designated by him to maintain order on such campus or facility, may notify a person that consent to remain on the campus or other facility under the control of the chief administrative officer has been withdrawn whenever there is reasonable cause to believe that such person has committed an unlawful act for the purpose of disrupting the orderly operation of such campus or facility.

(b) Whenever consent is withdrawn by any authorized officer or employee other than the chief administrative officer, such officer or employee shall

immediately submit a written report to the chief administrative officer. Such report shall contain:

(1) The name and description of the person from whom consent was withdrawn, including, if available, the person's address and phone number.

(2) A statement of the facts giving rise to the belief that reasonable cause existed to believe that the person from whom consent was withdrawn committed an unlawful act for the purpose of disrupting the campus or facility.

If the chief administrative officer, upon reviewing the report, finds that there was reasonable cause to believe that the person from whom consent was withdrawn committed an unlawful act for the purpose of disrupting the campus or facility, he may enter written confirmation upon the report of the action taken by the officer or employee. If the chief administrative officer, or his specific designee for such purposes, does not confirm the action of the officer or employee within 24 hours after the time that consent was withdrawn, or by the commencement of the next day on which classes are regularly scheduled, whichever is later, the action of the officer or employee shall be deemed void and of no force or effect, except that any arrest made during such period shall not for this reason be deemed not to have been made for probable cause.

(c) Consent shall be reinstated by the chief administrative officer whenever he has reason to believe that the presence of the person from whom consent was

withdrawn will no longer constitute a substantial and material threat to the orderly operation of the campus or facility. In no case shall consent be withdrawn for longer than two weeks from the date upon which consent was initially withdrawn. The person from whom consent has been withdrawn may request a hearing on the withdrawal within the two week period. The chief administrative officer shall grant such a hearing not later than five days following the request for the hearing.

(d) Any person who has been notified by the chief administrative officer of a campus or other facility of a state college or state university, or by an officer or employee designated by the chief administrative officer to maintain order on such campus or facility, that consent to remain on the campus or facility has been withdrawn pursuant to subdivision (a) and who has not been notified that such consent has been reinstated, and who willfully and knowingly enters or remains upon such campus or facility during the period for which consent has been withdrawn, is guilty of a misdemeanor. This subdivision does not apply to any person who enters or remains on such campus or facility for the sole purpose of applying to the chief administrative officer for the reinstatement of consent or for the sole purpose of attending a hearing on the withdrawal.

(e) This section shall not affect the power of the duly constituted authorities of a state college or

state university to suspend, dismiss, or expel, any student or employee at such university or college.

Sec. 3. Section 602.9 of the Penal Code is amended to read:

602.9. (a) Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of such school or disrupt the school or its pupils or school activities, and who remains there, after being asked to leave by the chief administrative official of that school or any designated agent of the chief administrative official who possesses a standard supervision credential or a standard administration credential or who carries out the same functions as a person who possesses such a credential or, in the absence of the chief administrative official, the person acting as the chief administrative official, is guilty of a misdemeanor and shall be punished upon a first conviction by a fine not exceeding five hundred dollars (\$500) or by imprisonment in the county jail for not more than six months, or by both such fine and imprisonment. If the defendant has been previously convicted of a violation of this section, Section 415.5, or of Section 602.7, then he shall be punished by imprisonment in the county jail for not less than 90 days and not more than six months, or by both such imprisonment and fine of not exceeding five hundred dollars

(\$500), and shall not be released on probation, parole, or any other basis until he has served not less than 90 days.

(b) For the purpose of determining the penalty to be imposed pursuant to this section, the court may consider a written report from the Bureau of Criminal Identification and Investigation containing information from its records showing prior convictions; and the communication is prima facie evidence of such convictions, if the defendant admits them, regardless of whether or not the complaint commencing the proceedings has alleged prior convictions.

(c) As used in this section:

(1) The term "school" as used in this section means any elementary school, junior high school, or senior high school, ~~or junior college.~~

(2) The term "lawful business" as used in this section means a reason for being present upon school property which is not otherwise prohibited by statute, by ordinance, or by any regulation adopted pursuant to statute or ordinance.

## TENTATIVE DRAFT

An act to add Section 415.5 to the Penal Code,  
relating to disturbing the peace.

The people of the State of California do enact as follows:

Section 1. Section 415.5 is added to the Penal  
Code, to read:

415.5. (a) Every person who maliciously and willfully disturbs the peace or quiet of any junior college, state college, or state university by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, traducing, quarreling, challenging to fight, or fighting, or by using any vulgar, profane, or indecent language within the presence or hearing of women or children, in a loud and boisterous manner, is guilty of a misdemeanor and shall be punished upon a first conviction by a fine not exceeding two hundred dollars (\$200) or by imprisonment in the county jail for not more than 90 days, or by both such fine and imprisonment. If the defendant has been previously convicted of a violation of this section, Section 602.7, or of Section 602.9, then he shall be punished by imprisonment in the county jail for not less than 90 days and not more than six months, or by both such imprisonment and a fine of not exceeding five hundred dollars (\$500), and shall not be released on probation, parole, or any other basis until he has served not less than 90 days.

(b) For the purpose of determining the penalty to be imposed pursuant to this section, the court may consider a written report from the Bureau of Criminal Identification and Investigation containing information from its records showing prior convictions; and the communication is prima facie evidence of such convictions, if the defendant admits them, regardless of whether or not the complaint commencing the proceedings has alleged prior convictions.

(c) As used in this section:

(1) "State university" means the University of California, and includes any affiliated institution thereof and any campus or facility owned, operated or controlled by the Regents of the University of California.

(2) "State college" means any California state college administered by the Trustees of the California State Colleges.

(3) "Junior college" means any school established pursuant to Chapter 3 (commencing with Section 25500) of Division 18.5 of the Education Code.

Req. #9874

## TENTATIVE DRAFT

An act to amend Sections 241, 243, and 245 of the Penal Code, relating to assault and battery.

The people of the State of California do enact as follows:

Section 1. Section 241 of the Penal Code is amended to read:

241. An assault is punishable by fine not exceeding five hundred dollars (\$500), or by imprisonment in the county jail not exceeding six months, or by both. When it is committed against the person of a peace officer or fireman, and the person committing the offense knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, and such peace officer or fireman is engaged in the performance of his duties, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison not exceeding two years.

As used in this section, "peace officer" refers to any person designated as a peace officer by Section 830.1, Section 830.2, subdivision (j) of Section 830.3, or by subdivision (a) of Section 830.6, as well as any member of a state college police department appointed pursuant to Section 24651 of the Education Code, any policeman of the San Francisco Port

Authority, and each deputized law enforcement member of the Wildlife Protection Branch of the Department of Fish and Game.

Sec. 2. Section 243 of the Penal Code is amended to read:

243. A battery is punishable by fine of not exceeding one thousand dollars (\$1,000), or by imprisonment in the county jail not exceeding six months, or by both. When it is committed against the person of a peace officer or fireman, and the person committing the offense knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, and such peace officer or fireman is engaged in the performance of his duties, the offense shall be punished by imprisonment in the county jail not exceeding one year or by imprisonment in the state prison for not less than one nor more than 10 years.

As used in this section, "peace officer" refers to any person designated as a peace officer by Section 830.1, Section 830.2, subdivision (j) of Section 830.3, or by subdivision (a) of Section 830.6, as well as any member of a state college police department appointed pursuant to Section 24651 of the Education Code, any policeman of the San Francisco Port Authority, and each deputized law enforcement member of the Wildlife Protection Branch of the Department of Fish and Game.

Sec. 3. Section 245 of the Penal Code is amended to read:

245. (a) Every person who commits an assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury is punishable by imprisonment in the state prison not exceeding 10 years, or in a county jail not exceeding one year, or by fine not exceeding five thousand dollars (\$5,000), or by both such fine and imprisonment. When a person is convicted of a violation of this section, in a case involving use of a deadly weapon or instrument, and such weapon or instrument is owned by such person, the court may, in its discretion, order that the weapon or instrument be deemed a nuisance and shall be confiscated and destroyed in the manner provided by Section 12028.

(b) Every person who commits an assault with a deadly weapon or instrument or by any means likely to produce great bodily injury upon the person of a peace officer or fireman, and who knows or reasonably should know that such victim is a peace officer or fireman engaged in the performance of his duties, when such peace officer or fireman is engaged in the performance of his duties shall be punished by imprisonment in the state prison not exceeding 15 years; provided, that if such person has previously been convicted of a felony under the laws of this

state or has previously been convicted of an offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a felony, he shall be punished by imprisonment in the state prison for five years to life.

As used in this section, "peace officer" refers to any person designated as a peace officer by Section 830.1, Section 830.2, subdivision (j) of Section 830.3, or by subdivision (a) of Section 830.6, as well as any member of a state college police department appointed pursuant to Section 24651 of the Education Code, any policeman of the San Francisco Port Authority, and each deputized law enforcement member of the Wildlife Protection Branch of the Department of Fish and Game.

Req. #9875

TENTATIVE DRAFT

An act to add Section 602.10 to the Penal Code, relating to college or university property.

The people of the State of California do enact as follows:

Section 1. Section 602.10 is added to the Penal Code, to read:

602.10. (a) Any person who knowingly and willfully operates a public address system upon the grounds of any public junior college, state college, or state university campus or facility without having first obtained written permission from the chief administrative officer of such campus or facility, or from a person authorized by him to grant such permission, is guilty of a misdemeanor.

(b) Permission to operate a public address system shall be granted by the chief administrative officer, or the person authorized by him to grant such permission, unless there is probable cause to believe that the person applying for such permission intends to operate the public address system in a manner that would substantially and materially interfere with the orderly operation of the campus or facility.

(c) For the purpose of determining whether permission should be granted, the chief administrative officer, or the person authorized by him to grant permission, may

require the person applying for permission to state in writing the purpose for which he intends to operate the public address system, the time at which he intends to operate it, and the place and manner in which he intends to operate it.

(d) This section does not apply to any person operating a public address system in the course of carrying out his duties as an employee of a state college or state university, nor does it apply to any person operating a public address system as part of a regularly scheduled school activity.

(e) A public address system as used in this section is any mechanical or electronic device which is primarily designed for the purpose of communicating sound over a greater distance than that normally attained by a person speaking in a normal voice.

(f) As used in this section:

(1) "State university" means the University of California, and includes any affiliated institution thereof and any campus or facility owned, operated, or controlled by the Regents of the University of California.

(2) "State college" means any California state college administered by the Trustees of the California State Colleges.

(3) "Junior college" means any school established pursuant to Chapter 3 (commencing with Section 25500) of Division 18.5 of the Education Code.

(4) "Chief administrative officer" means the president of a state college, or the officer designated by the Regents of the University of California or pursuant to authority granted by the Regents of the University of California to administer and be the officer in charge of a campus or other facility owned, operated, or controlled by the Regents of the University of California, or the superintendent of a junior college district or a school district maintaining a junior college.

July 6 1969

Req. #10214

TENTATIVE DRAFT

An act to add Chapter 4.7 (commencing with Section 31291) to Division 22 of the Education Code, relating to state aid to students.

The people of the State of California do enact as follows:

Section 1. Chapter 4.7 (commencing with Section 31291) is added to Division 22 of the Education Code, to read:

Chapter 4.7. Forfeiture of State

Aid to Students

31291. In accepting a scholarship, loan, fellowship, grant-in-aid, or any other financial aid given or guaranteed by the state for academic assistance, every scholarship award winner recipient thereof who is a student at a public or private university, college, or other institution of higher education, shall be deemed to have agreed to observe the rules and regulations promulgated by the governing authority of the university, college, or other institution of higher education, for the government thereof.

Any recipient of such state financial aid who, on the campus of the university, college, or other institution of higher education, willfully and knowingly commits any act likely to disrupt the peaceful conduct of the activities

of such campus, and is arrested and convicted of a public offense arising from such act, shall be ineligible for renewal of any such state academic financial aid for the ensuing two academic years.

The governing authority of the university, college, or other institution of higher education shall, for purposes of this section, review the record of each recipient and shall, as soon as practicable, notify a hearing board established by it of the name of any recipient who committed any such act and was arrested and convicted of any such public offense.

31292. Upon receipt of notice, as provided in Section 31291, that any recipient has committed any act likely to disrupt the peaceful conduct of the activities of the campus and was convicted of a public offense in connection therewith, the hearing board shall immediately give the recipient written notice of the report. The notice shall inform the recipient of the pendency of the proceedings for the suspension of assistance. It shall inform the recipient that he may present evidence of mitigating circumstances to the hearing board within 30 calendar days of the date of the mailing of the notice, and shall specify the procedures and means by which such evidence is to be presented, including the date at which any hearing to be afforded him is to be held. The hearing board may prescribe any procedures and means for such purposes which it may deem appropriate, provided that any hearing which

may be afforded the recipient shall not be held sooner than 20 days after the date of the mailing of the notice.

If no response to the hearing board's notice is made within the period specified in this section, the hearing board shall suspend further assistance to the recipient and the suspension shall remain in effect during the next two academic years.

After the conclusion of proceedings provided for in this section, the hearing board shall, by majority vote, determine whether further assistance to the recipient shall be suspended during the ensuing two academic years.

The hearing board shall notify the appropriate state agencies of any suspension of state financial aid, and no state academic financial aid shall be extended to the recipient during the ensuing two academic years.

Any notice required to be made by this section shall be sufficient when it is deposited in the United States registered mail, postage paid, addressed to the last known address of the addressee.

Sec. 2. The Legislature hereby finds and declares that the educational institutions and educational opportunities provided by public and private higher educational institutions in this state, including the University of California, are essential to the continued welfare of all persons in California. The Legislature also finds that serious disruptions have occurred at

several of these institutions, that such disruptions threaten the peaceful pursuit of higher education, and that they are a matter of statewide concern. The Legislature therefore intends that a coherent, fair and uniform system of discipline be operative upon the campuses of the public and private higher educational institutions in this state, including the University of California. This act is enacted as a part of such fair and uniform system.

TENTATIVE DRAFT

Req. #9877

An act to add Section 22505 to the Education Code, relating to colleges and universities.

The people of the State of California do enact as follows:

Section 1. Section 22505 is added to the Education Code, to read:

22505. The chief administrative officer of a public junior college, state college, or campus of the University of California, after a prompt and full hearing of the facts, shall take appropriate disciplinary action against any student, member of the faculty, or administration of the junior college, state college, or campus of the University of California who has been convicted of a crime arising out of a campus disturbance. The disciplinary action may include, but need not be limited to, suspension, dismissal or expulsion. The provisions of Sections 24308 to 24310, inclusive, shall be applicable to any state college academic employee dismissed pursuant to this section. The chief administrative officer of each such institution shall submit periodic reports as to the nature and disposition of cases acted upon pursuant to this section to his governing board.

Sec. 2. The Legislature hereby finds and declares that the educational institutions and educational opportunities provided by the University of California, the California State Colleges, and the public junior colleges are essential to the continued welfare of all persons in California. The Legislature also finds that serious disruptions have occurred at several of these institutions, that such disruptions threaten the peaceful pursuit of higher education, and that they are a matter of statewide concern. The Legislature therefore intends that a coherent, fair and uniform system of discipline be operative upon the campuses of the University of California, the California State Colleges, and the public junior colleges. This act is enacted as a part of such fair and uniform system.

Req. #9878

## TENTATIVE DRAFT

An act to add Chapter 3.7 (commencing with Section 22635) to Division 16.5 of the Education Code, relating to institutions of higher education.

The people of the State of California do enact as follows:

Section 1. Chapter 3.7 (commencing with Section 22635) is added to Division 16.5 of the Education Code, to read:

Chapter 3.7. Rules of Student Conduct

22636. The Regents of the University of California, the Trustees of the California State Colleges, and the governing board of every junior college or school district maintaining a junior college, shall adopt or provide for the adoption of specific rules and regulations governing student behavior along with specific penalties for violation of such rules and regulations. Every prospective student at such institutions of higher education shall, prior to enrollment at such institutions, be provided with a copy of such rules and regulations together with a statement of the applicable penalties which may be incurred by violation thereof.

22637. The provisions of this chapter shall apply to the Regents of the University of California to the full extent authorized by Section 9 of Article IX of the California Constitution, and it is the intent of the Legislature that the regents adopt rules and procedures which they deem appropriate for carrying out the purposes of this chapter.

Sec. 2. The Legislature hereby finds and declares that the educational institutions and educational opportunities provided by the University of California, the California State Colleges, and the public junior colleges are essential to the continued welfare of all persons in California. The Legislature also finds that serious disruptions have occurred at several of these institutions, that such disruptions threaten the peaceful pursuit of higher education, and that they are a matter of statewide concern. The Legislature therefore intends that a coherent, fair and uniform system of discipline be operative upon the campuses of the University of California, the California State Colleges, and the public junior colleges. This act is enacted as a part of such fair and uniform system.

Req. #9879

## TENTATIVE DRAFT

An act to add Sections 22508 and 22509 to the Education Code, relating to higher education.

The people of the State of California do enact as follows:

Section 1. Section 22508 is added to the Education Code, to read:

22508. (a) As used in this section and Section 22509:

(1) "State university" means the University of California, and includes any affiliated institution thereof and any campus or facility owned, operated, or controlled by the Regents of the University of California.

(2) "State college" means any California state college administered by the Trustees of the California State Colleges.

(3) "Junior college" means any school established pursuant to Chapter 3 (commencing with Section 25500) of Division 18.5 of the Education Code.

(4) "Chief administrative officer" means the president of a state college, or the officer designated by the Regents of the University of California or pursuant to authority granted by the Regents of the University of California to administer and be the officer in charge of a campus or other facility owned, operated, or controlled

by the Regents of the University of California, or the superintendent of a junior college district or a school district maintaining a junior college.

(5) "Civil disturbance" means any occurrence of human origin on the campus or environs of a state university or state college or junior college which in the opinion of the chief administrative officer and the chief of campus police is beyond the capabilities of the college officials and campus police to effectively control and which unreasonably disrupts the orderly conduct of academic business or instruction.

(b) The chief administrative officer of any state university, state college, or junior college may declare a "state of emergency" whenever he finds that any of the following conditions exists on or near the campus or other facility in such magnitude that is, or is likely to be, beyond the control of the services, personnel, equipment, and facilities of the campus or other facility:

- (1) Extreme peril to the safety of persons or property.
- (2) Sabotage.
- (3) Fire.
- (4) Flood.
- (5) Epidemic.
- (6) Riot.
- (7) Earthquake.
- (8) Civil Disturbance.

Sec. 2. Section 22509 is added to the Education Code, to read:

22509. (a) When a chief administrative officer of any state university or state college or junior college, after declaring a state of emergency pursuant to Section 22508, requests the assistance of the police or sheriff's department of any city, county, or city and county, in the control of a civil disturbance on the campus or environs thereof, the state shall, through the Department of Finance whenever money has been appropriated for the purpose, partially reimburse each police or sheriff's department for its costs in rendering such assistance. Reimbursement shall be at the rate of 50 percent of such costs, after one hundred thousand dollars (\$100,000) of such costs have been sustained. Reimbursement shall be made within 30 days after receipt of any statement of such cost duly submitted in accordance with requirements of form as may be adopted by the Department of Finance.

(b) The Department of Finance shall determine the items to be allowed as costs and shall determine when a local agency has sustained one hundred thousand dollars (\$100,000) of such costs. Costs of assistance may include regular wages and overtime paid to peace officers assigned to render assistance during the course of a civil disturbance. Costs of assistance may also include costs of replacement of, or repair to, property of the department destroyed or damaged as a result of assistance given during a civil disturbance.

Sec. 3. The Legislature hereby finds and declares that the educational institutions and educational opportunities provided by the University of California, the California State Colleges, and the public junior colleges are essential to the continued welfare of all persons in California. The Legislature also finds that serious disruptions have occurred at several of these institutions, that such disruptions threaten the peaceful pursuit of higher education, and that they are a matter of statewide concern. The Legislature therefore intends that a coherent, fair and uniform system of discipline be operative upon the campuses of the University of California, the California State Colleges, and the public junior colleges. This act is enacted as a part of such fair and uniform system.

Sec. 4. This act shall be operative until the 91st day after the adjournment of the 1971 Regular Session of the Legislature and thereafter shall have no force or effect.

MAY 9 1969

APPENDIX A-10

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Req. #10415

Assembly Concurrent Resolution No. \_\_\_\_\_  
Relative to campus disturbances.

WHEREAS, Testimony before the Select Committee on Campus Disturbances indicated that many school officials have not been fully aware of the many existing laws available to them through the Penal Code and the Education Code to control acts of violence and campus disturbances; and

WHEREAS, Complete knowledge and proper use of such laws can be effective in controlling outbreaks of violence on campus; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the Board of Regents of the University of California, the Board of Trustees of the California State Colleges, the Board of Governors of the California Community Colleges, and the State Board of Education, in cooperation with the Attorney General and County Counsels, should assume the responsibility to fully inform all school officials as to the existing laws on this subject; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President of the Board of Regents of the University of California,

the Chairman of the Trustees of the California State Colleges, the President of the Board of Governors of the California Community Colleges, the President of the State Board of Education, the Attorney General and all County Counsels.

Assembly Concurrent Resolution No. \_\_\_\_\_  
Relative to campus disturbances.

WHEREAS, Students, faculty members, representatives of the Board of Trustees of the California State Colleges, and representatives of the Board of Regents of the University of California emphasized to the Select Committee on Campus Disturbances the necessity for effective channels of communication among students, faculty, administrators and governing boards; and

WHEREAS, One cause for student and faculty disenchantment with the processes of higher education is the lack of effective channels of communication among students, faculty, administrators and governing boards; and

WHEREAS, Governing boards responsible for institutions of higher education have been slow to create such channels of communication; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That the governing boards of higher education in this state devise, with the cooperation of students and faculty groups, and implement, processes whereby effective communication can be established on all campuses of higher education in the state; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the Regents of the University of California, the Trustees of the California State Colleges and the Board of Governors of the California Community Colleges.

MAY 8 1969

Req. #10281

Assembly Concurrent Resolution No. \_\_\_\_\_  
Relative to the state college budget.

Resolved by the Assembly of the State of California,  
the Senate thereof concurring, That the Joint Legislative  
Budget Committee study the subject of the budgetary  
procedures relating to the California State Colleges and  
the feasibility and desirability of affording the Trustees of  
the California State College greater control and responsibility  
over the allocation of funds appropriated to the colleges;  
and be it further

Resolved, That the Joint Legislative Budget  
Committee report its findings and recommendations to the  
Legislature not later than the fifth legislative day of  
the 1970 Regular Session.

APPENDIX B  
ATTORNEY GENERAL'S OPINION ON  
LEGAL REMEDIES FOR DISRUPTIVE CONDUCT

PROTECTING THE SCHOOLS  
LEGAL REMEDIES FOR DISRUPTIVE CONDUCT

by

Robert R. Granucci  
Deputy Attorney General

INTRODUCTION

In response to the present widespread concern about campus disturbances, the Attorney General's Office has prepared this brief survey of applicable state law. This is intended to describe briefly and in relatively non-technical terms the provisions of law available to school authorities and law enforcement agencies responsible for guaranteeing that students seeking to learn will find the schools open and able to teach. It includes both administrative provisions available to school authorities and penal statutes enforced by police agencies and the courts.

I. The Rule of Law on the Campus

Much of the propaganda disseminated by those seeking for their own purposes to disrupt education in this state appears to be based on two fundamental fallacies. These fallacies should immediately be put to rest. The first is that the Constitution confers a right to disrupt a school without any legal accountability. It wrongly equates school disruption with free speech or academic freedom. Boiled down to its essentials this fallacy is no more than the proposition that if individuals believe their cause is just they can with impunity trample on the rights of others. Fortunately, however, this proposition has been squarely repudiated by the United States Supreme Court.

In Cox v. Louisiana, the Court stated as follows:

"The rights of free speech and assembly while fundamental in our democratic society, still do not mean that everyone with opinions or beliefs to express may address a group at any public place and at any time. The constitutional guarantee of liberty implies the existence of an organized society maintaining public order, without which liberty itself would be lost in the excesses of anarchy."

Cox v. Louisiana, 379 U.S. 536, at 544 (1965).

.....

"We emphatically reject the notion urged by appellant that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech." Id. at 555.

.....

Nothing we have said here or in No. 24, ante, is to be interpreted as sanctioning riotous conduct in any form of demonstrations, however peaceful their conduct or commendable their motives, which conflict with properly drawn statutes and ordinances designed to promote law and order, protect the community against disorder, regulate traffic, safeguard legitimate interests in private and public property, or protect the administration of justice and other essential governmental functions.

"Liberty can only be exercised in a system of law which safeguards order. We reaffirm the repeated holdings of this Court that our constitutional command of free speech and assembly is basic and fundamental and encompasses peaceful social protest, so important to the preservation of the freedoms treasured in a democratic society. We also reaffirm the repeated decisions of this Court that there is no place for violence in a democratic society dedicated to liberty under law, and that the right of peaceful protest does not mean that everyone with opinions or beliefs to express may do so at any time and at any place. There is a proper time and place for even the most peaceful protest and a plain duty and responsibility on the part of all citizens to obey all valid laws and regulations." Id. at 574.

This doctrine was restated by the Court in Adderley v. Florida as follows:

"The State, no less than a private owner of property, has power to preserve the property under its control for the use to which it is lawfully dedicated. For this reason there is no merit to the petitioners' argument that they had a constitutional right to stay on the property, over the jail custodian's objections, because this area chosen for the peaceful civil rights demonstration was not only "reasonable" but also particularly appropriate . . . .'. Such an argument has as its major unarticulated premise the assumption that people who want to propagandize protests or view have a constitutional right to do so whenever and however and wherever they please. That concept of constitutional law was vigorously and forthrightly rejected in two of the cases petitioners rely on, *Cox v. Louisiana*, supra, 554-555 and 563-563." 385 U.S. at 47-48.

However, the Supreme Court has recently emphasized that there is a crucial difference between the power of school officials to regulate conduct and their right to control the expression of opinion on controversial subjects. Thus in *Tinker v. Des Moines Independent Community School Dist.*, 37 U.S.L. Week 4121 (1969), the Court held that high school students could not be suspended for wearing black armbands as an antiwar protest because that conduct did not intrude on the operations of the school or the rights of other students.

The second fallacy is that a college campus is somehow an independent enclave where state penal laws do not apply and where police may not enter without an invitation. This is totally false. Penal Code section 777 states, "Every person is liable to punishment by the laws of this State for a public offense committed therein."

Penal statutes are enforced by the county sheriff and the police department of the city and town within whose boundaries the school or college is located. Where a college maintains its own campus police force, the campus police share a concurrent jurisdiction with the local police department and sheriff's office. See *In re Bacon*, 240 Cal.App.2d 34, 54-55 (1966); Ed. Code §§ 23501, 24651.

## II. Administrative Powers

The authority to make rules governing the administration of this state's public university and colleges is vested for the University of California in the Regents

of the University (Cal. Const. art. IX, § 9) and, for the state colleges, in the Trustees of the California State Colleges. Ed. Code §§ 22600, 23604. This rule-making power can be exercised to prevent or control campus disruptions in several important ways. For example, this power can be employed to establish regulations governing rallies and other kinds of meeting on campus, with regard to time, place and the manner in which they are conducted. Similarly, rules can be established to regulate the government and maintenance of the buildings and grounds of the college. The Trustees of the California State Colleges are explicitly given this power by statute (Ed. Code § 23604.1), and violation of the rules enacted pursuant to that section is a misdemeanor. As examples of the employment of such power, regulations may be promulgated declaring that the campus must be cleared at certain hours or that buildings may be used only for certain specified purposes.

Concomitant with the rule-making power is the authority to administer discipline to those individuals who disobey the regulations established by the Trustees or Regents. Illustrative of the exercise of this power are rules made by the Trustees stating specifically the grounds upon which students may be placed on probation, suspended or expelled. One such rule, dealing with the disruption of the educational process states:

"[A]ny student who . . . is found to have disrupted or to have attempted to disrupt, by force or violence, or by the threat of force or violence, any part of the instructional program of a state college, or any meeting, recruiting interview or any activity authorized to be held or conducted at the college, may, in the discretion of the President, be suspended, dismissed, or otherwise disciplined as provided by law." 5 Admin. Code § 41304.

A similar section deals with disruption of campus activities by a California State College employee. See 5 Admin. Code § 43526.

To enforce these rules, as well as state law generally, the Regents of the University of California and the Trustees of California State Colleges are authorized to establish campus police forces. Ed. Code §§ 23501, 24651. State college police exercise their jurisdiction within the boundaries of the college campus (Ed. Code § 24651), while the University of California police can exercise their power upon the campus and as far as a mile beyond its

boundaries. Ed. Code § 23501. As noted earlier, however, the jurisdiction of a campus police unit is not exclusive; it is concurrent with the jurisdiction exercised by the local law enforcement agencies, i.e., the city police department and county sheriff's office.

The public school system is composed of the elementary schools, secondary schools and all the public junior colleges. The governing boards of the various school districts have the power to establish security patrols. The purpose of the security patrols is to ensure the security of school district personnel and pupils in or about school district premises and the security of the real and personal property of the school district. Ed. Code § 15831. These patrols are intended to be supplementary to local law enforcement agencies, and a recent Penal Code amendment has conferred peace officer status on members of security patrols while they are engaged in the performance of their duties. Pen. Code § 830.4.

### III. Discipline of Public School Students

Public school students who disrupt the operations of the school system or interfere with the availability or use of school facilities may be dealt with in several ways. By statute public school teachers have a duty to hold their pupils to account for their conduct at school or on their way to and from school, and they have the right to exercise such physical control over their students as is necessary to "maintain order, protect property, or protect the health and safety of pupils." Ed. Code § 13557. This physical control includes the power directly to administer punishment, corporal or otherwise, to a disobedient student, in accordance with the rules and regulations dealing with the administration of punishment set forth by the governing board of the school district. Ed. Code § 10854.

In certain instances a public school student can be suspended or expelled. For example, such action can be taken by the governing board when the pupil has "used, sold or been in possession of narcotics or other hallucinogenic drugs or substances." Ed. Code § 10603. Another ground for suspension or expulsion is the wilful damage by a pupil of school property (Ed. Code § 10606). In such a case, not only can the student be suspended or expelled, but his parent or guardian is made liable for the damage caused.

Disruptive conduct can also constitute grounds for expulsion if it comes within the grounds set forth in Education Code section 10602. This section states in part:

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"Continued willful disobedience, habitual profanity or vulgarity, open and persistent defiance of the authority of the school personnel, or assault or battery upon a student, upon school premises or while under the authority of school personnel, or continued abuse of school personnel, assault or battery upon school personnel, or any threat of force or violence directed toward school personnel, at any time or place shall constitute good cause for suspension or expulsion from school; however, no pupil shall be suspended or expelled unless the conduct for which he is to be disciplined is related to school activity or school attendance."  
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Finally, "a student may be suspended or expelled for behavior inimical to the welfare of the other students or behavior which adversely affects school discipline, whether such behavior occurs on or off the school grounds."  
48 Ops. Cal. Atty. Gen. 4, 5 (1966).

#### IV. Duty to Report Student Assaults

In certain instances an assault committed by a student must be reported to the local law enforcement authorities, i.e., the police, sheriff, or district attorney's office. Education Code section 10605.5 provides that the chief administrative employee at a school shall, prior to the suspension or expulsion of any pupil, notify the appropriate law enforcement authorities of the county or city in which the school is situated of any acts of the student which may be violative of section 245 of the Penal Code, which covers any assault upon the person of another with a deadly weapon or instrument or by any means of force likely to produce great bodily injury. Similarly, when any employee of a school district or of the office of the county superintendent of schools is assaulted or menaced by any pupil, a report must be made by such employee and by his supervisor if he has knowledge of the fact. Failure to make a report, or any attempt to discourage the making of such report, is a misdemeanor. Ed. Code § 12916.

#### V. Penal Statutes Covering Organized School Disruption

As noted earlier in our memorandum the laws of our state are as applicable on school grounds as anywhere else. Provisions of the Education, Penal and Health and Safety Codes cover the techniques currently employed by the organizers of school disruption. Despite the apparent novelty of their tactics, those who interfere with the rights of others, or threaten the public safety, are punishable under well-settled rules of law.

#### A. Disturbance of Schools

Three statutes deal specifically with the disruption or disturbances of schools. Penal Code section 647b provides that any person who loiters about any school in which adult education classes are being held and who annoys or molests any person in attendance is guilty of a misdemeanor and punishable by a fine of \$500 and a county jail term of up to six months.

Another related statute is Education Code section 16701, which provides that any person who "willfully disturbs any public school or any public school meeting" is guilty of a misdemeanor; the punishment for this offense is a fine of from \$10 to \$100.

Section 13558.5 of the Education Code is similar in some respects to section 16701. Section 13558.5 prohibits willful interference with a public school class or activity, a prohibition similar to section 16701's proscription of willful disturbances. Both sections are applicable only to public schools, i.e., elementary and secondary schools and junior colleges. However, there are several differences between the two sections. First, section 13558.5 requires, in addition to interference, an intent to disrupt or to inflict property damage or bodily injury. Second, section 13558.5 applies only to individuals over 16 who are not pupils of the school they disrupt. Finally, section 13558.5 carries a more severe penalty. Willful interference with the conduct of a school class or activity is punishable by a fine of \$500 or by imprisonment in the county jail for six months, or both.

#### B. Unlawful Entry and Refusal to Leave School or College Grounds.

A commonly used technique of school disruption involves the mass entry and refusal to leave school grounds, including so-called "sit-in" tactics. This conduct can violate the Mulford Act as well as other provisions of the Penal Code defining criminal trespass. Penal Code section 602.7 and 602.9 comprise the Mulford Act. When a person not a student, officer or employee of the state college or university and not required by his employment to be on the campus, enters such campus and reasonably appears to be intending to commit or is actually committing any act likely to interfere with the school's peaceful operations, the chief administrative officer or agent designated by him may direct the person to leave. One who fails to leave after a direction to do so is guilty of a misdemeanor. Pen. Code

§ 602.7. Similarly, when a person without lawful business enters upon the grounds or into a building of an elementary school, junior or senior high school or junior college and the acts of this person actually interfere with school activities or disrupt the school or its pupils, he may be asked to leave. To remain after a request to leave is likewise a misdemeanor. Pen. Code § 602.9.

As noted above, section 602.7 applies to non-students. An appellate court has held that the reading of the Mulford Act as a whole fairly imports that the word "student" means a student of the particular institution whose campus or facility is involved. People v. Agnello, 259 A.C.A. 831, 837 (1968). Thus, only students of the particular campus or state institution would be immune from prosecution for violation of this section.

Other laws dealing with criminal trespass also apply to school property, and they cover students. At this point we would note that the fact that these laws may overlap the Mulford Act does not in any way affect their application. An act which is punishable in different ways by different provisions of the criminal law may be prosecuted under any or all such provisions and punished under the law which provides the greatest punishment. Pen. Code § 654.

Under Penal Code section 602(j) it is a misdemeanor to enter any land for the purpose of injuring any party or property rights or with the intention of interfering with, obstructing or injuring any lawful business or occupation carried on by the owner of such land, his agent or the person in lawful possession. The word "land" in this section includes buildings and fixtures and is synonymous with real property. People v. Brown, 236 Cal.App.2d Supp. 916 (1965). In a prosecution for violating this section, the fact that the defendants remained in the building after being asked to leave, and that their presence interfered with the business being carried on therein, is evidence that they entered for the purpose of such interference and were thus guilty of violating this section. People v. Brown, supra. Unlike the Mulford Act, this section contains no exception for students and it is violated at the moment of entry for an unlawful purpose.

Similarly, students may be held criminally liable for failing to leave school buildings after closing hours. Penal Code section 602(n) makes it a misdemeanor to refuse or fail to leave a public building of a public agency during those hours of the day and night when the building is regularly closed to the public upon being requested to do so by a regularly maintained guard, watchman or custodian of the

public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable man that such person has no apparent lawful business to pursue. Participants in the 1964 Sproul Hall sit-in, most of whom were students, were convicted of violating this among other Penal Code sections. The constitutionality of this section was sustained on appeal. In re Bacon, supra.

### C. Riots, Unlawful Assemblies and Disturbing the Peace

The very act of assembling for the purpose of disrupting a school, separate and apart from any ensuing disruption, is itself a misdemeanor offense. Penal Code section 407 provides that whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous or tumultuous manner, such assembly is an unlawful assembly. The courts have construed this section so that the very act of assembling for the purpose of committing an unlawful act is an unlawful assembly in violation of section 407 without regard to whether the defendants go on to complete the act or whether they disperse. See Coverstone v. Davies, 38 Cal.2d 315 (1952).

Under Penal Code section 404 a riot is defined as any use of force or violence disturbing the public peace or any threat to use such force or violence, if accompanied by the immediate power of execution by two or more persons acting together and without authority of law. Section 406 defines a "rout" as the assembly of two or more persons for the purpose of engaging in a riot. By virtue of the decision in Coverstone v. Davies, supra, such gathering would also be an unlawful assembly in addition to a rout.

Penal Code section 409 makes it a misdemeanor to remain at the place of any riot, rout or unlawful assembly after having been lawfully warned by public officers to disperse. Similarly, Penal Code section 416 makes it a misdemeanor for two or more people assembled for the purpose of disturbing the public peace or committing any unlawful act to fail to disperse upon being commanded to do so by a public officer.

No particular form is required for the warning to disperse, although the warning must (1) identify the person giving the command as a peace officer, (2) give the command in the name of the People of the State of California, and (3) direct those unlawfully assembled to disperse immediately. Pen. Code § 726. The following warning was given in the Sproul Hall sit-in case and was found sufficient.

"This is Lieutenant M. F. Chandler of the University of California Police Department.

"I direct your attention to the fact that this assembly is now in violation of the laws of the State of California and it is my duty and responsibility as prescribed by the law to disperse it.

"However, before so doing, I feel that all persons within hearing should know that the assemblage has become illegal and you are hereby so notified.

"To again identify myself, I am M. F. Chandler, Lieutenant of Police of the University of California. A condition of unlawful assemblage now exists under authority of section 726 of the Penal Code of the State of California, and in the name of the People of the State of California, I command you to disperse. I further notify you that all persons who do not immediately disperse are in violation of the California State law and are subject to arrest. You will have five minutes to leave the building or you will be arrested."

It might be observed at this point that a warning to disperse an unlawful assembly, if given by an officer of a campus police force, and coupled with a direction to leave the campus, can operate as both a warning to disperse an unlawful assembly and a direction to leave the campus for purposes of the Mulford Act. In that case remaining present following such a warning could constitute separate violations of Penal Code section 409 and Penal Code section 602.7. At this point it should be kept in mind that Penal Code section 602.7 requires a direction to leave the campus or facility, made by the chief administrative officer of the campus or an officer or employee designated by him to maintain order. The warning to disperse an unlawful assembly may be given by any peace officer, whether employed by the college or not, and contemplates breaking up the unlawful assembly, not necessarily that each of the participants immediately leave the campus.

### C. Blocking Entrances

The tactic of blocking entrances to school buildings is covered by two provisions of the Penal Code. Section 647c states that every person who willfully and

maliciously obstructs the free movement of any person on any street, sidewalk or any public place or in any place open to the public is guilty of a misdemeanor.

Penal Code section 370, which defines a public nuisance, includes within its provision the unlawful obstruction of the free passage or use in a customary manner of any public park square, street or highway. Section 372 declares that maintaining a nuisance is a misdemeanor. The Court of Appeal has recently held that a person willfully blocking a street may be prosecuted for violating sections 370 and 372. Pain v. Municipal Court, 268 A.C.A. 156 (1968). If the obstruction is done by two or more people, their assembly for the purpose is an unlawful assembly and may be additionally prosecuted under Penal Code section 407; for two or more people to continue to block entrance after being warned to disperse would additionally constitute a violation of Penal Code section 409.

Moreover, the courts have recognized that police officers have the power to regulate picketing so as to prevent the blocking of entrances. "The time, manner, and place for the expression of ideas in the streets, whether by speaking, demonstrating, or picketing, are subject to regulation and control by the police in the process of maintaining order." People v. Huss, 241 Cal.App.2d 361, 370 (1966).

#### E. Bringing Weapons or Explosives on to School Property

Penal Code section 171(c) prohibits, except for peace officers and certain other exempt classes, bringing or possessing a loaded firearm into or upon the grounds of any public school, specifically including the University of California and the state colleges. A firearm is deemed loaded when "both the firearm and expended ammunition capable of being discharged from such firearm are in the immediate possession of the same person." Pen. Code § 171(e). Violation of this prohibition is a felony. Ordinarily to carry a loaded firearm on one's person or in a vehicle while in any public place or in any public street in an incorporated city is a misdemeanor. Pen. Code § 12031. To carry a concealed firearm without a permit to do so is also a misdemeanor. Pen. Code § 12025.

Under Penal Code section 12020, it is a felony to possess a "blackjack, slingshot, billy, sandclub, sandbag, sawed-off shotgun, or metal knuckles" or to conceal upon one's person an explosive substance, other than fixed ammunition, or a dirk or dagger. It is a misdemeanor to carry a switchblade knife. Pen. Code § 653k.

It is a felony recklessly or maliciously to possess an explosive in or near schools or colleges. Health & Saf. Code § 12304. Unlawful possession of an explosive near schools and colleges is presumed to be reckless and malicious. Additionally, it is a felony to deposit, explode or attempt to explode any explosive at or near any school, house or other place usually inhabited or frequented by human beings if such act is accompanied by an intent to injure or intimidate any person or to destroy the school, house or public building. Health & Saf. Code § 12306.

#### F. Burning School Property

By virtue of Penal Code section 448(a), any person who willfully and maliciously sets fire to any school building is punishable by a prison sentence of from one to ten years. Setting fire to personal property of any kind, except a trailer coach, is punishable by a prison sentence of from one to three years. Pen. Code § 449(a). Anyone who attempts to set fire to a school building or school property, or attempts to aid or counsel anyone else to do so or to commit any act preliminary thereto, is subject to a two-year prison sentence. Pen. Code § 451(a). The placing or distributing of any flammable, explosive or combustible material near any building is declared to constitute an attempt to burn for purposes of section 451(a).

Under Penal Code section 452(a) every person who possesses any flammable explosive or combustible material or any incendiary device with intent willfully and maliciously to use such material device to set fire to any buildings or property is punishable by imprisonment in the state prison for up to five years. Under section 452(b) every person who possesses, manufactures or disposes of a fire bomb is guilty of a felony. For purposes of this section a fire bomb is defined as a breakable container containing a flammable liquid covering the wick or similar device capable of being ignited.

#### G. Resistance to Peace Officers

When police officers attempt to quell a school disturbance, failure to obey them or to cooperate with their efforts may be violative of several sections of the Penal Code. To attempt to take by force or violence or by threat of force or violence any person lawfully in police custody is a violation of Penal Code section 405(a). Apart from this section, otherwise to resist, delay or obstruct any public officer (whether a police officer or a school official in the discharge of his duties) constitutes a violation

of Penal Code section 148. Such resistance need not involve the use of force; it applies to passive resistance as well and even the use of words. In the Sproul Hall sit-in prosecution this section was applied to those defendants who, when arrested, went limp and required the arresting officers to carry them out of the building. In re Bacon, supra.

#### CONCLUSION

The foregoing discussion was intended as a summary, not as an exclusive, catalog of crimes that may be committed on school grounds. It is hoped, however, that this summary will be of help both to school administrators and law enforcement officers by advising them of the statutory provisions available to deal with school disturbances. While the Office of the Attorney General stands ready to offer assistance and advice when requested, we would emphasize that the most effective answer to school disturbances is the wholehearted cooperation of school administrators and law enforcement agencies at the local level.

APPENDIX C  
LEGISLATIVE COUNSEL OPINIONS

-- ADD GZESLA  
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 -- J. BAUM  
 GOVERNOR  
 -- K. KUNS  
 -- H. WHITAKER  
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# Legislative Counsel of California

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January 26, 1969

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Honorable Victor V. Veysey  
Assembly Chamber

Disturbances of Universities,  
 State Colleges, and Public  
 Schools - #730

Dear Mr. Veysey:

### QUESTION

You have asked what are the existing laws relating to the prohibition of disturbances of classrooms or campuses of the University of California, the California State Colleges, and the public schools.

### OPINION AND ANALYSIS

#### I. Crimes

Initially, we note that whether or not any given act would constitute a violation of law would depend on the particular circumstances involved in each individual case. Depending on the particular circumstances, the following statutes may be involved:

#### Section 171c, Penal Code

"171c. Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, full-time paid peace officer of another state or the federal government who is carrying out official duties while in California, or any person

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summoned by any such officer to assist in making arrests or preserving the peace while he is actually engaged in assisting such officer, or a member of the military forces of this state or of the United States engaged in the performance of his duties, or a person holding a valid license to carry the firearm pursuant to Article 3 (commencing with Section 12050) of Chapter 1 of Title 2 of Part 4 of the Penal Code, shall be punished by imprisonment in the county jail for not more than one year, or by fine of not more than one thousand dollars (\$1,000), or by both such fine and imprisonment, or by imprisonment in the state prison for not more than five years, if he does any of the following:

" \* \* \*

"2. Brings a loaded firearm upon, or possesses a loaded firearm upon, the grounds of any public school, including the University of California and the state colleges, or within any public school, including the University of California and the state colleges, unless it is with the permission of the school authorities."

Section 171e, Penal Code

"171e. A firearm shall be deemed loaded for the purposes of Sections 171c and 171d whenever both the firearm and unexpended ammunition capable of being discharged from such firearm are in the immediate possession of the same person.

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"In order to determine whether or not a firearm is loaded for the purpose of enforcing Section 171c or 171d, peace officers are authorized to examine any firearm carried by anyone on his person or in a vehicle while in any place or on the grounds of any place in or on which the possession of a loaded firearm is prohibited by Section 171c or 171d. Refusal to allow a peace officer to inspect a firearm pursuant to the provisions of this section constitutes probable cause for arrest for violation of Section 171c or 171d."

Section 403, Penal Code

"403. Every person who, without authority of law, willfully disturbs or breaks up any assembly or meeting, not unlawful in its character, other than such as is mentioned in Section 302 of the Penal Code and Section 12046 of the Elections Code, is guilty of a misdemeanor."

Section 404, Penal Code

"404. Any use of force or violence, disturbing the public peace, or any threat to use such force or violence, if accompanied by immediate power of execution, by two or more persons acting together, and without authority of law, is a riot."

Section 404.6, Penal Code

"404.6. Every person who with the intent to cause a riot does an act or engages in conduct which urges a riot, or urges others to commit acts of force or violence, or the burning or destroying of property, and at a time and place and under circumstances which produce a clear and present and immediate danger of acts of force or violence or the burning or destroying of property, is guilty of a misdemeanor.

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"This section shall not apply to, nor in any way affect, restrain, or interfere with, otherwise lawful activity engaged in by or on behalf of a labor organization or organizations by its members, agents or employees."

This section has been upheld as constitutional against attacks as being vague or overly broad or as amounting to impermissible limitation on freedom of speech (People v. Davis (1968), 68 A.C. 495).

Section 405, Penal Code

"405. Every person who participates in any riot is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment."

Section 406, Penal Code

"406. Whenever two or more persons, assembled and acting together, make any attempt or advance toward the commission of an act which would be a riot if actually committed, such assembly is a rout."

Section 407, Penal Code

"407. Whenever two or more persons assemble together to do an unlawful act, and separate without doing or advancing toward it, or do a lawful act in a violent, boisterous, or tumultuous manner, such assembly is an unlawful assembly."

Section 408, Penal Code

"408. Every person who participates in any rout or unlawful assembly is guilty of a misdemeanor."

Section 409, Penal Code

"409. Every person remaining present at the place of any riot, rout, or unlawful assembly, after the same has been lawfully warned to disperse, except public officers and persons assisting them in attempting to disperse the same, is guilty of a misdemeanor."

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Section 415, Penal Code

"415. Every person who maliciously and willfully disturbs the peace or quiet of any ... person, by loud or unusual noise, or by tumultuous or offensive conduct, or threatening, traducing ... is guilty of a misdemeanor, and upon conviction by any Court of competent jurisdiction shall be punished by fine not exceeding two hundred dollars, or by imprisonment in the County Jail for not more than ninety days, or by both fine and imprisonment, or either, at the discretion of the Court."

Section 416, Penal Code

"416. If two or more persons assemble for the purpose of disturbing the public peace, or committing any unlawful act, and do not disperse on being desired or commanded so to do by a public officer, the persons so offending are severally guilty of a misdemeanor."

Section 448a, Penal Code

"448a. Any person who willfully and maliciously sets fire to or burns or causes to be burned or who aids, counsels or procures the burning of any barn, stable, garage or other building, whether the property of himself or of another, not a parcel of a dwelling house; or any shop, storehouse, warehouse, factory, mill or other building, whether the property of himself or of another; or any church, meetinghouse, courthouse, workhouse, school, jail or other public building or any public bridge; shall, upon conviction thereof, be sentenced to the penitentiary for not less than 2 nor more than 20 years."

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Section 451a, Penal Code

"451a. Any person who willfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any of the buildings or property mentioned in the foregoing sections [including Section 448a], or who commits any act preliminary thereto, or in furtherance thereof, is guilty of a felony.

"The placing or distributing of any flammable, explosive or combustible material or substance, or any device in or about any building or property mentioned in the foregoing sections in an arrangement or preparation with intent to eventually willfully and maliciously set fire to or burn same, or to procure the setting fire to or burning of the same shall, for the purposes of this act constitute an attempt to burn such building or property."

Section 452, Penal Code

"452. (a) Every person who possesses any flammable, explosive or combustible material or substance, or any device in an arrangement or preparation, with intent to willfully and maliciously use such material, substance or device to set fire to or burn any buildings or property mentioned in this chapter [including Section 448a], is punishable by imprisonment in the state prison, not exceeding five years, or in the county jail, not exceeding one year.

"(b) Every person who possesses, manufactures or disposes of a fire bomb is guilty of a felony.

"For the purposes of this subdivision, 'disposes of' means to give, give away, loan, offer, offer for sale, sell, or transfer

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"For the purposes of this subdivision, a "fire bomb" is a breakable container containing a flammable liquid with a flash point of 150 degrees Fahrenheit or less, having a wick or similar device capable of being ignited, but no device commercially manufactured primarily for the purpose of illumination shall be deemed to be a fire bomb for the purposes of this subdivision.

"(c) Subdivisions (a) and (b) of this section shall not prohibit the authorized use or possession of any material, substance or device described therein by a member of the armed forces of the United States or by firemen, police officers, peace officers or law enforcement officers authorized by the properly constituted authorities; nor shall those subdivisions prohibit the use or possession of any material, substance or device described therein when used solely for scientific research or educational purposes, or for disposal of brush under permit as provided for in Section 4494 of the Public Resources Code, or for any other lawful burning. Subdivision (b) of this section shall not prohibit the manufacture or disposal of a fire bomb for the purposes described in this subdivision."

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Section 558, Penal Code

"558. Every person other than an officer, employee or student of the University of California, or licensee of the Regents of the University of California, is forbidden to enter upon those lands bordering on the Pacific Ocean in San Diego County, which were granted by Section 1 of Chapter 514 of the Statutes of 1929 to the Regents of the University of California for the uses and purposes of the University of California in connection with scientific research and investigation at the Scripps Institution of Oceanography, or upon state waters adjacent thereto, or to trespass upon the same, or to interfere with the exclusive possession, occupation, and use thereof by the Regents of the University of California.

"Nothing herein contained shall be deemed or construed to affect in any manner the rights of navigation and fishery reserved to the people by the Constitution."

Section 558.1, Penal Code

"Every person who violates any of the provisions of Section 558 is guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than three hundred dollars (\$300) or by imprisonment for not more than 30 days, or by both such fine and imprisonment."

Section 594, Penal Code

"594. Every person who maliciously injures or destroys any real or personal property not his own, in cases otherwise than such as are specified in this Code, is guilty of a misdemeanor."

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Section 602, Penal Code

"602. Every person who willfully commits any trespass by either:

" \* \* \*

"(n) Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable man that such person has no apparent lawful business to pursue; is guilty of a misdemeanor."

See In re Bacon (1966), 240 Cal. App. 2d 34, 46-48, holding subdivision (n) of Section 602 of the Penal Code applicable to a building of a University of California campus.

Section 602.7, Penal Code

"602.7. (a) In any case in which a person who is not a student or officer or employee of a state college or state university, and who is not required by his employment to be on the campus or any other facility owned, operated or controlled by the governing board of any such state college or state university, enters such campus or facility, and it reasonably appears to the chief administrative officer of such campus or facility or to an officer or employee designated by him to maintain order on such campus or facility that such person is committing any act likely to interfere with the peaceful conduct of the activities of such campus or facility or has entered such campus or facility for the purpose of committing any such act, the chief administrative officer or officer

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or employee designated by him to maintain order on such campus or facility may direct such person to leave such campus or facility, and if such person fails to do so, he is guilty of a misdemeanor.

"(b) As used in this section:

"(1) 'State university' means the University of California, and includes any affiliated institution thereof and any campus or facility owned, operated or controlled by the Regents of the University of California.

"(2) 'State college' means any California state college administered by the Trustees of the California State Colleges.

"(3) 'Chief administrative officer' means the president of a state college or the officer designated by the Regents of the University of California or pursuant to authority granted by the Regents of the University of California to administer and be the officer in charge of a campus or other facility owned, operated or controlled by the Regents of the University of California."

See People v. Agnello (1968), 259 Cal. App. 2d 875, upholding the constitutionality of Section 602.7 of the Penal Code.

Section 602.9, Penal Code

"602.9. Any person who comes into any school building or upon any school ground, or street, sidewalk, or public way adjacent thereto, without lawful business thereon, and whose presence or acts interfere with the peaceful conduct of the activities of such school or disrupt the school or its pupils or school activities, and who remains there, after being asked to leave by

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the chief administrative official of that school or any designated agent of the chief administrative official who possesses a standard supervision credential or a standard administration credential or who carries out the same functions as a person who possesses such a credential or, in the absence of the chief administrative official, the person acting as the chief administrative official, is guilty of a misdemeanor.

"The term 'school' as used in this section means any elementary school, junior high school, senior high school, or junior college.

"The term 'lawful business' as used in this section means a reason for being present upon school property which is not otherwise prohibited by statute, by ordinance, or by any regulation adopted pursuant to statute or ordinance."

Section 647b, Penal Code

"647b. Every person who loiters about any school in which adults are in attendance at courses established pursuant to Chapter 5.5 (commencing with Section 5701) of Division 6 of the Education Code, and who annoys or molests any person in attendance therein shall be punished by a fine of not exceeding five hundred dollars (\$500) or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment."

Section 647c, Penal Code

"647c. Every person who willfully and maliciously obstructs the free movement of any person on any street, sidewalk, or other public place or on or in any place open to the public is guilty of a misdemeanor.

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"Nothing in this section affects the power of a county or a city to regulate conduct upon a street, sidewalk, or other public place or on or in a place open to the public."

Section 650-1/2, Penal Code

"650-1/2. A person who wilfully and wrongfully commits any act which seriously injures the person or property of another, or which seriously disturbs or endangers the public peace... for which no other punishment is expressly prescribed by this code, is guilty of a misdemeanor."

Section 653g, Penal Code

"653g. Every person who loiters about any school or public place at or near which children attend or normally congregate is a vagrant, and is punishable by a fine of not exceeding five hundred dollars (\$500) or by imprisonment in the county jail for not exceeding six months, or by both such fine and imprisonment."

Section 13558.5, Education Code

"13558.5. Every minor over 16 years of age or adult who is not a pupil of the school, including but not limited to any such minor or adult who is the parent or guardian of a pupil of the school, who comes upon any school ground or into any schoolhouse and there willfully interferes with the discipline, good order, lawful conduct, or administration of any school class or activity of the school, with the intent to disrupt, obstruct, or to inflict damage to property or bodily injury upon any person, is guilty of a misdemeanor, and is punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for not more than six months, or both."

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Section 16701, Education Code

"16701. Any person who wilfully disturbs any public school or any public school meeting is guilty of a misdemeanor, and punishable by a fine of not less than ten dollars (\$10) nor more than one hundred dollars (\$100)."

II. Disciplinary Provisions

A. University of California

With respect to the University of California, the Chancellors of the various campuses of the university are required to establish campus regulations and procedures governing the use of university grounds, buildings, and other facilities. Such regulations must be designed to prevent interference with university functions or activities, in accordance with specified objectives. Students are required to refrain from conduct which significantly interferes with university teaching, research, administration, or the university's subsidiary responsibilities, or which endangers the health or safety of members of the university community, or of visitors to the campus, and from disorderly conduct on university premises or at university related events. (University of California Policies Relating to Students and Student Organizations, Use of University Facilities, and Non-Discrimination (February 19, 1968), Secs. II and III, pp. 5-10, incl.). Persons who are not students or employees of the university, while on university property, are required to adhere to the standards of conduct applicable to university students and to abide by university-wide policies and campus regulations (University of California Policies Relating to Students and Student Organizations, Use of University Facilities, and Non-Discrimination, supra, p. 10).

We also note the following Standards of Conduct for Students and Student Organizations at the University of California, issued by the President of the University on February 19, 1968, and appearing in University of California Policies Relating to Students and Student Organizations, Use of University Facilities, and Non-Discrimination, supra, at page 5:

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"A student enrolling in the University assumes an obligation to conduct himself in a manner compatible with the University's function as an educational institution. Misconduct for which students are subject to discipline falls into the following categories:

"(1) Dishonesty, such as cheating, plagiarism, or knowingly furnishing false information to the University;

"(2) Forgery, alteration, or misuse of University documents, records, or identification;

"(3) Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other University activities, including its public service functions, or of other authorized activities on University premises;

"(4) Physical abuse of any person on University-owned or controlled property or at University-sponsored or -supervised functions, or conduct which threatens or endangers the health or safety of any such person;

"(5) Theft of or damage to property of the University or of a member of the University community or campus visitor;

"(6) Unauthorized entry to or use of University facilities;

"(7) Violation of University policies or of campus regulations, including campus regulations concerning the registration of student organizations, the use of University facilities, or the time, place, and manner of public expression;

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"(8) Use, possession, or distribution of narcotic or dangerous drugs, such as marijuana and lysergic acid diethylamide (LSD), except as expressly permitted by law;

"(9) Violation of rules governing residence in University-owned or -controlled property;

"(10) Disorderly conduct or lewd, indecent, or obscene conduct or expression on University-owned or -controlled property or at University-sponsored or -supervised functions;

"(11) Failure to comply with directions of University officials acting in the performance of their duties; or

"(12) Conduct which adversely affects the student's suitability as a member of the academic community." (Emphasis added.) (Also printed in Assembly Journal, February 19, 1968, pages 587-588)

#### B. State Colleges

The Trustees of the California State Colleges are required to adopt rules and regulations for the government of the California State Colleges (Sec. 23604, Ed. C.). The trustees are authorized to establish rules and regulations for the government and maintenance of the buildings and grounds of the state colleges, with the violation of such rules and regulations declared to be a misdemeanor (Sec. 23604.1, Ed. C.). The trustees have adopted regulations relating to disciplinary proceedings against students for "disorderly, unethical, vicious, or immoral conduct" or for the "misuse, abuse, theft, or destructions of state property" (5 Cal. Adm. Code, Secs. 41301 and 41302). The trustees have also adopted a regulation relating to disciplinary action against students who are "found to have disrupted or to have attempted to disrupt, by force or violence, any part of the instructional program of a state college, or any meeting, recruiting interview, or other activity authorized to be held or conducted at the college" (5 Cal. Adm. Code, Sec. 41304).

Honorable Victor V. Veysey - #730

C. School Districts\*

Section 10601, Education Code

"10601. Teachers may suspend, for good cause, any pupil from the school for not exceeding one schoolday, plus the remainder of the schoolday during which the suspension is ordered, if suspension is ordered during a schoolday, and shall immediately report the suspension to the principal of the school and send the pupil to the principal for appropriate action."

Section 10602, Education Code

"10602. Continued willful disobedience, habitual profanity or vulgarity, open and persistent defiance of authority of the school personnel, or assault or battery upon a student, upon school premises or while under the authority of school personnel, or continued abuse of school personnel, assault or battery upon school personnel, or any threat of force or violence directed toward school personnel, at any time or place shall constitute good cause for suspension or expulsion from school; however, no pupil shall be suspended or expelled unless the conduct for which he is to be disciplined is related to school activity or school attendance. Smoking or having tobacco on school premises constitutes good cause for the suspension or expulsion of a pupil except when permitted as provided in this section. The governing board of any school district maintaining a junior college may adopt rules and regulations permitting the smoking and possession of tobacco on the campus of a junior college by pupils of the junior college 18 years of age and over and enrolled in grades above the 12th, if the campus is not shared with a high school."

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\* The public junior colleges are designated as secondary schools (Sec. 5552, Ed. C.) and are included in the public school system (Sec. 6, Art. IX, Cal. Const.), and the provisions of Sections 10601, 10602, 10605, and 10606 of the Education Code would be applicable to junior college students. (Also see Sec. 10604, Ed. C.)

Honorable Victor V. Veysey - - #730

Section 10605, Education Code

"10605. The governing board of any school district shall suspend or expel pupils for misconduct when other means of correction fail to bring about proper conduct."

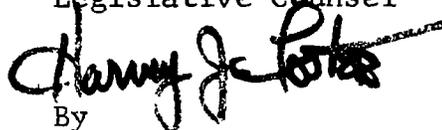
Section 10606, Education Code

"10606. Any pupil who wilfully cuts, defaces, or otherwise injures in any way any property, real or personal, belonging to a school district is liable to suspension or expulsion, and the parent or guardian shall be liable for all damages so caused by the pupil. The parent or guardian of a pupil shall be liable to a school district for all property belonging to the school district loaned to the pupil and not returned upon demand of an employee of the district authorized to make the demand."

The governing board of any school district is charged with the duty to maintain schools and classes (Sec. 1051, Ed. C.). This section impliedly requires school boards to maintain order in all school activities. (See Sec. 10604, Ed. C.) Governing boards may additionally prescribe rules not inconsistent with law or with the rules prescribed by the State Board of Education, for the government of the schools under its jurisdiction (Sec. 1052, Ed. C.). In view of these provisions, we think the governing board of a school district could adopt reasonable regulations relating to the prohibition of classroom and school campus disturbances.

Very truly yours,

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By  
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11

## Analysis of Laws Relating to the Discipline of Academic Employees and Students at California Insti- tutions of Higher Education - #1230

### I. Discipline of Academic Employees

#### A. State Colleges

Sections 24201, 24306, and 24308 of the Education Code<sup>1</sup> and Sections 43520 to 43526, inclusive, of Title 5 of the California Administrative Code contain provisions relating to the dismissal, demotion, or suspension for cause of an academic employee of the California State Colleges.

It should be noted, in this regard, that while the regulations of the trustees contain certain provisions regarding tenure rights of academic employees (5 Cal. Adm. C., Secs. 43560-43571, incl.), no distinction is made with respect to disciplinary procedure between employees who have tenure and employees who do not have tenure. The

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<sup>1</sup> All section references are to the Education Code, unless otherwise indicated.

dismissal of a permanent academic employee (i.e., academic employee with tenure [see Secs. 43560-43571, incl., 5 Cal. Adm. C.]) is recommended by the president of the college to the Trustees of the California State Colleges through the Chancellor; other disciplinary action affecting academic employees is recommended by the president of the college to the Chancellor (5 Cal. Adm. C., Sec. 43524).

The causes for dismissal, demotion, or suspension of an academic employee are set forth in Section 24306, a part of Article 2 (commencing with Section 24301) of Chapter 9 of Division 18, which reads as follows:

"24306. A permanent or probationary academic or nonacademic employee may be dismissed, demoted, or suspended for the following causes:

- "(a) Immoral conduct.
- "(b) Unprofessional conduct.
- "(c) Dishonesty.
- "(d) Incompetency.
- "(e) Physical or mental unfitness for position occupied.
- "(f) Failure or refusal to perform the normal and reasonable duties of the position.
- "(g) Conviction of a felony or conviction of any misdemeanor involving moral turpitude.
- "(h) Fraud in securing appointment.
- "(i) Drunkenness on duty.
- "(j) Addiction to the use of narcotics or habit forming drugs."

Section 43521 of Title 5 of the California Administrative Code reads as follows:

"43521. Cause. Employees may be dismissed, demoted, or suspended for cause as provided in Article 2 [(commencing with Section 24301)] of Chapter 9, Division 18 of the Education Code."

Any employee of the California State Colleges who, following appropriate procedures at the college, is found to have disrupted or to have attempted to disrupt, by force or violence, any part of the instructional program of a state college, or any meeting, recruiting interview, or other activity authorized to be held or conducted at the college, may, in the discretion of the president of the college, be disciplined pursuant to Section 24306 (5 Cal. Adm. C., Sec. 43526).

"Unprofessional conduct" as used in Section 24306 is defined in Section 24307, which reads as follows:

"24307. 'Unprofessional conduct' as used in Section 24306 includes, but is not limited to:

"(a) Membership in, or active support of, a 'communist front,' a 'communist action' organization, or a communist organization, as those terms are now defined in the act of the Congress of the United States designated as 'Internal Security Act of 1950.'

"(b) Persistent active participation in public meetings conducted or sponsored by an organization mentioned in subdivision (a) of this section.

"(c) Wilful advocacy of the overthrow of the Government of the United States or of the State, by force, violence or other unlawful means, either on or off the campus.

"(d) Wilful advocacy of communism, either on or off the campus, for the purpose

of undermining the patriotism of pupils, or with the intent to indoctrinate any pupil with communism or inculcate a preference for communism in the mind of any pupil."

We note that the phrase "unprofessional conduct," as used in statutes such as Section 24306, is a relative expression without technical meaning or arbitrary connotation, and may extend to a wide variety of activities (see Board of Education v. Swan (1953), 41 Cal. 2d 546, 553; Board of Trustees v. Owens (1962), 206 Cal. App. 2d 147, 157; Goldsmith v. Board of Education (1924), 66 Cal. App. 157).

Section 1028.1 of the Government Code provides that any public employee who fails to appear and answer under oath questions on specified matters, such as knowing membership in the Communist Party, propounded by certain public bodies shall be guilty of insubordination and shall be suspended and dismissed from his employment in the manner provided by law. (See Steinmetz v. Cal. State Board of Education (1955), 44 Cal. 2d 816; cert. denied 76 S. Ct. 708, 351 U.S. 915, 100 L. ed. 1448; compare Slochower v. Board of Ed. of N.Y. (1955), 100 L. ed. 693, 350 U.S. 551).

The formal procedure for the dismissal of an academic employee of the California State Colleges is set forth in Sections 24308 to 24310, inclusive, of the Education Code. The Chancellor of the California State Colleges must give written notice of the dismissal, demotion, or suspension to the employee, setting forth a statement of causes, the events or transactions upon which the causes are based, the nature of the penalty and the effective date, and a statement of the employee's right to answer within 20 days and request a hearing before the State Personnel Board (Sec. 24308). The employee may request, within 20 days of being served with the notice, a hearing by the State Personnel Board. The grounds for the request for such hearing are specified. The State Personnel Board is required to hold a hearing, following the same procedure as

in a state civil service proceeding, and is required to render a decision affirming, modifying or revoking the action taken. (Sec. 24309)

The law prescribing the procedure for a state civil service proceeding requires the State Personnel Board or its authorized representative to hold a hearing and give the employee notice of the time and place of the hearing (Sec. 19578, Gov. C.). The employee has the right to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses and to impeach any witness (Secs. 11513, 19578, and 19580, Gov. C.). The State Personnel Board is required to issue subpoenas for witnesses for the employee at his request and at his cost (Sec. 19581, Gov. C.). The board must render its decision within a reasonable time after the hearing (Sec. 19583, Gov. C.). The employee may petition the State Personnel Board for a rehearing which the board may grant or deny (Sec. 19586, Gov. C.).

If the dismissal, demotion, or suspension is revoked or modified by the State Personnel Board or the trustees, the employee must be restored to his position in accord with the decision and must be paid back salary equal to that which he would have earned if continuously employed in accord with the decision (Sec. 24310).

If the employee is dissatisfied with the decision of the board he may petition a superior court, a district court of appeal, or the California Supreme Court for a writ of mandate to be reinstated in his position (Sec. 1094.5, C.C.P.; see Boren v. State Personnel Board (1951), 37 Cal. 2d 634. The right to petition a court for a writ of mandate or to bring or maintain any action or proceeding based on or related to any state civil service law or administration thereof is not affected by the failure to apply for a rehearing with the State Personnel Board (Sec. 19588, Gov. C.). If the decision of the state court is adverse, he may petition the United States Supreme Court for certiorari. (See Steirmetz v. Cal. State Board of Education, supra.)

We note that an absence without leave for a period of five consecutive working days constitutes an automatic resignation on the part of the employee (Sec. 24311). Reinstatement may be granted only if the employee makes

a satisfactory explanation to the State Personnel Board as to the cause of his absence and his failure to obtain leave therefor, and the board finds that he is ready, able, and willing to resume the discharge of his duties or, if not, that he has obtained the consent of the appointing power to a leave of absence to commence upon reinstatement. A reinstated employee receives no salary for the period of his absence or separation (Sec. 24311).

B. University of California

With respect to the dismissal of an academic employee of the University of California, we note that Section 9 of Article IX of the California Constitution vests in the public corporation known as the "Regents of the University of California" virtually exclusive authority in the administration of the affairs of the University of California, in the following terms:

"Sec. 9. The University of California shall constitute a public trust, to be administered by the existing corporation known as 'The regents of the University of California,' with full powers or organization and government, subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the university and the security of its funds. . . . Said corporation shall be vested with the legal title and the management and disposition of the property of the university and of property held for its benefit and shall have the power to take and hold, either by purchase or by donation, or gift, testamentary or otherwise, or in any other manner, without restriction, all real and personal property for the benefit of the university or incidentally to its conduct. Said corporation shall also have all the powers necessary or convenient for the effective

administration of its trust, including the power to sue and to be sued, to use a seal, and to delegate to its committees or to the faculty of the university, or to others, such authority or functions as it may deem wise. . . . The university shall be entirely independent of all political or sectarian influence and kept free therefrom in the appointment of its regents and in the administration of its affairs, and no person shall be debarred admission to any department of the university on account of sex."

The above provision has been construed by the courts as vesting in the Regents the full control over matters which are internal affairs of the university, while reserving to the Legislature the power to legislate with regard to matters which are not exclusively university affairs or are of general statewide concern (Tolman v. Underhill (1952), 39 Cal. 2d 708).

Section 1028 of the Government Code, which probably would be held to apply to employees of the university as well as other public employees (see Tolman v. Underhill, supra; but cf. Calif. State Employees' Assn. v. Regents of the Univ. of Calif. (1968), 267 A.C.A. 744), makes knowing membership in the Communist Party, as therein described, a ground upon which dismissal may be based. That section provides:

"1028. It shall be sufficient cause for the dismissal of any public employee when such public employee advocates or is knowingly a member of the Communist Party or of an organization which during the time of his membership he knows advocates overthrow of the Government of the United States or of any state by force or violence."

We note that Section 1028.1 of the Government Code, as discussed on page 4, would also probably be held to apply to employees of the University of California.

As a general proposition, however, qualifications to become and remain a teacher at the University of California, as well as the subject of dismissal, constitute an internal affair of the university (see Newmarker v. Regents of Univ. of Cal. (1958), 160 Cal. App. 2d 640, 646; Wall v. Board of Regents, U.C. (1940), 38 Cal. App. 2d 698; 700; also see Ishimatsu v. Regents of the Univ. of Calif. (1968), 266 A.C.A. 932).

The "By-Laws and Standing Orders of the Regents of the University of California" provide for the government of the university, including the employment of officers and employees. Provision is made for dismissal or demotion of academic employees by the Regents upon recommendation of the President of the University. However, before making any such recommendation, the President is required to consider the recommendation of the Chief Campus Officer (Chancellor or Provost) of the campus involved. If the recommendation involves a professor, associate professor or dean (or equivalent position), the Chief Campus Officer is required to consult with a properly constituted advisory committee of the Academic Senate.<sup>2</sup> (By-Laws and Standing Orders, Chapter VIII, Section 1(c)) In this connection, subdivision (j) of Section 3 of Chapter VI of the By-Laws and Standing Orders provides as follows:

"(j) All appointments to the position of Professor and Associate Professor and to positions of equivalent rank ... are continuous in tenure until terminated by retirement, demotion or dismissal. The termination of a continuous tenure appointment or the termination of the appointment of any other member of the faculty before the expiration of his contract, shall be only for good cause, after the opportunity for a hearing before the properly constituted advisory committee of the Academic Senate. (See Section 1(c) of Chapter VIII.)"

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<sup>2</sup> The Academic Senate is composed of the President of the University, Vice Presidents, Chief Campus Officers, and various other specified officers and all professors and instructors (By-Laws and Standing Orders, Chapter IX, Section 1).

The phrase "good cause" is not defined in the By-Laws and Standing Orders, nor has that phrase, with reference to academic employees of the University of California, been interpreted in any reported judicial decision (see Ishimatsu v. Regents of the Univ. of Calif., supra, at pp. 936-937).

### C. Junior Colleges

With respect to the academic employees of junior colleges, we note initially that although public junior colleges are a segment of public higher education, as are the University of California and the California State Colleges (see Sec. 6, Art. IX, Cal. Const., and Sec. 22500), they are also included within the definition of "secondary schools" in the public school system (Secs. 5552 and 22650), and receive financial support from the State School Fund (Ch. 3 (commencing with Sec. 17601), Div. 14).

The academic employees of public junior colleges are thus certificated employees of the particular school districts maintaining the junior colleges, and the several code sections relative to the dismissal of certificated employees are applicable to them.

Section 13403 enumerates several grounds for the dismissal of permanent certificated employees. The power of dismissal has been interpreted to include, as necessarily implied, the power to suspend (Goldsmith v. Board of Education, supra).

Section 13403 provides:

"13403. No permanent employee shall be dismissed except for one or more of the following causes:

"(a) Immoral or unprofessional conduct.

"(b) Commission, aiding, or advocating the commission of acts of criminal syndicalism, as prohibited by Chapter 188, Statutes of 1919, or in any amendment thereof.

"(c) Dishonesty.

"(d) Incompetency.

"(e) Evident unfitness for service.

"(f) Physical or mental condition unfitting him to instruct or associate with children.

"(g) Persistent violation of or refusal to obey the school laws of the State or reasonable regulations prescribed for the government of the public schools by the State Board of Education or by the governing board of the school district employing him.

"(h) Conviction of a felony or of any crime involving moral turpitude.

"(i) Violation of Section 8455 of this code or conduct specified in Section 1028 of the Government Code, added by Chapter 1418 of the Statutes of 1947.

"(j) Violation of any provision in Section 12952 to 12958, inclusive, of this code.

"(k) Knowing membership by the employee in the Communist Party."

Section 13403.5 states further grounds for the dismissal or suspension of a certificated employee.

"13403.5. A permanent employee may be dismissed on grounds of unprofessional conduct consisting of acts or omissions other than those specified in Section 13403, but any such charge shall specify instances of behavior deemed to constitute unprofessional conduct."

As previously noted, the phrase "unprofessional conduct" is a relative expression without technical meaning or arbitrary connotation and may extend to a wide variety of activities.

Sections 13404 to 13441, inclusive, provide extensive procedures for the suspension or dismissal of permanent certificated employees. Generally speaking, the procedure involves the giving of notice to the employee, by the district governing board, of intention to dismiss. The notice must be based upon written charges formulated by the governing board itself, or verified and filed with the governing board by some person, charging that cause for dismissal exists (Secs. 13404, 13405). The employee may demand a hearing, in which case the governing board must, if it chooses to proceed in the matter, file a complaint in the superior court setting forth the charges and asking the court to inquire into the charges and determine whether or not the charges are true, whether or not they constitute sufficient grounds for dismissal, and for judgment pursuant to its findings (Secs. 13406-13412). Provision is made for the finding of facts by referees (Sec. 13418), and the report containing such facts may be confirmed by the court (Sec. 13431). A decision in favor of the employee

is binding upon the school board, but the board need not dismiss the employee even if the court determines that such dismissal is justified (Sec. 13436). Either party may appeal from the judgment of the court (Sec. 13440).

The law relating to dismissal of probationary employees is found in Sections 13442 to 13444.5, inclusive. As in the case of permanent employees, probationary employees may be dismissed during the school year for cause only, pursuant to the procedure described above (Sec. 13442). As an alternative procedure, the board may give written notice on or before May 15 of any year to the probationary employee that his services will not be required for the ensuing year. The governing board and the probationary employee must be given a written notice by a designated official that it has been recommended that such notice be given to the employee and stating the reasons therefor. The employee may request a hearing before the governing board to determine if there is cause for not reemploying him for the ensuing year. The board's determination of the sufficiency of the cause is conclusive, but the cause shall relate solely to the welfare of the schools and the pupils thereof. The governing board, upon request, must give the employee a written statement of the reasons for not reemploying him. The employee, upon demand, shall be afforded a hearing in accordance with specified Government Code provisions relating to administrative adjudications, with certain minor exceptions. The governing board shall pay for all expenses of the hearing, including the costs of the hearing officer, from the district funds. The board is authorized to adopt rules and regulations to effectuate the procedure described in this paragraph (Sec. 13443).

## II. Discipline of Students

### A. State Colleges

There is no statutory law dealing with the subject of student discipline at the California State Colleges.

Pursuant to authority given by law to provide by rules and regulations for the government of the California State Colleges (Sec. 23604), the Trustees of the California State Colleges have adopted the following regulations, which appear in Title 5 of the California Administrative Code, relating to discipline of students for behavioral misconduct:

"41301. Any student of a state college may be placed on probation, suspended or expelled for one or more of the following causes:

"(a) Disorderly, unethical, vicious, or immoral conduct.

"(b) Misuse, abuse, theft, or destruction of state property."

"41302. The president of the state college may place on probation or suspend a student for one or more of the causes enumerated in Section 41301. The period for which the student may be placed on probation or suspended by the president shall not exceed 12 months. No fees or tuition paid by or for such student for the semester, quarter, or summer session in which he is suspended shall be refunded. If the student is readmitted before the close of the semester, quarter, or summer session in which he is suspended, no additional tuition or fees shall be required of the student on account of his suspension. In the event that a student who has not reached his twenty-first birthday is suspended, the president shall

immediately notify his parent or guardian of the action by registered mail to the last known address, return receipt requested.

"41303. A student may be expelled by the president of the state college in which the student is enrolled, in accordance with procedures for hearings established by the college.

"41304. Notwithstanding any provision in this Article 1 to the contrary, any student who, in accordance with procedures for hearings established by the college, is found to have disrupted, or to have attempted to disrupt, by force or violence, or by the threat of force or violence, any part of the instructional program of a state college, or any meeting, recruiting interview or other activity authorized to be held or conducted at the college, may, in the discretion of the President, be suspended, dismissed, or otherwise disciplined as provided by law. Suspensions pursuant to this section may exceed one year."

Under these regulations the grounds upon which a student may be placed on probation, suspended, or expelled, are conduct which is disorderly, unethical, vicious or immoral, or which involves the misuse, abuse, theft, or destruction of state property (5 Cal. Adm. C., Sec. 41301). The president of a state college, in his discretion, may suspend or dismiss a student, who in accordance with established procedures for hearings, is found to have disrupted or to have attempted to disrupt by force or violence or by threat of force or violence any instructional program, meeting, recruiting interview, or activity authorized to be conducted at the state college (5 Cal. Adm. C., Sec. 41304).

Section 41302 of Title 5 makes particular provision concerning the power of the president of a state college to place on probation or suspend a student. No comprehensive procedural standards or requirements are prescribed.<sup>3</sup> The section merely fixes a 12-month maximum time period for which such sanctions may be imposed, makes provision concerning student fees, and provides for notification of parents if the student is a minor.

Section 41303 of Title 5 makes specific provision concerning the expulsion of a student by the president of a state college. Again, no comprehensive procedure is provided for. The section merely specifies that the action be undertaken in accordance with procedures for hearings established by the college.

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<sup>3</sup> See discussion in Part II, C, *infra*, as to general procedural due process requirements applicable to both the state colleges and the University of California.

## B. University of California

With reference to the University of California, again, there is no statutory law dealing with the subject of student discipline. This is apparently handled as an internal affair of the university. We find, from examination of the decision in the recent case of Goldberg v. Regents of the University of California (1967), 248 Cal. App. 2d 867, involving disciplinary action against a number of students for misconduct, that discipline was invoked after notice and hearings had been given the students involved. Written notice to the students specified the particular acts involved in the allegations of misconduct, and quoted university-wide policies of the regents concerning student conduct and discipline, and provisions of the General Catalogue of the Berkeley Campus relating thereto. The notice informed the students that a special ad hoc committee had been appointed to hold hearings and that the students could be represented by counsel at the hearings. (See 248 Cal. App. 2d 867, at pages 871-872)

The acts of the students upon which the charges of misconduct were based in the Goldberg case involved possible crimes (violations of the obscenity laws and disturbing the peace) and criminal prosecutions were pending against three of the students at the time the University's disciplinary proceedings were underway.

The Chancellors of the various campuses of the university are required to establish campus regulations and procedures governing the use of university grounds, buildings, and other facilities. Such regulations must be designed to prevent interference with university functions or activities, in accordance with specified objectives. Students are required to refrain from conduct which significantly interferes with university teaching, research, administration, or the university's subsidiary responsibilities, or which endangers the health or safety of members of the university community, or of visitors to the campus, and from disorderly conduct on university premises or at university related events. (University of California Policies Relating to Students and Student Organizations, Use of University Facilities, and Non-Discrimination (February 16, 1968) Secs. II and III, pp. 5-10, incl.). Persons

who are not students or employees of the university, while on university property, are required to adhere to the standards of conduct applicable to university students and to abide by university-wide policies and campus regulations (University of California Policies Relating to Students and Student Organizations, Use of University Facilities, and Non-Discrimination, supra, p.10).

We also note the following Standards of Conduct for Students and Student Organizations at the University of California, issued by the president of the university on February 19, 1968:

"STANDARDS OF CONDUCT FOR STUDENTS AND  
STUDENT ORGANIZATIONS  
University of California

"A student enrolling in the University assumes an obligation to conduct himself in a manner compatible with the University's function as an educational institution. Misconduct, for which students are subject to discipline, falls into the following categories:

"(1) Dishonesty, such as cheating, plagiarism, or knowingly furnishing false information to the University;

"(2) Forgery, alteration, or misuse of University documents, records, or identification;

(3) Obstruction or disruption of teaching, research, administration, disciplinary procedures, or other University activities, including its public service functions, or of other authorized activities on University premises;

"(4) Physical abuse of any person on University-owned or controlled property or at University sponsored or supervised functions; or conduct which threatens or endangers the health or safety of any such person;

"(5) Theft of, or damage to, property of the University or of a member of the University community or campus visitor;

"(6) Unauthorized entry to, or use of, University facilities;

"(7) Violation of University policies or campus regulations including campus regulations concerning the registration of student organizations, the use of University facilities, or the time, place, and manner of public expression;

"(8) Use, possession, or distribution of narcotic or dangerous drugs, such as marijuana and lysergic acid diethylamide (LSD), except as expressly permitted by law;

"(9) Violation of rules governing residence in University owned or controlled property;

"(10) Disorderly conduct, or lewd, indecent or obscene conduct or expression, on University owned or controlled property, or at University sponsored or supervised functions;

"(11) Failure to comply with directions of University officials acting in the performance of their duties;

"(12) Conduct which adversely affects the student's suitability as a member of the academic community."<sup>4</sup>

C. General Due Process Requirements Applicable to both the State Colleges and the University of California

It is established by recent decisions in other jurisdictions, as well as by the court's decision in the

<sup>4</sup> Printed in Assembly Journal on February 19, 1968, at pages 587 and 588.

Goldberg case, that as a general proposition procedural due process requires notice and some opportunity for a hearing before a student can be expelled or suspended from a tax-supported state university (Scoggin v. Lincoln University, 37 L.W. 2187 Oct. 1, 1968 [U.S.D.C.-Mo.]; Dixon v. Alabama State Board of Education (1961), 294 F. 2d 150; cert. denied, 7 L.ed. 2d 193; Knight v. State Bd. of Educ. (1961), 200 F. Supp. 174 [participation in demonstrations protesting laws concerning separation of races in public places]). While a full dress judicial hearing with the right to cross-examine witnesses is not required, the rudiments of an adversary proceeding must be observed (Scoggin v. Lincoln University, supra; Moore v. Student Affairs Committee of Troy State Univ. (1968), 284 F. Supp. 725, 730; Dixon v. Alabama State Board of Education, supra, p. 159; see Goldberg v. Regents of the University of California (1967), supra; Esteban v. Central Missouri State College (1968), 290 F. Supp. 622; 10 U.C.L.A. L. Rev. 368; 70 Harvard Law Review 1406; 58 A.L.R. 2d 903; 15 Am. Jur. 2d, Colleges and Universities, Sec. 26).

With reference to the matter of immediate suspension or expulsion of a student pending compliance with appropriate administrative procedures where the commission of a serious crime or the like has occurred, no such procedure is provided for in the California law or in administrative regulations, nor have the Regents of the University of California adopted any formal policy or regulation pertaining thereto. While we have found no reported judicial ruling on the issue, we think a student could be suspended or expelled pending a hearing where such action is justified by a compelling public interest (i.e., breach of peace, physical violence, destruction of property--see Escobedo v. State of California (1950), 35 Cal. 2d 870, 876-877). The determination of a "compelling public interest" would depend upon all the facts and circumstances in a given situation, and a hearing must be provided within a reasonable time (see Ewing v. Mytinger & Casselberry (1950, 94 L. ed. 1088, 1093-1094; see 3 Witkin, Summary of California Law, Constitutional Law, pp. 1921-1924; 2 Am. Jur. 2d, Administrative Law, Sec. 406; also see Scoggin v. Lincoln University, supra, at p. 2188). In this connection,

we note that the court in the Goldberg case held that attendance at publicly financed institutions of higher education should be regarded a benefit somewhat analogous to that of public employment (248 Cal. App. 2d 867 at 877). The statutory law governing state civil service and teacher tenure has, as a matter of long standing, authorized action of the type in question where designated serious acts were involved on the part of the public employee (Gov. C., Sec. 19574.5--misappropriation of public funds or property, drug addiction, mistreatment of persons in state institutions, immorality, or acts constituting crimes involving moral turpitude; Ed. C., Secs. 13408-13409--immoral conduct, crime involving moral turpitude, incompetence due to mental disability, advocating communism in classroom, Communist Party membership, specified sex offenses).

We think the University of California could adopt hearing procedures which are to be followed in cases involving the suspension or expulsion of students. If such procedures have been adopted, we do not think the University of California could suspend or expel a student without meeting any requirements relative to a hearing so established. With respect to the California State Colleges, the adopted regulations of the trustees contemplate a hearing in the case of expulsion. However, we think a state college could adopt hearing procedures which are to be followed in cases involving the suspension of students. If such procedures have been adopted, we do not think the particular state college involved could suspend a student without meeting any requirements relative to a hearing established by the particular state college involved.

#### D. Junior Colleges

Initially, we reiterate our statement that public junior colleges have a dual nature, being included in both the definition of secondary schools and institutions of higher education.

Students in public junior colleges may be suspended<sup>5</sup> or expelled by the governing board of the appropriate school

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<sup>5</sup> No pupil may be suspended from a secondary school for more than the duration of the current semester or the equivalent of such a semester, or duration of the current summer session (Sec. 10607).

district under various circumstances, as follows:

(1) Suspension or expulsion for good cause involving, on the school premises, willful disobedience, open and persistent defiance of the authority of the school personnel, habitual profanity or vulgarity, smoking or having tobacco (except as may be authorized at separate junior college campuses), assault or battery upon a student upon school premises or while under the authority of school personnel, continued abuse of school personnel, assault or battery upon school personnel, or any threat of force or violence directed toward school personnel, at any time or place; provided that conduct for which discipline is imposed is related to school activity or attendance (Sec. 10602).

(2) Suspension or expulsion for having, on or near school premises, used, sold, or possessed narcotics or other hallucinogenic drugs or substances, or having inhaled or breathed the fumes of, or ingested, specified poisons (Sec. 10603).

(3) Suspension or expulsion for refusal or neglect to obey board rules and regulations concerning the government and discipline of the schools, including unlawful membership in any secret fraternity, sorority, or club (Sec. 10604).

(4) Suspension or expulsion for misconduct when other means of correction fail to bring about proper conduct (Sec. 10605).

(5) Suspension or expulsion for willfully cutting, defacing, or otherwise injuring school district property (Sec. 10606).

Section 10601 authorizes a teacher to suspend a pupil from the school for good cause for not exceeding one schoolday, plus the remainder of the schoolday during which the suspension is ordered.

Section 10601.5 authorizes a principal to suspend a pupil for good cause (except the use, sale or possession of narcotics or other hallucinogenic drugs) for not to exceed 10 schooldays. Provision is made for reporting such suspensions to the governing board of the school district or to the district superintendent.

Section 10605.5 requires the chief administrative officer of the school, prior to the suspension or expulsion of a student, to notify appropriate law enforcement authorities of any acts of the student which may amount to an assault with a deadly weapon or by any means of force likely to produce great bodily injury.

While the governing board of any school district maintaining a two-year junior college is required to admit to the junior college any high school graduate (Sec. 25503), the compulsory school attendance laws are not applicable to students in grade 13 or 14 in a junior college (Secs. 12101, 12102, and 12551). If a student is expelled from a public school, the parent or the guardian of the student may appeal to the county board of education, which is required to hold a hearing thereon and to render its decision on the expulsion (Sec. 10608). However, there is no specific statutory requirement for such a hearing with respect to the suspension of a student (but see Sec. 12103, authorizing hearings on suspensions beyond 10 schooldays of students subject to the compulsory school attendance laws).

As we have previously noted, it has been held, as a general proposition, that procedural due process requires notice and some opportunity for a hearing before a student can be expelled or suspended from a tax-supported state university. While a full-dress judicial hearing with the right to cross-examine witnesses is not required, the rudiments of an adversary proceeding must be observed. (See cases and material cited in Part II, C, supra)

Due to the dual designation of junior colleges as both a "secondary school" and a segment of public higher education, the applicability of the cases discussed in Part II, C, supra, to a public junior college is not entirely clear. However, we think that, as a general proposition procedural due process would be applicable in situations where the student is to be suspended for such a period of time that his educational career is substantially affected or where the student is to be expelled.

The governing board of any school district, including a junior college district, is required to prescribe rules not inconsistent with law or with the rules prescribed by the State Board of Education, for the government of the schools under its jurisdiction (Sec. 1052). A junior college governing board, in our opinion, could adopt hearing procedures which are to be followed in cases involving suspension or expulsion of students and if such procedures have been adopted, we do not think the governing

of a junior college district could suspend or expel a student without meeting any requirements relative to a hearing established by the governing board.

In the event there are no hearing procedures established by the governing board of the junior college to be followed in cases involving suspension or expulsion of students, or if such procedures are established, but the appropriate officials either do not perform their duties or in performing their duties act in an arbitrary or unreasonable manner, we think the student, or his parents or guardian could, by writ of mandamus, seek judicial aid in requesting that a complete hearing be given to the matter involved in a particular situation (see Tape v. Hurley (1885), 66 Cal. 473; Miller v. Dailey (1902), 136 Cal. 212).

Very truly yours,

George H. Murphy  
Legislative Counsel



By  
Harvey J. Foster  
Deputy Legislative Counsel

HJF:js

APPENDIX D  
IMPERIAL COUNTY COUNSEL OPINION

(This is an opinion of the Imperial County Counsel on the regulations governing campus controls.)

OUTLINE FOR CAMPUS CONTROLS

I. RULES GOVERNING STUDENT ACTIVITIES.

A. District Rule Making Authority

1. The Legislature is vested with power to carry out the mandate of operation of a free public school system (Calif. Constitution, Art. IX, Sec. 1). Statutes and regulations confer upon school boards the authority to promulgate rules and regulations governing the conduct and operation of public schools.

2. Every school district is under control of a board of education (E.C. § 921). Governing boards shall prescribe and enforce rules not inconsistent with law or with rules prescribed by the State Board of Education (E.C. § 925).

3. All pupils must comply with school regulations (E.C. § 10609; Calif. Adm. Code, Title 5, Art. 7, § 62). Student body associations exist with the approval and subject to control and regulation of the governing board (E.C. § 10701).

B. Duty to Regulate Student Conduct

1. Districts must exercise ordinary prudence in carrying out the duty to properly supervise the members of the student body (Lemuth v. Long Beach Unified School District [1960] 53 Cal. 2d 544).

2. Every teacher shall hold pupils to strict account for their conduct on the way to and from school, on the playgrounds, or during recess (E.C. § 13557).

## C. Restrictions on Student Freedoms

### 1. Dress and Grooming

a. Hair styling has been interpreted to be a form of self expression and personal liberty protected by the Constitution (Finot v. Pasadena City Board of Education [1967] 250 C.A. 2d 189 - case established teacher's right to wear a beard).

b. Specific grooming regulations shown to relate to the orderly conduct of school business or to the health and safety of students have been upheld, however, (Akin v. Board of Education of Riverside Unified School District [1960] 262 A.C.A. 187 - suspension upheld where actual experience and opinion of educators indicated that beard caused classroom disruptions; Humbolt and Santa Clara County cases are on appeal involving students denied admission for excessively long hair).

### 2. Speech

a. Pupils are entitled to First Amendment guarantee of freedom of speech (West Virginia State Board of Education v. Barnette, 319 U.S. 624). The Supreme Court recently announced that students could wear black arm bands protesting Vietnam War (Tinker v. Des Moines [citation omitted]). Important limiting language in the opinion provides:

". . . Conduct by the student, in class or out of it, which for any reason--whether it stems from time, place or type of behavior--materially disrupts class work or involves substantial disorder or invasion of the rights of others is, of course, not immunized by the constitutional guarantee of freedom of speech."

### 3. Partisan Activities

a. Aside from activities and meetings conducted under the Civic Center Act (E.C. 16556, et al.), school grounds may not be used for partisan or political purposes (E.C. 10604).

b. No publication of a sectarian, partisan or denominational character may be used or distributed in any school (E.C. 8453). No bulletin, circular or other publication of any character whose purpose is to spread propaganda or to foster membership in or subscriptions to the funds of any organization not directly under the control of the school authorities, may be distributed or shown to pupils on school premises during school hours or within one hour before opening or after closing the school (E.C. 8454).

### 4. Other Conduct

a. Principals and teachers must exercise careful supervision of moral conditions in school, and not tolerate gambling, immorality, profanity, use of tobacco, narcotics, or intoxicants by pupils on school grounds or elsewhere (5 Calif. Admin. Code, Title 5, Art. 3, § 24).

b. Any student who conspires to haze or commit any act that injures, degrades, disgraces, or tends to injure, degrade, or disgrace any fellow student commits a misdemeanor (E.C. 10852).

## D. School Discipline

### 1. Suspension and Expulsion

a. The governing board shall suspend or expel for misconduct when other means of correction fail to bring about proper conduct (E.C. 10605).

b. Grounds for suspension are contained in E.C. 10602 and include continued willful disobedience, habitual profanity or vulgarity, open and persistent defiance of the authority of school personnel, or assault and battery upon a student, upon school premises or while under the authority of school personnel, or continued abuse of school personnel, assault or battery upon school personnel, or any threat of force or violence directed toward school personnel." (E.C. 10602).

c. The use, sale or possession of narcotics or hallucinogenic drugs or substances is a separate ground for suspension or expulsion under E.C. 10603. For the protection of other pupils in the public schools, the governing board or the Superintendent when authorized, may suspend or expel when it is established that the pupil has on school premises or elsewhere used, sold, or been in possession of narcotics (E.C. 10603). Sheriffs and chiefs of police are directed to notify the superintendent upon the arrest of any juvenile in attendance for a narcotics offense (Ibid).

d. Duration of suspension for elementary pupils is limited to two consecutive weeks (E.C. 10607). And no pupil shall be suspended from a secondary school for more than the duration of the current semester (Ibid). Teachers may suspend for not exceeding one

day (E.C. 10601). Principal may suspend (in cases not involving narcotics) for not exceeding 10 days (E.C. 10601.5).

e. Expulsion may be appealed to the County Board of Education by a pupil's parent or guardian (E.C. 10608). The County Board must grant a hearing and its decision shall be "final and binding upon the parent or guardian and the governing board expelling the pupil" (Ibid).

## 2. Adjustment schools

a. E.C. 10607.5 provides that no student shall be suspended from school for more than 20 days in a school year, except he shall first be transferred to and enrolled in either another regular school for adjustment purposes, an opportunity class in his school of residence, an opportunity school or class, or a continuation school or class.

Queries: Must a student be transferred to an adjustment school or class as a condition precedent to expulsion? What if a district has no adjustment school or class?

## 3. Exclusions

a. A student may be excluded from school due to "filthy or vicious habits" (E.C. 10552) or due to physical or mental disability causing attendance to be "inimical to the welfare of other pupils" (E.C. 10553). Exclusion can be for an indefinite period of time and determination of cause is a question of fact to be determined by the governing board (48 Ops. Cal. Atty. Gen. 4).

#### 4. Parental Responsibility

a. The parent or guardian of a pupil attending a public school is liable to the school district for damages caused by the pupils willfully cutting, defacing, or otherwise injuring real or personal property of the district (E.C. 10606).

#### 5. Formal Hearing Not Required

a. The Supreme Court just refused to review a case involving West Virginia College students who were suspended for participation in violent demonstrations (citation omitted). The Court thereby effectively affirmed the Circuit Court of Appeals which held that the suspended students were not required a formal hearing with right to cross examination. The Court recognized that school officials have "an inherent general power to maintain order."

In Dixon v. Alabama State Board of Education (1960) 186 F. Supp. 945, six students were summarily expelled without a formal hearing for having taken part in a civil rights demonstration. The court observed that right to attend a public college or university is not a constitutional right, but is conditioned upon an individual student's compliance with rules and regulations of the institution.

b. School age persons in California have a constitutional right to attend public schools (Calif. Consti., Art., Art. 9, § § 1,5; Piper v. Big Pine School District [1924] 193 Cal. 664).

Arguably, due process requires that elementary and secondary students be given an informal hearing and opportunity to be heard. This emphasizes the serious nature of the student's conduct and could be used to meet the requirement that the parent or guardian of a pupil under suspension be notified and asked to attend a meeting with school officials on or before the third day of a suspension (E.C. 10607).

## II. RULES GOVERNING NONSTUDENT CAMPUS ACTIVITIES

### A. The Civic Center Act

1. A "civic center" exists at every public school building and school ground within the state where specified groups and clubs or associations formed for recreational, educational, political, economic, artistic, or moral activities may meet and discuss, from time to time, subjects that in their judgment appertain to the education, political, economic, artistic, and moral interests of the citizens of the communities in which they reside (E.C. 16556).

2. Management, direction and control of the civic center is vested with the district governing board (E.C. 16558). The board may promulgate rules and regulations for conducting meetings and recreational activities (E.C. 16559). Civic center activities "shall in no way interfere with the use of the public school house and grounds, as is required for purposes of the public schools of the State" (E.C. 16557).

a. The governing board may not limit views expressed in civic center meetings (see E.C. 16553; Goodman v. Board of Education [1942] 48 C.A. 2d 73)--

Socialist Party held entitled to civic center permit to discuss questions of war and peace).

b. Civic center meeting should be open to the public (McClure v. Board of Education [1919] 38 C.A. 500). The "Brown Act" (§ 54950 to 54958 of the Govt. Code) applies only to local public agencies.

c. Outside of school hours, teachers are under no political activity prohibition as are some Federal employees under the "Hatch Act". However, no sectarian or denominational doctrine may be taught in any school (E.C. 8453; Goldsmith v. Board of Education [1924] 66 C.A. 157--teacher may not advocate the election of a single candidate).

#### B. Penal Provisions Covering Misconduct by Nonstudents

1. Numerous laws exist (and many more are being proposed) imposing criminal sanctions against nonstudents (and students) who enter campus and cause or intend to cause disruptions. Some of these laws are set out below:

E.C. 16701 provides:

"Any person who willfully disturbs any public school or any public school meeting is guilty of a misdemeanor and punishable by a fine of not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00)."

Penal Code § 602(n):

"Refusing or failing to leave a public building of a public agency during those hours of the day or night when the building is regularly closed to the public upon being requested to do so by a regularly employed guard, watchman, or custodian of the public agency owning or maintaining the building or property, if the surrounding circumstances are such as to indicate to a reasonable man that such person has no

apparent lawful business to pursue; is guilty of a misdemeanor."

Penal Code § 653(g) reads:

"Every person who loiters about any school or public place at or near which children attend or normally congregate is a vagrant, and is punishable by a fine of not exceeding five hundred dollars (\$500.00) or by imprisonment in the County jail for not exceeding six months, or by both such fine and imprisonment."

Education Code § 13558.5 reads:

"Every minor over 16 years of age or adult who is not a pupil of the school, including but not limited to any such minor or adult who is the parent or guardian of a pupil of the school, who comes upon any school ground or into any schoolhouse and there willfully interferes with the discipline, good order, lawful conduct, or administration of any school class or activity of the school, with the intent to disrupt, obstruct, or to inflict damage to property or bodily injury upon any person, is guilty of a misdemeanor, and is punishable by a fine of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), or by imprisonment in the county jail for not more than six months, or both."

Comment: Intent to cause disruptions can be shown by past conduct and lack of adequate reason for being on campus.

Education Code § 13560 reads:

"Any parent, guardian, or other person who insults or abuses any teacher in the presence of other school personnel or pupils and at a place which is on school premises or public sidewalks, streets, or other public ways adjacent to school premises or at some other place if the teacher is required to be at such other place in connection with assigned school activities is guilty of a misdemeanor, and is punishable by a fine of not less than fifty dollars (\$50) nor exceeding five hundred dollars (\$500)."

## 2. Police Protection

a. The governing board may establish a security patrol to insure the security of school district personnel and pupils in or about school district premises and the security of the real and personal property of the school district and to cooperate with local law enforcement agencies in matters involving the security of the personnel, pupils, and real and personal property of the school district (E.C. 15831). The patrol is supplementary to city and county law enforcement agencies and is not vested with general police powers (Ibid). However, persons employed as security patrolmen are peace officers within the meaning of Penal Code § 817 (E.C. 15832).

b. Sheriffs, police chiefs, marshals and constables are given the general police powers and have a responsibility for preserving the peace. (Govt. Code § § 26600, 38638 and 27823). The sheriff has the affirmative duty of preventing and suppressing any affrays, breaches of peace, riots and insurrections which come to his knowledge (Govt. Code § 26602).

## 3. Liability of Public Entity and Employees

a. A public employee is not liable for injuries inflicted by his acts or omissions "in the execution or enforcement of any law" while "exercising due care" (Govt. Code § 820.4). This immunity inures to the benefit of the public entity employer under Govt. Code § 815.2(b).

b. The Tort Claims Act recognizes that an employee may be personally liable for false arrest or false imprisonment (Govt. Code § 820.4; Dragna v. White [1955] 42 C.2d 469). Since the employee is exposed to liability, the employer entity is likewise liable under respondent superior principles and has a duty to indemnify the employee (Govt. Code § 825 et al.).

Prepared and submitted by

JAMES H. HARMON  
Deputy County Counsel

PROPOSED RULES AND REGULATIONS GOVERNING  
CONDUCT OF PERSONS ON SCHOOL GROUNDS

Resolution No. \_\_\_\_\_

BE IT RESOLVED that the District Superintendent be authorized to grant permission to an individual, associations, clubs, organizations, corporations or public agencies to use school buildings, grounds and other property in accordance with Chapter 4 of Division 12 of Part 1 of the Education Code (Section 16551, et. seq.). The District Superintendent may delegate such authority as he deems desirable to \_\_\_\_\_ to approve application for use of school buildings, grounds and equipment as may be desirable to expedite administration of this Resolution.

Resolution No. \_\_\_\_\_

BE IT RESOLVED that pursuant to Education Code Section 16559 the Board of Trustees of \_\_\_\_\_ District hereby makes and adopts the following rules and regulations for the conduct of persons, of civic meetings and of recreational activities, pursuant to Chapter 4 of Division 12 of Part 1 of the Education Code:

1. No person shall enter upon or remain upon the school grounds or within any school building while in the possession of the following property:
  - a. Any firearm except by a peace officer in the course of duty and except for a person to whom permission has been granted by the District Superintendent.
  - b. The possession of any personal property, the use or possession of which is prohibited by the Penal Code, Health and Safety Code and federal law.
2. No person shall while on school premises use foul, obscene, insulting or abusive language.
3. No person shall damage school property or shall conduct himself so as to incite damage to school property.
4. No person shall discharge mucus from the nose or mouth or spit upon any person, floor, sidewalk, building, equipment (except sanitary appliances), supplies or vehicle within or upon the school property.
5. No person shall pass out, distribute or disseminate any circular, handbill, be it handwritten, printed or mass-manufactured publication, unless the distribution thereof has been previously approved by the District Superintendent or his agent.

6. No person or groups of persons, whether organized or not, shall while within or upon the improved portion of the school grounds conduct any of the following activities unless permission therefor has been granted by the District Superintendent or his agent:

Protest marches or gatherings, sit-ins, lie-ins, stand-ins, love-ins, or any form of riotous or tumultuous conduct or conduct which incites riot or tumult.

7. Any person who shall violate any of the foregoing rules and regulations is hereby deemed a trespasser on school property and shall be ejected by the District's authorized agent after notice has been given to said person of the school's rules and regulations and after an order to cease and desist has been made by the school's representative and after said person has failed or refused the order thus given. The authorized representative of this District authorized to preserve and protect school property and preserve order is hereby authorized and directed to use such force as is reasonable and necessary in order to eject any trespasser provided that he shall not use force such as is likely to cause great bodily harm or produce death. This resolution is not intended to restrict the right of such representatives to use such force as is necessary to protect his person from the risks of bodily harm.

8. Permission to enter the campus or application to use campus facilities will be denied if there is any prior indication that violence is likely to occur which might result in bodily injury or property damage.

9. This resolution applies [does not apply] to any student who is enrolled at \_\_\_\_\_ for the current semester.

Resolution No. \_\_\_\_\_

BE IT RESOLVED that pursuant to Education Code Section 16560, the District Superintendent or other person designated by the Superintendent is hereby appointed, empowered and directed to have charge of the grounds of this District, preserve order, protect the school property, plan, promote, and supervise recreational activities, and do all things necessary in the capacity of a representative of this Board to enforce the laws of this state and the rules, regulations and policies of this Board, adopted pursuant to Chapter 4 of Division 12 of Part 1 of the Education Code.

BE IT FURTHER RESOLVED that the District Superintendent or other person designated by the Superintendent is hereby authorized and empowered to act as a peace officer pursuant to Education Code Section 15832 and to appoint and delegate such of his authority as he deems necessary to other persons or firms employed by this District to provide additional protection of property and preservation of order as is required under any circumstances.

APPENDIX E  
UNIVERSITY AND STATE COLLEGE  
DISCIPLINARY ACTIONS



## UNIVERSITY OF CALIFORNIA

Summary of Disciplinary Actions  
September 1967 - December 1968All Campuses

	<u>Students</u>	<u>Non-students</u>
<u>Academic Discipline</u>		
Dismissed	8	
Suspended	71 <sup>1</sup>	
Disciplinary Probation	159	
Reprimanded, censured or warned	<u>220</u>	
Total	<u>455</u>	

Legal Action

Arrests	178	22
Convictions (to date)	174	16

Academic Discipline by Campus

<u>Campus</u>	<u>Total Academic Disciplines</u>
Berkeley	279
Davis	3
Irvine	0
Los Angeles	96
Riverside	0
San Diego	50
San Francisco	1
Santa Barbara	25
Santa Cruz	<u>4</u>
Total	455

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<sup>1</sup> Of which 31 have suspended sentences.

DISCIPLINARY ACTIONS ON UNIVERSITY OF CALIFORNIA CAMPUSES  
September 1967 to December 1968

This is a brief report of disciplinary actions against students and charges levied against non-students as a result of campus disturbances during the period from September 1967 through December 1968.

Chancellors have a wide range of disciplinary tools which can be used against students to maintain order on campuses. These involve academic discipline as well as legal actions. Academic disciplines range from a warning to dismissal and have proven to be quite effective, particularly those which involve probation or some variation such as suspended suspension. The effectiveness of academic discipline is reflected in the absence of repeated violations by students. A student on probation is more reluctant to risk losing his student status than paying a fine or serving a few days in jail.

Student rules of conduct are well documented and are given to every new student when they register. Formal procedures exist for processing students charged with violations.

Students who break the law during campus disturbances are arrested when necessary. Arrests usually occur during mass demonstrations such as the recent Sproul Hall and Moses Hall sit-ins. Most of the charges are misdemeanors such as disorderly conduct, assault, disturbing the peace, failure to disperse and resisting arrest.

Financial restitution is sought when property damage is involved. There was very little property damage during the period studied which can be associated with student unrest. The \$21,000 in damage to Moses Hall in Fall, 1968 constituted by far the most serious incident involving property damage resulting from student disturbances.

The arsenal of disciplinary tools for non-students is, of course, limited to criminal and civil actions. Because the University of California campuses are public property, it is very difficult to limit access or remove non-students from campus until they create a disturbance which violates a law.

The following summary of campus incidents which resulted in violations of campus rules and, in some instances, of the law, and subsequent disciplinary actions, includes all campuses. Over 60 percent of the total number of academic disciplines, and all but one of the legal actions, occurred at Berkeley.

Berkeley

October, 1967 There were five incidents during "Stop the Draft Week" involving unauthorized rallies on campuses. 81 students were cited for violating University rules, 63 of which were judged to be guilty after following established procedures and were disciplined as follows:

Academic Discipline:

Suspended	7 <sup>1</sup>
Disciplinary Probation	10
Reprimanded, censured or warned	46

November, 1967 Thirty-four students were cited for violating University rules for incidents relating to the appearance of Dow Chemical and C.I.A. representatives on campus. Fifteen of the students were found guilty and disciplined as follows:

Academic Discipline:

Dismissed	1
Suspended	4 <sup>2</sup>
Reprimanded, censured or warned	10

November 29 to December 1, 1967

Students protested the Dow Chemical and C.I.A. incident disciplinary actions and staged "mill-ins," during which time an additional 41 students were cited and 30 disciplined:

Academic Discipline:

Suspended	9 <sup>3</sup>
Disciplinary probation	11
Reprimanded, censured or warned	10

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<sup>1</sup> 5 of these had sentences suspended, which means that they can be suspended from the University without another hearing if they violate campus rules again.

<sup>2</sup> 3 of these had sentences suspended.

<sup>3</sup> 4 of these had sentences suspended.

October, 1968 Two incidents occurred in protest of the Regents' action pertaining to the structure and approval of the experimental course, Social Analysis 139X. The first involved a sit-in in the administration building and the second was the forcible occupation of Moses Hall. The discipline resulting from the Sproul Hall and Moses Hall incidents is believed to be stronger than that levied by any college or university in the United States in the last ten years.

Academic Discipline:

Dismissal	7
Suspension	31
Disciplinary Probation	133

Legal Action:

	<u>Arrests</u>	<u>Convictions</u>
Sproul Hall		
Students	118	118
Non-students	3	1
Moses Hall		
Students	56	53 <sup>2</sup>
Non-students	<u>19</u>	<u>16<sup>3</sup></u>
Totals	196	169

Sproul Hall sentences consisted of \$125 fines and 30-day suspended sentences. Moses Hall sentences consisted of 90 days in jail with 80 days suspended, one year probation and a \$300 fine each to be paid to the University for the restitution of property damages.

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<sup>1</sup> One was released and 2 cases are pending.

<sup>2</sup> Two have been indicted for felony, conspiracy charges--cases are pending. One case was dismissed.

<sup>3</sup> One has been indicted for felony conspiracy charges--case is pending. Two non-students were drifters who have disappeared.

Davis

Fall, 1968 As an act of sympathy with those being jailed for resisting the draft, the American flag was lowered in front of the Student Union Building. A campus organization, The Resistance, was censured by the Student Conduct Committee. There were 3 students cited for participating in the Moses Hall incident.

Academic Discipline:

Suspended 3<sup>1</sup>

Legal Action:

Arrested and convicted 3

Irvine

Fall, 1967 A Marine recruiter was struck by a water balloon thrown by a student. The student was arrested and charged with battery, resisting arrest and disturbing the peace. He was convicted on the first two charges.

Los Angeles

Fall, 1967 A campus demonstration occurred when recruiters for the Dow Chemical Co. appeared on campus. Between 100 and 200 persons disrupted the operation of the Placement Center and a window was broken. Restitution was required for the property damage.

Academic Discipline:

Suspended 1  
Disciplinary Probation 4  
Reprimanded, censured or warned 91

May, 1968 Members of the Students for a Democratic Society attempted to destroy a display in the Student Union. The campus Board of Review suspended the organization until September 1969, and three of its members face criminal charges brought against them by other students.

Fall, 1968 There was a five minute sit-in in the Placement Center when Marine recruiters appeared on campus. The students left when asked to do so and none were cited.

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<sup>1</sup> Sentences suspended.

Riverside

Although a number of rallies and demonstrations have occurred protesting against recruiters from "war related industries," no rules or laws have been violated.

San Diego

Fall, 1967 There was a demonstration supporting the flying of the North Vietnam flag. No violations of campus regulations nor state statutes occurred.

Fifty students staged an illegal demonstration protesting food service policies.

Academic Discipline:

Reprimanded, censured or warned 50

San Francisco

Fall, 1967 A table was set up to register voters in the Peace and Freedom Party at an unauthorized location. After protesting being challenged, the students involved moved the table to the area designated for such activities.

Fall, 1968 One student was cited for participating in the Moses Hall incident.

Academic Discipline:

Disciplinary Probation 1

Santa Barbara

Fall, 1967 The Placement Center was picketed when recruiters from Dow Chemical Co. appeared on campus. Some picketers entered the Administration Bldg. and those who refused to leave when ordered to do so were cited. One student consequently withdrew from the University and his re-admission has been barred.

Academic Discipline:

Suspended 4<sup>1</sup>  
Reprimanded, censured or warned 7

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<sup>1</sup> Sentence suspended.

Fall, 1968      A minor disturbance occurred during an ROTC ceremony.

Academic Discipline:

Reprimanded, censured or warned      2

The Computer Center on campus was forcibly occupied by  
12 black students.

Academic Discipline:

Suspended      12<sup>1</sup>

Santa Cruz

Fall, 1968      Faculty, staff, students and non-University personnel  
disrupted a meeting of the Board of Regents. Eight  
students were cited for student conduct violations.

Academic Discipline:

Reprimanded, censured or warned      4

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<sup>1</sup> Sentence suspended.

Latest Figures on Berkeley  
April 9, 1969

1. <u>Arrests</u>			
Students	125	(these counts included 113 persons)	
Non-students	46		
Academic Personnel	1		
Juveniles	<u>2</u>		
	174		
2. <u>Administrative Enforcement of Student Conduct Rules - Jan. 28 - March :</u>			
	Arrest Related	No Arrest Involved	Total
Cases heard or dismissed	8	5	13
Students on new interim suspension (Feb. 21 - prevents suspended students from coming on campus without written permission except for disciplinary hearing.)	27	2	29
Students on old interim suspension (Prohibits students from classes but not from campus.)	32	0	32
Cases in process of citation	15	0	15
Cases pending	0	23	23
Cases under investigation	<u>43</u>	<u>01</u>	<u>43</u>
Totals	125	30	155
3. <u>Disposition of Cases Heard</u>			
Dismissed from University			10
Disciplinary probation			5
Case continued			1
Censure			14
Charges dismissed			<u>5</u>
Total			<u>35</u>

<sup>1</sup>Includes about 70 charges of student conduct rule violations.  
Additional note: Administrative blocks have been placed against non-students which will bar their future enrollment at Berkeley.

State Colleges - Jan. '68 - Feb. '69  
All Campuses

	Students	Non-Students	Faculty (or all)
Academic Discipline			
Expelled	2	0	0
Suspended	62 (5 lifted; 40 reinstated pending hearing)		
Probation	0	0	0
Legal Action - Arrests	1024		6

Academic Discipline by Campus

San Francisco State	6 (5 lifted)
San Jose State	0
Cal. State Long Beach	16
San Fernando Valley State	40 (all reinstated pending hearing)
Fresno State	1
Cal. State Hayward	<u>1</u>
	64

Legal Action by Campus

San Francisco State	584
San Jose State	19
San Fernando Valley State	347
Cal. State Long Beach	79
Fresno State	1
Cal. State Hayward	<u>0</u>
	1030

## Individual Campuses

California State College, Long Beach		
April, 1968 - S.D.S. "mill-in"		
Suspended		6
Probation		0
Expelled		1
Arrested		36
Nov., 1968 - illegal demonstration		
Suspended		8
Probation		0
Expelled		1
Arrested		43
San Francisco State College - 1/7/68 - 1/23/69		
Stikes, sit-ins, B.S.U. demands		
Suspended		6 (5 lifted)
Expelled		0
Arrested		584
San Jose State College - 1/26/68 - 1/8/69 - black athletes' boycott of B.Y.U. football game, fire, picket line violence		
Suspended		0
Expelled		0
Arrested		19
San Fernando Valley State College - 11/4/68 - 1/9/69 - student strike, building damage and occupation, fire		
Suspended		40 (reinstated pending hearing)
Expelled		0
Arrested		347 (40 reinstated (?) pending hearing)
Fresno State College - Fall, 1968 - property damage and destruction		
Suspended		1
Expelled		0
Arrested		1
California State College, Hayward - Fall, 1968 - property damage and destruction		
Suspended		1
Expelled		0
Arrested		0

APPENDIX F  
INFORMATION ON POLICE COSTS

List of Costs to County and City  
Governments for Use of Sheriff  
and Police to Control Campus  
Disturbances

1. City of Santa Clara, \$815.19 for S.F. State disturbances.
2. City of Berkeley, 1964, \$10,180.25, U.C. disturbances  
     1965, \$ 3,745.30, ditto  
     1966, \$ 5,573.45, ditto  
     1967, \$ 5,185.63, ditto  
     1968, \$12,833.31, ditto  
     1968, \$ 2,897.68, S.F. Mutual Aid  
         \$ 629.40, San Mateo College Mutual Aid  
     1969, \$34,554.22, U.C. disturbances  
         \$ 495.59, S.F. Mutual Aid
3. Alameda County, August 30, 1968, to March 24, 1969, \$59,618
4. Santa Clara County, August 31, 1968, to January 31, 1969, \$20,276
5. City of Oakland, 1968, \$22,620.64 U.C. and Mutual Aid  
     1969, \$ 1,556.18 ditto
6. San Francisco, November 6, 1968, to February 21, 1969: \*  
     \$469,239.14 in regular time cost  
     31,239.49 in overtime cost  
     232,094.42 in deferred watches for extra work load  
     Total   \$732,573.05
7. City of San Jose, September 20, 1967, to February 18, 1969:  
     \$48,683 for San Jose State disturbances, plus  
     Mutual Aid for S.F. State and U.C. Berkeley

\* Source of these particular figures is a report by San Francisco Police Chief Thomas J. Cahill.

APPENDIX G  
EDUCATIONAL OPPORTUNITY PROGRAM

### Educational Opportunity Programs

Fundamentally, Educational Opportunity Programs encourage and support students who would otherwise be unable to attend an institution of higher learning. There are several persisting barriers to higher education which these programs can overcome. Financially, E.O.P. seeks to meet the needs of each student, most of whom require considerable support. This comes mainly from federal loans, grants, and work programs. Geographically, most E.O.P. students require living on or near the campus. Generally there is not easy access to colleges by those communities at which E.O.P. is aimed. Academically, these students suffer from inferior public school preparation. This, plus the bias of traditional admissions criteria, limit the validity of a student's record in predicting his true potential.

E.O.P. uses more subjective approaches, such as recommendations and interviews, to determine who is likely to profit from college enrollment. Exception admission authority, recommended by the Coordinating Council of Higher Education and the Legislature, is often used. The enrolled student is provided with tutors and counselors to help him make the adjustment to the college environment and academic demands. Directors of E.O.P. have developed working relationships with the student bodies, faculties, administrative officers, and community. This opportunity is an open door to disadvantaged students and an educational advantage to all other students.

#### E.O.P. and Disturbances

Many people have contended that E.O.P. students are a drain on the University and State college systems because they have participated to a large extent in the current campus disturbances. However, an investigation has shown that this is not the case.

Out of 958 arrests made on State college campuses, 58 were arrests of students who were admitted under the four percent waiver provisions. Not all waiver students are on E.O.P., nor are all E.O.P. students admitted under waiver conditions. However, if there is any correlation between waiver admittees and E.O.P. students, then E.O.P. arrests would include about two percent of the total E.O.P. enrollment. This indicates arrests only, and not convictions. While this two percent is higher than regular student arrest-related participation, it would indicate that a large majority of E.O.P. students have not been directly involved in campus disturbances.

The University of California reports that as of April 25, Berkeley had fifteen E.O.P. arrests, U.C.L.A. had two, U.C.S.B. had eight, and no E.O.P. arrests were reported at other campuses. A total of known arrests and estimates would indicate a figure near 25 arrests out of 1,948 E.O.P. students throughout the University, or less than two percent.

#### State College E.O.P.

The results of E.O.P. at the California State Colleges have been highly positive. In the fall of 1967, 268 students were enrolled in pilot E.O.P. programs. Sixty-three percent earned a "C" average or better, and 22 percent earned "B" averages or better. Of the 210 admitted as exceptions, 62 percent earned "C" averages or better, and 25 percent earned "B" averages or better. The 1968 results are not yet complete. However, one of the charts following shows that results tend to confirm last year's performance. It is expected that as the results of tutoring begin to bear fruit over a longer period of time, even more marked improvement will be reflected.

State college authorities feel that enrolling students who would be admissible to junior colleges as freshmen and sophomores is justified on the part of the State colleges. Junior colleges are often

under budgetary strictures and unable to meet the financial aid of students. Four-year institutions can provide upper class and graduate tutors who are essential to the success of many E.O.P. students. Also, State colleges can often aid better with housing requirements. Administrators feel that the psychological climate of a four-year institution provides an environment which encourages persistence, more than that of junior colleges, where many students drift in and out. State college programs can then provide models for junior colleges.

The charts which follow provide some data on E.O.P. at the state colleges.

Collegiate Performance of Educational Opportunity Program Students

Many colleges have not yet reported on initial performance of 1968 admits. However, the data received thus far confirms previous year results:

College	Number Enrolled		Earned C or Better		Earned B or Better	
	"Exceptions"	Total	"Exceptions"	Total	"Exceptions"	Total
Dominguez Hills	26	-	61%	-	11%	-
Fresno	78	-	40%	-	3%	-
Hayward	63	-	51%	-	24%	-
Long Beach	240	312	60%	65%	12%	13%
Los Angeles	68	81	59%	62%	14%	16%
San Bernardino	11	-	75%	-	-	-
San Diego	155	272	37%	50%	6%	11%
San Fernando	179	209	52%	54%	16%	18%
San Jose	295	420	55%	58%	11%	13%
San Luis Obispo	18	21	72%	67%	5%	4%
Sonoma	63	-	51%	-	24%	-
Stanislaus	10	-	50%	-	20%	-

The above figures must be taken in context. Many beginning students, regardless of previous qualifications, find themselves on probation. It is noteworthy that only a few EOP students have withdrawn.

STATE COLLEGE EOP ENROLLMENT  
1968-69

	Total EOP Enrollment	Exception Admissions Enrolled in EOP
al State, Bakersfield	0	0
al State, Dominguez Hills	32	32
al State, Hayward	118	118
al State, Fullerton	53	48
al State, Long Beach	270	235
al State, Los Angeles	104	104
al State, San Bernardino	12	12
al Poly, (K-V) Pomona	60	12
al Poly, SLO	22	4
university of California	81	69
University of the Pacific	87	87
University of San Francisco	4	4
University of Sacramento	54	42
University of San Diego	408	182
University of San Fernando Valley	225	175
University of San Francisco	300	300
University of San Jose	438	346
University of Sonoma	64	50
University of Stanislaus	10	5
Total	2342	1825

survey of 15 of the 17 programs for ethnic distribution shows:

Black	58.9%
Mexican-American	33.7
Oriental	1.6
Caucasian	4.3
Other	1.3

University of California  
Educational Opportunity Programs

The Educational Opportunity Programs were first authorized for 1964-1965 to encourage disadvantaged youth to enroll in the University of California. Today, these programs exist at each of the nine campuses and encompass 2000 undergraduate students. Expenditures this year will total \$3,761,000, of which \$821,000 is from the Opportunity Fund, \$1,000,000 from a special allocation from the University registration fee, and the remainder from Federal sources, foundation grants, and gift

Vigorous recruiting efforts have been undertaken to identify those who are culturally, economically, or educationally disadvantaged, but who have shown a potential to benefit from higher education. Admitted students are provided with academic and personal counseling, tutoring, housing, and financial aid. The U.C. Office of Relations with Schools, which cooperates with the University, State Colleges, and Community Colleges, makes special efforts in the schools with 30 per cent or more minority students to convince these students of the importance of college preparatory studies. The limitation on the number of students who can be admitted in exception to regular admission procedures was raised in 1968 from 2 to 4 per cent, with 2% exclusively for disadvantaged students.

Faculty, staff, and students have responded enthusiastically, giving and raising funds and providing academic and other assistance. While the evaluation of the success of the program must include an appraisal of grade-point averages and attrition rates, subjective evaluation

must consider changes in self-expectation and vocational interests, increased self-confidence, and more realistic goals. Concerning grade points, for 1966-67 the regularly admissable freshmen achieved a grade-point average .16 higher than their Educational Opportunity counterparts and .52 higher than the E.O.P. freshmen admitted in 1967-68 by special action (the new, additional 2 per cent). In 1966-67, the 48 E.O.P. transfer students who met the established admission standards had a cumulative grade-point average of 2.66 at year's end, and the 106 entering in 1967-68 cumulated 2.48 at the end of that year. This compares favorably with the general performance of transfer students, who average about 2.30 for their first quarter. The special action students did predictably less well: 2.20 for the 1966-7 transfer students, and 2.32 for the 1967-68 transfers. However, the total picture, even in terms of grade points, proves encouraging.

Moreover, E.O.P. students persist academically. Nearly 89 per cent of the 449 freshmen admitted in 1967-68 returned in the fall of 1968, and 91 per cent of the 245 transfer students admitted the same year returned.

Graduate students have only recently been included in the Educational Opportunity Programs. This year, however, there are 300: 70 at Berkeley, 11 at Davis, 139 at Los Angeles, 75 at San Francisco, 4 at Santa Barbara, and one at San Diego. The University has sought to prepare a greater number of disadvantaged individuals for professional work. An evaluation of the success of these programs must await this year's experience.

The charts which follow give some data on E.O.P. throughout the University of California.

ETHNIC DISTRIBUTION OF EDUCATIONAL OPPORTUNITY STUDENTS

	<u>1966-67</u>	<u>1967-68</u>	<u>1968-69</u>
American Indian	5	5	16
White	31	83	147
Black, Negro, or Afro-American	222	490	918
Mexican-American/ Spanish Surname	127	268	500
Oriental	67	156	217
Unidentified	<u>20</u>	<u>88</u>	<u>150</u>
TOTALS	472	1,090	1,948

Attachment B

EDUCATIONAL OPPORTUNITY PROGRAM STUDENTS  
BY ADMISSIONS CLASSIFICATION AND GRADE POINT AVERAGE

<u>Admissions Classification</u>	1966-67		1967-68		1968-69
	<u>Number</u>	<u>GPA</u>	<u>Number</u>	<u>GPA</u>	<u>Number</u>
Academically Eligible Freshmen	166	2.41	306	2.30	301
Academically Eligible Transfers	48	2.66	106	2.48	98
Special Action Freshmen	75	2.05	143	2.04	317
Special Action Transfers	65	2.20	139	2.32	254
Continuing Eligible Students	106	2.40	298	2.43	663
Continuing Special Action	<u>12</u>	1.73	<u>98</u>	2.27	<u>315</u>
TOTALS	472		1,090		1,948

SOURCES AND DISTRIBUTION OF ECONOMIC OPPORTUNITY PROGRAM FUNDS ON  
UNIVERSITY OF CALIFORNIA CAMPUSES

<u>1966-67</u>	<u>Berk.</u>	<u>Davis</u>	<u>Irvine</u>	<u>UCLA</u>	<u>Riv.</u>	<u>S.D.</u>	<u>S.F.</u>	<u>S.B.</u>	<u>S.C.</u>	<u>Total</u>
No. of Students	199	11	--	201	13	24	--	24	--	472
Student Assistance	\$275,296	\$18,673	--	\$124,317	\$19,800	\$28,884	--	\$24,175	--	\$491,145
Tutorial Assistance	3,180	200	--	1,096	--	--	--	38	--	4,514
Counselors	--	--	--	--	--	1,507	--	--	--	1,507
Summer Programs	8,400	--	--	--	--	13,622	--	--	--	22,022
Community Service Projects	--	--	--	--	--	--	--	5,645	--	5,645
Administrative Expense	<u>25,663</u>	<u>3,779</u>	--	<u>38,904</u>	--	--	--	<u>8,265</u>	--	<u>76,611</u>
Grand Total	<u>\$312,539</u>	<u>\$22,652</u>	--	<u>\$164,317</u>	<u>\$19,800</u>	<u>\$44,013</u>	--	<u>\$38,123</u>	--	<u>\$601,446</u>
<u>1967-68</u>										
No. of Students	394	18	--	525	17	27	--	106	3	1,090
Student Assistance	\$435,554	\$32,294	--	\$507,884	\$28,800	\$49,714	--	\$85,750	\$3,571	\$1,143,557
Tutorial Assistance	7,167	310	--	14,403	--	1,707	--	1,506	85	25,178
Counselors	7,368	--	--	--	--	--	--	1,045	--	9,313
Summer Programs	12,000	14,000	--	12,635	--	12,723	--	2,500	3,366	57,224
Community Service Projects	--	--	--	--	--	--	--	7,060	--	7,060
Administrative Expense	<u>40,336</u>	<u>9,135</u>	--	<u>37,529</u>	--	<u>1,050</u>	--	<u>12,254</u>	<u>10,706</u>	<u>111,010</u>
Grand Total	<u>\$502,415</u>	<u>\$55,739</u>	--	<u>\$572,451</u>	<u>\$28,800</u>	<u>\$65,194</u>	--	<u>\$111,015</u>	<u>\$17,728</u>	<u>\$1,353,342</u>

<u>1968-69</u>	<u>Berk.</u>	<u>Davis</u>	<u>Irvine</u>	<u>UCLA</u>	<u>Riv.</u>	<u>S.D.</u>	<u>S.F.</u>	<u>S.B.</u>	<u>S.C.</u>	<u>Total</u>
No. of Students	635	90	41	725	81	54	57	223	42	1,948
Students Assistance	\$1,245,000	\$162,888	\$61,400	\$1,194,500	\$118,528	\$48,750	--	\$253,005	\$54,650	\$3,138,721
Tutorial Assistance	12,000	5,000	2,000	34,523	6,400	--	--	3,720	1,000	64,643
Counselors	8,112	26,260	3,600	--	--	--	--	13,680	--	51,652
Summer Programs	12,000	72,000	--	38,000	5,200	21,333	--	86,100	13,800	248,433
Community Service Projects	12,000	--	6,000	--	--	--	--	10,274	--	28,274
Administrative Expense	<u>57,520</u>	<u>16,500</u>	<u>22,500</u>	<u>39,240</u>	<u>28,450</u>	<u>18,560</u>	--	<u>30,208</u>	<u>16,320</u>	<u>229,302</u>
Grand Total	<u>\$1,346,632</u>	<u>\$282,648</u>	<u>\$95,500</u>	<u>\$1,306,267</u>	<u>\$158,578</u>	<u>\$88,643</u>	--	<u>\$396,997</u>	<u>\$85,770</u>	<u>\$3,761,025</u>

APPENDIX H  
STATEMENTS BY COMMITTEE MEMBERS

Statement by Willie L. Brown, Jr.  
Committee on Campus Disturbances

want to preface this minority report with a free quote, intended to summarize my reasons for rejecting both the tenor and conclusions of the majority report. ".....the slowness of change is always respectable and reasonable in the eyes of those who are only watching; it is a different matter for the ones who are in pain. It is complacency, gradualism and hypocrisy that seems unjust and strange. It is the comfortable people who make the decisions.....it is only the people who are affected by those decisions who are expected to stand quietly, watch patiently and wait....." (Death at an Early Age, Kozol, Bantam)

The document submitted by the majority is a dangerous exercise in utility. It avoids problems rather than confronting them. It reminds of a group of well-intentioned men observing a forest fire and blaming the conflagration on the existence of trees, rather than the combination of aridity and a match.

I submit a report on campus problems which virtually ignores the setting in which our campuses exist is absurd. Our campuses are of this world and not outside of it, the conditions which agitate our world likewise shape the world of the students and faculties and they must be recognized. They include:

- . The perpetuation of a vile, murderous war in Vietnam which virtually the entire national student community recognizes as illegitimate. The knowledge that their campuses are deeply complicit with that conflict in a variety of ways. They know that BETTER THAN TWO-THIRDS of university research money comes from Defense, NASA and the AEC. (James Ridgeway, "The Closed Corporation", Ballentine)
- . The pervasively racist nature of our society and its institutions. A society which cheerfully allows catastrophic unemployment rates for non-white young people, hunger for millions of its people, poverty and deprivation for ten million others while blandly spending 80 billion dollars for "defense", all the while having already emplaced 8174 deliverable nuclear warheads, sufficient to remove 116 million Soviets from the earth. (I. F. Stone - New York Review)
- . The calcification of many of our institutions, most particularly those of politics and education, which, rather than being the instrumentalities of change remain inextricably committed to the maintenance of an unjust status quo. As a corollary to that commitment, our institutions appear to be pursuing generational war against the beliefs and very life styles of our young who appear somewhat freer of the hypocrisies which society uses to mask its true nature.

These conditions make two consequences become crystal clear. The first is that students recognize that racism, physical poverty and psychic deprivation are not necessary in a nation with a Gross National Product of 800 billion dollars and a stated belief in freedom. Being unnecessary and evil, they are intolerable. The second is that this generation of students will not allow itself to be seduced into the middle class and by what has turned out to be a largely empty success ethic. They want these problems dealt with, they want them dealt with now, and very importantly, they want those institutions in which they find themselves to begin dealing with them. It is evident therefore that the myth of a somehow isolated ivory tower is dead. The elitist nature of places of higher education, attempting to serve as a training ground for new recruits in the war to maintain the status quo is thankfully gone forever.

The students' struggle has engendered a somewhat hysterical response on the part of some sections of the larger community. The response is usually to what is called "violence" on the campuses. We should therefore examine the term "violence". My dictionary defines it as "natural or physical force in action", but also as "the unjust use of power in the deprivation of rights". If we accept for a moment the second definition, it appears that (at least in the world of education) the major "violence" is that visited upon non-white or poor children in ghetto elementary and high schools who are systematically deprived of their right to an integrated quality education by the power of the educational establishments. If we turn to the second definition as "natural or physical force in action" we find nothing to get upset about. It appears therefore that we need to redefine the "violence" that concerns us.

The campus "violence" which should truly concern us, and which does concern me, is the use of the implements of force in ways potentially harmful to other human beings. The use of guns, bombs, clubs, rocks and gas is to be damned, whether used by students or the police. It is dishonest however to demand new legislation to deal with the on-campus use of these implements of force. There are sufficient laws on the books to deal with any assault, battery, shooting, bombing, etc., likely to be found on a high school or college campus. It should also be pointed out that, rather than having a "sanctuary", campus activists are subject not only to the courts as we all are, but also to campus discipline proceedings which frequently, and in the specific case of San Francisco State, are less protective of the rights of the accused than anything we would subject ourselves to.

No matter what is said then, sufficient law exists to deal with the illegitimate use of the implements of force and all else that is proposed is designed to suppress those who, whether we agree with them or not, are actively engaged in trying to change the institutions of our society. Can we diminish the use of what we commonly understand as "violence"? I believe so. Hannah Arendt points out that violence and power are antithetical; that is, powerlessness results in violence, those with power having no need for it (unless also psychotic). The answer thus lies in a redistribution of power

on our campuses and within our society as a whole, so as to make both more democratic.

If I were to make a list of my own findings and recommendations, they would in broad terms encompass the following:

### 1. OPEN UP THE CAMPUSES

The majority report shows that 47% of California's 18-24 year olds are in college. That the non-white population does not send an equivalent percentage of its children to college is evident to anyone who has ever visited a campus. The effort to open up our campuses cannot start at the college level. E.O.P. is only a band-aid where surgery is required, and we do not even properly fund that very small effort. We must begin at the elementary schools so that additional generations of non-whites will not be consigned to the welfare rolls by the time they are four years old. If I interpret the mood of the non-white youths properly, it is that we will either all have colleges or no one will.

### 2. REDEFINE THE PURPOSES OF THE UNIVERSITY

The campuses must be restructured so that they respond to the needs of our communities with the same degree of enthusiasm with which they respond to the needs of California's agro-business and the hallucinatory requirements of the Department of Defense. The purposes of education and the purposes of the institution must be directed to include solving society's maladjustments.

### 3. REDISTRIBUTION OF CAMPUS POWER

If we are truly interested in peace on the campus we must create a situation in which the students share meaningfully and directly in curriculum decisions, faculty hiring and the making of campus rules. We must stop viewing the campuses as holding pens where the young are kept until they are sufficiently indoctrinated to assume our place on a purposeless treadmill. We must give them the power to define their own reality and needs and hope that this will result in the creation of conditions wherein a just society can begin to emerge.

  
WILLIE L. BROWN, JR.

Statement by: John Stull  
Newton R. Russell  
Carlos J. Moorhead

We, the undersigned, agree that this report presents the problems found on our college campuses today. We are in general agreement with its findings and with the recommendations presented. However, in certain areas, we feel that the report did not go far enough. Without detracting from the report, we wish to make certain additional observations.

1. The reality and true danger that the anarchists, nihilists and revolutionaries pose to our educational institutions is not mentioned forcibly enough. It is these groups who are the real threat to true freedom of speech and the proper pursuit of education. It is their purpose to destroy our institutions of higher learning as a means of destroying our society itself. To be properly equipped to deal with this threat the universities and colleges must be thoroughly familiar with the true goals and strategy of each of these various groups.

In addition, the cause and effect aspect is all but ignored in the report. It is impossible to hire faculty members who condone or advocate illegal acts or violence without developing students who, in turn, will believe and act in accordance with these teachings.

2. The administration, in many instances, has seemingly been totally unprepared to handle the events that have been thrust upon them. Years of permissiveness based upon a philosophy which holds that an act is neither good nor bad, but only relative has contributed to this unpreparedness.

In dealing with these campus anarchists and their disruptive tactics, vacillation, equivocation, indecision and amnesty have proved to be inadequate administrative weapons to deal with today's campus lawlessness. Such action can only be interpreted by the students as weakness which will demoralize and dishearten the law-abiding and will encourage further unlawful acts.

The administration must make it known--well in advance--that disturbances will not be tolerated, and that students engaging in such acts will be punished swiftly, equitably and justly. With such an administrative policy clearly and forcibly stated, further temporizing, equivocation or delaying on the part of the administration must not be permitted if campus order is to be maintained.

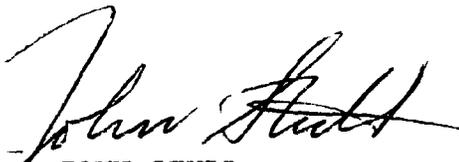
Furthermore, individuals who, by their violent and disruptive tactics, show themselves to be opposed to the normal, peaceful channels of dissent must not be allowed to remain at our institutions of higher learning.

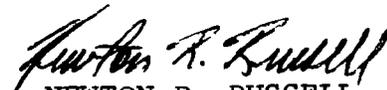
3. It is clear to us that the students feel that far too many faculty members are more interested in research, lighter teaching loads and other prerogatives than they are in the welfare of individual students.

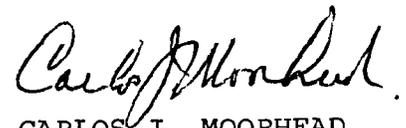
It is equally clear that too many faculty members and faculty organizations have failed to recognize the need for more personal concern with student needs and problems, for the upgrading of teaching methods, or the need to improve methods of communicating course subject-matter to students in an interesting and relevant manner.

We also feel that the report did not go far enough in recommending academic penalties against those teachers who abandon their students in order to participate in disruptive demonstrations.

We feel that the above observations were necessary to supplement the report in areas wherein it appeared deficient.

  
JOHN STULL

  
NEWTON R. RUSSELL

  
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COMMITTEES 1,  
EDUCATION  
MUNICIPAL AND  
GOVERNMENT  
CRIMINAL F--

# Assembly California Legislature

JOHN VASCONCELLOS  
ASSEMBLYMAN, TWENTY-FOURTH DISTRICT



May 9, 1969

The Honorable Victor Veysey  
Chairman, Assembly Education Committee  
Room 3112, State Capitol

Dear Vic:

I have these reservations about the report of the Select Committee on Campus Disturbances:

1. The Forward -- is not indicative of the worth/depth of the documents following.
2. The Findings --
  - a. Omit a critical finding -- the unrest amongst our student generation on the campus is directly related to the unrest in our society at large and to the major unresolved issues in our society; namely, the Vietnam War and the Draft, race and prejudice, poverty and hunger. Until and unless these issues are more readily addressed by the Legislature and the society at large, the unrest will likely continue.
  - b. Omit perhaps the most critical finding, a very sad finding -- that but for the unrest, (the disruption, even the violence), we wouldn't even have made findings at all.
  - c. Fail to make explicit the finding that is implicit in the findings; namely, that we in the Legislature have been reached, have become more aware, and are willing to listen and learn, and that, hopefully, we nor anyone else needs further violence to gain our attention.

Honorable Victor Veysey

May 9, 1969

3. The Recommendations -- generally I have no reservations.
4. The Proposed Bills --
  - a. Fail to include specific legislative proposals to carry out the positive and constructive recommendations, particularly proposals for student participation in decision making and for funding of educational opportunity programs.
  - b. The bill mandating withdrawal of financial assistance
    1. takes away flexibility from the chief administrative officer on the campus and may leave him less able to deal with the realities of each situation; and
    2. invokes a heavier burden on poor students than falls upon rich students (for the same act, each could be similarly tried and punished by the criminal court, and each could be similarly tried and disciplined by the school, but the rich student could continue to avail himself of the public institution supported by our tax money while the poor student would be eliminated because of his resultant inability to finance his education).

I would instead require a hearing in such instances and a review of the financial aid, making its withdrawal one of the penalties invocable at the hearing mandated by proceeding proposed legislation.

5. The Report -- I have no reservations.

Sincerely

A handwritten signature in black ink, appearing to be the initials 'MV' or similar, written in a cursive style.

Statement of Honorable Bill Greene, Assemblyman, Fifty-Third District, Los Angeles, to be included in Report of Assembly Select Committee on Campus Disturbances:

The Subcommittee on Educational Environment of the Assembly Committee on Education, initiated public hearings into the problems on university and state college campuses prior to the appointment and subsequent works of the Select Committee on Campus Disturbances. I serve on all of the beforementioned bodies.

It is clear to me far more of the responsibility for the climate which has permitted such problems to develop from the outset, and the fact the problems have increased in intensity, rest with: (1) the faculty, (2) the respective administration, and (3) the appropriate governing body, that many appear willing to articulate.

In fact, I charge that persons charged with the above categories of responsibility have not performed efficiently enough in their jobs to: (1) see the problem coming, (2) have any idea of what to do when faced with same, and (3) make recommendations to the Legislature as to action which would alleviate the problems.

I am compelled to state, in my opinion, they have failed the students and the public interest, and in appearances before the Legislature, have assumed none of the responsibility for their lack of action.

Respectfully



BILL GREENE  
Member of the Assembly  
Fifty-Third District



# THE CHALLENGE OF ACHIEVEMENT

*A Report on Public and Private  
Higher Education in California*

to the  
**JOINT COMMITTEE ON HIGHER EDUCATION**  
of the  
**CALIFORNIA LEGISLATURE**

*Members of the Committee*

Jesse M Unruh, Chairman  
Donald L Grunsky, Vice Chairman

**Assemblymen**

Carlos Bee  
Gordon W Duffy  
Robert T Monagan  
Winfield A Shoemaker  
Jesse M Unruh

**Senators**

Alfred E Alquist  
Donald L Grunsky  
George R Moscone  
Albert S Rodda  
John G Schmitz

---

***Letter of Transmittal***

---

Honorable Edward Reinecke, President  
and Members of the Senate  
State Capitol  
Sacramento, California

Honorable Bob Monagan, Speaker  
and Members of the Assembly  
State Capitol  
Sacramento, California

Ladies and Gentlemen:

On behalf of the Joint Committee on Higher Education, I am transmitting a staff report prepared for the Committee on the subject of public and private higher education in California.

This study was prepared in accordance with ACR 156, 1965 Regular Session, ACR 56, 1966 First Extraordinary Session and ACR 16, 1967 Regular Session. These resolutions directed the Committee to "ascertain, study and analyze all the facts relating to the development of higher education under the Master Plan", to explore the future needs of higher education in California and to report any recommendations for new legislation and changes, if any, in existing law.

I believe this report substantially fulfills the Committee's obligations. It is the Committee's intent that the report be printed and that it receive the widest possible dissemination.

In transmitting this report it is also the Committee's recommendation that the Joint Committee on Higher Education be reconstituted for the period of one year, and that it be assigned as its principal task the review and evaluation of the findings and recommendations contained in this report through public hearings and such other means as may be deemed appropriate.

Respectfully submitted,

JESSE M. UNRUH  
Chairman

Alfred E. Alquist  
Donald L. Grunsky  
George R. Moscone  
Albert S. Rodda  
John G. Schmitz \*

Carlos Bee  
Gordon W. Duffy  
Bob Monagan  
Winfield Shoemaker

\* Did not sign Letter of Transmittal. See Appendix G.

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*Committee Staff and Contractors*

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Office of the Auditor General, California State Legislature

A general diffusion of knowledge and  
intelligence being essential to the preservation  
of the rights and liberties of the people, the  
Legislature shall encourage by all suitable means  
the promotion of intellectual, scientific, moral,  
and agricultural improvement.

—Constitution of California,  
Article IX, Section 1.

Forgive me, masters of the mind!  
At whose behest I long ago  
So much unlearn't, so much resign'd—  
I come not here to be your foe!

—Matthew Arnold

Never ask of money spent  
Where the spender thinks it went.

—Robert Frost

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# SUMMARY OF RECOMMENDATIONS

This report has been prepared and submitted to the Joint Committee on Higher Education in response to a directive that the Committee ascertain, study and analyze the facts relative to the development of higher education in California under the 1960 Master Plan. The Committee was also directed to explore the future needs of higher education in California and to report its recommendations for appropriate new legislation and change, if any, in existing law.

The first section of the report presents a description of higher education in California as it is today, the major trends of the past decade and some projections into the future. The second section presents a detailed analysis of six major issues: the statewide structure and governance of higher education; equality of opportunity; measuring the flow of students into, through and out of higher education; the role and financing of the private colleges and universities, the financing of public higher education; and the role of higher education in relation to the "urban crisis."

Those who believe that the overriding problem of higher education today is anarchy and insurrection on the campuses may be disappointed initially with the topics to which this report is addressed and the recommendations which we advance. The report says nothing concerning the problem of maintaining order on those campuses which have witnessed so much strife in recent months. It says nothing about trespass rules, the right of faculty members to strike, the enforcement of rules of student conduct or similar matters which so occupy the Legislature's attention at this moment.

Nevertheless, we believe that much of what is contained in this report is relevant to present circumstances. In the chapter on statewide structure and governance of higher education we recommend a thorough reorganization of public higher education, with the objective not only of strengthening statewide and regional planning and coordination, but also to focus greater responsibility at the campus level for the management of each institution. Our recommendations will make it possible, we believe, for public higher education to become more responsive to educational needs and public policy at the state and local levels.

Equally important, in the chapter on equality of opportunity in higher education we advance a series of specific recommendations which are intended to sharply increase the opportunity for students from all ethnic groups to gain a college education. These recommendations represent a bold, positive step toward meeting the just and reasoned demands of those who have been effectively barred from true equality of opportunity. We believe they accurately reflect the

proposals so effectively articulated before the Committee by students, student advisors, student aid officers and others over the course of this study.

There is also relevance, we believe, in what is said about the problems of financing public and private higher education, of learning more about which students are served by the system and how well they are served, and of encouraging the colleges and universities to play a greater role in helping to deal with the broad problems which are grouped under the term "urban crisis." All of these matters have an important bearing on current events, however indirect it may seem.

We make the following recommendations, therefore, with some hope that they will be received and studied carefully as evidence of a positive effort to develop solutions to the basic problems confronting higher education today.

## **THE STRUCTURE AND GOVERNANCE OF PUBLIC HIGHER EDUCATION (Chapter 5)**

1. We recommend the consolidation of the University of California and the California State Colleges into a single unified system of public higher education, with the new system also to absorb the powers and duties which have been and will be assigned to the Board of Governors of the California Community Colleges. This new system may bear the name of the University of California. It should have a single governing board with statewide responsibility for the general governance of the unified system, for the allocation of state appropriations, and for the development of short- and long-range program and fiscal planning. Although the junior colleges would retain their basic relationship to their local boards and districts, they, too, would come within the jurisdiction and policies of the proposed new board.

To assist the statewide board in its planning and program functions there should be established a coordinating and administrative body for each major region in the state to focus the various resources of public higher education on the needs of each region and to monitor the implementation of statewide and regional policies.

Within each region the individual institutions may function as university centers, liberal arts colleges, community colleges and specialized institutions according to the needs of the region and their own capabilities for service. Finally, there may be established, as deemed appropriate, local boards for each public campus to assist the campuses in serving and in maintaining communications with their surrounding communities.

We further recommend that upon the passage of the necessary constitutional revision there be established a Joint Legislative Committee on the Reorganization of Higher Education. This Committee should be given explicit powers to assemble technical staff and technical advisors from the University, state colleges and junior colleges, from such executive agencies of state government as the Department of Finance, the Controller, and the State Personnel Board, and from such legislative staff agencies as the Office of the Legislative Analyst and the Legislative Council Bureau. Its primary responsibility would be to draft such legislation as may be required to provide a sound basis in statute and in administrative procedure for the operation of the consolidated system.

In order to bring about this reorganization we propose that Article 9 of the California Constitution be substantially revised as it pertains to the University of California to provide that:

- (a) There be a unified system of public higher education (with appropriate qualification for the special circumstances of the junior colleges), free from political and sectarian influence;
- (b) That the Board of Regents be given the authority and responsibility for the statewide governance of this system, as spelled out by statute; and
- (c) That the composition of the Regents be changed to delete all *ex officio* members except the President of the University and, after a period of transition, to provide for 24 members appointed by the Governor for terms of 12 years.

## **TOWARD EQUALITY OF OPPORTUNITY IN HIGHER EDUCATION (Chapter 6)**

1. We recommend that state funds be appropriated through the Office of Compensatory Education of the Department of Education to provide for special college advisors for disadvantaged students in the secondary schools. The purpose of this proposal is to provide for the type of college counseling that most nondisadvantaged students get at home. The principal objective is to substantially increase the number of high school students who are properly prepared for college and to motivate and to recruit such students to apply to and enter college.

2. We recommend that the necessary funds be authorized to provide University, state college and junior college faculty positions for persons to serve as special advisors for enrolled disadvantaged students. The general objective of this proposal is to increase assistance to disadvantaged students who enroll in college so that they can overcome academic obstacles to success and complete their studies.

3. We recommend that facilities be provided, particularly on urban campuses, for study, advisement and tutorial centers for all commuter students. The prin-

cipal purpose of this proposal is to provide the same study opportunities for commuting students as are provided for students who live in residence halls.

4. We recommend the funding on an experimental basis of a small-scale, student operated supplementary transportation system for low-income students who attend urban colleges. The system would utilize small 9-passenger buses with student drivers and would operate on flexible schedules between the campuses and the communities where low-income students reside. The program would be subsidized with both state and federal funds.

5. We recommend the provision for mid-high school entry into the college prep curriculum and supplemental transition programs between high school and college for students who decide late in high school to go on to higher education. The purpose of this proposal is to overcome some of the rigidities of the multiple-track curricula in the junior high and high schools which tend to make it especially difficult for disadvantaged students to gain the necessary academic preparation for college. The program will entail special state support for those schools which establish such opportunities.

6. We recommend the establishment of a large-scale comprehensive financial aid program for disadvantaged students to begin in 1969-70. The program should encompass loans, grants, and work-study funds and should have provision for an effective information and recruitment program. The initial funding of this program should provide aid for 8,000 additional students at an initial cost of \$12.5 million. The greatest portion of this aid should be made available to junior college students.

7. We recommend legislation to specifically designate student financial aid as a public purpose for which junior colleges may expend public monies from whatever source.

8. We recommend the establishment of a demonstration and research center for the teaching of verbal skills to disadvantaged high school and college students. The center would be jointly sponsored by a high school, a junior college and a state college. It would be expected to utilize and evaluate the most effective and advanced educational methods and media to improve reading and other language skills.

9. We recommend that the California State Colleges and the University of California be directed to adopt a simplified common admission application form for all undergraduate students. With the cooperation of the local governing boards, the public junior colleges should also be encouraged to adopt the same standard form.

10. We recommend that the University of California and the California State Colleges expand authorized exceptions to their admission rules from 4% to 10% of the number of applicants expected to be admitted as freshmen and as transfer students to advanced standing.

11. We further recommend a careful reexamination of the Master Plan admission quotas for the University and state colleges. We believe that consideration should be given to expanding these quotas from the top 12½% and 33½% of California high school graduates to the top 20% for the University and the upper 40% for the state colleges.

### **ATTRITION AND THE FLOW OF STUDENTS (Chapter 7)**

It is our recommendation that work continue on the development of the proposed student flow information system with the objective of presenting a complete design for consideration by the Legislature at the 1970 Session. This work should be carried forward by the Coordinating Council for Higher Education in cooperation with the University, the California State Colleges, the Board of Governors of the California Community Colleges, the Department of Finance, the Department of Education and other interested agencies.

### **THE ROLE AND FINANCING OF PRIVATE HIGHER EDUCATION (Chapter 8)**

1. We recommend that careful consideration be given to two types of state aid to the private colleges and universities: (a) partial tax credits for contributions to institutions of higher education, and (b) cost-of-education supplements to accompany state scholarship awards to students who attend private institutions.

2. We further recommend that the Legislature initiate a revision of the California Constitution to permit the state to provide financial support to non-sectarian programs at private colleges and universities at such time as it may appear desirable to do so and under terms and conditions to be determined subsequently.

### **FINANCING PUBLIC HIGHER EDUCATION (Chapter 9)**

1. We recommend continued opposition to an increase in tuition, or a comparably large increase in other student charges, while other means are sought to provide necessary support for higher education over the next few years.

2. We recommend that both the University of California and the California State Colleges undertake more aggressive fund-raising programs to increase private support for public higher education from individuals and corporations.

3. We recommend that all segments of public higher education in California, together with other appropriate state agencies, participate actively and directly in determining what new forms federal aid to higher education should take and what objectives it should serve. Every effort should be made to *formulate a proposal which is concerned with all of higher education, rather than one which simply reflects the current interests of the junior colleges or the*

University or any other single segment. Moreover, the proposal should be one which reflects the need to strengthen statewide planning and policy formulation.

4. The question of whether or not California should shift to a system of withholding is, of course, a matter of basic state tax policy rather than simply a question of how public higher education is to be financed. Nevertheless, in the course of this report we advance a number of recommendations which will require additional state financing. To the extent that we are therefore obligated to suggest the means for providing such additional financing, we recommend the adoption of a system of withholding and estimating for state income tax payments, with a significant portion of the additional revenue which is expected to result to be allocated to higher education.

5. We recommend, in addition, active investigation of other potential revenue sources for higher education, including increased charges for services to private industry and the possibility of greater current use of endowment fund earnings.

6. We recommend that beginning no later than 1971, the Governor's Budget present a consolidated budget for public higher education which will have as its components:

- (a) A statement of the several goals and objectives of the system as a whole and its individual segments;
- (b) A detailed description of each of the major programs and program elements of the system, together with a statement of the objectives and appropriate performance evaluation criteria for each program and program element;
- (c) A projection of support and capital outlay costs for each major program and segment and for the system as a whole over a period of at least five years;
- (d) A complete statement of proposed funding by source for each major program and segment and for the system as a whole over the period of the projection; and
- (d) Sufficient performance data to permit a careful evaluation of the level of service being provided and the proposed rate of progress toward the stated objectives.

7. We further recommend that the new Board of Governors of the Community Colleges begin immediately to collect, prepare and publish comprehensive current fiscal data regarding junior college income and expenditures, regardless of source. This data should be prepared in the same general manner as we have recommended for higher education as a whole.

### **URBAN FOCUS: COMMUNITY EDUCATION AND ASSISTANCE (Chapter 10)**

1. We recommend that the University campuses, state colleges and junior colleges which are located in metropolitan areas organize regional, jointly op-

erated urban research and development centers to function as the focus for programs in urban research and community education and assistance.

2. We recommend that consideration be given to reshaping University Extension so that it becomes an effective agency for all types of community education, with an appropriate level of state support.

3. We recommend that the state colleges and the University, where appropriate, develop much closer ties with the public schools of the inner city.

4. We recommend that the public institutions of higher education facilitate and encourage the establishment of solidly supported programs on the campuses to achieve a partnership with the Black and Mexican-American communities.

5. We recommend, finally, that new criteria be considered for the location of proposed new state colleges and University campuses to more adequately reflect the economic and social impact the campuses can have on surrounding areas.

# PART I

*Introduction*

*California Higher Education Today*

*Major Trends of the Past 10 Years*

*Enrollment and Cost Projections: 1969-1975*

# 1. Introduction

We have chosen the title of this report with some care. Our purpose is to emphasize the fact that California's structure of public and private higher education represents a great achievement for the people of this state and, at the same time, that with this achievement have come many new challenges. At the moment some of these challenges are all too apparent. Others, however, are perhaps not so obvious, and it is our objective to give them the attention they have been denied by events which just now seem to be more newsworthy.

Of late higher education has drawn a spate of commentators both from within and from without the academic community. Each observer has tended to find fault with the various institutions of higher education in much the same way as he finds fault with the larger society around him. Higher education to some is too parochial and unresponsive to today's needs, to others it tries to do too much for too many. Some see it as lacking order and purpose, others see it as too inhibited and too orderly. Some critics charge that our campuses permit and encourage excessive freedom for students and faculty, others see the colleges and universities as instruments of a new authoritarianism. To certain writers there has been a shocking decline in standards, to others the university is a citadel of elitism and irrelevancy. We must admit that this report is no exception, it deals with what we believe to be among the most pressing problems of the day, and ignores many important issues which others have identified.

We wish to make clear our belief, however, that many of the problems which we identify would not now be before us if it were not for the great achievement in building a public and private system of higher education which is in several respects a model for other states and other countries. The problems of finance, of equality of opportunity and of governance would either not exist or be of a much different character if this vast educational apparatus had not been built up so rapidly, especially over the past twenty-five years.

Still, it would be a serious mistake to view this achievement as essentially complete, to assume that we now have the best of all possible higher education systems and that it must be guarded zealously against all who would criticize or change it. If we now stop building and modifying to meet the new conditions and new challenges, the earlier achievement will be diminished and lost. It is with this sense of obligation both to the present and to the past that this report has been prepared.

## ORIGIN OF THE JOINT COMMITTEE ON HIGHER EDUCATION

"It is by now no news that California has been and is in a great crisis in higher education. . . It is only in the last decade that we have admitted crisis, it is only in the last year or two that its meaning in finance and control have come directly home to the general public. How the state emerges from this crisis will depend greatly upon the depth of perception of what is involved, of how significantly the whole technologically based economy of California relates to all higher education in California and its output in knowledge, persons, and processes of action."<sup>1</sup>

These words were written by the late Arthur G. Coons, former president of Occidental College, President of the Coordinating Council for Higher Education and Chairman of the Master Plan Survey Team, shortly before his death in 1968. It is in response to this crisis and in recognition of the fundamental importance of higher education to the health and welfare of this state, that this report has been prepared.

The Joint Committee on Higher Education was established in 1965 in response to widespread concern over developing student unrest within the University of California. Initially, the principal function of the Committee was to provide for the establishment of informal channels of communication between the Legislature and the several educational communities within the state. Its objective was to create an atmosphere in which very controversial events might be discussed and appropriate responses determined free of the heat and vindictiveness which characterized initial reactions. The Committee refrained from conducting a full-scale investigation of campus disorders, but instead maintained a watchfulness in the event that further legislative action might become necessary.

At the same time the Committee began to develop the outlines of a broad study of the principle substantive issues confronting higher education in California ACR 165 of the 1965 Session, which had authorized establishment of the Committee, had also directed it to

". . . ascertain, study and analyze all the facts relating to the development of higher education under the Master Plan during the period 1960-65; explore the needs of higher education for the years 1975-80; and report thereon to the Legislature, including in its report its recommendations for appropriate legislation and change, if any, in the present law."

Identical language was included in ACR 56 of the 1966 Session which extended the life of the Committee and reset its reporting date to January, 1969.\*

This broad directive was translated the following year into a tentative study plan which was endorsed in September 1966 by the governing boards of the University and the state colleges, the Coordinating Council for Higher Education, representatives of the junior colleges and representatives of the private colleges and universities. Pledges of cooperation were also obtained from representatives of all the major faculty organizations.

This study plan received further consideration during the early months of 1967. The study plan and a supporting budget were approved by the Assembly and Senate Rules Committees, and in April, 1967, the Legislature passed ACR 16, once more renewing the Committee's authorization and adding \$250,000 to the initial appropriation of \$100,000 to finance the proposed study. ACR 16 also directed the Committee to make a special study and report on the matter of tuition in higher education to be submitted at the 1968 Session of the Legislature. In addition, the Legislature adopted ACR 22 calling for a study of University financial practices by the Auditor General to be submitted to the Committee for subsequent transmittal to the Legislature. A separate appropriation of \$50,000 was provided to finance the Auditor General's investigations.

The study upon which this report is based began in June, 1967, and continued over a period of 19 months. At the outset it was determined to preclude any suggestion of institutional bias by keeping the conduct of the study free from dependence upon any one of the segments of higher education. Accordingly, a contract was drawn up with Baxter, McDonald & Company of Berkeley, California, for that firm to serve as research director, with the assistance of the Committee's small staff, and to sub-contract portions of the research to experts and qualified organizations within and outside the state.

During the period of the study, the Committee has frequently been under strong pressure to divert its attention to matters of student unrest, off-campus political activities and campus administration. It has not done so *not* because it has failed to see the relevancy of these matters, but because the majority of the members have remained convinced that the Committee could contribute more to the strengthening of California's educational system by dealing with the basic substantive issues of state policy than by becoming entangled in all the various conflicts which have occurred over the past few years on and about the campuses. Clearly, however, the Committee has dealt only indirectly with several very important contemporary issues which concern higher education, and which are necessarily matters of continuing legislative concern.

\* The full texts of the resolutions authorizing the committee's activities may be found in Appendix A

It should also be noted that it was upon the specific request of the Governor in 1967 that the Committee agreed not to investigate incidents of student unrest at that time and also agreed to the deletion from ACR 16 (1967) of a proposed directive for the Committee to undertake such an investigation.

## EARLIER STUDIES

The current legislative interest in higher education as demonstrated by this Committee's study is in no way unique in California's history, a look back to earlier studies reveals the fact that the Legislature, acting on its own or through a specially appointed group of representatives, has been a major focus of leadership in bringing about a strengthening of higher education in this state.

At the close of the last century the legislature established a 45-member California Education Commission made up of leading educators and other outstanding citizens of the state. This commission was charged with responsibility for a review of the state's system of public education from kindergarten through the University. In accordance with that directive the commission dealt with a broad range of educational problems, but it was particularly concerned with the matter of admission to the "normal" schools (later the state colleges) and the need for a special governing board for those institutions.

Twenty years later, in 1919, a study of higher education was carried out by a Joint Legislative Committee not unlike the present Committee. The principal results of that committee's deliberations were a redesignation of the normal schools as teachers colleges and recognition of the growing need, even then, for greater coordination within public higher education.

In 1931 the Legislature again called for the appointment of a commission to make a broad study of education in California. The commission itself was appointed by the Carnegie Foundation for the Advancement of Teaching which acted as the agent of the Legislature. A report, popularly known as the "Suzzalo Report" after President Henry Suzzalo of the Carnegie Foundation, was produced in 1932. That report dealt primarily with the junior colleges, teacher education and the role of the State Board of Education. Perhaps the most interesting recommendations, however, were that the Regents should assume jurisdiction over the state colleges and that a State Council for Educational Planning and Coordination should be established on a continuing basis.

Although nothing came of the recommendation regarding the Regents, the proposed council was established in the following year. Its membership consisted of the President of the University, a Regent, the Superintendent of Public Instruction, a member of the State Board of Education and five other leading citizens of the state. The purpose of this council was "to study problems affecting the relationship between the schools of the public school system and the University

of California, and to make recommendations thereon, jointly to the State Board of Education and the Regents of the University of California through the Superintendent of Public Instruction and the President of the University.”<sup>2</sup> The council became inactive after 1941 and last met in 1945.

The most radical proposal of this period came from a Committee of Twenty-Five, created privately in 1936 to study problems of government and taxation. This committee proposed that all lower division instruction in the University and state colleges be transferred to the jurisdiction of the State Board of Education and local school boards, and that all upper division and graduate instruction become the responsibility of the Regents of the University.

In 1945 the State Board of Education and the Regents, sensing the need for greater coordination in higher education, agreed to devise a means for dealing with their mutual concerns which they hoped would preclude the establishment of an official coordinating agency by the Legislature. Accordingly, a “voluntary” Liaison Committee was established, with equal representation from each board, to make nonbinding recommendations to the boards on matters of common interest. The Liaison Committee served primarily as a means for discussing proposals by one board which might affect the other before such proposals were submitted to the Legislature.

The principal accomplishment of the Liaison Committee was to call for what was to become the first of the series of studies of higher education conducted during the past two decades. This study was carried out under the supervision of the Liaison Committee and resulted in a report, submitted in March 1948, entitled *A Report of a Survey of the Needs of California in Higher Education* and commonly referred to as the “Strayer Report” after the principal author. In general, the Strayer Report dealt with the functions and programs of the public segments in the context of a differentiation of function which had developed in the preceding decades. The principal recommendations were that there should be no upper division programs in the junior colleges, that the University should have exclusive jurisdiction over doctoral programs, professional training and research, that the Liaison Committee should continue as the coordinating mechanism and that certain additional institutions were needed.

In 1953 the Legislature directed that there be another study, this one to become known as the “Restudy”, despite the fact that it was much more extensive than the Strayer Report and remains to this date as the most comprehensive of all the studies of higher education in California. When submitted to the Liaison Committee in February, 1955, the Restudy advanced some 140 recommendations dealing with differentiation of function among the segments, enrollment growth, the need for additional facilities, government and administration of public higher education, costs of educational services and the ability of Cali-

fornia to support higher education in the future. Among the more significant recommendations were those which called for an expansion of the junior college role at the lower division and vocational level, authorization for the state colleges to grant master’s degrees, a tightening of admission standards and an increase in retention rates for the University and state colleges, a streamlining of the University’s structure of governance and administration, establishment of a separate state college board, and an expansion and strengthening of the Liaison Committee to improve its functioning as a coordinating body.

A much more restricted study was undertaken a year later by the Liaison Committee and published in 1957 under the title of *The Need for Additional Centers of Public Higher Education in California*. This study stemmed from the fact that 15 different measures were passed during the 1955 session of the Legislature regarding the need for new institutions of higher education in various areas of the state. The report sought to establish a set of criteria upon which the need for new institutions of higher education in various areas of the state could be determined and then to set forth a priority list of new state colleges and University campuses in accordance with those criteria. Three new state colleges and two new University campuses were subsequently developed as a result of this report.

## **THE 1960 MASTER PLAN FOR HIGHER EDUCATION**

In 1959 the Legislature authorized the most recent and probably the best known study of higher education in California, the Master Plan. ACR 88 of the 1959 Session called upon the Liaison Committee “to prepare a master plan for the development, expansion, and integration of the facilities, curriculum, and standards of higher education, in junior colleges, state colleges, the University of California and other institutions of higher education of the state, to meet the needs of the state during the next ten years and thereafter . . .”

The need for such a study arose from the growing inadequacy of existing coordinating machinery, the increasingly obvious inability of the State Board of Education to govern the state colleges, impatience among state college leaders for recognition of the growth which had taken place in the college system since 1946, dissatisfaction among the junior colleges, and the steady clamor for new campuses and new colleges in many areas of the state. This situation came to a head in 1958–59 with several challenges to the jurisdiction of the Liaison Committee, threatened restrictions on the flow of state funds to higher education, and the introduction of an unprecedented number of legislative measures to establish new campuses and to alter the structure of public higher education.

The legislative mandate for the Master Plan study reflected a belief that the conflict among public institutions of higher education had gotten out of hand and

that some reasonable solution to this conflict, ensuring economy for the state's taxpayers, had to be found soon.<sup>3</sup> At the same time there was a strong sense of insecurity among the public and private colleges and universities as to their individual futures. In effect these institutions asked the Legislature to give them a chance to work out their own problems, believing that if they didn't some outside agency would be called upon to do so.

The Master Plan Survey Team which was appointed by the Liaison Committee to direct the study consisted of two representatives each from the state colleges, the public junior colleges, the University and the independent colleges and universities. Although several legislators were invited to sit with the Liaison Committee in discussing the study, and several state officials contributed technical expertise in certain areas, there was no question but that this was to be a "self-study" and that the findings and recommendations would reflect the current aspirations of the individual segments. The report that was completed in December of 1959, after only eight months of study and negotiation, and presented to the Legislature in February 1960 was in essence a statement of mutual demands on the one hand, and a record of negotiated compromises on the other.

The 1960 Master Plan, as approved by the Regents and the State Department of Education and, where appropriate, written into statute, made some important changes in the higher education landscape in California. The state colleges were given their own governing board, a new formal coordinating agency was established to replace the Liaison Committee, some changes were made in admission policies and procedures. Yet, fundamentally, the 1960 Master Plan represented a ratification of the status quo.

At the outset the Survey Team agreed that it would present only recommendations upon which there was either unanimous agreement or, at least, no dissenting voice.<sup>4</sup> The Master Plan recommendations, although somewhat modified by the Legislature, received broad general acceptance because they made very few changes in existing relationships, because they seemed to express a strong concern for the problems of cost and efficiency and, most importantly, because they were accepted by the segments themselves.

Although the Master Plan recognized the need for a strong coordinating mechanism, the agency which it finally recommended was at best designed to be only another buffer between the institutions of higher education and the outside world. The new coordinating agency was given advisory functions, rather than specific powers to direct the development of public higher education, and its membership was heavily weighted with official representatives of the four segments. Two key conclusions of the Survey Team made this inevitable. The first was that ". . . (legally) a strong coordinating body could not be established by statutes, even though the Regents consented" and that ". . . a constitutional amendment is unlikely to pass

if opposed by any one segment. . ." The second important conclusion was that the new coordinating body should be ". . . composed exclusively of segmental representatives to assure informed members" and that ". . . (only) authentic representatives of the several segments quickly penetrate to the heart of higher educational problems."<sup>5</sup>

A similar approach carried over into the discussion of the admission of students and their allocation among the segments, the financing of public higher education and the functions of the three public segments. The major recommendation of the Survey Team in each of these areas rarely went beyond an endorsement of the policies and procedures already in existence.

It is not the purpose of this report, however, to attack the 1960 Master Plan. Much has taken place in the field of higher education since the Survey Team conducted its study in 1959. The facts that helped determine the Master Plan recommendations need to be brought up to date. The judgments underlying the interpretation of those facts deserve reexamination in the light of nearly ten year's experience. Whatever their original merits, many of the recommendations need to be reevaluated in terms of their effectiveness and present utility for the continuing development of the strength, efficiency and quality of public and private higher education in California. These considerations are evident in the origin of the Joint Committee on Higher Education, in the two resolutions which established it and the framework for its efforts.

But more importantly, it is clear that if higher education in California is to achieve the fundamental objectives of service and excellence which are so evident in the spirit of the 1960 Master Plan, it will be necessary to go well beyond the language of that document. Higher education must be made much more accessible to ethnic minorities within our state, the structure of public higher education must be radically reshaped to make coordinated planning and development a reality, resources must be allocated not according to tradition but where they will be most effective in the instruction of students, the advancement of research and the promotion of service to the communities. It is with these objectives that this study has been undertaken.

## COMMITTEE ACTIVITIES

During the course of this study the Committee met as necessary to establish the framework for the study, discuss each of the principal elements, and to receive materials submitted by subcontractors and the staff. The Committee also held two public hearings at which witnesses were heard at length. The first hearing was on the subject of tuition for California's public institutions of higher education and was held on October 13, 1967, in Los Angeles and October 16, 1967, in San Francisco. Those who testified included the Director of Finance, representatives of the Legislative Analyst, the Coordinating Council for Higher Educa-

tion and each of the three public segments of higher education, as well as representatives of faculty organizations and other agencies and individuals interested in the question.

A second hearing was held on the subject of equality of opportunity in higher education at California State College, Los Angeles, on May 25, 1968. Testimony was heard from individuals with a direct interest in the subject either as students, equal opportunity program directors, student advisors or as members of community organizations working on behalf of disadvantaged students. Among those who testified were several members of the Black Students Union and the United Mexican-American Students. The transcripts of both of these hearings have been made available to those who have requested them.

In addition, the Committee's Research Director and its Consultant have attempted to contact a wide range of individuals who are concerned with higher education in this state to ascertain their views and to discuss various aspects of the Committee's study. Those who have been contacted on this basis and with whom informal discussions of the issues have been held include faculty members of the University of California, state colleges and junior colleges, representatives of faculty organizations, a number of junior college presidents, University and state college administrators, several state college presidents, individual students and representatives of student organizations, and staff members of such agencies as the Coordinating Council, the State Scholarship and Loan Commission and the Constitutional Revision Commission. In addition, a number of presidents of private colleges and universities have been interviewed at length.

In sum, the Committee and its staff have made a considerable effort not only to hear and profit from the views of a great many individuals who have an active concern for higher education in this state but also to inform others of the direction the study was taking and the general nature of the recommendations it was likely to produce.

It should also be noted that important technical assistance has been provided by the University of California, the Office of the Chancellor of the California State Colleges, the Office of the Chancellor of the California Community Colleges, the Coordinating Council for Higher Education, the Office of the Legislative Analyst, the Department of Finance and several other state agencies.

## THE ADVISORY COMMITTEE

A special Advisory Committee was formed in June, 1968, in accordance with ACR 16 (1967) which directed the Speaker of the Assembly and the Senate Committee on Rules to appoint six members each to "a broadly based advisory commission, representative of all segments of California society, to assist the Com-

mittee in its studies." The eleven persons (there was one vacancy) who served on this advisory committee are:

Frank J. Cleary	Assistant Controller for ITT Gilfillan, Chairman of the Education Section of the Governor's Survey on Efficiency and Cost Control for State Government.
Dave Durand	Student at the University of California at Davis, past president of Associated Students, UC Davis.
Donald M. Hart	Businessman, Chairman of the Trustees of the California State Colleges 1967-68, Trustee from 1961 to 1968, member of the State Board of Education 1960-64
Leland Medsker	Professor of Higher Education, University of California, Chairman of the Center for Research and Development in Higher Education, UC Berkeley.
Einar Mohn	International Director, Western Conference of Teamsters, former Regent of the University of California.
Julian Nava	Member of the Los Angeles Board of Education, Associate Professor of History at San Fernando Valley State College.
J. K. Obatala	Student at California State College at Los Los Angeles, member of Black Students Union, Cal State Los Angeles
Wilson C. Riles	Associate Superintendent of Public Instruction and Director of Office of Compensatory Education, State Department of Education
Norman Topping	President of the University of Southern California.
Robert J. Wert	President of Mills College, former member of the Master Plan Survey Team, former member and past President of the Coordinating Council for Higher Education
Aaron Wildavsky	Professor of Political Science and Chairman of the Department, University of California, Berkeley.

The Advisory Committee, in compliance with ACR 16, included no institutional representatives, but rather individual educators, students and businessmen who have had a close acquaintance with public or private higher education in California. Although a number of the Advisory Committee members are associated with one or another of the segments, it was their experience and point of view as individuals which the Committee sought, not the official position of their institutions or organizations.

In this capacity the members of the Advisory Committee have been very helpful to the Committee in the preparation of this report through their advice and criticism. It should be emphasized, however, that these individuals performed a purely advisory role. At no time were they asked as a group to endorse any specific proposal, and several members individually recorded strong objections to certain of the report's conclusions and recommendations.

## SPECIAL STUDIES

At several points in its study the Committee has found it useful to contract for special studies of the type requiring substantial staff time, continuing access to particular information or special expertise not otherwise available to the Committee. The results of several of these studies have been incorporated in large measure in this report. One of the studies was helpful primarily in indicating an area which could not profitably be pursued at this time. In each case, however, the studies themselves have been printed separately and, with two exceptions, are available through the Committee office.

1. *High Level Manpower and Development of Higher Education* by Nicholas DeWitt, February 1967 (not for distribution).
2. *Student Expenditure and Income Patterns: The University of California; Berkeley and Santa Cruz Campuses*, by David Bradwell and Associates, March 1967.
3. *Benefits and Costs of Public Higher Education in California*, by W. Lee Hansen and Burton A. Weisbrod, with comments by Kenneth J. Arrow, Seymour E. Harris and Werner Z. Hirsch, November 1967.
4. *A Report on the Financial Practices of the University of California*, by the Office of the Auditor General, California State Legislature, January 1968.
5. *Increasing Opportunities for Disadvantaged Students: A Preliminary Outline*, by Kenneth A. Martyn, December 1967.
6. *Equal Opportunity in Higher Education*, by Kenneth A. Martyn, February 1969.
7. *A Statistical Profile of Independent Higher Education in California*, The Association of Independent California Colleges and Universities, August 1968.
8. *Financing Independent Higher Education in California*, McKinsey & Company, Los Angeles, December 1968. (Distributed by the Association of Independent California Colleges and Universities.)
9. *A California Student Flow Information System*, Computing Sciences Division, Aerojet-General Corporation, February 1969.

## 1968 PROGRESS REPORT—THE ACADEMIC STATE

In March of 1968, approximately halfway through its study, the Committee published a progress report entitled *The Academic State*. That report had three principal purposes: first, to deal with the issue of tuition for California's public institutions of higher education, second, to present in a very tentative way some of the initial findings of the Committee regarding the other principal elements of the study, and, third, to present certain basic statistics regarding recent trends and short-range projections for higher education in California.

The issue of tuition was discussed in some detail in *The Academic State*; that discussion will not be repeated at length in this report except as our earlier information is brought up to date and is relevant to a discussion of the broader problem of financing public and private higher education. In 1968, after carefully reviewing the arguments for and against tuition as well as all relevant data bearing upon the issue, a majority of the Committee concluded that under existing circumstances the arguments offered for tuition are of insufficient relevance and merit to justify a departure from the state's historic policy regarding tuition. Accordingly, the majority of the Committee recorded itself in opposition to the imposition of tuition or any comparably large increase in student fees for the same purpose in 1968-69.

Three statements of dissent regarding this position were appended to the 1968 report. At least three members of the Committee clearly disagreed with the majority position and favored some system for directly imposing tuition for University and state college students.

In addition to the discussion of tuition, the 1968 progress report outlined some preliminary Committee findings regarding the need for changes in the structure and governance of public higher education, the desirability of Constitutional revision to permit state aid for private colleges and universities and the need for a comprehensive attack upon the problem of expanding educational opportunity for "disadvantaged" students. Each of these subjects is treated at length in this report. As necessary and appropriate, the statistical data presented in the progress report have been corrected, brought up to date, and, in some cases, reorganized, for presentation in this report.

# 2. California Higher Education Today

## STRUCTURE AND GOVERNANCE

Higher education in California now embraces 85 public junior colleges, 19 state colleges, 9 campuses of the University of California and 79 accredited private colleges and universities. In addition, there are several specialized institutions such as the California Maritime Academy, the California College of Medicine, Hastings College of Law and more than a dozen accredited business schools\*

Altogether these institutions enroll in excess of 990,000 full-time and part-time students. By 1969, the figure of one million students will be passed.

The geographic distribution of the public institutions and those private institutions which belong to the AICCU is shown on pages 8-11. Because of the number of institutions, it has been necessary to divide the state into four sections. These maps indicate rather clearly the extent to which California has attempted to make higher education easily accessible, geographically, to all its citizens.

### THE THREE MAJOR PUBLIC SEGMENTS

The 85 individual public junior colleges now operating in California have been planned, constructed and operated by local districts. Six of these districts are unified school districts which also operate elementary

\* We have not attempted to deal here with the other agencies, organizations and firms which offer post high school training in California, although those agencies undoubtedly play an important role in providing such training. Unfortunately, there is at present no comprehensive catalog of agencies and organizations of this type

and secondary schools. The remaining 62 districts (which operate 78 colleges) are separate junior college districts which in most cases are entirely autonomous in relation to other school districts

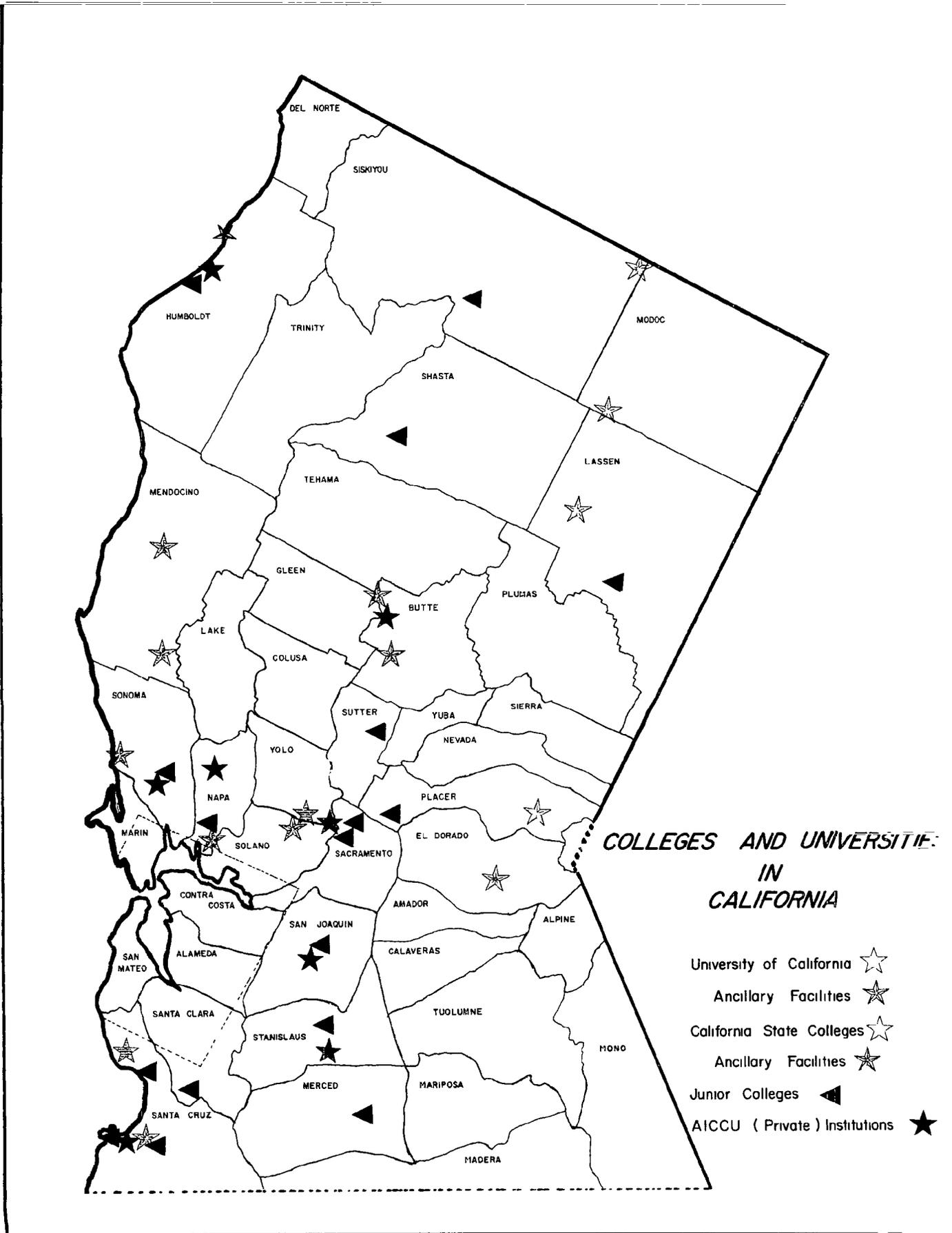
Since July 1, 1968, the junior colleges have been drawn together under the general (and as yet largely undefined) supervision of a single statewide board, the Board of Governors of the California Community Colleges. This new board has been established to take responsibility for the junior colleges at the state level from the State Board of Education in much the same way that the junior colleges have pulled away from high school and unified governing boards at the local level to form separate junior college districts.

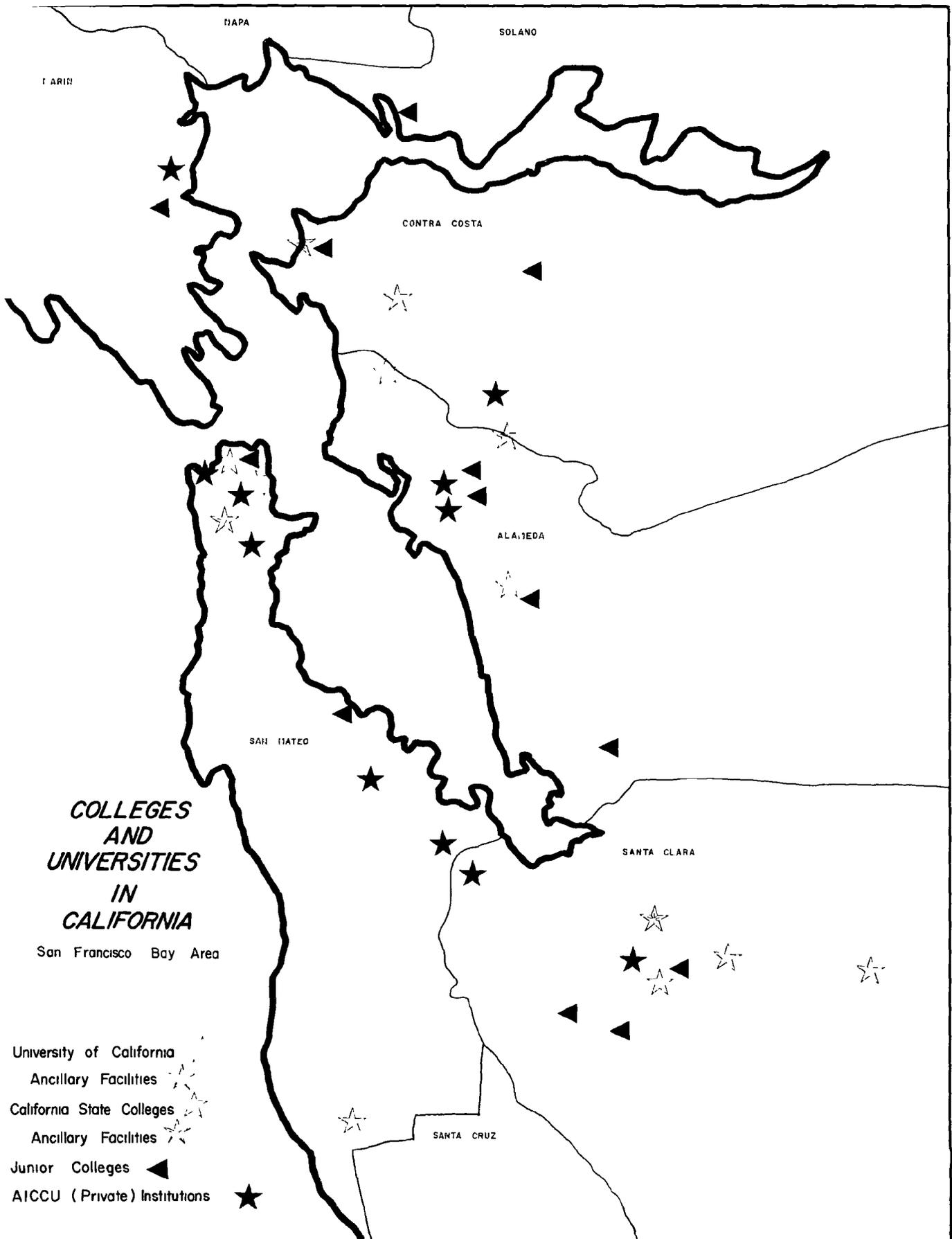
The 15 member Board of Governors has succeeded to the rather limited powers previously vested in the State Board of Education, pending legislative action on a study by the Coordinating Council on Higher Education and other agencies as to what expansion or contraction of those powers might now be desirable. It remains to be seen whether any significant authority for the planning, construction and administration of the junior colleges will be transferred to the state level. At present the public junior colleges enjoy a high degree of autonomy in relation to the state and in relation to the local communities.

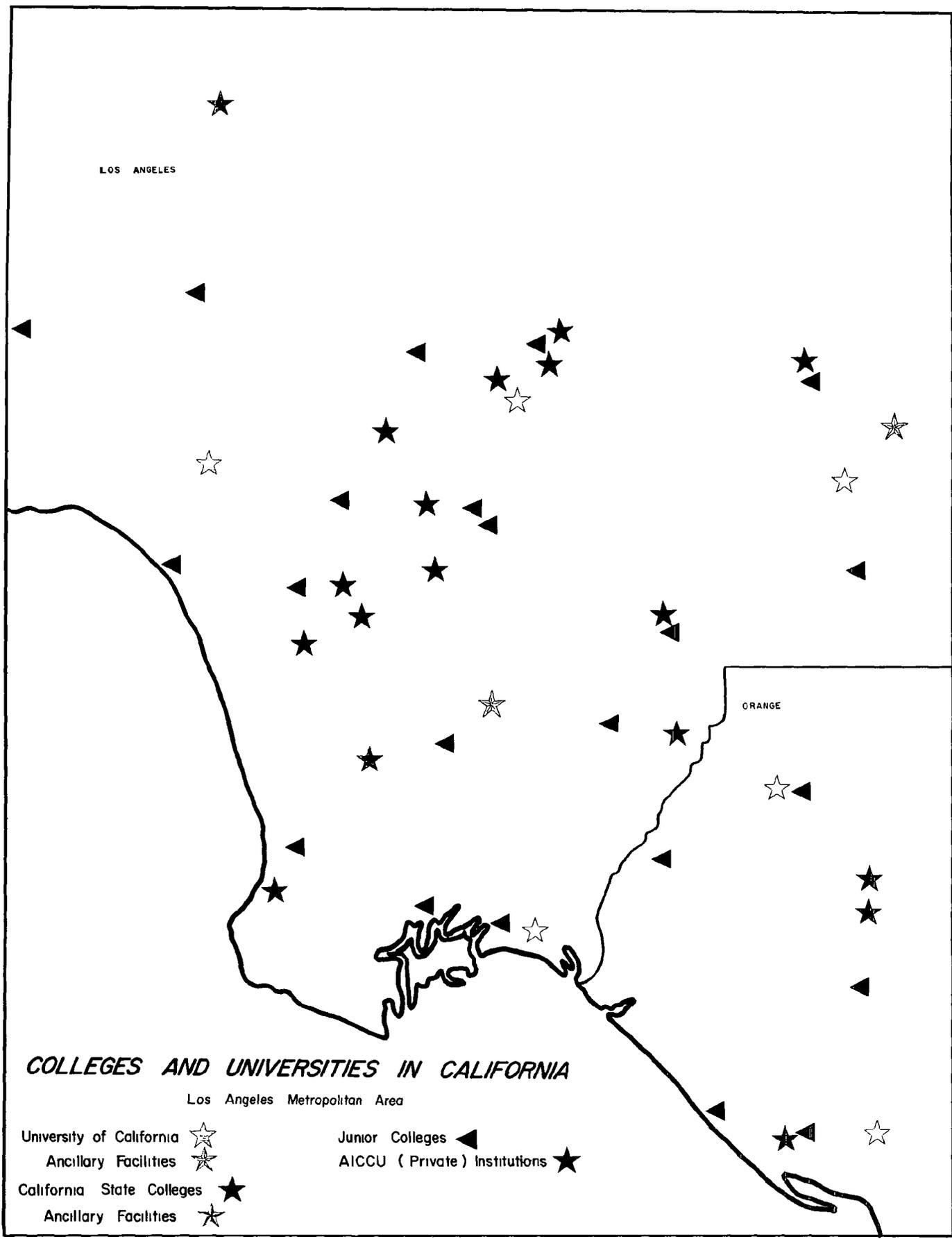
The 19 California State Colleges are governed by the Trustees of the California State Colleges, a 21-member board which began exercising its responsibilities on July 1, 1961, in accordance with the recom-

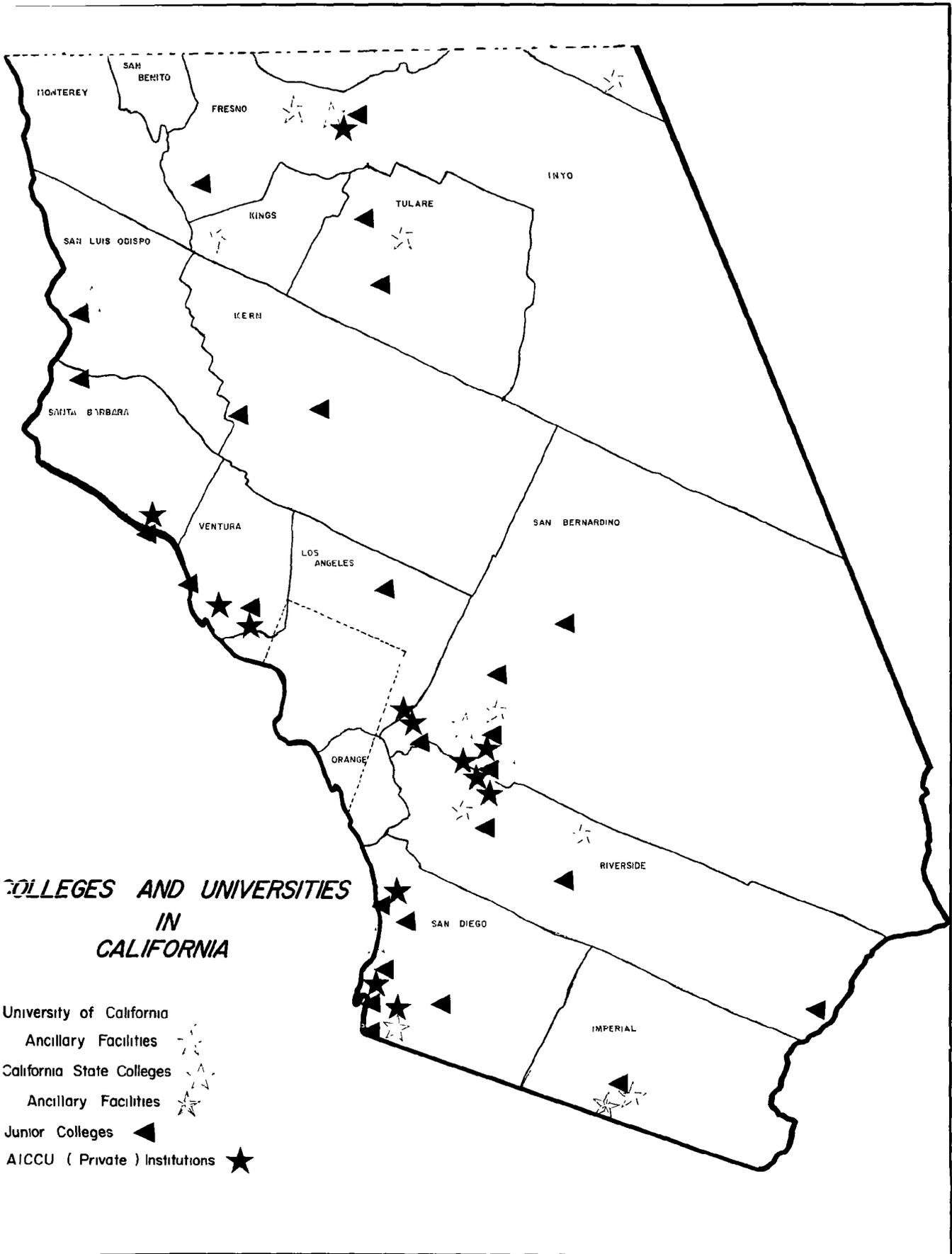
**TABLE 2.1 PUBLIC AND PRIVATE INSTITUTIONS OF HIGHER EDUCATION IN CALIFORNIA, 1968-69**

Segment	Institutions				Total Fall Term Enrollment
	Junior Colleges	Liberal Arts Colleges	Universities	Other	
<b>Public Institutions</b>					
Public Junior Colleges.....	85	-----	-----	-----	567,749
California State Colleges.....	-----	19	-----	-----	211,600
University of California.....	-----	-----	9	-----	98,781
Other.....	-----	-----	-----	2	1,250
<b>Private Institutions</b>					
AICCU Institutions.....	-----	39	8	1	97,141
Other Accredited Institutions.....	1	5	-----	25	13,897
<b>Totals.....</b>	<b>86</b>	<b>63</b>	<b>17</b>	<b>28</b>	<b>990,418</b>









mendations of the 1960 Master Plan. The powers and duties of the Trustees have been established by statute and are to be found in the Education Code. The Trustees are served by a statewide administrative staff under the direction of the Chancellor. Although the individual colleges have traditionally enjoyed a substantial amount of freedom of operation, they are subject to detailed supervision and control in such matters as purchasing, budget standards, campus planning and construction, and admission policies, either by the Trustees and the Chancellor's Office, or by other state agencies.

The University of California is governed by the Board of Regents, a 24 member body established under the Organic Act of 1868. According to the terms of Article IX, Section 9, of the California Constitution, the Regents have "full powers of organization and government, subject only to such legislative control as may be necessary to insure compliance with the terms of the endowments of the University and the security of its funds." The Regents appoint the President of the University who functions, with the aid of an extensive staff, as the "executive head" of the University in all its departments and on all its campuses.

According to the terms of the 1960 Master Plan, as it was enacted into law in the Donahoe Act, the public junior colleges are expected to ". . . offer instruction through but not beyond the fourteenth grade level, which instruction may include, but shall not be limited to, programs in one or more of the following categories (1) standard collegiate courses for transfer to higher institutions, (2) vocational and technical fields leading to employment; and (3) general or liberal arts courses." In the case of the state colleges, their "primary function" is declared to be ". . . the provision of instruction for undergraduate students and graduate students, through the master's degree, in the liberal arts and sciences, in applied fields and in the professions, including the teaching profession." The state colleges are authorized to award doctoral degrees only by joint arrangement with the University, and any faculty research must be "consistent with the primary function of the state colleges and the facilities provided for that function."

The University of California is to ". . . provide instruction in the liberal arts and sciences and in the professions, including the teaching profession" without regard to the level of instruction offered. The University has retained ". . . exclusive jurisdiction in public higher education over instruction in the profession of law, and over graduate instruction in the professions of medicine, dentistry, veterinary medicine and architecture." It also has ". . . sole authority in public higher education to award the doctoral degree in all fields of learning" (except as it may agree to award joint doctoral degrees with the state colleges) and is designated as the "primary state-supported academic agency for research."

## **OTHER PUBLIC INSTITUTIONS**

There are two other public institutions of higher education in California which are not usually included within one of the three major segments. These are Hastings College of Law and the California Maritime Academy.

Hastings College of Law has been affiliated with the University of California since 1878 and is designated by statute as a law department of the University, but it is governed by its own Board of Directors and is operated independently of the University in most respects. Hastings' stated objective is to provide instruction in those aspects of law which best prepare graduates to practice law in California. It enrolls approximately 1,000 students.

The California Maritime Academy is one of six institutions in the country which train young men to become licensed officers in the US Merchant Marine. The academy has its own Board of Governors ("in the Department of Education") which consists of 5 members, including the Superintendent of Public Instruction and four others appointed by the Governor. The training program runs for three years, with each year divided into two academic terms on shore and one term of training at sea. Admission is by examination. The average annual enrollment is about 250. The academy operates with a budget of approximately \$1 million of which about 60% is provided by the state, 21% from the federal government and 19% from student fees.<sup>1</sup>

## **THE INDEPENDENT COLLEGES AND UNIVERSITIES**

Although the independent colleges and universities account for only approximately 9.6% of total higher education enrollment (11.6% of full-time enrollment) in California, they are many in number and, taken altogether, have an importance well beyond their size alone. The individual institutions range in enrollment from the University of Southern California with its 18,700 students to small denominational and business schools which enroll fewer than 200 students.

Most of these institutions were originally founded by churches, a few extremely wealthy individuals or persons with specific vocational training interests. As time has passed religious affiliations in many cases have either fallen away or declined in significance, both as to the financing and the operation of the institutions. By and large, the liberal arts, science and professional curricula of these institutions are difficult to distinguish from those of the public segments.

If any classification of these institutions is possible, perhaps four or five categories can be listed. First are those institutions of such size, diversity and prestige, especially in graduate instruction and research, that they are, in their own view, national institutions. The fact that they are located in California is only incidental to their operation and their objectives. One or

two of these institutions, together with one or two of the public institutions, may in fact be the forerunners of the new "national universities" of which several observers have spoken in recent years.

Another important category includes those institutions which are generally much smaller but which have become leaders in maintaining and strengthening undergraduate liberal arts instruction. Most of these institutions have other functions as well, but their main strength and contribution is in the teaching of undergraduate students. This category includes several institutions that call themselves universities, as well as those which have continued to call themselves colleges.

Additional categories include those institutions which have retained an essential element of church sponsorship and control for the service of their churches, numerous small liberal arts colleges which have not obtained the distinction of those described above, and several business schools and vocational schools of other types which have been accredited but which do not have the aspirations or diversity of curricula to be counted among the liberal arts colleges.

Among the 80 accredited independent institutions in California in 1968, 48 are members of the Association of Independent California Colleges and Universities (AICCU).<sup>2</sup> The AICCU was formed in 1955 as a non-profit corporation with the stated purpose of working with agencies of higher education and government to strengthen collegiate education in California. It is governed by a Board of Trustees made up of three representatives from each member institution. This association includes all of the major private institutions and accounts for over 85% of all enrollment in accredited private institutions in California. Although the Department of Finance collects fall enrollment data for a number of other colleges, only the AICCU institutions now report enrollment and financial data on a generally uniform basis. For this reason when we refer to the private institutions in the balance of this report we generally refer to the AICCU institutions, rather than to all accredited independent institutions.

## **THE COORDINATING COUNCIL FOR HIGHER EDUCATION**

The Coordinating Council for Higher Education is an advisory body created to provide for the voluntary coordination and orderly growth and development of higher education in California. It was established under the terms of the Donahoe Higher Education Act of 1960 in accordance with recommendations contained in the 1960 Master Plan for Higher Education in California.

There are 18 members of the council. Six members are appointed by the Governor to represent the public, 3 members are appointed by the Governor to represent the private colleges and universities, 3 members are chosen by the Regents to represent the University, 3 members are appointed by the Board of Governors

of the Community Colleges to represent the public junior colleges and 3 members are chosen by the Trustees to represent the state colleges. The representatives of the public segments have 1 year terms, all others have 4 year terms. The council selects its own director and staff and also utilizes the services of special consultants and committees of representatives of the segments and other state agencies.

In its advisory capacity the council is expected to review and comment upon the annual budget requests of the University and state colleges, to assist in delineating the functions of the segments and the programs appropriate to each, and to develop plans for the orderly growth of public higher education, including recommendations as to the need for and location of new facilities and programs. The council is empowered by law to obtain the information necessary to carry out these functions, but the statutes are otherwise silent with respect to specific powers.

The council has issued annual reports to the Governor and the Legislature on the subjects of faculty salaries and the proposed annual budgets for public higher education. It has also carried out continuing and occasional studies with regard to: the admission policies of the public institutions, particularly in relation to Master Plan recommendations; the need for student financial aid; the utilization of college and University facilities and means to improve utilization rates; the supply and demand for personnel in certain occupations, including the medical and engineering professions, the costs of instruction and methods of cost accounting and reporting for current expense; and the level of and justification for student charges.

In addition, the council has been designated by statute or, in some cases, by the Governor, as the state agency which is responsible for the planning and administration of state participation in several federal higher education programs. Among these programs are those established under the Higher Education Facilities Act of 1963, and Titles I and VI of the Higher Education Act of 1965.

The manner in which the council has been able to carry out these responsibilities and its effectiveness as a coordinating body are discussed in some detail in Chapter 5.

## **THE CALIFORNIA STATE SCHOLARSHIP AND LOAN COMMISSION**

The State Scholarship and Loan Commission was established by statute in 1956 as an independent agency responsible for administration of the State Scholarship Program. In 1965 and 1966, it was also given responsibility for the Graduate Fellowship Program and the State Guaranteed Loan Program. In 1968 the commission was also given responsibility for the new College Opportunity Grant Program (see Chapter 6). The commission received an appropriation of \$256,000 for administrative costs and \$8.7 million in program funds for 1968-69.

The commission consists of nine members who are appointed to four-year terms by the Governor. The Education Code provides that its membership must include three representatives of private institutions of higher education, one representative each for the junior colleges, state colleges and the University and three representatives of the public, of whom one must be a member of a local school board. The commission appoints an Executive Director who is responsible for the administration of the commission's programs. Although the commission has an agreement with the Coordinating Council for Higher Education to submit policy proposals to the council for approval, the com-

mission operates, for the most part, as an independent agency.

The relatively heavy representation for private institutions on the commission stems from the fact that the State Scholarship Program originally had greater importance for private institutions than for the public institutions. As more scholarship winners have chosen to attend the University or a state college, however, and as new programs have been added to the commission's responsibility, the justification for this weighting has lost most of its original force. This is also true of the independent status of the commission relative to other educational agencies.

## **PROGRAMS, POLICIES AND OBJECTIVES**

The principal programs or functions of higher education are commonly and usefully divided between instruction, research and other public service. A fourth category of activity encompasses the various auxiliary enterprises associated with each institution, and a fifth is made up of student financial aid programs. Although individual institutions differ widely as to the extent to which they emphasize one or more of these broad functions, virtually every institution maintains at least one program or activity within each of these four categories.

California's public colleges and university campuses are not exceptional in this regard. However, the state colleges, a majority of the private colleges and, especially, the public junior colleges devote all but a relatively small portion of their resources to instruction. It is only at several campuses of the University of California and several of the largest private universities that all four functions and activities are carried on in a major way.

### **INSTRUCTION**

The instruction function consists primarily of the traditional on-campus instructional programs carried on during the regular academic term. In addition, however, there are summer session programs, educational television, broadcasting, conferences and special training programs. In the following sections we present brief summary material regarding curricula, admissions, enrollment, and student characteristics.

#### **1. Curricula**

The two major instructional functions of the public junior colleges are. (a) to provide the first two years of college instruction for students who intend to transfer later to a four-year college and to complete work for a baccalaureate degree and (b) to provide "vocational-technical" training and general education for students who will complete two years or less of college. In addition, because of the "open door" admission policy, junior colleges have a large responsibility for remedial instruction for students whose

previous work has been inadequate and for adult education for persons who wish to pursue a general education curriculum or vocational-technical training on a part-time basis. The Associate in Arts degree is awarded to those who complete a two-year curriculum. Certificates of completion are awarded for the completion of shorter-term programs.

Every junior college offers basic lower division undergraduate courses equivalent to the lower division courses offered by public and private four-year institutions. These courses are intended to meet the needs of students who for a variety of reasons start their college career at a junior college or come to a junior college to make a second start. Because these courses must be acceptable to the four-year institutions for transfer, their scope and content is determined in large part by the four-year institutions rather than the junior colleges.

Every junior college also offers "occupation-centered" curricula for vocational-technical training for students who will find employment in commerce, manufacturing, service industries, agriculture, health services, etc. Although the heaviest concentration of such training is in such areas as accounting and book-keeping, cosmetology, secretarial training, drafting, electronics, nursing and machine shop, individual college curricula range widely to include such areas as office machine servicing, agricultural management, nursery management, technical writing, public relations and traffic management. The extent to which such occupational training is offered depends heavily upon the objectives of the students enrolled and the degree to which such curricula reflect actual employment opportunities. The preponderance of junior college enrollment is in transfer or general education courses, except in those few junior colleges which specialize in occupational training.

The California State Colleges are basically liberal arts colleges which offer the traditional undergraduate liberal arts curricula plus a rather broad array of master's degree programs in liberal arts and occupational training. For graduation, all of the state colleges require a basic program in the liberal arts consisting

of the equivalent of 45 semester units of "general education" for all students, regardless of the type of bachelor's degree or the major field to be pursued.<sup>3</sup> On top of this base more than 200 different degree curricula are offered, with the principal concentration of effort in agriculture, business, criminology, creative arts, education, engineering, languages, health, home economics, humanities, industrial arts, mathematics, natural resources, physical sciences and social sciences.

Graduate instruction began in the state colleges in 1946 with authorization to offer a fifth year of study leading to the general secondary credential. In 1955 authorization for graduate instruction was extended from teacher education to the master of science degree and in 1958 it was extended to encompass the liberal arts and the sciences. Now, only eleven years later, the colleges offer some 300 individual master's degree programs, including 38 two-year professional degrees. These figures, of course, include a great deal of duplication and minor differences in terminology; when that duplication is eliminated there are about 120 different fields in which master's degrees are offered by one or more of the colleges. The principal fields of graduate study are business, the creative arts, education, the humanities, physical education, psychology and the social sciences.

On its nine campuses the University of California offers programs in more than 80 undergraduate majors in the schools of letters and sciences leading to the bachelor of arts degree. The bachelor of science degree is offered by the College of Agriculture, Chemistry, Engineering, and in schools of Business Administration, Forestry, and Public Health. The master of arts is offered in more than 50 fields, and the master of science in more than 20. Except for the San Francisco Medical Center campus, every University campus provides, or will provide, undergraduate, graduate and professional programs of instruction in a wide variety of fields.

The doctor of philosophy and equivalent doctoral degrees are offered in more than 75 fields, while professional degrees are offered in a variety of professional fields. Law degrees are offered up to the doctor of juridical science at four University law schools; three in Northern California, and one in Los Angeles. Medical education is offered in San Francisco, Los Angeles, San Diego, and Davis. Degrees in medical science are offered at these schools, and degrees in the health sciences are offered in the medical centers as well as at the School of Public Health on the Berkeley campus.

The majority of private institutions which are members of the AICCU are relatively small four-year liberal arts colleges with or without a religious orientation (Table 2.2). Within this group are several which rank among the small nationwide elite of four-year liberal arts colleges. In addition, there are three specialized institutions with substantial graduate enrollment, six diversified universities, most of which have some religious affiliation, and three widely diversified "national" institutions.

## 2. Admission Policies and Procedures

California's public institutions of higher education operate under a policy of "differential access" with respect to the admission of students. This policy long preceded the 1960 Master Plan but was given explicit recognition in that document. The policy is intended to segregate students by ability and achievement as those two factors are conventionally measured. Students of the highest ability category, the "upper 12½% of California high school graduates", may be admitted to any one of the three segments. Students who rank between the upper 12½% and the upper 33½% may be admitted to two of the segments, the state colleges and the junior colleges. The great majority of students, those who rank among the lower 66½% of all California high school graduates, may be admitted only to a junior college for their initial college work.

**TABLE 2.2 CLASSIFICATION OF AICCU INSTITUTIONS \***

Group	Number	Type of Institution	Breadth and Orientation of Curriculum	% Graduate Enrollment	Religious Affiliation
I	3	University and Institute	Widely diversified	50%-60%	No
II	7	University	Diversified	20%-100%	Yes for most
III	9	College	Liberal Arts	0%-20%	No for most
IV	18	College	Liberal arts, religious orientation	0%-20%	Yes for most
V	8	College	Liberal arts, religious orientation	-----	Yes
VI	3	College and Institute	Specialized	0%-50%	No

\* See Appendix D for listings by group

Under the terms of the Education Code, junior colleges "should admit . . . any high school graduate." However, even this requirement may be waived. Junior college governing boards are authorized to "by rule determine whether there shall be admitted . . . any other person who is over 18 years of age and who, in the judgment of the board or of the principal of the junior college . . . , is capable of profiting from the instruction offered."<sup>4</sup> In practice many junior colleges routinely admit students who are not high school graduates.

To be eligible for admission to a California State College (as well as to a junior college), a student must be a high school graduate and must achieve an "eligibility index" equal to or above a certain minimum. This minimum is intended to limit eligibility to the top one-third of all California high school graduates.<sup>5</sup> The eligibility index is a combination of the student's high school grade-point average and his test score for either the American College Test (ACT) or the Scholastic Aptitude Test (SAT). The grade-point average is based upon the last three years of high school and excludes physical education and military science, but otherwise there are no specific high school course requirements.

For admission to advanced standing at a state college, a student must have a 2.0 (C) grade-point average for all college-level work, or be individually judged capable of succeeding at a state college, if he was originally eligible for admission as a freshman. If not, the general requirement is a 2.0 grade-point average in 60 semester units of college work prior to transfer.

A student may be admitted to graduate standing as an "unclassified graduate student" at a state college if he has a baccalaureate degree or has completed equivalent academic preparation as determined by the college. Admission to graduate degree curricula is entirely up to each college and the individual departments.

To be eligible for admission to the University of California as a freshman (and therefore to a state college or junior college, as well), a California high school graduate must meet a series of specific high school course requirements and must have achieved at least a B average in those courses which are taken after the ninth grade and are used to meet the subject requirements. Applicants must also take the Scholastic Aptitude Test and three College Entrance Examination Board achievement tests. Borderline students are required to meet a certain minimum total score on these tests. Admission may also be gained by students with insufficient grade averages if they receive sufficiently high scores on these tests.

Generally, to be admitted to advanced standing at the University a student must have a grade-point average of 2.0 for all college-level work, if he was eligible for admission as a freshman. If originally ineligible, he must have a grade-point average of 2.4 for at least 56 semester units of college study.

To be admitted to graduate study a student must have a baccalaureate degree with a grade-point average of 3.0 (B) and adequate undergraduate preparation for his chosen field, as determined by the department concerned. Admission to graduate study remains a highly subjective matter determined by the individual departments and professional schools.

There are two important exceptions to the foregoing requirements for admission to the state colleges and the University. In each case exceptions may be allowed for freshman admissions in numbers up to the equivalent of 4% of the number of all applicants expected to be admitted as first-time freshmen. Half of these exceptions (2%) are reserved for "disadvantaged students." Similar provisions apply for each segment with respect to the admission of transfer students to advanced standing. These exceptions are discussed in greater detail in Chapter 6 of this report.

Except for the recent expansion of the provision for exceptions, these requirements are essentially those accepted by the Master Plan Survey Team in 1959. In endorsing this policy of differential access, the Survey Team based its action upon the belief that institutions of higher education should provide space only for those students able and willing to meet their "standards" and that those "standards" should be kept high. The apparent reasoning of the Survey Team was that as long as the junior colleges remain open to all, the state colleges, and more especially the University, should be encouraged to tighten up their admission requirements and accept only students of demonstrated achievement with a high probability of success in their academic programs.

Two other elements of state college and University admissions should also be noted. In order to cope with the problem of excess applications for several individual institutions, especially those which have reached their current enrollment ceilings, each state college and University has been authorized to devise its own means of limiting enrollment to existing facilities. In general this is accomplished by shortening application periods and by establishing a first-come, first-served basis for acceptance of eligible applicants. Recently the University campuses have begun to employ additional criteria applicable to individual students, while the state colleges generally attempt to give preference to transfer students from junior colleges and freshmen from their immediate communities.

Both segments have also accepted a Master Plan recommendation (as interpreted by the Coordinating Council) that by 1975 full-time undergraduate enrollment for each will be divided 40% lower division and 60% upper division. Neither segment, however, has taken direct action to achieve this goal. For the state colleges such action has not been necessary; their basic admission policies have brought them to the 40-60 ratio well in advance of 1975. The University is about where it was in 1960 (50-50), but has decided apparently to postpone any action other than that involving persuasion and publicity. In any case, the original

policy, which was probably intended in some way to aid the junior colleges, has attracted little active support.

AICCU institutions have great latitude in selecting students for admission. In particular they are free to be highly selective; they may and do choose to educate the types of students they believe to be appropriate to their educational goals. Generally this selectivity follows standard measures of academic potential (i.e., high school grades, rank in class and SAT scores). However, the AICCU institutions also rely to varying degrees on more subjective criteria related to such matters as creative ability, leadership potential, motivation and special talents as perceived by the college admission officers. In addition, those institutions with a strong religious orientation give some consideration to the religious affiliation of their applicants, and others may consider whether an applicant's parents are alumni and even the extent to which the applicant's parents have contributed to the institution. Several of the AICCU institutions rank among the most selective in the nation in academic terms.

### 3. Enrollment

In Table 2.3 we indicate preliminary enrollment data for the fall term of 1968. All four segments are remarkably slow in collecting and reporting fall term enrollment; as a consequence it was necessary to rely upon estimates in certain cases where the actual figures have not yet been reported.

Total individual enrollment is divided approximately 55% full-time and 45% part-time. Both the state colleges and the junior colleges continue to enroll very large numbers of part-time students. The University of California reports the smallest proportion of part-time enrollment, in part because of its practice of counting nearly all graduate students as full-time students, unlike both the state colleges, which report three out of four graduate students as part-time, and the AICCU institutions.

For the current year the public junior colleges enroll approximately 86% of total lower-division enrollment in public institutions and 81% of total lower division enrollment. When part-time students are excluded, however, the junior college share of the total drops to 67%.

The California State Colleges report upper division enrollment equivalent to 63% of total upper division enrollment and 58% of full-time upper division students. At the upper division level 26% of state college students are enrolled part-time, a much higher proportion than that reported for the lower division but still less than the colleges indicate for graduate students.

The University of California enrolls 55% of full-time graduate enrollment for all segments according to these figures, but only 28% of full-time and part-time graduate enrollment combined. If the University and the AICCU institutions used the same criteria for determining a full-time load at the graduate level,

**TABLE 2.3 ENROLLMENT IN HIGHER EDUCATION BY SEGMENT AND LEVEL, FALL, 1968**  
(PRELIMINARY ESTIMATES)

	Public Junior Colleges	California State Colleges	University of California	AICCU Institutions	Totals
<i>Lower Division</i>					
Full-time.....	231,492	48,470	30,823	33,695	344,480
Part-time.....	304,502	7,980	1,618	4,961	319,061
Total.....	535,994	56,450	32,441	38,656	663,541
<i>Upper Division</i>					
Full-time.....	--	79,050	33,191	24,094	136,335
Part-time.....	--	27,340	2,535	3,898	33,773
Total.....	--	106,390	35,726	27,992	170,108
<i>Graduate</i>					
Full-time.....	--	12,080	29,811	13,176	55,067
Part-time.....	--	36,680	803	17,317	54,800
Total.....	--	48,760	30,614	30,493	109,867
<i>Other</i>					
Full-time.....	2,218	--	--	--	2,218
Part-time.....	29,537	--	--	--	29,537
Total.....	31,755	--	--	--	31,755
<i>All Levels</i>					
Full-time.....	233,710	139,600	93,825	70,965	538,100
Part-time.....	334,039	72,000	4,956	26,176	437,171
Total.....	567,749	211,600	98,781	97,141	975,271*

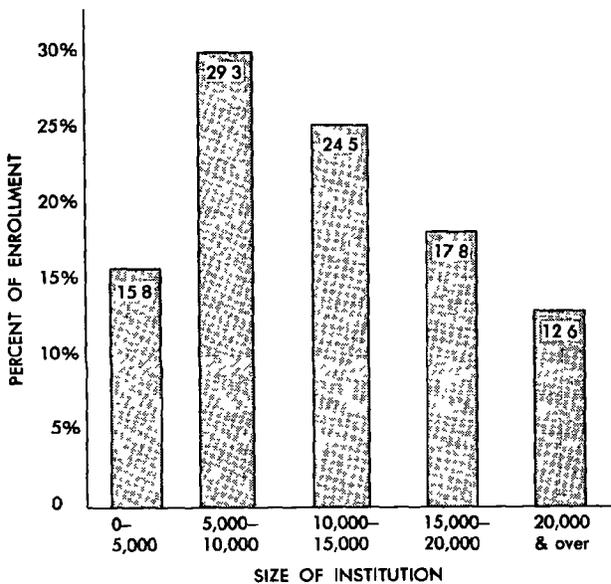
\* Excludes 1,250 (est.) for Hastings College of Law and the California Maritime Academy and 13,897 for non-AICCU private institutions

it is probable that their figures would be much closer. For the state colleges, however, although the distribution between full-time and part-time enrollment is exaggerated by the manner in which full-time enrollment is determined, it is clear that part-time enrollment is unusually high.

It is interesting to note in Table 2.3 the close similarity at all levels between the figures reported for the University of California and those for the AICCU institutions. We will comment again on this fact in Chapter 8.

As indicated in Figure I, nearly 55% of total enrollment in public institutions is concentrated on campuses of 10,000 or more students and only 15.8% on campuses of 5,000 or fewer students. Ten years ago the situation was much the same except that in the interval the concentration of enrollment among the largest institutions has increased.

**FIGURE I** DISTRIBUTION OF ENROLLMENT BY SIZE OF INSTITUTION, PUBLIC INSTITUTIONS, FALL, 1967



Other enrollment data are reported in the next chapter which deals with major trends over the past ten years.

#### 4. Student Characteristics

In the Committee's interim report, *The Academic State*, we noted, as has long been known, that scholastic attainments in high school and, hence, college eligibility are strongly correlated with the educational attainments of parents and also with parents' income. The data developed by the several recent studies confirm and sharpen these relationships.<sup>6</sup> Taking family income and parental educational attainments as indicators of economic and social characteristics, there are clear differences among the students who attend different classes of institutions.

Those California students who attend out-of-state colleges tend, on the average, to be from the more affluent families, from families with higher educational attainments, and tend themselves to have higher educational records and aspirations. Still considering average characteristics, the students who attend the University of California come next after the "out-of-staters" in economic status and in academic abilities, and just ahead of those students who attend private colleges and universities within California. This positioning holds despite the fact that some of the California private institutions are both expensive and highly selective academically. The drawing power of these particular institutions (Stanford, the California Institute of Technology, the Claremont Colleges, etc.) is offset by that of the many private colleges which have markedly lower entrance requirements than does the University and whose total costs, while higher than the University's, are not widely dissimilar. Next in line with respect to average affluence, parental education and average academic attainment come state college students, then junior college students, and finally students who do not go on to higher education.

These correlations are far from absolute, there are poor as well as wealthy students at the University, and wealthy as well as poor students at junior colleges. The discussion must be understood as relating only to average characteristics of a broad spectrum of students and a wide variety of institutions.

From the two studies which produced the statistical bases for the generalizations noted above come some important clues as to the relationships between socio-economic status, academic attainment in high school, and college-going rates. The first of these clues relates to the proportion of high school seniors in each of three ability groups to attend college one year after high school graduation. These data give a partial answer, and one which must be significantly qualified, to the question as to how many of those who might attend college do so a year after high school graduation.

The results of two studies, one asking students about their intentions and the other following a different sample of high school graduates a year later, are summarized in Table 2.4. It must be emphasized that the samples in the two studies are not strictly comparable nor were the same statistical techniques and definitions employed. Further, because of biases due to high rates of nonresponse to questionnaires, the tabulated figures are almost certainly too high. While precision is not possible on this point, it appears that around 10% of the most able high school graduates do not go on to college.

For the next ability grouping, corresponding roughly to those eligible for the state colleges, but not for the University, the non-attendance rates go up sharply. Interestingly, the non-participation figures from the studies cited are not greatly different for the lower 60%-65% of the high school graduates

than for the middle ranking group. While we believe that much remains to be done to insure equality of educational opportunity over the full range of Cali-

fornia students, it is undeniable that achievements to date toward this goal are considerable and due in a very great measure to the existence of a widespread, egalitarian system of junior colleges.

**TABLE 2.4 COLLEGE ATTENDANCE RATES IN RELATION TO MEASURES OF HIGH SCHOOL ACHIEVEMENT**

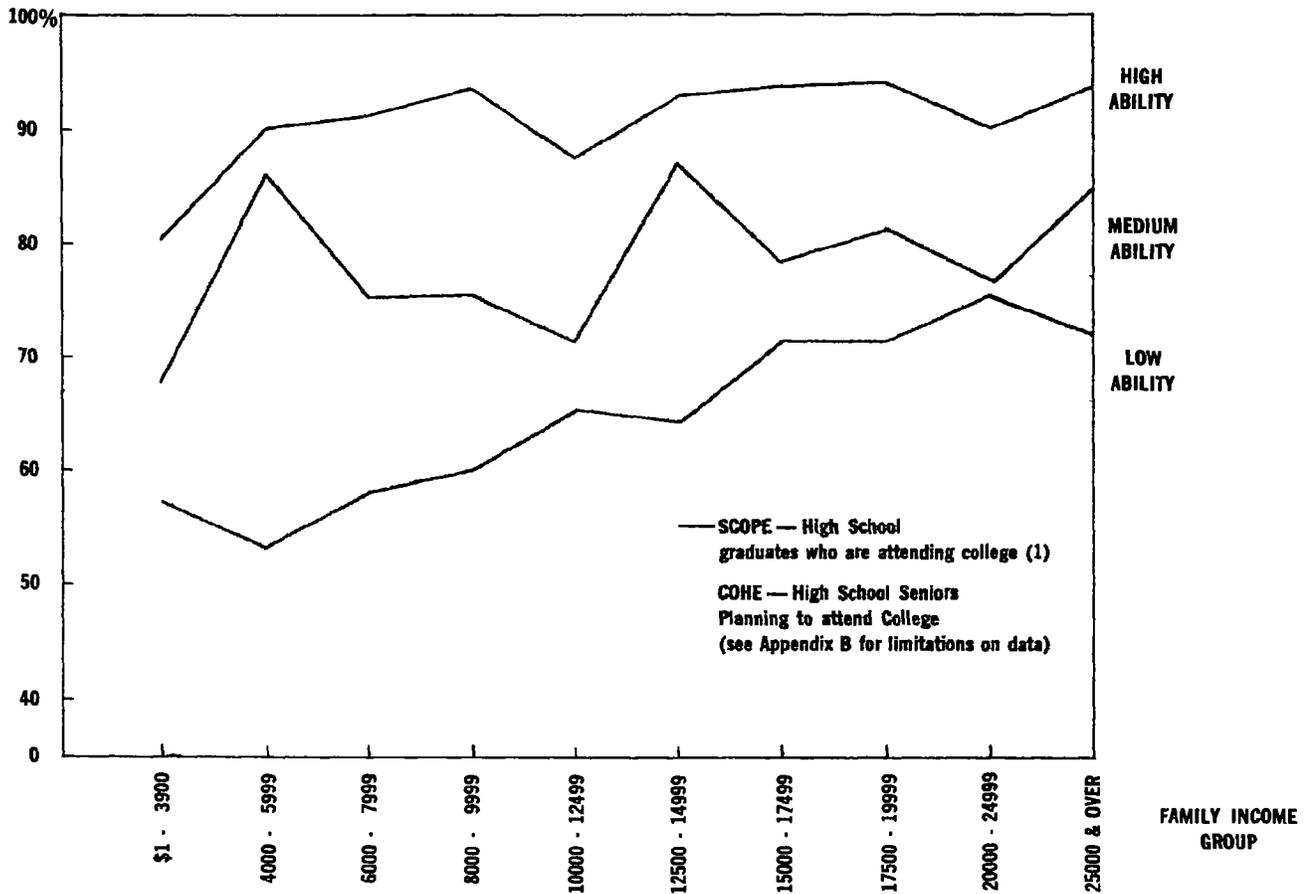
A. CCHE STUDY (1967 High School Graduates)		Percent of Ability Group Not Planning to Attend a Post-Secondary Educational Institution	
		Spring 1967	
Top	19% (Approximately UC Eligible)-----	8	3%
Next	16% (Approximately CSC Eligible)-----	25	9
Bottom	65% (Approximately JC Eligible Only)...	41	5

B. SCOPE DATA (1966 High School Graduates)		Percent of Ability Group Not in Attendance at a Post-Secondary Educational Institution.		
		Fall 1966	Winter 1967	Spring 1967
Top	25%-----	3 8%	5 0%	7 6%
Next	15%-----	13 8	16 8	20 2
Bottom	60%-----	23 4	28 6	36 0

The second of the two clues to be derived from the CCHE and SCOPE study data is obtained by combining measures of academic attainment in high school and measures of family income and tabulating the college-going rates for various income groups with ability levels held constant. Figure II summarizes the results of these comparisons. In broad terms, college attendance a year after high school graduation goes up with income for all ability levels. For any income level, college going, in the limited sense defined, goes up with measures of academic ability. Unfortunately, however, the data cited are too optimistic, very limited in coverage, not fully representative, and do not even touch the important issues associated with persistence in college after initial entry and with the very substantial fraction of high school entrants who do not even graduate from high school and hence remain largely outside of the college-eligible pool.

**FIGURE II COLLEGE ATTENDANCE WITH RESPECT TO ABILITY AND FAMILY INCOME IN CALIFORNIA**



This graph shows for each income group the percentage of high school graduates of a given scholastic ability who attended or planned to attend college

**TABLE 2.5 SUMMARY OF ETHNIC DISTRIBUTION OF STATE COLLEGE STUDENTS, FALL 1968**

College	Black	Spanish Surname	American Indian	Oriental	Other
Dominguez.....	15 6%	3 3%	1 8%	8 3%	71 0%
Fullerton.....	7	2 3	2	1 1	95 7
Hayward.....	5 7	2 0	4	3 4	88 5
Long Beach.....	2 4	2 5	1	2 5	92 5
Los Angeles.....	9 4	8 4	1 7	11 9	68 6
San Bernardino.....	1 9	3 7	1 8	4	92 2
Cal Poly, K-V.....	1 5	2 7	2 9	2 2	90 7
Cal Poly, SLO.....	8	1 4	3	2 7	94 8
Chico.....	1 3	1 4	5	1 0	95 8
Fresno.....	2 0	4 7	1 5	4 5	87 3
Humboldt.....	2	5	4	2	98 7
Sacramento.....	2 3	2 2	1 3	4 1	90 1
San Diego.....	2 1	3 5	4	2 2	91 8
San Fernando.....	2 9	1 6	---	1 0	94 5
San Francisco.....	5 2	3 3	5	7 9	83 1
San Jose.....	2 4	3 3	4	2 8	91 1
Sonoma.....	1 8	1 3	2 5	1 5	92 9
Stanislaus.....	8	2 6	2 5	1 9	92 2
All Colleges.....	2 9%	2 9%	7%	3 4%	90 1%

At this time we have been able to develop only rather fragmentary data in attempting to determine actual numbers of minority group and low-income students enrolled in California's public and private institutions of higher education. Very little information of this type is published regularly. In pursuing this matter, therefore, we addressed a series of questions to the University and the state colleges as to the frequency and manner of collecting such data and the latest figures they could report.

In response to our questions, the Chancellor's Office of the California State Colleges reported that prior to the fall of 1968 the only system-wide survey of ethnic background or family income was the Spring 1967 Financial and Demographic Survey, from which data previously had been submitted to the Committee. This survey was conducted as a 10% sample. It produced reasonably reliable ethnic group data but the financial background figures had little value because of a poor response rate and other weaknesses. The ethnic distribution was reported as follows: Mexican-American 2.1%, Negro 2.3%, Oriental 3.7%, Caucasian 91.6%, no response .3%.

For the fall of 1968 the state colleges have attempted to improve the annual estimates of ethnic background distribution required by the U.S. Office of Education, in accordance with a federal directive. The fall 1968 survey was based upon voluntary self-reporting for the total enrollment. Although it still suffers from certain weaknesses, the data are probably much improved. These figures, which are shown in Table 2.5, indicate the following system-wide distribution: Black 2.9%, Spanish surname 2.9%, American Indian .7%, Oriental 3.4%, other 90.1%.

Family income data are not collected routinely by the California State Colleges. CSC Los Angeles has conducted periodic demographic surveys and several other colleges have undertaken such studies from time

to time, but the only group of students for whom income data is routinely available consists of those who apply for financial assistance.

The University of California has also been required, beginning in the fall of 1967, to report on the ethnic composition of its student body. For the initial report the University complied by using estimates of ethnic composition obtained from a Spring 1967 "Tuition and Financial Aids Study Questionnaire."<sup>7</sup> For 1968 the University undertook a census of the entire student body through a voluntarily completed questionnaire which was distributed during registration and study list filing periods in the Fall Quarter, 1968. After consultation with the campuses, it was decided that the University would seek to obtain information from the entire population rather than by drawing a sample. To protect the students' privilege of not having to answer questions about ethnic background, it was decided that the survey should be a voluntary one.

Each campus was urged to make the purpose of the survey widely known and to encourage a high rate of response from the student body. The campuses which have a highly developed student information system were able to supply some of the information requested by the Office of Education (such as full-time status and the college in which the student is enrolled) from their files. Other campuses designed a survey card in which the students were asked to provide all the information requested by the Compliance Report. The University intends to make this survey a regular part of the Fall Quarter registration period for each campus.

The information collected in the Fall 1968 survey is now being processed, but is not available for reporting at this writing. In table 2.6 we indicate summary data on the ethnic composition of University enrollment taken from the Spring 1967 Tuition and Financial

**TABLE 2.6 RACIAL COMPOSITION OF ENROLLMENT BY CAMPUS, UNIVERSITY OF CALIFORNIA, SPRING 1967 \***

	8 campus total	Irvine	Santa Barbara	Santa Cruz	Riverside	Davis	San Diego	Los Angeles	San Francisco
Caucasian.....	93 1%	97 8%	97 1%	96 7%	95 7%	93 6%	93 1%	90 8%	85 6%
American Indian.....	2	3	2	0	3	3	7	2	1
Negro.....	9	0	3	1	9	4	4	1 3	1 3
Oriental.....	4 9	1 6	1 8	2 0	2 3	4 3	4 5	6 7	12 3
Other.....	1 0	3	6	1 2	8	1 4	1 2	1 0	8

\* Data unavailable for Berkeley

Aids Study. While much of the information reported by the University from this survey is very pertinent to the matter of enrollment composition and equality of opportunity, it deals primarily with expectations of high school seniors, and the data for actual University enrollment does not include the Berkeley campus.

The University does not systematically collect any data by which the income distribution of the student body can be determined. A good deal of information is collected on certain student groups, such as those students enrolled in the Educational Opportunities Program. Students who apply for financial aid are also required to submit information on their family's income. However, data from these sources cannot provide a complete picture of the number of students enrolled from low income families.

The University did collect income distribution data on its student population in the spring of 1967, again as part of the Tuition and Financial Aids study and again excluding the Berkeley campus. According to these figures, for single California resident undergraduates enrolled at the University of California (65.2% of the total California resident student population for the University), 11% are totally self-supporting. Of this self-supporting group, 55% come from families whose incomes are less than \$10,000 per year. Among the remaining group of undergraduate single California resident students, those who are parent-supported, 28% come from families whose incomes are less than \$10,000, 34% come from families with incomes between \$10,000 and \$14,999, and 38% come from families with incomes of \$15,000 or more.

Unfortunately we do not even have this much information for the junior colleges.

There is also a notable absence of reliable data regarding other student characteristics for each system. This problem is discussed further in Chapter 7 in connection with the need to establish an improved student information system. Clearly there is need for such data so that we can have a clearer understanding as to who is directly benefiting from California's system of higher education and who is not

## RESEARCH

Prior to 1945 instruction was the overriding concern of all but a very few institutions of higher education. Since then, and particularly over the past fifteen years, research and related activities have so rapidly gained in importance that they challenge instruction as the principal activity on many campuses. Unquestionably, the University of California and several independent California institutions have been leaders in this change.

The Education Code provides that the University of California shall be the primary state-supported institution for research. In carrying out this responsibility, the University has established three major research structures: the academic departments (departmental research), organized research units outside the departments and agricultural research stations. Departmental research is supported and administered as one nearly inseparable aspect of instruction. Organized research differs little in content with departmental research, in most cases, but has been established in separate units as a separate activity.

**TABLE 2.7 UNIVERSITY EXPENDITURES FOR ORGANIZED RESEARCH, 1966-67**

	Total	University Funds	State Support
Agriculture and forestry.....	\$27,367,369	\$9,358,742	\$18,008,627
Medical and related fields.....	31,640,864	29,659,522	1,981,342
Mathematical, physical and engineering sciences.....	41,706,195	37,568,117	4,138,078
Social sciences and other.....	41,432,498	32,997,255	8,435,243
	\$142,146,926	\$109,583,636	\$32,563,290

It is extremely difficult to state in any precise way the scope and magnitude of University research and related activity. A very considerable amount is carried on within the departments, made possible by greatly reduced teaching responsibilities, generous expense and equipment allowances and appropriate facilities. According to an estimate prepared by the Legislative Analyst for 1965, 25% of expenditures for instruction and departmental research could be allotted to research. Applying this figure to 1967-68 University expenditures would give a figure of approximately \$35 million.

Again according to the Legislative Analyst, University expenditures for organized research in 1966-67 amounted to \$142 million.<sup>8</sup> About 66% of this amount came from federal grants and contracts, 25% from state sources and the balance from endowments, private grants and other sources. By 1967-68 organized research expenditures had risen to \$157.8 million, an increase of \$65 million or 70% over the past four years.<sup>9</sup>

Faculty research in the state colleges, according to the Education Code, is authorized "to the extent that it is consistent with the primary function of the state colleges and the facilities provided for that function." This statement, which is taken from the Master Plan, is apparently intended to legitimize such research activity as is carried out in the colleges without giving a positive impetus to the expansion of that activity and without in any way threatening the University's primary role in this regard. The college faculties have never accepted the concept of "teacher-oriented research" which some have read into the Master Plan language, and they have consistently pushed for an increase in research funds.

Unfortunately, there is little up-to-date information on existing state college research. A recent study prepared for the Coordinating Council for Higher Education under the direction of Louis T. Benezet dealt largely with the arguments for and against expanding research activity rather than with the extent of current activity. It is clear from such evidence as is available, however, that both departmental and organized research at the state colleges remain very restricted despite some growth over the past ten years.

The principal source of support for state college research is the federal government which accounts for approximately 80% of total funds for this purpose. According to the Legislative Analyst, federal funds for state college research were expected to reach the level of nearly \$3.3 million in 1967-68. The major agency sources for this support have been the National Science Foundation, the Department of Health, Education and Welfare, the National Institute of Health and the Department of Defense.

Direct state support for state college research is very limited. The state provides nearly \$500,000 for faculty leaves for research and other creative activity. It also provides \$200,000 for matching grants from other sources. Additionally, state funds are provided

for a small number of research grants for state agencies, and state support for sabbatical leaves in the amount of about \$2 million might also be added.

We have been able to uncover only very fragmentary information regarding research among the AICCU institutions. Based upon recent expenditure summaries prepared for this Committee, we estimate that expenditures for organized research totaled approximately \$70 million in 1967-68. About 95% of this total was spent by the three Group I institutions.

Nevertheless, there is for many institutions a fairly substantial amount of activity which is not generally taken into account when we think of the principal activities of colleges and universities and their costs. In Chapter 10 of this report we make several recommendations to expand this activity. We believe every effort should be made at the same time to develop a better method of reporting both the activity and the costs that fall within this function.

## **AUXILIARY ENTERPRISES AND STUDENT FINANCIAL AID**

These two functions are quite readily identifiable and subject to description in quantitative terms. They are not usually thought of as major functions, however, and are not commonly segregated and described as important activities. It is to be hoped that with the advance of program planning and budgeting these activities will be better reported and that their scope and importance will be given clearer recognition.

The auxiliary enterprises to which we refer are the bookstores, cafeterias, residence halls, transportation programs, parking lots and garages, student health clinics and similar facilities which provide important on-campus services to students, faculty and staff comparable to those available to the general public through private enterprise off-campus. All campuses have at least one form of auxiliary enterprise, and the larger campuses, particularly those with a substantial number of students living on campus, have very extensive service facilities of this type.

The University of California, in the Regents' version of the University budget, reports 1967-68 expenditures of \$33.5 million for auxiliary enterprises and estimated expenditures of \$40.8 million for 1969-70. The California State Colleges report expenditures of \$27.8 million for 1967-68. We have no reliable figures for the junior colleges because the accounting system is designed more for the elementary and secondary schools than for institutions of higher education. In any case, junior college auxiliary enterprises are largely restricted to cafeteria and parking operations.

One reason why income and expenditures for auxiliary enterprises are not well reported is that they are generally expected to be self-supporting, both as to current costs of operation and construction (or debt service) costs. Only land costs are normally excluded from this requirement. There are some exceptions to this rule, but the trend has been to adjust fees and

user charges to cover all of these operations. The last major study of the problem was undertaken by the Coordinating Council at the direction of the Legislature in 1963.<sup>11</sup> However, both the Department of Finance and the Legislative Analyst look into this matter periodically as regards the University and state colleges. Many of the state college auxiliary enterprises, it should be noted, are operated by separate non-profit corporations set up for this purpose. This is another reason why it is difficult to get an accurate picture of total activity for auxiliary enterprises.

Student financial aid has often been reported as an instructional cost and just as often has been ignored altogether in financial reports. In our opinion student financial aid is basically a method of supplementing income for a specific group of persons and therefore resembles in many ways other categorical welfare programs. For this reason we believe it should be treated as an entirely separate type of expenditure and not added to other institutional expenditures for instruction, research, etc. In this way, also, the problem of double counting of student aid for tuition and fees and the expenditure of tuition and fees and the expenditure of tuition and fee income can be avoided.

The last comprehensive survey of student financial aid was also undertaken by the Coordinating Council in connection with its study of the need for additional aid.<sup>12</sup> Unfortunately the survey has not yet been placed on a regular annual basis, and we are unable to present current data at this time. We strongly believe that the quantities and kinds of student aid should be surveyed and reported regularly, as this is a matter of continuing interest and one for which last year's figures may at best be misleading.

## **OTHER PUBLIC SERVICE**

In describing the scope and functions of higher education it is easy to allow our interest in enrollment

data, admission policies and research activity to obscure the fact that most institutions of higher education also carry on several other important functions. As noted earlier, at least three additional functions can be identified public or community service, auxiliary enterprises and student financial aid. It is no easy matter, however, to present any very useful description of these functions in quantitative terms because the institutions themselves either do not collect and report the necessary data or because the data are not ordinarily segregated in a useful way.

Public service, or "other public service" (we assume that there is some public service element in the instruction and research functions), is in large part a residual category for activities which do not appear to fit within the functions of instruction and research. Thus the University of California often places in this category such diverse activities as public lectures, musical and dramatic performances (open to the public), agricultural extension and research, patient care in the University's medical centers, research, development and consulting activities of many of its special institutes, consulting activities of individual faculty members, and all the activities under the jurisdiction of University Extension.<sup>10</sup> For the state colleges, junior colleges and private institutions the list would be similar except for the special University extension agencies which are not duplicated on the same scale in the other segments.

The foregoing list suggests not only the potential scope of "other public service" but the difficulty at this point of providing any useful measure or measures of this function. Much of what is described has important if not predominant elements of instruction or research intertwined with it. In fact, the function of "other public service" may in most cases simply describe a different manner of providing instruction and research, rather than a separable function.

## **FINANCE**

In fiscal year 1967-68, California's institutions of higher education, public and private, and related agencies spent a total of nearly \$2.0 billion, of which \$1,546 million was for current expense and \$424 million for capital outlay. The public institutions accounted for approximately \$1,527 million or 77% of the total and \$1,183 million or 76% of current expenditures. The figures for each segment are indicated in Table 2.8. In some cases, as indicated, it has been necessary to estimate expenditures where the reporting is unusually slow or fragmentary.

The principal sources of income for current expense and capital outlay by segment are indicated in Table 2.9. It should be noted that the totals in most cases exceed total expenditures indicated in Table 2.8 because of the time lapse between receipt of income and

actual expenditures, increases or decreases in ending balances, etc.

State support for current expense amounted to a total of \$540.1 million, 42.4% of total current income for public institutions and 34.3% of current income for both public and private institutions. Federal funds amounting to \$310.3 million for current expense and provided 16.7% current income for public institutions and 18.7% of current income for all institutions. These federal funds went mainly to the University of California and the 3-4 largest AICCU institutions.

### **STATE FUNDS**

The State of California provided a total of approximately \$685 million for the support of public higher education in 1967-68.

**TABLE 2.8 ESTIMATED TOTAL EXPENDITURES FOR HIGHER EDUCATION BY SEGMENT AND AGENCY, 1967-68**

	Amount	%
<i>Current Operating Expense</i>		
Public Segments and Agencies		
University of California.....	\$579,821,614	37 5%
California State Colleges.....	285,295,273	18 5
Junior Colleges.....	309,490,000	20 0
Coordinating Council.....	907,881	--
Scholarship and Loan Commission.....	5,426,386	4
Other.....	2,093,781	1
Private Institutions		
AICCU Institutions.....	363,129,000	23 5
	\$1,546,163,935	100 0%
<i>Capital Outlay</i>		
Public Segments		
University of California.....	128,979,000	30 4%
California State Colleges.....	99,771,843	23 5
Junior Colleges.....	115,000,000	27 1
Other.....	--	--
Private Institutions		
AICCU Institutions.....	80,400,000	19 0
	\$424,150,843	100 0%
<i>Total Expenditures</i>		
Public Segments and Agencies		
University of California.....	708,800,614	36 1%
California State Colleges.....	385,067,116	19 5
Junior Colleges.....	424,490,000	21 5
Coordinating Council.....	907,881	--
Scholarship and Loan Commission.....	5,426,386	3
Other.....	2,093,781	1
Private Institutions		
AICCU Institutions.....	443,529,000	22 5
	\$1,970,314,778	100 0%

Of this amount, \$534 million or 78% went for current operating expense, \$145 million or 21% went for capital outlay, \$512,837 was provided for statewide coordination and \$5.3 million went for the support of state administered financial aid programs. These figures, together with budgeted expenditures for the current fiscal year, 1968-69, are shown in Table 2 10

State support for the current operating expense of the University of California and the California State Colleges is provided by direct appropriation in the annual budget acts Each segment prepares its own budget for approval by its governing board and submission to the Governor and the Legislature. These proposed budgets and supporting detail are reviewed by the Department of Finance and, upon amendment to conform with the Governor's policies, are then included in the Governor's Budget for review by the Legislature The final legislative appropriation takes the form of a "lump sum" appropriation to the Regents of the University and a somewhat more detailed allocation to the state colleges. All but a very minor amount of the support for the two segments is drawn from the state's General Fund.

State support for the current operating expense of the public junior colleges is provided according to statutory formulas rather than by budget review and direct appropriation. The formulas are based upon the same type of foundation program concept as is used for the public schools Its principal purpose is to guarantee a certain minimum level of state and local support per unit of attendance for each junior college district, regardless of its local taxable wealth. For 1967-68 and 1968-69 that amount is \$628 per unit of attendance (other than "adult" attendance) Junior college support also comes from the state's Gen-

**TABLE 2.9 SOURCES OF FUNDS FOR HIGHER EDUCATION IN CALIFORNIA, 1967-68 (In Millions)**

	University of California	California State Colleges	Junior Colleges	Other Public Institutions and Agencies	AICCU Institutions	Total	
						Amount	%
<i>Current Operations</i>							
Federal funds.....	\$170 4	\$33 3	\$8 9	\$ 7	\$97 0	\$310 3	19 7%
State funds.....	247 4	192 8	92 8	7 1	--	540 1	34 3
Local funds.....	--	--	202 8	--	--	202 8	12 9
Student charges.....	48 2	27 8	2 5	6	110 6	189 7	12 1
Private gifts, grants and endowments.....	23 9	1 5	--	--	63 5	88 9	5 7
Organized activities and auxiliary enterprises.....	73 4	33 4	2 5	--	59 0	168 3	10 7
Other.....	16 5	1 8	--	--	55 0	73 3	4 6
Total.....	\$579 8	\$290 6	\$309 5	\$8 4	\$385 1	\$1,573 4	100 0%
<i>Capital Outlay</i>							
Federal funds.....	\$20 7	\$14 7	\$6 3	--	\$14 5	\$56 2	12 5%
State funds.....	57 1	79 3	19 6	--	--	156 0	34 9
Local funds.....	--	--	88 8	--	--	88 8	19 9
Private gifts and grants.....	1 7	3 1	--	--	59 5	64 3	14 4
Other.....	30 2	45 1	--	--	6 4	81 7	18 3
Total.....	\$109 7	\$142 2	\$114 7	--	\$80 4	\$447 0	100 0%

\* Estimate

eral Fund, although it is first appropriated to the State School Fund before apportionment to the districts.

State funds for state college and University capital outlay are provided in a manner similar to that for current expense support. Each segment submits specific projects for review by the Department of Finance and the Legislature prior to appropriation of the necessary state funds by the Legislature. The funds come from two sources, the state's General Fund and the tidelands oil and gas revenues. As a matter of convenience, these funds are deposited in the Capital Outlay Fund for Public Higher Education from which the actual appropriations are made.

State support for junior college capital outlay is also provided through the normal budget process. Specific projects are submitted by the individual districts for state financing. However, in the case of the junior colleges the local districts are required to participate in the funding of each project according to statutory formulas which provide a measure of district financial ability and which are intended to ensure a uniform level of effort. State funds are provided on an equalization basis which takes into account standard utilization requirements.

All other state funds indicated in Table 2.10 are provided through the regular budgetary process.

**TABLE 2.10 STATE EXPENDITURES FOR HIGHER EDUCATION, 1967-68 AND 1968-69**

	Actual 1967-68	Budgeted 1968-69
<i>Current Institutional Operating Expense</i>		
University of California.....	\$247,418,925	\$291,250,545
California State Colleges.....	192,759,845	238,782,610
Junior Colleges		
Board of Governors.....	--	561,115
School Fund Apportionments.....	92,846,025	*96,000,000
Hastings College of Law.....	665,412	830,036
California Maritime Academy.....	622,830	667,938
	\$534,313,037	\$628,092,244
<i>Capital Outlay</i>		
University of California.....	\$57,615,000	\$47,599,000
California State Colleges.....	67,833,983	46,165,300
Public Junior Colleges.....	19,617,030	15,609,533
California Maritime Academy.....	--	96,525
	\$145,066,013	\$109,470,358
<i>Statewide Coordination</i>		
Coordinating Council for Higher Education.....	512,837	537,546
<i>Student Aid Funds and Administration</i>		
State Scholarship and Loan Commission.....	5,345,966	8,999,245
<i>Other</i>		
Western Interstate Commission on Higher Education.....	15,000	15,000
<b>Total.....</b>	<b>\$685,252,853</b>	<b>\$747,114,393</b>

\* Estimate.

## LOCAL FUNDS

The public junior colleges continue to depend heavily upon local property taxes and other school district and county funds for their support. For 1967-68 the junior colleges received approximately \$220 million from local sources, of which \$203 million was for current expense and \$88.8 million for capital outlay, including bond funds. Roughly 66% of junior college current expense was supported from local funds, including 62% from district funds and the balance from county funds.

District tax revenues, of course, provided the largest portion of local support, approximately \$185 million for current expense and \$25 million for capital outlay. All districts which maintain a junior college are authorized to levy a basic tax rate of \$.35 per \$100 assessed valuation. This basic rate may be increased to meet the cost of current expense or capital outlay but only by a two-thirds vote of district electors. However, every district is authorized to levy several special supplementary taxes. These supplementary rates include the following:

Purpose	Supplementary Tax Rate (max)
Community Services (Civic center and community recreation) .....	\$ .05
Retirement Funds—Certificated Employees .....	.05
Retirement Funds—Classified Employees .....	no limit
Employee Health and Welfare Benefits .....	no limit
Adult Education .....	.10

These special rates may not be used for other purposes, but their existence obviously eases pressures on the general purpose rate. In addition, when district electors authorize the issuance of bonds for construction they also, in effect, approve a special bond interest and redemption tax rate to pay off those bonds in the future.

For 1968-69 only 16 junior college districts levied a general purpose tax rate in excess of the basic \$.35 rate. Among the 16 districts, 13 levied a general purpose rate of more than \$.50 and 5 levied general purpose rates in excess of \$.60 per \$100 of assessed valuation. In most cases those districts with high general purpose rates are funding capital outlay costs on a pay-as-you-go basis. Unlike other school districts, it is still the exceptional junior college district which has been forced to exceed the basic rate in order to meet current expense.

All but three districts, however, levied special purpose rates, and 37 levied bond interest and redemption rates. In over half of the districts the total for special purpose rates fell between \$.05 and \$.15. Bond interest and redemption rates ranged from \$.005 to \$.39, with all but 4 having rates of \$.20 or less.

## FEDERAL FUNDS

The first comprehensive report of federal support for higher education in California was prepared by the staff of the Coordinating Council for Higher Education in early 1968 at the request of the Legislature.<sup>10</sup>

**TABLE 2.11 FEDERAL GRANTS TO CALIFORNIA INSTITUTIONS OF HIGHER EDUCATION, 1965-66 (In Millions)**

	Facilities and Equipment	Research	Training Programs	Individual Financial Assistance	Institutional Grants	Totals
University of California.....	\$36 0	\$110.0	\$8.1	\$26 8	\$0 7	\$181.6
California State Colleges.....	21 1	3.7	8 0	8 0	1 3	42 1
Junior Colleges.....	3 1	0.1	7 3	4 4	----	14 9
Private Institutions.....	18.6	80.3	6 0	16 9	0 3	122 1
Miscellaneous Agencies.....	----	----	6 9	17 5	----	24 4
Totals.....	\$78 8	\$194.1	\$36 3	\$73.6	\$2 3	\$385 1

The figures, which pertain to the 1965-66 fiscal year, are shown in summary form in Table 2.11.

During that year California's public and private institutions of higher education received a total of nearly \$434 million: \$385 million in grants and \$69 million in loans. According to the Council's report, these funds came from 27 different federal agencies through hundreds of different programs.

The figures in Table 2.11 indicate that nearly one-half of total federal funds received in 1965-66 went for research at the University of California and the AICCU institutions. Roughly 20% was allocated to construction of new facilities and the purchase of equipment, and another 20% was allocated to student financial assistance. The \$69 million in loan funds (not shown in Table 2.11) was divided between construction and equipment (83%) and student financial assistance (17%).

Although a great many individual agencies were involved in providing these funds, the council report indicated that 59% of grant funds came from the Department of Health, Education and Welfare (HEW), 13% from the Department of Defense, 13% from the National Science Foundation, 6% from the National Aeronautics and Space Administration, and 4% from the Atomic Energy Commission. Loan funds came

largely from the Department of Housing and Urban Development and the US Office of Education.

Because of the number of agencies and institutions involved, it has proven very difficult to bring these figures up to date. There is reason to believe, however, that 1965-66 was a high point for federal aid. For 1966-67 total HEW obligations to California institutions came to \$219 million, as compared with \$228 million for the previous year. Of this amount, the University of California received \$108 million, the private institutions \$63 million, the state colleges \$36 million and the public junior colleges \$12 million.

At this time we do not have comparable data for 1967-68. According to Coordinating Council data, HEW grants for construction were down from \$37.8 million in 1966-67 to \$27.1 million in 1967-68. University of California research grants from the Department of Defense were up slightly to \$19.7 million, but down for the state colleges (\$284,000). The private institutions received nearly \$25 million from this source, a significant increase over the previous year.

In addition to recording the amounts flowing to California, the Coordinating Council report on federal funds also concluded that: (1) with the exception of a few general institutional grants amounting to relatively small amounts, federal funds have not been al-

**TABLE 2.12 MAJOR SOURCES OF FEDERAL GRANT AID TO CALIFORNIA INSTITUTIONS, 1966-67 (In Millions)**

	University of California	Private Colleges and Universities	California State Colleges	Junior Colleges	Totals
Department of Health, Education and Welfare....	\$107 9	\$62 7	\$35 9	\$12 1	\$218 6
National Science Foundation.....	23 4	19 8	2 8	*	46 0
Department of Defense.....	18 4	16 5	0 7	----	35 6
Atomic Energy Commission.....	10 9	1 2	2 8	----	14 9
NASA.....	7 9	4 0	*	----	11 9
Totals.....	\$168 5	\$104 2	\$42 2	\$12 1	\$327 0

\* Less than \$100,000

**TABLE 2.13 CURRENT ANNUAL STUDENT CHARGES FOR UNDERGRADUATES, 1968-69**

	Univer- sity of California	California State Colleges	Junior Colleges
Basic student fee.....	\$300	\$86	--
Student organization fees			
Student activity fee.....	11-25	10-20	--
Student union fee.....	11-24	2-12	--
Auxiliary service fees			
Parking.....	50	26	--
Room and board.....	920	620-880	--
Other			
Application fee.....	10	10	
Nonresident tuition.....	981	720	\$375

located to institutions for general support but for specific programs, facilities and projects—therefore the phrase “federal aid to education” can be very misleading; (2) most of the federal grants require some kind of state or institutional matching; (3) there is little or no coordination between federal agencies involved in similar or closely related programs; and (4) most federal funds go directly to the institution, an individual at the institution or, in the case of the junior colleges, the district, but very little is channeled through statewide agencies or commissions.

### STUDENT CHARGES

Student charges are a major source of income for private institutions of higher education in California and they are also an important source for the public institutions. For 1967-68, student charges for University students, excluding charges for room and board, provided \$48.2 million or about 8.3% of University current income. For the state colleges the figures were \$27.8 million or 9.7% of current income, while for the junior colleges students fees provided only about \$2.5 million or about 0.8% of current income.

Students who are residents of California and enrolled either in a state college or a university campus now pay three types of fees—a basic fee to cover a variety of general and special services, student activities fees, and auxiliary service fees. The basic fee, which is now called a registration fee at the University and a materials and services fee at the state colleges, is intended to cover the cost of expendable instructional supplies, student health services, placement services and other services not directly related to the instructional program. Only at the University's Schools of Medicine, Pharmacy and Dentistry are residents explicitly required to pay a tuition charge, but the University's new registration fee is also a tuition charge for all practical purposes. All income labeled student charges income in Table 2.9 comes from these fees and nonresident tuition.

Student activities fees are intended to cover the costs of athletic and other extracurricular activities undertaken by student organizations and the cost of providing student union facilities. The exact charges are fixed by vote of the students, within bounds set by the governing boards. Auxiliary service fees are charged for the use of parking facilities, residence halls and residence hall dining facilities, and are intended to cover the operating and debt service costs for such facilities.

University fees are established by the Regents in accordance with the powers granted them by the Constitution. State college fees are set by the Trustees under the terms of section 23751 of the Education Code. The public junior colleges are required by statute to levy a nonresident tuition charge equivalent to the average district cost per student for the last actual year, as determined by the State Board of Education. The junior colleges are also authorized under section 25425 of the Education Code to levy fees to cover parking or health services, or both, up to a total of \$10 per year. Few junior colleges use this authority. Current fee levels are shown in Table 2.13.

Among all AICCU institutions, student fees in 1966-67 provided 29.3% of total operating income and 47.4% of “educational income”, which excludes auxiliary enterprises and organized research. Among the Group I institutions student fees provided only 37% of educational income as compared with 61.49% for Group II and 61.9% for Group IV institutions. Among Group I institutions, tuition currently ranges from \$1,800 to \$2,100 per year. Tuition for Group II institutions ranges from \$1,300 to \$1,900, and from \$1,300 to \$2,000 for Group III institutions.

### OTHER SOURCES

All institutions derived a substantial amount of income from organized activities, such as agricultural operations and teaching hospitals, or auxiliary enterprises, such as cafeterias, book stores and parking facilities, or both. In most cases, however, income for these activities and services is closely related to the costs of such activities and services and is not available for general support. The volume of income and expenditures for these purposes is to a large extent independent of the total volume of instructional activity and therefore is often subtracted in arriving at something called “educational” or “education and general” income to produce a better measure of instructional activity and finance.

Income from private gifts and grants was reported to be \$30.2 million for public institutions in 1967-68 and \$123 million for the AICCU institutions. Among the public institutions the University received the lion's share of this money, \$34.9 million, of which \$21.3 million was for current expense and \$12.7 million for capital outlay or as gifts-in-kind. The state colleges reported a total of \$4.6 million from private gifts and grants, of which \$1.5 million was for current

support and \$3.1 million for capital outlay, largely in the form of land donated for a new campus.

The AICCU institutions, of course, received a greater share of income from private sources, and we estimate their current income from private gifts and

grants at about \$63.5 million for current expenses in 1967-68 and \$59.5 million for capital outlay.

Additional data dealing with income for higher education in California may be found in the next chapter and in Chapter 8.

**TABLE 2.14** STUDENT FEES AS A PERCENTAGE OF TOTAL OPERATING INCOME AND EDUCATIONAL INCOME, AICCU INSTITUTIONS, 1966-67

	Group					All AICCU Institutions
	I	II	III	IV	V	
Student fees as a % of total operating income.....	21.9%	37.0%	43.4%	46.5%	35.9%	29.3%
Student fees as a % of educational income.....	37.8	61.4	58.6	61.9	46.2	47.4

# 3. Major Trends of the Past 10 Years

California's public and private structure of higher education has undergone very substantial growth over the past ten years since the Master Plan Survey Team assembled its data on the system. In general, the growth projections of the Master Plan, which seemed so startling at the time, have been met or surpassed. In this chapter we will present data on the major elements of growth and change within the system to demonstrate what has occurred during this period and to provide background for the discussion of specific problem areas in Chapters 5-10.

## THE INSTITUTIONAL SETTING

In 1959, at the time of the Master Plan Survey, there were 84 public institutions of higher education, and they enrolled a total of 391,470 students. There

were, in addition, 69 accredited private institutions which enrolled nearly 68,000 students. Ten years later, in 1969, the number of public institutions of higher education has increased to 116 with a total enrollment of 879,380 and the number of accredited private institutions has increased to 79 with a total enrollment of 111,038.

The rapid increase in public institutions is largely attributable to the addition of 22 new junior colleges. However, there have also been five new state colleges established during this period—Stanislaus, Sonoma, Dominguez Hills, San Bernardino and Bakersfield—and four new campuses of the University—Santa Cruz, Irvine, San Diego and Riverside.

The increase in the number of private institutions is somewhat deceptive. Only three new AICCU institutions were opened during this period; the two other

**TABLE 3.1 GROWTH IN THE NUMBER OF INSTITUTIONS OF HIGHER EDUCATION AND TOTAL ENROLLMENT, 1959-60 TO 1968-69**

	1959-60		1968-69	
	Number	Enrollment	Number	Enrollment
<b>Public Institutions</b>				
Public Junior Colleges.....	63	257,821	85	567,749
California State Colleges.....	14	88,082	19	211,600
University of California.....	5	44,860	9	98,781
Other.....	2	707	2	1,250
<b>Private Institutions</b>				
AICCU Institutions.....	44	58,456	48	97,141
Other Accredited Institutions.....	25	9,529	31	13,897
<b>Totals.....</b>	<b>153</b>	<b>459,455</b>	<b>194</b>	<b>990,418</b>

**TABLE 3.2 HIGHER EDUCATION ENROLLMENT AS A PERCENTAGE OF STATE CIVILIAN POPULATION**

	Total Civilian Population	Total Enrollment in Higher Education	Percent of Civilian Population	Full-Time Enrollment in Higher Education	Percent of Civilian Population
1959-60.....	14,964,000	449,219	3 00%	222,882	1 50%
1960-61.....	15,567,000	496,700	3 19	245,601	1 58
1961-62.....	16,163,000	530,473	3 28	272,649	1 69
1962-63.....	16,737,000	582,545	3 48	295,675	1 77
1963-64.....	17,349,000	638,210	3 69	320,584	1 85
1964-65.....	17,902,000	706,968	3 95	365,769	2 04
1965-66.....	18,417,000	773,831	4 20	422,388	2 29
1966-67.....	18,792,000	826,810	4 40	453,441	2 41
1967-68.....	19,185,000	891,327	4 66	482,200	2 51
1968-69.....	19,600,000	975,271	4 97	538,100	2 74

new members of the organization were established earlier. The other new accredited private institutions are primarily specialized institutions, in most cases church schools, some of which were established but not accredited well before 1959-60.

### ENROLLMENT TRENDS

Over twenty different definitions of "student" are in current use by various institutions and agencies of state government in California. The three principal categories are: (1) "students" or "individual students", meaning any person enrolled in a regular college or university course (excluding extension courses), regardless of the number of units for which he is enrolled; (2) "full-time students" or those students who are enrolled for at least 12 units, plus all University graduate students; and (3) "full-time equivalent" (FTE) students, a computed unit of enrollment used to combine full-time and part-time enrollment and derived by dividing total units taken by measures of a "full-time load." As is typical of educational statistics in California, each segment defines FTE units of enrollment in a different way, so that the resulting measures are not exactly comparable for certain detailed purposes. Except when these inconsistencies pose major risks of misunderstanding, however, we will treat them as roughly equivalent for the purposes of this report.

Table 3.2 shows the growth in total enrollment and full-time enrollment in public and private institutions of higher education in comparison with total civilian population. Much of the very rapid growth in student population relative to total civilian population is explained by growth within the 18-24 "college-age group". This age group has grown from 8.0% to 10.7% of total state population over the same period.

According to the latest figures reported by the U.S. Office of Education, California's student population accounts for about 14% of the national student population for higher education. When the state and national enrollment figures are compared with the state

and national population figures in the 18-24 age group, California far surpasses the national average, as indicated in Table 3.3, and the difference, although narrowing slightly, is being maintained. These figures, it should be noted, do not show the actual percentage of 18-24 year olds enrolled in higher education, but simply a comparison of total higher education enrollment with the 18-24 age group population.

All of these figures indicate the effects for California of a rapid growth in total population, a disproportionate growth in the principal college-age group, and high and slowly rising participation rates for all age groups. Among the reasons for California's relatively high participation rates are the following

1. The large number and widespread geographic availability of public institutions, combined with the state's traditional policy of low student charges, has made college education available at a relatively low cost to many students.
2. The location of state colleges and junior colleges, in particular, in major urban areas permits part-time attendance in combination with full-time or part-time employment. This circumstance encourages, or at least does not discourage, the combination of college-going with earning a living and raising a family.
3. The generally perceived investment value of college training may be increasing as people become aware of the relative decrease in unskilled jobs and the comparable increased demands and rewards for persons with technical and professional training in the California economy.
4. An increasing general affluence means that more individuals and families can afford to forego the earnings lost when school attendance is substituted for employment, even though the magnitude of foregone earnings may be increasing as general wage rates rise. The social, cultural and recreational values of college may be receiving heightened esteem at a time when declining net personal costs of education and increasing general affluence make the consumption of college services more widely available.

**TABLE 3.3 TOTAL HIGHER EDUCATION ENROLLMENT COMPARED WITH 18-24 AGE GROUP POPULATION, CALIFORNIA AND UNITED STATES**

	18-24 Age Group Population (000)		Total Higher Education Enrollment (000)		Higher Education Enrollment as Percent of 18-24 Population	
	US	California	US	California	US	California
1960.....	14,684	1,248	3,583	497	24 4%	39 8%
1961.....	15,623	1,355	3,861	530	24 7	39 1
1962.....	16,109	1,432	4,175	583	25 9	40 7
1963.....	16,676	1,531	4,495	638	26 9	41 7
1964.....	17,246	1,616	4,950	707	28 7	43 7
1965.....	18,750	1,762	5,526	774	29 5	43 9
1966.....	19,544	1,882	5,947	827	30 4	43 9
1967.....	20,117	1,986	6,500	891	32 3	44 9
1968.....	20,692	2,108	6,902	975	33 3	46 3

**TABLE 3.4 DISTRIBUTION OF TOTAL ENROLLMENT IN HIGHER EDUCATION IN CALIFORNIA BY SEGMENT, 1959-60 TO 1968-69**

Academic Year (Fall Semester)	University of California		California State Colleges		Public Junior Colleges		AICCU Institutions		Total	
	Number	%	Number	%	Number	%	Number	%	Number	%
1959-1960.....	44,860	10 0%	88,082	19 6%	257,821	57 4%	58,456	13 0%	449,219	100 0%
1960-1961.....	49,719	10 0	95,081	19 1	289,998	58 4	62,002	12 5	496,800	100 0
1961-1962.....	54,265	10 2	105,858	20 0	305,201	57 5	65,149	12 3	530,473	100 0
1962-1963.....	58,616	10 1	118,057	20 3	336,704	57 7	69,168	11 9	582,545	100 0
1963-1964.....	64,504	10 1	133,108	20 9	368,008	57 6	72,590	11 4	638,210	100 0
1964-1965.....	71,267	10 1	148,796	21 0	411,338	58 2	75,407	10 7	706,808	100 0
1965-1966.....	79,437	10 3	154,887	20 0	459,400	59 4	80,107	10 3	773,831	100 0
1966-1967.....	86,406	10 4	169,520	20 5	487,458	59 0	83,426	10 1	826,810	100 0
1967-1968.....	95,376	10 7	185,601	20 8	521,695	58 3	90,797	10 2	893,469	100 0
1968-1969*.....	98,781	10 1	211,600	21 7	567,749	58 2	97,141	10 0	975,271	100 0

\* Estimated

There is no reason to expect a significant slackening in any of these factors in the next five to ten years. Nevertheless, there is reason to believe, as discussed in Chapter 4, that there will be a general slowing in the rate of population growth within the principal college age-group, with the result that the immense enrollment pressures of the past decade will soon begin to ease. It may be, however, that this will be largely offset by increasing participation rates which result from newly developing policies regarding access to higher education and attrition rates.

Table 3.4 indicates the distribution of total enrollment in higher education in California by segment over the past 10 years. In general, these figures indicate that the University of California has continued to serve a relatively constant share of total enrollment while the state college and junior college shares have increased somewhat. The share of total enrollment reported by AICCU institutions has steadily declined, despite a substantial increase in the absolute number of students enrolled in the independent institutions. This trend, and changes in the financial position of the independent institutions, is discussed in greater detail in Chapter 8.

The distribution of full-time students, as shown in Table 3.5, indicates much the same pattern, except these figures show that the relative growth of the state colleges has been largely in full-time rather than part-time enrollment, and much the same appears to be true of the junior colleges. These figures also accentuate the fact that the private colleges and universities serve a declining share of the market.

The overall growth rate for the public segments of higher education has averaged nearly 10% per year over the past ten years. Although the growth rate for University enrollment appears to have slowed recently, as has the state college growth rate, the average for all segments for the past five years is somewhat above the rate for the first half of the decade. Clearly, the average rate of growth of 9%-10% per year has presented a great challenge to the state to provide the funds necessary to support this growth.

Because 58% of total enrollment is in junior colleges, it is in no way surprising that the state's higher educational system resembles a building with a very large lobby. As can be seen in Table 3.7, nearly half of the total enrollments are freshmen, and an additional 19% are sophomores. The figures in Table 3.7 refer

**TABLE 3.5 DISTRIBUTION OF FULL-TIME ENROLLMENT IN HIGHER EDUCATION IN CALIFORNIA BY SEGMENT, 1959-60 TO 1968-69**

Academic Year (Fall Semester)	University of California		California State Colleges		Public Junior Colleges		AICCU Institutions		Total	
	Number	%	Number	%	Number	%	Number	%	Number	%
1959-1960.....	42,386	19 0%	49,711	22 3%	90,254	40 5%	40,531	18 2%	222,882	100 0%
1960-1961.....	46,801	19 1	56,480	23 0	99,783	40 6	42,537	17 3	245,601	100 0
1961-1962.....	51,340	18 8	64,099	23 5	112,638	41 3	44,572	16 4	272,649	100 0
1962-1963.....	55,775	18 9	71,502	24 2	121,283	41 0	47,115	15 9	295,675	100 0
1963-1964.....	61,073	19 1	80,188	25 0	128,221	40 0	51,102	15 9	320,584	100 0
1964-1965.....	67,070	18 3	92,454	25 3	152,401	41 7	53,844	14 7	365,769	100 0
1965-1966.....	75,743	17 9	98,840	23 4	188,874	44 7	58,931	14 0	422,388	100 0
1966-1967.....	82,585	18 2	110,274	24 3	198,135	43 7	62,447	13 8	453,441	100 0
1967-1968.....	91,741	18 6	122,426	24 8	213,496	43 2	66,232	13 4	493,895	100 0
1968-1969.....	93,825	17 4	139,600	25 9	233,710	43 5	70,965	13 2	538,100	100 0

**TABLE 3.6 ANNUAL RATE OF ENROLLMENT GROWTH, PUBLIC SEGMENTS, 1959-60 THROUGH 1968-69 \***

	University of California	California State Colleges	Junior Colleges	All Three Segments
1959-60.....	3 6%	8 8%	1.2%	3 2%
1960-61.....	10.5	12 7	9 7	10 5
1961-62.....	9 5	11 6	10 5	10 6
1962-63.....	8 1	12 1	6 7	8 2
1963-64.....	10 5	11 6	14 4	13 1
5 Year Average.....	8 4%	11 4%	8 5%	9 1%
1964-65.....	10.6%	12 7%	12 9%	12 5%
1965-66.....	12.4	7 3	15 8	13 3
1966-67.....	7 2	11 8	5,7	7 3
1967-68.....	9 7	10 1	11 0	10 6
1968-69 (est.).....	4 2	9 1	7 3	7 2
5 Year Average.....	8 8%	10 2%	10 5%	10 2%
10 Year Average.....	8 6%	10 8%	9 5%	9 6%

\* UC average annual headcount, CSC average annual FTE, JC average daily attendance, regular sessions only

to classifications of students by their level of academic attainment and not of the level of the courses in which they enroll. Because graduate students frequently enroll in upper division courses and upper division students take lower division courses, the distribution of students by level of academic course offerings is even more strongly skewed toward the lower division than these figures indicate.

The figures in Table 3.7 appear to show a significant increase in freshman enrollment over the period, and smaller increases in the enrollment of juniors and graduate students. Unfortunately, much of this apparent change actually reflects a change in the definition of each level, and a corresponding change in the number of residual "other" students. Over the past five years there is little evidence of any important change in the mix of students by grade level.

Within each segment the picture appears to be much the same, as shown in Table 3.8, with such shifts as are indicated apparently the result in changes in the

"other" category rather than important changes in actual enrollment. These figures also indicate, as noted in Chapter 2, that whatever diversion of lower division students there has been in accord with the Master Plan recommendations has occurred between the state colleges and junior colleges.

A careful examination of Table 3.7, however, suggests one reason why the public institutions, and particularly the state colleges, have had unusual difficulty in projecting enrollment from one year to the next. The passage of the surge in enrollment growth through the undergraduate years has changed the relationship between the years as stated in enrollment ratios. Freshman enrollment in the past two years has stopped growing as fast as upper division enrollment, where the recent surge in enrollment growth is still being felt. Consequently, the continuation rates from freshman class to sophomore class to junior class have become distorted, and total enrollment no longer has the same relationship to the number of high school graduates and first-time freshmen

**TABLE 3.7 DISTRIBUTION OF TOTAL ENROLLMENT BY CLASS LEVEL FOR ALL SEGMENTS OF CALIFORNIA HIGHER EDUCATION, 1958-59 TO 1967-68**

Academic Year (fall semester)	Freshmen		Sophomores		Juniors		Seniors		Graduate		Other Students*		Total	
	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%	Number	%
1958-59.....	186,938	42 8%	88,607	20 3%	33,773	7 7%	31,085	7 1%	40,727	9 3%	55,414	12 7%	436,544	99 9%
1959-60.....	200,201	44 6	87,975	19 5	35,796	8 0	32,180	7 2	45,863	10 2	47,204	10 5	449,219	100 0
1960-61.....	227,627	45 8	95,029	19 1	38,420	7 7	35,609	7 2	52,935	10 7	47,080	9 5	496,700	100 0
1961-62.....	245,142	46 2	102,350	19 3	41,085	7 7	37,201	7 0	59,547	11 2	45,148	8 5	530,473	99 9
1962-63.....	276,786	47 5	115,965	19 9	46,534	8 0	40,828	7 0	65,586	11 3	36,846	6 3	582,545	100 0
1963-64.....	314,857	49 3	112,851	19 2	51,783	8 1	45,727	7 2	74,732	11 7	28,260	4 5	628,210	100 0
1964-65.....	357,956	50 6	131,910	18 7	58,581	8 3	51,796	7 3	80,810	11 4	25,915	3 7	706,968	100 0
1965-66.....	391,744	50 6	146,598	18 9	63,303	8 2	55,681	7 2	86,486	11 2	30,019	3 9	773,831	100 0
1966-67.....	406,136	49 1	161,633	19 5	74,811	9 0	58,934	7 1	91,637	11 1	33,654	4 1	826,805	99 9
1967-68.....	432,549	48 4	172,382	19 3	83,005	9 3	69,155	7 7	101,947	11 4	34,431	3 9	893,469	99 9

\* The term "Other Students" refers to those students who have a degree but are not working toward an advanced degree. For instance students who have bachelor's degrees who are enrolled in undergraduate courses to prepare for advanced studies are classified as "Other Students"

**TABLE 3.8 CLASS LEVEL DISTRIBUTION CHANGES BY SEGMENT IN CALIFORNIA HIGHER EDUCATION, 1959-60 TO 1967-68**

	University of California		California State Colleges		Public Junior Colleges		AICCU Institutions		All Segments	
	1959-60	1967-68	1959-60	1967-68	1959-60	1967-68	1959-60	1967-68	1959-60	1967-68
Freshmen.....	17 3%	19 6%	18 8%	14 8%	63 7%	70 7%	19 7%	19 0%	44 6%	48.4%
Sophomores.....	15 0	14 2	13 8	11 9	23.3	23 5	15.6	15 8	19 5	19 3
Juniors.....	18 4	21 0	21 2	26 7	----	----	15.2	14 7	8 0	9 3
Seniors.....	18 1	13 6	17 6	23.5	----	----	14 6	13 8	7 2	7 7
Graduates.....	26 9	31 0	20 9	23 1	----	----	26 2	32 6	10 2	11 4
Other Students*.....	4 3	0 6	7 7	0 0	13 0	5 8	8 7	4 1	10 5	3 9
Total.....	100 0%	100 0%	100 0%	100 0%	100 0%	100 0%	100 0%	100 0%	100 0%	100 0%

\* See footnote Table 3.7

**STUDENT CHARACTERISTICS AND ATTENDANCE PATTERNS**

Nearly 45% of all students enrolled in a college or university in California are part-time students. The percentage distribution for each segment is shown in Table 3.9. Part-time enrollment is concentrated, of course, among the junior colleges and remains just under 60% for those institutions. Among the state colleges there has been a very substantial reduction in part-time enrollment over the past ten years to the point that only about one-third of all students are in that classification. The percentage would be reduced even further if the definition of full-time study for graduate students were determined by the individual departments as it is in the University of California. Part-time enrollment among undergraduate students in the state colleges now amounts to only 22% of total state college undergraduate enrollment.

Nevertheless, part-time enrollment remains large and an inescapably important aspect of higher education in California. The reasons for these relatively high rates of part-time enrollment need investigation. Some part-time students are undoubtedly combining an oc-

casional course with full-time employment, others split their time between work and study in a more nearly even proportion. In addition, many students attend college intermittently by alternating full-time work with full-time college enrollment. This class of part-time students is not reflected at all in the statistics in Table 3.9.

Behind these bare statistics must lie the inability or unwillingness of some students to go without income from employment. Inability and unwillingness may in turn reflect either strictly limited means or deliberate choices regarding early marriage, the upkeep of a car, a certain living standard, etc. To the extent that financial restrictions which are not self-imposed or self-generated are involved, substantial increases in financial aid may be needed. To the extent that students elect to combine or intersperse school and employment for reasons of personal preference, there is no need for intervention.

A second class of policy issue is suggested by the full-time and part-time statistics, namely whether the full-timers and part-timers are equally well served by institutions which have developed in many cases for service to predominantly full-time constituencies. By

**TABLE 3.9 PERCENTAGE DISTRIBUTION OF PART-TIME AND FULL-TIME ENROLLMENT BY SEGMENT, CALIFORNIA HIGHER EDUCATION, 1959-60 TO 1968-69**

Academic Year (Fall Semester)	University of California		California State Colleges		Public Junior Colleges		Total Public Sector		AICCU Institutions		Total Higher Education	
	Full-Time	Part-Time	Full-Time	Part-Time	Full-Time	Part-Time	Full-Time	Part-Time	Full-Time	Part-Time	Full-Time	Part-Time
1959-1960.....	94 5%	5 5%	56 4%	43 6%	35 0%	65 0%	46 7%	53 3%	69 3%	30 7%	49 5%	50 5%
1960-1961.....	94 1	5 9	59 5	40 5	34 4	65 6	46 7	53 3	68 6	31 4	49 4	50 6
1961-1962.....	94 6	5 4	60 6	39 4	36 9	63 1	49 0	51 0	68 4	31 6	51 4	48 6
1962-1963.....	95 2	4 8	60 6	39 4	36 0	64 0	48 4	51 6	68 1	31 9	50 8	49 2
1963-1964.....	94 7	5 3	60 2	39 8	34 8	65 2	47 6	52 4	70 4	29 6	50 2	49 8
1964-1965.....	94 1	5 9	62 1	37 9	37 1	62 9	49 4	50 6	71 4	28 6	51 7	48 3
1965-1966.....	95 3	4 7	63 8	36 2	41 1	58 9	52 4	47 6	73 6	26 4	54 6	45 4
1966-1967.....	95 6	4 4	65 1	34 9	40 6	59 4	52 6	47 4	79 9	30 1	54 8	45 2
1967-1968.....	96 2	3 8	66 0	34 0	40 9	59 1	53 3	46 7	72 9	27 1	55 3	44 7
1968-1969.....	95 0	5 0	66 0	34 0	41 2	58 8	53 8	46 2	73 0	27 0	54 3	45 7

**TABLE 3.10 PERCENTAGE DISTRIBUTION OF FULL-TIME FALL TERM, LOWER DIVISION ENROLLMENT, PUBLIC SEGMENTS, 1959-60 THROUGH 1968-69**

Fall Term	University of California	California State Colleges	Junior Colleges
1959-60.....	11.0%	18.7%	70.3%
1960-61.....	11.5	19.2	69.3
1961-62.....	11.1	19.9	69.0
1962-63.....	11.1	19.9	69.0
1963-64.....	11.4	20.2	68.4
1964-65.....	10.3	19.4	70.3
1965-66.....	10.1	16.1	73.8
1966-67.....	10.7	15.5	73.8
1967-68.....	10.8	14.9	74.6
1968-69.....	9.9	15.6	74.5

its policies, the University of California discourages part-time attendance. Are these policies sound? In practice, the urban state colleges have developed substantial programs to serve part-time and evening students predominantly, as have many of the urban junior colleges. Is this specialization justified?

It is clear, also, that equity issues are involved in the current policies which require University Extension courses, for example, to carry their own weight financially, while courses at the state colleges, which are often closely equivalent in purpose, context, and clientele, are funded from the general state budget. If the distinctions between study and other activities are to be progressively blurred and if higher education is seen to benefit and be in demand by students over a wide range of ages and career positions, the basic rationale for the abrupt distinctions between what is and is not "extension work" would benefit from re-examination.

The figures in Table 3.10 indicate an uneven but significant change in the distribution of full-time lower division enrollment among the three public segments of higher education. The University of California, contrary to what the Master Plan Survey Team thought to be desirable, has maintained approximately the same share of full-time lower division enrollment, but there has been a substantial shift from the state colleges to the junior colleges. As a consequence, the junior colleges are now very close to the Master Plan goal of 75% of full-time lower division enrollment.

According to the best available information on the distribution of first-time freshmen in relation to the prior year's high school graduates, roughly 5% go to the University, 6% to the state colleges, and 41% to the junior colleges. These figures, as would be expected, also show a relatively stable share for the University but a noticeable shift from the state colleges to the junior colleges for first-time freshmen.

Much of the increase in age-group participation rates indicated in Table 3.3 has been due to the rapidly increasing number of women who go to college. Table 3.12 summarizes applicable recent statistics and

shows the increasing proportion of women in all institutions as well as the steep rise in age-group participation rates for women. While male participation rates moved roughly from 43% to 49% over the past decade, the comparable figures for women were 19% and 30%. Since the male participation rate figures have turned slightly down in recent years, it seems likely that any differential in college-going proclivities between men and women will narrow and possibly disappear over succeeding years.

The Committee has been unable to obtain useful up-to-date figures as to the distribution of enrollment by age for the individual segments. The only recent data lumps enrollment in the upper age groups, thereby prohibiting display of the statistics in a manner which is not distorted and misleading.

Unfortunately, the Committee has also been unable to find sources of data which would permit comparisons over time of changes in the college-going rates for students of differing social, economic, and educational circumstances. This lack of data from longitudinal studies is one of several very critical deficiencies in the information resources available to those responsible for the planning and management of higher education. Specific proposals to remedy this lack are contained in Chapter 7.

To this point, we have summarized what is known about collegiate enrollment respecting numbers, distributions by type of school, sex, part-time attendance, socio-economic characteristics and academic attainment levels. We turn now to a brief discussion of what is being produced, in the special sense of degrees awarded.

## DEGREES AWARDED

The outputs, products, measures of value added and other results of the instruction function of higher education are many and often, in character, very elusive. Some part of the output may be quantified in terms of the number of degrees awarded, but how large a part is not clear. Certainly some substantial

**TABLE 3.11 FIRST-TIME FRESHMAN (FALL TERM) ENROLLMENT AS A PERCENT OF THE PRIOR YEAR'S HIGH SCHOOL GRADUATES \***

Fall Term	University of California	California State Colleges	Junior Colleges	Totals
1959-60.....	4.1%	na	na	na.
1960-61.....	4.3	7.9%	na	na
1961-62.....	4.2	7.9	na	na
1962-63.....	4.3	8.5	na	na
1963-64.....	4.6	8.4	na	na
1964-65.....	4.7	8.6	39.5%	52.8%
1965-66.....	4.8	5.7	42.2	52.7
1966-67.....	4.6	6.0	40.1	50.7
1967-68.....	5.0	6.2	41.0	52.3

\* First-time freshman are those who have graduated from a California high school. High school graduates include both public and private schools. Data are not available as to first-time freshman for private segment.

**TABLE 3.12 FEMALE STUDENTS AS A PERCENTAGE OF TOTAL ENROLLMENT IN PUBLIC HIGHER EDUCATION AND COMPARATIVE MALE-FEMALE PARTICIPATION RATES, 1957-58 TO 1966-67**

	University of California	California State Colleges	Junior Colleges	All Three Segments	18-24 Age Group Participation Rate for Females	18-24 Age Group Participation Rate for Males	18-24 Age Group Participation Ratio of Females to Males
1959-60.....	36%	39%	36%	37%	21 4%	45 2%	47
1960-61.....	37	40	38	38	24 6	47 1	52
1961-62.....	37	41	37	38	24 0	46 6	51
1962-63.....	38	42	37	38	25 2	48 2	52
1963-64.....	38	42	37	38	26 3	49 2	53
1964-65.....	39	43	37	39	28 4	51 2	55
1965-66.....	39	42	38	39	28 5	50 0	55
1966-67.....	39	43	40	41	30 0	49 2	61

value, both to the individual and the community, comes from the chance to attend college, enrollment in "occasional courses," completion of short-term programs, or attendance for any period up to but short of graduation. But how much importance should be attached to those elements? To what extent are they successes and to what extent are they failures of the system? How are they to be valued? Until we come closer to answers to these questions it is necessary to

measure output according to the means at hand—while recognizing the shortcomings of these tools.

There is little doubt that associate in arts, baccalaureate, master's and doctor's degrees are legitimate objectives of educational aspiration and do represent one measure of educational output or value added. Over 69,000 degrees (baccalaureate and beyond) were conferred by the public and independent institutions in California in 1967-68. This grand total is up 110%

**TABLE 3.13 THE DISTRIBUTION OF DEGREES CONFERRED BY CALIFORNIA INSTITUTIONS OF HIGHER EDUCATION, 1958-59 THROUGH 1967-68**

	University of California		California State Colleges		AICCU Institutions		Totals	
	Number	%	Number	%	Number	%	Number	%
<b>Bachelor's Degrees</b>								
1958-59.....	6,695	27%	10,770	44%	7,060	29%	24,525	100%
1959-60.....	6,758	27	11,045	44	7,352	29	25,155	100
1960-61.....	6,701	25	12,010	45	7,830	30	26,541	100
1961-62.....	6,737	24	13,281	48	7,856	28	27,874	100
1962-63.....	7,382	24	15,370	50	7,920	26	30,672	100
1963-64.....	8,303	24	17,258	50	8,736	26	34,297	100
1964-65.....	9,384	24	20,056	52	9,220	24	38,660	100
1965-66.....	9,926	24	21,533	52	9,593	24	41,052	100
1966-67.....	11,848	26	23,858	52	9,839	22	45,545	100
1967-68.....	12,938	26	27,271	54	10,257*	20	50,466	100
<b>Master's Degrees**</b>								
1958-59.....	1,822	30%	1,668	28%	2,539	42%	6,029	100%
1959-60.....	1,921	30	1,911	30	2,605	40	6,437	100
1960-61.....	2,199	31	2,062	29	2,778	40	7,039	100
1961-62.....	2,381	31	2,283	29	3,111	40	7,775	100
1962-63.....	2,744	33	2,341	28	3,267	39	8,352	100
1963-64.....	3,214	34	2,730	28	3,652	38	9,596	100
1964-65.....	3,600	33	3,109	28	4,322	39	11,031	100
1965-66.....	4,263	36	3,795	32	3,731	32	11,789	100
1966-67.....	4,780	36	4,247	32	4,162	32	13,189	100
1967-68.....	4,880	34	4,881	34	4,442*	32	14,203	100
<b>Doctor's Degrees**</b>								
1958-59.....	971	44%	--	--	1,255	56%	2,226	100%
1959-60.....	1,053	47	--	--	1,200	53	2,253	100
1960-61.....	1,169	48	--	--	1,290	52	2,459	100
1961-62.....	1,247	48	--	--	1,355	52	2,602	100
1962-63.....	1,392	50	--	--	1,402	50	2,794	100
1963-64.....	1,563	50	--	--	1,598	50	3,161	100
1964-65.....	1,789	52	--	--	1,671	48	3,460	100
1965-66.....	2,046	53	--	--	1,818	47	3,864	100
1966-67.....	2,347	54	1	--	1,980	46	4,328	100
1967-68.....	2,384	53	--	--	2,098*	47	4,482	100

\* Estimated  
\*\* Including professional degrees

**TABLE 3.14 TOTAL INSTITUTIONAL EXPENDITURES FOR HIGHER EDUCATION IN CALIFORNIA BY SEGMENT, 1959-60 THROUGH 1968-69 (In Millions)**

	University of California	California State Colleges	Public Junior Colleges	Other Public Agencies and Institutions	AICCU Institutions	Totals
1959-60.....	\$225	\$97	\$160	\$2	\$162	\$646
1960-61.....	254	128	162	2	172	718
1961-62.....	289	128	170	3	197	787
1962-63.....	341	146	205	3	238	933
1963-64.....	402	168	235	4	280	1,089
1964-65.....	459	196	250	5	279	1,189
1965-66.....	544	203	296	6	358	1,407
1966-67.....	609	393	344	7	400	1,753
1967-68.....	709	385	424	8	444	1,970
1968-69 (est).....	740	415	425	10	470	2,060

from the comparable figure of 32,760 in 1958-59 Table 3.13 shows how these degrees were distributed by level and by segment. As a matter of convenience we have lumped all 5 and 6 year degrees together as well as all degrees which take 7 or more years.

The University has maintained approximately the same position as a producer of baccalaureate degrees over this period. The independent colleges have declined from 29% to 20% in numerical importance as producers of baccalaureate degrees. The state college share has increased proportionately to over half of all baccalaureate degrees. At the level of master's degrees, both the University and state college contributions have increased, while the private college contribution has declined relatively. At the Ph.D. level, the University has assumed an increasing fraction of degree production, moving from a 44-56 split with the private colleges in 1958-59 to a 53-47 split in 1967-68. Again it should be noted that these figures include all degrees which require 7 or more years.

The satisfaction of individual preferences and the economic and social needs of California require not only that certain numbers of professionally trained people be produced, but that this production be spread over a variety of fields of specialization. Engineers, teachers, economists, musicians, accountants, are all required. Like most states, California has no explicit manpower policy, and the tools of economic planning are not used to determine preferable numbers

and distributions of graduates as targets for budgeting the educational system. Instead, the choice of academic major and occupational training is left largely to individual students. The only important exceptions occur in certain professional fields where quotas and other enrollment limitations have been imposed to reflect physical capacity limits or limitations upon available teaching staffs.

At the federal level, a variety of programs are operative with the explicit goals of increasing the total numbers of graduates in certain fields such as the health sciences, engineering and foreign languages. The programs include a spectrum of scholarships, fellowships, and incentive awards tied to study in particular fields. Also included are grants to institutions to support staff and facilities devoted to particular academic specialties. Early in this study we gave explicit consideration to the possibility of using manpower targets as guides to educational planning and budgeting, but came to the conclusion that the technical problems involved would require research well beyond the resources of the Committee. Further, the free movement of people into and out of California suggests that comprehensive manpower planning is more reasonable at the national level. This conclusion does not eliminate the necessity to consider manpower needs specifically in planning for particular fields of specialization.

**TABLE 3.15 PERCENTAGE DISTRIBUTION OF TOTAL INSTITUTIONAL EXPENDITURES, 1959-60 THROUGH 1968-69**

	University of California	California State Colleges	Junior Colleges	Other Public Agencies	AICCU Institutions	Totals
1959-60.....	34 8%	15 0%	24 8%	3%	25 1%	100 0%
1960-61.....	35 4	17 8	22 6	3	23 9	100 0
1961-62.....	36 7	16 3	21 6	4	25 0	100 0
1962-63.....	36 5	15 6	22 0	3	25 6	100 0
1963-64.....	36 9	15 4	21 6	4	25 7	100 0
1964-65.....	38 6	16 5	21 0	4	23 5	100 0
1965-66.....	38 7	14 4	21.0	4	25 5	100 0
1966-67.....	34 7	22 4	19 6	4	22 9	100 0
1967-68.....	36 0	19 5	21 5	4	22 5	100 0
1968-69.....	35 9	20 1	20 6	5	22 9	100 0

**TABLE 3.16 STATE SUPPORT FOR HIGHER EDUCATION—CURRENT EXPENSE (In Thousands)**

	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65	1965-66	1966-67	1967-68	1968-69
University of California.....	\$99,408	\$121,306	\$134,434	\$147,623	\$159,959	\$181,495	\$204,496	\$240,382	\$247,419	\$291,372
California State Colleges.....	55,974	68,515	77,892	90,259	101,353	115,594	136,629	167,705	192,760	238,783
Public Junior Colleges*.....	25,900	28,413	35,885	36,273	45,357	58,379	71,013	74,397	92,846	96,000
Board of Governors.....	--	--	--	--	--	--	--	--	4	609
Coordinating Council for Higher Education.....	--	22	147	228	284	314	354	420	513	571
State Scholarship and Loan Commission.....	1,168	1,220	1,825	2,345	2,766	3,702	3,776	4,701	5,346	8,840
Hastings College of Law.....	286	347	359	338	326	400	480	611	665	830
California Maritime Academy.....	366	391	415	435	491	531	563	593	623	712
Western Interstate Commission on Higher Education.....	10	10	10	10	15	15	15	15	15	15
Total.....	\$183,112	\$220,224	\$250,967	\$277,511	\$310,551	\$360,430	\$417,321	\$488,824	\$540,191	\$637,732

\* Includes allocations to new junior colleges

## FINANCE

Over the years since the Master Plan study in 1959-60, direct (institutional) expenditures for higher education in California have risen from \$.6 billion to approximately \$2.1 billion. The distribution of this amount among the public and private institutions is indicated in Table 3.14. The figures in that table include both capital and operating expenditures for all institutional purposes, including instruction, research, auxiliary enterprises, administration, etc. Only expenditures for the operation of special federal installations by the University and AICCU universities have been excluded.

It should be borne in mind that in addition to institutional expenditures there are very substantial related expenditures by students and their families for board

and room (off-campus), travel, books and miscellaneous services which do not get counted. Expenditures for tuition and other fees, on-campus room and board and certain other expenses, however, do get counted as part of income and expenditures for current expense, either as current educational expense or in connection with the operation of auxiliary enterprises.

It should also be kept in mind that a substantial part of the growth in expenditures over the ten-year period reflects rising prices. This is particularly true of capital outlay expenditures, for which the price index has risen by as much as 7%-10% each year. It is also important for current expense where rising costs reflect not only enrollment growth but also rapidly rising salary costs for faculty and administrative personnel, with no substantial change in productivity.

**TABLE 3.17 STATE SUPPORT FOR HIGHER EDUCATION—CAPITAL OUTLAY (In Thousands)**

	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65	1965-66	1966-67	1967-68	1968-69
University of California										
Bond Funds.....	\$15,937	--	\$46,268	\$52,307	\$69,021	\$61,737	\$57,613	\$65,314	\$55,663	--
Current Funds.....	5,221	\$50,693	1,732	3,583	1,949	2,016	1,530	1,372	2,301	\$44,615
California State Colleges										
Bond Funds.....	21,655	-5,265	30,661	32,184	40,756	51,713	28,773	40,992	66,064	73,547
Current Funds.....	9,146	36,382	1,707	3,206	1,166	1,097	1,131	1,037	1,778	46,270
Public Junior Colleges										
Bond Funds.....	--	--	--	--	3,322	7,316	25,890	9,379	23,986	17,235
Current Funds.....	--	--	5,000	5,000	-536	420	--	--	--	--
California Maritime Academy										
Bond Funds.....	570	19	--	-17	--	--	--	--	--	--
Current Funds.....	59	45	5	9	28	45	21	34	2	104
Total.....	\$52,588	\$81,874	\$85,373	\$96,272	\$115,706	\$124,344	\$114,958	\$118,128	\$149,794	\$181,769
Bond Funds.....	38,162	-5,246	76,929	84,474	113,099	120,766	112,276	115,685	145,713	90,989
Current Funds.....	14,426	87,120	8,444	11,798	2,607	3,578	2,682	2,443	4,081	90,780

In Table 3.15 the figures from Table 3.14 have been converted to percentages to indicate the percentage distribution of total expenditures over the period. Despite the year-to-year fluctuations caused by the bunching up of capital outlay funds, several general comments can be made about the patterns evident in Table 3.15.

1. The distribution of expenditures between public and private institutions has remained relatively stable over the period, despite the continuing decline in the share of total enrollment which the private institutions claim;
2. The University's share of total expenditure grew steadily from 35% to nearly 39% until 1966-67 when it dropped back again to its earlier level;
3. The state college share of the total has risen and fallen repeatedly but appears to have declined somewhat from 1959-60 to 1965-66 and then to have risen somewhat above the 1959-60 level.
4. Junior college expenditures declined somewhat in the early part of the period but have since remained fairly constant.

The relative stability of AICCU institutional expenditures in the face of a declining share of enrollment, and the growth of University expenditures until 1965-66, probably reflects the sharp increase in federal research funds during this period as well as the rising costs of graduate education. The decline in the University's share since 1965-66 undoubtedly reflects cut-backs in budgeted state support and some slowdown in total enrollment growth.

It would be very interesting to chart the changes in expenditures by function over this period—to follow, in particular, the increasing importance of research in relation to instruction—but expenditure reports do not yet permit such analysis with any reasonable degree of accuracy.

Total state expenditures for public higher education have risen from \$236 million 1959-60 to an estimated \$820 million for 1968-69. In Tables 3.16 and 3.17 we have summarized state support for current expense and for capital outlay. In Table 3.21 the figures for state support of current expense have been converted to percentages to indicate the percentage distribution of total state support among the three segments and the other public agencies and institutions.

**TABLE 3.18 THE PERCENTAGE DISTRIBUTION OF STATE SUPPORT FOR CURRENT EXPENSE FOR PUBLIC HIGHER EDUCATION, 1959-60 THROUGH 1968-69**

	University of California	California State Colleges	Junior Colleges	Total
1959-60.....	54 8%	30 9%	14 3%	100 0%
1960-61.....	55 6	31.4	13 0	100 0
1961-62.....	54 1	31 4	14 5	100 0
1962-63.....	53 8	32 9	13 3	100 0
1963-64.....	52 1	33 1	14 8	100 0
1964-65.....	51 1	32 5	16 4	100 0
1965-66.....	49 6	33.1	17 3	100 0
1966-67.....	49 8	34 8	15 4	100 0
1967-68.....	46 5	36 1	17 4	100 0
1968-69 (est.).....	46 5	38 1	15 4	100 0

# 4. Enrollment and Cost Projections: 1969-1975

In Chapter 3 we reviewed a number of the major trends in enrollment and finance which characterized the past decade. In this Chapter we turn to the short-term future and present projections of enrollment and expenditures from 1969-1970 through 1975-76. These projections are based generally upon a continuation of past trends, with modifications where appropriate for discernable shifts in such basic factors as entry rates, persistence rates, and unit costs. Our purpose is not so much to try to guess the future but to indicate in quantitative terms where we are headed as a consequence of present policies.

## ENROLLMENT PROJECTIONS

Table 4.1 summarizes our best estimates of the number of students who will be enrolled in the public and private colleges and universities in California in each of the next seven years. By 1975-76, if present policies and trends are maintained, total enrollment of full-time and part-time students may be expected to reach 1,430,000. This figure is over 3 times the figure for total enrollment in 1959-60 when the Master Plan was written.

As indicated in Table 4.1, our projection is founded upon projected population for the 18-24 age group within California's total population. The projection for this age group was prepared by the Department of Finance.<sup>1</sup> Although the actual age span for college and university students is much broader than the 18-24 age group, this group provides a very convenient and generally valid index to the total potential population from which college students are drawn.

As shown in Tables 3.2 and 3.3 (Chapter 3), gross participation rates based upon this age group have been increasing over the past several decades. The participation rate, we should make clear, is not an actual measure of the percentage of 18-24 year olds in college but simply an expression of total enrollment, regardless of age, as a percentage of the number of 18-24 year olds.

**TABLE 4.1** PROJECTED TOTAL HIGHER EDUCATION ENROLLMENT, 1969-70 TO 1975-76

	18-24 Age Group Population	Participation Rate	Total Enrollment
1969-70.....	2,232,000	46 2%	1,031,000
1970-71.....	2,370,000	47 5	1,126,000
1971-72.....	2,520,000	48 0	1,212,000
1972-73.....	2,620,000	48 5	1,271,000
1973-74.....	2,690,000	49 0	1,318,000
1974-75.....	2,770,000	49 5	1,371,000
1975-76.....	2,860,000	50 0	1,430,000

The factors which have contributed to the increase in the participation rate are not changing uniformly. In particular, the rate of entry into college for high school graduates has reached or almost reached saturation for those high school graduates in the upper 20% of their class. As successive groups of high school graduates are considered, each with lower academic attainments at this point in their career (as conventionally measured), there is evidence to suggest that their entry rates are increasing but from a lower base and toward, probably, a lower upper limit.

Accordingly, and in the absence of specific new policies and programs which would increase either the completion rate for high school entrants or the entry rate of high school graduates into college, it is likely that enrollment growth over the next decades will respond more to population increases and less to dramatic increases in the entry rates. Further, even if entry rates increase more rapidly than anticipated among students with modest academic records, it is to be expected that the rates of attrition for these students will remain high and thus damp some of the enrollment consequences of increased entry rates.

This is not to say, however, that we believe that California should be content with either the present completion rates for high school students or current persistence rates among undergraduate and graduate

**TABLE 4.2** PROJECTED TOTAL ENROLLMENT BY SEGMENT, 1969-70 TO 1975-76

	University of California		California State Colleges		Junior Colleges		AICCU Institutions	
	Number	%	Number	%	Number	%	Number	%
1969-70.....	110,000	10 7%	226,000	21 8%	597,000	58 0%	98,000	9 5%
1970-71.....	115,000	10 2	256,000	22 7	655,000	58 2	100,000	8 9
1971-72.....	122,000	10 1	275,000	22 7	710,000	58 7	105,000	8 7
1972-73.....	127,000	10 0	285,000	22 4	751,000	59.1	108,000	8 5
1973-74.....	133,000	10 1	290,000	22 0	784,000	59 5	111,000	8 4
1974-75.....	138,000	10 1	296,000	21 6	823,000	60 0	114,000	8.3
1975-76.....	146,000	10 2	307,000	21 5	858,000	60 0	119,000	8 3

**TABLE 4.3 COMPARATIVE PROJECTIONS FOR FULL-TIME ENROLLMENT FOR PUBLIC INSTITUTIONS, 1960-61 THROUGH 1975-76**

	Actual Enrollment	Master Plan	Coordinating Council (Dec. 1968)	Joint Committee on Higher Education*
1960-61...	203,064	224,750	--	--
1965-66...	363,457	338,100	--	--
1970-71...	--	463,350	545,000	568,000
1975-76...	--	--	725,000	761,000

\* Based upon estimated full-time enrollment of 55% for 1970-71 and 58% for 1975-76

students. On the contrary, we strongly believe that positive action should be taken to improve completion and persistence rates from high school through college. Our recommendations in this regard may be found in the second section of this report. Nevertheless, based upon present policies, we cannot project any significant changes over the time period with which we are concerned here.

The slowing of the annual growth rate and the absolute annual increase in students, as indicated in Table 4.1, suggests a significant easing of the enrollment pressures to which we have become accustomed over the past decade. Longer-range projections by others into the late 70's and early 80's commonly show a leveling off for college enrollment by that time. Projections now being prepared by the Coordinating Council, in connection with the council's report on the need for additional campuses, follow this pattern. It must be noted again, however, that these projections incorporate an assumption that there will be no substantial change in attrition and persistence rates to offset the declining growth rate for the 18-24 year age group.

In Table 4.2 we show how the projected enrollment may be expected to be distributed among the several segments. Of the total enrollment projection of 1,430,000 for 1975-76, we expect the University of California to enroll approximately 146,000 students, the state colleges 307,000, the junior colleges 858,000 (in "graded" classes) and the AICCU institutions 119,000. The percentages indicate our expectations as to the share of the total market each segment will serve if current policies are continued

If persistence rates remain reasonably constant, it is to be expected that the junior colleges will grow most rapidly. The junior colleges draw from the largest eligible population and the entry rates for this population have farther to go to practical saturation than do those for the populations eligible for the four-year colleges. The state colleges will grow next most rapidly and the University may be expected to have the slowest growth rate over the next half decade.

For reasons of policy and due to financial limitations, the independent colleges and universities do not propose to expand at the 5% average annual rate

which has prevailed over the last decade. Accordingly, the AICCU institutions are estimated to grow modestly at about a 4% annual rate compounded. As a consequence, the private colleges will continue to enroll a declining fraction of the total number of full-time and part-time students

The future of graduate enrollments is more a matter of policy than of the workings of demographic and social forces. Capacity and staffs for graduate instruction do not expand simply as a function of demand for entry. At major campuses of the University, the proportion of graduate applicants accepted has declined. Since capacity for graduate instruction is directly related to budget decision by institutions, the Governor, the Legislature, and the federal government, it is hazardous to treat such enrollments merely as some fraction of a population group.

On the positive or high growth rate side, there are such factors as the increasing importance of graduate training for entry into and for subsequent success in a number of professions. The availability of fellowships and scholarships, from public and private sources will probably increase. The availability of part-time jobs and occasional employment to graduate students may also remain high in an expanding economy. All these factors act toward the maintenance of demand for graduate training. On the negative or low growth side, there are major limitations in obtaining qualified staff and facilities (which are costly and have long lead times for planning and construction) and in the fact of general budgetary stringency at the state and federal levels. On the basis of these conflicting forces, we believe that on balance graduate enrollments in the near term will increase only slightly as a percentage of total enrollments.

Needless to say, our projections of enrollment can not be taken as more than careful and informed estimates. The specific projections might well be regarded as medium estimates based on available historical data, official population projections, and a good measure of judgment on the internal workings of the complex factors which collectively are manifested in age group participation rate statistics.

The most important caution to be offered in connection with our projections does not deal, however, with the inherent imprecisions of such forecasting. The major potential sources of errors in judgment lie in the specific policies and programs adopted by institutions and by the state government. If significantly more money is made available for graduate facilities and staff, it can be expected that graduate programs will expand to fill the capacity. If generous programs of scholarships and other aids are made available to students, it should be expected that both entry and persistence rates will grow under such stimulus. If major efforts are launched to improve the graduation rate in urban high schools, the whole base from which college entrants are drawn may increase so that subsequent college enrollment increases will start from a higher threshold.

Finally, if improvements can be made in counseling and in the provision of academic and other support to students already enrolled, so that the high attrition rates are reduced, a different set of persistence measures will have to be developed and applied in formulating new enrollment projections. Since we recommend that special programs be undertaken in several of the areas which would alter entry and persistence rates, these qualifications are of particular importance. If the programs recommended in Chapters 5, 6, 7, 9, and 10 are initiated and are successful, it should be expected that enrollments will rise faster than the cautious projections given in Table 4.1. If the recommendations made in Chapter 8 respecting the potential availability of public funds for private colleges and universities are accepted, approved by the voters and put into subsequent effect, the projections about a relatively declining private college sector may also prove incorrect and low in the longer run.

Table 4.3 recapitulates three sets of enrollment projections. The first set was made during the Master Plan studies in 1959-60. The other two are current estimates, ours and that of the staff of the Coordinating Council for Higher Education.<sup>2</sup> The Master Plan and Coordinating Council projections, although based upon the same population age group as we used, were formulated in units of full-time enrollment rather than in the units of total enrollment. It has been necessary, therefore, to convert our figures to full-time units in order to make a comparison.

The Coordinating Council and Committee projections are quite close for the state colleges and junior colleges. Our projection for the University (for full-time students) is roughly 10,000 below the council projection for the University but corresponds closely to recent projections by the University itself. There is an even larger difference between our projections and those of the Council for the AICCU institutions (not included in Table 4.3). Here our projections are much lower and correspond fairly closely with recent projections made by the AICCU.<sup>3</sup> The difference between our projections and those of the Council for the public segments in 1975-76 is approximately the same as the difference between our two projections for the AICCU institutions.

A final point should be noted. The projections made during the Master Plan period, while quite accurate for the early years, have proved to be almost 100,000 students too low in only a decade. This is a measure of the astonishing growth in participation rates in California beyond what could be foreseen in 1960. The magnitude of this "error" in projections based upon quite good demographic data underlines the need for a continuous program of updating applied to enrollment and related budgetary forecasts.

## FINANCIAL PROJECTIONS

Turning to the financial consequences and implications of our enrollment projections, it is overwhelmingly likely that there will be a continuation of the long-term differences in productivity trends which have caused educational costs to rise relative to the cost of other services in the economy.<sup>4</sup> If this is in fact the case, a reasonable method of projecting educational costs may be found in selecting a per student cost figure which is consistent with the trends of historical experience and which represents both operating and capital expenditures, and applying it to enrollments with a compound increase factor also derived from a statistical analysis of segmental financial records. If the results of this process are carefully qualified and understood, in particular if the projections are not mistaken for decisions or recommendations on what will or should happen, the resulting figures suggest a view of the future which is broadly consistent with projected enrollment increases and changes in mix, as well as with the general economic trends evident over the past decades.

Two sets of projections have been made. One deals with total institutional expenditures and the other reflects projections only of state operating support. Given the bunching or lumpiness of capital investments due to the irregularities of bond elections and short-term changes within long-term budgetary trends, it did not seem reasonable to project capital outlays from state sources only on the basis of the past decade's experience.

If the projections, with all their applicable qualifications, are useful indicators of the future, what do they suggest about that future? In the first place, they

**TABLE 4.4 PROJECTIONS OF TOTAL EXPENDITURES FOR THE THREE SEGMENTS OF PUBLIC HIGHER EDUCATION, 1968-69 THROUGH 1975-76 (In Millions of Current Dollars)**

	University of California		California State Colleges		Junior Colleges		Total Public Segments	
	Amount	%	Amount	%	Amount	%	Amount	%
1968-69.....	\$740	47%	\$414	26%	\$425	27%	\$1,579	100%
1969-70.....	850	47	468	26	477	27	1,795	100
1970-71.....	937	46	564	28	536	26	2,037	100
1971-72.....	1,030	46	642	28	593	26	2,265	100
1972-73.....	1,129	46	709	28	641	26	2,479	100
1973-74.....	1,236	46	768	29	685	25	2,689	100
1974-75.....	1,340	46	825	29	735	25	2,900	100
1975-76.....	1,395	45	899	29	806	26	3,100	100

forecast a considerable stability in the proportions of total institutional expenditures among the three publicly supported segments. Only a slight increase in the state college share is indicated, along with a corresponding decrease in the percentages for the University and the junior colleges. Second, the public totals show a reduced effect from increasing enrollments and a corresponding increase in the impact of projected increases in the levels of expenditure-per-student. With continuing pressure on faculty and administrative salaries and continuing increases in construction costs, we see no reason to expect anything other than rising unit costs. In practice, however, it is unlikely that unit costs will rise as smoothly as is implied by the projected totals.

In Table 4.5, we have projected state operating support totals for the three segments and for the several smaller academic and administrative units which receive state appropriations. The totals were projected by assuming a continuation of those trends affecting unit costs and by applying unit cost projections to projections of enrollments. Against these projected totals, the budgetary forecasts made by the University of California were entered and expressed as percentages of the totals. The resulting decline in the percentage of state support going to the University is consistent in direction and in rate with recent historical trends and with the implications of the projected distribution of students among the public segments.

Since the junior colleges and the state colleges do not maintain five-year budget statements and forecasts, the subtotals shown for these two segments reflect University plans combined with independently projected state operating support totals, rather than deliberate decisions and plans reported by the segments themselves. In passing, we note that recommendations for improved budget and planning procedures are contained in Chapter 5 in connection with discussions of organization and in Chapter 9 in connection with recommendations on public finance.

The state totals indicate an impressive increase in general fund appropriations. We know of no recent

and authoritative projections by the Department of Finance of the state's General Fund, and therefore it is not possible to express the projected state operating support to higher education as a fraction of that funding source. An exercise with ruler and graph paper, however, will suggest to anyone that the projected state appropriations to higher education represent a continuation of the long term trend whereby higher education has taken an increasing fraction of the state general fund. Whereas in 1968-69 operating support to higher education represented about 16.5% of General Fund expenditures, the projections in this chapter when combined with rough projections of General Fund Expenditures indicate an increase to 20% or 21% by 1975.

The implications in this substantial shift in projected budget allocation are discussed at length in Chapter 9. In that chapter the point is made that some of the higher educational funds may be available from lower education which is expected to show declining rates of enrollment increases. To the extent that this shift of resources, internal to the total educational budget does not take place, the projected demands of higher education presage sharp competition with the other state programs which are also dependent upon General Fund support.

In concluding, it should be noted that the long term shifts toward increasing General Fund support to higher education are not inconsistent with national trends respecting the share of GNP going to higher educational investment.<sup>6</sup>

## SUMMARY

If the future resembles the past in its general shape, and in particular if persistence rates do not change while entry rates improve most significantly for the junior colleges and the state colleges, the enrollments of California's institutions of higher education will pass the one million mark next year and edge toward 1.4 million by the middle of the next decade. Associated with these impressive but more gradual increases in total enrollments, will be gradual increases in participation rates and shifts in the distribution of students

**TABLE 4.5 PROJECTED OPERATING EXPENSE REQUIREMENTS FROM STATE SOURCES BY SEGMENT, 1969-70 THROUGH 1975-76 (In Millions of Current Dollars)**

	University of California		California State Colleges		Junior Colleges		Other Public		Totals	
	Amount	%	Amount	%	Amount	%	Amount	%	Amount	%
1968-69.....	\$291	46%	\$239	37%	\$96	15%	\$12	2%	\$638	100%
1969-70.....	326	45	271	38	108	15	15	2	720	100
1970-71.....	365	45	306	38	126	15	17	2	815	100
1971-72.....	385	42	359	40	146	16	20	2	910	100
1972-73.....	410	40	419	41	169	17	22	2	1,020	100
1973-74.....	432	38	485	43	193	17	25	2	1,135	100
1974-75.....	475	38	527	42	219	18	29	2	1,250	100
1975-76.....	520	37	540	42	260	18	45	3	1,365	100

among segments. The independent colleges and universities will continue to take a declining share of the market as a matter of policy and as a reflection of increasing economic difficulties. The junior colleges will expand their relative enrollments slightly while the University and the state colleges will hold their current positions.

On the financial side, the long-term trends manifested in increasing per student costs will continue. These trends, taken together with the effects of increasing participation rates and larger populations, will lead to expenditure increases on the order of 99% between 1969-1970 and 1975-76 for total funds and about 101% for state operating support. These increases are to be compared with an enrollment increase over the same period of only 40%.

The projected expenditure levels imply that higher education will absorb an increasing fraction of the state General Fund with all of the political and economic problems which this increasing pressure will engender.

Finally, it must be reemphasized that the enrollment projections are between medium and low and that they could be very seriously in error given specific program or budget decisions which change the direction of long term trends or by decisions which would improve persistence rates, and by keeping more students in college who originally enter, increase the rate of the projected enrollment increase and thus increase any budgets which may be associated with larger total enrollment levels.



## PART II

The Structure and Governance  
of Public Higher Education

Toward Equality of Opportunity  
in Higher Education

Attrition and the Flow of Students

The Role and Financing of Private  
Higher Education

Financing Public Higher Education

Urban Focus: Community Education  
and Assistance



# 5. The Structure and Governance of Public Higher Education

This Chapter has as its principal purpose an analysis of the strengths and weaknesses of the present structure of public higher education in California and the elaboration of a major reorganization proposal. The first section deals with the present structure and offers a criticism of some of its primary features. The

second section presents the proposed reorganization, its principal objectives, its essential characteristics, and some of its more significant details, together with a brief discussion of certain alternative approaches which have been or may be advanced to achieve many of the same ends.

## THE PRESENT STRUCTURE

### ONE STATE OR THREE?

As described in Chapter 2 of this report, the term higher education embraces at least three separate statewide educational systems in California. The University of California operates nine University campuses and some 30 other facilities under the direction of the Board of Regents. The California State Colleges are 19 liberal arts colleges joined together under the administration of the Chancellor and his staff and governed by a Board of Trustees. As of July 1, 1968, the public junior colleges, of which there are 85 campuses maintained by 67 local districts, have been linked together, to a degree yet to be determined, under the Board of Governors of the California Community Colleges. There are also 49 independent institutions which are members of the Association of Independent California Colleges and Universities, plus 31 other accredited private institutions spread up and down the state.

In addition, there is the State Scholarship and Loan Commission which administers the state scholarship and fellowship programs, the California Maritime Academy, and the Coordinating Council for Higher Education.

As these facts suggest, California's higher education structure is at once highly stratified and highly fragmented. No single agency has authority and responsibility for statewide policy development, the establishment of new institutions, the approval of new programs, or comprehensive financial planning. In past years each of the three public segments has been able to add enrollment, develop new programs and activities, build new facilities and budget available funds with little attention to similar activity and expansion in the other two segments.

New programs such as equal opportunity programs, computer assisted instruction, educational research and data processing centers are or will be established within each segment with little regard for what is *being done within the other segments*. Except for isolated informal arrangements between individual in-

stitutions with a strong common interest, the three segments are operated as if they were in three different states. The consequence is duplication of effort, needless competition and, most seriously, lost opportunities for productive cooperation in teaching, research and community service activities.

No agency below the level of the Governor and the Legislature has authority to reallocate resources among the segments according to changes in statewide needs and objectives. The Coordinating Council for Higher Education was intentionally denied such authority when it was established in 1961 as a voluntary coordinating body controlled by segmental representatives. The Master Plan Survey Team explicitly rejected the idea of a single board with effective governing powers. Instead, it recommended the establishment of an agency which has many of the characteristics of a protective association and which cannot serve a more significant role in the absence of a substantial overhaul of its powers, duties and composition, and a revision of Constitutional provisions regarding the University of California.

The justification for continuing the existing stratification of public higher education appears to be based entirely upon historical accident and historically nourished loyalties, not upon a careful assessment of the state's needs, the needs of the local communities or the needs of the institutions themselves. As each segment has grown, adding programs and enrollment, its independence has been carefully protected, and much effort has gone into attempts to identify different objectives and to spell out functional differences, so as to justify the continuance of the three separate systems.

### COORDINATION VERSUS INTEGRATION

We are convinced that the state can no longer afford a laissez-faire attitude regarding the organization of higher education, that California must now begin to bring together her educational resources so that they may be employed more efficiently on the one hand

and with greater freedom from needless constraints on the other. California must now look for new forms of organization and governance of higher education which will make it possible to achieve these goals.

At the state level the issue may be described as one of coordination versus integration. Coordination has been and must be voluntary. Voluntary coordination through the Coordinating Council for Higher Education was recommended by the Master Plan Survey Team as a way to bring the segments together to discuss their mutual interests and to give an appearance of unity of purpose without endangering their basic sense of independence. Accordingly, the powers and duties of the council were written in very general terms, and the council was limited for the most part to advising the governing boards of the segments. Appropriate to these objectives, the public was given only a very small place in the council's membership.

The inability of the Coordinating Council to play a major role in the development of higher education is perhaps most evident in regard to fiscal matters. The University, often with the support of the two other public segments, has consistently opposed any significant fiscal role for the council. The council itself has recognized its lack of influence in this area, particularly in regard to the annual budget requests of the University and state colleges. No "self-policing" of budget requests such as was once hoped for as a function of the council has yet been accomplished on a significant scale. Modest efforts by the council staff to initiate some beginnings of statewide fiscal and program planning have been quickly put aside by the council.

Recently the Director of the council's staff made the following statement in this regard to council members:

"The director finds that while California pioneered a long-range master plan for higher education, the Coordinating Council appears to have stopped short of translating this initial effort into an annual or periodic plan designed to bring about a team approach to providing post-secondary education. Rather, it appears that 'orderly growth' has been going forward on three fronts rather than one, permitting certain undesirable situations to develop as pointed out in the Terman report."<sup>1</sup>

In keeping with past policy, the council reacted to this comment, as well as to an accompanying proposal to begin to integrate existing planning into a single "coherent plan" for all of higher education, by promptly deferring consideration to a later date.

Voluntary coordination for public higher education in California has been tried and, with certain exceptions, has failed. Its few successes can be listed quickly. The Coordinating Council for Higher Education has succeeded in restraining the University and the state colleges from succumbing too easily to pressures for the establishment of new campuses. It has played a

significant role in the annual determination of faculty salary increases. The council has been a very useful agency in the allocation of new federal aid funds. In recent years it has been a forum for discussion of several important policy issues. But beyond these activities the council has not had a significant impact upon public or private higher education in California.

One reason for this is that the council has rarely stepped beyond the bounds of the Master Plan with respect to problems of enrollment distribution, state funding and the expansion of educational opportunities. It has not attempted to develop short- or long-range program and fiscal plans for higher education. It has not had a significant impact of annual budget actions. It has not provided a solution to the problem of the state college drive for university status. It has had little impact on the growth and development of the junior colleges. For all of these reasons, membership on the council has not been elevated to the level of membership on the Board of Regents or the Board of Trustees.

Some form of "mandatory" coordination, with the powers and duties of the council carefully spelled out, is unlikely to be any more effective. Real coordination, whether voluntary or mandatory, will still depend heavily upon cooperation from the segments. As long as the segments themselves are the basic structural units of the system, they will remain paramount, and the governing board and administrators of each segment will continue to give first priority to the interests of that segment. Under these conditions no important changes in current conditions can be expected.

## **BARRIERS TO MAXIMUM USE OF RESOURCES**

While other states which are making large investments in higher education are developing unified structures in the public area, California, in spite of, or perhaps because of the Master Plan, is continuing to permit its three public systems of higher education to grow independently and largely unchecked except by their relative abilities to compete for limited resources. In consequence of this rivalry, barriers have been built up between the three public segments which reinforce the original structural stratification. These barriers between the segments seriously affect the availability and disposition of faculty, library resources, laboratories and research opportunities.

Under the present system these resources have become compartmentalized. That is, they are available only to those students and faculty who are at the right place at the right time. The decision of individual students and faculty members as to which segment they will enter determines as well the quality and nature of the educational resources which will be available to them. The freezing of resources which has resulted from the stratification of public higher education is, in our opinion, one of the most serious weaknesses of the present system.

Within each segment the movement of students is generally unrestricted except as affected by the crowding of the older campuses and by problems in the junior college system caused by district boundaries. Between segments, however, there are many procedural and practical barriers to the transfer of students. Differential admission requirements are the most obvious obstacle, but in addition there are the continuing problems of articulation, particularly for junior college transfers, which appear to have little educational justification.

As was observed in a recent report prepared by the staff of the Coordinating Council, the problem of state college and University requirements as obstacles to transfer is one of long standing in California higher education.<sup>2</sup> Current policies of diversion and redirection of students have made the problem even more important and have increased public demand that it be easier for students to move among the segments. At present, students who attempt to transfer between segments are faced with the possibility that they will not receive credit for courses they have been required to take and that they will have to take additional courses after transfer to meet new requirements.

Efforts to improve articulation between the segments are continuing under some pressure from the Coordinating Council. In all probability the situation has improved over the past five years. However, little is known at this time about the number of students who are prevented or discouraged from transferring between campuses and between segments.

Another and perhaps more important set of barriers surrounds the faculties of the three segments. Each segment has its own salary scale (each district, in the case of the junior colleges), and each has its own system of benefits and personnel policies. Consequently, there can be no significant interchange of faculty despite the considerable benefits which might accrue to each segment if such an interchange were established. At present the only interchange occurs when, for example, state college faculty are hired to teach summer session courses at University campuses, or when junior college faculty teach in "extended day" courses at the state colleges.

As a result, the extensive research and development facilities of the University are largely closed to junior college and state college faculties, and the teaching opportunities at the junior colleges and state colleges are closed to University faculty. Given the present shortage of faculty relative to the demand to meet enrollment growth, the restricted availability of research opportunities and the overlapping of functions among the three public segments, it is very difficult to find any justification for this situation.

## **BARRIERS TO EFFECTIVE PLANNING**

This same stratification of public higher education has made effective statewide planning all but impossible. One reason for this is to be found in the barriers between the three public segments. Another is to be

found in the fact that within each segment there is a strong tendency towards a single pattern of development. Uniformity is not inherent in this structure, but each institution within a single segment works within or toward essentially the same admission requirements, faculty and administrative salaries, teaching load, facility standards, budget formulas and administrative staffing patterns. Consequently, all the institutions within a segment must operate within much the same general pattern.

Moreover, the attitudes and policies of the governing boards and central staffs strongly reinforce these patterns and discourage the development of important differences among the institutions within each segment. When one campus receives an important concession, all of the other campuses within that segment are likely to claim the same treatment, and the governing board, governed itself to a large extent by precedent, usually extends its action to include the other campuses.

It has followed, in practice, that individual campuses inherit a large and important set of characteristics solely from the circumstances of belonging to a particular segment. San Jose State College, for example, is centrally located in a large and rapidly growing metropolitan area with a diverse agricultural and technical-industrial base, but it may not aspire to offering advanced graduate work, to the development of professional schools, or to the recruitment and retention of faculty of distinguished attainments in various fields of research. Although it is a large, strong, and mature campus with a major metropolitan and agricultural constituency, by virtue of its membership in the State College System it may not develop along university lines.

On the other hand, the University of California at Santa Cruz, a still small new liberal arts college, must have institutional aspirations akin to those of Berkeley. These opportunities and lines of institutional growth and development are open to the campus in Santa Cruz, not because of the factors of its location or stage of growth but because of membership in the University system.

Of course, the Santa Cruz campus (or the Irvine campus or the San Diego campus) did not just happen, it was obviously established with the intention that it become a University campus with all the potential for growth which follows from that fact. Nevertheless, once such a decision is made there is now no way of altering it, of changing an institution's course of development once it has begun, whatever the force of new circumstances and of subsequent experience.

Each campus is now locked into the general mold of the segment in which it was established. State colleges such as San Jose, San Diego and San Francisco are locked into the state college system and cannot exceed the developmental ceiling agreed upon under the Master Plan, no matter what their strengths or the need for university centers in the areas which they serve. Other state colleges such as Stanislaus and

Sonoma must also pursue the general state college pattern despite the benefits which might accrue to them and to the regions they serve from a much greater degree of specialization.

University campuses such as Santa Cruz and Riverside are similarly locked into the general University mold which, despite some important differences in organization, emphasis and outlook, forces them to rush ahead in the tracks of Berkeley and UCLA. Opportunities for leadership in undergraduate teaching and organizational innovation are inevitably subordinated to the accepted standards of the segment as a whole.

Comparable pressures can be found among the junior colleges. Because there was once a strong tendency among certain of the larger junior colleges to become or seek to become four-year colleges, it seemed desirable to close off that possibility altogether in the Master Plan. Consequently, a junior college with a strong academic program in an area which needs a four-year liberal arts college cannot be expanded to fill that need. Instead, the community must wait for the establishment of a state college or University campus, whether or not it can support both a two-year and a four-year institution.

It is our belief that these segmental rigidities are serious handicaps to the orderly development of higher education in California and that they are overwhelming obstacles to effective statewide planning. We also believe that the benefits of greater flexibility to be gained by erasing segmental lines would far outweigh any increased difficulties of administration which might accrue from unification.

It is clear that circumstances have changed and will continue to change so that a campus which is established by one segment may more appropriately assume the functions and characteristics of an institution in one of the other segments. Under the present structure this is possible only by actually transferring campuses between segments. Even in the absence of constitutional prohibitions against such action it would not appear to be a practical solution. If only one such change were desirable, it might seem the best course, but a number of such changes are likely to be found needed in time. In our judgement, resistance to multiple institutional transfers of this type, from one segment to another, would be even greater than is the present pressure to conform to segmental norms within each segment. Therefore, we believe that the only real solution is to erase existing segmental lines.

Thus would also clear the way for more effective statewide planning of programs and administration. At present very little planning of this type occurs and that which does is largely confined to an individual segment. For example, despite the critical importance of teachers and the vital contributions of almost all California institutions toward the training of teachers, there has been no comprehensive evaluation of the numbers needed, the numbers potentially available from other states and the net requirements for those to

be trained in California. Neither has there been any evaluation of the adequacy of the present distribution of teacher training programs among various public and private colleges. The Committee can find no evidence, in this important field, that there is any single focus of concern or responsibility for the review and evaluation of programs which have so vital and so clear an effect upon the intellectual health of the state.

The Terman Report on engineering education which was recently commissioned by the Coordinating Council suggests that several campuses have been permitted to establish engineering programs which are limited in quality, extraordinarily costly in relation to their numbers of graduates, and, in total, well beyond what can be justified by the demands for engineering education among qualified students.<sup>3</sup> The manner in which this problem has developed suggests that comparable problems may exist in fields other than engineering.

The third example of inadequate planning and analysis is drawn from the general field of academic attrition. Simply put, no one knows how many of the students who enter California colleges never complete a degree or curriculum anywhere, anytime. While reasonably detailed statistics are available in some institutions on students who are currently enrolled, the minute a student leaves an institution he is of concern to no one. As a result, there are available only the most rudimentary and limited bases for estimating the very substantial, and quite probably growing, attrition rates which are characteristic of all of the public colleges in California. While reorganization may not of itself assure adequate analysis of the large scale dynamic characteristics of student flows, there is every reason to believe that without providing a strong, central focus for planning and analytic responsibility, the information resources of the future will be little better than they are now.

In sum, the present structure is not working. The system of voluntary cooperation established under the Master Plan has done little to foster orderly growth of higher education. The late Arthur Coons, who served as Chairman of the Master Plan Survey Team, has written the following about the period of 1965-67:

"Within each segment there has been some struggle between and among institutions, but the main struggles have been between and among the segments themselves as major 'corporate' estates vying for advantage, favor, and finance. At times these segments have sought or have found common ground. At other times, and much more characteristically, they have been vying vigorously for their own interests, often with not much evidence to support the idea of a commonly respected profession, manifesting bitter animosity, charges, and counter claims."<sup>4</sup>

The recent study by the Governor's Survey on Efficiency and Cost Control, after surveying each segment and the system as a whole, reached the conclusion that "there is a lack of sufficient coordination to pre-

vent overlapping of roles, duplication of facilities and lack of specialization of campus and programs." The report goes on to say.

"Inadequate planning and coordinating machinery has led to the duplication of facilities, waste of resources and absence of "cost of alternative" studies by the Council or any of the segments. Additionally, there is an apparent lack of a trend toward extension of classes into evening hours, as suggested in the Master Plan; a fragmented approach to computer systems; establishment of new campuses far in advance of need, proliferation of curricula and circumvention of the Master Plan with respect to delineation of function. The state colleges appear to be seeking university status in the fields of research and the granting of doctorates. Also, many junior colleges aspire to achieve four-year status."<sup>5</sup>

In short, those who have looked closely at California's system of higher education in recent years appear to be unanimous in believing that the present structure for coordination and planning is not working and needs substantial revision.

### THE PROBLEM OF EQUITY

Another major weakness of the present structure has to do with the problem of equity. Do students receive the same quality of instruction in similar curricula in all three segments? If not, should they?

As was noted previously in the Committee's progress report, the rank order of expenditures per student which characterized each segment in the late 1950's appears to have been preserved over the past ten years. The level of expenditure remains directly related to the measures of academic ability used to determine which students are eligible for admission to each segment. The better the student, according to conventional measures of achievement and ability, the more spent (on the average) for his instruction. This proportioning of average expenditures to ability measures must, in our judgment, be regarded as a major, if implicit, pedagogical and philosophical premise of the Master Plan.

This is not to say that we agree with it. We do not. But before we examine the merits of the policy, we will present some evidence of its importance and impact.

In response to a request by the Legislature, the staff of the Coordinating Council for Higher Education prepared the unit cost figures for 1966-67 shown in Table 5.1.

**TABLE 5.2 UNIT COSTS FOR INSTRUCTION, FALL, 1963**

	<i>Total Instructional Expense per Student Credit Hour</i>
Lower Division	
Junior Colleges .....	\$14.69
State Colleges .....	18.51
University of California .....	23 63
Upper Division	
State Colleges .....	27 07
University of California .....	45 16

Unquestionably, these figures obscure important differences in student mix—the higher percentage of students at the upper division and graduate levels at the University—and the cost differences which reflect that mix. They also obscure other important facts; for example, the ability of the University to save on teaching salary costs at the lower division level through the use of teaching assistants and large classes and consequently to spend more on other salaries and expenses. But the figures do suggest a major discrepancy in the level of resource expenditure per student among the three segments.

These differences were evident also in figures reported by the council in its 1965 *Cost and Statistical Analysis* for public higher education as shown in Table 5.2. These figures attempt to segregate unit costs by level of instruction.

Comparable differences in the level of expenditure for instruction can be demonstrated in regard to individual elements of instructional cost, such as faculty salaries and benefits, library resources, instructional equipment and supplies, supporting staff, and special programs related to instruction. State college faculty salaries run 5% to 10% behind those of the University (and administrative salaries for the state colleges lag even further behind). Library expenditures per FTE unit of enrollment for the general campuses of the University run nearly 40% ahead of library expenditures for the state colleges, despite the more rapid enrollment growth of the colleges and the meagerness of their collections according to national standards. The junior colleges have been able in recent years to raise their maximum faculty salaries to levels comparable to those for the state colleges, but in all other respects, according to the very fragmentary data available as to junior college expenditures, the resources provided for lower division instruction among the junior colleges are substantially less than the resources available for lower division instruction at the state colleges.

**TABLE 5.1 ENROLLMENT DETERMINED AVERAGE COSTS BY SEGMENT, 1966-67**

	<i>Enrollment</i>	<i>Expenditure</i>		<i>Average Unit Cost</i>	
		<i>Total</i>	<i>State</i>	<i>Total</i>	<i>State</i>
University of California .....	75,248	\$168,128	\$133,354	\$2,234	\$1,772
California State Colleges .....	132,900	186,077	167,880	1,400	1,263
Junior Colleges .....	261,297	218,579	71,243	837	273

Although these differences in resource allocation among the three segments are widely recognized, it has generally been assumed that they are fully justifiable on some educational grounds. There has been tacit acceptance of the notion that a disproportionate share of educational resources should be made available for the instruction of those judged to be the ablest students. This notion is nowhere as evident as it is in the Master Plan, in which it is recommended, in effect, that a greater proportion of less able freshman and sophomore students be diverted to the junior colleges, where expenditures per student are lowest.

A University study committee recently described the situation in these terms:

"Outlays per student are maximum for UC, moderate for the state colleges and small for the junior colleges. That is to say, the expenditures are large where the returns are likely to be especially great—e.g., expenditures on the top 12 percent of high school seniors."<sup>8</sup>

In no small part the present policy results from the effort to build and maintain the reputation of the University of California in competition with four or five elite private eastern universities. The growth of the University's prestige and stature has been of great benefit to this state, but it has also been achieved at a great cost, the denial of resources to other institutions. It is all too clear that not all public institutions can seek to obtain such stature. It is also evident that no institution can gain a reputation for academic excellence which exceeds the level of ability of the students it admits. Accordingly, the "best" students and a disproportionate share of available resources have been concentrated in the University.

Few educators in this state should be willing to accept this situation as educationally defensible when it is stated in these terms. Even assuming that present admission requirements do accurately identify the ablest students, we know of no evidence to support the contention that the best students should get the most costly instruction. Once students are admitted to a public institution of higher education it would seem reasonable to expect that all who are enrolled in similar curricula should get roughly the same expenditure of resources, or, perhaps, a greater percentage of available resources might be devoted to those who are found to rank lowest in previous achievement.

### **DIFFERENTIATION OF FUNCTION IN THE 1960 MASTER PLAN**

A good deal of attention has been given since 1960 to the effort in the Master Plan to spell out the differentiated and distinguishing functions of the University of California, the California State Colleges and the public junior colleges. The language of the Master Plan was incorporated in the Donahoe Act to provide as follows:

22550. The Legislature hereby finds and declares that the University of California is the primary state-supported academic agency for research.

22551. The University may provide instruction in the liberal arts and sciences and in the professions, including the teaching profession. The University has exclusive jurisdiction in public higher education over instruction in the profession of law, and over graduate instruction in the professions of medicine, dentistry, veterinary medicine and architecture.

22552. The University has the sole authority in public higher education to award the doctoral degree in all fields of learning, except that it may agree with the state colleges to award joint doctoral degrees in selected fields.

22606. The primary function of the state colleges is the provision of instruction for undergraduate students and graduate students, through the master's degree, in the liberal arts and sciences, in applied fields and in the professions, including the teaching profession. Presently established two-year programs in agriculture are authorized, but other two-year programs shall be authorized only when mutually agreed upon by the Trustees of the California State Colleges and the State Board of Education. The doctoral degree may be awarded jointly with the University of California, as provided in Section 22552. Faculty research is authorized to the extent that it is consistent with the primary function of the state colleges and the facilities provided for that function.

22651. Public junior colleges shall offer instruction through but not beyond the 14th grade level, which instruction may include, but shall not be limited to, programs in one or more of the following categories: (1) standard collegiate courses for transfer to higher institutions, (2) vocational and technical fields leading to employment, and (3) general or liberal arts courses. Studies in these fields may lead to the associate in arts or associate in science degree.<sup>10</sup>

These provisions are believed to be the heart of the Master Plan. This "differentiation of function" is intended to provide the basis for the other principal elements of the Master Plan which deal with admission standards, diversion of students, state support, coordination and the need for new campuses.

We question whether this language actually describes different roles for each segment so much as it lays down rigid limitations to their growth and development. Fundamentally, these provisions set ceilings on growth and development toward the University model on the part of institutions within the state college and junior college segments. The Master Plan did not add to the functions of the junior colleges, it simply listed their existing functions and prohibited them from developing into four-year institutions. The Master Plan did not add significantly to the functions of the state colleges, it simply marked off those areas (doctoral programs, organized research, professional training) into which the state colleges are not to venture in any substantial way.

The 1960 Master Plan was not, in fact, a plan but a compromise "package" expressing the claims of each of the existing segments at that time in certain areas. This was stated clearly by the Master Plan Survey Team itself:

"A 'package' acceptable to all segments required compromises. *Frank recognition of the needs and desires of each segment and of relative priorities among them was an essential starting point.* The junior colleges sought fuller recognition of their role and a mechanism to arrest the projected decline in their proportion of lower division students. The state colleges wanted 'the efficiency of freedom' to manage their own affairs, the authority to enter the research field, and a potential role in graduate education beyond the master's level. The University wanted to expand in proportion to the growth of the state and was concerned lest changes undermine its quality standards for graduate and professional education and jeopardize its premier role in advanced training and research."<sup>11</sup> (Italics added)

For various reasons the state colleges have had the greatest difficulty living with the results of this "delicately balanced consensus." At one time the Master Plan appeared to promise new strength to the state colleges, a new opportunity to achieve "excellence". The original Master Plan agreement promised them an independent governing board with constitutional autonomy, fiscal autonomy similar to that of the University, an expanded research function and an opportunity to participate extensively in graduate education beyond the master's degree level. Even when several of these recommendations were not implemented the colleges retained expectations of a substantial growth in stature and prestige.

In the opinion of many state college observers, these have proved to be unfounded expectations. In their view

". . . the nature of the compromises struck between the University and the State Colleges in the Master Plan (together with certain other historic differentiations) are such as to affirm and perpetuate an unwarrantably advantageous position for the University in comparison with the State Colleges. The placing of the State Colleges in a perpetually and invidiously subordinate position to the University operates to the inherent disadvantage of the students and the faculties in the State Colleges and thus to the people of California because it develops and sustains differential quality in and among the senior segments of higher education.

"The Master Plan is fundamentally and inherently contradictory. On the one hand, it requires that each segment strive for excellence in its sphere and, on the other, it provides a set of arrangements which make differential quality among the segments inevitable."<sup>12</sup>

## TWO UNIVERSITY SYSTEMS?

The state college faculties complain of having been relegated to "second-class academic citizenship" by the Master Plan. First-class citizenship to many in the state colleges and elsewhere in the academic world means university status, and university status was clearly reserved under the Master Plan to the campuses of the University of California. The Master Plan, in the words of the Chairman of the Survey Team, gave the University of California, "a protection of its essential standards . . . a renewed sense of security."<sup>7</sup> This security derived in no small part from the University's apparently successful effort to turn back the threat of incursions into its domain by several of the leading state colleges.

However, by 1962 it was evident that a number of the state colleges were not content with the title of California State Colleges but were seeking university status both in name and in fact. Initially this effort focused in a drive to gain direct state support for faculty research, an expansion of master's degree programs, a reduced teaching load and a narrowing of the gap between University and state college faculty salaries. In 1967 the state college drive for university status was openly proclaimed by the Chancellor of the California State Colleges. In testimony before the Constitutional Revision Commission, Chancellor Dumke attacked the state colleges' "second-class academic citizenship," claiming that several of the state colleges were not colleges but universities and that a change in name for the entire system was overdue.

At the request of the Chancellor and the Trustees, legislation changing the name of the system as a whole from California State Colleges to California State University and authorizing appropriate changes for the individual campuses was introduced in the Legislature in 1967 and again in 1968. In both years the bill received more than enough support for passage by the Assembly but was stopped in the Senate's Committee on Governmental Efficiency. Although there remains some strong opposition to the name change in the Legislature, that opposition is unlikely to prevail for many more years in the absence of an alternative which can attract wide support.

We do not accept the proposition that there is only one road to academic distinction. Moreover, although the Chancellor of the California State Colleges has insisted that the state colleges can maintain their emphasis upon teaching rather than research once they become universities, there is little evidence to support this contention. Along with the name change, the Chancellor has proposed that state college salaries be raised to the level of University salaries, that faculty teaching load be reduced to an average of nine hours per week to provide increased research opportunity and that the colleges be granted authority to operate their own Ph.D. programs.<sup>8</sup>

Clearly the state college name change proposals are closely linked to dissatisfaction with the University's primacy in research, its monopoly in doctoral pro-

grams (other than the very slow to develop joint doctoral programs), the lower salary scales of state college faculty and administrators and the heavier teaching loads in the colleges. The proposed name change should be discussed openly, therefore, as a means of bringing about basic changes in the role and functions of the state colleges, rather than as an effort simply to gain greater prestige.

Once the colleges receive university status in name it is evident that they will seek it in fact as well. If they are successful, California, like many other states, will soon find itself with two university systems. But in California's case these two systems will not be limited to only a few institutions and one or two true "multiversities". In California's case there will be two separate large-scale systems, each extending throughout the state. It will then become apparent that the cost of maintaining two independent public university systems will be immense, much greater than the costs we have projected in Chapter 4. That cost would seem to require justification which goes well beyond that of institutional pride and old campus loyalties.

In sum, the state colleges have evidenced a strong dissatisfaction with the workings of the Master Plan to date and this dissatisfaction, in the absence of an effective alternative, is leading the state toward the acceptance of a costly and inefficient dual university system.

## **THE NEED FOR CONSTITUTIONAL REVISION**

There can be no effective structure for statewide planning and coordination for California higher education in the absence of constitutional revision. This fact was apparent to those who argued for greater coordination prior to the Master Plan, it was evident to the Master Plan Survey Team, and it must be acknowledged by all those who would propose now to strengthen or improve upon the present structure.

The Master Plan Survey Team stated the problem in these terms:

"The Liaison Committee since 1945 has had a remarkable record of agreements reached, but the fact is increasingly obvious that enforcement will require more sanctions than are available at present.

If the demands of the state for rational development and maximum economy in higher education are to be met, the coordinating agency will require considerable influence. Early in its work the Survey Team's attention was called to an opinion of the Legislative Counsel (Kleps to Donahoe, August 27, 1959, No. 239), which indicated that a strong coordinating body could not be established by statute, even though the Regents consented. Proceeding on the assumption that a constitutional amendment is unlikely to pass if opposed by any one segment, the team then undertook to work out the composition of a coordinating agency that would be acceptable to all segments."<sup>9</sup>

Although the opinion to which the Survey Team referred deals with a specific proposal for a new coordinating board, its findings clearly extend to any proposed coordinating agency with powers which conflict with Article 9 of the Constitution which gives the Regents full powers to govern the University. Any effort to give a coordinating agency specific powers to approve budgets, curricula, degrees, or admission policies, for example, would necessarily constitute an invasion of the Regents' powers in violation of Article 9.

The Legislature can grant the existing Coordinating Council statutory authority with respect to the budgets and curricula of the state colleges and junior colleges. It can not do so with respect to the University under existing Constitutional language. Therefore, any significant change in the existing assignment of powers and duties affecting all segments will require revision of Article 9. Only if it is proposed to increase the powers of the Coordinating Council with respect to the state colleges and junior colleges and to permit the University to continue to go its own way, would statutory action be sufficient

To recapitulate, we find that the 1960 Master Plan agreements are now under serious attack, that in the absence of any other action the state may find itself trying to support two full-scale university systems, that the Master Plan has not brought about effective planning and coordination, that serious inequities for students are built into the present system, and that any significant change must eventually incorporate constitutional revision.

# **A PROPOSED PLAN FOR REORGANIZATION OF PUBLIC HIGHER EDUCATION**

## **THE PRINCIPAL ELEMENTS AND OBJECTIVES OF THE PROPOSED PLAN**

In order to bring about a substantial improvement in the structure of public higher education in California, we believe the University and state college systems should be merged into a single unified system of public higher education, with the new system also to absorb the powers and duties which have been or will be assigned to the Board of Governors of the Community Colleges. This new system may bear the name of the University of California. A single governing board should be assigned statewide responsibility for the general governance of the unified system, for the allocation of state and federal appropriations, and for the development of long-range program and fiscal planning. Although the junior colleges would retain their basic relationship to their local boards and districts, they too would come within the jurisdiction and policies of the proposed new board.

Below the level of the statewide board there would be an administrative and coordinating body for each major region of the state. These regional units would be responsible for focusing the various public higher education resources on the needs of each region and for monitoring the implementation of statewide and regional policies. Within each region the individual institutions may function as university (graduate) centers, liberal arts colleges, community colleges and specialized institutions according to the needs of the region and their own capabilities for service. The individual institutions may be expected to function within this structure with no less freedom than they now enjoy within the existing systems, and in some cases much more.

There are four basic objectives behind this proposal. The first is to eliminate the organizational barriers that have been built up between the University campuses, the state colleges and the junior colleges so that all the resources of public higher education can be employed with maximum effectiveness. For example, all the lower division teaching resources, including faculty, libraries, classrooms, etc. which are now divided among the segments could, within the new structure, be reallocated according to the educational needs of the state and of each major region. New programs (in the area of equal opportunity, for example) would be established not according to the separate plans of each segment but according to the particular needs of each region. Faculty would move more freely between types of institutions for teaching and research.

The second basic objective is to free individual institutions from the unnecessary constraints upon their development which now result from inclusion within

one of the segments. This plan is intended to foster educational pluralism, to open new channels of development which, intentionally or otherwise, have been closed under the segmental form of organization. A state college which is capable of becoming a University center and which is located in an area which is not at the time adequately served, could be authorized to develop into such a center. A University campus which has developed exceptional strength as an undergraduate institution would not be forced instead into the present University of California mold. Small institutions which have been established outside major areas of population growth can be encouraged to develop specialized programs for the region or the entire state, instead of attempting to duplicate the programs of larger institutions. Institutional patterns which may be appropriate to large urban centers will not be forced upon less densely populated suburban and rural areas.

The third basic objective of the proposed reorganization is to insure that planning, financing and evaluation will be done continuously, comprehensively and in forms which permit informed review by the Governor and the Legislature. By bringing fundamental responsibilities for planning, financing and evaluation within the compass of a single board, the public will have some assurance, and for the first time, that all aspects of higher education and its links with the public school system are systematically considered in the largest possible planning context. We are persuaded that by no other organizational means can the full values of a large, complex, and highly differentiated educational system be developed and rationally managed.

This structure will also permit important changes in the method of allocating state funds for current expense and capital outlay. The creation of a single statewide agency to deal with all of public higher education will enable the Legislature and the Governor to delegate greater authority to such an agency to deal with the many competing interests which now converge at the state level. With the development of comprehensive long-range fiscal and program planning by the statewide board, individual institutions can be given substantially greater responsibility for their current financial operations. The new board will be expected to develop a system of allocations to the individual institutions based upon unit costs and performance standards rather than detailed budget approval. The proposed regional bodies will be expected to assist the state board by monitoring the equity and efficiency of the allocation system within each region.

Clearly, what we are proposing represents a very radical departure from the sort of structure which has been permitted to grow over the years since the first campuses were established. We are convinced, how-

ever, that a radical reorganization of this type is now necessary if California is to obtain maximum benefit from the resources it assigns to higher education and if public higher education is to respond effectively to the new demands being placed upon it.

## THE PROPOSED PLAN IN DETAIL

### 1. The Composition, Powers and Duties of the Governing Board

We propose that the three existing governing boards be combined to form a single statewide governing board for all public higher education in California. The new governing board for all public higher education in California should ultimately consist of twenty-five members, twenty-four of whom are appointed by the Governor for twelve-year terms. There should be no *ex officio* members other than the President of the University.\*

We would also propose that the new board initially absorb membership from each of the three existing governing boards. At the outset ten members from each of the three existing boards should be appointed by special provision to sit as members of the new board throughout a necessary transition period, all with the same rights, duties and obligations. New appointments might be postponed until the new board, by normal attrition, has been reduced to twenty-three members. At that time new appointments could begin to be made at the rate of two per year to maintain the board at 25 members.

The new board, which for convenience may be titled the Board of Regents, should have responsibility for: (1) the formulation of broad statewide governing policies for the system, (2) short-range and long-range fiscal planning, (3) the allocation of state support for all public institutions of higher education, (4) long-range program planning, (5) periodic evaluation of the performance of the system in relation to educational policies, (6) central administration of student aid programs, and (7) appointment of the President of the University and the presidents of the four-year institutions. These powers may be given to the new board within the terms of a broad grant of power and responsibility similar to that of the present Regents and by more specific statutory authority.

The functions of the Coordinating Council for Higher Education and the State Scholarship and Loan Commission would be absorbed by the new board, along with those of the three segmental governing boards. The establishment of special advisory committees to assist the board in certain functions can be left to latter determination.

The Board of Regents would be expected to prepare, update, and periodically submit to the Legislature a long-range plan for post-secondary education

in California. This plan should comprehend not only post-secondary programs but the points and processes of articulation between these programs and those of the elementary and secondary schools. Also implied by the broad planning and organizational powers is the responsibility for establishing regional educational goals and targets, assigning functional missions, and approving institutional and regional plans to meet approved planning objectives. Another component of the plan should be the five-year fiscal plan. The fiscal plan should in turn be explicitly related to the phased achievement of the objectives stated in the longer-term program plans.

This integrated fiscal plan for current operations and capital outlay should cover all funds for public higher education (including instruction, research, public service, student aid, administration, auxiliary services and related elements). It should be constructed on the basis of programs and performance expectations, not simply upon categories of expenditure and student enrollment units. The fiscal plan should also deal explicitly with all sources of income, including public appropriations, student charges, gifts and grants and earnings.

The Regents should be expected to regularly review and evaluate the quality, availability and efficiency of higher education in California and develop appropriate criteria and measurement techniques for that evaluation. The new board should be expected to report periodically upon the results of such reviews in connection with support requests and long-term plans.

While the new Regents would have no specific authority over the programs of private institutions, they should be aware of the current status and probable future course of those institutions and their major programs. Further, the current and probable future contributions of the independent institutions to the whole spectrum of educational activities in California should be reflected regularly and explicitly in the long-term plan and the related fiscal plan. Should state funds ever be appropriated for independent institutions, such funds should be appropriated to the Board of Regents and allocated by it to the individual institutions.

To the extent compatible with current and future federal law, the Regents should be the recipient on behalf of the State of California of all federal higher education funds which are allocated on a program basis. To the extent permitted by applicable federal law, these federal educational funds should then be allocated under the same planning and budgetary procedures applicable to other funds from other sources.

All academic and non-academic appointments at any campus or special institution other than a junior college should be made in the name of and under the authority of the Regents. All such employees should be designated as employees of the University of California, combined with such other distinguishing titles or designations as the Regents may set. The Regents

\* Whether or not this reorganization plan is adopted, we would recommend termination of the *ex officio* memberships on the present Board of Regents and the Trustees of the California State Colleges. The inclusion of elective officials as board members inevitably turns board meetings into partisan political battlegrounds. *Ex officio* membership for special interest groups (e.g., alumni, academic senates, student groups, etc.) is, in our opinion, contrary to the essential purpose of governing boards, whatever the merits in any particular representation.

should determine the salary scales and steps within scales to be applied to employees in various categories and with varying levels of experience and competence.

The Regents should also establish the several classes of institutions, including but not limited to community colleges, liberal arts colleges, university centers and specialized institutions and the general characteristics of each. The Regents should have the responsibility for classifying each institution and for approving changes in classification.

## **2. Unification of the Three Public Segments**

All personnel under the existing governing boards and all property, buildings, contracts, and indebtedness belonging to them would be transferred ultimately to the new system. Important differences in the rights, privileges and benefits of academic and non-academic employees of the three boards would be resolved during a transition period to cover the negotiation and settlement of inevitable conflicts. If necessary, complex financial and other matters may be administered as separate but parallel programs until complete consolidation can be accomplished. The experience and accomplishment of major corporations in the matter of merging programs and resources suggests that such consolidation may be difficult and complex, but that it is not impossible.

It should be noted carefully that in all of the foregoing we have referred to employees and property of the statewide governing boards. This is because we do not propose at this stage that the present relationship between the junior colleges and their local governing boards and districts be substantially disturbed, except as concern for the junior colleges as an essential element of the whole statewide system of higher education is made more explicit. We do propose, of course, that the powers and duties of the recently established Board of Governors of the Community Colleges be absorbed by the new Board of Regents.

## **3. The Proposed Regional Bodies for Coordination and Administration**

An important feature of the proposed reorganization plan as was indicated earlier, is the delineation of geographic regions of the state, each with a coordinating and administrative body to monitor the implementation of statewide policies and, most importantly, to assist in focusing public higher education resources of each region on the needs of the communities encompassed with that region:

We propose that for each region there be a Council of Presidents consisting of the presidents of all the public institutions of the region. The members of each regional council would elect one of their number to serve, for a two-year term, as Chairman. Each such council would be provided with a staff and executive officer by the Board of Regents. This staff would have responsibility, under supervision of the Council of Presidents, for administering the functions delegated to the regions, as well as any special regional pro-

grams, and for assisting the individual institutions, as necessary, in carrying out the policies of the Board of Regents.

Among the principal functions of the regional councils will be to prepare regional plans, coordinate admission policies and procedures, administer regional equal opportunity programs, and advise the Board of Regents on proposed new programs and facilities and the effectiveness of support allocation formulas. The regional councils will also have primary responsibility for overseeing the implementation of statewide and regional policies with respect to the joint use of specialized facilities, including research facilities, teaching and research exchange programs among the institutions of each region, and other cooperative activities.

With regard to admission policies it is tentatively recommended that the regional councils play a larger role in determining how the basic statewide policy—i.e., equal access to higher education for all citizens of the state who can profit from it and to the extent of their ability—shall be carried out within each region. That is, the regional councils would be responsible for allocating instructional responsibility among the institutions within the region according to the general guidelines of the regional and statewide long-range plans.

The chief purpose for the regional councils is to bring the institutions of each region together formally and regularly to deal with programs, policies and interests common to the majority or all of the institutions of that region. We do not propose that these councils be executive bodies, as we have little confidence in the ability of a committee or council to perform executive functions effectively. Such executive and administrative responsibilities as are assigned to the councils should be carried out by their executive secretaries, subject to approval by the councils. They must have specific continuing responsibilities, however, if they are to be an effective link in the decentralized (but unified) system of public higher education which we propose.

Somewhat tentatively, and with due regard for many of the hazards involved, we suggest that the state may be divided into 7 regions: a North Coast Region, a San Francisco Bay Area Region, a large North Central Region, a Central Coast Region, a Los Angeles Metropolitan Region, a South Central Region and a Southern Region. The approximate boundaries of these regions are shown in Figure III.

There is nothing inevitable about either the number of regions we propose or the specific areas and institutions included. Both aspects should be given careful consideration before any actual determination is made, and the boundaries should remain flexible to accommodate changing conditions and patterns of development. The San Francisco Bay Area and Los Angeles Regions are the most obvious selections because of the interrelationships of the urban communities and institutions of higher education within the two areas. The other regions are somewhat more arbitrary and



**TABLE 5.3 COMPARATIVE DATA FOR THE SEVEN PROPOSED HIGHER EDUCATION REGIONS**

<i>Characteristics</i>	<i>1 North Coast</i>	<i>2 North Central</i>	<i>3 SF Bay</i>	<i>4 Central Coast</i>	<i>5 South Central</i>	<i>6 LA Area</i>	<i>7 Southern</i>
Total Population, 1966 .....	455,900	1,871,700	3,894,600	989,800	1,806,000	8,020,600	1,687,400
Number of Counties .....	7	4	6	6	10	2	3
Total Higher Education Enrollment .....	14,466	67,748	161,258	42,765	37,921	266,625	65,179
Total Higher Education Enrollment— Public Institutions .....	12,929	64,881	136,691	41,555	37,616	218,282	57,537
UC Campuses .....	—	1	2	2	—	2	3
CSC Campuses .....	2	3	3	1	3	6	1
JC Campuses .....	3	11	15	8	12	24	13
AICCU Campuses .....	1	1	10	2	1	21	6

forced, they have been chosen according to such factors as geographical similarities, principal transportation routes, the existing patterns of institutional development and enrollment and the general population distribution. Some of these factors are noted in Table 5.3.

**4. The Individual Campuses**

Within this structure the individual campuses will enjoy a great deal of responsibility for their own operation. The allocation of support for current operations and capital outlay for each campus will be a matter of campus determination, within the allocation formulas employed by the statewide board. Each institution will have an important role in determining campus policies and procedures for implementing statewide and regional admission policies. The supervision of curriculum content and faculty assignments will also be a local campus responsibility.

The state college campuses will receive substantially greater responsibility for their own operation under this proposal than they now enjoy. The present University campuses will gain some responsibility, e.g. for capital outlay projects, but will generally find their situation changed very little. The junior colleges will remain within the local junior college districts.

We believe that under this plan greater responsibility and accountability will be combined on each individual campus. Accountability and responsibility for dealing with campus problems will be focused at the campus level, rather than being diffused among governing boards, statewide administrators, local officials and others. Although there is nothing in our proposal as presented here to preclude intervention on the part of the governing board and statewide officials in local matters, the whole structuring of duties and responsibilities is intended to discourage such activity.

It should also be noted that we do not propose that the consolidation of the segments should result in a blurring of functions so that, for example, every state college takes on the functions of a university campus. On the contrary, we believe that in certain respects the functions assigned to individual campuses ought to be sharpened, and as a case in point, that existing research activities be cut back somewhat on certain campuses in relation to teaching functions. The important factor in our proposal is that decisions as to what functions each campus shall perform would not

be made on the basis of segmental origin or pressures to conform to segmental patterns, but on the basis of relative need and capabilities. Moreover, faculty and students, we believe, should not be shut out of participation in various types of educational activity simply because of the campus they chose.

**5. The Distribution of Powers—  
A Recapitulation**

In Table 5.4 we have attempted to summarize our initial judgements as to the distribution of powers and duties among the three levels of the proposed new system. This distribution is by no means final, as this aspect of the proposal is much too complex and important to yield easily to quick decisions. The whole matter will require careful study and extensive consultation before any such judgments are put into effect.

We are convinced, however, that at each level there should be much greater attention to fiscal and program planning—for the individual institutions, for each region and on a statewide basis. It is also clear that planning at each level must take into account the policies, procedures and plans at the other two levels, and that fiscal and program planning must be integrated at each level.

**CONSTITUTIONAL REVISION  
TO EFFECT REORGANIZATION**

In order to bring about this reorganization we propose that Article 9 of the California Constitution be substantially revised as it pertains to the University of California to provide that:

- (a) There be a unified system of public higher education (with appropriate qualification for the special circumstances of the junior colleges) free from political and sectarian influence;
- (b) That the Board of Regents be given the authority and responsibility for the statewide governance of this system as spelled out by statute; and
- (c) That the composition of the Regents be changed to delete all *ex officio* members except the President of the University and, after a period of transition, to provide for 24 members appointed by the Governor for terms of 12 years.

**TABLE 5.4 PROPOSED DISTRIBUTION OF POWERS AND DUTIES**

	<i>Board of Regents</i>	<i>Regional Councils</i>	<i>Campuses *</i>
Planning	Prepare long-range plan for all higher education. Revise and update plan periodically.	Formulate regional plans Review institutional plans for inclusion in regional plans. Advise Regents on implementation of plans.	Prepare institutional program plans and related fiscal plans.
Budgeting and Allocation of Funds	Prepare and administer allocation formulas for current expense and capital outlay programs Prepare 5-year fiscal plans for public higher education. Allocate state appropriations to institutions Review special support requests. Review and transmit all federal program funds.	Advise Regents as to effect of allocation formulas; propose changes. Review special budget requests for recommendation to Regents	Advise regional councils as to effect of state allocation formulas. Propose special support requests.
Personnel	Establish statewide personnel policies, rules and regulations for academic and nonacademic personnel Establish salary scales.	Monitor the implementation of statewide policies.	Implement statewide policies. Formulate campus regulations, delegate campus responsibility in personnel matters.
Appointments	Appoint President of University, chancellors and presidents of institutions (other than junior colleges) with advice of campus committees. Appoint regional staff.		Advise on appointment of presidents and chancellors, appoint all other campus officers in Regents' name.
New Campuses, New Facilities	Determine need for and location of new campuses, major facilities—new junior college districts. Establish facility standards.	Advise Regents on need for new campuses and major facilities	
Curricula	Approve new degree curricula, approve termination of degree programs. Adopt minimum statewide standards	Advise Regents on need for new degree curricula	Propose new degree curricula. Approve new courses, course content, teaching methods.
Admissions	Determine statewide admission policies within the statutory guidelines	Determine regional implementation of statewide policies, allocation of instructional responsibilities. Determine necessary diversion and redirection policies. Evaluate regional policies and procedures.	Determine campus admission procedures.
Special Programs	Authorize special regional programs.	Administer special regional programs e.g., Equal Opportunity Programs; Research Institutes, Computer Centers.	

\* Junior colleges are excluded where powers of local governing bodies conflict with these provisions

We believe that the language of the Constitution should be as brief and as general in this regard as possible while maintaining the essential foundation of the public system of higher education. Details of the structure of the system, as well as the board's specific responsibilities should be spelled out in statute. We do not think that the sense of greater security which might be gained from extensive constitutional detail would offset the operational rigidity which that detail would engender.

## **ESSENTIAL FEATURES OF THE REORGANIZATION PLAN**

The fundamental feature of the proposed plan is the provision of a single governing board, with constitutional status, which is eventually to assume responsibility for the overall planning, and governance of all phases of publicly supported higher education in California.

The second important element of the recommended plan is the allocation of coordinating, planning and administrative powers to subordinate units with specified geographical jurisdictions. It should be emphasized, however, that the proposed regional councils are secondary to the statewide consolidation of governance and planning and to the expansion of responsibility and authority at the campus level. Crucial to the rationale for the new regional structure is the extension of substantial powers of self-determination to individual institutions in order to focus operational responsibility and to alleviate administrative problems which would otherwise face a system of this size. A basic purpose of the regional structure is to bridge the gap between the local campuses and the statewide governing board, as well as to extend the interests of the individual campuses to regional planning and development.

A third major feature of the recommended plan is its ability to respond flexibly to important new features of educational finance which are now quite possible but not yet in effect. Substantial federal support to public and private institutions is clearly on the horizon. The single planning board would be a natural and effective conduit for the redistribution of federal block and program funds among institutions in California according to the general policies established for educational development within the state. Without a strong, single planning body, it is more than likely that federal funds will flow directly from the federal government to individual institutions. We believe that federal grants, no less than state General Fund appropriations, should be allocated among programs and institutions in accordance with a consolidated, up-to-date plan for educational development in California and an explicit statement of priorities. Any other approach to educational financing is sure to be inefficient, inconsistent and wasteful of public investment, whether the invested funds are state or federal in their origins.

A fourth central feature of the recommended plan is a careful balancing of the powers assigned to the single board in the Constitution and by statute. We were led to our particular recommendations in this regard by the belief that although certain constitutional autonomies for higher education are desirable, constitutional insulation from statutory adjustment, if too pervasive, creates inflexible structures incapable of timely adjustment to altered circumstances. In reaching the particulars of the recommended balance between powers assigned by constitution and by statute, we sought to preserve all that has proved valuable in the constitutional status and independence of the Board of Regents, while permitting such organizational adjustments to be made in the basic structure by statute as experience and system growth may prove to be desirable.

No reorganization plan, however sweeping, will guarantee necessary and desired changes in policies and performance. It can, however, make such change possible, and even encourage such change, and this is all we claim for this proposal. Some of the additional changes we believe can stem from this form of reorganization can be listed very briefly:

1. Greater cooperation and coordination of programs and policies between public and private institutions of higher education within each region,
2. The development of special purpose institutions, particularly on campuses which may not otherwise draw a sufficient number of students;
3. A strengthening of campus advisory boards to take on some of the community relations functions which the existing statewide boards are unable to perform well;
4. The development of regional service centers to provide specialized high cost services in such areas as data processing, library resource storage and transmittal, and purchasing;
5. Experimentation with jointly sponsored specialized instructional programs at the graduate and undergraduate levels, including ethnic group studies (e.g. Afro-American Studies), which each institution may not have the resources to provide on its own,
6. The development of research and development centers which utilize talent from all three of the existing segments (e.g. urban studies centers as proposed in Chapter 10).

Of all these possibilities, perhaps the one with the greatest current interest is that which pertains to the development of local boards for individual campuses. We believe that there is substantial merit in encouraging the development of local boards to assist individual campuses in better serving and maintaining communication with their surrounding communities. It

would be a mistake to attempt to give such boards direct governing powers, as that would compound rather than alleviate existing problems of governance. But there is clearly a place for active advisory boards which can aid the individual institutions in maintaining an awareness of the attitudes and intentions of the neighboring communities and, in turn, in explaining the functions and objectives of the institutions to the people of those communities.

The state colleges now have advisory boards which are largely honorary bodies and which are used for very modest fund raising activities and a certain amount of community relations work within a very narrow stratum of the population. Where appropriate and desired, the functions and composition of these advisory boards might be altered to serve the broader functions described above.

### **THE PROBLEM OF TRANSITION**

Because this plan calls for a radical departure from the present organizational structure of public higher education in California, the legal, administrative and financial problems of transition will be complex and challenging. There are also, as we have acknowledged, a number of important elements of the plan about which we have advanced only our best preliminary judgments. Accordingly, implementation of this proposal will require the best advice of all of the institutions and agencies concerned.

We propose, therefore, that there be established, contingent upon the passage of the necessary constitutional revisions and supplementary statutes, a Joint Legislative Committee on the Reorganization of Higher Education. This Committee should be given explicit powers to assemble technical staff and technical advisors from the University, state colleges and junior colleges, from such executive agencies of state government as the Department of Finance, the Controller, and the State Personnel Board, and from such legislative staff agencies as the Office of the Legislative Analyst and the Legislative Council Bureau.

The joint committee should be given the responsibility for drafting such supplementary legislation as may be required to provide a sound basis in law and in related administrative practice for the operation of the newly combined higher education system.

If the Legislature approves the general reorganizational recommendations presented here, considerable time and much detailed work will be required to prepare the required constitutional revisions for voter approval, to obtain voter approval of those constitutional revisions, and to draft the necessary statutory changes. Following the successful completion of this work, additional time and effort would be needed to draft and approve the necessary administrative regulations and to phase into actual operations the new, consolidated organizational pattern.

### **ALTERNATIVE PROPOSALS FOR REORGANIZATION**

Several other reorganization plans have been advanced recently by other agencies and organizations. Although none of these proposals calls for such a radical restructuring as we propose, several would attempt to achieve certain of the same goals as we have indicated for our proposal. Almost all of them, except perhaps the state college name change proposal, are aimed at drawing closer together the major elements of our present system.

For example, the Report of the Governor's Survey on Efficiency and Cost Control recommended as an interim measure that the Coordinating Council be given additional statutory authority in order to improve statewide planning and coordination for public higher education. The proposed authority, although not spelled out in the report, would allow the council "to prescribe and adjudicate such areas as budgetary control, curriculum coordination, admissions and transfers, course proliferation, utilization of facilities, new sites, programs and long-range academic planning."<sup>13</sup> Unfortunately, the report does not elaborate upon the terms "prescribe and adjudicate." If those terms would mean anything at all this could not be accomplished by "additional statutory authority" unless the University of California were to be exempted.

Within the past few months the Coordinating Council has received a study of the problem of organization and governance prepared for it by an independent educational research firm, The Academy for Educational Development (AED).<sup>14</sup> In the short time available to it, the AED considered a number of different alternatives (including a plan for regionalization differing very substantially from what we propose). The AED's report recommends the merging of the University and the state colleges into a single system as the best means of dealing with the problems of duplication, competition and coordination of programs among the existing systems and institutions.

The AED proposal is presented in very general terms with little detailed analysis either of the shortcomings of the present structure which are to be remedied or the objectives of the proposed new structure. In several respects the proposal is similar to ours and to earlier proposals, in that it calls for a consolidation of existing systems. However, the AED plan largely ignores the vast junior college system which is such an essential part of California's higher education structure, and it appears to call for a central board with essentially the same powers and duties as the existing boards enjoy.

More recently, it has also been proposed to further fragment the existing structure by setting up a separate board of trustees for each University campus and for each state college. These campus boards would be responsible for implementing the policies of the segmental boards and for overseeing the operation of the individual campuses, and they would act as advisory

bodies to the segmental boards. Their powers would be much more extensive than those of the local advisory boards we have referred to above.

Such boards could not be established for the University campuses except by action of the Regents or by revision of the Constitution. Any legislative action alone would clearly violate Article 9 of the Constitution which gives the Regents sole responsibility for governing the University. The creation by statute of local boards with any significant powers and duties would clearly constitute intervention by the Legislature.

Setting legal questions aside, it remains difficult to understand what might be accomplished by further fragmentation of this sort except a further weakening of statewide policy formulation and planning. In the absence of some consolidation or integration of responsibility at the statewide level, there would be even less chance than now exists for the "orderly development" of higher education.

In response to this Committee's first rather tentative suggestions for a change in the structure, as reported in *The Academic State*, the University administration responded in these words.

It is of the utmost importance that proposed changes in the governance of higher education in California, under discussion by the Joint Committee and by the Constitutional Revision Commission, be given the most careful attention. The University of California has become one of the world's outstanding universities under current arrangements and the California State Colleges have achieved substantial eminence, in particular, since the adoption of the Master Plan and establishment of the Trustees of California State Colleges. Similarly, the locally gov-

erned junior colleges of California appear to constitute a model to which states all over the country look to find a pattern appropriate to themselves.

If this statement fully and accurately describes the development of higher education in California since 1960, then it may be correct that no further changes should be made. We do not think it does.

Unquestionably California's present system of public higher education is a notable achievement and many of its individual institutions have gained eminence among other such institutions. But California's system of higher education also has a number of important weaknesses which are becoming more and more serious. California's system of higher education is no longer considered a model which other major states wish to copy. We believe that the Legislature, the Governor, the governing boards, the students and the faculties should begin at once to strengthen the existing structure so that the ideals of the Master Plan and earlier studies can be brought closer to fulfillment.

In concluding these arguments and considerations which we believe justify the recommended reorganization proposals, it is important to note that there are limits on what should be expected of any reorganization. Changing the structure of governance will not, in itself, create new resources, reduce the annual costs of higher education, or convert institutions of modest attainments into Harvards or Berkeleys. Problems of scarcity of resources, of financing, and of quality will remain no matter how higher education is organized. We believe, however, that the recommended reorganization will make the solutions to these and other continuing problems far easier to achieve than may be foreseen now in the context of the highly stratified and fragmented higher education structure with which California is now encumbered.



# 6. Toward Equality of Opportunity In Higher Education

Traditionally California has relied upon low-cost widespread public higher education, rather than extensive student financial aid to assure access to higher education for students from low-income families. Student charges remain relatively modest, particularly for the state colleges and junior colleges, and the network of public campuses has grown rapidly over the past decade, yet it is becoming increasingly obvious that these efforts have not been enough. Even though California has gone well beyond most states in providing educational opportunity past high school, much remains to be done to assure true equality of opportunity for all segments of the population.

In large part the new challenge stems from the fact that higher education is no longer the province of an economic or academic elite, or even of the middle-class. Persons from all income levels and a wide range of ages and backgrounds have come to see at least two to four years of college as a reasonable expectation, even a necessity. In some ways this development is similar to the development over the period from 1870 to 1920 when a high school education became an unexceptional expectation for Americans of all backgrounds.

David Riesman and Christopher Jencks have described the situation in these terms:

"In 1900, for example, a man who completed high school was a member of his generation's educational elite. Most high school graduates of that era seem to have accepted most of the middle class norms of their time. In 1967, on the other hand, about 75 percent of all young people were finishing high school . . . As a result, the fact that a man survived twelve years in school no longer told much if anything about him. By 1967, colleges rather than high schools had become the instruments for separating out the prospective middle classes from the rest."<sup>1</sup>

We are now coming to see that our educational system, for a variety of reasons, has shut out large numbers of people who are no longer willing to have their aspirations and expectations stifled in this way. California must acknowledge this challenge and seek to move further toward true equality of opportunity if it is to continue to lay claim to significant educational leadership.

## COMMITTEE STUDIES

At the outset of its studies, the Joint Committee on Higher Education accepted this subject as one of its principal areas of concern, and perhaps the single most important area in which it should press for major change. One of the Committee's first acts was to engage Dr. Kenneth A. Martyn, an acknowledged expert in this relatively new field, to prepare a preliminary outline of the principal elements of the problem, including the chief barriers to equal opportunity, the basic objectives of state policy, a classification of existing programs and suggestions as to the kind of legislative action needed. Dr. Martyn's report was subsequently received and reviewed by the Committee and its staff, along with other materials prepared by the Coordinating Council for Higher Education, the State Scholarship Commission and other agencies and individuals.<sup>2</sup>

Midway in its studies (May 1968), the Committee held a hearing in Los Angeles on this subject to get the benefit of direct testimony from students, counselors, administrators and others closely concerned with the problem. The Committee then asked Dr. Martyn to undertake a second report which would present a comprehensive series of specific proposals aimed at substantially improving access to higher education among students from low-income families and from ethnic minority groups. Dr. Martyn's final report is being completed concurrently with this report and is to be issued separately by the Committee. The following material leans very heavily upon the work of Dr. Martyn, however, and incorporates most of his proposals as well as some of the supporting information. Where we depart in any significant way from Dr. Martyn's findings and conclusions we have attempted to make that fact clear.

## DEFINING THE TERM "DISADVANTAGED"

In order to proceed to a discussion of policy objectives, an assessment of current achievement and a formulation of new goals, it may first be useful to set forth and define a term to designate the youth of the state with whom we are concerned. As a matter of convenience we have decided for this purpose to use the term "disadvantaged youth," although we are not unaware of certain objections to the use of the term, particularly on the part of those who find themselves thus labeled.

We use this term to designate those youth who are disadvantaged in the sense that for a variety of reasons they do not enjoy the same opportunities to pursue higher education as do others—and we define the term by economic criteria. Unfortunately, the term has been employed by a great number of agencies and individuals in a multitude of different ways, as a synonym for “culturally disadvantaged” or “educationally disadvantaged”, for example, or as a multi-dimensional concept embodying a variety of sociological and economic indices, or as a substitute for Black, Mexican-American and Indian youth. Our definition is strictly economic, however, and is based upon family income.

For the purpose of this report, the term “disadvantaged” youth or student simply means students from families with an annual income of \$6,000 or less. We use the term not to describe individuals, however, but to provide a numerical dimension for our work. We do not propose, for example, that student aid programs should adopt so simple a standard for the allocation of aid; much more useful and sensitive standards are now being used. We propose only that this definition be employed to determine the numerical magnitude of the job confronting us and as a means of stating our objectives and of measuring performance.

### MEASURING CURRENT ACHIEVEMENT

In his initial report to the Committee on this subject, Dr. Martyn described very directly and strikingly the nature of the problem in quantitative terms. The best available data suggests that among students who complete high school and graduate, approximately 78%–80% who are not disadvantaged now continue on to college, as compared with 70%–72% for disadvantaged students. Current projections indicate that the participation rates for both groups are rising, but that the participation rate for disadvantaged students is rising more rapidly. Therefore it may be expected that by 1980 only 2 or 3 percentage points will separate the two.

These projections are no more than the best that can be done with very meager information. Still, we must acknowledge their message that if no changes are made in the admissions requirements, in the proportions of students at all social and economic levels who graduate from high school, and no particular intervention is

applied, the proportion of the disadvantaged students who go on to college from among those who graduate from high school will be very close, ten years from now, to the proportion of nondisadvantaged graduating high school seniors who will go on to college. If the assumption is made that the objective to increase opportunities for disadvantaged students means that it should be increased to the point where the proportion of disadvantaged to nondisadvantaged college students is the same as the proportion of disadvantaged to nondisadvantaged high school graduates, this may occur with only very limited intervention in the form of financial aid and other assistance.

But acceptance of this assumption would ignore a very fundamental fact—the high school graduation rate for disadvantaged students is well below that for other students, and any policy aimed solely at high school graduates will miss entirely that large group of youths who present the most important challenge to our educational system. On a statewide basis it appears that the dropout rate among high school students is at least 15% by the senior year and probably climbs to 20% at graduation. But in the major urban centers, in some of the inner city schools, the dropout rate may rise as high as 66%.<sup>3</sup>

Thus a very substantial portion of the student population doesn't even show up in studies based upon the number and percentage of high school graduates who go on to college. Although the proportion of disadvantaged high school graduates who go on to college (however briefly) may be very close to the proportion of nondisadvantaged high school graduates who do so, the proportion of 18–24 year old disadvantaged youth who go on to college will not come anywhere near the proportion of 18–24 year old nondisadvantaged who go on to college.

Another important dimension of the problem has to do with attrition rates for those disadvantaged students who do make it to college. We know of no very accurate figures which differentiate between disadvantaged and other students, but we do know that all the factors which seem to play the largest part in college attrition are most likely to be found among disadvantaged students—financial problems, inadequate preparation, low motivation, psychological barriers, conflicts between study and employment, etc. In the

**TABLE 6.1 RACIAL AND ETHNIC DISTRIBUTION OF ENROLLMENT FOR CALIFORNIA PUBLIC SCHOOLS AND PUBLIC HIGHER EDUCATION, FALL 1967**

Level of Enrollment	Spanish Surname	Negro	Chinese, Japanese, Korean	American Indian	Other Nonwhite	Other White	Totals
Elementary Grades (K-8).....	14 4%	8 6%	2 1%	3%	7%	73 9%	100.0%
High School Grades (9-12).....	11 6	7.0	2.1	2	5	78 6	100 0
All Grades, K-12.....	13 7	8 2	2 1	3	7	75 1	100 0
Junior Colleges.....	7 5	6.1	2 9	1	8	82 6	100 0
California State Colleges.....	2 9	2 9	1 9	7	--	90 1	100 0
University of California*.....	7	.8	4 6	2	--	93.7	100 0

\* Excludes Berkeley Campus

absence of strong efforts by the colleges and by the students' peers to help these students stay in college (and until recently the colleges had few programs along this line), the attrition rate will remain very high. This fact was brought out very clearly in testimony before the committee.<sup>4</sup>

According to Martyn's figures, if it is taken as a goal that the proportion of disadvantaged students in higher education in California ought to approximate the same proportion of the total of all disadvantaged 18-21 year olds as the proportion of nondisadvantaged students in higher education is to the total of all non-disadvantaged 18-21 year olds, then the present number of disadvantaged students going on to higher education will have to increase presently from 25,000 to 75,000, and the ten-year prediction will have to increase from 42,000 to 126,000.<sup>5</sup> Thus, by 1979 there will need to be provision for about 84,000 more students in California higher education than are presently expected. Further, the effort to provide opportunities for such students in higher education will require a concentration of effort at the junior high and high school level on the problems of academic, motivational, and geographic barriers to continued study which is at least as great and probably greater than the effort to remove financial barriers at the college level.

### **OBSTACLES TO EQUAL OPPORTUNITY**

The principal barriers to higher education for disadvantaged students are described at some length in the two reports prepared for the Committee by Dr. Martyn. They were also described very directly and succinctly in some of the testimony before the Committee at its hearing in May, 1968, in Los Angeles. These barriers need only be summarized very briefly here

Financial barriers have probably received the greatest attention. This term encompasses both the real and the perceived cost to the student and to his family of entering college and of staying in college from year to year. These costs, as measured by student charges, transportation charges, the price of books and supplies, the cost of board and room and clothing and, more difficult to measure, in reduced or foregone income, are fairly evident but often underestimated.

It is possible for disadvantaged students to obtain limited financial aid in the form of loans and grants and in the form of full- or part-time employment. However, it is also true that financial aid has not been made available in anything like the amounts needed to meet rapidly increasing enrollment, rising prices and a steady increase in the percentage of students who require such aid. Low student fees have been very important in giving many students further educational opportunity, but there are many costs other than tuition and fees which require substantial cash payments. Full- and part-time employment is commonplace for disadvantaged students as well as those who can not be so classified, but for students who also face im-

portant academic obstacles to success, such as insufficient preparation in the elementary and secondary grades, the necessity of part-time employment may prove to be too much of a burden.

Other special problems confront many disadvantaged youth in this regard. Often both the parents and the student are poorly informed about available aid. The financial obstacle appears insurmountable long before it is actually faced and, as a consequence, there may be none of the family planning to meet this challenge similar to that which takes place among middle-class families.

Another important set of obstacles can be categorized as "motivational" barriers. These barriers pertain to the student's self-confidence, his personal drive to gain status and his expectations as to how the world around him will react to his efforts. Quite obviously if back in the elementary grades and in junior high school the student and his parents build the expectation that the student will graduate from high school and go on to college, and, with reasonable effort, will succeed there, then the student has an immeasurable head start in attaining that goal. If, on the other hand, the student begins to accept failure, if he gets no support from his family and if he comes to expect that many of his best efforts will go unrewarded, he will face immense psychological obstacles to either entering college or, if he does enter, to persisting through the four or more years of study.

There is ample evidence that a student's motivation to attend college is strongly influenced by his family's expectations, his own desire for recognition, the attitudes and expectations of his associates, previous scholastic recognition and similar factors. As Martyn and others have emphasized, the relationship between a disadvantaged student's self-concept and the likelihood of his being successful in school and college can hardly be overstated.

Mr. Ron Lopez, a student at UCLA and a member of the United Mexican American Students, described the problem in these terms in testimony before the Committee.

"Basically what we're talking about is the problem of identity and image. All of our people, black and brown, go through the system and the only image they have is a negative image because the only way that the black and brown people are treated in our books and in our classrooms by our teachers is in a negative way. The end result is that by the time they get to the college level many of them have tried to become white, something that is physically very difficult to do for some of us. And the problem is this, they have also tried to become white in a cultural sense, because they're ashamed of their cultural background and they're ashamed of their second language, if they have it, they're ashamed of the various sociological aspects because they've been taught that it's incorrect."<sup>8</sup>

Mr. Lopez proposed the development of a "psychological moratorium", a period of special cultural study, to help disadvantaged students to overcome this problem.

Geographic barriers also stand between many disadvantaged students and further education. As we point out in a later section of this report, it has been the usual practice to locate college and university campuses in suburban and semirural areas. Much attention is given to accessibility by street and freeway but very little to public transportation which, in any case, is very scarce. Moreover, the campuses are located in areas with high college-going rates—not in the areas from which disadvantaged students come. Consequently, the simple matter of getting to the campus each day can be extremely difficult for students who live in the inner city, and especially if they must also work at a third location. It can be difficult physically, it can be costly and it can be very time-consuming.

Finally, there are academic barriers. These are clearly among the most formidable obstacles to equal opportunity which disadvantaged students must overcome. Under this heading we include such factors as subject matter requirements for admission, the development of general verbal skills, admission tests, and English language ability. College instruction places a great premium on basic verbal skills and so do admission tests and course requirements. Students who have not had the opportunity or the early training necessary to develop such skills are clearly at a great disadvantage. And there is considerable evidence that the public schools in the inner city are failing the children in this fundamental aspect of their education.

Moreover, these same students very often receive inadequate course counseling, at best. By the time they get to their junior or senior year, college may be closed to them because they have not taken the necessary pattern of courses—necessary either for specific entrance requirements or as basic prerequisites for college study. Unfortunately, the present evidence suggests strongly that remedial study at the college level is generally too late for most students. The problem must be attacked much earlier.

## **CURRENT EQUAL OPPORTUNITY PROGRAMS**

### **1. Present State Programs for Student Financial Aid**

The State of California participates in student financial aid programs in at least four different ways: (1) state administered and financed scholarship funds; (2) state-federal loan guarantees; (3) state matching appropriations, and (4) campus aid programs which utilize state supported staff and facilities. The following summary material pertains primarily with the first two forms.

*State administered and financed programs:* California has two state financed and administered programs for

California students who enroll in public or private colleges and universities in California: the State Scholarship Program and the Graduate Fellowship Program. Both are administered by the State Scholarship and Loan Commission, an independent agency with representation from the private colleges and universities, the three public segments and the general public. A third program, also to be administered by the Commission, is to be established under the terms of AB 765 of the 1968 Session under the title of the College Opportunity Grant Program.

The State Scholarship Program is a traditional scholarship program for students of the highest academic standing (as conventionally measured). It is based on the concept of student aid as a reward for academic achievement and promise. It has had little impact, therefore, on the problem of opening up educational opportunities for disadvantaged (economically and educationally) students.

Scholarship award winners are selected first on the basis of academic criteria and then are screened as to financial need. Applicants must meet minimum grade requirements of 18 A's and B's for five semesters of high school and score above a certain cutting level on the Scholastic Aptitude Test (SAT). In 1967 the minimum SAT score was 1130 for high school seniors. Applicants are then ranked according to their SAT scores for financial need screening. Financial need is determined according to the College Scholarship Service (CSS) standards, although certain departures are made from the standard CSS computation.

For 1968-69 individual state scholarships will range from \$300 to \$900 plus 90% of tuition and fees above \$900 up to a maximum of \$1500 per academic year. For students who enroll in the University or a state college the scholarships cover incidental or "registration" fees. Scholarships are held in trust for recipients who choose to attend a junior college prior to transferring to a four-year institution.

The number of new awards to be granted each year has been increased recently to the equivalent of 2% of the number of high school graduates of the preceding year. For 1968-69 it is estimated that there will be 5,500 new awards plus 5,150 renewed awards for a total of 10,650. In five years, under existing policies, the total number of scholarships is expected to increase to approximately 20,000 per year, and approximately 10% of first-time freshmen at four-year colleges will receive state scholarships.

The Graduate Fellowship Program was created in 1965 to provide financial aid for outstanding graduate students who intend to become college teachers. The principal objective of the program is to increase the supply of college and university faculty in California with special emphasis on fields in which there is believed to be a critical shortage of teachers.

The fellowships also cover tuition and other required student fees. Each award is determined on a needs basis according to the student's assets and income (no family contribution is required) and the level of charges of the institution attended. The number of

fellowships to be granted each year has been set by statute at the equivalent of 2% of the number of baccalaureate degrees awarded in the previous year. For 1968-69 it is expected that there will be 840 fellowships awarded at an average amount of \$1,000 each.

The newest program, and one which does have a direct bearing upon the problem of equal opportunity, is the College Opportunity Grant Program. Beginning in 1969-70, if the program gets started on schedule, up to 1,000 grants are to be awarded to disadvantaged undergraduate students by the Commission under this new program. The awards are to be made to students who are "not necessarily able to obtain state competitive scholarships by the conventional selection methods." The Commission is to determine the criteria for selection of disadvantaged students. Awards are to be in amounts up to \$1,100 per student. The stated legislative intent is that the awards will go primarily to junior college students.

No administrative funds were provided for 1968-69 to establish criteria, evaluate applications, make awards, etc. for 1969-70. It is uncertain, therefore, whether any awards will in fact be made for 1969-70.

*State-federal loan guarantees:* The Guaranteed Loan Program is a federally funded program which has been administered both by the Scholarship and Loan Commission and by the federal Office of Education, with the cooperation of private financial institutions. The program was established under provisions of Title IV of the federal Higher Education Act of 1965 and is intended to make low-interest loans available to students of all income levels. The federal government provides loan insurance funds with which either the federal government or a state agency guarantees loans by private financial institutions to students at interest rates of no more than 7% (originally 6%).

In the case of students whose families have annual adjusted incomes of less than \$15,000, the federal government, directly or through the Commission, pays all interest charges while the student is enrolled in college, and the interest cost in excess of 3% after the student leaves college. Under the federal regulations, students from families with incomes of \$15,000 or greater are eligible for a guaranteed loan but must pay all interest costs themselves.

Both undergraduate and graduate students are eligible. State regulations provide, however, that the students must be recommended by their colleges and be enrolled full-time in a degree, certificate or credential program. Loan amounts are authorized in a range between \$300 to \$1,000 for California undergraduates and \$300 and \$1,500 for graduate students.

In 1966-67 the Commission administered approximately 5,900 loans, and in 1967-68 approximately 12,200. By January 1968, the Commission had used up all of its loan guarantee reserve funds, and administration of the program was transferred to the regional office of the US Office of Education. The federal government continues to administer the program pending further legislation.

*State matching funds and support for administrative costs:* The state also participates in several federal student aid programs by providing necessary matching funds. These programs include NDEA loans and the Work-Study Program. In addition, state supported staff positions and facilities are employed on each campus for student aid administration.

## **2. Campus Programs to Assist Disadvantaged Students**

Most of the programs designed specifically to aid disadvantaged students have been initiated by the individual campuses, making use of such federal, private or general state support as can be assembled for this purpose. The specific programs have been listed and described briefly in several recent reports, including two reports to the Coordinating Council, *Increasing Opportunities in Higher Education for Disadvantaged Students* (1966), and *California Higher Education and the Disadvantaged Student* (1968), Martyn's first report to this Committee, *Increasing Opportunities for Disadvantaged Students, A Preliminary Outline*; and a recent report entitled *Programs for Disadvantaged Students in the California Community Colleges*.<sup>7</sup>

There is no need to attempt to summarize these reports here except to note a few principal characteristics of current activity. First, most of the existing programs are relatively small-scale and piecemeal, primarily because of difficulties in developing adequate financial support. For the same reason, few of these programs have developed an established institutional base to assure them continuity and to permit them to develop necessary experience. It is also important to note that student aid funds are more readily available to students at the four-year institutions than to students at the junior colleges where, despite the number of disadvantaged students enrolled, financial aid has received little attention until recently.

The University of California's Equal Opportunity Program was first authorized in 1964-65. In 1965-66 there were 100 undergraduate students enrolled in this program, and the number has now risen to 1,948 students for 1968-69. Proposed expenditures for 1968-69 total \$3,761,000, of which \$821,000 is from the Regent's Opportunity Fund, \$1,000,000 from a special allocation from the University Registration Fee, and the remainder from federal sources, foundation grants, and private sources. The distribution of University Educational Opportunity Students by ethnic group is shown in table 6.2.

The California State Colleges report 3,098 students in their Educational Opportunity Programs for 1968-69. Unfortunately we do not at this time have any information on the distribution of these students by ethnic group. Nor do we have any consolidated data regarding the junior college programs.

Finally, it should be noted that some of the most significant activity, particularly on the state college and junior college campuses, has been undertaken by the students themselves. Organizations such as the

**TABLE 6.2 ETHNIC DISTRIBUTION OF EDUCATIONAL OPPORTUNITY STUDENTS, UNIVERSITY OF CALIFORNIA**

	1966-67	1967-68	1968-69
American Indian.....	5	5	16
White.....	31	83	147
Black, Negro, or Afro-American	222	490	918
Mexican-American/Spanish Sur-			
name.....	127	268	500
Oriental.....	67	156	217
Unidentified.....	20	88	150
Totals.....	472	1,090	1,948

Black Students Union and the United Mexican American Students, acutely aware of the needs and attitudes of their fellow students, have played an important role in assisting disadvantaged students to succeed in their studies.<sup>8</sup> Where these organizations have received dependable cooperation from campus administrators, they have given strong evidence of the merits of unofficial self-help activities in this area.

### A PROPOSED STATE POLICY OBJECTIVE

We believe that the state's basic objective in this regard can be stated very simply. It should be the removal of all barriers to higher education for those who have been denied access directly or indirectly because of the color of their skin, their national origin, insufficient family income or inadequate preparation by the public schools. We propose that the general goal be the enrollment of students from ethnic minorities and low-income families in approximately the same proportion as such persons are found in the general college age population of the state. This should be accomplished not by restricting opportunity for those who now benefit from higher education, but by greatly expanding opportunity for those who now do not.

Some will object that such a policy can only be achieved by setting artificial quotas and by lowering present "standards." It is easily forgotten that the present admission structure is based upon quotas and "standards" which have no other rationale than their general acceptance. We are not in any case proposing a reduction in educational standards. Such standards go well beyond those used to establish admission quotas, they consist primarily of the standards of instruction which are observed in our colleges and universities. It would be a serious error to reduce these standards, it would be grossly unfair to those who finally achieve the opportunity to continue their education, and there is no need to do so.

Also, we believe the emphasis should be upon the factor of income rather than any other, as we have indicated in stating our working definition of the term disadvantaged. Most of the students who come within our definition are members of ethnic minority groups, but, of course, they do not make up the

whole of this segment of the population. As a matter of convenience we often refer to disadvantaged students and students who are members of ethnic minority groups as if the two were interchangeable. We are aware that they are not, even though for quantitative purposes the difference is relatively slight.

### RECOMMENDATIONS

It will be no simple matter, however, to achieve this objective. The matter of equal educational opportunity depends upon a whole series of interrelated factors including the quality of instructional programs at every level, individual and group motivation, the availability of appropriate financial assistance, the amount and quality of counseling and guidance provided before and after admission to college, the nature of admission procedures, the perceived relevance of higher education to each student, and each student's previous school experience. To deal with all of these factors will require the development of a comprehensive, large-scale state Equal Opportunity Program to be established on a statewide, regional and campus basis with reasonable assurance of continuing financial support.

We recommend that this comprehensive program include the following elements.\*

#### 1. College Advisors for High School Students

We recommend that state funds be appropriated through the Office of Compensatory Education of the Department of Education to provide for special college advisors for disadvantaged students in the secondary schools. The purpose of this proposal is to provide for the type of college counseling that most nondisadvantaged students get at home. The principal objective is to substantially increase the number of high school students who are properly prepared for college and to motivate and to recruit such students to apply to and enter college.

These special advisors are to supplement the regular professional counseling programs within the junior high schools and high schools in areas where there are significant proportions of disadvantaged students. The special advisors should be selected from college students at the junior, senior and graduate levels and should reflect the ethnic group composition of the high school students they are to advise.

The advisors should work 15 hours per week, for which they should be paid at the rates allowed under the Work-Study Program of the college or university from which they come. Not less than 12 hours per week of their time should be spent in direct face-to-face individual advising sessions with junior high and high school students. Their principal functions should be to help the students learn about the admissions requirements of the various California colleges and universities, the course prerequisites and the sources

\* Each of the first 8 recommendations is described in greater detail as to objectives, structure and costs in the separate report prepared for the Committee by Dr. Martyn

and methods of obtaining financial aid; they should also help students fill out financial aid application forms and admission application forms; they should help students in choosing the proper courses that lead to college entrance, and they should also meet with the parents of the students they advise.

Each advisor should be assigned a maximum of 50 students, and they should be so concentrated within a high school that every disadvantaged student within the high school is assigned to such an advisor. The work of the advisors should be coordinated with the school administration and the existing counseling program under the supervision of full-time counselors. These full-time counselors may be added to the faculty of each school through the appropriate appointment procedures of that school but paid for from a special appropriation authorizing this program. Such counselors would serve not only as supervisors of the advisory program, but also to increase the counseling staff in the participating high schools.

The actual selection of the special advisors should be done with the assistance of regional selection advisory committees made up of college students from the public and private colleges in each region. Those selected should participate in a four-week training session organized on the campuses of colleges in the region. The training programs should be held each summer and after the first summer should include a short refresher session for experienced advisors. The training program should be designed under the direction of a regional consultant working for the State Office of Compensatory Education. Those doing the training in the training sessions should also be predominantly minority group members. The training period should include some time on campus in a junior college, state college, university, and private college. The advisors should receive pay at work-study rates during the training period.

We propose that this program be administered under the Office of the Associate Superintendent for Compensatory Education of the State Department of Education. We believe that the cooperation of the colleges and University in the various regions of the state, as well as that of the high schools, can best be obtained by this approach. Further, the likelihood of success for the program will be increased if these resources are focused in particular areas rather than spread too thinly. Also, the relationships with school districts which are already established by the Compensatory Education Office through its Intergroup Relations Bureau establishes a precedent for this kind of cooperative endeavor.

For the first full year of operation at least fifty high schools and junior high schools should be included in the program. This will require a training program for 1,500 advisors statewide who in turn will be working with 75,000 students. These figures could be doubled during the second year so that 100 high schools and junior high schools are participating, with a total of 3,000 advisors, some of whom would be carried over from the first year, and 150,000 students

being included from the high schools and junior high schools. This number should be increased each year until the program includes students at each grade level from the eighth through twelfth in the participating schools.

During the 36-week school year, the advisors would earn approximately \$1,300-\$1,500, and during the summer training session they would earn about \$300-\$400. The total earnings for each advisor would be about \$1,600-\$1,900 each for the year, which is very close to the estimated cost for room, board, tuition fees, books, and incidentals for a year at a state college, junior college or University campus. On this basis, the first year direct cost for the advisors would be \$2,400,000-\$2,850,000. This money, however, would serve not only the purposes of this program, but provide direct financial aid for the selected disadvantaged college students. It would provide full financial aid for 1,500 such students.

The counselors, at an average cost of \$12,000 for an additional counselor in each of the 50 participating schools, would come to \$600,000. The training costs for the 1,500 advisors, exclusive of the direct compensation to the trainees which is included above, would be \$175,000 for direct instructional costs. With \$100 per month room and board for the students there would be an additional \$150,000, plus some preparation time and travel costs for the regional consultant and a staff to establish the program, including the selection procedures, which would come to \$75,000.

On this basis we estimate the total first-year cost for 1,500 advisors at \$3,550,000-\$4,000,000, including \$2,400,000-\$2,850,000 for the advisors, \$325,000 for training costs, \$75,000 administrative costs, \$600,000 for additional counselors, \$125,000 for office space rental and \$25,000 for clerical assistance. The cost of the program per secondary school student served for a year for the first year would be between \$47 and \$53. It should also be noted that out of this \$47-\$53 approximately \$32-\$38 would be money going directly to provide financial aid for disadvantaged college students. These funds would be serving two purposes—providing financial aid for disadvantaged college students and providing a program on a comprehensive basis to increase the proportion of minority group students who become eligible for admission to a college or university.

## **2. Special Advisors for Disadvantaged College Students**

We recommend that the necessary funds be authorized to provide University, state college and junior college faculty positions for persons to serve as special advisors for enrolled disadvantaged students. The general objective of this proposal is to increase assistance to disadvantaged students who enroll in college so that they can overcome academic obstacles to success and complete their studies.

These advisors should be selected by the institutions from among graduate students and seniors (or upper

classmen in the junior colleges). Most should be minority group members—Black, Mexican-American, or Indian. Their essential function should be to help disadvantaged students overcome some of the difficulties of procedure and paperwork involved in obtaining the most appropriate instructional program in the large urban colleges, to help him to get into the right class with the appropriate instructor, to help the student to choose his academic program and to help him cut through the red tape when necessary to obtain the various services which the college provides to students. In a large urban institution, particularly, such advisors would serve a very vital role in establishing and strengthening communication between the student and the institution on a personal, one-to-one basis.

Freshmen students would be assigned such an advisor for two years, and students transferring into the college as juniors would be assigned to an advisor for one year. In subsequent years, and in every case in the senior year, the student should participate only in the regular college advisement program. The intention behind this aspect of the proposal is to foster a sense of independence and equality among students eligible for this type of assistance.

Each full-time advisor position should be assigned no more than 50 students. Each advisor should be expected to meet with his advisees on a weekly basis, particularly during the first year, so as to increase the number of person-to-person contacts with faculty for such students. Following an initial orientation or training period, the advisors would be supervised by an experienced member of the faculty. The work of the advisors should be reviewed periodically to be sure students are given accurate and useful advice. The advisors should be paid as full-time or part-time faculty members.

This program should be administered within each individual college, and, wherever possible, within the Equal Opportunity Program of the college. The participating colleges should be required to provide funds from their regular faculty advisement allocation for the supervision of the program. Additional state support will be required for the cost of the advisors and for clerical help. Approximately 160 such advisors will be needed to serve 8,000 additional students in the first year. At an average salary of \$8,000 this would cost \$1,280,000. Again, it should be noted that these funds will provide financial aid for seniors and graduate students equivalent to the full cost of their college program. In most cases, at the option of the school, the advisors' workload will be divided into halves, fourths, or thirds. This will increase the number of persons serving as advisors, but will not change the estimated costs.

Space for the advisors will need to be included in the advisement and tutorial centers which are the subject of the next recommendation. Clerical help will add about \$100,000 to the cost. Some additional equipment costs could be shared between the regular col-

lege budgets and the special appropriation, at an initial estimate of \$24,000. Each succeeding year this program, as all the others, should be increased on the basis of the target number of students to be served. The division of funds between the state colleges, University and junior colleges should be proportionate to those target figures.

### **3. On-Campus Study, Advisement and Tutorial Centers**

We recommend that facilities be provided, particularly on urban campuses, for study, advisement and tutorial centers for all commuter students. The principal purpose of this proposal is to provide the same study opportunities for commuting students as are provided for students who live on campus in residence halls.

Most urban junior college and state college campuses have extremely limited on-campus or even near-campus residence facilities or none at all. For many of the disadvantaged students who attend these colleges there is inadequate study space at home, inadequate opportunity to consult with others on homework, writing, and exam problems, and no nearby access to college library facilities. All of these are advantages of the resident student that are particularly needed for academic improvement of the disadvantaged student. Roughly 85% or more of the minority group and disadvantaged students now enrolled in higher education in California are enrolled on one of the urban campuses. This program is intended to provide the appropriate study space on campus for these and other students, as well as space for organized tutorial help.

The first step in providing this space should be recognition of the need by means of an addition to approved plant space formulas. We would suggest the addition of 25 square feet of study space for every three eligible students, with the space which is already included in the campus facilities inventory for library carrels, study places, etc., to be subtracted from the total number of stations to be provided under this proposal. The study space should include drawer or locker space for the individual students who are assigned space to leave books, materials, and personal belongings that are related to their course assignments and participation. A desk or table and chair should be a part of the equipment provided in such a facility.

Pending construction of additional space of this type, study space in existing campus structures, temporary structures, or leased movable facilities could be provided or assigned and thereby added to the lists of space used for the assigned program in the facilities inventory. Such assignment could include the classroom facilities which are built into new library buildings and presently carried against the classroom inventory of the colleges. For the long-range, however, full implementation would need to be worked into the building program of the state with arrangements made for federal support and approval as a

part of the instructional program of the college. Space could then be built or converted within the college unions or libraries, or adjacent to such structures, on each of the urban college campuses.

The program as carried out for these facilities would have three parts. First, the provision of study space where the student can have a quiet place to study and keep his books and study materials undisturbed. Study spaces should be kept open daily until at least 11 p.m. and should also be kept open on weekends. The second aspect of the program would be tutorial help. Tutors would be selected for this program by a campus selection committee representing a majority of minority group and disadvantaged students. Tutors would specialize in the social sciences, English, language arts and the humanities, physical and biological sciences, and mathematics. The job of the tutors would be to help students with specific homework problems on specific subjects. They would also provide appropriate assistance in writing papers, initiation of library projects, and review and study for examinations.

The third aspect of the tutorial center would be to include space for the college advisors. This program is described in more detail in the preceding recommendation.

The tutorial aspect of this program should be administered under the Equal Opportunity Program on each of the campuses and should be tied in administratively with the financial aids, admissions, and special advisement programs. A tutorial coordinator would probably be required, particularly on the larger campuses, at an average cost of \$8,000. The number of students to be served will vary by discipline and also by the amount of time or number of hours per week they receive tutoring. Based upon an estimated 1½ hours per week per eligible student and a tutorial rate of \$4.00 per hour, the cost would be \$6.00 per student for 8,000 students per week for a thirty-week instructional year. This produces a total cost of \$1,440,000. As many as 500-1000 student tutors would be able to help pay their educational costs by serving in this program.

The coordination of the tutorial program could be carried out under the supervision of the college advisors and the person assigned to administer that program. The procedures for obtaining the study space building allocations would be assigned to the regular building planning and supervision staff within each college. Funds assigned for advisors and tutors could also be used for assistance in supervising the study and advisory space.

#### **4. Supplemental Transportation for Urban Campuses**

We recommend the funding on an experimental basis of a small-scale, student operated supplementary transportation system for low-income students who attend urban colleges. The system would utilize small 9-passenger buses with student drivers and would op-

erate on flexible schedules between the campuses and the communities where low-income students reside. The program would be subsidized with both state and federal funds.

The purpose of this proposal is to assist in reducing the geographic barriers to higher education for disadvantaged students. For many urban campuses public transportation is at best inadequate, particularly for students who commute from the inner city. Those who are forced to use public transportation to get to these campuses pay a great price in time, effort and money. As long as it was assumed that most students who commute could afford private transportation, this did not appear to be a problem. Now, however, it is necessary to face up to the fact that some improved form of public transportation is essential for several campuses to assist disadvantaged students.

We propose, therefore, state funding for a supplemental transportation system on a pilot basis for one or two of the urban state college and junior college campuses. This supplementary system would be built around the use of small 9-passenger buses operated by students on a flexible schedule. The buses could either be leased by the colleges for this purpose or purchased by the drivers themselves with the assistance of loan funds provided by the colleges.

If the buses are leased by the college for operation by a student-directed transportation system, the student drivers could be paid from work-study funds at the standard rates. A charge of \$.25 to \$.50 per day could be established for those who would use the system. If the buses are student owned, the drivers' earnings and charges to passengers would be established on a somewhat more complicated basis to provide for the payment of the loans and some reasonable income to the student drivers.

The proposal has the advantage of providing what the transportation experts say is most needed, that is, flexibility in scheduling. It would provide by far the shortest riding time between the student's home and the college because it would be the most direct with the fewest stops. It would have by far the lowest per mile cost of any other attempt to overcome this barrier. It would also relate to the financial aid programs by providing financial aid to the driver and considerably reduced cost for the riders. Finally, it would give additional responsibility to those students who would be responsible for operating the system and those who would serve as drivers.

#### **5. College Prep Curriculum Entry Program**

We recommend the establishment of special college prep curriculum entry programs for disadvantaged students who, near the end of high school or after graduation, want to go on to college but are kept from doing so by inadequate curricular preparation. This will provide a special means of entry into the college prep curriculum during high school and a special college prep course after completion of the 11th or 12th grade.

Notwithstanding all of its many advantages, the comprehensive high school has one disadvantage that affects disadvantaged students most dramatically. The multiple-track curriculum that provides for general or vocational training, a business curriculum and a college preparatory curriculum, is intended to provide at once for specialization and for a more comprehensive overall curriculum on the same high school campus. The apparent flexibility of transfer from one curriculum to another within the high school, rather than between high schools, is frequently listed as an advantage for the comprehensive high school, and to some extent it is.

To a large extent, however, for the disadvantaged student whose home and elementary school background is considerably behind that of other students, the comprehensive tracks become exceedingly rigid. The student who enters the ninth grade and after testing and evaluation is placed in the pre-math or general mathematics program rarely receives an encouraged opportunity in the eleventh or twelfth grade to try again to take the college prep algebra course. Similarly, if he is placed in the ninth grade in the makeup English section, he rarely gets an opportunity to move to the college prep English program, even at the ninth grade level, when he is in the eleventh or twelfth grade. As was pointed out in a recent University report on Educational Opportunity Programs, too few disadvantaged students are now enrolled in the college prep curriculum. As a consequence, a great deal of effort is now being expended in going to the schools to advise qualified students to change their curriculum.

The purpose of this proposal would be to create an incentive for high schools to provide for special entry into the college prep curriculum. If a special section, for example, of college prep algebra is to be offered for eleventh graders, it is likely there will be an added expense to the high school, particularly if enrollment is low. For this reason we propose a cost reimbursement up to an additional \$250 per student to be available to qualified high schools in disadvantaged areas to provide special opportunities of this nature.

The curriculum which is offered should closely parallel that of the standard entrance level college prep curriculum at the ninth and tenth grade, but should be available to older students who have already attained eleventh or twelfth grade standing. Additional tutoring might also be provided on the certification of the high school advisors. The special entry curriculum should be limited to English, reading, language arts, and mathematics (algebra and geometry), as these are the prerequisite subjects that most often present academic barriers to higher education.

An additional provision of an interim or prep year to be operated under the auspices of a junior college or state college might be provided at the twelfth and thirteenth grade level. Such a program should

be based on the most successful aspects of the national Upward Bound Program, but should be designed on a year-round basis with entry either the summer before the twelfth grade or the summer after the twelfth grade. By paralleling the federal Upward Bound programs, the three-way matching funds provided by the state, the school district, and the federal Upward Bound program would be possible. This matching would allow a 75%-25% sharing of the operating costs between the federal government and state sharing with the district carrying the administrative costs as its contribution.

The college prep sequence would include English, reading, and language skills, as well as mathematics and social and civic problems or social sciences. In the appropriate schools, it might concentrate on selected Afro-American studies or Mexican studies that would increase the relevance and motivational potential of the curriculum for Black and Mexican-American students.

The administration of the high school portion of this program should be carried out by the high school district with state funds provided on an excess cost reimbursement basis. Statewide administration of this funding arrangement could be handled through the State Department of Education on the same basis that Special Education cost reimbursement is provided.

The costs for the pre-college program run by the colleges should be added as a part of the regular college workload budget. Financial provisions should be based on 1,000 students statewide in the first year and 1,500 the second year. Upward Bound figures would indicate that a program for about 100 students in ten colleges in five metropolitan areas would be appropriate. The amount of the appropriation it would take to cover this would depend on the length of training period that is required and the amount of year-round supervision provided. If our other recommendations, such as pre-college advising, tutorial and college advising, and financial aid, are available to these students, then the cost of the program would run under \$200 per student per week, or \$1,600 for an eight-week session. This cost would normally include the planning and evaluating period and administration costs, as well as room and board and a stipend for the students. On this basis, a program for 1,000 students would cost \$1,600,000.

#### **6. A Comprehensive Financial Aid Program**

We recommend the establishment of a large-scale comprehensive financial aid program for disadvantaged students to begin in 1969-70. The program should encompass loans, grants, and work-study funds and should have provision for an effective information and recruitment program. The initial funding of this program should provide aid for 8,000 additional students at an initial cost of \$12.5 million. The greatest portion of this aid should be made available to junior college students.

If the number and proportion of disadvantaged students entering and succeeding in higher education in California is to be increased substantially, a major increase of recruitment and financial assistance must be provided on a comprehensive basis. By far the largest number of disadvantaged students in higher education in California are in the junior colleges. At the same time these institutions have proportionately the least amount of financial assistance for such students, so that a concentration of effort at this level must be one of the principal elements in a successful aid program.

This comprehensive financial aid program should consist of four aspects: grants-in-aid, work-study funds, loans, and information and recruitment.

*Grants-in-Aid.* The grants-in-aid program should be administered by the individual junior college, state college and University campuses, using funds allocated according to the proportion of the number of minority and disadvantaged students attending that college. These grants-in-aid should be combined after the first year of college attendance with loan and work-study funds from state, federal or private sources, the combination to be equal to the average total cost of college attendance for the student. The financial aids officer on each campus should be allowed the discretion of deciding the appropriate aid mixture for each student.

In addition, the grants-in-aid program should be appropriated one year in advance of the year in which the funds are expended, so that commitments of the funds may be made to students in the eleventh grade, although the awards are not presented until they reach high school graduation. These commitments should be worked out on a regional basis among cooperating junior colleges, state colleges, and University in each region

The total amount of funds for this program should be related to the increase in disadvantaged students set as a goal by the Legislature in reviewing the present and projected enrollments in disadvantaged students for a five-year period.

*Work-Study.* Work-study funds should be provided by the state in addition to those provided by the federal government and should be administered through the individual colleges. The first priority on the work-study funds should be the funds for the college and high school advisors program described in the preceding proposals. In addition, the total of work-study funds provided should be not less than \$1,000 for each additional disadvantaged student enrolled in the California public colleges, minus the amount of money in grants-in-aid and minus the amount provided in such colleges by federal work-study

Each college with a disadvantaged minority student enrollment of not less than 5% should be allowed an additional figure equal to 10% of its state work-study and grants-in-aid funds for the administrative costs of the program.

*Loans.* A revolving loan fund should be established at each public college which has not less than 5% of its student body qualifying as disadvantaged or from minority groups. The funds are to be used to provide for emergency loans on the signature of a designated college official for up to \$100 per year. These funds are to be paid back within six months at an interest rate not to exceed 3% per year.

*Information and Recruitment.* A regional organization of cooperating junior colleges, University campuses, and state college campuses should be responsible in each region for contacting all students at the eighth, tenth and twelfth grade level in junior high and high schools in disadvantaged areas. At least one mailing of information describing the financial and academic support program provided by the Legislature should be made to each potentially eligible student. In addition, representatives might present films illustrating the availability of college education and the kind of financial and tutorial support available, as well as the personal and other rewards of a college education. These films shall be produced and shown in the high schools in such communities on at least a once-a-year basis.

Additional regional efforts to recruit students and parents and to increase the level of knowledge of college opportunities through utilization of the media should be provided. There should also be an attempt to get a written, signed and returned form from every student and at least one parent indicating familiarity with the college opportunities and financial aid possibilities.

Funds for this recruitment and information program should be administered through the Office of Compensatory Education on application by each of the regional organizations of University, state college, and junior college campuses.

*Administration and Cost.* Pending the development of a more useful data system on student characteristics, the only practical method of determining the amount of student aid needed is to determine the specific number of students to be aided as a target figure, together with an average maximum amount of aid to be provided per student based upon total estimated student costs.

We tentatively propose that the target figure be set at 8,000 students for the first year. We believe that this figure fairly represents the total number of additional disadvantaged students who may be expected to enroll at the junior colleges, state colleges and University. Of this total we assume that approximately 4,000 will enroll in the junior colleges and 2,000 each for the four-year segments. All of these students are in addition to those now enrolled but are chiefly the students who will be recruited by current information and recruitment programs

Assuming an average student aid amount (from some mixture of grant funds, work-study and loans) of \$1,600,\* the total cost of the proposed program for

\* Martyn recommends a figure of \$2,000

the first year would be \$12,800,000. However, a significant portion of this cost would go for support of the preceding recommendations for student advisors. Under the first two recommendations we have proposed the hiring of student advisors to be paid according to work-study standards. The total amount recommended for that purpose was \$3.5-\$4.0 million. Therefore the net additional cost of the financial aid program would be about \$9 million.

These funds are to be allocated according to the relative numbers of additional disadvantaged students to be enrolled by each segment and each institution. A central agency with regional representation should be charged with the responsibility of making these allocations and drawing up general guidelines as to the division of funds between loans, grants and work-study. In the previous chapter we have proposed a reorganization which would provide, among other things, the necessary structure for the administration of this program. Pending such reorganization, we believe that an existing statewide agency should be given this responsibility. Either the Coordinating Council or the State Scholarship Commission could be employed, but our preference would be for the Scholarship Commission because of its greater experience, its responsibility for the recently enacted Equal Opportunity Program and its demonstrated administrative capability.

The eligibility requirements and other detailed administrative responsibilities should be assigned to the individual institutions within basic statewide guidelines. It should be emphasized, however, that these funds should be provided in addition to any other equal opportunity funds which the campuses may have for 1969-70.

Undoubtedly there will be serious problems in attempting to get these new programs under way in the short time between enactment of the necessary legislation and the 1969 fall term. It may be that the program will begin at a reduced level of activity and at some reduction in the cost we have estimated above. Nevertheless, we want to stress our belief that it would be a serious mistake to put off for as much as a year the initiation of these programs. We are strongly convinced that a major state effort in this area must be begun in the fall of 1969.

### **7. Authorization for Junior College Financial Aid**

We recommend legislation to specifically designate student financial aid as a public purpose for which junior colleges may expend public monies from whatever source.

According to junior college representatives, the public junior colleges cannot now use district funds to provide necessary financial aid for junior college students. Only federal funds may now be used for this purpose, and where a federal program calls for local matching or when a district would like to continue or

supplement a successful federal program, the district is placed in a very difficult position. According to the junior college officials, county counsels have held consistently that without specific authorization the districts may not spend public funds for what may be construed to be a gift of public funds prohibited under Article 13, Section 25 of the California Constitution.

This difficulty can be overcome by a statutory provision recognizing collegiate education to be a public purpose and designating student financial aid, including loans, grants, scholarships and work-study aid, for junior college students to be a desirable and appropriate method of furthering that public purpose. Language to this effect would satisfy the California Constitution in much the same manner as does the language of the Education Code which authorizes the State Scholarship Program (especially Section 31217). It is well settled, as the Legislative Counsel has pointed out in another context (see Appendix E), that if public funds are expended for a "public purpose" the expenditure does not constitute a gift within the meaning of Section 25, Article XXIII of the California Constitution.

Although the junior colleges would undoubtedly prefer to use state or federal funds, rather than district tax revenues, for expanding student aid programs, they should be freed to use district funds whenever circumstances make it possible and desirable.

### **8. Demonstration and Research Center for the Teaching of Verbal Skills**

We recommend that a new demonstration and research center for the teaching of verbal skills be established. The proposed center should be concerned primarily with the teaching of reading and language skills to disadvantaged students at all educational levels. It should be located on a state college campus but should be operated jointly by at least one junior college, state college and University campus.

This proposal stems from an earlier recommendation by the Coordinating Council that the state colleges develop an institute for the study of the teaching of reading and language skills to disadvantaged students.<sup>9</sup> The new center should be a joint project, however, not just for the state colleges. It should serve to bring together the various talents of the junior colleges, the state colleges and the University. It should also make use of every modern device and approach which has some probable utility, including television and computer-assisted instruction.

The center should carry on fundamental research on the teaching of verbal skills at all levels, with perhaps some greater emphasis upon the problems of disadvantaged high school and college students. Recent experience and research indicate that college-run remedial programs in verbal skills have generally failed, yet strong verbal skills are known to be absolutely essential to the completion of college curricula. These facts pose a serious dilemma for those colleges which wish to admit larger numbers of educa-

tionally disadvantaged students, as well as for the students themselves. Every effort must be made to find the way out of this situation. The need for a research and demonstration center of the type we propose has been stated and restated by the Coordinating Council, the McCone Commission, the Kerner Commission, the University of California and others.

Initial funding should be provided by the state with the expectation of additional support from interested federal and private sources. Based on the proposals currently being considered by the Chancellor's Office of the California State Colleges, the cost would be \$75,000 for the planning year, \$250,000 for the first developmental year, and \$300,000 for the first year of complete operation. These figures assume the availability of some related computer-assisted instruction and instructional television facilities and personnel on loan from the college. Cooperative funding with foundations and the US Office of Education should be among the first tasks undertaken by the administrative staff.

### **9. Uniform Admission Application Form**

We recommend that the University and the California State Colleges be directed to adopt a single uniform admission application form for all undergraduate students. With the cooperation of the local governing boards, the public junior colleges should also be encouraged to adopt the same standard form.

At present each state college and each junior college district has its own form to be filled out by those who would apply for admission. The University of California also has its own form, but the University's form is now the same for each of its campuses. We believe that all of public higher education should follow the University's example in this regard and adopt a single common application form.

The existing pattern of a different form for each college may have been appropriate in an era when only one high school graduate in ten went on to college, but it is seriously out of date at a time when more than one out of every two high school graduates enters college. The welter of different admission application forms has become in itself a minor bottleneck in the movement of students from the public schools to higher education, and one which undoubtedly is most troublesome for those students who do not have parents or friends who are experienced in the task of preparing and submitting such forms.

We have been unable to uncover any convincing justification for the continuance of the practice of allowing each public institution (with the notable exception of the individual University campuses) to require its own special form. We have examined a number of these forms and find that for the most part they all seek about the same information, although some ask a little more and some a little less. Nor have we been able to discover any serious barriers to a consolidation of these forms into a single document

to be used by all the public institutions. The essential requirement is the will of the institutions and segments to cooperate for the benefit of the students.

We do not think it unreasonable that students and counselors should ask that one standard form be used by all of the state's public institutions of higher education. From their point of view, this would eliminate much needless paperwork and chance for error. It would also make it easier for the institutions themselves to develop comparable records and student data reports.

It is interesting to note that through the efforts of the College Scholarship Service nearly all institutions now utilize a single basic form for the complicated matter of determining a student's need for financial aid—the Parents' Confidential Statement. Based upon its success in the financial aid area, the College Entrance Examination Board is now investigating the possibility of also establishing a national admission application clearinghouse paralleling its College Scholarship Service. We do not advocate as large a step as that, however, even within this one state California needs first to demonstrate the ability of its public institutions to cooperate to the extent of adopting a common admission application form.

### **10. Expansion of Admission Flexibility**

We recommend that the University of California and the California State Colleges expand authorized exceptions to their admissions rules from 4% to 10% of the number of applicants expected to be admitted as freshmen and as transfer students to advanced standing.

Initially, under the terms of the 1960 Master Plan, the number of authorized exceptions to the basic state college and University admissions rules were limited to the equivalent of 2% of the number of applicants expected to be admitted as freshmen and as transfer students. The figure of 2% was recommended by the Master Plan Survey Team without any particular justification, except that it would provide some release from the basic rule in the case of athletes and others whom the state colleges and University might wish to admit.

As the pressure to admit more disadvantaged students began to increase, the pressure to admit a greater number of exceptions also increased. A careful examination of the way the campuses were actually using the allotted 2% revealed, to no one's surprise, that it was being used primarily for athletes and others with special talents or attributes which the campuses wanted. For 1966 it was found that among the freshmen admitted as exceptions by both segments, less than 2 of 10 could be termed disadvantaged. And the figure was less than 1 in 10 for those admitted to advanced standing. In the following year, 1967, as pressure continued to mount for the admission of disadvantaged students, these figures began to show some improvement, but the number of exceptions who were also disadvantaged remained well below 50%.

**TABLE 6.3 ADMISSION OF DISADVANTAGED STUDENTS AS EXCEPTIONS TO ADMISSION RULES**

	California State Colleges			University of California		
	1966	1967	1968*	1966	1967	1968
<i>Freshmen</i>						
Exceptions as a % of total admissions.....	1 4%	1 8%	5 3%	1 5%	1 9%	3 5%
Disadvantaged students as % of total admissions.....	.3%	.9%	3 8%	2%	3%	2 1%
Number of disadvantaged admitted as exceptions.....	65	226	1,109	46	67	382
<i>Advanced Standing</i>						
Admitted exceptions as a % of total applicants.....	8%	7%	1 9%	1 6%	2 1%	2 9%
Admitted disadvantaged students as % of total applicants.....	1%	2%	1 2%	1%	3%	1 7%
Number of disadvantaged admitted as exceptions.....	33	93	598	19	43	268

\* State College figures for 1968 are for enrolled students rather than admitted students.

Recognizing that the ceiling on exceptions was beginning to limit the ability of the segments to admit a larger number of truly disadvantaged students (and that the ceiling itself was entirely arbitrary), the Coordinating Council recommended early in 1968 that both the state colleges and the University raise the ceiling to 4%. Both segments accepted the recommendation and put it into effect for the fall of 1968. Under the new rules, exceptions are authorized up to 4% of freshman admissions and 4% of advanced standing admission, with at least 2% in each case reserved solely for disadvantaged students. In table 6.3 we indicate the use of admissions exceptions over the three years, 1966 through 1968, as reported by the Coordinating Council.

The new 4% figure for exceptions is just as arbitrary as the previous 2% ceiling. It is also evident from the figures reported in table 6.3 that the 4% ceiling will soon become a limit on the ability of the University and state colleges to admit disadvantaged students, just as was the earlier 2% rule. Already, apparently, the state colleges have exceeded the 4% figure for freshmen.

As Chancellor Dumke observed in support of the expansion of the exception rule from 2% to 4%, the continuing growth in the use of the exceptions provision for disadvantaged students "indicates a dramatic shift in attitude and a growing awareness that mathematical formulas alone are not adequate tools for assuring that educational opportunities are fully realized"<sup>10</sup>

We propose therefore that the ceiling be raised to 10% in each case.<sup>11</sup> This also is an arbitrary figure, but its acceptance would indicate a real effort on the part of the two four-year segments to expand opportunities for disadvantaged students—and without excluding normally qualified students. Its justification is otherwise much the same as was that for the change from 2% to 4%—it retains the basic Master Plan admission standards but offers real opportunity for the state colleges and university campuses to play a significant role in extending educational opportunity to disadvantaged students

We do not believe that such action would in any way deny or diminish the important role of the jun-

ior colleges in also serving disadvantaged students. The number of students which must be brought into the total system if we are to achieve true equality of opportunity is sufficiently large to require substantial participation by all public and private institutions. There is no reason we know of to arbitrarily limit what can be accomplished in this regard at the expense of the students concerned, in the belief that this will somehow protect the role of the junior colleges. Current enrollment figures indicate that the junior colleges are not lacking for students.

#### **11. Reexamination of Master Plan Admission Quotas**

We further recommend a careful reexamination of the Master Plan admission quotas for the University and state colleges. We believe that consideration should be given to expanding these quotas from the top 12½% and 33⅓% of California high school graduates to the top 20% for the University and the upper 40% for the state colleges.

As discussed earlier in this report, the Master Plan recommendation to limit University admission to the top 12½% of all California high school graduates and the state colleges to the top 33⅓% was essentially a ratification of what was thought to be approximately the then current practice. No careful examination of the actual facts was undertaken during the short period of the study, however, it was generally believed that the proposed figures were, if anything, only a bit more stringent than the existing standards. The concept of differential access, of course, had been discussed in several of the earlier studies of higher education in California and by the time of the Master Plan it was widely accepted, at least among educators

In our opinion these quotas should now, somewhat belatedly, receive the careful examination they deserve, along with the entire question of "differential access." There are reasons, we believe, to question both the general policy and the specific quotas of 12½% and 33⅓%. As a first step toward freeing public higher education from these arbitrary restraints, we propose that consideration be given to changing the figure of 12% for the University to 20% and

changing the figure of 33 $\frac{1}{3}$ % for the state colleges to 40%.<sup>12</sup>

There are, we believe, many reasons to challenge the present "standards." First of all it should be frankly acknowledged that these standards are in fact quotas for the two four-year systems, quotas which in their specific numbers have no justification other than their acceptance by the dominant majority. Those who have charged that the spokesman for the minority group students would create ethnic quotas in their efforts to get more minority group students into college must be aware that such action would be quite compatible with the present system.

At the time the Master Plan was being written there was great concern as to how higher education could deal with the great surge of students forecast for the next decade. The great challenge was thought to be the problem of numbers and how those numbers could be handled without endangering the "standards" of the institutions. In the words of Arthur Coons:

"The numbers game was out in front. It was the problem of what to do about the projected increase in college age population over the period to 1975 and beyond, the possible but certainly expected increase in the percentage desiring to go to college, which experience since then has borne out, the problem of the magnitude of the part-time enrollments in all four segments of higher education swelling the total burden of full-time equivalent students (that is, beyond the enrollment of full-time students). This was the major factual factor in the backdrop setting the stage for the Master Plan Survey."<sup>13</sup>

To meet this challenge the Survey Team acted to ratify, with some further tightening, the existing enrollment quotas which were based upon a student's prior academic achievement. Chancellor Dumke, a member of the Survey Team, has reported that

"The Master Plan Survey Team arrived at the fractions of one-third and one-eighth primarily as a result of a study of the enrollment projections and balancing these against institutional capacities and fiscal resources."<sup>14</sup>

The case for continuing the policy of differential access was presented in terms of academic efficiency and the maintenance of "standards." The efficiency argument was and is based on the belief that students should be segregated by ability and achievement levels, as conventionally determined, for admission to one of the three public segments. Students in the highest ability category may be admitted to any institution within any of the three segments, students in a second category are limited to two of the three segments, the majority of students may be admitted to only one of the segments.

Under this policy the junior colleges are expected to screen out students who lack the ability to succeed

in a four-year college, sending on only those who by past performance or by later development can prove that they can meet the stricter standards necessary at the state colleges and University levels. Similarly the state colleges are to accept students in the middle range so as to permit the University to concentrate its resources on only the most able students. This system was and is believed to be one which would minimize dropout rates for the more expensive institutions (by preselection) and permit the development of instructional programs according to the ability levels of the students.

As we have noted elsewhere, this is a system which emphasizes institutional standards rather than student educational needs. It has been said, for example, that if the University were to relax its admission standards it could no longer offer instruction of the same quality as at present. Accordingly, this system reserves the best instruction, in terms of expenditure per student, staffing and facilities, for those who are believed to be the "best" students. The admission criteria are chosen in an attempt to select out those students most likely to succeed in that instructional program. Even though this attempt has not been very successful, it has served well to buttress the notion that the "best" students should receive the "best" instruction, because only the best students are admitted and subsequently graduated.

We are beginning to learn many things which cast doubt upon the existing quota system and the matching of the "best" students with the "best" institutions. It is becoming evident, for one thing, that the institutions may not have quite so much to do with the achievements of their students and alumni as they have thought. The role of the institutions may in fact be very limited. As one researcher in this field, Alexander W. Astin, has stated it:

"Although colleges appear to differ in their effects on several aspects of the students' development, the size of the differential effects is small. In brief, the college actually attended by the student of high ability appears to make only a slight difference in his eventual career choice, academic and extra curricular achievements during college, academic ability, persistence in college and the eventual level of education that he obtains."<sup>15</sup>

We are also beginning to acknowledge that we know very little about how best to segregate students even if we accept the concept of differential access. Most careful observers would have to agree with Dr. William B. Michael that

"Whenever one looks at articles and research reports concerning the results of predictive validity studies involving the use of standardized scholastic aptitude and achievement tests employed in the process of college admissions, it becomes apparent that relatively little practical progress has been made during the past 25 years."<sup>16</sup>

Unfortunately, however, the application of "minimum loss decision strategy" still gets a great deal of attention in admission studies.<sup>17</sup> And it is still claimed, although somewhat defensively, that admission standards in the form of test scores, high school grades and college prep curriculum are not intended to keep students out of college but to assure that they have adequate skill and preparation to carry on the required work.

In 1959 it may have been appropriate for the Master Plan Survey Team to concern itself with allocating students among existing and new institutions, upholding standards, and the like. In 1969, however, this no longer appears to be an adequate response. The institutional approach to the matter of access and admission is being challenged from many sides. In the words of B. Alden Thresher, "The question of who attains higher education . . . is more than a matter of admission requirements, or even finances. It is a question of who does or should aspire to education."<sup>18</sup>

The present discussion of this issue is reminiscent of the controversy that developed nationally following World War I when the demand for college education was undergoing a similarly dramatic increase. Many educators and others then held that colleges and universities should admit only those who could be expected to profit from the traditional liberal arts curriculum. A major function of higher education was believed to be the selection and instruction of those who were destined to be the leaders of the next generation. Accordingly, it was thought to be necessary for the colleges to keep their entrance standards high so as to weed out students who were not qualified to carry that burden. This position came under heavy

attack, of course, from the progressives and many others who held a higher opinion of the abilities of those not born to the elite, and with the help of the land-grant colleges, higher education was forced to give way to those who demanded entrance.

Nevertheless, the "pool of ability" concept has survived in a somewhat expanded and modified version. Junior colleges and state colleges have been constructed across the country with no small part of their function that of relieving pressure on the more distinguished public and private institutions so that those institutions can maintain or tighten their admission quotas.

As Thresher has pointed out, the arguments advanced in support of these quotas deserve careful examination:

"There is a kind of *reductio ad absurdum* lurking behind all such reasoning which tends to admit to education those who need it least and to exclude those for whom the "value added" by education would be greatest. It is obviously essential to exclude those so unprepared that they cannot benefit from instruction at the going level, yet this tendency, if left unchecked, can focus the educational process on a small and indefinitely diminishing fraction of students."<sup>19</sup>

Too many institutions, in the name of maintaining standards, have excluded those who would benefit most from further education. For these reasons we believe that current admissions policies among California's public institutions of higher education should be very carefully and thoroughly reexamined.

# 7. Attrition and the Flow of Students

In his Chapter we briefly discuss the problem of attrition among college students and the availability and quality of data concerning the movement of students into, through and out of California's system of higher education. We then propose for further consideration the establishment of a statewide student flow information system to provide the kinds of information about students which are not currently available in any consistent and useful form. Our intention in this chapter is to describe what is known now about the flow of students, what will be known if the proposed information system is established, and how that will help strengthen the state's system of public and private higher education.

## THE PROBLEM OF ATTRITION

According to current estimates, for every 1,000 students who enter California high schools, between 750 and 800 will be graduated. Of these, some 550 to 600 will enter a college or university somewhere. Between 150 and 200 of these college entrants will eventually obtain a bachelor's degree.

For those students who reach its threshold, the door to higher education opens wide, and California may take substantial pride and credit that as many as 75% of its high school graduates find the opportunity at least to try college. From our studies, however, we have also been forced to conclude that the door to higher education swings just as easily in the other direction. As first time entry rates have increased among high school graduates, so too have attrition rates. One measure of this phenomena is the striking increase in the proportion of all college students who are freshmen. This fraction moved from 41% to 48% between 1957-58 and 1967-68, reaching a high of 51% in 1965-66.

This summary picture of gross attrition characteristics in California was derived from cross-sectional statistics and confirmed by the few glimpses of student flows which special longitudinal studies have permitted. The ratio of 150 college graduates to 550 college entrants reflects a variety of quite different circumstances. Many of the students who attend junior colleges never intend to work toward a four-year degree. The wide availability to these students of two-year vocational and technical curricula is one of the notable strengths of the California system. It is therefore no sign of system weakness if students who elect to pursue a two-year program do so and leave college after this period. To put the entrant-graduate ratio in a more exact framework, it would be necessary to have measures of graduation rates for those students

who intend to obtain a four-year degree. Unfortunately, few such measures are available.

It is possible, however, to derive an indirect measure of junior college attrition within and between the first two years. By comparing the enrollments by class level over a series of years, we have found that while it took two junior college freshmen to "produce" one sophomore in 1957-58, it currently takes three freshmen. These cross-sectional statistics imply a very substantial increase in the attrition rates within the first two years of junior college.<sup>1</sup>

Only very limited evidence is available regarding the graduation rates for students who enter four-year colleges as freshmen or who transfer into such institutions from junior colleges. For the University of California at Berkeley, it is known that roughly half of the freshmen entrants obtain degrees from the University within five or six years. It is also known that many of those who leave the University eventually obtain degrees at other institutions. The exact proportion of these may be in the range of an additional 15% to 25% of the original entering class. Accordingly, it may be estimated that of the students who enter the University, some 65% to 75% will eventually obtain bachelor's degrees somewhere. From extremely limited and imprecise data for the state colleges, it may be conjectured that the eventual graduation rate for state college entrants is below that estimated from University data.

In an attempt to use enrollment statistics and data on awarded degrees to generate a crude measure of degree productivity, we have compared senior class enrollments with bachelor's degrees awarded (ignoring for the time all attrition which had taken place prior to students obtaining senior class status). The nine years series showed that the private colleges and the University had 1.0 and 1.1 seniors, respectively, per AB or BS degree and that these figures had improved over the past decade from the region of 1.2 seniors per degree. The state colleges, on the other hand, showed a deterioration in productivity, on this measure, with a trend moving from 1.3 to 1.6 seniors per degree over the same base period. Even when the differing proportion of full- and part-time students at the different segments is allowed for, the state college figures indicate a declining completion rate continuing through the senior year. We have no information on why it takes three state college seniors to produce two degrees when the ratio is roughly 2.2 at the University and the independent colleges.

From these few statistics, it should be evident, however, that the phenomena and problems of entry, persistence, and attrition are not simple matters. The term

attrition itself might well be used in the plural to suggest that there are many kinds of attrition, each with different causes and different consequences. Further, not all attrition is undesirable, nor are all types of undesirable attrition equally subject to remedy. The economic consequences to the individual and to the public institutions may also be quite different, depending upon the length of time between entrance and departure.

Finally, entry and persistence rates are known to be quite different among students with differing academic and socio-economic antecedents, the statistics also vary among institutions and among classes of institutions. Accordingly, such measures provide valuable diagnostic indicators of how equitably and how efficiently the educational system is working.

Among the questions raised by currently available attrition data are the following

1. Are these proportions satisfactory?
2. Are they stable?
3. Why do students leave college?
4. How do the social, economic, and academic characteristics of drop-outs differ from those of students who persist?
5. What are the economic results of school and college attendance?
6. Are they worth the private and public costs involved?

## **SOURCES OF EXISTING INFORMATION ON ENTRY AND PERSISTENCE PATTERNS**

### **1. Enrollment Data**

There are two basic sources of data on which to base estimates of the rates at which students with different characteristics enter and persist in colleges and universities. The first source includes the enrollment data maintained by the individual institutions and the segments, some of which is reported directly to the Department of Finance. The Department of Finance provides year-by-year counts of enrollments by class level, by institution, by sex, and by certain measures of academic status used for budgetary purposes. These cross-sectional statistics describe the state of the educational system at single points in time and permit comparisons of the size of enrollments at different points in time. It was chiefly from this data that the Committee generated the rough estimates of gross attrition published in *The Academic State*.

The cross-sectional enrollment statistics are fundamental tools in the current budgeting process for higher education, but they have three critical limitations to their usefulness for other purposes. First, they provide measures of academic load or of academic activity and not of academic output or product. There is no direct connection under the present budgetary and statistical system between the input of resources and the output of graduates. It is quite possible under this system that appropriations might

continue to rise while the number of students who complete programs and receive degrees declines.

Second, the academic career patterns of individual students or of groups of students can not be traced. While the size of the state college sophomore class can be compared with the size of the freshman class one year before, for example, no information is available as to how many of the individual freshmen became sophomores or what happened to those who did not progress in this fashion.

Third, enrollment statistics do not permit any determination to be made of the changes in system dynamics over time, because no account is available of students who are not enrolled in some California college at a particular point in time. Temporary withdrawals from one campus or institutional transfers can not be distinguished from permanent drop-outs

These observations are not offered as criticisms of the quality of current enrollment statistics nor of the way in which the available data is used. The three limitations are emphasized to indicate the range of vital policy issues which are not and can not be illuminated by cross-sectional data alone.

### **2. Longitudinal Studies**

The second source of information on entry and persistence patterns is a set of unconnected, *ad hoc* studies which have followed sample populations of students over time. These studies have been conducted under a variety of auspices and for a variety of purposes. Accordingly, it is not surprising that they have markedly different coverage and that they employ different definitions and methodologies. Two recent longitudinal studies, however, deserve specific mention

*Project SCOPE*.<sup>2</sup> This is a continuing study funded by the Carnegie Foundation and conducted under the auspices of the Center for Research and Development of the University of California at Berkeley. Its basic purpose is to follow samples of high school graduates from four states at intervals over a period of six years to determine what happens to students with various academic, social and intellectual characteristics. The study is in its third year, having started with samples of high school graduating classes from 1966. Published data is available only for one year after normal transition from high school to college.

*Project TALENT*.<sup>3</sup> This national study was sponsored by the US Office of Education and conducted by a group formerly at the University of Pittsburg and now established at the American Institute for Research in Palo Alto. Using national samples of high school graduates from June of 1960, TALENT has attempted to follow the careers of individual students. The TALENT data is typically the more valuable because it extends over the full, typical undergraduate years. This advantage is offset by the declining reliability of the recent information due to degradation of the original samples. It has proven very difficult to keep track of individual students in a mobile age

and country and to get adequate, unbiased responses from those in sample populations whose whereabouts can be identified.

The staffs of TALENT and SCOPE have been most helpful to us, both in making information available and in explaining the technical difficulties inherent in the conduct of large-scale longitudinal studies of the type in question. Comments and suggestions from the SCOPE and TALENT staffs were significant inputs in the preliminary design of the longitudinal studies recommended later in this Chapter.

### **3. Attrition Among Graduate Students**

Despite the substantial size and high cost of graduate programs, we have found relatively few studies dealing with the magnitude and other characteristics of attrition at the graduate level.<sup>4</sup> Most of the available research is quite recent, which may indicate an increasing institutional concern with the phenomena involved. Available studies generally focus on one or more of the following questions:

1. Of those who enter graduate school, how many complete degrees?
2. What happens afterwards to students who obtain graduate degrees?
3. How does the number of degrees awarded relate to institutional resources?

Almost nothing is known about what happens to students who leave graduate school without completing any degree.

At the University of California at Berkeley, for which some information is available, completion rates for the Ph.D. range from 15% to 85% of entrants, depending upon the departments considered. For the same campus, the 2100 students who obtained Ph.D.'s between 1960-61 and 1964-65 required an average of 10 semesters to do so. Although 90% of the 2100 successful students who were studied obtained their degrees in less than 14 semesters, some students took as few as 3 semesters and others as long as 25.

In reviewing available studies we were impressed with the technical difficulties which are involved in attrition studies at the graduate level and which necessarily impair their utility. In order, for example, to get reasonably large statistical populations, it is necessary to group several departments together (such as social sciences, physical sciences, etc.). In doing so, the process aggregates departmental programs which, despite intellectual and administrative affinities, are often quite dissimilar in program organization. For such reasons it is difficult to generalize about the status of graduate attrition rates at even one campus, let alone graduate education statewide.

Important differences in the nature of research work in different fields contributes to sizable differences in the time taken to complete thesis research. Beyond the statistical shadow of different patterns of instruction and research, there are also technical problems due to changes in requirements for registration during thesis work and due to the difficulties of distinguish-

ing between full- and part-time enrollment. Finally, the complications due to the admixture and overlapping of work toward master's and doctor's degrees makes highly reliable interpretations and comparisons difficult.

Despite these and other difficulties, we believe the matter is worth pursuing. While financial factors alone do not account for the variation among departments in degree completion rates (differences in curricula, differences in subject matter, methods of thesis research, field work required, etc also being involved) the rough match between low completion rates (and high unit costs per degree actually granted) and modest funds for student support is striking.

Not only are there substantial differences in the availability of student aid funds in different graduate departments, but there are also substantial differences in the opportunities for employment which are related to graduate studies. In 1967 at Berkeley, for example, one study showed that for graduate students who had some employment, University employment related to academic study varied from a high in the 90% range for the physical sciences and the agricultural sciences to figures of less than half that in the professional schools and arts department.<sup>5</sup>

We find it surprising that the range of completion rates for the Ph.D., as reported in the University study on Efficiency of Graduate Education and confirmed by interviews with graduate deans, is so very wide between the high and low output departments. While it is wholly plausible that with good student selection, effective instruction and supervision and adequate financial support, completion rates in the 70% and 80% ranges should be obtained, it is more difficult to understand why in some departments fewer than one entering graduate student out of 10 will complete a Ph.D. within a 6 year period.

It should be emphasized that we do not believe that there should be no variation in completion rates among departments. There is, however, something obviously wrong in the circumstance of admissions, instruction or financial support which permit the lower end of the range to be so very low. Neither the citizens of California nor the legislature begrudge the necessarily high costs of distinguished post-graduate education, but they certainly may question the utility of such expenditures when associated with very low rates of Ph.D.'s actually produced.

### **4. High School Drop-Out Statistics**

We are also concerned with high school attrition figures for the reason, as described in Chapter 5, that those who drop out of high school before graduation seldom go on later to college. High school attrition is heaviest among those students from low-income and ethnic minority backgrounds. Unfortunately, we know very little about the actual incidence of attrition school by school.

Two basic techniques are used by the high schools for calculating high school drop-out rates. The first is

the "survey" method in which each student leaving the school system is separately interviewed and recontacted as necessary. The second is the "attrition formula" method, in which the number of graduates is subtracted from the number of enrollees in a prior class, and the result is called the drop-out rate. The first method seems to yield the most accurate results. However, it is much more expensive and therefore is usually used only for small samples. Also, no consistent figures are available between districts because of variations in record maintenance and reporting. Another major fault with the survey method is that many dropouts occur, in effect, when students simply don't show up for classes on the first day of each school year. This substantial group severely biases the results of the rest of the study because they are unavailable for exit interviews and are difficult to recontact.

The attrition formula method, on the other hand, is easier and less expensive to compute. It can be made more accurate by adjusting the gross drop-out rate for certain known factors which bias the results in one direction or another. These factors might include changes in the service area of the school or district, large-scale construction or destruction of housing, mass hiring or lay-offs in local industry. Unfortunately, however, this method gives only net changes in enrollment rather than gross changes in both directions, and therefore may obscure important movements into and out of school during the period covered.

The only high school dropout statistics presently available on a statewide basis are published in the Department of Education's "California Guidance Newsletter."<sup>6</sup> Using the attrition formula method, the Department of Education compiled the following figures

Class of	Enrollment		Per Cent Decrease (Attrition)
	8th Grade	12th Grade	
1957	134,999	101,389	25%
1958	140,824	108,610	23
1959	152,900	120,994	21
1960	178,306	143,620	20
1961	188,760	152,355	19
1962	193,401	158,558	18
1963	194,864	163,553	16
1964	232,717	200,709	14
1965	252,179	218,488	13
1966	265,756	232,366	13
1967	273,843	237,891	13

The Department of Education notes that the dropout rates may be "somewhat higher" than these figures indicate because of the effect of decreasing numbers of in-migrating students. They state, however, that the factor of in-migration is thought to be less influential now than formerly.

Several recent reports have presented some excellent material on reasons why students drop out of high school.<sup>7</sup> These reports, however, seldom attempt to determine dropout rates. Most of the statistical references to this problem are in the nature of age-participation rates and cohort retention rates. One recent

study of reasons for dropping out covers the Fresno county schools for the period 1963 to 1966. This study refers to a national dropout rate of 33%. This figure is attributed to the U.S. Department of Labor and is derived from the number of persons over eighteen years of age who enter the labor market without having graduated from high school

The only other information that we have on dropouts is for the Los Angeles City Schools. They report a district-wide rate of 21.1% for 1964-65. This figure is derived by the survey method, however. Beginning this year, Los Angeles is converting to the use of the formula method, modified by certain correction factors, to measure high school attrition rates.

## AN ASSESSMENT OF EXISTING KNOWLEDGE

In a report entitled *Student Flows in California's System of Higher Education* issued by the Office of the Vice President for Planning and Analysis of the University of California, an attempt is made to summarize current knowledge regarding attrition and student flows based upon TALENT data and other sources.<sup>8</sup> The authors have done their work carefully and with every effort to extract the maximum amount of information. The fact that this information must nevertheless be described as highly fragmented and inconclusive provides rather clear evidence of the paucity of current data on entrance, attrition and persistence rates.

After TALENT and SCOPE have been examined, the choice of information sources narrows markedly. At the high school level, there are a variety of special purpose, longitudinal studies conducted by individual schools or school districts. Aside from confirming and illustrating the facts that high school attrition varies markedly with the social and economic characteristics of the particular high school involved and that dropout rates as high as 67% are known at some urban schools, little use can be made of the separate studies to construct meaningful, statewide summaries or comparisons of attrition rates over time.

It should be noted that beginning in 1966 the Coordinating Council for Higher Education has published an annual document entitled *The Flow of Students*. Unfortunately, the title is somewhat misleading, as this document has dealt primarily with past and present enrollment data, a review of admission policies and procedures for the University and state colleges and compliance by those two segments with Master Plan recommendations regarding admission standards, diversion and redirection. The reports have not dealt at all with the longitudinal movement of students nor with the problems of attrition, except to acknowledge that the Council has no useful data on this subject.

In summary, even the best current enrollment data does not begin to serve the full range of important policy issues regarding the equity and efficiency of the educational system. The principal source for student

flow data with which to supplement and extend cross-sectional statistics must be found in carefully designed, sustained, longitudinal studies. Upon the basis of our own investigation as well as the work of others, we are persuaded that either important policy questions must remain unanswered or the state must design and implement a program of continuing longitudinal studies to identify and monitor the patterns of student flows.

Because of our bias in favor of learning more about how the system of higher education works and whom it benefits, we are predisposed to recommend that steps be taken to close this major information gap

## **A PROPOSED STUDENT FLOW INFORMATION SYSTEM**

At the direction of, and under contract to the Committee, the Computing Sciences Division of Aerojet General Corporation has prepared a preliminary design for a statewide student flow information system. The proposed system is described in some detail in a separate report which has been prepared by the Aerojet staff and distributed by the Committee. In the following paragraphs we will describe the principal features of the system and offer some examples of its potential usefulness. Those who seek more details are referred to the Aerojet report itself.

While the preliminary characterization of the information system is sufficiently precise to justify our recommendation for its further development, we recognize that many important details, including precise cost estimates, developmental schedules, and applicable administrative provisions, cannot be established prior to further developmental work. Accordingly, we believe the next design phase should be begun as soon as possible and with the formal involvement of the agencies and institutions which may eventually be responsible for the operation of the system.

It is our recommendation that work continue on the development of the proposed system with the objective of presenting a complete design for consideration by the Legislature at the 1970 Session. This work should be carried forward by the Coordinating Council for Higher Education in cooperation with the University, the California State Colleges, the Board of Governors of the California Community Colleges, the Department of Finance, the Department of Education and other interested agencies.

### **1. Principal Features of the Proposed System**

Basically, the proposed information system is intended to collect and store for machine access the following kinds of data on every student who moves through California's higher education system: student identity data, limited data on the student's parental family and marital family (if appropriate), student educational background data, and current student educational data. Examples of information to be collected and maintained are as follows:

- A. Student Identity Data
  1. Name
  2. Social Security Number
  3. Sex
  4. Date and Place of Birth
  5. Ethnic Origin
  6. Permanent Address
- B. Parental Family Data
  1. Name of a Parent or Guardian
  2. Relationship
  3. Occupation
  4. Educational Attainment
  5. Permanent Address
- C. Marital Family Data
  1. Marital Status (single or married)
  2. Number of Dependents—Age of Each
  3. Student Employment—Number of Hours per Week
- D. Student Background Educational Data
  1. Last High School Attended—Name and Location
  2. Year of Graduation from High School
  3. High School Grades (or other index of achievement)
  4. Other Colleges Attended—Name and Location
  5. Degrees Obtained and Year Awarded
  6. SAT/ACT Test Scores
- E. Current Educational Data
  1. School Attending—Name and Location
  2. Grade Level (Number of Units Completed)
  3. Major Field or Curriculum
  4. Full- or Part-Time (Number of units enrolled)
- F. Plans or Objectives
  1. Educational Objective (degree level)
  2. Vocational Aspirations

We have tried to take a very practical approach to the question of what data is to be collected. It is evident that we are not proposing that the attempt be made at the outset to collect all the various data which might be considered desirable, for example, for a thorough study of all the important reasons for college attrition. What we propose here is much more limited, in large part because we know that a much greater amount of information cannot be collected for 100% of the population (the population to be studied) at anything like an acceptable cost. We have settled for much less, based upon what we think to be the minimum essential information and what we know is now collected. This information will make it possible to follow students through the educational system, to make initial analyses, to determine what persons should be followed-up for more information in detailed studies, and to make contact with those persons.

In its physical and operational form, the proposed information system will comprise a central set of in-

dividual records stored on magnetic tape. For those records which are active—i.e. those of students in the California system or of individuals who are in follow-up samples—periodic supplementary information will be collected and added. In the case of students in school, the information will come from registration data included in the regional or local student information systems (existing or under development). In the case of individuals in follow-up samples, updating information will come from periodic interviews, or more typically, from mailed questionnaires. Supplementing the basic active and updated files will be the inactive records which may be used for special studies. These files will be periodically destroyed to keep the total volume of active and inactive records within manageable limits.

The system is designed to include cumulative information on all students who are currently registered in any secondary school or college in California. This decision for a 100% sample of those enrolled was derived from both statistical and economic considerations. In order to generate sufficiently large subpopulations (e.g., white, male blue collar family background, B average in high school, etc.) so as to obtain statistical significance in analyses, it is necessary to start with quite large samples in the original population. As a practical matter, we believe that it is less expensive to use the existing and developing record systems of the schools and colleges to find where students are enrolled than it would be to track individual students without the aid of school records.

The system is intended to permit the tracking of all students as they move within the California educational system and of samples of students who leave California institutions. The duration of the follow-up period is intended to include at least the years of young adulthood and sufficient time after a student's departure from graduate or professional school to permit some assessment of the consequences of educational attainments as they are manifested in career patterns.

In sharp distinction to existing cross-sectional data and retrospective studies of those who have completed particular courses of study, the proposed system will comprehend individuals who do not complete programs of study and who are not enrolled in school. This feature of the system design is intended to provide information to illuminate the causes and consequences of attrition and drop-out phenomena with reference to the characteristics and experience of individuals who do not stay in school. Further, this aspect of the system design will permit, over time, the comparison of careers of individuals who have similar characteristics apart from differences in the amount and kind of schooling received.

The system is intended for continuing rather than "one shot" operation to insure analyses which will reflect changes in system performance over time and the impact of both new and continuing programs and

policies. The informational results of the system are intended to be available to individual institutions as well as to statewide agencies concerned with higher education. The resource will thus be widely available and serve a variety of planning and evaluation purposes.

To safeguard the confidentiality of individual records, specific statutory provisions are contemplated to restrict access to the encoded names of individuals to the minimum necessary for the operation of the follow-up procedures. All other data will be available only in forms which do not permit the identification of individual records. We believe that the potential threat to individual privacy can be minimized if reasonable and technically simple precautions are taken to make available statistical information which can not be related to individuals.

The proposed information system will take maximum advantage of the existing and developing capabilities of large-scale computational equipment which make possible the storage, retrieval and manipulation of large quantities of data. The system is also designed to use information already collected on a regular basis by all of the participating institutions and to make use of this information in the forms in which it will be recorded for use in institutional information systems. To the extent that some schools and colleges are still developing computer based student information systems, every effort should be made to coordinate the design of these developing systems with the needs of the statewide system in mind. By so doing, the necessity for subsequent changes or modifications of these systems can be minimized. The resulting economies can be substantial.

In the estimates of system costs we have included amounts to reimburse cooperating institutions for the special costs of participation which are beyond those which would be incurred otherwise. While we do not propose that funds be appropriated twice to cover the same institutional information collection and storage procedures, it is reasonable that where the statewide system requires information elements or processing steps beyond those normally used, associated incremental institutional costs be met and properly charged to the budget of the statewide student flow information system.

In summary, the proposed information system is designed to supply data which will characterize the ways in which the educational system works. In addition, information of a descriptive and diagnostic type will be supplemented by data applicable to analyses of the causes and underlying mechanism of system performance as one source of insight into why the system performs as it does. The initial system will not, by itself, serve either task completely, that is, neither the description nor the casual explanations will be complete. The information available, however, will be sufficient to remedy many of the most pressing shortages of information and to suggest directions for more detailed, *ad hoc* investigations.

## 2. Some Technical Characteristics of the Proposed System

Subject to changes which will emerge during the detailed system design process, the proposed system will have the following technical characteristics:

*A. Incremental Information.* As noted above, the system is based largely upon data which is already collected on a regular basis. To the extent that information is needed for the operation of the statewide system which is not regularly collected, additional questions will be required on institutional admissions and registration forms. The magnitude and character of this additional information are summarized in Table 7.1. It can be seen that although an estimated total of 376 characters of information is contemplated, only 32 of these characters will need to be added to those already collected by secondary schools. At the college level, the incremental characters total relatively more—124 out of a total of 376.

*B. System Size Over Time.* While estimates of the growth of the system size over time shown in Table 7.2 are preliminary and subject to revision during detailed system design, they do indicate the scale of the proposed system in terms of the number of individuals whose records will be in the system. The Table also gives estimates of the number of individuals who will leave the system each year from which follow-up samples will be drawn. The estimates given in Table

7.2 suggest the size of the central data files on students who are currently enrolled. Not all of the accumulating file volume will be maintained in an active state however, since the data on students who leave school and who are not in follow-up samples will be kept in inactive storage and periodically eliminated.

*C. Follow-up Information.* At this stage of system design, no specific list of follow-up questions has been determined and no hard estimates of the number of characters of data have been prepared. These tasks remain for completion during the detailed design phase. It is possible, however, to provide a reasonably accurate list of the basic types of information which may be asked of those who leave school.

This list would include:

- Changes in Name (if any)
- Current Address
- Occupation
- Marital Status
- Family Size
- Income Level
- Education (if any) received since leaving last California Institution attended
- Career Plans, educational occupation, etc.

Naturally, somewhat different questions will be asked of those who leave at various points in the academic process. The availability of the follow-up samples will permit the periodic changes in the specific

**TABLE 7.1 INCREMENTAL INFORMATION NOT REGULARLY OR GENERALLY COLLECTED**

Class of Data	High School	Junior College	State Colleges	University
<i>Admissions</i>				
Student Identity				
Social Security.....	9	--	--	--
Ethnic Origin.....	--	2	2	2
Parental Family				
Relationship.....	--	1	1	1
Occupation.....	--	2	2	2
Educational Attainment.....	--	1	1	1
Student Educational Background				
Year of Graduation/H.S.....	--	2	2	2
High School Grades.....	--	10	10	10
SAT/ACT/Other.....	--	18	18	18
Current Educational Plans or Objectives				
Educational Objectives.....	2	2	2	2
Vocational Aspirations.....	2	2	2	2
Total.....	13	40	40	40
<i>Registration</i>				
Student Identity				
Social Security.....	9	--	--	--
Parental Family Data				
Name of Parent/Guardian or Person Knowing your location.....	--	30	30	30
Address of above.....	--	41	41	41
Marital Family Data				
Number of Legal Dependents.....	2	2	2	2
Age of each Dependent.....	2/Dependent	2/Dependent	2/Dependent	2/Dependent
Student Employment.....	2	2	2	2
Current Educational Data				
Grade Point Average.....	--	3	3	3
Total.....	19	84	84	84
<i>Graduation</i>				
Total.....	0	0	0	0

**TABLE 7.2 ESTIMATED GROWTH OF ENROLLED EDUCATIONAL POPULATION TO BE INCLUDED IN THE STUDENT FLOW INFORMATION SYSTEM (In Millions)**

Year	Enrollments			Annual Increase	New Entrants			Exits
	High School	College	Total		High School	College*	Total	
1971-----	1 469	1 051	2 520	--	--	--	--	--
1972-----	1 502	1 092	2 594	074	481	044	525	451
1973-----	1 537	1 134	2 671	077	492	045	537	460
1974-----	1 568	1 177	2 745	074	502	047	549	475
1975-----	1 600	1 220	2 820	075	512	049	561	486
1976-----	1 626	1 258	2 884	064	520	050	570	506
1977-----	1 646	1 297	2 943	059	527	052	579	520
1978-----	1 648	1 338	2 986	043	527	054	581	538
1979-----	1 624	1 378	3 002	016	520	055	575	559
1980-----	1 597	1 419	3 016	014	511	057	568	554

\* Includes only college entrants from out-of-state

sets of questions asked in follow-up interviews or questionnaires as the results of early efforts or as emerging research interests suggest such revisions

The cumulative size of the population within the follow-up samples will grow in relation to the number of exits from the system each year and in relation to the size of the sample or samples drawn. Using the estimates of annual "exits" from the right hand column of Table 7.2 and an assumed 15% sample size, the follow-up sample would start at about 68,000 individuals in 1971 (the hypothetical first year of system operation) and grow to a steady state of around 500,000 in 1988 when permanent exits from the sample would balance new entrants. The explicit statistical assumptions and analyses which justify the estimated 15% sample size are provided in the Aerojet Report cited above

*D. System Costs.* Table 7.3 provides a summary of the costs estimated by the Aerojet contractors for various components of the information system over time. Because of the uncertainties in the individual, component estimates, the totals have been expressed as minimums and maximums to emphasize the preliminary nature and qualified reliability of the figures

It should be noted that the only cost to be incurred by the Committee's initial recommendation is the cost of detailed and final system design, some part of which is being undertaken separately by the individual seg-

ments and institutions in any case. Every effort should be made to find federal matching funds to assist with this design phase since the work accomplished will have potential applicability to the educational planning problems of other states and to those of the federal government.

### 3. Uses of the System

The principal uses of this proposed student flow information system may be summarized as follows:

(a) To monitor high school attrition and graduation rates as one source of guidance to programs aimed at increasing high school graduation rates. Such programs are essential to any numerically significant expansion of higher educational opportunity to students who are not now part of the college-eligible pool

(b) To provide the continuing measurement of access and persistence rates which is essential to an evaluation of the complex, and somewhat inconsistent requirements that a public educational system be both efficient and socially equitable. The evaluation of alternative strategies of student financial aid is a specific case in point requiring information of this type.

(c) To improve comprehension of the relationships between California and the rest of the country with respect to the training and deployment of professional manpower.

**TABLE 7.3 ESTIMATED ANNUAL COST OF THE PROPOSED INFORMATION SYSTEM**

Year	Detailed Design and Coordination	Programming and Implementation	Incremental Data Collection	Computer Facilities <sup>1</sup>	Project Staff	Follow-Up Procedures	Total Cost		
							High	Medium	Low
1969-70-----	\$100,000	--	--	--	\$50,000	--	--	\$150,000	--
1970-71-----	50,000	\$100,000	\$400,000	\$220,000	125,000	--	--	895,000	--
1971-72-----	--	50,000	611,000	436,000	183,000	--	\$1,891,000	1,280,000	\$975,000
1972-73-----	--	--	632,000	436,000	198,000	893,000	1,991,000	1,359,000	1,043,000
1973-74-----	--	--	653,000	436,000	213,000	178,000	2,133,000	1,480,000	1,154,000
1974-75-----	--	--	676,000	436,000	228,000	240,000	2,256,000	1,580,000	1,242,000
1977-78-----	--	--	734,000	436,000	273,000	405,000	2,582,000	1,848,000	1,481,000
1980-81-----	--	--	788,000	436,000	318,000	541,000	2,871,000	2,083,000	1,689,000
1983-84-----	--	--	830,000	436,000	363,000	642,000	3,101,000	2,271,000	1,856,000

<sup>1</sup> Includes cost of computer, computer operations staff, supplies, etc

<sup>2</sup> Institutional costs associated with preparation of conversion programs, redesign of admission and registration forms and related activities

(d) To provide necessary information for the evaluation of current admissions policies and practices. There is evidence that increasing the stringency of academic requirements does not reduce attrition from academic causes and that drop-outs among the best students are not as far from those for the less well qualified (by academic measures) as is often thought. The demands that a wider set of criteria be considered have merit and need experimentation to determine which supplementary criteria might be employed, and how, and by whom.

(e) To expand the apparatus for the consideration of educational costs and consequences. In addition to improved fiscal reporting formats, more and better data will also be required. Many of the specific data requirements of improved financial analyses will be supplied by the recommended information system.

(f) The proposed information system will also provide a fund of information applicable to planning management at the institutional level.

Several illustrative policy questions can be formulated to demonstrate the potential uses of the data which the system is intended to produce. For example, it is generally accepted that completion of high school and an opportunity to seek further education are reasonable, minimum educational conditions for satisfactory individual and social life. Accordingly, it is of the greatest importance that high school graduation rates be monitored on a continuing basis and in sufficient detail to provide diagnostic and evaluative information which can be used to reduce high school attrition rates.

When viewed from the perspective of higher education, the existing data suggest that if effective opportunities to try college and to profit from it are to be assured to California students, notwithstanding social or economic background, not only will financial and other types of student aid be required, but also large changes in the high school attrition rates. In this special sense, one of the major equity issues in higher education has its roots and its potential remedies at the elementary and secondary levels.

The proposed information system will track or provide the basis for tracking students during their secondary school years, including students who leave school prior to graduation. The resulting information will not only serve the planning and analytic purposes of higher education, but will provide guidance to those responsible for the administration of the public school system. In this dual role, the secondary school portions of the proposed information system will provide a vital, administrative link between the quite separate organizational elements which have responsibility for higher education, on one hand, and for the public schools on the other.

Another illustration may be found in the conflicts between equity and efficiency objectives. Success in college is markedly related to measures of academic attainment in high school. The traditional pattern of academic entrance requirements for the University and state colleges reflects this circumstance. Unfor-

tunately, the same measures of academic ability are also strongly correlated with indices of social and economic circumstance. Any system which has selective admissions regulations based upon high school grades will also exhibit social and economic stratification within its student body. This circumstance poses a basic policy issue of our time, namely, how to assure reasonable levels of academic quality, and numbers of degrees awarded (efficiency objectives) while at the same time making college entry and persistence relatively independent of nonacademic factors relating to background and finances (equity objectives).

If very high persistence rates were sought as indices of system efficiency, only the most able students could be admitted to college and then provided with extensive and intensive financial and academic support to insure that those who started would finish. This strategy is quite close to traditional practice in many of the more select private colleges and universities. While such a program might lead to efficiencies in the narrow sense defined (degrees granted divided by college entrants), the system would not necessarily be equitable. College populations so selected would exhibit marked social and economic stratification. The availability of higher education would be limited to a very small fraction of the population.

Two lines of attack on the equity-efficiency problem seem available. The first is to increase experimentation with the breadth of entrance requirements so that a larger set of factors relating to motivation, experience, and talent can be reflected. Such a broadening of the factors considered relevant to admission decisions need not imply a reduction in the stringency of admissions standards. To carry out such experimentation, not only will it be necessary to organize the use and evaluation of discretionary admissions now permitted, but it will also be necessary to follow up the results of admissions under different criteria over time both within and outside of colleges and universities.

The second line of attack has two prongs: one to improve the quality of education offered and the holding capabilities of the secondary (and possibly the elementary schools), the other is to improve the rates at which those who graduate make effective use of college opportunities. These efforts are the core strategy behind the related programs recommended in Chapter 6 on equal opportunity. The design and the evaluation of programs composing both lines of attack will require and benefit from feedback information derived from longitudinal studies. To undertake major, new programs of student aid, recruitment, counseling, discretionary entrance requirements, etc. without concurrently providing a mechanism for their continuing evaluation and revision seems unwise. The estimated cost of an adequate evaluation system is small in relation to the magnitude and importance of programs to be monitored and evaluated.

A third illustration of the potential uses of the student flow data concerns what might be termed the

import-export balance. The educational system which serves California is worldwide in character, and the California institutions are part of the larger system in which students from other states and other countries receive training. While the totality of educational costs and benefits may not be significantly altered by interstate flows of students, the distribution of costs and benefits is most markedly influenced. In the case of a student who has been educated from kindergarten through the BA in California public institutions and who leaves the state permanently upon graduation, all of the public costs associated with his education fall in the California column. Since the student's full working career will take place elsewhere, all or almost all of the economic benefits will fall in the column of some other state. In the case of a student coming to California for a Ph.D. and remaining after completing earlier education elsewhere, only the last component of educational costs are borne by California, while substantially all of the benefits are garnered here. Even if the Ph.D. is expensive on a unit cost basis, the return is also very large since the earlier costs were incurred elsewhere.

As these examples suggest, the large-scale economics of education, as viewed from the point of California, depend upon where costs are incurred, and upon where the flows of benefits accrue. Information on these questions is meager since little is known about the interstate and international flows of students. It is known, however, that California educated only about 20% of those who obtain medical licenses in the state. We are a major importer of trained talent expensively prepared in other states. It may be that our "balance of educational trade" is less favorable in other fields. The magnitudes, causes, and consequences of intrastate and interstate student flows are largely unknown.

Also unexplored are the ways in which educational policy and pricing might be used explicitly as elements of population and manpower policies. To these areas of fact and to such questions of policy, better information of student flows are a necessity. Ideally, the same interest which California has in these issues should be found nationally and in other states. For this reason, among others, we propose that portions of the cost of the recommended statewide student information system are appropriately to be met from federal sources.

A final example of the utility of the proposed information system concerns educational costs. The present literature on educational unit costs is derived primarily from a procedure which first isolates and aggregates certain components of total institutional expenses (those, for example, associated with lower division instruction) and divides the results by some measure of enrollment. Leaving aside the accounting conventions and difficulties associated with deriving the numerator, it is important to consider the limitations imposed by the selection of enrollment as a denominator. At best, enrollment is a measure of current load or

of the level of academic activity and does not of itself provide any useful basis for comparing differences in performance as these differences may be related to curricula completed, degrees awarded, or benefits generated over time. There may be little point in offering low unit cost instruction if no one ever finished the curriculum in question.

A further limitation of the common unit cost measures is that they neglect the costs of those educational inputs antecedent to those of a particular institution and year. This is to say, the present system of academic accounting does not contribute to any systematic understanding of what it costs, for example, to produce a teacher when all educational costs are included and attrition rates reflected.

Beyond the technical problems of accounting and definition are some further issues of policy. Should the Legislature focus its attention not only upon unit costs of instruction but also upon total costs of a unit of trained manpower at work in California? On the output side of such an analysis, only teachers or engineers "on the line" would be counted. Against this measure of output would be set some proration of all of those educational costs incident in California. Such an accounting format and focus of policy interest would reflect factors of attrition and factors of in- and out-migration, for the measure could count imported engineers as applicable output but neglect those of their educational costs incurred elsewhere. Similarly, the costs of those who leave the state would be counted even though the value of the "product" could not be counted.

If such analyses were undertaken they would shed light on the relative costs and results of local training versus importation of professionally trained doctors, teachers, engineers, etc. While such considerations are and should not be the sole determinants to educational policy, neither should they be ignored in the planning of high cost professional schools.

The point of these illustrations is that there are a variety of useful ways of looking at the costs and consequences of education. No one approach has sovereign value in all situations and each has a particular contribution to policy debate. Unfortunately, very few of the potentially illuminating modes of cost analysis are now well served by data or by accounting apparatus. The data problems can be solved in part by measurements of student flows proposed in this Chapter. The accounting problems are part of a larger set of recommendations contained in Chapter 9 on improved budgeting and financial reporting practices.

For all of these reasons we believe it is important to continue the design work on the statewide information system we have proposed. The actual decision to implement the system must await more detailed design and analysis as well as more extensive study and criticism by those who will operate the system. But the case for such a system as we have outlined it is now strong enough, we believe, to fully justify these next steps.

# 8. The Role and Financing of Private Higher Education in California

At the outset of this study it was decided that explicit attention should be given to the contributions and the economic characteristics of the independent colleges and universities in California, as well as to those of the publicly supported institutions. In terms of institutional quality, diversity of programs and levels of instruction and research, the private colleges and universities, taken together, are broadly equivalent to the University of California. For reasons, then, of their size, quality, and economic impact, the welfare and contributions of the private institutions can not be ignored in any systematic survey of California higher education.

Moreover, several recent national reports have focused interest on the financial problems of private colleges and universities across the nation. A number of states in which private institutions of higher education play a declining but still very important role have been seeking ways of stepping up their assistance to these institutions. In California, because of the rather strict prohibitions against direct aid to private colleges and universities in our constitution, this discussion has centered about the question of the desirability of constitutional revision.

In this chapter we discuss briefly the role and contribution of private institutions of higher education in California, their present and projected financial condition as reported in recent studies, and the feasibility and desirability of expanding state financial assistance.

## THE SCOPE AND FUNCTION OF PRIVATE HIGHER EDUCATION IN CALIFORNIA

California's private colleges and universities—those which are members of the Association of Independent California Colleges and Universities (AICCU)—currently enroll approximately 97,000 students, of which 67,000 are undergraduates and 30,000 are graduate students. In total these private institutions account for about 10% of total enrollment in California and 13.5% of enrolled full-time students.\* They also grant approximately 20% of all baccalaureate degrees each year and 47% of all doctorates.

These figures begin to make it evident that the private colleges and universities, taken together, make

up a very important part of California's higher education structure and yet are a relatively small element by many of the standard measures. In large part this is true because of the unprecedented growth of public institutions of higher education in this state since 1946. The very substantial growth in enrollment, facilities and financing which the private institutions have undergone during this period appears small only in comparison with far larger increases among the public institutions.

During the 10 year period 1957-58 through 1966-67, the AICCU institutions grew in enrollment at an average rate of slightly more than 5% per year.<sup>1</sup> The growth rate was highest among the smaller universities and colleges. For all of the institutions, graduate enrollment has been increasing more rapidly than undergraduate enrollment and this growth has been particularly significant among the larger institutions.

The 5% overall growth rate for the AICCU institutions has been overshadowed, however, by a 9.5% annual growth rate over the same period for the public institutions. Even at the graduate level where the AICCU institutions have reported a growth of more than 13,000 students, the public institutions have added more than 90,000 students. As a consequence, over the past ten years the AICCU share of master's degrees has dropped from 42% to 32% and the AICCU share of doctor's degrees has dropped from 56% to 47%.

This trend toward a steadily declining share of total educational activity on the part of private institutions is similar to the trend nationally. According to recent estimates, in 1950 independent colleges and universities accounted for about one-half of total enrollment. By 1965 the fraction had been reduced to one-third, and by 1985 it is expected to be down to one-fifth as a nationwide average.

The aggregate statistics for California's private institutions, however, mask important matters of detail. When the enrollments of those institutions which have strict policies of enrollment limitation are excluded, for example, the growth rate of the other colleges approaches that of the total public sector. Figure IV summarizes the growth in total AICCU enrollments by level of enrollment and by the full- or part-time status of students. The same table also shows the increases in the production of degrees at the baccalaureate and postgraduate levels.

\* The institutions which are members of the AICCU are listed by category in Appendix D. It should also be noted that it is common practice for the AICCU institutions to refer to a 23% share of total enrollment for four-year institutions, a much higher figure than the one we refer to here (10%) because the AICCU figure excludes enrollment in the public junior colleges.

**FIGURE IV. TOTAL AICCU ENROLLMENT AND DEGREES, 1957-1967**

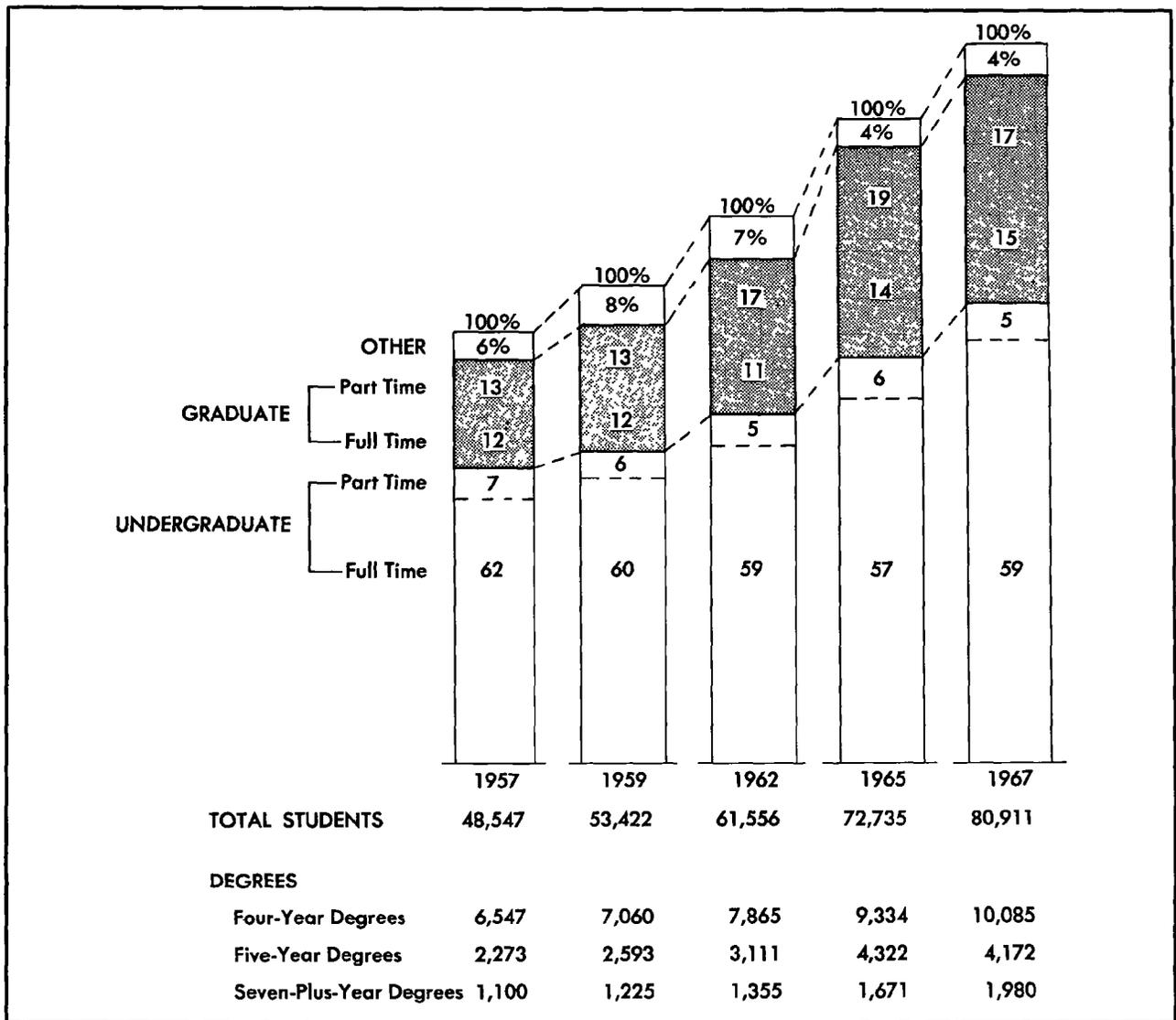
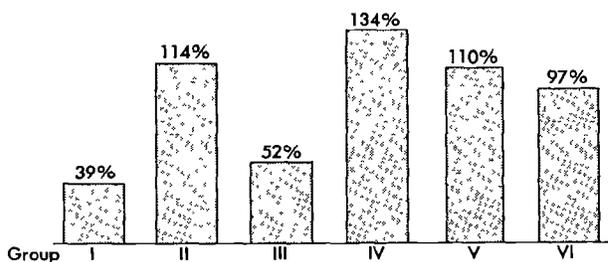


Figure V shows the different growth rates over the period 1957-1967 for each of the six groups of private colleges. Stanford, the California Institute of Technology, Occidental, and the Claremont Colleges have placed policy limitations upon the growth of their

**FIGURE V. ENROLLMENT GROWTH RATE FOR AICCU INSTITUTIONS BY GROUP—1957-1967**



enrollments, and therefore Groups I and III show comparatively modest growth. Because these groups enroll a large fraction of the total AICCU enrollment, the average growth rate for all of the private colleges is held down to approximately 67% over the same base period.

One further table (Table 8.1) shows the remarkable increase in the relative size of the graduate enrollments in Group II, IV and VI institutions. These shifts in the proportion of advanced students are evidence of very significant vitality among the private colleges and are an important element in the rapidly increasing educational costs which are discussed below.

In summary, the AICCU institutions in aggregate now contribute to the state's total system of higher education in approximately the same proportion as the University of California. The AICCU institutions'

total enrollment of 96,700 and graduate enrollment of 30,400 compares closely to the University's figures of 98,800 for total enrollment and 30,600 for graduate enrollment. In 1967-68 the AICCU institutions awarded 10,257 baccalaureate degrees and 6,540 graduate and professional degrees, as compared with 12,938 baccalaureate and 7,264 advanced degrees for the University of California.

**PRIVATE AND PUBLIC INSTITUTIONS: DIFFERENCES AND SIMILARITIES**

It is often suggested that there are a number of important and essential factors which distinguish private colleges and universities from their public counterparts, such as sources of funds, an absence of externally generated policies, regulations, and procedures, an absence of external budget review, and religious affiliation. In our review of the statistics and objectives of both segments, we have found that although there are in fact several important differences between the two types of institutions, the similarities are much more striking.

For example, with respect to sources of funding we note that the private institutions receive 52% of their total revenues from public (mostly federal) sources. (Much of this public support is concentrated in the research budgets of Group I institutions.) Moreover, present evidence suggests that the differences in the relative importance of various revenue sources for public and private institutions will continue to decline as they have in the past decade, so that any significant differentiation based upon the mix of revenues will also decline.

We also find that the allocation of institutional resources among major expenditure categories does not differ systematically between comparable public and private institutions of the same general type. The proportion of resources devoted to faculty salaries, to student aid, to plant operations, to general administrative activities, are not significantly different between Stanford and Berkeley, for example, or between USC and UCLA. In view of facts such as these it is difficult to attach a great deal of importance to the statement that individual private institutions appear to have greater freedom from external control than their public counterparts.

**TABLE 8.1 GRADUATE STUDENTS AS A PERCENT OF TOTAL ENROLLMENT BY INSTITUTIONAL GROUP, AICCU INSTITUTIONS**

	1956-57	1958-59	1961-62	1964-65	1966-67
Group I.....	42 2%	46 3%	49 7%	51 7%	52 2%
Group II.....	11 5	15 4	22 2	33 9	33 0
Group III.....	6 6	6 3	5 5	5 4	5 6
Group IV.....	7 1	4 9	13 2	13 6	15 3
Group V.....	0 6	0 4	0 2		
Group VI.....	10 6	3 9	14 3	21 1	22 0

Some observers have suggested that the rapid increase in federal support for research and other programs among the private institutions has caused an erosion of the essential differences between public and private institutions. In this connection we note that no important distinctions are drawn between public and private institutions in the allocation of federal funds. This fact suggests not so much that the acceptance of federal funds has changed private higher education but that the private institutions in large part serve public purposes and the federal funding is made available accordingly.

A much more important factor in the growing similarity between public and private institutions has been the professionalization within the various disciplines and the increasing power of the graduate schools in defining academic competence and in determining what will be taught at the undergraduate level.<sup>2</sup> It is this change which has tended to eliminate important differences in the way in which private and public institutions of comparable size serve the broad purposes of education, research and public service common to all major four-year institutions of higher education.

Both public and private colleges conform to national standards of faculty training and salaries. Both sectors use similar standards to determine what should be taught and how. Virtually no class subjects are the exclusive domain of one sector or the other (except perhaps agriculture). Nor is there evidence that a given course is significantly affected by the type of control or the source of support. With few exceptions, the private colleges and universities of California, including many of those which once enjoyed sectarian sponsorship and origins, have become secular institutions for all practical purposes.

There are, nevertheless, some differences between public and private higher education which deserve mention. Although these differences are not shared by all private institutions, they are generally characteristic of the private segment in California.

Perhaps the most obvious difference is found at the undergraduate level where the private institutions continue to enjoy the luxury of a high degree of selectivity and easily manageable growth, as compared with the public institutions which have been required to meet the full force of accelerating demand for higher education. Their unwillingness to grow faster is a major reason why the private institutions enroll a declining share of total higher education enrollment in California. As a consequence, the private institutions, unlike their public counterparts, have been able to plan their growth and to determine their own paths of development. They have also been able to set standards for the quality of instruction at the undergraduate level which serve as standards of achievement for all institutions.

In this connection it should also be observed that the private institutions have also been able to be somewhat more subjective than the public institutions in their ad-

mission procedures. In doing so they have been able to present a constant challenge to the increasingly "objective" and standardized admissions criteria of the public institutions which, under the pressure of numbers, have come to rely more and more upon test scores and high school grades in college preparatory subjects as measures of ability.

The private institutions have also demonstrated a somewhat stronger concern for holding on to their students once they are admitted. The private institutions clearly evidence a feeling of obligation toward each student, once he is admitted, and acknowledge a responsibility to help him to succeed. Too often the public institutions appear to believe that their obligation ends once a student is admitted. As a consequence, attrition rates among many of public institutions run higher than might be explained by differences in admission standards. The private institutions, of course, generally admit only those students who rank at the top of the scale according to conventional measures of ability, whatever other criteria are used, and therefore they cannot excuse high attrition by low ability. Nevertheless, it is important to note that the private institutions generally far exceed the public colleges and universities in their provisions for academic and other aid to students who need such assistance.

It may also be noted that private institutions enjoy a special kind of academic and institutional freedom. Although subject to pressure from private donors and alumni, they remain relatively free from short-run political pressures. Private supporters have proven to be somewhat more permissive regarding the use of their support, and where restrictions exist they usually pertain only to the use of specific private gifts rather than to all institutional resources. Generally speaking, the pressures brought to bear on private institutions are different sorts of pressures from those felt by the public institutions, and the growth and freedom of all institutions is enhanced by the existence of the dual system of control

## **FINANCING PRIVATE HIGHER EDUCATION IN CALIFORNIA**

Private higher education traditionally has been financed from a highly diverse set of sources. These sources include tuition and fees charged to students; income from endowment investments, gifts and grants from alumni, foundations, corporations, church groups and other individuals and groups, bequests, annuities and life contracts; federal, state and local government subsidies, and research contracts and auxiliary enterprises.

We have drawn upon the Association of Independent California Colleges and Universities for historical information about its member institutions in order to obtain detailed financial information about California's private institutions of higher learning. A research contract with the Association resulted in a

report titled *A Statistical Profile of Independent Higher Education in California*, which was published in August 1968 and has been distributed by the Committee.

On its own initiative but with general support and partial financial backing from the Joint Committee, the AICCU also undertook a special, forward looking study which projected into the next 10 years the trends and the institutional financial circumstances summarized in the first report.<sup>3</sup> This second study was undertaken under the direction of a firm of management consultants and enlisted specific planning contributions from 24 of the 49 member institutions of the AICCU

The findings of the AICCU study of the financial prospects for the private institutions were summarized in the second report (the "McKinsey Report") as follows

"It is becoming increasingly difficult for independent institutions of higher learning to maintain their relative level of participation in the State of California and to provide the distinctive academic and living environments they have traditionally offered. For the AICCU as a whole, costs per student have increased at the rate of 7 percent annually in the past 5 years, and it is generally predicted that per-student costs will increase at the same rate for at least the next 5 years. At the same time, absolute enrollments have been growing. To accommodate these additional students, AICCU institutions have had to rely more heavily on loans for capital expenditures, thus accumulating debt at increasingly rapid rates. Loans from public and private sources accounted for 19 percent of total capital funds from 1957 to 1962, from 1963 to 1967, however, loans grew in importance and provided 31 percent of capital outlay funds

"Our analysis of AICCU projections of expenditures and revenues for the next 5-10 years clearly indicate that member institutions will face substantial deficits unless they can find ways to develop traditional sources of income more fully and to establish new sources. Reasonable estimates of what this deficit might amount to by 1973 and 1978 are \$56 million and \$127 million respectively. While a substantial part of these deficits—36 percent in 1973 and 24 percent in 1978—will occur in the capital funds sector, operating deficits of \$36 million for 1973 and \$96 million for 1978 are also likely to occur.

"Unless these deficits can be financed, efforts to trim expenditures back to available financing will result in a serious "educational deficit"—that is, reduced spending will lower the quality and limit the magnitude of independent higher education in California. One area that could be especially hard hit by spending cutbacks is student aid. Some institutions are projecting increases in aid per student of not over 5.5 percent per year—substan-

tially less than planned increases in tuitions and drastically less than the 11-percent rate of increase in the past 5 years. And reduced levels of student aid, unless offset by expanded external scholarship programs, run counter to the plans of most institutions, to enroll a higher percentage of students from low-income families. Of even graver consequence, some institutions may not be able to limit expenditures to available resources and, thus, may find it impossible to continue operations.<sup>4</sup>

In reviewing the information reported in both of the AICCU reports we have come to the conclusion that the foregoing substantially overstates the financial difficulties facing the private institutions. Our own conclusions might be summarized as follows:

1. While modest growth is anticipated by many of the private institutions, there are signs that the relative contribution of the private colleges to the total capacity and output of California higher education will continue to decline.
2. There are no major financial crises emerging in the very short run comparable to those which caused the transfer of formerly private universities to public control and support in other states, although there are increasing signs of financial difficulty at an increasing number of private colleges and universities.
3. The private institutions, however, have not exhausted the financial resources available to them from such sources as tuition, alumni contributions and contributions from corporations. There is no immediate need, therefore, to formulate a large-scale state program of direct aid to these institutions.

### 1. Operating Income

Table 8.2 shows the operating income of AICCU members for the past decade. Operating income is all income other than receipts for capital outlay. The average annual increase in operating income has been 13.3%. The yearly increases have been remarkably even, with 5 of the 10 yearly increases within 2% of the average for the period.

During the past eleven years, student fee income has provided a relatively constant portion of operating income, accounting for slightly less than 30% of the total, but student fee income has increased at a slightly lower rate than all other operating income (12.8% compared to 13.3% average annual increase).

Over the eleven year period the percentage of operating income derived from student fees steadily declined for Group I institutions. This may be explained in part by the fact that income from sponsored research increased from 24% to 41% for this group during the period. If sponsored research is held constant, the percentage of income derived from student fees for Group I remains rather even throughout the period. In the other groups, where sponsored research is not as significant, percentage of operating income derived from student fees increased significantly during the period. In Groups II and IV the percentage of income from student fees increased by one-half.

The percentage of operating income derived from endowment funds decreased for all groups during the period. It now represents only about 3% of total operating income for Groups II, IV, and V, for Group I it is 7%, and Group III, 11%. Income from sales, services, and organizational activities and income from other sources were rather steady but relatively small sources of income for all groups. Income from auxiliary enterprises declined steadily for all groups. In 1966-67 it represented between one-fourth and one-third of the income for all groups except Group I, which derived about 10% of operating income from this source. The reason for the decline of auxiliary enterprises income would appear to be that college-operated dining and dormitory programs have not expanded as fast as enrollment growth and that charges in these areas have not increased as rapidly as educational fees.

Gifts and grants remained very stable as a portion of operating income during the last decade. Like tuition and fees, the only pattern was that average annual increases were slightly less than for all operating income (12.5% compared to 13.3%). Gifts and grants provided around 10% of operating income for Groups

**TABLE 8.2 RECEIPTS BY SOURCE, OPERATING INCOME, AICCU INSTITUTIONS, 1956-57 THROUGH 1966-67**  
(In Thousands)

Operating Income by Source	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65	1965-66	1966-67
Student Fees.....	\$27,822	\$30,342	\$35,343	\$39,216	\$43,065	\$49,834	\$56,748	\$64,250	\$70,840	\$84,670	\$92,740
Endowment Income.....	8,395	9,373	9,748	10,922	11,905	12,557	13,548	14,555	16,104	17,113	19,407
Sales, Services, Organizational Activities.....	1,321	1,356	1,511	2,058	2,130	2,468	3,056	3,561	4,087	4,469	6,177
Auxiliary Enterprises.....	25,028	26,700	28,967	32,476	36,138	39,202	43,602	43,746	44,630	50,360	56,960
Other Sources.....	3,608	3,870	4,582	5,442	6,450	7,839	9,411	10,759	11,600	12,687	13,278
Gifts and Grants.....	11,354	11,628	14,066	15,653	19,191	19,279	23,751	27,134	30,610	35,460	35,710
Sponsored Research.....	13,456	15,856	21,270	26,443	30,619	39,914	49,492	54,873	59,901	68,474	85,238
Governmental Programs.....	301	330	514	1,251	1,861	2,345	2,995	3,508	4,508	5,564	7,045
Total.....	\$91,294	\$99,455	\$116,001	\$133,461	\$151,359	\$173,438	\$202,603	\$222,386	\$242,280	\$278,797	\$316,555

I, II and III and were remarkably steady at this level throughout the period. Gifts and grants declined on a percentage basis for Groups IV and V although this source provided a larger percentage of the income for these groups. More than one-fourth of the funds of Group V come from this source.

Income from governmental programs, outside of funds provided for research, was a small or insignificant source of operating income for all groups. The average annual increase of such governmental program funds was 40.7%, but this increase only managed to bring governmental program support up to 2.2% of all operating income.

In summary, student fees, sales, services and organizational activities, gifts and grants and income from other sources were relatively stable fractions of operating income. Endowment income decreased and governmental programs increased as portions of operating income. Sponsored research, especially federal support, became a major part of operating income, particularly for Group I institutions. For groups other than Group I, student fees grew significantly as a source of income. There also was modest growth in percentage of income from sponsored research for Group II, and in gifts and grants for Group III. All other important sources of income declined for these groups.

## 2. Operating Expenditures

Table 8.3 shows the operating expenditures of AICCU members for the past decade. More detailed data for each group may be found in the AICCU statistical summary. Few useful generalizations can be made on the basis of these figures.

Expense for instruction and departmental research increased substantially over the period for Group II, increased slightly for Groups I and III, stayed even for Group V, and declined slightly for Group IV. Organized research expense increased by one-third for Group I but not as rapidly as sponsored research income for the same group. Organized research became a slightly more significant item for Group II

during the period. It was not significant for the other three groups.

Plant operation and maintenance expense also remained fairly constant for all groups. Auxiliary enterprise expense declined quite substantially for all groups except Group III where there was a smaller decline. However, this item still represents one-third of total expenditures for Group II. Expense of scholarships and student aid increased for all groups except Group III, where this expense remained at the same level. Again, the colleges devote a slightly larger share of total expenditures to this item than the universities.

## 3. Operating Income Compared With Operating Expenditures

According to figures reported by the AICCU for the period 1957-1967, a comparison of income and expenditures for individual institutions reveals that deficits were experienced in at least one year by 30 of the 42 institutions which were studied. The term "deficit" as used by the AICCU institutions refers to a negative difference between current income from regular sources and current operating expense. It should be made clear that no actual deficits occur because the difference between current operating income and current expense is made up by withdrawing funds from reserves, increasing current income from endowment funds, or diverting current income from capital outlay.

A total of 19 of the 42 institutions had deficits in two or more of the last six years covered by the study. During the first nine years covered by the study, the number of institutions showing deficits remained rather constant; the average was about 11 per year. However, during the last two years, the total climbed to 15 and then 19 institutions.

The number of institutions with what might be called serious deficits (\$50.00 or more per FTE) was also fairly steady throughout the first nine years, averaging four per year. Again, however, the number jumped in the last two years to 8 and then 14 institu-

**TABLE 8.3 OPERATING EXPENDITURES, AICCU INSTITUTIONS (In Thousands)**

Operating Expen	1956-57	1957-58	1958-59	1959-60	1960-61	1961-62	1962-63	1963-64	1964-65	1965-66	1966-67
Administration and General Expense.....	\$9,377	\$10,378	\$11,934	\$14,402	\$17,523	\$18,669	\$21,872	\$23,742	\$26,377	\$29,827	\$35,440
Instruction & Departmental Research.....	25,433	28,632	34,073	38,747	44,434	51,178	58,498	67,624	74,750	84,200	96,710
Summer Session, Extension and Irregular Instructional Programs ..	2,284	2,437	3,023	3,426	3,582	3,759	3,960	4,618	5,060	6,276	7,845
Organized Research.....	13,296	15,696	18,927	22,647	25,884	33,496	42,016	45,567	49,722	56,791	65,633
Libraries.....	2,947	3,272	3,558	3,987	4,386	4,962	5,942	6,862	8,076	9,243	10,893
Plant Operation & Maintenance.....	5,502	6,148	7,001	8,016	9,116	9,945	11,420	12,113	14,038	16,223	17,680
Auxiliary Expenses.....	23,849	25,050	26,984	30,245	33,097	35,947	40,065	40,470	41,306	47,680	54,560
Scholarships & Student Aid.....	3,563	4,188	5,432	6,290	6,670	8,236	9,563	11,275	12,600	15,530	18,779
Other Non-Educational Expenses.....	2,821	2,940	3,185	3,695	3,922	4,472	4,622	5,347	6,118	6,958	7,410
Total Operating.....	\$89,072	\$98,741	\$114,117	\$131,455	\$148,614	\$170,664	\$197,958	\$217,618	\$238,047	\$272,728	\$314,950

**TABLE 8.4 NET COMPUTED SURPLUS OR DEFICIT REPORTED FOR EACH AICCU INSTITUTIONAL GROUP, 1956-57 THROUGH 1966-67**

Year	Institutional Group					All Groups
	I	II	III	IV	V	
1956-57.....	\$684	\$108	\$911	\$516	\$3	\$2,222
1957-58.....	77	198	460	36	-57	714
1958-59.....	718	293	387	424	62	1,884
1959-60.....	290	487	645	558	26	2,006
1960-61.....	450	288	1,014	889	104	2,745
1961-62.....	750	339	1,193	482	10	2,774
1962-63.....	2,260	1,107	1,150	130	-2	4,645
1963-64.....	870	1,811	1,294	744	49	4,768
1964-65.....	-870	1,657	3,028	204	214	4,233
1965-66.....	-310	1,532	4,528	122	197	6,069
1966-67.....	-360	598	1,979	-735	123	1,605

tions. For the first nine years, an average of three institutions per year had deficits of \$100 or more per FTE unit of enrollment. For the last two years the totals were eight and eleven. Deficits of over \$200 per FTE were experienced by an average of one to two institutions each year for the first nine years. This number increased in the last two years to three and then six institutions.

Group I institutions averaged more deficit years than institutions in any other group—somewhat more than one year out of every three. Institutions in Groups II, IV, V, and VI averaged about one year out of three. Group III institutions averaged the fewest deficit years (about one year out of 12).

Serious deficit years (\$50 or more per FTE) were experienced in one out of every five years, on the average, by institutions in Groups I, IV, V, and VI. Group II institutions averaged one year out of sixteen and Group III, one year out of 50. Deficits of \$200 or more occurred in one or more years in ten institutions. Seven of these institutions are in Group IV. Of the

nine institutions in Group IV that had deficits in 1966-67, five had deficits of \$200 or more.

We now turn to the projected deficits over the next few years for these same institutions. The AICCU (McKinsey) projections are shown in Table 8.5. An educational expense "deficit" of \$36 million is indicated for 1973 and one of \$96 million for 1978. Our first impression is that the projected deficits are not large. Ten years from now, we find that desired and expected expenditures will be only 15% greater than projected revenues; and five years from now income will be less than 10% short of projected expenditures.

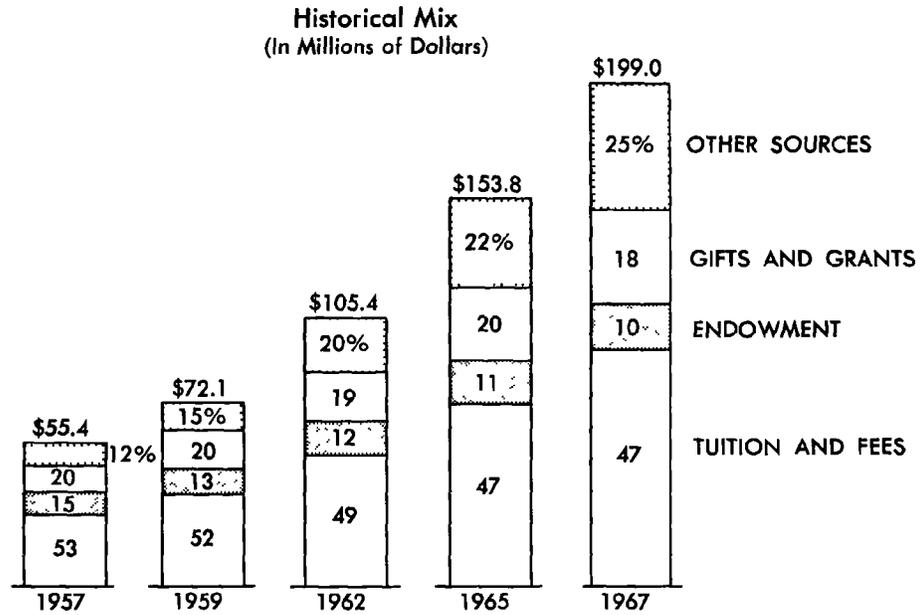
Furthermore, the deficits described by the McKinsey study will not be spread evenly over all private institutions. Such deficits are unique to certain types of institutions—primarily the large universities where expensive graduate programs form a large portion of the institutional budget, and a few small institutions which are struggling to compete academically with public counterparts.

**TABLE 8.5 PROJECTED EDUCATIONAL EXPENDITURES AND RECEIPTS, AICCU INSTITUTIONS (In Millions)**

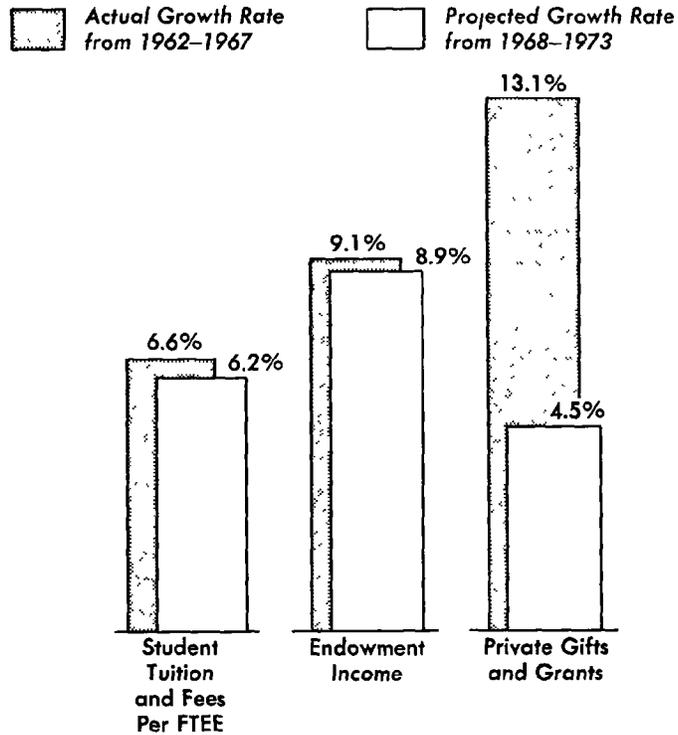
	1967		1973		1978	
	Amount	%	Amount	%	Amount	%
<i>Expenditures</i>						
Instruction and departmental research.....	\$112	53%	\$216	55%	\$371	57%
Administration and general expense.....	39	19	68	17	107	16
Student aid.....	20	9	36	9	59	9
Other expenses.....	39	19	73	19	115	18
Total expenditures.....	\$210	100%	\$393	100%	\$652	100%
<i>Receipts</i>						
Tuition and fees.....	\$101	48%	\$182	46%	\$298	45%
Endowment income.....	21	10	35	9	53	8
Gifts and grants.....	38	18	63	16	97	15
Net recovery and other.....	51	25	77	20	108	17
Total receipts.....	\$211	101%	\$357	91%	\$556	85%
Deficit.....	\$1*	1%*	\$36	9%	\$96	15%

\* Surplus

**FIGURE VI. AICCU TRENDS IN EDUCATIONAL INCOME**



**Comparison of Growth Rates**



Finally, we note that there are numerous ways to absorb such deficits. While the McKinsey report discusses several methods of increasing income, no attempt is made to show how those improvements would offset portions of the projected deficit.

In its attention to the problem of increasing revenue from existing and new sources, the second AICCU report offers the following findings. Tuition will remain a major, or the major, source of income for most of the private institutions. In spite of continuing increase in tuition rates, however, there are severe limitations to using this revenue source alone to prevent projected deficits. Tuition is already rising more rapidly than disposable income in California and more rapidly than the prices of other goods and services. Competition with the low-tuition public institutions will remain substantial even if the public college tuition rates are increased. Increased tuition is inconsistent with the objective of broadening the socioeconomic groups represented in private college student bodies. For all these reasons, the AICCU report does not see in tuition alone as more than a partial and generally undesirable source of revenues to expand proportionally to meet projected expenditures.

Similar arguments are brought to bear on revenues from auxiliary enterprises. Food and lodging charges fall upon students and their families in the same way as does tuition and are subject to the same competitive limitations and operational disadvantages. While the specific conclusion is not stated in the report, it seems fair to say that the best that might be expected of auxiliary enterprise revenues is that they will continue to offset associated costs and at most produce a modest surplus.

Substantial attention is given to sources of increased gifts and grants from individuals and from corporations. Comparative statistics are cited in the report for AICCU institutions with respect to the number of their alumni who contribute and the amount of such contributions. Comparative data on national fund raising trends and results are also provided. A wide range was observed in the professionalism of their approaches to fund raising and in the results of these efforts. With appropriate qualifications due to the range of the institutional results, the report concludes that there are major opportunities for markedly improved fund-raising efforts by many of the private colleges among their alumni, among non-alumni, and among potential corporate supporters, which, as a group, have not kept pace in their educational philanthropies with the needs of higher education or with trends in pretax corporate profits.

All of this leads us to believe that the financial situation of the private institutions is not critical, but that there is reason for concern and it is an appropriate time to give serious consideration to what steps the state can take to preclude the emergence of a real financial crisis among these institutions in the future.

## IMPLICATIONS FOR STATE POLICY

We are convinced that the State of California has a definite and continuing interest in the viability of the private colleges and universities. Shorn of ornamentation, this interest is based upon these facts

1. The private colleges and universities are performing an important educational service which would otherwise have to be done by public institutions, and, in general, they are doing it well.
2. They provide an extremely useful yardstick in terms of the quality of instruction, efficiency of operation and the maintenance of academic freedom against which the performance of the public institutions can be measured.

The private colleges serve the public interest in education no less well than the public institutions. Therefore, any reduction in the ability of the AICCU schools to grow or any impairment to the quality or diversity of their programs is a serious loss to the state. In addition, from a narrow point of view, each student who does not enroll in a private institution is one more to attend a public one. In the former case, only a small fraction of his costs may be borne by state tax revenues, whereas enrollment growth at the public colleges and universities generates a large and direct impact upon institutional and state resources.

For these reasons a significant weakening or loss of the private colleges and universities would be a serious blow to higher education in California. In consequence of this fact, private higher education is vested with a public interest which cannot be ignored. As provided in Article 9, Section 1, of the California Constitution,

"A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, *the Legislature shall encourage by all suitable means* the promotion of intellectual, scientific, moral, and agricultural improvement (emphasis added)."

The specific policy implications, however, are not quite so clear. We have characterized the financial condition of the private institutions in aggregate as one of fair to good health with some warning signs of deterioration. The private institutions are not approaching a financial crisis, with some effort on their part they should be able to maintain their present growth rates and standards of excellence over the next 5-10 years without severe difficulty. Several traditional sources of income, however, have not kept pace with rising costs, and new and existing sources will have to be expanded. We believe it is an appropriate time, therefore, for the state to begin to look for additional ways to contribute to maintaining the strength of this important segment of higher education. The principal question is what existing measures might be expanded and what new approaches, if any, should be considered.

## **CURRENT METHODS OF STATE ASSISTANCE**

As we indicate later in this chapter, the California Constitution is quite explicit in prohibiting direct state aid for private institutions. Consequently, California now assists the private colleges only in four indirect ways: (1) by granting them exemption from property taxes, (2) by granting them authority to condemn property in the same manner as public agencies, (3) through tax deductions for contributions, and (4) through the state student aid programs.

Tax exemption (Art. XIII, Sec. 1a of the Constitution), authority to exercise the powers of eminent domain (Section 1238, Civil Procedures Code), and tax deductions (Section 17054, Revenue and Tax Code) are very important, though unobtrusive, methods of state aid. They are often overlooked because there is no actual transaction between the state and the institutions, and it is very difficult to assign any specific monetary amount as a measure of the benefit received. However, the total savings in property taxes can be roughly estimated. If the reported assets of \$1.5 billion were assessed at 23% and taxed at \$9.00 per \$100, the combined annual property tax obligation for the AICCU institutions would amount to approximately \$30 million.

The State Scholarship Program and the Graduate Fellowship Programs are described briefly on page 68 of this report. Approximately 55% of all scholarship award winners attend private institutions in California. This program was originally intended in part as a means to assist the private institutions, and it has generally been credited with doing so. Although the scholarship program does not give the private institutions funds beyond what they might otherwise raise from tuition and fees, it does offset what they would have to provide in financial aid themselves to these students, and it permits them to use that money for other students or other purposes, as they see fit.

Unfortunately, none of these four forms of aid offers a vehicle for expanding public aid to any significant extent. Obviously property tax exemption and the authority to exercise the powers of eminent domain are not subject to expansion. Nor is there real possibility of increasing tax deductions for those who make contributions to the private institutions.

It is also questionable whether further expansion of the existing State Scholarship Program in its present form would be of any significant benefit to the private institutions. As the number of awards has been increased in recent years, the percentage of students enrolling in private institutions has declined from 68% to 55% and may be expected to continue to decline in the near future. There are at least two reasons for this: the inability or unwillingness of the private institutions to expand fast enough to absorb a greater share of the award winners and the fact that the necessary achievement and aptitude levels required to receive an award are declining, possibly below the principal admission threshold of the major private institutions. Ultimately,

under the existing program nearly 10% of all freshmen will receive awards, whereas the major private institutions generally select students from the upper 3%-5% of high school graduates.

On occasion it has seemed desirable to resort to another type of aid—to assume the full responsibilities of ownership and operation of a private institution. The Berkeley campus of the University of California grew from a transfer to public ownership in 1868 of the formerly private institution called College of California. More recently, the California College of Medicine was transferred to the Regents of the University of California, with legislative approval. On any significant scale, of course, action of this nature would simply indicate a failure to act effectively to assure the necessary financial strength for the private institutions.

## **MEASURES ADOPTED BY OTHER STATES**

California is not alone, of course, in feeling a growing concern for the financial health of her private colleges and universities. In fact, this concern has been much more evident in other states, especially in those states in the eastern half of the country where private institutions have traditionally carried the larger burden of responsibility for higher education.

The most notable example of state support for private higher education occurs in Pennsylvania where private non-sectarian colleges and universities have received public support for many decades. In 1967-68, fifteen private institutions in Pennsylvania received almost \$65 million in direct operating support, and two of the larger private universities also received \$25 million (total) for "tuition reduction supplements". Another state, Alabama, provides direct support for Marion Institute and Walker County Junior College. New Jersey has given the medical school at Seton Hall the use of the city hospital for clinical teaching. In Florida, the University of Miami has a similar arrangement with Dade County and also receives direct support from the state. Maryland and Vermont also make regular annual legislative appropriations directly to private institutions.

At one time or another Maryland, New York, New Jersey, Florida, North Carolina, Texas and Alabama have aided private institutions by contracting with them for various services. Eighteen states and Puerto Rico provide scholarships that students may use at public or private institutions. Virtually all states provide extensive tax exemptions to non-profit private colleges and universities.

More recently, the State of Indiana enacted a measure for the aid of private higher education which may be of special interest in California. The Indiana law provides that individuals and corporations may claim tax credits equal to 50% of their contributions to institutions of higher education, up to a maximum credit of \$50 for individuals and \$500 for corporations. The tax credit is applicable to contributions to public as well as private institutions. The purpose of the meas-

ure, however, is to stimulate an increase in contributions to private colleges and universities by means of the limited tax credit.

The program has been in effect only one year, and with very limited success. Indiana has 1,800,000 taxpayers, but only 12,000 used this tax credit the first year. It was estimated that the cost to the state could run as high as \$20 million (if all taxpayers took the maximum credit), yet only \$300,000 in credits were claimed the first year by individuals. For corporations, no estimates were made of potential tax loss to the state, but the actual credits totaled \$130,000. These credits were taken by only 600 out of 30,000 Indiana corporations. The total of \$430,000 in credits would represent a minimum of only \$860,000 in contributions. It is assumed that most of this year's credits were taken by individual taxpayers and corporations who were already making contributions and getting deductions on their federal taxes.

Clearly a measure of this type needs a great deal of publicity because it depends heavily for success upon response from middle-income taxpayers. Indiana higher education is now going to start a campaign to publicize the new law and to boost receipts.

According to the opinion prepared for the Committee by the Legislative Counsel, such a measure could be enacted in California without constitutional revision and would probably be upheld by the courts.

The State of New York recently established a system of direct subsidies for the operating expenses of its private colleges and universities. This program provides for direct annual payments from the state to private institutions in amounts equivalent to \$400 per earned bachelor's or master's degree, and \$2400 per earned doctorate degree awarded in the prior academic year. The estimated cost for 1970-71 is approximately \$32 million.

To be eligible an institution must (1) be incorporated by the Regents or legislature (accredited), (2) maintain one or more earned degree programs culminating in a bachelor's degree or higher, (3) meet such standards of educational quality as are applicable to comparable public institutions of higher education as established by the Regents. In addition, the Commissioner of Education has the power to require reports concerning, but not limited to, present and contemplated programs, curricula and facilities of the institution, its financial affairs, its long-range plans and its programs in implementing such plans, and its administrative practices and procedures.

Potential state control appears to be minimized by making direct grants per earned degree without reference to programs or use of the funds. A memorandum filed with the original legislation, however, declared the state's intention "to establish a system of accounting for private institutions of higher learning that wish to qualify for this aid, to assist both the (Education) Department and the respective colleges and universities to obtain a better view of their financial and academic strengths and weaknesses."

## LEGAL ASPECTS—CONSTITUTIONAL PROVISIONS

Whatever the merits of arguments for increasing state aid to private colleges and universities in California, such aid is now prohibited by the California Constitution except by the indirect forms such as are now used. Although the Constitution lays great stress on the importance of education to the welfare of the state (Article IX, Sec. 1), it is impossible under any circumstances and for any purposes to directly appropriate public funds for the support of private higher education.

There are several provisions of the California Constitution which appear to effectively prohibit public aid to private higher education, except by way of tax exemptions, tax credits, aid to individual students or other indirect devices. Among the most important of these are:

*Article IX, Section 8.* This fundamental section states

"No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this state."

*Article XIII, Section 21.* Section 21 regulates the manner in which monies may be drawn from the State Treasury and further provides that no monies

". . . shall ever be appropriated or drawn from the State Treasury for the purpose or benefit of any corporation, association . . . or any other institution not under the exclusive management and control of the State as a State institution, nor shall any grant or donation of property ever be made thereto by the State. . ."

This section makes certain specific exceptions (e.g. aids to hospital construction, institutions for support of orphans, etc.) but none is applicable to aid to higher education.

*Article XIII, Section 24.* This is an omnibus section which prohibits appropriation of public monies for sectarian purposes. It provides:

"Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever, nor shall any grant or donation of personal property, or real estate ever be made by the state, or any city, city and county, town,

or other municipal corporation, for any religious creed, church, or sectarian purpose whatever, provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 21 of this article."

*Article IX, Section 6.* This section defines the public school system, including the state colleges, and adds that:

"No school or college . . . shall be directly or indirectly, transferred from the public school system or placed under the jurisdiction of any authority other than one included within the Public School System."

This section would apparently preclude any plan to expand educational capacity by (for example) building facilities and then allowing a private institution to administer those facilities and the activities connected with them.

Among these and other provisions of the Constitution there may be identified three separate types of restraints which are relevant to the current problem. They are.

- (a) Restraints against state aid to any institution "not under the exclusive management and control of the State as a state institution" (Art. XIII, Sec. 21 and Art. IX, Sec. 8).
- (b) Restraint against state aid to institutions which are "controlled by any religious creed, church or sectarian denomination" (Art. XIII, Sec. 24).
- (c) Restraint against state aid for "any religious sect, church creed, or sectarian purpose" (Art. XIII, Sec. 24).

The first restraint is the most pervasive in this context since it cuts across both sectarian and nonsectarian lines. The restraint in effect creates a barrier between state and private institutions (so far as appropriations go) which is comparable to the barrier between state and church. The original purposes of the section obviously transcend the subject matter of education, however, and any attempt to work a wholesale revision of this restraint should be viewed with caution.

The second type of restraint listed above may be viewed as a derivative of the first, being a smaller part of the general proscription against aid to institutions not under the exclusive management and control of the state. An institution is obviously not controlled by the state if it is controlled by a religious creed. If the first restraint remains unaltered, the second is somewhat irrelevant. It must be considered, however, if the first restraint is altered (as is suggested below).

The third type of restraint listed above is quite different from the first two and, in essence, is an expression of the fundamental doctrine of separation of church and state. It does not provide a barrier against public aid to private higher education since, under the Constitution, no program of such aid could ever have

as an object the promotion of religious worship or instruction.

In Appendix E of this report we have included a copy of a thorough examination by the Legislative Counsel as to the possibilities for state support under present circumstances. To summarize that document, the Legislative Counsel finds that such measures as educational service contracts and earmarked tax payments would not be constitutional, but that tax credits or deductions for tuition paid for attendance at private and church-supported institutions (and contributions to such institutions) would be upheld by the courts as matters primarily of benefit to the citizens of the state generally, rather than of direct benefit to the institutions themselves.

## RECOMMENDATIONS

From the point of view of the State of California and its citizens, and as matters of simple prudence and practical economics, it would be most unfortunate if the private colleges were to suffer any serious reductions in their growth rates or deterioration in the quality of programs. Accordingly, we believe that it should be the policy of the State of California to commend, support and encourage the efforts of the private colleges and universities.

1. We recommend that immediate consideration be given to two types of state aid to the private colleges and universities: (a) partial tax credits for contributions to the private institutions and (b) cost-of-education supplements to accompany state scholarship awards to students who attend private institutions. The first would not require constitutional revision, the second would require constitutional revision.

In general, we are of the opinion that any additional state assistance to private colleges and universities should be related to two important objectives (1) that of increasing private contributions from individuals and corporations for the support of private higher education, and (2) to relate any direct aid to students rather than institutions, thereby assuring the students the greatest freedom of choice as to the institutions they will attend.

The evidence with respect to income from private contributions for California's private institutions suggests rather clearly that this source has not been developed sufficiently by most of the institutions. This is particularly true with respect to alumni and corporation contributions. As further evidence of this fact, it was interesting to find that a recent meeting of AICCU representatives which was convened to discuss the need for additional state and federal aid ended up emphasizing the need to concentrate greater effort on developing private sources.

We believe it would be appropriate for the State of California to carefully examine possible means of assisting the private colleges in this endeavor. One means would be the granting of partial tax credits for indi-

vidual and corporate gifts along the lines of legislation recently adopted in Indiana. The Indiana plan, as indicated earlier in this chapter, authorizes individuals and corporations to claim tax credits equal to 50% of their contributions to institutions of higher education (public and private), up to a maximum credit of \$50 for individuals and \$500 for corporations. Although the Indiana program has not yet been very successful in stimulating an increase in contributions in its first year, with greater publicity it has substantial promise. We are advised by the Legislative Counsel that a similar program could be established in this State with no change in the Constitution.

The second proposal which we believe merits further consideration is that of adding "cost-of-education" allowances to state scholarships which are awarded to students who enroll in private institutions. The funds would go to the institutions to assist them to provide for the state scholarship students. Such allowances would in some part compensate the private institutions for those costs incurred in educating scholarship students which are in excess of expenses covered by tuition. This proposal would require constitutional revision because the money would go for support of the operating costs of the private institutions, although only in proportion to the enrollment of scholarship students.

This is the one way we believe that the present scholarship program can be expanded with any substantial expectation of aid to the private colleges and universities and benefit to the state. The proposal is not new, but it is one that still seems to promise to benefit students and the institutions in a direct manner with a minimum of administrative cost. The principal thing it does not provide is an opportunity for the state to play a greater direct role in the supervision and development of the private institutions.

We further recommend that the Legislature initiate a revision of the California Constitution with the object of putting the state in a legal position to consider providing financial support to non-sectarian programs at private colleges and universities at such time as it may appear useful to do so and under terms and conditions subsequently to be determined. An example of specific language for this proposed revision may be found in Appendix F.

We are recommending a constitutional revision which would permit but not require the appropriation of public funds to or through private colleges and universities (excepting, as does federal legislation, support of specifically and narrowly religious or sectarian programs or institutions). In its most general form, the argument for such revision is based on the fact that it would provide planning options to the state which are not now available and which could be used or not as specific justification and future circumstances might suggest.

Additional investment options should be welcomed because they would open ways to provide more or better units of educational capacity or output for the

same level of public expenditure. This circumstance would obtain, for example, if an additional 5,000 college "places" could be added to some set of public and private institutions at a total public cost lower than that for the same capacity procured from a set of public institutions only.

This example is selected deliberately to emphasize that the general argument for constitutional revision need not be based on any particular solicitude for institutions because they are under private sponsorship. Nor is the argument derived from any bias against particular colleges because they are public. Both classes of institutions serve the same set of public purposes, and, accordingly, the public interest in these purposes would be served to a greater and more efficient degree if public procurement of educational capacity could take place in a market which contained a larger and more diverse set of suppliers.

In 1967, a subcommittee of the Assembly Committee on Ways and Means, assigned the topic of medical education costs, raised the possibility that under certain circumstances it might be less expensive for the state to pay some portion of the capital and operating costs of the expansion of existing, private medical schools than to provide equivalent capacity by the construction of completely new public medical schools within the University of California. The occasion of the finding was a proposal from the University of the Pacific and the Presbyterian Medical Center in San Francisco to build and operate a new medical school if state support could be added to income from private benefactions, tuition charges and federal grants. On constitutional grounds, however, the proposal could not even be given serious consideration and so there was no point in evaluating its academic and economic merits.

We believe that this constitutional restriction is very undesirable because it restricts the range of planning, budgeting, and program options available to the Legislature. At the moment, the state is undertaking the establishment and partial support of two new, public medical schools at Davis and San Diego. Without prejudice to their justification or to their internal efficiencies, it might be deemed a disadvantage that other options were not available to the Legislature for its serious consideration.

In the field of technical and vocational education at the junior college level, a case may be made that institutional arrangements other than the junior colleges might enrich the variety, extend the quality, and possibly reduce the net public costs of such training. Joint venture institutions using the facilities, equipment and staff of industries or of regional industrial associations as well as public resources might provide attractive alternatives or supplements to the junior college technical programs which are now supported totally with public funds.

There may be little but formal distinction between the provision of public subsidies to private employers through the support of specific, technical training pro-

grams in junior colleges and the provision of these same subsidies directly to industrial associations in partial support of industry-sponsored educational programs. The effects on the size of the technically trained labor pool, upon employment rates, and upon the net costs of technical labor to employers may be the same under each alternative procedure. Notwithstanding this equivalence, there may be significant arguments for a dual system derived from considerations of net public cost, quality of training, employability of trainees, or other considerations such as a greater diversity of educational prototypes for study and evaluation.

In addition to this general argument, there is one has to do with the possibility, as discussed in greater detail in the following chapter, that federal support for college and university operating expense will increase substantially over the next five to ten years. The larger private institutions in California have been alerted to this possibility for some time and have been making preparations, including divesting themselves of remaining sectarian influences where necessary and possible, to receive this bounty. Whether or not such aid materializes in the near future, we believe that the state would make a mistake not to clear the way so that it can play some role in determining the allocation of the federal funds in California and the general purposes for which they are spent. If such aid does materialize and California has no part in determining how it is spent, it will be even more difficult for the state to effectively manage its higher education resources.

In considering the problems of Constitutional revision and the nature of the recommendation we should advance, we have given considerable thought to the question of whether the proposed constitutional revision should leave undisturbed present language regarding the church-state division or whether we should go further and, in effect, adopt the federal model. Our first inclination was not to disturb existing provisions which prohibit public support of any kind for sectarian institutions, whether or not they provide extensive nonsectarian services which are in the public interest. In line with this thought, we requested the Legislative Counsel to draft language that would simply authorize state support for higher education carried on by nonsectarian private institutions. That language is indicated in Appendix F.

Upon further consideration of the question, however, it became apparent that the arguments in support of Constitutional revision really carried beyond this language. If sectarian institutions are performing the same services as nonsectarian institutions, and if those services can be aided and encouraged without giving aid to the purely sectarian activities, then there is no reason to exclude such institutions. Accordingly, we have revised our first recommendation and now favor amendment to the California Constitution to make it conform in this respect (in meaning, not necessarily

in language) to the federal Constitution (See Appendix F).

As noted elsewhere in this report, the federal government has a longstanding tradition and history of providing direct and indirect aid (usually categorical in form) to both public and private institutions of higher education for secular public purposes in the national interest. There are no prohibitions contained in the Federal Constitution comparable to California's restraints against aid to any institution "not under the exclusive management and control of the state as a state institution" or against aid to institutions which are "controlled by any religious creed, church, or sectarian denomination." Of course, the guarantees of the First Amendment of the Federal Constitution are applicable to all federal programs. The fact remains, however, that the federal government retains the flexibility to provide aid to private as well as public institutions even if they are in fact managed by sectarian denominations, provided only that violations of the First Amendment do not occur. It is our recommendation that the State of California be placed in a position of similar flexibility.

Applicable examples of the federal practice which currently allow direct support to private institutions of higher education, whether sectarian or nonsectarian, are found in the Higher Education Facilities Act of 1963 as amended (PL #89-329, 20 USC Section 701, et seq.) and the Elementary and Secondary Education Act (PL 83-480 as amended by PL 89-10, 20 USC Section 331, et seq.).

The Higher Education Facilities Act provides assistance to institutions of higher education, including graduate and undergraduate institutions, junior colleges, and technical institutes, in providing certain academic facilities. The act, however, defines the term "academic facility" as not including "any facility used or to be used for sectarian instruction or as a place for religious worship, or . . . any facility which is used or to be used primarily in connection with any part of the program of a school or department of divinity . . ." A "school or department of divinity" is defined as an "institution, or a department or branch of an institution, whose program is specifically for the education of students to prepare them to become ministers of religion or to enter upon some other religious vocation or to prepare them to teach theological subjects." Finally, the Facilities Act contains a separate section (20 USC Section 885) which provides that "nothing contained in this Act shall be construed to authorize the making of any payment under this Act, or under any Act amended by this Act, for religious worship or instruction."

In sum, the act is drawn to allow aid to a sectarian institution so long as it is otherwise qualified and so long as the facilities constructed with the aid of the federal funds are not used for sectarian instruction or religious worship. Aid is intended to be given under the act to aid construction, for example, of a language

laboratory or a classroom for instruction in English literature on the campus of a Jesuit university so long as those facilities are never used for sectarian or religious worship. Under present constitutional constraints, California could not give comparable aid on a state level.

We are aware, of course, of present legal challenges to the validity of the Higher Education Facilities Act of 1963. A complaint has recently been filed in U.S. District Court for the District of Connecticut in a case known as *Tilton V. Cohen*. The plaintiffs seek an injunction to restrain the application of federal funds for the construction of facilities at four named sectarian educational institutions in Connecticut. The challenge is made on the grounds that the funding represents a violation of the First and Fourteenth Amendments in that: (1) tax-raised funds are in effect supporting sectarian institutions, (2) the collection of taxes represents compulsory taxation for religious purposes, and (3) that application of funds to private institutions benefits a limited class of students at the expense of public institutions which are available to all classes of student.

The *Tilton* case (and undoubtedly others like it to follow) was made possible by the recent Supreme Court decision in *Flast v. Cohen* (1968) 88 S.C. 1942, 20 L. Ed. 2d 947 which removed certain "standing to sue" barriers previously applicable. In fact, before the *Flast* case was decided, an earlier case challenging the Higher Education Facilities Act had been dismissed on the ground that the plaintiffs had no standing to sue. To date, no case involving such a challenge to federal programs has reached the level of the Supreme Court of the United States or any other appellate court so far as we have been able to learn. Intervening decisions of the Supreme Court concerning other First Amendment questions may or may not shed light on the issues raised by the *Tilton* case. In the meantime, a vigorous debate is proceeding in both legislative and legal circles over the issues and arguments considered here.

An intriguing and important capsule of the constitutional issues relevant to the subject under consideration is seen in the recent case of *Horace Mann League of the U.S. v. Board of Public Works* (1966), 220 A.2d 51, 242 Md. 645. In that 4-3 decision by the Maryland Supreme Court, the court considered the federal constitutional validity of Maryland's state grants to four specific private colleges in Maryland for construction of science buildings, a classroom, a dormitory and a dining hall. The majority held that all but one of the grants were invalid on the ground that the operative effect of the invalid grant would have been to aid religion. The majority decision adopted a detailed test requiring the case by case examination of six factual characteristics of each institution concerned (e.g., the stated purposes of the college, the place of religion in the college's program, etc.). Consideration extended in the case of one college to examining whether or not

crucifixes, statues or waterfonts were likely to be placed in the proposed science building.

While the majority opinion laid stress on the contribution of tax funds to support institutions which teach the doctrines of a particular church, the dissenting minority opinion tended to emphasize that the grants were in furtherance of a more general public secular purpose of promoting higher education. The dissenting opinion stated that the grants were intended to supplement the general ability of all institutions of higher education to meet demands for such education in the state.

The Supreme Court of the United States denied review of the Maryland decision. It is interesting to note, nevertheless, that the three institutions denied state aid in Maryland subsequently sought and obtained grants for construction of the same facilities through federal programs.

In considering the foregoing cases and the debate involving support to sectarian institutions, it must be kept in mind that the issue involved is narrowly restricted to the granting of aid to sectarian institutions. Neither the *Tilton* nor the *Horace Mann* case questions the propriety of supplying public aid to private institutions of higher education which are not sectarian. Thus, even assuming the most restrictive resolution of the foregoing constitutional issues against aid to sectarian institutions, the extensive potential of public supported non-sectarian institutions will undoubtedly remain alive and healthy on the federal level and in states which are free of restrictive constitutional prohibitions of the kind found now in California. Assuming a moderate resolution of the foregoing constitutional issues, it may be expected that in future practice aid by the federal government and such other states would extend not only to nonsectarian private institutions but to many sectarian institutions as well.

We believe, in short, that there is no compelling reason to await the conclusion of these constitutional debates before undertaking a process of constitutional revision in California. Application of careful legal draftsmanship will doubtlessly minimize the potential for conflict with federal constitutional and decisional law in preparing the necessary constitutional revisions. At the minimum, these revisions would extend the capacity of the state to initiate public support of the many important nonsectarian private institutions of higher education in California. With careful draftsmanship, the capacity of the state to so operate could be extended to carefully circumscribed areas of support for sectarian institutions for programs involving a secular purpose serving the general public interest.

It must be emphasized, however, that we do not now recommend that public funds be appropriated as direct operating or construction subsidies for private colleges and universities. Our recommendation is quite different, namely, that the California Constitution be amended to permit (but not require) such assistance as well as cost-of-education supplements to student aid funds and other types of aid.

We do not believe that a strong case can now be made on economic grounds for direct state subsidies for the private colleges and universities of this state. Although there is reason to be concerned about the short-range financial future of these institutions, we do not think the evidence supports such drastic action as direct subsidies. The private institutions still have private sources of support which are far from being exhausted. Data reported nationally and for California regarding alumni support and contributions from corporations suggest that neither of these sources has been adequately exploited by the great majority of the AICCU institutions.

A move toward direct operating subsidies by the state would raise major questions as to what institutions would be eligible, what would be the basis for such allocations, what standards of financial accounting would need to be established, what standards of academic performance would be required, and so forth. The allocation of direct operating subsidies would necessarily be accompanied by measures designed to protect the state's interest, to guarantee the effective and appropriate use of public funds. We do not find sufficient evidence of financial need on the part of the private institutions to justify a move in this direction at this time.

# 9. Financing Public Higher Education

Although there is some indication that the huge enrollment surge of the past decade is beginning to ease, the problem of financing public higher education is, if anything, growing more difficult. There has never been enough money to satisfy all the demands of higher education, but now, in the opinion of some observers, public higher education is coming close to exhausting its present financial means.

In this chapter we summarize available information on the sources of current financing of the state's system of public higher education and the important trends in income for higher education. We then present some findings and conclusions regarding new and expanded sources of funds to meet current and future needs. Finally, we present recommendations regarding budgeting and fiscal planning for public higher education.

## SOURCES OF SUPPORT FOR PUBLIC HIGHER EDUCATION

### THE NATIONAL CONTEXT

Nationally, over the past few years, the total expenditures of colleges and universities have been increasing at the rate of about 10% per year. The rate of increase is substantially the same for both public and private institutions. According to figures prepared by the U. S. Office of Education, institutions of higher education were expected to spend about \$18.3 billion in 1967-68, of which public institutions accounted for \$10.7 billion and private institutions \$7.6 billion.

Beginning about 1955-56 American higher education entered a period of growth and expansion which has been unparalleled at least since the 1920's, and perhaps in the whole history of the country. Also in the mid-1950's there began what has been described as a "new era of support for higher education", as state appropriations across the country increased even faster than enrollment and were accompanied by rapid growth in federal grant and contract funds, steep increases in student fee income, and growth in private gifts and grants. As a consequence of the sharp increase in support and enrollment, it has been estimated that total institutional expenditures have grown from about 0.8% of gross national product at the start of the period to nearly 1.9% at present.<sup>1</sup> Thus the rate of growth for resources allocated to higher education has been about twice the growth rate for the national economy as a whole.

The question now is whether or not this growth rate for financial support can continue. There are indications that state taxpayers are stiffening their resistance to ever increasing tax outlays for higher education, that parents and students are less and less willing to submit to constantly rising tuition charges and other student costs, that private funds are shifting to other activities and that a pronounced lull in federal support has set in.

The costs continue to rise rapidly, however, forced upward by rising enrollment, rising cost per student and expanding functions. Merely to maintain the existing quality of higher education, however, at the present level and scope of activity will place heavy demands upon all available financial sources. Unfortunately, the colleges and universities, despite constant prodding by legislators and others, have been unable to significantly improve efficiency and lower unit costs. Where unit costs have been controlled it has been accomplished largely by the simple expedient of allowing enrollment growth to outpace budget increases.

The explanation for continuously rising unit costs is to be found in the technology of education.<sup>2</sup> Educational institutions have been unable, chiefly because of their heavy reliance upon professional services, to benefit from the steady increases in output per unit of labor that most other major industries have enjoyed. There is no significant annual increase in productivity to offset salary and wage cost increases. With much

**TABLE 9.1** TOTAL EXPENDITURES BY U. S. COLLEGES AND UNIVERSITIES, 1967-68 (In Billions)

Source	Public Institutions		Independent Institutions		All Institutions	
	Amount	%	Amount	%	Amount	%
Federal Funds.....	\$2 1	19 5%	\$2 3	29 3%	\$4 4	24 0%
State Funds.....	4 1	38 0	1	1 4	4 2	23 0
Local Funds.....	.4	4 0	---	2	2	2 0
Other Sources.....	4 1	38 5	5 2	68 5	9 3	50 8
Totals.....	\$10 7	100 0%	\$7 6	100 0%	\$18 1	100 0%

**TABLE 9.2 PRINCIPAL SOURCES OF SUPPORT FOR CURRENT EXPENSE, PUBLIC HIGHER EDUCATION, 1967-68**  
(In Millions)

	University of California	California State Colleges	Public Junior Colleges	AICCO Institutions	Totals
State Funds.....	\$247.4	\$192.8	\$92.8	\$7.1	\$540.1
Federal Funds.....	170.4	33.3	8.9	7	213.3
Local Funds.....	-----	-----	202.8	--	202.8
Student Charges.....	48.2	27.8	2.5	6	79.1
Organized Activities and Auxiliary Enterprises.....	73.4	33.4	2.5	--	109.3
Private Gifts, Grants and Endowments.....	23.9	1.5	-----	--	25.4
Other Sources.....	16.5	1.8	-----	--	18.3
Totals.....	\$579.8	\$290.6	\$309.5	\$8.4	\$1,188.3

smaller increases in productivity than the economy as a whole, educational unit costs have necessarily risen relative to costs generally. And, unfortunately, there is no reason to look for a substantial change in this situation.

Thus, the period of relative affluence for higher education may be drawing to a close. The old sources of funds no longer appear to be adequate to meet the continuing demand, and new sources are slow to show themselves. Moreover, what once appeared as a solid foundation of public support and political favor has undergone serious and rapid erosion.

### CURRENT SOURCES OF SUPPORT FOR PUBLIC HIGHER EDUCATION IN CALIFORNIA

In Chapters 2 and 3 we have described in some detail the principal sources of support for California's system of higher education and the trend in income over the past ten years. Based upon recent estimates, the public segments obtain about 45% of their support for current expense from state funds, 17% from local funds, 18% from federal funds (excluding special AEC contracts), 7% from student charges and 13% from all other sources.

With respect to income for capital outlay for 1967-68, we estimate that state support amounted to \$156 million or 43%, federal funds amounted to \$41.7 million or 11%, local (junior college) funds amounted to \$88.8 million or 24% and other sources, principally revenue bonds, provided \$80.1 million or 22% of the total.

In the following pages the principal sources of support for each of the three public segments are described in greater detail. The purpose of this discussion is to isolate the principal trends in financial support for each segment as they relate to the financing of the whole system of public higher education.

### SUPPORT BY SEGMENT

#### 1. University of California

University of California financial transactions are segregated according to five major "fund groups." Current Funds, Endowment and Other Nonexpendable Funds, Plant Funds, Loan Funds and University Retirement System Funds. The basic operating funds of the University are in the current fund group. Expenditures and income for current funds are reported in summary form in the annual Financial Report of the University of California.

For 1967-68 current fund expenditures totaled \$823 million. Total current fund income amounted to \$827 million. Current fund income net of \$250 million for special federal research operations (AEC) amounted to \$579.8 million. The principal sources of this income were the State of California (43%), the federal government (29%), student fees (8%), organized activities (6%), and auxiliary enterprises (6%).

Over the five-year period from 1963-64 through 1967-68 the state contribution to current funds, excluding AEC funds, has declined from 48.4% to 42.7%. Federal funds have risen from 24.9% to 29.4%, largely offsetting the decline in the state share. When

**TABLE 9.3 SUMMARY OF FINANCIAL TRANSACTIONS, UNIVERSITY OF CALIFORNIA, 1967-68 (In Thousands)**

	Balances 7/1/67	Receipts and Other Additions	Expenditures and Other Deductions	Balances 6/30/68
Current Funds.....	\$88,355	\$827,137	\$823,571	\$91,921
Endowment and Similar Funds.....	207,816	2,640	-----	210,456
Plant Funds.....				
Unexpended.....	29,705	10,097	5,337	34,465
Debt Retirement.....	15,786	8,064	4,929	18,921
Investment in Plant.....	1,013,663	128,979	18,709	1,123,933
Loan Funds.....	8,304	1,425	64	10,875
UC Retirement System Funds.....	202,173	50,462	9,665	241,760

**TABLE 9.4 CURRENT FUND INCOME BY SOURCE, UNIVERSITY OF CALIFORNIA, 1963-64 THROUGH 1967-68**  
(In Millions)

	1963-64	1964-65	1965-66	1966-67	1967-68
State of California.....	\$160 0	\$180 7	\$207 9	\$243 3	\$247 4
U.S.A.....	82 5	95 4	120 7	150 5	170 4
Student Fees.....	27 8	33 8	39 9	44 1	48 2
Organized activities—educational departments					
Hospitals and clinics.....	15 2	16 8	18 8	31 3	36 5
Other.....	2 2	2 2	3 1	3 5	3 6
Gifts and private grants.....	9 0	10 3	11 7	13 5	15 1
Endowment funds*.....	6 9	5 3	6 6	8 0	8 8
Income from temporary cash investments.....	2.7	2 9	3 7	4 1	4 9
Sales and services—educational departments.....	1 6	2 0	1 7	3 6	4 5
Auxiliary enterprises.....	20 6	23 9	27 2	30 3	33 2
Other income.....	2 1	2 4	5 2	5 6	7 1
Subtotal.....	\$330 5	\$375 8	\$446 5	\$537 4	\$579 8
Special federal research operations.....	\$248 9	\$237 7	\$240 8	\$242 8	\$250 4
Total.....	\$579 4	\$613 5	\$687 3	\$780 2	\$830 2

\* Investment income added directly to principal of other funds is excluded beginning 1964-65

all federal funds are excluded from consideration, the state share shows a decline over the period from 64.5% to 60.4%, almost as large a decline as when federal funds other than AEC contracts are included. This indicates clearly that the decline in state participation is not simply a mathematical result of the rise in federal funds. The sharpest drop in the state share occurred between 1967 and 1968.

The increase in federal funds has been concentrated in the area of organized research. In 1967-68 federal support for organized research reached a peak of \$107 million. However, federal research funds have been cut back during the first half of 1968-69 and are expected to be lower for this year than in the preceding year, reversing the previous trend. State support for organized research has grown much more slowly over this period and cannot be expected to make up for any significant reduction in federal expenditures.

Income from private gifts and bequests tends to advance very irregularly for the University. For 1965-66, a figure of \$26.4 million was reported. For 1966-67 this amount moved up slightly to \$28.8 million, but for 1967-68 it jumped to \$34 million. Although the general trend is up, it is very difficult to predict year to year changes. The figures for gifts and grants in Table 9.4 reflect expenditures rather than current income at the time of receipt.

## 2. California State Colleges

State college reporting of financial transactions lags well behind that for the University, and state college income, as a consequence, is much more difficult to ascertain and summarize. For this reason the following information, like that for the junior colleges, is less comprehensive than that for the University and occasionally depends upon estimates rather than actual reported income.

Unlike the University of California, the California State Colleges are largely dependent upon state support for current expense and have no major source of discretionary funds. For 1967-68 reported income for current operations totalled \$290.6 million, of which about two-thirds came from state appropriations, roughly one-tenth each from federal funds, auxiliary enterprises, and student fees, and the balance from miscellaneous reimbursements.

In general, although there has been an important increase in federal funds, the state colleges remain largely dependent upon state appropriations, particularly when instructional costs alone are considered. In the period covered in Table 9.5, state support as a percentage of total income for current operations moved only from 70% to 66%. In the same period federal funds increased from 2.7% to 11.5% of income, but the greater part of federal support was pro-

**TABLE 9.5 INCOME FOR CURRENT EXPENSE BY SOURCE, CALIFORNIA STATE COLLEGES (In Thousands)**

	1963-64	1964-65	1965-66	1966-67	1967-68
State Funds.....	\$101,501	\$115,594	\$136,656	\$167,650	\$192,760
Federal Funds.....	3,962	5,202	24,700	32,911	33,306
Student Fees.....	15,780	18,049	20,003	22,983	27,819
Gifts and Grants.....	8	13	2,086	2,546	1,538
Auxiliary Enterprises.....	23,143	25,774	27,952	30,415	33,366
Other Current Income.....	672	670	896	1,211	1,833
Totals.....	\$145,066	\$165,302	\$312,293	\$257,716	\$290,622

**TABLE 9.6 SOURCES OF CURRENT FUNDS FOR PUBLIC JUNIOR COLLEGES, 1964-65 THROUGH 1966-67**

Source	1964-65		1965-66		1966-67	
	Amount	%	Amount	%	Amount	%
State Funds.....	\$61,549,284	31 3%	\$73,523,630	31 3%	\$76,080,429	29 0%
Local Funds						
District Taxes.....	112,751,441	57 4	137,065,209	58 3	157,557,627	60 1
Non-tax Revenue.....	7,301,666	3 7	9,109,909	3 9	10,998,470	4 2
Counties.....	12,664,288	6 4	11,390,066	4 8	10,268,129	3 9
Federal Funds.....	2,105,425	1 2	4,124,448	1 7	7,099,391	2 8
Totals.....	\$196,372,104	100 0%	\$235,213,262	100 0%	\$262,004,046	100 0%

vided for student aid rather than instructional expense. Student fee income from incidental fees and from charges for summer sessions and other programs moved slightly downward as a share to total support for current expense, from 10.8% to 9.6%.

For 1967-68 the colleges reported combined income from gifts and bequests, including gifts of land, of \$4,660,697. This figure includes \$1 million as the value of the Bakersfield campus, and \$1.5 million for a Continuing Education Center at Pomona. Only \$1,538,027 was provided for current expense from this source.

**3. Junior Colleges**

Financial data for the public junior colleges continues to be fragmentary and somewhat out-of-date. It is difficult, therefore, to say much about junior college income without leaving several important gaps and running the risk of reporting that which was once true but which has been superseded by more recent events.

There are two principal sources of junior college support, district tax revenue and state apportionments. Together these two sources provide nearly 90% of total junior college support for current expense and 85% of total income. Other sources are nondistrict

“tuition tax” contributions, other district income including student fees (nontax), and federal funds.

All “local” sources provided for approximately 67% of current expense, with the major part provided from district taxes. As indicated in Chapter 2 (page 25), the basic junior college tax rate for current expense is \$.35 per \$100 of assessed valuation, but other specific rates are allowed by statute for adult education, retirement funds, etc.

State subventions for junior college current expense have doubled over the past five years as a consequence of enrollment growth and increases in the foundation program for junior colleges. The basic foundation program amount has risen from \$573 per unit of attendance to \$628. It is also important to note that as the level of the foundation program has risen, the ratio of basic aid to equalization aid has shifted sharply from 3 1 to nearly 1 1.

Despite the rapid increase in state support funds, the proportion of total current expenditures supported from local funds of all types has remained at about 67%-68% over the period 1963-64 through 1967-68. District expenditures have kept pace generally with rising enrollment and increases in state support. District assessed valuation has grown at about the same rate, or

**TABLE 9.7 STATE SUPPORT FOR JUNIOR COLLEGES, 1963-64 THROUGH 1967-68**

	1963-64	1964-65	1965-66	1966-67	1967-68
Current Expense					
Basic Aid.....	\$30,749,375	\$34,470,375	\$39,674,250	\$42,269,250	\$46,886,375
Equalization Aid.....	10,593,807	18,132,855	27,454,094	28,973,420	43,244,278
Subtotal.....	\$41,343,182	\$52,603,230	\$67,128,344	\$71,242,630	\$90,130,653
Junior College Tuition Fund*.....	\$1,793,076	\$3,448,620	\$2,470,697	\$1,683,401	\$1,000,000
New Districts.....	4,044,492	5,497,434	3,924,598	3,154,398	1,715,372
Totals.....	\$47,180,750	\$61,549,284	\$73,523,639	\$76,080,429	\$92,846,025
Capital Outlay					
Bond Funds.....	\$3,322,298	\$7,316,858	\$31,681,007	\$7,955,973	\$23,985,795
Current funds.....		420,377	80,304		
Junior College Tuition Fund*.....	2,282,068	2,500,955	1,300,063	1,335,280	1,000,000
Totals.....	\$5,604,366	\$10,238,190	\$33,061,374	\$9,291,253	\$24,985,795
Total, State Support.....	\$52,785,116	\$71,787,474	\$106,585,013	\$85,371,682	\$117,831,820

\* Divided between current expense and capital outlay according to allocations to district general funds and to other funds. † estimate for 1967-68

**TABLE 9.8 COMPARATIVE GROWTH INDICES, ASSESSED VALUATION AND AVERAGE DAILY ATTENDANCE, JUNIOR COLLEGE DISTRICTS \***

	Assessed Valuation		Average Daily Attendance**	
	Amount (Billions)	Index	Amount	Index
1958-59.....	\$18 3	100	164,227	100
1959-60.....	19 3	105	166,219	101
1960-61.....	20 8	114	182,378	111
1961-62.....	23 8	130	201,588	123
1962-63.....	26 3	144	215,108	131
1963-64.....	28 4	155	245,994	149
1964-65.....	32 2	176	277,801	169
1965-66.....	35 5	194	321,787	196
1966-67.....	40 1	219	340,079	207
1967-68.....	43 0	235	377,574	230

\* All districts which maintain a junior college  
 \*\* Total ADA, including adult ADA

slightly faster, than enrollment, enabling the districts in most cases to raise additional funds for current expense within statutory tax rates. Under the present system of support, the proportion of state aid is closely tied to district assessed valuation per attendance unit, a measure of ability to pay. A comparison of the growth rates for assessed valuation and junior college ADA in shown in Table 9.8.

**TRENDS IN SUPPORT FOR PUBLIC HIGHER EDUCATION**

**1. State Funds**

Perhaps the most evident trend in state support for public higher education is the growing gap between what the University and state colleges request in state support and what they have been receiving.

In 1966-67 the Regents of the University asked for a total of \$237.7 million in general current support (excluding salary increases). They eventually received an appropriation of \$229.9 million. The following year, after deleting nearly all proposed new programs, the

Regents requested \$264.5 million in general support funds and received \$251.5 million (\$231.5 in General Fund support plus \$20 million from Regents Funds). For 1968-69 the Regents asked for \$311 million from the state and received an appropriation of \$276.5. Thus the gap between what the Regents request and what the state finally provides has grown rapidly from \$7.8 million in 1966-67 to \$13 million in 1967-68 and \$34.5 million in 1968-69. There is little reason to expect this gap to narrow in the coming year.

The picture is much the same for the state colleges, although the magnitude of the difference between budget requests and actual appropriations is somewhat less. The Trustees' budget for 1966-67 called for \$171.7 million in general state support (again excluding salary increase funds), the colleges received \$166.4 million. In 1967-68 they asked for \$213.2 million and received \$187.9 million. For 1968-69 the Trustees proposed \$250.3 million in general state support and got \$224.4 million.

These figures are not intended to prove that higher education is getting either too little or too much support. They are intended to illustrate what has become, particularly in the case of the University, a wide gulf between state officials and the governing boards as to how much state support is necessary and available for public higher education. This gulf has important implications, we believe, not only for the current financing of public higher education, but for the whole budgetary process.

Another important trend has to do with the relationship of state support for higher education to state support for other activities, particularly the public school system. The expenditure of state funds for the support of the current expense of higher education has risen from \$169 million to \$540 million over the ten year period 1958-59 through 1967-68. The expenditure of state funds for current and capital cost including bond funds, has risen from \$280 million to \$685 million.

These sharp increases in state support must be seen, however, in the context of state expenditures for other services and activities. One good measure of general

**TABLE 9.9 CURRENT AND TOTAL STATE SUPPORT FOR PUBLIC HIGHER EDUCATION COMPARED WITH TOTAL GENERAL FUND EXPENDITURES**

	Current state support for HE	Total* state expenditures for HE	Total GF expenditure	Current state support as a % of GF expenditure	Total state support as a % of GF expenditure
1958-59.....	\$169,561	\$280,105	\$1,280 0	13 2%	21 9%
1959-60.....	183,112	235,700	1,437 2	12 7	16 4
1960-61.....	220,224	302,098	1,683 8	13 1	17 9
1961-62.....	250,967	336,340	1,697 4	14 8	19 8
1962-63.....	277,511	373,783	1,919 1	14 5	19 5
1963-64.....	310,551	426,257	2,106 1	14 7	20 2
1964-65.....	360,430	484,774	2,344 8	15 4	20 7
1965-66.....	417,321	532,279	2,579 6	16 2	20 6
1966-67.....	488,824	606,952	3,017 2	16 2	20 1
1967-68 (est.).....	540,226	685,293	3,274 7	16 5	20 9

\* Includes Bond Funds

**TABLE 9.10 STATE CURRENT EXPENDITURES FOR EDUCATION COMPARED WITH TOTAL STATE GENERAL FUND EXPENDITURES**

	Total state GF expenditures (millions)	State expenditures for grades K-12 (thousands)	State current expenditures for HE (thousands)	Total state current expenditures for education (thousands)	State support for K-12 as a % of GF	State support for HE as a % of GF	Total state current expenditures for education as a % of GF
1958-59.....	\$1,280 0	\$551,634	\$169,561	\$721,195	43 1%	13 2%	56 3%
1959-60.....	1,437 2	603,135	183,112	786,247	41 9	12 7	54 7
1960-61.....	1,683 8	694,898	220,224	915,122	41 3	13 1	54 4
1961-62.....	1,697 4	734,102	250,967	985,069	43 2	14 8	58 0
1962-63.....	1,919 1	777,013	277,511	1,054,524	40 5	14 5	55 0
1963-64.....	2,106 1	829,065	310,551	1,139,616	39 4	14 7	54 1
1964-65.....	2,344 8	893,860	360,430	1,254,290	38 1	15 4	53 5
1965-66.....	2,579 6	999,023	417,321	1,416,344	38 7	16 2	54 9
1966-67.....	3,017 2	1,154,146	488,824	1,642,970	38 3	16 2	54 5
1967-68.....	3,274 7	1,296,585	540,226	1,836,811	39 6	16 5	56 1

state expenditures is the total expenditure from the state's General Fund. When state support for the current expense of public higher education (which is drawn almost entirely from the General Fund) is compared with total General Fund expenditures, as in Table 9.9, it can be seen that higher education's share has risen, but much more gradually than the above figures might suggest.

It may also be said that the relative growth in state support for higher education has been made possible to a large extent by a diversion of funds from the elementary and secondary schools. In Table 9.10 state support for the current expense of higher education is compared with state expenditures for the elementary and secondary grades. The rising share of General Fund expenditures going to higher education has been offset by a decline in the share of expenditures going to the public school system.

In large part the apparent diversion of funds reflects the passage of the heavy wave of enrollment growth (which had its origin in the "baby boom" following World War II) from the elementary and secondary grades to the undergraduate and graduate levels of our public institutions of higher education. The passage of this wave, and the consequent slowing of enrollment-based cost growth in the public schools, has released funds for improving the level of support in the public schools and for meeting enrollment-based cost growth in higher education.

It is this surge of enrollment, coupled with steadily rising unit costs and the cost of new activities (especially the growth of faculty research), which has resulted in the sharp increase in expenditures for higher education. This increase, then, has been quite predictable in its general dimensions, if not in exact amounts. It represents the continuation of an obligation taken on nearly two decades ago.

**2. Federal Funds**

This report is being submitted at what appears to be an important junction in the history of federal aid to higher education. The principal evidence of this fact is to be found in the current debate about estab-

lishing a comprehensive definition of the federal role in higher education to replace the piecemeal programs and approaches which mark the past. Several commentators have for some years pointed out the need for an organized and more comprehensive federal approach to higher education, but only with the rapid growth of a multitude of separate programs and a more recent challenging of the effectiveness of those programs has the matter become an issue of widespread concern.

A list of the principal historical landmarks in federal aid to higher education would include the following

- 1862—Morrill Act (Land Grant Colleges)
- 1887—Hatch Act
- 1890—Second Morrill Act
- 1944—First G.I. Bill
- 1946—Atomic Energy Act
- 1950—National Science Foundation established;
- Federal Housing Act
- 1958—National Defense Education Act
- 1963—Higher Education Facilities Act
- 1965—Higher Education Act

The great landmarks of the last century were the Morrill Act of 1862 and the Second Morrill Act of 1890. The first enabled the creation of the land grant colleges with endowments of public lands. The second act established the continuing support of the land grant colleges by federal payments to land grant institutions for specific fields of instruction, particularly agriculture and "the mechanical arts". These subsidies to the land grant colleges have continued ever since. Other programs of this era were characteristically made in response to crises generated by the Depression and by World War I. Perhaps the most important of these for precedent value was the 1918 predecessor of the G.I. bill, an act providing vocational education opportunities for disabled veterans of the war.

A second period of development, beginning with World War II, also saw several major innovations which have had a great impact on higher education. The G.I. Bill, following World War II, provided the first large scale educational opportunity program to

individuals in U.S. history. During this time also, a tremendous expansion in military and scientific contract research with universities took place. The Atomic Energy Act of 1946 and the creation of the National Science Foundation in 1950 were new high marks in the federal provision of scholarships, fellowships and traineeships to individuals. Also during this period, federal aid to areas impacted by federal installations or programs began and flourished. The first large federal aid to college housing began in 1950 with portions of the National Housing Act authorizing federal loans for construction of student housing facilities.

Nearly all of the programs, however, were associated with particular aims of particular subdivisions of the federal government and were not propounded as parts of a general educational policy. The level of federal funding in higher education over this period remained at less than \$1.0 billion, experiencing a notable slump between 1949-50 and 1955-56 as payments for veterans' tuition and fees dropped from postwar highs to drastically lower levels. Two increasing trends tended to off-set the decrease in veterans' payments, however. These were constantly increasing amounts for research (up from \$95 million to \$534 million during this period) and for plant fund outlays (from about \$12 million to \$63 million). The Housing Act of 1950 was the principal source of the latter funds.

In 1947-48, about 67% of the federal expenditure was attributable to veteran's tuition and fees whereas only about 17% went to research. By 1957-58, however, federal expenditures for research accounted for nearly 70% of the federal total, and veterans' tuition and fees had been reduced to less than 1% of the total. As a percentage of total income for all institutions, the federal contribution actually decreased over the decade by virtue of remaining relatively constant as total institutional income grew.

The recent growth in federal aid to higher education got its first impetus from the National Defense Education Act of 1958. In the decade since that event, a steady procession of new enactments has enlarged upon the crisis-oriented Act of 1958 toward a somewhat more general approach (e.g. the Higher Education Facilities Act of 1963 and the Higher Education Act of 1965) which gave recognition to direct aid to colleges and universities as a legitimate federal activity. It has been estimated by the Carnegie Commission that the level of federal aid to higher education rose from \$775 million in 1958 to \$4.7 billion in fiscal 1967-68. The latter figure is estimated to represent about 24% of total expenditures for higher education nationwide (as compared with about 12.4% in 1957-58).<sup>3</sup> Federal contributions to some major universities, directly and indirectly, have in fact become so large so fast as to precipitate extensive debate as to whether such institutions were giving themselves over to federal control.

The greater portion of this federal aid has continued to be "categorical aid" for particular activities, certain kinds of talent and facilities, and special policy-related

purposes. Examples may be found in the concentration of funds for research grants by the National Science Foundation and the National Institutes of Health, research and development contracts, teacher training grants and loans, student financial aid, and construction grants. Nevertheless, there have been some important shifts in emphasis over the decade.

Figures now available for the five years between fiscal 1961-62 and 1966-67 concerning new obligational authority reflect the change in emphasis of the underlying laws and programs. The Office of Education and the U.S. Bureau of the Census report that new obligational authority for grants in higher education went from approximately \$992 million in fiscal year 1962 to about \$3.6 billion in fiscal year 1967. Loan authority went from \$320.5 million to \$741.3 million in the same five-year period. The total obligational authority for grants and loans combined went from about \$1.3 billion to \$4.3 billion over that period, an increase of 330%.

Within this general growth pattern, the various types of support authorization increased at widely different rates. By far the greatest increase in dollars as well as in percentage came in the category of grants to institutions for facilities (excluding research facilities), up from \$37.1 million in fiscal year 1962 to \$822.2 million in fiscal year 1967, reflecting provisions of the Higher Education Facilities Act of 1963 and its amendments. Comparatively, the growth in obligations for facilities loans was slight: \$245.9 million in 1962 to \$503.6 million in 1967. Institutional facilities grant and loan programs (excluding research facilities) accounted for 31% of all grant and loan programs by fiscal year 1967. The comparable figure in fiscal year 1962 was 22%.

Large growth was also reflected in the student aid category (which includes the college work-study program) which went up slightly over 450% in the same five years. By 1967, the categories of fellowships and traineeships, other student assistance (including work-study), and the Student Loan Programs accounted for 27% of all new obligational authority for grants and loans combined. The comparable figure in 1962 was 22%.

New obligational authority for grants in "basic research in educational institutions proper" and "research facilities" grew more slowly than the average growth of all grants taken together. Basic research grew from \$384.5 million in fiscal year 1962 to slightly over \$1.0 billion in fiscal year 1967, an increase over the period of about 270%, compared with an increase of about 360% for all grant authorities. Grants for research facilities grew even less rapidly: from \$121.8 million to \$203 million for an increase over the period of about 165%. The net result was that while grants in these two research categories accounted for 51% of total authorized grants in fiscal year 1962, they had declined to 35% in fiscal year 1967.

Now there is good reason to believe we are in another period of transition to some form of institu-

**TABLE 9.11 FEDERAL AID TO CALIFORNIA HIGHER EDUCATION, SOURCES AND TYPES OF PROGRAM, FISCAL 1965-66**

SOURCE	% of Category	TYPES OF PROGRAM	% of Category	SEGMENTAL DISTRIBUTION
<b>GRANTS</b>				
Health, Education & Welfare.....	59%	<b>GRANTS</b> Research..... 50% Facilities & Equipment..... 21% Individual Financial Assistance..... 19% Training Programs..... 9% Institutional Grants..... 1%	<b>TOTAL AID</b> \$454 Million	Distributed to 192 Institutions of Higher Education in California
Department of Defense.....	13%			
National Science Foundation.....	13%			
NASA.....	6%			
Atomic Energy Commission.....	4%			
Other.....	5%			
	100%			
<b>LOANS</b>				
Housing & Urban Development ..	62%	<b>LOANS</b> Facilities & Equipment..... 83% Individual Financial Assistance..... 17%	<b>TOTAL AID</b> \$454 Million	Distributed to 192 Institutions of Higher Education in California
Health, Education & Welfare.....	38%			
	100%			
				<b>PUBLIC</b> \$290 million (64%)
				<b>PRIVATE &amp; OTHER</b> \$164 million (36%)

tional grants for general support.<sup>4</sup> Congress has demonstrated an increasing disenchantment with the indirect grant and contract approach to aid, in large part because it has been so difficult to measure the results or to direct funds according to educational rather than research objectives. As a consequence, and as a result of the recent federal budget squeeze, these activities have been threatened with a sharp cutback. At the same time there has been increasing discussion within Congress and within the federal agencies as to ways in which the federal government can most effectively pursue a broader policy of support for higher education.

Sensing the impending change and wishing to give it impetus, the chorus of educators appealing to the federal government for greater financial support has grown rapidly in the past two years in number and in volume. Public and private institutions have joined repeatedly to ask not only that present federal contributions for such specific purposes as research, construction, and student aid be maintained and increased but also that the federal government begin a general subsidy of current operations on a regular, continuing basis.

There is still, however, no clearly stated federal policy regarding support for higher education. A large part of the legislation affecting higher education and the funds which have found their way into university hands have come as a by-product of other federal interests, such as agriculture, public health, atomic research, space exploration and national defense. According to a recent report by a federal panel, the federal government has acted "hesitantly, fitfully and without clear goals or a comprehensive set of related policies" in its support of higher education, and has moved into "a position of primary responsibility for the destiny of higher education" but is "as yet unaware of the implications of this responsibility."<sup>5</sup>

To many observers the question is no longer whether such aid will be forthcoming, but when and how. In the following section we discuss the question

as to how further federal aid may be made available and some of the implications of this trend for state policy.

### POTENTIAL SOURCES OF ADDITIONAL FUNDS

There is no ready panacea for the financial problems which continue to confront our public system of higher education, there are only a number of hard choices, just as there have always been. Among these hard choices we believe the following merit closer consideration: an increase in student charges, greater federal aid, an increase in state income tax revenue, private gifts and grants, fees or other charges for "public services," and greater current use of endowment fund earnings. In several cases we have found it impossible to determine exactly what the income potential is, but we are convinced that each of these sources should be carefully weighed in terms of potential additional yield, equity, feasibility, collateral effects, etc.

#### 1. Student Fees

Unquestionably, student charges for California's public institutions of higher education are quite moderate when compared with those of public institutions in other states. Among the 100 institutions which are members of the National Association of State Universities and Land-Grant Colleges the median student charge for resident students is \$360 for 1968-69. The median figure for the current year for the 230 institutional members of the Association of State Colleges and Universities is \$303. In comparison, the University "registration fee" for 1968-69 is \$300, the basic state college fee is \$86 and junior college fees are negligible. Obviously, there are many public institutions which charge much more than California's institutions do.

Although we expect that there will be strong and growing pressure during the 1969 Session of the Legislature to increase student charges and to openly adopt

a substantial tuition charge for University and state college students, we see no reason to modify the position which the Committee accepted regarding tuition as reported in its progress report to the 1968 Session of the Legislature. We believe that the Committee's opposition to further large increases in student charges was well founded on a careful analysis of the arguments for each side of the issue.

As was noted in the earlier report, the principal and overriding purpose of any decision to impose tuition or a comparable increase in other student charges must be to raise additional funds for the current support of higher education, in full or partial substitution for what would otherwise be available from state sources. Put most directly and simply, the argument is that only by charging higher tuition can we channel into higher education the amount of money which educators say they need.<sup>6</sup> The objective, of course, is to increase the financial contribution of middle- and upper-income parents beyond what the tax system can extract.

An increase of \$100 in student charges per full-time student may be expected to yield \$20-\$25 million from University and state college students (combined) plus an additional \$25-\$30 million from junior college students, depending on the extent to which the increase is waived for low-income students and the reduction in enrollment caused by the increased charge. The yield for each additional \$100 of increased charges may be expected to decline as a consequence of further enrollment reductions and further provisions for exceptions.

The pressure to increase student charges will be particularly strong in this legislative session because of the failure of the proposed construction bond proposition at the 1968 General Election and because of the widening gap between what the state colleges and University boards say is needed in state support and what the Administration appears willing to provide. The pressure will also grow in consequence of the proposals which will be presented for costly new programs, particularly new equal opportunity programs.

It needs to be reiterated, however, that there is no direct relationship between these proposed new expenditures and any specific means of financing them. In fact, the use of tuition revenue, or revenue from some comparable student charge, to provide funds for student financial aid is probably the least justifiable use of such funds. The use of tuition revenue for student aid is exactly the same as levying a tax against one group of students or their parents to benefit another group of students. Student aid is basically a form of supplementary income, and student aid programs, presumably, are a matter of general public policy related to equality of access to higher education. It is difficult, therefore, to see why students who receive no special benefit not shared by the public generally should be singled out to be taxed for funds to finance these programs.

It may be noted that this point is not universally accepted. Despite the Joint Committee's recommendation, the Regents of the University of California voted in April, 1968, to initiate a new student charge (under the euphemism of "registration fee") for the 1968-69 academic year. The new charge amounts to an increase of only \$81 per year but clearly represents a victory for the advocates of tuition.

The additional funds are to be used by the University for student aid for disadvantaged students. In response to the criticism that such an increase in student aid should be supported from the general tax base rather than by means of a discriminatory tax on students who are not direct beneficiaries of the proposed program, it was the University's contention that the student charge was the only source of funds available to it for that purpose. Subsequently, the University found that it could divert \$3.5 million in Regents' Special Funds to offset budget reductions by the Governor, but no attempt was made to use such funds to reduce the new student fee or to provide additional student aid.

Too little is known at this time about the individual economic benefits of higher education in relation to the general public benefits to warrant an increase in tuition as a user charge to reduce or eliminate the current public subsidy to higher education. No conclusive evidence has been presented to the Committee in this regard. Moreover, we know of no convincing evidence for the proposition that under the present state tax structure low-income groups support a disproportionate share of the cost of public higher education when tax payments, ability to pay and college attendance rates are compared.

The special report prepared for the Committee by Professors Hansen and Weisbrod stands as a beginning to what should be a thorough study of the economic benefits of higher education in California. Professional economists and others have only begun to explore this subject in depth. Much of what we know or think we know today about the distribution and extent of economic benefits (or "returns") is based on little more than hunches, intuition and certain commonly accepted beliefs. These hunches and beliefs should be examined much more carefully before they are made the foundation of basic state policy.

We do believe, however, that there is ample evidence at present to support the contention that increased tuition and other charges, on top of the already high private costs of college attendance, will constitute an increase in the barriers to higher education which too many students now cannot overcome. An increase in tuition would run directly counter to the recommendations in Chapter 6 of this report aimed at greatly expanding efforts to overcome the financial and other barriers to higher education for "disadvantaged" youth.

It is possible, of course, to establish loan programs to attempt to offset tuition charges. Federal and state loan programs have already established the concept

of deferred payment through relatively low cost credit as a major means for students themselves to finance their higher education. Additional loan programs are being proposed at both the state and federal levels, usually with deferred repayment related to after-college income.<sup>7</sup> But such loan programs tend to obscure the great need for more student aid now, even before there is any increase in charges. Moreover, a tuition-loan program which is closely related to after college income becomes little more than a somewhat inefficient income tax system.

We believe that there is some evidence to support the contention that higher education at the undergraduate level may be going through much the same sort of development as the public high schools went through in the mid-nineteenth century.<sup>8</sup> Almost all of the arguments which surrounded the growth of the free public high school, open to all, are now being repeated in connection with the growth of low-cost, easily accessible college education. These arguments include the question of individual versus general social benefits, the need to combat poverty and the impact on private, high tuition institutions. The similarity proves nothing one way or another, but it does suggest that we should try to understand how our system of higher education is developing and act accordingly, rather than simply basing current policies on past performance.

Accordingly, we believe that opposition to any increase in tuition, or a comparably large increase in other student charges, should be continued while other means are sought to provide support for higher education over the next few years.

## 2. Private Gifts and Grants

Private gifts from individuals, corporations, foundations and other organizations constitute a very small but growing source of income for California's public institutions of higher education—and a small but nevertheless important potential source of additional income. There is reason to believe that neither the University nor the state college system has really begun to explore this potential.

The University of California does, of course, receive a substantial amount of income from private gifts and grants. Income from this source has more than doubled since 1960. As indicated in Table 9.12, the University reported a total of \$34,909,659 in gifts and grants for 1967-68, of which \$3.4 million was for universitywide purposes and the balance for the individual campuses. Approximately 41% of the gifts and grants reported for 1967-68 came from individuals (including \$1.4 million from alumni), while corporations contributed 15%, private foundations 32% and associations 12%. A decline since 1960 in gifts and grants from these last three sources has been offset almost exactly by increases in gifts from individuals.

According to the American Alumni Council and the Council for Financial Aid to Education, the Univer-

**TABLE 9.12** GIFTS AND GRANTS FROM PRIVATE INDIVIDUALS, CORPORATIONS, FOUNDATIONS AND OTHER ORGANIZATIONS, UNIVERSITY OF CALIFORNIA

Fiscal Year	Total Received
1960-61.....	\$15,953,502
1961-62.....	11,523,667
1962-63.....	16,116,746
1963-64.....	20,339,444
1964-65.....	26,441,152
1965-66.....	26,428,875
1966-67.....	28,897,666
1967-68.....	34,090,659

sity of California ranked first among public institutions for gifts received in 1966-67 and third among all institutions, public and private. It must be kept in mind, however, that the University's position results from the fact that all nine campuses are totalled together. When the Berkeley campus and the Los Angeles campuses are considered separately they rank well below the top twenty institutions.

The California State Colleges, in their annual report to the Coordinating Council for Higher Education on the subject of gifts and bequests received by the colleges, indicated income of \$4,660,697 from this source for 1967-68. A large portion of this total consisted of land for the new Bakersfield campus (\$1 million title insurance value), and \$1.5 million from a single foundation to establish a new continuing education center.

In our opinion, however, both segments could increase income from this source very substantially if they would devote greater attention and effort to that end. The state colleges have no organized effort to attract private funds. The University of California, under increasing pressure for development funds, has recently begun to show more interest in this area, but continues to be hampered by "non-aggressive" policy guidelines.

The University's policy regarding the scope of its fund-raising efforts, first adopted by the Regents in 1958, provides that the University "... shall limit its fund-raising effort to its 'immediate family,' that is, alumni, faculty, students, possibly parents, friends geographically and sentimentally attached to various campuses, and corporations and foundations interested in the University and desiring to utilize the University's facilities." It is further provided that the University "... shall not embark on widespread public solicitations."

The University has a number of fund-raising projects under way at the present, the largest of which is the \$15 million Centennial Fund drive, but none of these would be accurately described as well organized, continuing efforts of sufficient scale to indicate significant change in current policy. This restrictive policy, according to the University's own statements, appears to be unique among major public institutions. Its purpose, quite clearly, is to preclude interference

**TABLE 9.13 GIFTS, DONATIONS AND BEQUESTS, CALIFORNIA STATE COLLEGES, 1966-67 AND 1967-68**

Purpose	1966-67	1967-68
Instruction.....	\$142,133	\$468,794
Research.....	76,602	148,304
Libraries and collections.....	61,865	229,104
Student welfare.....	448,036	691,825
Campus improvement.....	27,548	279,301
Miscellaneous.....	86,763	2,843,359
Totals.....	\$897,844	\$4,660,697

or competition with the fund-raising activities of the private colleges and universities of the state. In our opinion the policy needs very careful reconsideration.

It may be that as a consequence of the University's restraint much potential private support for higher education in California is lost to other activities and other states, to the detriment of both public and private higher education. We suspect that the University could substantially expand its fund-raising activities without in any way endangering financial support for the private institutions. Moreover, a more aggressive effort by the University might well serve as a stimulus to gift-giving generally, with the result that the private institutions would also benefit.

Much the same is true of the California State Colleges, except that they have far to go just to catch up with the University in this regard. Until they begin to make a real effort it is impossible to tell what the potential may be for income from this source.

All the data which we have seen indicate that neither the public nor the private colleges and universities in California are doing an acceptable job of developing private sources of support. Only a few of the private institutions have well organized fund-raising efforts, particularly in comparison with the fund-raising programs of many eastern colleges and universities. In states where the competition for private funds is stronger the amount of private support is also greater. It is possible that in the absence of serious competition from the public institutions in California, the private institutions have not been stimulated to develop the kind of fund-raising programs they are now beginning to need.

The only way to find out if this is true and at the same time to measure the potential for private support is to experiment for several years with more aggressive fund-raising programs. We believe that both the University and the state colleges should be encouraged to begin to conduct such an experiment.

According to the 1966-67 data reported by the American Alumni Council and the Council for Financial Aid to Education, total contributions to all campuses of the University averaged \$296 per enrolled student.<sup>9</sup> Although this figure put the University of California well ahead of most other major state institutions, it is far behind the figure of \$649 for the

University of Michigan. The figures for major private universities run much higher; for example, Columbia reported an average of \$1,609 per enrolled student, Pennsylvania \$1,203, Northwestern \$880, Stanford \$1,942, Cornell \$1,617, Chicago \$2,218.

If the University could raise its income from private contributions to the level of \$500 per enrolled student, it would gain some \$19 million in additional income. If the California State Colleges were able to increase their average income from private gifts and grants to \$100 per FTE unit of enrollment, they would gain approximately \$13 million in additional income. Although these figures are not great in terms of the total budgets of the two segments, they would be significant as supplementary income for new programs and special activities not now funded by the state.

### 3. Federal Aid

Federal aid for higher education is now at the lowest point in the past 3-4 years. It may fall even further with additional cutbacks in research allocations and comparable reductions in enrollment-related grant programs. Continuing national defense costs, the problem of inflation and the press for federal aid for the cities all make it clear that no great federal bonanza will be forthcoming in the next year or two. The signs are, however, that once a satisfactory vehicle is found, federal aid may increase substantially sometime during the next five years. The principal questions at the moment seem to be how and when this will occur.

Although the prospects of immediate direct assistance are slight, we believe that California's public institutions of higher education should begin now to play a part in determining how much and by what means additional federal aid may be forthcoming. For much the same reason as we believe that the state Constitution should be revised now to eliminate the legal obstacles to a state role in federal aid to private higher education, we believe the state should begin thinking now about federal aid for the public institutions. As others have observed, the decision which is finally made as to how federal aid is to be distributed may be one of the most critical public decisions regarding higher education since the passage of the Morrill Act.<sup>10</sup> California should play an active part in shaping that decision.

Among the principal proposals so far advanced are the following.

1. Tax relief in the form of special exemptions or credits: (a) for families with children in college, in some relation to direct enrollment costs, and (b) for private gifts to higher education;
2. Increased student financial aid through low-cost loans or through greater appropriations for work-study programs and scholarships;
3. Expanded categorical grants for specific purposes—e.g., research, construction, graduate instruction, libraries,

4. Direct general purpose subsidies for current expense based upon some type of allocation formula and not tied to any specific purpose; and
5. The return of tax revenues to the states to be spent as the states choose, for higher education or any other purpose, along the lines suggested in the "Heller-Pechman Plan".

Each proposal will have an important impact on fiscal policy and each will have an important impact on the politics of education.<sup>11</sup> Each proposal, therefore, has its particular cluster of supporters, and it is not surprising to find the majority of educators in favor of direct subsidies for current expense as opposed to the categorical aid of the past decade. Subsidies which follow students, giving aid to the students and to the institutions they choose to attend as well, appear, however, to have the widest support.

The efforts of the state of California and its institutions to take part in forthcoming changes in the patterns of federal aid to higher education could have a substantial impact on the course of those programs if strongly pursued with unity of purpose. Unless specific steps are taken to promote such unity of purpose, however, it will not otherwise exist. At the present time, there is a strong tendency for self-representation by institutions and the segments in seeking new federal aid programs. On the institutional level, both the University of California and the state colleges maintain offices in Washington, D.C. The junior colleges are represented by their national association. On the governmental level, California is represented in Washington by offices of the Governor, the Legislature, and the coordinating Council for Higher Education (now closing its office). The private colleges and universities, of course, also promote their own interests in Washington. On the individual level, thousands of faculty members and graduate students originate applications for individual aid, research projects, departmental assistance, and the like.

The result is that the segments and institutions may often work at cross purposes and with no explicitly stated goal in mind with respect to the general welfare of higher education in this state. In the present situation, it is quite natural to find institutions and their associations pressing Washington for new programs which extend undesignated broad-purpose grants to individual institutions for operational expenditures along with continuing demands for research funds.

In the absence of a strongly promoted state position concerning federal aid to higher education, there will be a continuing tendency for major proposals (and new programs) in Congress to be institutionally centered. This fact will continue to work against a necessary strengthening of public higher education in California. (It is somewhat ironical that just at this time the Coordinating Council for Higher Education should decide to remove its Washington representative, however justifiable that action may be in terms of cost and workload).

We recommend, therefore, that all segments of public higher education in California, together with other appropriate state agencies, participate actively and directly in determining what new forms federal aid to higher education should take and what objectives it should serve. Every effort should be made to formulate a proposal which is concerned with all of higher education, rather than one which simply reflects the current interests of the junior colleges or the University or any other single segment. Moreover, the proposal should be one which reflects the need to strengthen statewide planning and policy formulation.

Whatever the future pattern, it is clear that federal aid for higher education has not been an unmixed blessing. It has greatly strengthened the primacy of research in relation to teaching in many fields, it has forced the states to provide matching funds for programs that the federal government has chosen to foster, it has intensified the concentration of prestige and power among a relatively small number of "multi-versities", and it has been seen that it can be cut back just as fast as it can be expanded.

These are all reasons, we believe, why the state should play as large a part as it can as early as possible in the development of new forms of aid.

#### 4. State Funds

According to figures reported recently by the Coordinating Council for Higher Education, California's state and local tax effort for higher education, relative to personal income and population, is among the lowest in the nation.<sup>12</sup> These figures place California 37th in state and local effort for higher education (1965-66), and 37th in the proportion of total state expenditures allocated to higher education—11% as compared with the national average of 15.2%.

Among the 10 states with the largest populations and highest income per capita, California ranked third in tax effort for higher education (1965-66), but eleventh among states with a similarly high proportion of enrollment in public institutions. According to data for 1965, published by the National Education Association, California ranked 22nd in per capita state expenditures for state institutions of higher education and (adding in the junior colleges) 16th in per capita state and local public expenditures for higher education.<sup>13</sup> All of these comparisons are subject to a certain amount of manipulation to prove the desired point, but when due allowance is made for income, population and enrollment, California does not appear to be making as great an effort in relation to its ability as are many other states.

In Table 9.14 we indicate the approximate level of state support available for public higher education through 1972-73 if the same proportion of General Fund expenditure is allocated for this purpose as for the last fiscal year (1967-68), using our own rough projections of General Fund expenditures over a five-year period. These rough estimates suggest that there will continue to be a significant gap between the

**TABLE 9.14 PROJECTED STATE ALLOCATIONS FOR PUBLIC HIGHER EDUCATION COMPARED WITH PROJECTED BUDGET REQUESTS (In Millions)**

	1968-69	1969-70	1970-71	1971-72	1972-73
Total General Fund Expenditures.....	\$3,999	\$4,435	\$4,725	\$5,120	\$5,450
Allocation to Higher Education Current Expense					
Percent.....	16 5%	16 5%	16 5%	16 5%	16 5%
Amount.....	\$659	\$732	\$780	\$845	\$899
Projected Budget Requests.....	(638)	720	815	910	1,020
Difference.....	\$--	+\$12	-\$35	-\$65	-\$121
Difference as a % of Projected General Fund Expenditures..	--	-0-	7%	1 3%	2 2%

budget requests of the public institutions and the share of General Fund expenditures they can claim on the basis of precedent. If the current level of state contributions to the cost of public higher education (in relation to total costs) is to be maintained, either higher education's share will have to be increased at the expense of other state services and activities or new state revenues will have to be sought to help support higher education.

If the proportion of General Fund expense allocated to public school subventions continues to decline with declining enrollment growth, it may be possible to meet higher education budgets by increasing the General Fund contribution by 1%-2% over the next 5-10 years. An increase of 2.2% would cover the projected costs indicated in Table 9.14.

Another important alternative is the adoption of withholding (and estimating) of state income tax payments. Current estimates indicate that the continuing revenue effect would be an increase of approximately \$110 million per year over the next few years. If 50% of this sum were allocated to higher education, it would be sufficient to close the foreseeable gap between revenues and projected expenditures through 1971-72.

A system of withholding may have other faults, but it is clearly a more equitable and less regressive means of supporting higher education than tuition, inasmuch as it is primarily a method of improving the collection of income taxes. The present state personal income tax has a number of flaws, but it is the one state tax which is directly based upon ability to pay and which captures the increased earnings which may result, in part, from higher education. Moreover, the adoption of withholding would not require the increase in administrative staff and expense for the colleges and university's campuses which a system of graduated tuition payment would entail.

The question of whether or not California should shift to a system of withholding is, of course, a matter of basic state tax policy rather than simply a question of how public higher education is to be financed. Nevertheless, in the course of this report we advance a number of recommendations which will require additional state financing. To the extent that we are therefore obligated to suggest the means for providing such additional financing, we recommend the adoption of a

system of withholding and estimating for state income tax payments, with a significant portion of the additional revenue which is expected to result to be allocated to higher education.

### 5. Other Sources

In addition to support from state and federal funds, student charges and private gifts and grants, there are a number of other potential sources of additional funds which merit periodic review. Among these are

- (a) Charges to agriculture and other industries for research and development costs,
- (b) Agricultural extension charges;
- (c) Patent income,
- (d) Increased charges for public use of campus facilities, and
- (e) Greater current use of endowment fund earnings.

According to a recent report of the Coordinating Council for Higher Education, the University of California Agricultural Experiment Stations spent \$29.5 million for research in 1965-66 of which only 5% was supported from fee charges or sales and services.<sup>14</sup> Although a great part of this activity was applied research and development for specific agricultural industries, state General Fund appropriations met 63% of the cost and federal support met 24%. The figure for state support in California appears to exceed the average figure for other states with major agricultural experiment station programs and the income from fees and sales is comparably lower.

The same council study reported that among a sample of twenty states, California relies most heavily upon state support for agricultural extension and is one of the ten states that do not levy significant user charges. The council staff estimated that up to \$2-\$3 million might be gained by assessing charges for a portion of extension activities.

In 1967 the Legislature, acting in response to a recommendation by the Legislative Analyst, directed the University to propose a system of charges for services provided to the agricultural industry and related industries which would reduce future state costs. In response, the University submitted a statement arguing that any system of charges for its services would be unfair, impractical and impossible to devise. The Legislature indicated that it was not satisfied with this

answer and directed the University to come back this year with a more responsive report. That report should be studied very carefully when it is finally submitted

Increased charges for agricultural research and extension by the University of California might also be extended to research and development projects for other industries which directly benefit from University work. Conceivably, some portion of the more than \$30 million which the state now spends for the support of organized research in the University might be recaptured by establishing a system of charges for applied research. Although we have no way of making a useful estimate of potential income from this source, we believe that the University should be encouraged to give attention to this possibility as well.

Another area, and one to which the University itself has given increased attention, is that of royalty income from patents and copyrights. At present the University receives 50% of the net patent royalty income after patent and overhead costs are deducted. The University has no general claim to income from copyrights. The California State Colleges have no statewide policy regarding income either from patents or from copyrights.

It is doubtful, however, than any significant increase in income can be developed from this source. For 1966-67 the University obtained a total of \$123,066 in income from patent royalties. For 1967-68 this figure dropped to only \$41,748, and about half of this came from the tomato harvester.

A source which holds somewhat greater promise is that of increased charges for public use of campus facilities. Here we refer principally to the facilities for the performing arts, the large and small theaters which have been constructed on University and state college

campuses with state funds. In many cases very elaborate facilities have been provided and these facilities are being used for professional performances as well as by student groups. We believe that the admission charges for public performances in these facilities should be carefully scrutinized to determine whether they can be made more nearly self-financing, particularly when there is opportunity to serve a large population surrounding the campus.

Finally, there is the matter of getting greater current benefit from University endowment funds. Traditional policies which result in the addition of endowment fund earnings to existing funds and the steady growth of such funds have begun to be challenged at several leading institutions across the country. Nevertheless, according to the Auditor General's study of University of California financial practices, ". . . no policy has been established relative to the size of the endowments that the University, a public institution, may accumulate"<sup>15</sup> University financial reports continue to emphasize the growth of endowment funds with little reference to the use of such funds, as if growth alone were an appropriate objective.

In Tables 9.15, 9.16 and 9.17 we indicate the growth in endowments (and funds treated as endowments) over the past five years, the amount of income made available for current expenditures and the purposes for which those amounts have been allocated. The Auditor General reported that endowment funds had increased by 25% in the two-year period from June 30, 1965 to June 30, 1967. When this period is extended to include 1967-68, the three-year gain has been approximately 27%, but would have been substantially greater had the University not been required to contribute from "Regent's funds" to current support in an unusually large amount in 1967-68.

**TABLE 9.15 CHANGES IN UNIVERSITY OF CALIFORNIA ENDOWMENT FUND BALANCES 1965-66 THROUGH 1967-68**

	1965-66	1966-67	1967-68
Balances, beginning of year.....	\$165,803,000	\$190,789,000	\$207,816,000
Additions			
Gifts.....	11,504,000	6,452,000	7,177,000
Investment income.....	2,861,000	3,760,000	3,757,000
Net gain on sales of investments.....	3,421,000	938,000	1,467,000
Deposits (agency funds).....	481,000	150,000	141,000
Other additions.....	52,000	46,000	207,000
Transfers from current funds			
Grant and contract indirect cost recovery.....	12,049,000	11,595,000	14,505,000
Income from temporary cash investments.....	1,609,000	1,634,000	1,484,000
Other transfers.....	495,000	389,000	141,000
Total.....	\$32,472,000	\$24,937,000	\$28,879,000
Deductions—transfer to			
Current funds—appropriations for current expenditures.....	\$5,245,000	\$5,491,000	\$20,524,000
Plant funds.....	1,343,000	1,692,000	4,645,000
Loan funds.....	989,000	727,000	1,070,000
Total.....	\$7,486,000	\$7,910,000	\$26,239,000
Balance, end of year.....	\$190,789,000	\$207,816,000	\$210,456,000

**TABLE 9.16 UNIVERSITY OF CALIFORNIA ENDOWMENT FUNDS, 1963-64 THROUGH 1967-68 (In Millions)**

	1963-64	1964-65	1965-66	1966-67	1967-68
Endowments					
Book Value.....	\$152 9	\$165.8	\$190 8	\$207 8	\$210 5
Market Value.....	204 4	221 2	238 7	259 8	271 3

During the 1967-68 fiscal year the University was required to devote \$21.6 million of "funds functioning as endowments" to replace budgeted state appropriations. These funds were taken from three "special funds" which are available for allocation by the Regents to current expense, advances to capital outlay projects and direct capital outlay. The three special funds are the Opportunity Fund, the Nuclear Science Fund and the University Fund. All three are treated as endowments, but unlike other endowment funds the greater part of current income to these funds comes from federal payments for the indirect costs of grants and contracts. In 1967-68 a total of \$14.5 million was gained from this source, as compared with \$11.6 for the preceding year.

To provide the necessary funds (\$21.6 million), the Regents agreed to draw down existing special fund balances and shift to a current basis, rather than to continue to accumulate federal overhead payments during one year for allocation in the following year. As a consequence of these decisions, total allocations from these special funds increased from \$15,172,451 in 1966-67 to \$36,148,918 for 1967-68. Total balances for the three special funds fell from \$25.5 million on June 30, 1967, to \$9.5 million on June 30, 1968. Obviously, this cannot be done twice with the same funds, but this does not mean that the special funds and other funds treated as endowments cannot be used to provide essential budget support in the future.

In June 1968 the University sought approval from the Regents to allocate \$10.2 million in Regent's funds (from the three special funds) for advances to capital

outlay projects and \$4.9 million for direct capital outlay expenditures. This proposal was challenged on the grounds that the University was claiming at the same time that reductions in its state appropriation threatened the quality of its operation. The proposed capital outlay allocation also appeared to contradict the University's claim that an increase in student fees was the only possible source of funds for an expanded student aid program. The proposed action was postponed, and subsequently the University decided to divert \$5.5 million in Regents' funds to offset in part the reductions in the support budget.

Prior to this time it had been agreed that these funds would only be used for internal borrowing, capital outlay and certain special activities—they were held to be out of bounds as far as the regular support budget was concerned and were not to be diverted to any other purpose, whatever the circumstances. Now a more rational policy has been initiated and as a consequence the University should have greater flexibility to meet its current funding requirements. The next step should be to reconsider the general policy of steadily amassing endowment funds regardless of the circumstances and the need for current support.

Moreover, there is evidence that the recent rate of appreciation could be substantially improved. The Auditor General's study found that the rate of return on endowment fund investments in common stocks was somewhat lower for several recent years than it would have been had the Regents invested, in effect, in the Dow-Jones or Standard and Poor average. The

**TABLE 9.17 EXPENDITURE OF CURRENT INCOME FROM UNIVERSITY ENDOWMENT FUNDS, 1965-66 THROUGH 1967-68 \***

	1965-66	1966-67	1967-68
Instruction and Departmental Research.....	\$1,275,000	\$1,679,000	\$1,777,000
Extension and Public Service.....	367,000	442,000	543,000
Organized Activities—Education Departments			
Hospitals and Clinics.....	54,000	65,000	99,000
Other.....	6,000	6,000	8,000
Organized Research.....	3,145,000	4,174,000	5,830,000
Libraries.....	1,156,000	946,000	1,294,000
Student Services.....	51,000	94,000	322,000
Student Aids.....	2,538,000	2,845,000	3,500,000
Maintenance and Operation of Plant.....	17,000	21,000	418,000
Staff Benefits.....	18,000	6,000	-----
General Administration.....	139,000	235,000	251,000
Institutional Services and General.....	466,000	598,000	898,000
Auxiliary Enterprises.....	-----	9,000	1,000
<b>Total.....</b>	<b>\$9,323,000</b>	<b>\$11,120,000</b>	<b>\$14,941,000</b>

\* Included are expenditures of funds from the Opportunity Fund, Nuclear Science Fund, and University Fund approved for current use. Regents' loans and appropriations for capital outlay purposes from these funds are not included.

same study also reported that the 3.89% yield upon the market value of the University General Endowment Pool for 1965-66 placed the rate of return twenty-sixth among 64 university endowment funds studied by the Boston Fund. If the market value of common stocks held over this period had increased, the combination of appreciation and dividends might have produced a more impressive total rate of return. Instead, the portfolio declined or made small gains in market value in the same years that the Dow-Jones average and the more inclusive Standard and Poor Index either remained stable or made appreciable gains.

Improved rates of return, altered policies respecting the reinvestment of income and the use of unrestricted gifts for current expenditures could in combination make available for University purposes sums of the same magnitude as the various tuition proposals are expected to produce. Without prejudice to whatever decisions the Regents might reach on these issues, it does seem relevant to ask for whom endowments are being increased, and on what basis the students and taxpayers of this generation are judged less important and less worthy beneficiaries of University holdings than those of subsequent generations.

## **BUDGETING STATE SUPPORT FOR PUBLIC HIGHER EDUCATION**

### **A PROGRAM BUDGET FOR HIGHER EDUCATION**

As the pressure mounts to find new and expanded sources of support for higher education, the institutions themselves will face increasing demands that they account clearly for the use of the funds they receive and that they tell the public what is being accomplished with its tax dollars. Moreover, the public and its representatives want some assurance that those in management positions in higher education have a reasonably clear view of their objectives and the best means to attain them.

For this reason the Legislature has a strong and direct interest in the manner in which higher education budgets are formulated and the manner in which they are presented to the Legislature. It is out of this general concern that there has grown the Legislature's specific interest in what is called programming and budgeting systems (PABS) or planning, programming budgeting (PPB). For the Legislature, PABS means some assurance of better internal decision-making and better information in a useful form for legislative decision-making.

In order to act intelligently and responsibly in regard to higher education budget requests, the Legislature should have:

- (1) A statement of the basic goals and objectives of the state's entire system of public higher education,
- (2) A detailed description of each of the major programs and program elements of that system, including a statement of the objectives of such programs and program elements,
- (3) The projected support and capital costs of the entire system and each major program over a period of at least five years,
- (4) A complete statement of proposed funding by source for each major program and program element over the period of the projection, and
- (5) Sufficient performance data for each major program and program element to permit a careful evaluation of the level of service to be provided and the proposed rate of progress toward stated objectives.

The first requirement is for a comprehensive view of the state's entire system of higher education as an essential backdrop for consideration of proposals effecting individual segments and programs. Instead of the periodic summaries of the major elements of the entire system as presented in the 1960 Master Plan and again in this report, the Legislature should have a comprehensive up-to-date statement for reference at each session. Such a statement should include a listing of the principal objectives of the system and the framework of priorities which have been established for those objectives.

These objectives and priorities should reflect not only the viewpoint of the academic community but also the goals and policies of the current state administration. It is particularly important that the Governor's Budget state as explicitly as possible the Governor's view of the state's needs in regard to higher education.

This general structure should then be broken down into its major programs and program elements, the means by which the stated objectives of the system are to be achieved. Initially, this program statement should concentrate upon providing the clearest possible presentation of the major programs and their principal elements rather than attempting to carry program analysis or identification down to the smallest units. At this time, for example, it is much less important to have a program analysis of instruction in terms of individual disciplines and the smallest organizational units, than it is to have a clear picture of the principal ways in which instruction is provided, regardless of field.

Proposed annual expenditures for the system as a whole and for the separate program components must be presented in the context of the best possible projection of the cost of the system and its components over a period of at least five years into the future. These projections should not attempt to speculate as to the future cost of future actions. They should concentrate upon the future cost of existing and currently proposed programs, and they should reflect both current expense and capital costs.

We believe it is important in this regard that some agency of the state, either the Department of Finance or a committee of the Legislature, provide a projection of revenues, again for a period of at least five years in the future, together with a statement of the proposed allocation of those revenues among the various activities of the state according to current policies. It is unreasonable to ask higher education agencies to make serious expenditure projections in the absence of necessary information as to the probable levels of income to be available to them and the expectations of the state administration in that regard. In this connection it is interesting to note that the recently published Phase II Report of the State Development Plan Program, prepared by the California State Office of Planning, devotes the equivalent of less than one page out of a total of 348 to the subject of higher education.

The expenditure projections as well as the immediate annual budget proposals should clearly indicate all proposed sources of funding, including state funds, federal program support and grants, local financing, student and other user charges, overhead cost reimbursements, endowment income and other private sources of funds. The state contribution is sufficient in every case to justify an expectation of full disclosure to the state of all other proposed financing. Full and accurate disclosure in this respect will do much to dispel the feeling that alternative sources of funds are being hidden and that accurate information as to the actual size of various programs is being withheld to gain the maximum amount of state funds.

Finally, it is of greatest importance that relevant performance data be developed and presented in each program area so that the quality of program evaluation can be significantly improved. In many cases it will be difficult to decide upon performance measures which are both obtainable and relevant. Some program elements may not have directly applicable performance measures. In other cases available performance data may pertain only to one aspect of the program. Nevertheless, a substantial effort must be made in this direction in order that the Legislature be given some explicit basis for evaluating the success of various programs and the merits of alternative methods of operation.

## **THE PRESENT BUDGET SYSTEM FOR HIGHER EDUCATION**

With respect to the University of California there has been some improvement in the Governor's Budget in recent years in reporting nonstate sources of funding and in identifying and describing program augmentations. However, there is still no effort to place each year's proposed budget in the context of five- or ten-year cost projections, to identify and analyze important performance indicators, to clearly describe all sources of funding for each major program element or to account for all costs on a program basis.\*

\* This is being written prior to the publication of the Governor's Budget for 1969-70. The new budget is expected to provide more program material than in the past.

The University itself acted several years ago to adopt a functional budget structure which was a significant improvement over previous formats. The University is also moving forward with short- and long-range fiscal planning. Nevertheless, several improvements in cost projections which are contained in the Regents' budget, are not carried over into the Governor's Budget. The Regents' budget, on the other hand, still emphasizes the allocation of funds by campus rather than by program and activity. The two documents, rather than supporting one another, are extremely difficult to reconcile in many important respects. Much of the effort of the Legislative Analyst must be devoted to this reconciliation rather than to the more appropriate functions of examining program justifications, analyzing performance data, and developing expenditure alternatives.

In 1967 the Office of the Auditor General, at the request of the Legislature and in cooperation with this Committee, undertook a series of special studies of the financial practices of the University of California.<sup>16</sup> One of the principal findings reported by the Auditor General was the need for the University to "design and implement a program budget and cost accounting system" The Auditor General's staff described the need in these words:

"The objectives of . . . classifications of expenditures are to accumulate and report financial data in a form which will disclose the costs of end products or outputs of the university to provide the Legislature and the administration with a better comprehension of the financial activities of the university.

"Based upon our review of financial reports and records of the university, we have found that expenditures are classified in accordance with traditional institutional accounting classifications which do not disclose the cost of end products or programs. Also, in the existing system there are inconsistencies in the recording and reporting of expenditures primarily because of budgetary influences on the accounting system which require that expenditures be charged where budgeted. As examples, (1) staff benefits, which include retirement and health insurance contributions, are charged directly to auxiliary enterprises and AEC research projects but are not charged to any other classification such as instruction, public service, etc.; (2) faculty salaries, except for extension and some medical center salaries, are all charged to instruction regardless of the activity engaged in by the faculty, and (3) intercollegiate athletics expenses are accounted for partly as an auxiliary enterprise, partly as an organized activity, and partly as instruction.

"In order to correct these inconsistencies and to provide the Legislature and administration with meaningful measurements of the total money costs of accomplishing stated objectives of the university, program budget and program cost ac-

counting systems need to be designed and implemented. The application of program costs to other management information, such as classifications of students, should provide the university with the capability of reporting the cost of its end products, such as units of instruction by level of instruction.

"The university's cost of instruction by level of instruction would be useful to the Legislature in making decisions relative to the allocation of state funds for instruction to the various segments of higher education which, in addition to the university, include the state colleges, junior colleges, and state scholarships for instruction at state and private colleges and universities. Program cost variances by location would be useful to the university administration in making decisions relative to specialization in curriculums or in research."<sup>17</sup>

As an example of the differences between University expenditures as now reported and actual expenditures by major programs, the Auditor General prepared the data shown in table 9.18.

Several improvements have also been made in recent years in the presentation of the state college budgets, particularly in grouping expenditure items and in shifting some of the emphasis from individual institutions to the system itself. Much of this progress has come as a result of legislative prodding. Nevertheless, the presentation of the state college budgets suffers from many of the same shortcomings which characterize the University budgets: the emphasis upon organizational structure rather than program functions and objectives, an absence of cost and income projections, the meagerness of performance information and evaluation and the continued complete separation of current operations and capital outlay.

It must be acknowledged that the implementation of program budgeting and planning for institutions of

higher education is no simple matter. There are major conceptual problems in identifying useful measures of output and in segregating functions and costs which in practice overlap extensively. Nevertheless, we are convinced that it is worth the effort if the Legislature is to have a rational analysis of the costs and objectives of public higher education.

Perhaps the most serious problem now is that the University and state college budgets are presented as entirely separate matters with no apparent relationship between what the University does and spends and what the state colleges do and spend. In fact, the five basic documents which the University has developed as planning and management tools (the academic plan, the long-range development plan, the fiscal plan, the capital outlay budget and the annual operating budget) carry no mention of the state colleges or the junior colleges, although it is only reasonable to suppose that in planning for one segment it would be necessary to give some attention to the plans of the other segments.

Obviously there is an important relationship between the budgets of the two segments, but it is seldom given open and direct consideration except in the decision-making process of the administration and the fiscal committees of the Legislature. The Coordinating Council for Higher Education, which might have provided the means for a careful consideration of support requirements for all of public higher education, has been precluded from doing so by the unwillingness of the segments to give the council an important role in fiscal matters. Recent efforts by the council staff to provide some leadership with regard to program and performance budgeting have received a very cool reception from the segmental representatives on the council.

State support for junior college current expense remains outside the annual budget bill and therefore receives no direct consideration whatsoever in the reg-

**TABLE 9.18 ADJUSTMENT AND REALLOCATION OF 1965-66 EXPENDITURES TO DISCLOSE EXPENDITURES BY PROGRAM**

	Amount Reported	Adjustments (Deduction)	Allocation of Overhead (Deduction)	Expenditures by Program
Instruction and departmental research.....	\$118,918,000	\$(4,785,000)	\$42,554,000	\$156,687,000
Organized research.....	123,145,000	(13,290,000)	30,393,000	140,248,000
Public service:				
Extension and public service.....	31,381,000	(374,000)	5,908,000	36,915,000
Organized activities				
Hospitals and clinics.....	26,616,000	(1,081,000)	6,310,000	31,845,000
Other.....	3,604,000	(393,000)	1,062,000	4,273,000
Student aid.....	13,529,000	-----	742,000	14,271,000
Student services.....	14,082,000	(229,000)	2,293,000	16,146,000
Auxiliary enterprises.....	23,052,000	(335,000)	4,385,000	27,102,000
AEC operations.....	238,313,000	-----	2,450,000	240,763,000
Staff benefits.....	17,196,000	-----	(17,196,000)	-----
General administration and institutional services.....	19,866,000	(1,837,000)	(18,029,000)	-----
Maintenance and operation of plant.....	22,101,000	(575,000)	(21,526,000)	-----
Libraries.....	15,304,000	2,897,000	(18,201,000)	-----
Plant use charge.....	-----	21,145,000	(21,145,000)	-----
Total.....	\$667,107,000	\$1,143,000	-----	\$668,250,000

ular budget process. Although the junior colleges are responsible for approximately 75% of lower division instruction, they are treated, so far as the budget process goes, as a matter of no real concern. Fortunately, this is not true of state support for junior college capital outlay, which, at legislative insistence, was brought within the regular budget review process when established on a continuing basis in 1965.

#### RECOMMENDATIONS

We recommend that beginning no later than 1971, the Governor's Budget present a consolidated budget for public higher education which will have as its components.

1. A statement of the several goals and objectives of the system as a whole and its individual segments;
2. A detailed description of each of the major programs and program elements of the system, together with a statement of the objectives and appropriate performance evaluation criteria for each program and program element;
3. A projection of support and capital outlay costs for each major program and segment and for the system as a whole over a period of at least five years;

4. A complete statement of proposed funding by source for each major program and segment and for the system as a whole over the period of the projection, and
5. Sufficient performance data to permit a careful evaluation of the level of service being provided and the proposed rate of progress toward the stated objectives.

Implementation of this recommendation would be aided by any step taken toward implementation of our recommendations regarding structure and governance in Chapter 5. However, we see no reason why the adoption of a consolidated program budget for higher education need be dependent upon actual consolidation of the systems. Although we believe that it will be impossible to have effective fiscal and program planning until the segments are unified in some manner, we believe that much progress can be made toward a consolidation of higher education budgets in the absence of any structural change.

We further recommend that the new Board of Governors of the Community Colleges begin immediately to collect, prepare and publish comprehensive current fiscal data regarding junior college income and expenditures, regardless of source. This data should be prepared in the same general manner as we have recommended for higher education as a whole.



# 10. Urban Focus: Community Education and Assistance

## HIGHER EDUCATION AND THE "URBAN CRISIS"

According to the 1960 census, 86% of California's population is located in urban areas. This figure places California second among the states in degree of urbanization and well above the national average of about 70%. Between 1950 and 1960 94% of the state's population growth occurred in the state's 14 standard metropolitan statistical areas. Moreover, nearly 80% of the state's total population was located within the sixteen counties which make up San Francisco Bay, Los Angeles and San Diego metropolitan areas. Metropolitan California continues to grow by more than five million residents every decade. It is now expected that by 1980 91% of the state's population will be located within the 14 metropolitan areas.<sup>1</sup>

It is no secret that this tremendous growth in urbanization has brought with it social, economic and political problems of great urgency. What once were merely problems and issues are increasingly viewed as closely interrelated manifestations of an "urban crisis". This urban crisis pertains not only to the "ghettos", or the "inner city", it also involves the suburban and fringe areas where growth rates have been the greatest.

The urban crisis is making heavy demands upon government at all levels. Those demands can be expected to increase to the point at which some existing forms of governmental organization will be seized by a state of paralysis because of their inability to cope with the multitude of problems confronting them. This is most likely to happen where public agencies prove incapable of adaptation to a changing environment and where there is no positive effort to cope with each new situation until it has become a problem of such severity that it can no longer be ignored.

Most state and local agencies have begun to adapt to the fact that this is a highly urbanized state. State and local agencies dealing with transportation, employment, welfare, law enforcement and other essential services have discovered that they must restructure and redirect their activities or become irrelevant to the communities they are intended to serve. The Legislature itself has been reapportioned to give more nearly equal representation to those who reside in the major cities.

A similar adaptation must be undertaken by our public institutions of higher education. The most pressing need confronting the campuses in this regard is to open their doors to greater numbers of students from minority groups and low-income families and to serve the new students more effectively. The recommendations which we have advanced in Chapter 6 of this report are aimed directly at that aspect of higher education's responsibility.

But the responsibility, in our view, does not end there. It is not enough for the colleges and universities to say, in effect, that they will accept these new students, but other than that, they will simply continue to do what they have always done best, that is, to teach the students what they need to know, including what they need to know about urban problems.

No matter how much they might like it to be otherwise, the colleges and universities have become a central element of our urban society. In the opinion of some observers they have become the principal base of an "educational and scientific estate" which now stands in much the same relationship to our industrial system as did the banking and financial community at an earlier state of economic development.<sup>2</sup> In other words, this "educational and scientific estate" now deals in the decisive factor of production, talented, highly trained manpower.

Whether or not this is true, it is evident that our institutions of higher education, and more particularly the faculties of those institutions, do have the potential to exercise an enormous influence on the course of urban life. They can do so through the three major elements of campus activity: instruction, research and applied knowledge. The colleges and universities are the only existing agencies of sufficient scale which possess these resources. They cannot remain isolated from their communities; they must become part of the action. They must become involved if only because, as we have seen on several recent occasions, the problems of their surrounding communities have a way of spilling over onto the campuses—and being acted out there with all the conflict and disruption and disarray that more often occurs off-campus.

The basic problem confronting the Legislature in this regard is to determine what steps are necessary, what public policy action can be taken, to more effectively engage the resources of public higher education in dealing with the needs of the cities.

## **CURRENT COMMUNITY EDUCATION AND ASSISTANCE PROGRAMS**

For some time California's public institutions of higher education have been making an important contribution to their communities through their extension programs, "continuing education" and "extended day" instruction. In 1966-67 the University of California, through its University Extension, offered more than 6,300 programs for some 220,000 enrollments at 350 different locations throughout the state. These programs are intended to provide adult Californians opportunities for professional advancement, increased participation in public affairs and personal growth and to assist in the application of University resources to local, state and national problems.

The California State Colleges also operate extension programs, including academic courses, workshops, institutes, conferences and consultant services. In 1966-67, 42,000 individuals were enrolled in state college extension activities. Both the state colleges and the junior colleges also make a large contribution to community education through the admission of part-time students to "extended day" classes and "classes for adults" as well as to regular day classes.

Other traditional community education and assistance activities include campus lecture and arts series which are open to the public and the provision of campus recreational facilities for community use. In some cases the state college laboratory schools perform an important community service by demonstrating the feasibility of new teaching techniques and equipment for community schools. Certain junior colleges have made available to their communities their expertise and experience in educational administration through the operation of job training centers. Finally, University and state college faculty members, usually on an individual basis, have engaged in a limited amount of consulting activity for local government and private non-profit agencies.

Recently several of these activities have been expanded, and several new forms of activity have been initiated. For example, the Peralta Colleges have established an Inner City Project as part of a nationwide demonstration project by community colleges. The project is intended to demonstrate ways in which the community colleges can more effectively disperse their services and programs into the inner city. An important goal is to provide college services and resources to residents of the inner city in order to develop there a new sense of community identity, participation and involvement.

Sacramento State College has recently established a Center for Community Study and Service. The new center is intended to bring together the college's faculty and student resources in assisting various segments of the college's surrounding community to understand and deal with such problems as racial strife, urban decay, public transportation, municipal government and mental health. The California State College at

Los Angeles has pledged itself to community assistance as a major institutional commitment. This commitment, called Urban Focus, has led the college to develop close ties with several inner city schools, and to develop other activities involving direct service to the urban communities.

The University of California has also intensified its efforts of this type. In May of 1968, President Hitch told the Regents of plans to establish a broad new University program to attack urban problems, including greater emphasis upon research, service and teacher training for urban areas. Although the content and organizational structure of this program are not yet apparent, several campuses have already moved ahead with their own programs. UCLA's Institute of Government and Public Affairs has given considerable attention to contemporary problems in Los Angeles. Other campuses have sent students and faculty members alike into inner city areas to develop a sharper understanding of the problems confronting the residents of those areas and to provide special assistance to community development programs.

Similar programs and activities have been undertaken by several of the independent colleges and universities. Stanford University has set up a Community Planning Laboratory bringing together students and faculty from a broad array of disciplines to provide direct assistance to Bay Area communities. The University of Southern California established an innovative course entitled the "Urban Semester" which focuses upon the entire urban system and takes students into the heart of each of the major elements of urban life.

Some of this activity has been stimulated by financial aid from the federal government in accordance with the Community Services and Continuing Education Program established under provisions of Title I of the Higher Education Act of 1965. This program was set up to strengthen the community service activities of institutions of higher education through a state-federal matching arrangement. California's public and private institutions receive approximately \$500,000 annually in federal funds under this program. California's participation is supervised by the Coordinating Council for Higher Education which has recently stated the primary concern for this program to be "the quality of life in ghetto communities."

Other activity has been sponsored directly by federal agencies, such as the Office of Economic Opportunity and the US Office of Education, through contracts for university and college participation in Head Start, the Job Corps, Upward Bound and other programs. These activities have demonstrated not only the ability of university and college faculty to make significant contributions but also the importance of specific grant and contract support in stimulating interest and participation on the part of the academic community.

Nevertheless, despite the progress indicated by these individual programs, the total response of higher education to the urban crisis has not been very impressive. What has been done so far has been piecemeal, sporadic and, for the most part, small-scale. Few of our public institutions of higher education have given convincing evidence of having accepted the challenge of becoming involved with the urban communities which surround them. Much of the apparent activity has gone but a little way beyond press releases and the formulation of new justification for old programs.

It is not difficult to find reasons for this. The institutions are deeply concerned just now with their own internal problems and are understandably reluctant to enter into new activities which are sure to stir up additional opposition from some quarter. They also suffer obvious difficulty in entering new fields for the reason that, by tradition, each new activity must be added to the existing structure, increasing the demand for scarce funds and talent, rather than replacing some outmoded function.

More importantly, among the faculties, where the real initiative must be sought, there is as yet little motivation to participate. There is, in fact, a strong skepticism as to the capability of the colleges and universities to make a substantial contribution aside from that which results from their traditional activities. In the face of this skepticism and the tradition of small-scale individual social research and consulting, few campuses have been able to put together anything resembling a continuing, interdisciplinary urban research and development program.

These obstacles to greater participation are real and will be difficult to overcome, but they should not be allowed to stand in the way of a large-scale commitment on the part of higher education to helping to overcome the problems of our cities. The colleges and universities cannot be major pools of talent and yet remain aloof from the most pressing needs for the application of that talent. New ways must be found to focus that talent upon the needs of the cities, to the benefit of higher education as well as the cities. As John Gardner has pointed out,

“The problems involved in the urban crisis are enormously varied. There are problems of government, of taxation and the allocation of resources, of law enforcement and the administration of justice. There are the problems of education, health, income maintenance, social services, recreation. There are the problems of city planning and architecture, transportation, land use, pollution control, solid waste disposal, and renewal of the city’s physical plant. There are problems of economic development, jobs, housing, black entrepreneurship, consumer protection. There are some fascinating questions centering around the question of population distribution—questions relating to dispersal of the ghetto, patterns of migration, and new towns.

“I could go on, but those should serve to suggest at how many points the intellectual interests of the university intersect the agonizing difficulties of the city”.<sup>3</sup>

## THE RURAL PRECEDENT

It has often been observed that the task which now confronts higher education in relation to the urban crisis is similar to and can find precedent in the great contribution which the land-grant colleges and universities have made to agriculture and rural society.<sup>4</sup> It is an inviting comparison, with important points of similarity as well as points of strong contrast.

First, the points of similarity. The success of the land-grant colleges in building the economic strength of American agriculture rested upon a number of basic attitudes and ideas. Perhaps the most important was the idea that educational opportunity should not be restricted to an elite but should be made available on a mass basis. Higher education was taken to the people by the establishment of new campuses and through various extension programs. It was assumed that all people, not simply an elite, could profit from higher education, either by attending the colleges or through the extension activities of those colleges. Education was made to have an impact on every basic institution, including the family, the schools and the local community. This must be achieved today, too, in dealing with urban problems.

It was also recognized that new knowledge was needed and that specially designated centers of research and development were necessary to produce that knowledge and to act as clearinghouses for the dissemination of new methods across the country. When the Morrill Act was passed in 1862 those centers did not exist, nor was there a ready-made set of plans for the agricultural revolution which eventually followed. There is little evidence that what had to be done to bring about that revolution was any clearer to those who confronted the problem in the 1870’s and 1880’s than are the solutions to the major urban problems to those who would confront them today.

Great emphasis was placed upon direct, practical experience (“learning by doing”), for teachers as well as for those who received the new knowledge, as the best method for transmitting that knowledge. Closely related to this was the willingness of the land-grant colleges to rely upon persons who lacked formal credentials but who had the experience and feeling of personal involvement necessary to carry the work of the colleges to the rural society. In addition, and not without strong opposition, there was a willingness to accept new curricula, to give academic acceptability to such subjects as agriculture and home economics.<sup>5</sup>

Aspiration, participation, mobility, innovation, and communication were the basic elements of the agricultural revolution. These are the same factors which must form the foundation for California’s response to today’s urban crisis.

There are, however, some very important differences between what was accomplished in agriculture and rural society and the problems confronting us in the urban scene. The agricultural revolution was primarily a technological revolution and only secondarily a social movement. Its principal impact was upon methods of production, transportation and marketing. It did not confront the broad range of interrelated problems incorporated in the term "urban crisis."

Moreover, the agricultural revolution dealt with the economic aspirations of the majority, it had little or no effect upon the lives of the rural poor in many areas of the country. The ethnic minorities which now make up the majorities of the inner cities had no significant role in the agricultural movement. Much of the labor force which proved unnecessary to the new agriculture moved to the cities where it remained unemployed or underemployed, and, as a consequence, some of the unsolved problems of today's cities may be traced to the "success" of the agricultural movement.

It should be noted, as well, that it took nearly 50 years following enactment of the Morrill Act in 1862 for the land-grant colleges and universities to accept the new responsibility thrust upon them and then to develop their capability to work effectively in the rural community. The Morrill Act did not begin to have a major impact upon American agriculture and rural society until about 1910. It is clear that the present urban crisis cannot be approached with quite such deliberation. The traditional disengagement of the universities must be overcome much more rapidly this time if they are to play a role commensurate with the resources they command.

It is true in the broadest sense, however, that the basic objective today is to bring the institutions of higher education into much the same working relationship with urban communities as the land-grant institutions developed, over time, with the rural communities. It is with this general objective in mind that we advance the following recommendations.

## RECOMMENDATIONS

1. We recommend that the University campuses, state colleges and junior colleges which are located in metropolitan areas organize regional, jointly operated urban research and development centers to function as the focus for programs in urban research and community education and assistance.

Elsewhere in this report we urge the consolidation of higher education resources and the creation of a unified public system. The need for such a step state-wide and at the regional level is nowhere so strong as in connection with higher education's response to the urban crisis.

One form of detachment which individual institutions in urban areas must be encouraged to abandon is that which leads each to be concerned primarily with its own interests and activities, rather than with

ways and means which institutions generally and collectively can respond to the urban crises in its many manifestations. Few individual institutions, acting alone, command the talent and resources to make a major contribution. The possibilities for service will multiply rapidly, however, if all the public (and private) institutions of higher education in each major metropolitan area will combine their resources and skills.

We propose, therefore, the establishment of joint urban research and development centers with participation by University, state college and junior college personnel. Wherever possible these centers should absorb the very small and generally faltering agencies set up by many individual institutions. The new centers, following the example of the several outstanding centers of scientific research and development in California which have made such outstanding contributions to both pure and applied science, could serve to focus and stimulate research and applied knowledge in urban affairs. In this case, however, all three public segments should be involved, because each of the three has particular talents and experience which need to be brought to bear on the various elements of the urban crisis.

It should be clear that we do not propose the further proliferation of the type of urban studies institutes which have sprung up across the country in the past few years. The great majority of these institutes are fragile, small-scale affairs, often no more than one man with one grant. We are proposing, rather, fully staffed centers which emphasize sustained policy-oriented research, development and demonstration. The approach must be interdisciplinary and intersegmental. Urban transportation, urban and suburban housing, inner city employment, the influence of housing and income on education, evaluation of recent federal programs and problems of campus-community communication, among other issues, would be appropriate subjects for research, experimentation and evaluation.

Programs and activities of this character will clearly require state support for their basic operating costs and some portion of their program cost. We believe that such support should be provided upon clear evidence of interinstitutional and intersegmental cooperation and an explicit statement of proposed activities and objectives. The proposed centers should also attract substantial federal funding, as well as support from the major private foundations which have recently expressed a strong interest in urban matters.

It may be found that if the various institutions in an urban area work cooperatively in developing needed services, they will also be in a stronger position to maintain those values of professionalism and academic integrity which the academic community fears to lose in close contact with its surrounding society.

2. We recommend that consideration be given to reshaping University Extension so that it becomes an effective agency for all types of community education, with an appropriate level of state support.

In recent years University Extension has become, to a large extent, a program of high cost recreation and advanced professional training for doctors, teachers, etc. This appears to have happened in part because it is the type of activity the administrators and faculty have found most congenial to their interests and in part because these activities yield the greatest tuition revenues. As these activities have come to make up an increasingly large portion of University Extension's total activity, state support has been reduced, on the grounds that University Extension can and should become self-supporting. In this way reductions in state support have given encouragement to greater concentration on revenue producing activities, which in turn, when successful, appear to justify further reductions in state support.

Only the junior colleges now provide anything like the type of community education activity in urban areas which is so widely discussed and so little in evidence. However, few of the junior colleges have the sort of financial base, even with the assistance of the special district tax rate for adult education, to mount large-scale continuing community education programs. These programs, where they occur, should be encouraged, but we believe it is not nearly enough to rely solely on the junior colleges for their development and operation.

The resources of the University and the state colleges should also be brought to bear in this area. We believe that University Extension, while retaining many of its present functions, should be reshaped or redirected so that it can begin to provide low-cost community education in the heart of the state's major metropolitan areas, in the inner cities, together with education and professional training in urban affairs for residents of the suburbs. In doing this, University Extension should utilize the resources of the state colleges and junior colleges as well as those of the various University campuses.

With the establishment of the joint urban research and development centers which we propose in our first recommendation, University Extension could serve as the community education arm, extending out from the centers to carry the work of the centers to the individual communities, on the one hand, and, on the other, bringing the people of the communities into closer contact with the activities of the centers. Quite obviously the campuses, although major centers of trained and talented manpower, do not yet have a monopoly. An agency such as University Extension could provide one means of bringing more individuals with special talents into the service of higher education on a part-time basis.

3. We recommend that the state colleges and the University, where appropriate, develop much closer ties with the public schools of the inner city.

We believe there is a great deal of opportunity for expanding state college and University assistance to the public schools, if the educators are willing to pro-

vide the services which the teachers and administrators of those schools want. This is an area in which the colleges and University campuses should perhaps be best prepared to bring their skills directly to bear in the communities where they are most needed.

There are a number of specific possibilities to be explored: concentration of internship programs in inner city schools, special in-service training for inner city teachers; experimentation with decentralized schools operated jointly by the colleges and the communities, special evaluation programs for compensatory education activities; the testing of alternative methods of attaining basic educational objectives in the primary grades.

It is in the public schools of the inner city that the lessons learned in the earlier land-grant college experience should prove to be most useful. In these urban schools the colleges should find the same opportunities for commitment and partnership that they found in the agricultural movement, provided that they emphasize their capacity for service rather than direction. Clearly this is one area in which educators must acknowledge some special skills and a special responsibility.

It is becoming increasingly clear that many of these schools do not and cannot under present circumstances meet the needs of the children they serve. The colleges and universities which claim important roles in teacher training and educational development must share in the responsibility for this failure. They must also recognize their responsibility to help bring about the drastic and creative changes in organization, curriculum and attitude which are so long overdue.

4. We recommend that the public institutions of higher education facilitate and encourage the establishment of solidly supported programs on the campuses to achieve a partnership with the black and Mexican-American communities.

If the public institutions of higher education are going to make their resources available in an effective way to the black and Mexican-American communities, they must be prepared to do so on a partnership basis with the leadership and fullest possible participation of the students and faculty members who have close ties with those communities. The principal objective must be to create the sort of conditions under which the people most directly concerned can work for themselves on a continuing basis.

In most cases the Afro-American and Mexican-American study programs which have been proposed by interested students, faculty and community groups can provide the kind of framework necessary to the partnership which must be established. Usually these proposed programs go beyond simply making certain desirable additions to the regular curriculum. They also encompass the establishment and support of research facilities, community centers and other means of day-to-day campus communication and cooperation with the urban communities.

Undoubtedly programs such as these will make a heavy demand upon the campuses and one which, if accepted at all, will be accepted very reluctantly. The campuses are being asked to accept a close day-to-day bond with the real and often harsh world around them, a fact they have usually opposed except as necessary to maintain their traditional sources of financial and political support. Nevertheless, this is another important area in which higher education can apply the lessons of service and commitment which were learned in the development of the land-grant colleges.

A number of the public junior colleges and, on occasion, several of the state colleges, have demonstrated the service which can be performed simply by opening college facilities and events to responsible community groups and interests. We believe that this activity should be greatly expanded in the case of those campuses which are accessible to urban populations. This is one excellent way in which the campuses can open communication with minority group communities—by making their facilities available for various types of cultural, social and self-help activities and events.

The large urban campuses will never be able to capture the sense of detachment and academic community which has characterized smaller institutions which are located away from the urban centers and attended by full-time students living on campus. The large urban campuses must be characterized by involvement and service, just as they will certainly be heavily populated by full-time and part-time students who reside off campus and who are not totally enveloped in campus life. Accepting this fact, the urban campuses should expand their efforts to serve their communities by opening their doors more often to the people of those communities.

The colleges and University campuses should also make it possible for students who come from the minority communities to remain close to their communities and to continue to work in them while they are in school. Too often the public as well as private institutions of higher education have passively accepted or actively encouraged students from low-income and minority group backgrounds to sever their connections with the communities from which they have come. As a consequence, higher education has in effect taken much of the talent and potential leadership from such communities, thereby ensuring their continued dependence upon the larger urban and suburban community. We suggest that this tendency can be reversed as the college and university faculties and administrators learn better to communicate with minority group students and with their communities.

Many of these students have demonstrated a new and strong feeling of responsibility for improving life within the communities from which they come. The colleges and universities must learn to capitalize upon this sense of responsibility, to encourage it and to remove as many of the obstacles between the new college students and their communities as possible.

Unquestionably, this will not be easy, nor will it be without some danger to those institutions which have always felt safer with the illusion of isolation and detachment.

5. We recommend, finally, that new criteria be considered in the location of new state colleges. University campuses and junior colleges to more adequately reflect the economic and social impact the campuses can have on surrounding areas.

The usual criteria for the location of a new state college or University campus have emphasized such factors as the availability of extensive acreage, freedom from congestion, the gift of land by private owners, and access to major streets, highways and freeways. We believe that it is time to reconsider these criteria and to begin to give some attention to other factors such as the potential economic impact of a campus on the community in which it is located, the possibility of stimulating urban redevelopment by the proper location of new campuses, the availability of public transportation, and the opportunities for community service as the new campus develops.

It is interesting to note that while the need for new campuses over the past 10–15 years has been determined in most cases according to population growth and the resulting educational need in various areas of the state, actual site selection appears to reflect a desire to escape from existing population centers. The attempt to find sites relatively free from urban congestion and in areas with the lowest possible land prices has led to the establishment of new campuses in suburban and rural locations, thereby reducing to some degree their ability to serve the urban populations for which they were intended.

We do not propose that these additional factors suddenly be given overriding consideration, we argue only that they be given more weight than they have received thus far. It is not unreasonable, for example, that the state should be just as interested in the potential impact of a new campus on inner city development as private landowners have been in regard to the impact of new campuses on suburban and rural land development plans. Public higher education ought to be as much a part of public planning and development as it has been of private development.

It may even be that the concept of “campus” should be reexamined as some claim, and that the sharp lines between campus and community should be dissolved.<sup>6</sup> There is reason to question why, especially in middle-sized cities, the campuses and the city should in effect compete in providing libraries, art galleries, theaters and commercial athletic facilities. Just as the University teaching hospitals are expected, explicitly, to be part of regional medical care plans, so too the University and college campuses can become centers for certain urban services or make use of existing and new

city facilities (galleries, theaters, research agencies) as extensions of their campuses.

In addition, greater consideration should be given to the total potential college-going population, rather than just the current college-going rates for high school graduates. By locating campuses in proximity to areas with the highest college-going rates we have tended to reinforce existing differences in such rates, and in high school graduation rates, among the various socio-economic groupings within the metropolitan areas. For similar reasons greater consideration should be given to the transportation needs of students who must use public transportation, without sacrificing

reasonable consideration for those who can afford their own private transportation.

We are aware that each of the foregoing recommendations, if carried out, will make heavy demands upon the already scarce resources of the colleges and universities. Yet we believe that it is also obvious that the colleges and universities are major elements in the urban scene and that they cannot retreat from this position. Therefore they must choose the means of making a maximum contribution to urban life, and we are convinced that this must be by extending rather than drawing back the impressive human resources which they command.



# APPENDICES

**Resolutions**

**Notes**

**Data Sources**

**AICCU Institutions**

**Legislative Counsel Opinion**

**Constitutional Revision**

**Statements by Committee Members**



# Appendix A

## **TEXTS OF ASSEMBLY CONCURRENT RESOLUTIONS ESTABLISHING AND CONTINUING THE JOINT COMMITTEE ON HIGHER EDUCATION**

### ***ACR 156—1965 Regular Session***

Whereas, The Master Plan for Higher Education has been in effect in the State of California since 1960; and

Whereas, The Legislature has not since the inception of the Master Plan conducted a comprehensive review of its operation and the degree to which the intent of the Legislature has been carried out through the Master Plan; and

Whereas, Changes in one segment of higher education cannot be undertaken without legislative consideration of the effects of these changes upon the entire system of higher education in California, now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, as follows

1. The Joint Committee on Higher Education is hereby created and authorized and directed to ascertain, study and analyze all the facts relating to the development of higher education under the Master Plan during the period of 1960–65, determine what reevaluation, if any, is necessary for Master Plan recommendations for the years 1965–75, explore the needs of higher education for the years 1975–80, and report thereon to the Legislature, including in its report its recommendations for appropriate legislation and change, if any, in the present law.

2. The committee shall consist of five Members of the Assembly appointed by the Speaker thereof, and five Members of the Senate, appointed by the Committee on Rules thereof. Vacancies occurring in the membership of the committee shall be filled by the appointing powers

3. The committee is authorized to act during this session of the Legislature, including any recess, and after final adjournment until the commencement of the 1967 Regular Session, with authority to file its final report not later than the fifth legislative day of that session.

4. The committee and its members shall have and exercise all of the rights, duties and powers conferred upon investigating committees and their members by the provisions of the Joint Rules of the Senate and Assembly as they are adopted and amended from time to time at this session, which provisions are incorporated herein and made applicable to this committee and its members.

5. The committee has the following additional powers and duties

(a) To select a chairman and a vice chairman from its membership.

(b) To contract with such other agencies, public or private, as it deems necessary for the rendition and affording of such services, facilities, studies and reports to the committee as will best assist it to carry out the purposes for which it is created.

(c) To cooperate with and secure the cooperation of county, city, city and county, and other local law enforcement agencies in investigating any matter within the scope of this resolution and to direct the sheriff of any county to serve subpoenas, orders and other process issued by the committee.

(d) To report its findings and recommendations to the Legislature and to the people from time to time and at any time, not later than herein provided.

(e) To do any and all other things necessary or convenient to enable it fully and adequately to exercise its powers, perform its duties, and accomplish the objects and purposes of this resolution.

6. The sum of one hundred thousand dollars (\$100,000) or so much thereof as may be necessary is hereby made available from the Contingent Funds of the Assembly and Senate for the expenses of the committee and its Members and for any charges, expenses or claims it may incur under this resolution, to be paid from these contingent funds equally and disbursed, after certification by the chairman of the committee, upon warrants drawn by the State Controller upon the State Treasury.

### ***ACR 56—1966 First Extraordinary Session***

Whereas, The 1965 Legislature recognized the need for a thorough and long-range study of California's system of higher education, and

Whereas, The Joint Committee on Higher Education was thereby created by the Legislature through the adoption of Assembly Concurrent Resolution No. 156 (Resolutions Chapter 216, Statutes of 1965), and

Whereas, This joint legislative committee is authorized and directed to ascertain, study and analyze all the facts relative to the development of higher education in California under the master plan during the period 1960–65, determine what reevaluation, if any, is necessary for master plan recommendations for the years 1965–75, explore the needs and requirements of higher education for the years 1975–80, and report thereon to the Legislature, including in its report recommendations for appropriate legislative change, if any, in the present law, and

Whereas, Such a study, being the first comprehensive review of the master plan since its inception, will have an important and long-range influence on the course of California higher education in the future; and

Whereas, Proper planning and the selection of a highly qualified staff for this study is of the utmost importance, has been commenced by the joint committee, but has yet to be completed; and

Whereas, In the interests of a thorough and objective study of higher education in this state it will be necessary to extend the authorization of the Joint Committee on Higher Education past the original reporting date of January, 1967, and therewith extend the committee's reporting date; now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That in addition to all authority, rights and duties heretofore conferred on it, the Joint Committee on Higher Education is authorized to act during the 1967 Regular and 1968 Regular (Budget) Sessions of the Legislature, including any recesses therein, and after the final adjournment thereof, with authority to file its final report no later than the fifth legislative day of the 1969 Regular Session of the Legislature, and be it further

Resolved, That such moneys as have previously been made available for the expenses of the committee and its members shall continue to be available during the period of its extended existence provided by this resolution.

#### **ACR 16—1967 Regular Session**

Whereas, The Master Plan for Higher Education has been in effect in California since 1960, and

Whereas, The Legislature has not, since the inception of the master plan, conducted a comprehensive review of its operation and the degree to which the intent of the Legislature has been carried out in the master plan; and

Whereas, Changes in one segment of higher education cannot be undertaken without an effect upon other segments of higher education in California; and

Whereas, The 1965 Legislature recognized the need for a thorough and long-range study of California's

system of higher education, and the Joint Committee on Higher Education was thereby created by the Legislature through the adoption of Assembly Concurrent Resolution No. 156 (Resolution Chapter 216, Statutes of 1965); and

Whereas, This joint legislative committee is directed to present a final report on the subjects under its jurisdiction to the Legislature no later than the fifth legislative day of the 1969 Regular Session, now, therefore, be it

Resolved by the Assembly of the State of California, the Senate thereof concurring, That, in addition to its study of the implementation of the Master Plan for Higher Education, the Joint Committee on Higher Education is hereby specifically directed to include in its studies an examination of the financing of higher education in California, including the desirability and feasibility of instituting tuition charges and the effect of such charges upon the California student population, upon the state's system of higher education and upon its components, and upon the economy of the entire state, and be it further

Resolved, That the committee is directed to report to the Legislature on the matter of tuition in higher education not later than the fifth legislative day of the 1968 Regular Session, and be it further

Resolved, That the Speaker of the Assembly is hereby authorized to appoint six members and the Senate Committee on Rules is hereby authorized to appoint six members to a broadly based advisory commission, representative of all segments of California society, to assist the committee in its studies, and be it further

Resolved, That, in addition to any money heretofore made available, the sum of two hundred fifty thousands dollars (\$250,000), or so much thereof as may be necessary, is hereby made available from the Contingent Funds of the Assembly and Senate for the expenses of the committee and its members, and for any charges, expenses, or claims it may incur under this resolution or Assembly Concurrent Resolution No. 156 of the 1965 Regular Session, to be paid from these contingent funds equally and disbursed after certification by the chairman of the committee upon warrants drawn by the State Controller upon the State Treasury.

# Appendix B

## NOTES

### Chapter 1—Introduction

1. Arthur G. Coons, *Crises in California Higher Education*, Los Angeles: The Ward Ritchie Press, 1968, p. 210.
2. *State Higher Education in California*, Report of the Carnegie Foundation for the Advancement of Teaching. Sacramento: California State Printing Office, June, 1932.
3. Coons, *op. cit.*, p. 24
4. *Ibid.*, p. 40.
5. The Master Plan Survey Team, *A Master Plan for Higher Education in California, 1960-1975*, Sacramento: State Department of Education, 1960, pp. 38-39. Copies of the Master Plan are obtainable from the Joint Committee on Higher Education.

### Chapter 2—California Higher Education Today

1. *Analysis of the Budget Bill, 1968-1969*, Office of the Legislative Analyst, California Legislature, pp. 421-424
2. The AICCU institutions are listed in Appendix D. The other accredited institutions are those listed either as accredited or as candidates for accreditation in *Accredited Institutions of Higher Education*, American Council on Education, February 1968
3. *Academic Master Planning in the California State Colleges—Phase II 1966-67 through 1970-71*, Office of the Chancellor, California State Colleges, October 1967
4. California Education Code, Division 185, Section 25503.
5. State College and University admission policies are reported in greater detail in *The Flow of Students in California Higher Education, 1968*, Coordinating Council for Higher Education, Sacramento, May 1968
6. *Financial Assistance Programs for California College and University Students*, Coordinating Council for Higher Education, October 1967, School to College Opportunities for Post Secondary Education (SCOPE), a study conducted by the Center for Research and Development in Higher Education, University of California, Berkeley, in cooperation with the College Entrance Examination Board
7. See "Socio-Economic Characteristics of Student Groups Relevant to the Question of Equality by Access," Office of the Vice President—Business and Finance, University of California, October 9, 1967.
8. *Analysis of the Budget Bill, 1968-69*, pp. 324-327
9. *Academic Plan of the University of California, 1960-69 to 1977-78* (Draft) Regents Agenda for January 16, 1969
10. *Ibid.*, p. 85
11. *Financing of Additional Auxiliary Enterprise Facilities on State College and University Campuses*, Coordinating Council for Higher Education, Staff Report, September 1963
12. *Student Financial Assistance Programs for California Colleges and University Students*, Coordinating Council for Higher Education, October 1967.
13. *Federal Funds and California Higher Education*, Coordinating Council for Higher Education, July 1, 1968.

### Chapter 4—Enrollment and Cost Projections, 1969-75

1. *Estimated and Projected Population of California, 1960-2000*, California Department of Finance, Sacramento, June 1968
2. *Meeting the Enrollment Demand for Public Higher Edu-*

*cation in California Through 1977*, Coordinating Council for Higher Education, Staff Report, January 1969.

3. *Financing Independent Higher Education in California*, McKinsey and Company, Inc. (for the Association of Independent California Colleges and Universities), December 1968
4. *The Economics of the Major Private Universities*, William G. Bowen, Carnegie Commission on Higher Education, 1968
5. *Quality and Equality: New Levels of Federal Responsibility for Higher Education*, Carnegie Commission on Higher Education, McGraw-Hill, December 1968, p. 6.

### Chapter 5—The Structure and Governance of Public Higher Education

1. "Directors Report," Agenda for the Coordinating Council for Higher Education, October 7-8, 1968
2. "State College General Education and University Breadth Requirements as Obstacles to Transfer", Coordinating Council for Higher Education, Agenda, Committee on Educational Programs, February 19, 1968
3. *A Study of Engineering Education in California*, Frederick E. Terman, Coordinating Council for Higher Education, 1968
4. Coons, *op. cit.*, p. 149
5. *Governor's Survey on Efficiency and Cost Control*, Sacramento, 1968, p. 129. For a detailed and penetrating analysis of the Council's role and effectiveness see the unpublished Ph.D. dissertation of John M. Smart, *Political Aspects of State Coordination of Higher Education*. The Graduate School, U.S.C., 1968
6. "Report of Study Committee No. 1," *Proceedings of the University of California Twenty-Second All-University Faculty Conference*, 1967, p. 7.
7. Coons, *op. cit.*, p. 83
8. "Chancellor Asks Higher Rank for State Colleges", *Los Angeles Times*, April 11, 1968, p. 3
9. *Master Plan*, p. 38
10. Education Code, State of California, Division 165, Chapters 1-4
11. *Master Plan*, p. 27
12. *The California State Colleges Under the Master Plan*, A Report to the Academic Senate, Marc R. Tool, Sacramento, 1966, p. 7
13. *Governor's Survey*, p. 129
14. *Governance of Public Higher Education in California*. A Report Prepared by the Academy for Educational Development, Inc. for the Coordinating Council for Higher Education

### Chapter 6—Toward Equality of Opportunity in Higher Education

1. "On Class in America", *Public Interest*, No. 10 (Winter, 1968) p. 79.
2. *Increasing Opportunities in Higher Education for Disadvantaged Students*, July 1966, and *California Higher Education and the Disadvantaged*, March 1968, Coordinating Council for Higher Education, Sacramento, *Increasing Opportunities for Disadvantaged Students. A Preliminary Outline*, Kenneth A. Martyn, for the Joint Committee on Higher Education, Sacramento, 1968.

3. Martyn, *Increasing Opportunities*, p 12.
4. *Equal Opportunity in Higher Education*, Transcript of Proceedings, May 25, 1968, Joint Committee on Higher Education, California Legislature, p 78-79.
5. Martyn, *op cit.* p. 13.
6. Transcript of Proceedings, JCHE, p. 26.
7. *Programs for Disadvantaged Students in the California Community Colleges*, Ernest H Berg and Dayton Axtell, Peralta Junior College District, 1968, other documents cited above
8. Transcript of Proceedings, JCHE, pp. 9-10, 71-72, 124.
9. Coordinating Council, *Increasing Opportunities*, p. 65
10. Memorandum to Board of Trustees, "Status Report on Admission of Students Not Meeting Regular Requirements, April 11, 1968.
11. A similar recommendation was recently advanced by the Study Subcommittee No 2, University of California, Twenty-third All-University Faculty Conference, (March 1968), UC Davis See Proceedings, p 24.
12. Dr. Allan M Cartter suggested a similar change in his 1968 address to the Assembly entitled "Questions of Higher Education in California", reprinted in *Attitudes, Innovations, and Public Policy*. A Symposium for the California Legislature, Institute of Governmental Studies, UC Berkeley, April 1968
13. Coons, *op cit.*, p 4
14. Letter to Chairman Jesse M. Unruh, June 10, 1968, in response to a series of questions on the background and implementation of the Master Plan admission recommendations.
15. Alexander W. Astin, *Who Goes Where to College*, Science Research Associates, Chicago, 1965, p 89. See additional comments by Astin in *Science*, August 16, 1968
16. "Measurement and Prediction in the College Admission Process Some Possible Directions for Future Research," *Educational and Psychological Measurement*, Vol XXV, No 1, 1965, p 55.
17. For example, see E. G. Bogue, "Application of a minimum Loss Decision Strategy in the Selection of Cutoff Points in College and University Admissions," *College and University*, Vol. 43, No 2, (Winter 1968).
18. *College Admissions and the Public Interest*, New York College Entrance Examination Board, 1966
19. *Ibid*, p 49

#### Chapter 7—Attrition and the Flow of Students

1. They also cast strong doubt upon the concept of junior colleges as "cooling-out" agencies as described by Burton R Clark, "The 'Cooling-Out' Function in Higher Education", *American Journal of Sociology*, (May 1960), pp. 569-76.
2. School to College Opportunities for Post Secondary Education (SCOPE), Center for Research in Higher Education, University of California, Berkeley.
3. Project Talent data are described in some detail in a recent study by the University's Office of Analytical Studies (footnote 8 below).
4. Among the few recent studies dealing with graduate attrition are *The Efficiency of Graduate Education*, a staff study by the Office for Analytical Studies, University of California, 1967, mimeographed, *The Length of Time Spent in Earning the Ph.D.*, by Eleanor Langlois of the Office of Institutional Research, University of California, Berkeley, March 1967; *Doctorate Recipients from United States' Universities 1958-1966*, National Academy of Sciences, *Earned Degrees Conferred*, P Wright, US Office of Education, *Studies of the 1960 and 1964 Cohorts of Entering Graduate Students at Berkeley*, Suslow and Distenfeld, Office of Institutional Research, University of California, Berkeley.
5. "Student Financial Support at Berkeley," Office of Institutional Research, February 1968, University of California, Berkeley.
6. "California Guidance Newsletter," California State Department of Education, November 1967, Sacramento
7. *Education of the American Population*, Folger and Nam, US Department of Commerce, 1964
8. *Student Flows in California's System of Higher Education*, Lewis J Perl and Martin T. Katzman, Office of Vice President—Planning and Analysis, University of California.

#### Chapter 8—The Role and Financing of Private Higher Education in California

1. *A Statistical Profile of Independent Higher Education in California*, A Report to the Joint Committee on Higher Education, by the AICCU, August 15, 1968, pp. 7-13.
2. This point has been made in a very compelling fashion by Christopher Jencks and David Reesman in *The Academic Revolution*, Doubleday, New York, 1968
3. *Financing Independent Higher Education in California*, by McKinsey and Company, Inc, for the Association of Independent California Colleges and Universities, December 1968
4. *Ibid.*, pp 114-115.

#### Chapter 9—Financing Public Higher Education

1. US Office of Education, National Center for Educational Statistics, as reported in the *Chronicle of Higher Education*, Vol II, N. 19, (June 10, 1968), p. 3.
2. See William G Bowen, *The Economics of the Major Private Universities*, Carnegie Commission on Higher Education, 1968, pp. 12-30
3. Carnegie Commission on Higher Education, *Alternative Methods of Federal Funding for Higher Education*, Berkeley, August 1968, p 1, 51
4. See, for example, John F. Morse, "The Role of the Federal Government in the Future Financing of Higher Education," speech to the Association of Governing Boards of Universities and Colleges, 1968, Howard R. Bowen, "The Financing of Higher Education Issues and Prospects" in *The Future Academic Community: Community and Change*, American Council on Education, 1968, and *Quality and Equality New Levels of Federal Responsibility for Higher Education*, Carnegie Commission, 1968.
5. Advisory Committee on Higher Education, A Report to the Secretary of Health, Education and Welfare, (Wescos Panel), July 1, 1968.
6. For a statement of this argument see William G. Bowen "Financing Higher Education—Two Views (II)" in Association of Governing Boards of Universities and Colleges, *AGB Reports*, Vol 10. No 9 (June 1968), pp 15-16.
7. See, for example, the proposed Graduated Student Tuition Plan authored by Assemblyman Bob Monagan and summarized at the end of *The Academic State*
8. Ann H. Rosenthal, "Tuition-Free College Parallel and Perspective," *The Educational Record*, Vol 47, No. 4 (Fall 1966).
9. *Voluntary Support of Education, 1966-67*, American Alumni Council and Council for Financial Aid to Education, 1968.

10. "The Distribution of Money and Power," Clark Kerr, *The Public Interest*, No. 11, (Spring 1968), pp. 100-104
11. *Ibid*, p. 102.
12. *Study of Income for Public Higher Education*, A Staff Report, Coordinating Council for Higher Education, May 1968, pp. 13-14, 37.
13. *Rankings of the States, 1968*, Research Report 1968-R1, Research Division, National Education Association, 1968.
14. *Study of Income*, Coordinating Council, p 20.
15. *A Report on the Financial Practices of the University of California*, Office of the Auditor General, California State Legislature, 1968.
16. *Ibid*.
17. *Ibid*, pp. 35-36.

## Chapter 10—Urban Focus: Community Education and Assistance

1. *California State Development Plan Program, Phase II Report*, California State Office of Planning, 1968.
2. John Kenneth Galbraith, *The New Industrial State*, Houghton Mifflin Boston, 1967, pp. 282, 371-387.
3. John W. Gardner, address to the American Council on Education, 51st Annual Meeting, October 10, 1968.
4. Paul A. Miller, "Informal Education. The Rural Precedent and the Urban Challenge", address prepared for the Centennial Lecture Series, UC Extension, Davis, April 3, 1968 See also Report of Subcommittee No. 3, Proceedings of UC Twenty-second All-University Faculty Conference, March, 1967, pp. 33-35.
5. *Colleges for Our Land and Time*, Edward D. Eddy, Jr., Harper New York, 1957.



# Appendix C

## DATA SOURCES FOR TABLES AND FIGURES

### Tables

- Table 2.1—Public and Private Institutions of Higher Education in California, 1968–69  
Fall term enrollment from Dept. of Finance and individual segments; private, nonAICCU institutions from *Accredited Institutions of Higher Education*, Sept. 1968, American Council on Education.
- Table 2.2—Classification of AICCU Institutions  
AICCU classification as reported in *A Statistical Profile of Independent Higher Education in California*, A Report to the JCHE by the AICCU, Aug. 1968.
- Table 2.3—Enrollment in Higher Education by Segment and Level, Fall, 1968  
Gathered from the individual segments, final data will be reported by the California Dept. of Finance in Spring, 1969.
- Table 2.4—College Attendance Rates in Relation to Measures of High School Achievement  
Sources as indicated.
- Table 2.5—Summary of Ethnic Distribution of State College Students, Fall, 1968  
Reported by Student Affairs, Office of the Chancellor, to the JCHE based upon report submitted for HEW Civil Rights Compliance Report, Fall, 1968.
- Table 2.6—Racial Composition of Enrollment by Campus, University of California, Spring, 1967  
University of California, *Tuition and Financial Aids Study*, 1967.
- Table 2.7—University Expenditures for Organized Research, 1966–67  
*Analysis of the Budget Bill for 1968–69*, Legislative Analyst, p. 327.
- Table 2.8—Estimated Total Expenditures for Higher Education by Segment and Agency, 1967–68  
Support Budget for 1969–70, Office of the Chancellor of the California State Colleges; University of California, Budget for Current Operations, 1969–70. Junior College income and expenditure reports, California Dept. of Education, Dept. of Finance.
- Table 2.9—Sources of Funds for Higher Education in California, 1967–68  
Same as Table 2.9 plus McKinsey and Co. for AICCU figures.
- Table 2.10—State Expenditures for Higher Education, 1967–68 and 1968–69  
Same as Table 2.9 plus Governors Budget for 1968–69, Report of Conference Committee, California Legislature, 1968 Session.
- Table 2.11—Federal Grants to California Institutions of Higher Education, 1965–66  
Coordinating Council for Higher Education, *Federal Funds and California Higher Education*, July 1, 1968, pages V-6 to V-10.
- Table 2.12—Major Sources of Federal Grant Aid to California Institutions, 1966–67  
Special report to the JCHE from the Coordinating Council for Higher Education.
- Table 2.13—Current Annual Student Charges for Undergraduates, 1968–69  
Catalogs for UC and CSC campuses, Office of the Chancellor, California Community Colleges.
- Table 2.14—Student Fees as a Percentage of Total Operating Income and Educational Income, AICCU Institutions, 1966–67  
AICCU Statistical Summary (see Table 2.2).
- Table 3.1—Growth in the Number of Institutions of Higher Education and Total Enrollment, 1959–60 to 1968–69  
Enrollment data from State Dept. of Education, *Full-Time and Part-Time Students in Institutions of Higher Education* and segmental reports for 1968; Institutions from 1960 Master Plan.
- Table 3.2—Higher Education Enrollment as a Percentage of State Civilian Population  
Dept. of Finance, *Estimated and Projected Population of California, 1960–2000*, and annual reports of fall enrollment for higher education.
- Table 3.3—Total Higher Education Enrollment Compared with 18–24 Age Group Population, California and United States  
Same as Table 3.2 plus *Fact Book on Higher Education*, American Council on Education and *Digest of Educational Statistics*, US Dept. of HEW.
- Table 3.4—Distribution of Total Enrollment in Higher Education in California by Segment, 1959–60 to 1968–69  
Same as 3.1.
- Table 3.5—Distribution of Full-Time Enrollment in Higher Education in California by Segment, 1959–60 to 1968–69  
Same as 3.1.
- Table 3.6—Annual Rate of Enrollment Growth, Public Segments, 1959–60 through 1968–69  
Staff computations from enrollment data reported in UC and CSC support budgets plus ADA data reported by Dept. of Education.

- Table 3.7—Distribution of Total Enrollment by Class Level for All Segments of California Higher Education, 1958–59 to 1967–68  
Enrollment history for each segment maintained in JCHE files and supplemented for 1967–68 by special report from each segment.
- Table 3.8—Class Level Distribution Changes by Segment in California Higher Education, 1959–60 to 1967–68  
Same as 3.7.
- Table 3.9—Percentage Distribution of Part-Time and Full-Time Enrollment by Segment, California Higher Education, 1959–60 to 1968–69  
Same as 3.1.
- Table 3.10—Percentage Distribution of Full-Time, Fall Term, Lower Division Enrollment, Public Segments, 1959–60 through 1968–69  
Same as 3.1.
- Table 3.11—First-Time Freshmen (Fall Term) Enrollment as a Percentage of the Prior Year's High School Graduates  
Coordinating Council for Higher Education, *Flow of Students Report for 1968*.
- Table 3.12—Female Students as a Percentage of Total Enrollment in Public Higher Education and Comparative Male-Female Participation Rates, 1957–58 to 1966–67  
Same as 3.1 plus male-female data from Dept. of Finance fall term enrollment reports.
- Table 3.13—The Distribution of Degrees Conferred by California Institutions of Higher Education, 1958–59 through 1966–67  
University of California Prior to 1959—University of California, *The University of California Register 1959–67*—University of California, *Statistical Summary of Students and Staff* (annual). California State Colleges. California State Colleges, Office of the Chancellor, Division of Institutional Research, *Statistical Report of the California State Colleges* (annual). AICCU Institutions. Data was obtained directly from AICCU member institutions by JCHE.
- Table 3.14—Total Institutional Expenditures for Higher Education in California by Segment, 1959–60 through 1968–69  
UC Annual Financial Reports; UC *Fiscal Facts*, UC Office of Analytical Studies; CSC Office of the Chancellor, Special Report to JCHE; *Financial Transactions of School Districts*, Controller; CCHE Report, *Financing the Public Junior Colleges*; AICCU Statistical Report.
- Table 3.15—Percentage Distribution of Total Institutional Expenditures, 1959–60 through 1968–69  
Same as 3.14.
- Table 3.16—State Support for Higher Education—Current Expense  
Governor's Budgets and *Financial Transactions of School Districts*, Controller, 67–68 and 68–69 junior college figures are JCHE estimates.
- Table 3.17—State Support for Higher Education—Capital Outlay  
Governor's Budgets, Office of the Chancellor, California Community Colleges.
- Table 3.18—The Percentage Distribution of State Support for Current Expense for Public Higher Education, 1959–60 through 1968–69  
Same as 3.16.
- Table 4.1—Projected Total Higher Education Enrollment, 1969–70 to 1975–76  
Dept. of Finance, *Estimated and Projected Population of California, 1969–2000*, June 1968 and sources for 3.1.
- Table 4.2—Projected Total Enrollment by Segment, 1969–70 to 1975–76  
Staff computations.
- Table 4.3—Comparative Projections for Full-Time Enrollment for Public Institutions, 1960–61 through 1975–76  
Same as 3.1 plus 1960 *Master Plan for Higher Education* and CCHE *Meeting the Enrollment Demand for Public Higher Education in California*, January 1969.
- Table 4.4—Projections of Total Expenditures for the Three Segments of Public Higher Education, 1968–69 through 1975–76  
Staff computations.
- Table 4.5—Projected Operating Expenditures from State Sources by Segment, 1969–70 through 1975–76  
Staff computations.
- Table 5.1—Enrollment Determined Average Costs by Segment, 1966–67  
CCHE, *Cost-Per-Student Computations in California Public Higher Education*, (staff report) February, 1968.
- Table 5.2—Unit Costs for Institution, Fall, 1963  
*California Public Higher Education Cost and Statistical Analysis*, CCHE, June 1965.
- Table 5.3—Comparative Data for the Seven Proposed Higher Education Regions  
Institutional Data is the same as for Table 3.1; population by county from *California Population, 1966*, Dept. of Finance, 1966.
- Table 6.1—Racial and Ethnic Distribution of Enrollment for California Public Schools and Public Higher Education, Fall 1967  
*Distribution of Racial and Ethnic Groups in California Public Schools*, Bureau of Intergroup Relations, State Dept. of Education, Nov. 1968, supplemented by JC Data in bureau records; UC and CSC data—see Tables 2.5 and 2.6.
- Table 6.2—Ethnic Distribution of Educational Opportunity Students, University of California Regents' Agenda, "Report on Educational Opportunity Programs for Disadvantaged Students," Nov. 21, 1968.

- Table 6.3—Admission of Disadvantaged Students as Exceptions to Admission Rules  
Coordinating Council for Higher Education, “Use of Exceptions to Admissions Standards for Admission of Disadvantaged Students,” *Council Agenda*, Dec. 3, 1968.
- Table 7.1—Incremental Information Not Regularly or Generally Collected  
*A Student Flow Information System for the State of California*, Report to the JCHE, Computing Sciences Division, Aerojet-General Corp.
- Table 7.2—Estimated Growth of Enrolled Educational Population to be Included in the Student Flow Information System  
Same as 7.1.
- Table 7.3—Estimated Annual Cost of the Proposed Information System  
Same as 7.1.
- Table 8.1—Graduate Students as a Percent of Total Enrollment by Institutional Group, AICCU Institutions  
*A Statistical Profile of Independent Higher Education in California*, AICCU report to the JCHE, August 1968; *Financing Independent Higher Education in California*, McKinsey & Co., Dec. 1968.
- Table 8.2—Receipts by Source, Operating Income, AICCU Institutions, 1956–57 through 1966–67  
Same as 8.1.
- Table 8.3—Operating Expenditures, AICCU Institutions, 1956–57 through 1966–67  
Same as 8.1.
- Table 8.4—Net Computed Surplus or Deficit Reported for Each AICCU Institutional Group, 1956–57 through 1966–67  
Same as 8.1.
- Table 8.5—Projected Educational Expenditures and Receipts, AICCU Institutions  
Same as 8.1.
- Table 9.1—Total Expenditures by US Colleges and Universities, 1967–68  
US Office of Education, National Center for Educational Statistics, as reported in *Chronicle of Higher Education*, Vol. III, No. 6 (Nov. 25, 1968).
- Table 9.2—Principal Sources of Support for Current Expense, Public Higher Education, 1967–68  
UC and CSC support budgets for 1969–70; JC income and expenditure reports for 1967–68, Dept. of Education; McKinsey & Co. (AICCU data).
- Table 9.3—Summary of Financial Transactions, University of California, 1967–68  
UC Report of Operations, 1967–68, Haskins & Sells (UC Audits), *Supplemental Schedules and Commentary for the Year Ended June 30, 1968*.
- Table 9.4—Current Fund Income by Source, University of California, 1963–64 through 1967–68  
UC Annual Financial Reports.
- Table 9.5—Income for Current Expense by Source, California State Colleges  
Office of the Chancellor, special report of total income and expenditures for 1957–58 through 1967–68.
- Table 9.6—Sources of Current Funds for Public Junior Colleges, 1964–65 through 1966–67  
*Annual Report of School District Financial Transactions*, Office of the Controller; JC income and expenditure reports, Dept. of Education.
- Table 9.7—State Support for Junior Colleges, 1963–64 through 1967–68  
Same as 9.6 plus Governor’s Budget.
- Table 9.8—Comparative Growth Indices, Assessed Valuation and Average Daily Attendance, Junior College Districts  
Assessed valuation data from various Dept. of Education reports; ADA from annual Dept. of Education Attendance Reports.
- Table 9.9—Current and Total State Support for Public Higher Education Compared with Total General Fund Expenditures  
Governor’s Budget for the years covered.
- Table 9.10—State Current Expenditures for Education Compared With Total State General Fund Expenditures  
Same as Table 9.9.
- Table 9.11—Federal Aid to California Higher Education, Sources and Types of Program, Fiscal 1965–66  
*Federal Funds and California Higher Education*, Coordinating Council for Higher Education, July, 1968.
- Table 9.12—Gifts and Grants from Private Individuals, Corporations, Foundations and Other Organizations, University of California  
Regents Agenda, “Report on University’s Gifts and Endowments Program, 1967–68” November 21, 1968.
- Table 9.13—Gifts, Donations and Bequests, California State Colleges, 1966–67 and 1967–68  
*Annual Report of Gifts, Donations and Bequests to the California State Colleges* for 1966–67 and 1967–68, Office of the Chancellor.
- Table 9.14—Projected State Allocations for Public Higher Education Compared with Projected Budget Requests  
Staff estimates and projections; the state current expenditure figures include apportionments to junior college districts for current expense.
- Table 9.15—Changes in University of California Endowment Fund Balances, 1965–66 through 1967–68  
UC Financial Reports; *UC Treasurer’s Annual Report*, 1965–66 through 1967–68.

Table 9.16—University of California Endowment Funds, 1963-64 through 1967-68  
Same as Table 9.15.

Table 9.17—Expenditure of Current Income from University Endowment Funds, 1965-66 through 1967-68

Same as Table 9.15 plus annual audit report for 1967-68 by Haskins and Sells.

Table 9.18—Adjustment and Reallocation of 1965-66 Expenditures to Disclose Expenditures by Program

*University Financial Transactions*, Office of the Auditor General, 1968.

#### FIGURES

Figure I—Distribution of Enrollment by Size of Institution, Public Institutions, Fall, 1967

Determined from enrollment data from sources noted for table 3.1.

Figure II—College Attendance with Respect to Ability and Family Income in California

CCHE data from staff report, *Financial Assistance Programs for California College and University Students*, 67-13; SCOPE data came from unpublished material provided by Dr. Dale Tillery, Chief Investigator, SCOPE Project.

Figure III—Proposed Higher Education Regions  
(No data.)

Figure IV—Total AICCU Enrollment and Degrees, 1957-1967

McKinsey Report, *Financing Independent Higher Education in California*—data from AICCU statistical survey.

Same as figure IV.

Figure V—Enrollment Growth Rate for AICCU Institutions by Group

Same as figure IV.

Figure VI—AICCU Trends in Educational Income

# Appendix D

## AICCU INSTITUTIONS BY GROUP

### **Group I**

California Institute of  
Technology  
Stanford University  
University of Southern California

### **Group II**

Claremont University Center  
Loma Linda University  
Loyola University  
University of the Pacific  
University of San Francisco  
University of Santa Clara

### **Group III**

Claremont Men's College  
Harvey Mudd College  
Mills College  
Occidental College  
Pitzer College  
Pomona College  
Scripps College  
University of Redlands  
Whittier College

### **Group IV**

Biola College  
California Lutheran College  
Chapman College  
College of Notre Dame  
Dominican College of San Rafael

La Verne College  
Marymount College  
Mount Saint Mary's College  
Pasadena College  
Pepperdine College  
St. Mary's College of California  
San Francisco College for Women  
University of San Diego—  
College for Men  
University of San Diego—  
College for Women  
Westmont College  
\*Immaculate Heart College  
\*Menlo College  
\*St. John's College

### **Group V**

Azusa Pacific College  
California Baptist College  
College of Holy Names  
Pacific College  
San Luis Rey College  
Southern California College  
\*Pacific Union College  
\*St. Patrick's College

### **Group VI**

Golden Gate College  
Northrop Institute of Technology  
Monterey Institute of Foreign  
Studies

\*These institutions were not included in the AICCU's *Statistical Profile of Independent Higher Education in California*



# Appendix E

## OPINION OF LEGISLATIVE COUNSEL REGARDING STATE FINANCIAL AID TO PRIVATE COLLEGES AND UNIVERSITIES (#16360—DEC. 10, 1968)

### Question

You have asked that we generally discuss constitutional problems involved in legislation authorizing the state to grant financial aid to private colleges and universities through utilization of educational service contracts, earmarked tax payments, tax credits, or tax deductions.

### Opinion and Analysis

#### *Educational Service Contracts*

We assume that the contracts would provide funds to pay for the construction, operation and maintenance of buildings, purchase and maintenance of 'equipment, payment of instructors' and other employees' salaries and other school costs.

We assume also that the legislation in question would authorize such contracts to be executed with private schools generally, and not to specific schools, which would raise questions of special legislation.

In the event that legislation is enacted which authorizes the state to enter into long term contracts with private educational institutions, Section 1 of Article XVI of the State Constitution must be considered. The section reads in part:

"Section 1. The Legislature shall not, in any manner create any debt or debts, liability or liabilities, which shall, singly or in the aggregate with any previous debts or liabilities, exceed the sum of three hundred thousand dollars (\$300,000) . . . unless the same shall be authorized by law [as specified] . . . ; but no such law shall take effect until, at a general election or at a direct primary, it shall have been submitted to the people and shall have received a majority of all the votes cast for and against it at such election, . . ."

The Supreme Court of this state has considered this debt limitation upon a number of occasions. It has consistently held that if the liability created, although in excess of \$300,000, is covered by an appropriation the constitutional limitation is not applicable. In the early case of *State v. McCauley* (1860), 15 Cal. 429, the Legislature provided for a contract obligating the state to pay \$10,000 a month over a five-year period for the rendition of services by the contracting party and appropriated \$600,000 therefor. The point was made that the \$600,000 appropriated created a liability

in excess of the constitutional limitation. There follows the language of Chief Justice Field in upholding the validity of the legislation in question:

"The eighth article was intended to prevent the State from running into debt, and to keep her expenditures, except in certain cases within her revenues. *These revenues may be appropriated in anticipation of their receipt, as effectually as when actually in the treasury.* The appropriation of the moneys, when received, meets the services as they are rendered, thus discharging the liabilities as they arise, or rather anticipating and preventing their existence. The appropriation accompanying the services operates in fact in the nature of a case payment." (15 Cal. at page 455; emphasis added)

The effect of this decision is to hold that no debt is created within the meaning of the constitutional limitation if an appropriation has been made that is available to pay the obligation as liability for payment accrues.

Thus, if money were to be appropriated under the legislation in question to cover the payment of the obligations incurred under the contracts authorized thereunder, this constitutional prohibition would not be violated. On the other hand, if the obligations to be incurred under the contracts for a current fiscal year exceeded \$300,000 singly or in the aggregate with any previous debts or liabilities and no appropriation were made therefor, Section 1 of Article XVI of the State Constitution would be violated unless it were submitted to the electorate for approval.

It may be observed, however, that in determining whether the \$300,000 maximum debt limitation is exceeded under a contract which is in operation over a number of years, a question arises whether the state immediately incurs the total obligation under the contract for its entire life or whether it incurs an obligation in each year of the contract for only that amount due under the contract for that year.

In 1951 the Supreme Court decided the case of *Dean v. Kuchel*,\* 35 Cal. 2d 444, which involved a contract that had been executed by the Director of Finance under the authority of Government Code Section 13114. Under that contract the state leased to a private corporation certain real property in Los Angeles for a term of 35 years for the sum of one dollar. The company agreed to erect an office building on the property in accordance with specified plans and to lease the building and the property to the state for a term of 25 years at a specified monthly rental. The validity of the agreement was challenged on the

\* Other decisions to the same effect are *Vandegrift v. Riley*, 16 Pac. 2d 734; *McBean v. City of Fresno*, 112 Cal. 159; *State v. McCauley*, 15 Cal. 429.

basis that it violated the constitutional debt limitation imposed by Section 1 of Article XVI.

The Supreme Court upheld the validity of the agreement. During the course of its opinion, it stated

“...if the lease or other agreement is entered into in good faith and creates no immediate indebtedness for the aggregate installments therein provided for, but, on the contrary, confines liability to each installment as it falls due and each year’s payment is for the consideration actually furnished that year, no violence is done to the constitutional provision, . . .”

The court then went on to state:

“ . . . If, however, the instrument creates a full and complete liability upon its execution, or if its designation as a ‘lease’ is a subterfuge and it is actually a conditional sales contract in which the ‘rentals’ are installment payments on the purchase price for the aggregate of which an immediate and present indebtedness or liability exceeding the constitutional limitation arises against the public entity, the contract is void.”

While it is true that the *Dean* case involved the validity of a long term lease arrangement, rather than a purchase agreement, we see no reason why the two situations would not be regarded, in principle, in the same light.

In general, the First and Fourteenth Amendments to the United States Constitution prohibit the expenditure of public funds for the support of parochial schools (see *Everson v. Board of Education* (1947), 91 L. Ed. 711, 723). Thus, any direct payment of public funds to a church operated school would, in all likelihood, to be held to be violative of this constitutional prohibition.

The State Constitution also prohibits the Legislature from making any gift of public money or thing of value to any individual, municipal or other corporation (Art. XIII, Sec. 25). However, it is well settled that if public funds are expended for a “public purpose” the expenditure does not constitute a gift within the meaning of that section; neither does such expenditure fall within the prohibitions of Section 21 of Article XIII of the State Constitution which, among other things, generally prohibits expenditures for the purpose or benefit of private corporations or associations (*Simpson v. City of Los Angeles* (1953), 40 Cal. 2d 271, 282; *County of Alameda v. Janssen* (1940), 16 Cal. 2d 276). Therefore, if the Legislature should find that there is a shortage of college trained citizens in the state, the courts would probably hold that expenditures reasonably designed to alleviate this condition would serve a “public purpose.” Thus, we think that legislation of a kind under consideration would probably serve a “public purpose.”

There is still another provision of the Constitution which must be considered, however. Section 8 of Article IX provides in part that:

“No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools, . . .”

Since an appropriation to be used by a private school for its normal operating expenditures, such as costs of operating the school and buildings, purchasing supplies, and paying salaries, would appear to be “for the support of” the school, we believe any such appropriation would be held to violate Section 8 of Article IX of the Constitution. If the school were “controlled by any religious creed, church, or sectarian denomination” there would be an additional violation of Section 24 of Article XIII, which prohibits use of public funds or property in aid of religious sects or institutions controlled by them.

#### *Earmarked Tax Payments*

We think that legislation which permitted an individual taxpayer to specify that a certain portion of his income tax payment would be paid to a private institution of higher education of his choice would clearly fall within the prohibition of Section 8 of Article IX of the State Constitution, since such moneys would appear to be for the “support of” the school. Similarly, if the school were “controlled by any religious creed, church, or sectarian denomination” there would be an additional violation of Section 24 of Article XIII, which prohibits use of public funds or property in aid of religious sects or institutions controlled by them (see *County of Los Angeles v. Hollinger* (1963) 221 Cal. App. 2d 154).

#### *Tax Deductions or Credits for Educational Costs*

Initially, we note that, subject to such limitations as may be prescribed by the State and Federal Constitutions and treaties of the United States, the State has inherent power to tax and to grant exemptions from taxation (see 46 Cal. Jur. 2d, Taxation, Secs. 10, 15 and 69). The right to make exemptions is involved in the right to select the subjects of taxation and apportion the public burdens among them, and must consequently be understood to exist in the lawmaking power whenever it has not in terms been taken away (*San Francisco v. McGovern* (1915), 28 Cal. App. 491, 512).

Insofar as the First Amendment is concerned, the United States Supreme Court has ruled, inferentially at least, that state legislatures can exempt church property from taxation (*Gibbons v. District of Columbia* (1886), 29 L. ed. 680).

Similarly, exemptions and deductions under the federal income tax laws have been upheld by the federal courts against the challenge that exemptions and deductions allowable for charitable and religious purposes contravene the establishment of religion clause of the First Amendment (*Swallow v. United States* (10th Cir. 1963), 325 F. 2d 97; *United States v. Keig* (7th Cir. 1964), 334 F. 2d 823).

No case decided by the United States Supreme Court has ever held that deductions under federal income tax laws for charitable and religious purposes are constitutional. This fact may be explained by the historical acceptance by the American people of this type of assistance to church supported institutions. In any case, the United States Supreme Court has repeatedly refused to review the more recent court decisions involving tax exemptions (*Lundberg v. County of Alameda* (1956), 46 Cal. 2d 644, appeal dismissed sub. nom.). It should also be noted that the two federal cases which have considered the question of whether federal income tax deductions for contributions to religious institutions contravene the establishment clause of the First Amendment, *Swallow* and *Keig*, supra, appear, at least partially, to be based upon two factors: (1) that challenge of the constitutionality of a federal taxing statute by a federal taxpayer does not raise a justiciable issue and (2) the lack of standing to sue principle relied upon in the historic *Frothingham v. Mellon* (1923), 67 L. ed. 1078 decision.

In *Frothingham*, a federal taxpayer who challenged the validity of a federal grant-in-aid statute was held to have sustained insufficient injury in order to have standing to sue. *Frothingham* has been recently distinguished in a decision in which the United States Supreme Court held that a federal taxpayer had the standing to contest federal expenditure of funds under the Elementary and Secondary Education Act of 1965 to finance instruction in religious schools and to purchase textbooks and other instructional materials for use in such schools upon the ground that such expenditures contravened the establishment of religion clause of the First Amendment and that such a suit would raise a justiciable issue (*Flast v. Cohen* (1968), 20 L. ed. 2d 947).

In view of the United States Supreme Court's holding in *Flast*, it would appear that the jurisdictional roadblocks which hitherto had been raised to a full scale review of the constitutionality of tax exemptions for religious institutions and federal income tax deductions for contributions to religious institutions will no longer prevent a judicial review on the merits.

Turning now to a consideration of the validity of income tax deductions for contributions to religious organizations and institutions on the state level, we note that Section 17214 of the California Revenue and Taxation Code permits tax deductions from personal income for contributions to various entities organized and operated for religious or educational purposes. We also note that Section 17054 of the California Revenue and Taxation Code permits income tax credits for support of a student attending any public or private educational institution.

The constitutionality of these laws has not been tested, either under the establishment of religion clause of the First Amendment or under the prohibition of Section 24 of Article XIII of the State Constitution.

Since *Flast v. Cohen*, supra, has greatly modified the jurisdictional bases for rejecting taxpayer suits which

attack federal appropriation statutes as in conflict with the establishment of religion clause of the First Amendment, it is more probable than not that state statutes as well will be tested on First Amendment grounds. In addition, such suits will undoubtedly raise state constitutional issues with respect to whether a state can validly grant income tax deductions and credits of the kind previously noted. With this in mind, we now turn to a discussion of the legal theories which will be urged upon the courts in upholding such legislation.

Most of the legal writers draw a distinction between direct and indirect aid to denominational and sectarian institutions in determining whether particular governmental aid contravenes the establishment of religion clause of the First Amendment (see generally "Notre Dame Lawyer," Vol. 43; 684, p. 738, N. 423-425). The cases appear to support this view. Thus, two similar theories have evolved which the courts have employed to justify legislation which aids church supported schools: the "secular purpose" theory and the "child benefit" theory. The secular purpose theory derives its greatest support from the United States Supreme Court's upholding of Sunday closing laws. In *McGowan v. Maryland* (1961), 6 L. ed. 2d 393, 410, the court noted

"The present purpose and effect of most of [the Sunday closing laws] is to provide a uniform day of rest for all citizens, the fact that this day is Sunday, a day of particular significance for the dominant Christian sects, does not bar the State from achieving its secular goals. To say that the States cannot prescribe Sunday as a day of rest . . . solely because centuries ago such laws had their genesis in religion would give a constitutional interpretation of hostility to the public welfare rather than one of mere separation of church and State."

Under some circumstances, at least, a state can achieve its secular goals even though the particular legislation aids religious sects insofar as the First Amendment is concerned. However, in *Abington School District v. Schempp* (1963), 10 L. ed. 2d 844, the court held that there must be a secular purpose and a primary effect that neither advances or inhibits religion. This rationale has been followed in *Board of Education v. Allen* (1968), 20 L. ed. 1060, in upholding a state statute authorizing the lending of textbooks free of charge to all students in grades 7 through 12, including students attending private parochial schools. No California case has utilized the theory in a case involving Section 24 of Article XIII of the California Constitution (the theory appears to have been repudiated in *County of Los Angeles v. Hollinger* (1963), 221 Cal. App. 2d 154).

In *Bowker v. Baker* (1946), 73 Cal. App. 2d 653, the District Court of Appeal upheld the provisions of present Section 16806 of the Education Code, which authorize the governing board of a school district to

allow transportation to pupils entitled to attend the schools of the district, but in attendance at a school other than a public school, where the transportation is upon the same terms and in the same manner and over the same routes of travel as is permitted pupils attending the district school. The court concluded that the action being taken under this section by the particular school district involved served an essential public purpose in promoting the education and safety of children, and that the benefit to the parochial school involved was incidental (see 73 Cal. App. 2d 653, at 663). The court mentioned some of the pertinent decisions which have been rendered by the courts in other states, and commented (73 Cal. App. 2d 653, at 661) as follows:

“The general line of reasoning running through those cases which uphold the right of the school district to provide free transportation for school children finds its starting point in the undoubted police power of the state to promote the public welfare by aiding in practical ways the education of the young. *It is generally held that the direct benefit conferred is to the children with only an incidental and immaterial benefit to the private schools; that this indirect benefit is not an appropriation of public moneys for private purposes and does not violate any constitutional provisions against giving state aid to denominational schools.*” (Emphasis added)

The language underscored above represents a concise judicial statement of what is commonly referred to as the “child benefit theory” in connection with the expenditure of public funds which results in some benefit to private or parochial schools (see also in this regard *Everson v. Board of Education* (1947), 91 L. ed. 711). In view of the express constitutional prohibitions against public assistance to schools not within the public school system, and to religious sects or institutions controlled by them, we think that the “child benefit theory” might well justify legislation which provided tax credits or deductions for tuition paid to private schools on the basis that tax credits and deductions are of primary benefit to the student and of only indirect benefit to the private educational institution.

We also note that despite these constitutional prohibitions and limitations the courts have upheld legislation involving public assistance and the expenditure of public funds where only a remote, indirect, or incidental benefit results to private and parochial schools, provided an essential “public purpose” is being served. Thus, it is accepted that legislation providing for state educational assistance to veterans (M. & V.C., Secs. 981 and following) is valid, serving the public purpose of inciting patriotism and willingness to defend the country, though the recipient may use the funds received to pay for attendance at private or parochial schools (see *Veterans Welfare Board v. Raley* (1922), 188 Cal. 607).

We note further that the state has also established competitive scholarship programs under which students may attend private institutions of collegiate grade (Ed. C., Secs. 31201–31237, incl.).

Finally, we note that, in rejecting the argument that tax exemptions granted religious and private nonprofit educational institutions contravene the establishment of religion clause of the First Amendment, the California Supreme Court in *Lundberg v. County of Alameda* (1956), 46 Cal. 2d 644, at page 654, remarked as follows:

“In the first place, it is apparent that the exemption was enacted to promote the general welfare though encouraging the education of the young and not to favor religion, since it is not limited to schools maintained by religious groups but applies also to those operated by other charitable organizations. Under the circumstances, any benefit received by religious denominations is merely incidental to the achievement of a public purpose. An analogous situation was presented in *Everson v. Board of Education*, 330 U.S. 1 [67 S. Ct. 504, 91 L. Ed. 711, 168 A.L.R. 1392], where it was held that a statute authorizing the use of public funds to transport pupils could constitutionally be applied to include the furnishing of transportation to parochial schools. The court reasoned that the statute was designed to promote the general welfare, that a parochial school would benefit upon the same terms as would other schools and that the First Amendment does not require that government be hostile to religion in enacting public welfare legislation. (330 U.S. at p. 16 et seq. Cf. *Bowker v Baker*, 73 Cal. App. 2d 653, 663 [167 P 2d 256], *Opinion of the Justices*, 99 N.H. 519 [113 A. 2d 114, 116].)

“Secondly, even if we regard the exemption as benefiting religious organizations, it does not follow that it violates the First Amendment. The practice of granting tax exemptions benefiting religious sects began in the colonial period. (See Paulsen, *Preferment of Religious Institutions in Tax and Labor Legislation* (1949), 14 Law & Contemp. Prob. 144, 147–148; Torpey, *Judicial Doctrines of Religious Rights in America* (1948), ch. VI, pp. 171–174, Zollman, *Tax Exemptions of American Church Property* (1916), 14 Mich. L. Rev. 646, 647–650.) Today, at least some tax exemption for religious groups is authorized by statutory or constitutional provisions in every state and the District of Columbia, as well as by federal law.”

Since the California Supreme Court views tax exemptions for church supported schools as incidental to achieving a public purpose, we think that it would adopt the same attitude toward tax credits or deductions for tuition paid for attendance at church supported and private schools.

With respect to tax deductions and tax credits, as compared to appropriation measures, we think that the following comment from "Notre Dame Lawyer," Vol. 43; 684, p. 763 is worthy of note:

" . . . A determination by Congress that income used in a certain way is deductible for tax purposes is equivalent to a refusal by Congress to declare a tax on that income. Since in our system of government Congress has the discretion to legislate or to refuse to legislate, there appears to be nothing the judiciary can do to require Congress to legislate that income contributed to a religious organization is taxable."

The conclusion to be drawn from the above quotation is that since Congress may choose not to tax a portion of a taxpayer's income (by granting a tax deduction or credit), the contribution by a taxpayer of such income to a religious institution cannot raise a justiciable issue, since the judiciary has no power to require, in effect, Congress to tax such income.

We see no reason why this rationale would not apply to state legislatures as well. Whether the courts will adopt this rationale in place of, or in addition to, the "secular purpose" or "child benefit" theories remains to be seen.

In summary, we think that the cases have tended to uphold legislation generally when it appears that aid granted only incidentally and indirectly aids the sectarian or denominational institution and when the public welfare is at stake.

We, therefore, are inclined to believe that tax credits or deductions for tuition paid for attendance at private and church supported schools will be upheld by the courts, since such legislation would be viewed as not directly benefiting such institutions in contravention of the State and Federal Constitutions.

GEORGE H. MURPHY  
Legislative Counsel

By CAREY W. ROYSTER  
Deputy Legislative Counsel



# Appendix F

## ILLUSTRATIVE REVISIONS OF THE CALIFORNIA CONSTITUTION TO PERMIT STATE AID TO PRIVATE INSTITUTIONS OF HIGHER EDUCATION

The proposed amendments to the California Constitution presented below are intended only as specific and limited illustrations of the manner in which the Constitution might be revised to accomplish the purposes described in pages 101-104 of this report. These amendments pertain only to the principal constitutional provisions at issue. We make no attempt to illustrate revisions of other, related, provisions of constitutional and statutory law which might be required. We acknowledge and caution that actual revision can be undertaken only after the most careful professional analysis of all existing provisions, the objectives of the proposed revisions and the best method of translating those objectives into law.

### 1. Illustrative Revision to Permit State Aid— Limited to Nonsectarian Institutions

A new section could be added to Article XIII which would supersede other constitutional limitations now existing, with the sole exception of Article XIII, Section 24, which presently contains the proscription against state aid to sectarian institutions.

The new section might read:

#### Article XIII

Sec. \*\*. Notwithstanding any limitations or restrictions contained in this Constitution, but subject to the limitations prescribed in Section 24 of this article, the Legislature may make appropriations of state moneys for the support and aid of colleges or universities within this state which are not owned or controlled by the state or any other public entity, provided that any such appropriation shall serve a statewide public purpose.

### 2. Illustrative Revision to Permit State Aid— Applicable to All Private Institutions

Here also a new section could be added to Article XIII which would supersede other constitutional limitations. The language would be identical to that quoted immediately above, except that the phrase "but subject to the limitations prescribed in Section 24 of this article" would be omitted.

Since the above section would operate as an explicit exception to Article XIII, Section 24, the latter section might be clarified slightly to remove any doubt of legislative intention in connection with the new exception. In the following illustrative revision of Section 24, the parts in italics denote additions to the present text.

#### Article XIII

Sec. 24. *Except as hereinafter provided*, neither the Legislature, nor any county, city and county, town, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to *and* in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever; nor shall any grant or donation of personal property or real estate ever be made by the state, or any city, city and county, town, or other municipal corporation for any religious creed, church, or sectarian purpose whatever; provided, that nothing in this section shall prevent the Legislature granting aid pursuant to Section 21 of this article.

Since the present Article IX, Section 8, contains language which appears applicable to institutions of higher education as well as the public school system, a further revision might be employed to clarify that Section. Since the public schools are not within the scope of this study, we do not attempt to suggest here what restraints should remain applicable to the public school systems or private schools below the level of higher education. We do suggest, however, that in a constitutional revision it may be logical and preferable to treat higher education separately from the public school system. In such a case, the subject matter of the existing Section 8 could be covered either as the proviso to the illustrated new subsection (7) to Article XIII, Section 21, quoted above or (either alone or in addition) as a new section which might read as follows.

#### Article IX

Sec. \*\*. No religious worship shall be permitted, nor shall any religious creed, or sectarian or denominational doctrine be advocated in any institution of public higher education of the State.

Another approach would be to add a new exception to Article XIII, Section 21 (see page 99 of this report), accompanied by modifications to Article XIII, Section 21, and Article IX, Section 8 (see pages 99-100 of this report).

The new exception might read as follows:

#### Article XIII

Sec. 21 \* \* \* (Add new subsection (7) to present text)

(7) The Legislature may define the public interest in providing aid for the promotion of secular education at any institution of higher

education in this State and make such laws, including but not limited to laws providing for grants in aid of State funds and for the making or guaranteeing of loans to such institutions, as it finds necessary for the promotion of such education in the public interest. As used herein, the term "institution of higher education" shall mean an educational institution in the State which meets all of the following criteria:

- (a) admits as regular students only individuals having a certification of graduation from a high school, or the recognized equivalent of such a certificate;
- (b) is legally authorized within the State to provide a program of education beyond high school;

- (c) provides an educational program for which it awards a bachelor's degree, or provides not less than a two-year program which is acceptable for credit toward such a degree, or offers a two-year program in a recognized subject which is designed to prepare the student to work as a technician.
- (d) is a non-profit institution; and
- (e) is accredited by a nationally recognized accrediting agency or association.

Provided, however, that nothing in this subsection shall be construed to authorize the making of any payment to any institution or person for the purpose of aiding religious worship or for the advocacy of any religious creed or sectarian or denominational doctrine.

# Appendix G

## STATEMENTS BY COMMITTEE MEMBERS

### *Statement of Chairman Jesse M. Unruh*

I commend the members and staff of the Joint Committee on Higher Education for the effort and study which went into this final report, and I share the view of the Committee that the body should be reconstituted for one year for the purpose of holding hearings on the recommendations contained in this document. Nevertheless, I wish to state my personal view that this recommendation in no way should be construed as my belief that the 1969 Legislature should take no action on these matters this year.

The crisis facing public and private higher education in California is a very real one. The Joint Committee on Higher Education has now been studying the elements of this crisis for more than three years. The recommendations in this report constitute radical changes for the support and governance of higher education in California and should be subjected to full public scrutiny and hearings, but certain of the proposals—such as additional scholarship aid for disadvantaged students and a strengthening of private higher education through the provision of income tax credits—can and should be acted upon by the Legislature this year. I will oppose any attempt to put solutions to the problems of California higher education off yet another year based upon the argument that a new Joint Committee on Higher Education needs more time for study.

With respect to several of these recommendations, I believe the time for study is past and the time for legislative action has arrived.

### *Statement of Senator John G. Schmitz*

January 25, 1969

Honorable Ed Reinecke, President  
and Members of the Senate  
State Capitol  
Sacramento, California

Honorable Bob Monagan, Speaker  
and Members of the Assembly  
State Capitol  
Sacramento, California

Ladies and Gentlemen:

As a member of the Joint Committee on Higher Education, I am withholding my signature from the letter of transmittal of the staff report prepared for the Committee on the development of higher education in California under the Master Plan, and on its future needs.

When this report was presented to the Joint Committee on Higher Education I voted only to receive it, as a courtesy to the staff members who prepared it.

In no way did my vote, or the Committee's vote, signify acceptance or approval of its contents.

Yet the letter of transmittal asserts that "this report substantially fulfills the Committee's obligations." I do not believe it does anything of the sort. Instead, it evades or ignores the most critical issues now facing public higher education in California.

My reasons for arriving at this conclusion are explained in a more detailed statement appended to this report.

Sincerely,  
JOHN G. SCHMITZ

### *Senator Schmitz's Statement*

Not only am I in profound and fundamental disagreement with many of the specific recommendations made by this report, but I am appalled by its pervading attitude of "business as usual" in the face of the greatest crisis ever to confront higher education in California. It is almost incredible that at a moment when one of our major state colleges can only be kept open—after a fashion—under the protection of hundreds of police, when college buildings are being burned down and college officials attacked in their homes and threatened with murder, this Committee is presented with a report which blandly pretends that nothing has changed—that the same tired old slogans and nostrums, and more of the same programs which have so dismally failed to attain their stated goal of a "great university," will suffice for an educational system which stands on the brink of total disaster.

It seems that the writers of this report must be living in a dream world. But the Legislature, representing the people of California, is obligated to live in the world of reality.

The necessity of restoring order to our campuses is obviously pre-eminent in today's world of reality. If order is not restored, all grandiose plans for the future of our higher educational system will be so much waste paper. This Committee, charged with the duty of reporting to the Legislature on the development of higher education in California, should first of all address itself to the overriding issue of how we can preserve a system of higher education capable of development. The Legislature urgently needs the best advice and the most thoughtful recommendations on this issue which we can possibly obtain. Far from that, this report gives us no more than a restatement of the great American myth: that all problems can be solved by education, and all educational problems solved by more money.

To turn to the specific recommendations in the report, one of the few points on which both campus

militants and those who have had enough of campus turmoil agree is that the University of California has become too large—so gigantic and ponderous a system that the individual student feels insignificant, lost and ignored within it, one tiny cog in a huge machine. Even the state colleges have grown so rapidly that the same criticism, from both sides in the current controversy, is now being justly made of them. Yet this report proposes to compound this evil, and all its attendant problems, by “consolidating” all our existing public higher educational institutions—even the junior colleges—into one super-system under a single authority, the University of California Board of Regents. This monstrosity, wholly controlled by 24 appointed officials with 12-year terms of office, would have a population greater than several of our states and greater than some entire nations. Worse still, the report proposes vast increases in the present enrollment in what would be the components of this system, through lowering admission standards.

The University of California is far too big now. To increase it to the dimensions proposed in this report would be disastrous. Meaningful education simply cannot be carried on by an institution embracing hundreds of thousands, if not millions of persons. Such an institution would not be accepted by teachers, by students or by the general public. Only deluded and overly ambitious administrators would welcome it.

I am uncompromisingly opposed to admitting unqualified students to our state colleges and the University of California for any reason. Under the Master Plan, our junior colleges are open to all who may not have fulfilled their academic potential in high school and desire a second chance. From there, if qualified, they can go on to the four-year colleges and the University of California. But at these higher levels where it is necessary to impose limits on the number of applicants who are admitted, it is grossly unfair to students who would otherwise qualify for admission, to displace them in favor of the unqualified, whatever excuses may be offered for their failure to qualify.

One of the most striking examples of this report's failure to reflect any new or original thinking on the problems of higher education in California appears in the recommendations on “the role and financing of private higher education.” If the present troubles of our public higher educational system continue and grow worse, we will have to rely more and more on private institutions to fill the void by providing the orderly education that many of the best of our young people will demand. Yet this report recommends only the most timid and tentative steps toward opening up the potentialities of private education: an occasional subsidy to private colleges, “partial tax credits for contributions,” and “cost-of-education supplements to accompany state scholarship awards.”

There is no mention of proposals which have been made to grant tax credits, or at least tax deductions, to *individuals* who attend private colleges, or send their children to them, thereby reducing the burden on public institutions. There is no mention of proposals that some of the state funds now poured into the University of California and the state colleges be given instead to the individual student to be applied toward the cost of his education at the private college of his choice.

Furthermore, the report again makes obeisance to the great myth of “tuition-free” education, thereby dismissing out of hand not only a badly needed source of additional revenue, but a very practical and effective way of heightening many students' awareness of the value of the education they are receiving. For the record, it should be repeated once again. There is no such thing as “free” education. The only question is who should pay for it, and whether the student who gets its benefit should share to any degree in paying for it. I believe he should share, and that both our students and our colleges would be well served by a moderate tuition charge used to help defray the expenses of the institution which the tuition-paying students attend.

**TO: HONORABLE WILLAM T. BAGLEY**  
Chairman, Judiciary Committee, California Assembly

**SUBJECT: PROBLEMS IN THE  
ADMINISTRATION  
OF JUSTICE  
IN CALIFORNIA**

**BY: RONALD L. GOLDFARB and LINDA R. SINGER**

**KURZMAN & GOLDFARB**  
1616 H STREET, N. W.  
WASHINGTON, D. C. 20006

202 NATIONAL 8-3266

January 17, 1969

The Honorable William T. Bagley  
Chairman, Assembly Committee on  
Judiciary  
California Legislature  
Assembly Post Office Box 83  
Sacramento, California 95814

Dear Mr. Bagley:

The following report is submitted pursuant to this office's contract with the California Legislature to conduct a study of problem areas in the administration of justice in California for the Assembly Committee on Judiciary.

The report is divided into three areas: criminal justice, civil justice, and court administration.

A. Under the heading of criminal justice, the following subjects have been considered:

1. Public Information and Crime News. The free press, fair trial dilemma, a most vexing and persistent problem, recently has called forth solutions from such diverse sources as the American Bar Association and Pope Paul VI. The report recommends that the Legislature look into the proposals of the Reardon Report of the American Bar Association, the appropriateness of the courts' rules of evidence traditionally used to prevent prejudice during criminal trials, the use of the contempt power to curb prejudicial publicity by the press, and the proper role of television in reporting crime news and criminal trials.

2. Juvenile Justice. The Supreme Court's recent decision in the Gault Case will revolutionize the juvenile court system. The Court left several crucial questions unanswered and raised serious administrative and personnel questions for California. The report suggests that the Legislature consider forming a separate subcommittee to deal with juvenile justice, and that in any case consideration be given to appropriate training of special prosecuting officers, the qualifications of juvenile judges, inequities in the operation of the present juvenile justice system, pre-trial detention, sealing of juvenile records, alternatives to institutionalization, and new provisions for dependent and neglected children.
3. Alcoholics and the Criminal Courts. Two critical questions face the Legislature in this area. One is the overriding policy issue whether alcoholics should be treated as criminals. The other concerns the alternatives to the traditional judicial and correctional treatment of alcoholics. The way in which these important questions are answered will have serious consequences not only for the individuals themselves but for the entire criminal justice system since questions of alcoholism enter about one-third of all criminal cases.
4. Protective Detention. An issue related to the bail reform bill which is presently being considered by the Legislature is the problem of pre-trial detention. What should be done with the accused who can afford bail and who presents no risk of flight, but who presents a danger to the community if he is released pending trial? Hearings are recommended to consider whether there is empirical evidence to warrant legislation allowing some scheme of preventive detention, the constitutional propriety of any form of detention without full trial, and appropriate procedural protections to guard defendants from excessive or abusive uses of pre-trial detention.

5. Citations. The expanded use of citations is one technique which can be used to relieve the police and decrease the extraordinary volume of minor cases clogging the criminal courts. Citations replace the process of arrest, bail, and jail with simple notification to appear for trial. A 1967 amendment to the California Penal Code allows the police to issue citations for misdemeanors, but the amendment has not been employed as effectively as possible. Some recommended changes and extensions in the law are made in this part of the report.
6. Justice During Riots. Solutions to the underlying social problems which cause urban riots may take years to accomplish. Nevertheless, preparation of contingency plans to cope with the inevitable, special problems arising in the criminal justice system during emergency situations of mass disorder is necessary and possible now. Planning can make a difference in enabling the system to function effectively during an emergency, as the Kerner Commission Report and other studies following up on the recent urban riots have made abundantly clear. The report recommends hearings to develop appropriate guidelines and programs in this area.
7. Corrections. Once a criminal has been caught and tried, society's interest in him wanes. But the failures of the correctional system result in extraordinarily high recidivism and in wasted resources. Alternatives must be found to the overcrowded and inadequate state institutions that presently house convicted criminals. The report recommends that the committee review present sentencing practices and consider various institutional and programmatic alternatives to traditional penal institutionalization by the state.

B. Under the heading of civil justice, the following subjects have been considered:

1. Personal Injury Litigation. The automobile is California's biggest killer and maimer. Present systems of accident compensation do not aid all victims; and they are costly and time-consuming

to administer. It is time to consider more efficient alternatives to the present system of determining fault. Various intermediate measures, such as compulsory insurance and comparative negligence, should be reviewed. Furthermore, liability of community property, contribution of joint tortfeasors, and alternatives to jury trials, all designed to make the civil justice system more efficient and more equitable without completely revolutionizing it, are discussed.

2. Probate. The probate process is one area of the law which affects and which irritates almost everyone. Reform of the system would be efficient and could do much to increase respect for the law. Hearings into probate reform should examine the following areas: appointments and fees of guardians, appraisers, executors, and attorneys; the costs and delays of various probate proceedings; the qualifications of judges; alternatives to the traditional probate process and the correlation of other means for transferring property at death. A related area which should be considered is the revision of the rule against perpetuities.
3. Legal Representation. Recently, emphasis has been placed on providing legal representation to indigents charged with committing crimes. The need for counsel in civil cases has received less attention. Two groups currently lack adequate representation: indigents who cannot afford to pay anything for a lawyer; and people in low and middle income brackets who can pay something but cannot afford the fees charged by private attorneys. Hearings should inquire into means for assuring sufficient representation to the first group without charge and forms of group legal services for the second group.
4. Procedural Reform. The report recommends changes in legal procedures that would make the administration of justice more responsive to the needs of the unsophisticated people who come in contact with the system. Consumers sued by

merchants or finance companies face the abuses of sewer service, wage attachment, the holder-in-due-course doctrine, deficiency judgments, improper location of legal actions, and the costs of going to court. Tenants face an unequal distribution of obligations with their landlords, insufficient enforcement of housing codes and summary procedures for eviction. In addition, it is recommended that various methods for solving disputes short of involving the judicial process be reviewed: expeditiously handling uncontested claims, expanding and simplifying small claims courts; arbitration; adoption of other new techniques for settling disputes; and the need for officials or bureaus to assist people with complaints against the bureaucracy.

C. The third part of the report deals with the need for inquiry into the problems of court administration. Pursuant to our contract, this part of the study was conducted independently by Operations Research, Incorporated, with our help. The present report summarizes ORI's findings, which are included along with its full analysis in a separate report that also is submitted herewith.

The gist of our conclusions is that the best laws and procedures in the world are of little service to the people if the legal system cannot make its services available and complete its action in a reasonable time. The California courts are in some respects most efficient; they conduct an immensely crucial and big business. In many other respects, however, they operate with less efficiency and good management than might be possible.

Management of the courts and their judicial resources faces several critical problems in California that the Legislature can take steps to resolve. The report recommends, first, development of necessary data on court operations and, secondly, analytic methods and systems for assessing the impact of all relevant changes upon the administration of the courts, especially those resulting from changes in civil and criminal laws.

D. The report also suggests to me that the Legislature should consider the advisability of creating a Joint Committee on the Administration of Justice to carry out the recommendations of this report and continue work in this important area.

The Honorable William T. Bagley

There are several reasons why a Joint Committee would be in a better position than the Legislature's standing committees to consider in an intensive and continuing fashion the issues raised by this report.

1. These proposals cut across the individual jurisdictions of the standing committees.
2. The Senate committees often have different responsibilities from their counterparts in the Assembly. Cooperation between both houses would be efficient and economic, as well as politically wise.
3. The standing committees and their staffs already are too overburdened with the regular business of the Legislature to undertake a new and major area of work.
4. A new Joint Committee would be able to concentrate its efforts and expertise in areas connected with the administration of justice.
5. A Citizen's Advisory Committee, composed of community leaders with varied interests and non-legislative specialists in the fields under review, could be recruited as a valuable adjunct to such a new Joint Committee. New committee members might be added from time to time to work on individual subjects.
6. A Joint Legislative Committee so composed and staffed and aided by a group of concerned and influential citizens and experts would provide fresh impetus and afford the problems of the administration of justice the kind of mature and sophisticated consideration which is warranted.

A survey of this kind perforce is panoramic and cannot cover every potential subject in detail. Had time and resources allowed, we would have considered several additional areas, such as the need for emergency strike legislation, reform of the sovereign immunity doctrine, gun control, and others. Instead, to make our task finite, and with your approval, we concentrated on those areas where it was felt priorities could be made sensibly. Of course, work in this area must continue and new subjects of inquiry should be undertaken periodically.

The Honorable William T. Bagley

7.

With thanks for all of the help provided by you and your staff, I am,

Respectfully,

*Ronald L. Goldfarb*

Ronald L. Goldfarb

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## I. CRIMINAL JUSTICE

### A. PUBLIC INFORMATION AND CRIMINAL TRIALS

No other public issue has received such intense, ubiquitous and persevering attention as the role of the publications media in reporting crime news and criminal trials. From the time of Christ and Socrates to the recent trials of Billy Sol Estes, the public has always shown an insatiable interest in crimes and criminal trials. This has been true in California particularly, as is clear from such recent episodes as the Mother Duncan and Finch-Tregoff trials, the Silverthorne case and the impending trial of Sirhan Sirhan.

In response to this growing public concern and to the Supreme Court's lead in the Sheppard case, the American Bar Association recently conducted a major study which resulted in a series of free press, fair trial guidelines for lawyers recommending standards of conduct for defense lawyers, prosecutors, police and the press. This report, known as the Reardon Report, was adopted by the House of Delegates and will be incorporated in the new ABA Code of Professional Responsibility. The United States Judicial Conference in substance adopted the ABA policies governing the conduct of lawyers and court personnel regarding potentially

prejudicial information. In response to this movement for reform, the state bar associations in about forty states have established committees and entered into negotiations with media groups looking toward the adoption of voluntary codes of practice. Even Pope Paul VI has proposed a code of behavior for the press to reduce the permanence of crime news.

The time has come for the State of California to adopt a position with regard to this complex and troubling issue. It would be appropriate for the Legislature to conduct hearings in this area.

The Committee should look into the following aspects of what is traditionally called the free press, fair trial dilemma. First, hearings should be held to consider the Reardon Report of the American Bar Association, to determine which of the recommendations should be adopted in the State of California, and to decide whether action should be taken through rules of court, through bar association regulations or through new laws.

Second, the Committee should examine the appropriateness of those filtering procedures of the law of evidence which are traditionally used to prevent prejudice during criminal trials. How do the California rules of continuance, change of venue, voir dire, instructions, sequestration, habeas corpus, mistrial, new trial and reversal, and blue ribbon juries accomplish the jobs for which they are designed? The perfection of these techniques could make a significant contribution to the resolution of a significant part of this overall problem. In the Sheppard case, the Supreme Court indicated that this is where the chief attention needs to be paid. Associate Justice Tom Clark wrote in that case: "The cure lies in those remedial measures that will prevent the prejudice at its inception."

The law of contempt needs to be re-examined and clear policies drawn regarding its use against the press as a means of curbing prejudicial

publicity. This is one of the controversial areas broached by the ABA regulations; indeed, it might be one area where this state would determine to depart from the ABA's recommendation. With good reason, the Supreme Court historically has shown an indisposition to using the contempt power against the press.

Another area which raises emotional and sensitive questions is the administration of the criminal justice process. In the *Estes* case, the Supreme Court came close to forbidding television in courts as a matter of constitutional edict. Yet, several members of that Court urged that the Constitution dictates the opposite conclusion.

It would not be inappropriate in hearings on the free press, fair trial issue generally to give consideration to the question whether television should remain the black sheep of the media in the eyes of the law, or whether and in what instances this modern medium could make a positive contribution to the public's information and a positive influence upon the administration of criminal justice.



## B. JUVENILE JUSTICE

For very good reasons, there has been a legal revolution in the juvenile court system in recent years. The half century experiment with paternalistic juvenile justice has failed: it has been neither a fairer nor a more workable system. The powers and impact of the juvenile justice system had grown precipitously during the first half of the twentieth century until it was deflated by the Supreme Court last year.

Juvenile courts have tremendous powers to intercede in the daily life of a child and his family. It can order a complete investigation of home life, personal habits and family relationships. It can break up a family and put a child in a foster home or an institution. It can cause a child who has committed no crime to be housed with criminals. All this is rationalized on the theory that it is for the child's own good.

In determining what is for a child's welfare a judge, social worker or probation officer focuses not on whether a child has committed a crime but on what is in his best interest. Until last year, when the U.S. Supreme Court decided in the famous Gault case that children must be provided basic constitutional rights in juvenile court cases, a court

could put a child in an institution until he turned 21 without even telling him what he was charged with or letting him talk to a lawyer. Even now, the California Supreme Court has held that a child with a mental age of between 10 and 12 is able to make an "intelligent" waiver of counsel. Juvenile courts in some busy urban areas decide what to do with a child in a ten-minute hearing.

Legislative hearings on the need to revamp the California juvenile court system are warranted. A general study of the workings of the system would be useful; then specific problems could be examined, specific proposals for change evaluated, and consideration given to designing a fresh, dynamic, workable system for treating children in trouble. No more crucial subject will come before any legislative committee.

The Supreme Court's decision in Gault has left several specific questions to be answered. One relates to the propriety of pretrial detention of juveniles. No case has been decided in California, but other states' courts have disagreed about the constitutional need to release juveniles on bail or on their own recognizance. Another question is whether a juvenile is entitled to a trial by jury. Also, the required standard of proof (beyond a reasonable doubt, clear and convincing, preponderance of the evidence) in juvenile cases has not been clearly defined.

The right to counsel raises administrative and personnel questions. Since Gault, most courts have insisted that juvenile defendants be provided with counsel. In an effort to furnish the necessary counsel, the size of the Public Defender's Office in Los Angeles has tripled. Once the juvenile court proceeding has taken an adversary character, changes other than the addition of defense counsel are made necessary.

First, the probation officers who "prosecute" cases need special training to develop adversary expertise, or they must be replaced by conventional prosecutors. Defense lawyers are presently complaining that due to the probation officer's inability to ask witnesses the appropriate questions, the judge has been asking them himself. The lawyers are thus presented with the dilemma of alienating the court or failing to object to a judge's questions. San Mateo County is using specially trained probation officers as prosecutors. The only known objection about that system is that the duty of the probation officers to prosecute cases may conflict with their later responsibility to supervise defendants who are put on probation.

Adversary proceedings as are now required in juvenile courts also take time. In some California cities, referees have been appointed to avoid the need to increase the number of judges. Referees conduct most of the initial hearings, with an appeal to a judge from a transcript. One problem with this solution is that referees are not required to be attorneys. Now that the Supreme Court has required that the constitutional rights of juveniles be protected by juvenile courts and that the rules of evidence apply in juvenile hearings, it probably is essential that those officials who conduct the hearings have training. The Bay Area Social Planning Council recommended in its December, 1968 report on the San Francisco Juvenile Court, that all referees be attorneys.

The inequality of the way the juvenile justice system actually operates is an even harder fact to face. The President's Crime Commission recently stated that 90 percent of the youth in America have done something for which they could be committed by a juvenile court. Generally, children from poor homes are put in institutions for their own good, regardless of whether they have committed a major offense. A child from a more prosperous home is usually released, again for his own good, even though

he may have been guilty of a more serious crime. Sociologists Sheldon and Eleanor Glueck have reported that only 5 percent of the children put in institutions for juvenile delinquency come from families considered to be in "comfortable circumstances."

While it is arguable that poor children commit more wrongs, it is also likely that the discrepancy is due to the fact that middle class families adjust their children's problems in private. Among the poor, problems arising out of illicit sexual relations, truancy, vandalism and running away from home become court—and frequently—prison cases.

Although it is the law that juvenile authorities must release children to their parents immediately, unless that would endanger the child or the public, in San Francisco it is reported that 73 percent of the juveniles who are arrested are detained before their trials. The probable reason for the high detention rate in San Francisco is that probation officers who allow children to be released to their parents are required to account to the judge. Since officers are reluctant to take a chance and release a child from a poor family, those children are locked up.

The problem compounds itself. Once a child has a record as a juvenile delinquent, it is very difficult for him to escape from the prejudices which accompany that record. In California, the record cannot be sealed until 5 years after the child's period of probation ends or until he turns 21. Once 21, the youth may have already been prevented by his record from getting into college, military service or employment. Even when the time arrives for the records to be sealed, a youth must be sophisticated enough to take advantage of the possibility. Sealing of records requires a court hearing. An attorney is thus necessary. This procedure could be simplified.

Although a child is being held in juvenile facilities against the will of his parents, counties are allowed to sue the parents of a delinquent

for the cost of maintaining the child in the institution. Juvenile courts have gone so far as to impose a lien on the parents' house for the costs of caring for a child sentenced to a Youth Guidance Center for commission of a crime. Whether the expense of the system should be borne by the community or by the unwilling victims of the system, who happen also to be those least able to afford it, is another issue that should be considered.

Still another subject is the need for alternatives to institutionalization and for community follow-up programs for juvenile delinquents. When a child is found not guilty in a juvenile court proceeding, no effort is made to refer him to some auxiliary service in the community. Aware of this failure to provide services for youths not found delinquent, court officials sometimes are moved to find a child delinquent just so he will have access to some help.

The establishment of Youth Service Bureaus in each county to coordinate programs for the prevention of delinquency was authorized by SB 892. The Youth Authority has drawn up guidelines to which the bureaus must conform, but no bureaus have as yet been created.

Two bills have been introduced by Assemblyman Willie L. Brown, Jr. which warrant serious consideration. The first requires the California Youth Authority to establish standards for and to conduct annual inspections of juvenile halls. At present there is a mandate to inspect, but none to establish standards. Even with such a law, the state probably has no way to enforce standards on the counties unless the Legislature decides to subsidize juvenile detention facilities.

The second bill would amend the law establishing juvenile justice commissions. The commissions are now appointed by the juvenile court justices. At least in San Francisco, their composition has tended to be middle class, and they have been criticized for failing to perform the

critical function that was expected when they were first established. Assemblyman Brown's bill provides that the commissions be appointed in whatever way other commissions in the county are appointed. The Bay Area Social Planning Council has recommended that the commissions be enlarged, and that they be appointed as follows: 6 members by the President of the Board of Supervisors; 6 by the Presiding Judge; and 9 by the Mayor.

An additional problem facing the juvenile courts is how to deal with minors who have committed no crime but who, for some other reason, are wards of the state. At present, these children come within the jurisdiction of the juvenile court. As a result, children found by the court to be dependent or neglected are treated in the same manner and get the same record as juveniles who have been found to be criminals.

California law allows dependent children to be sheltered in the same facilities as delinquents, so long as there is some physical separation between the two. The staff is interchangeable as are its practices and attitudes. If a child who is in "protective custody" annoys a counselor, he may be transferred to a facility for delinquents. Although there is some hearing before such a transfer, it is common for only the counselor who wishes the child to be moved to testify.

No one questions the fact that private homes are preferable to institutions for housing children. They are less expensive as well. Keeping dependent and neglected children in institutions costs from \$350 to \$450 a month. Foster homes cost the state \$110 a month. But because of rigid legal requirements of what in some instances are unrealistic standards for foster homes (for example, each child is required to have a private bedroom), a lack of any training for foster parents or special services to help them in handling behavioral problems, and a lack of staff to investigate possible foster homes, too many children end up crowded into institutions.

One way of dealing with the problem of dependent and neglected children was suggested in hearings before the Assembly's Judiciary Committee last year on the proposed Family Court bill. The bill would have taken matters concerned with establishing wardships and caring for dependent and neglected children out of the jurisdiction of the juvenile court, removing them to a family court augmented by social workers. If this proposal were enacted, the juvenile court and its auxiliary services would be freed to deal with children who have committed crimes.

The Bar Association of San Francisco has proposed a series of statutes dealing with juvenile justice. The proposals include the following: the right of a minor who is detained to make telephone calls to an attorney, a relative or an employer; the right of a juvenile to a hearing within 48 hours of his arrest regardless of when he is arrested (weekday, Sunday or holiday); provision for compensation of appointed counsel; and prohibition of delivery to the court of social investigations until after the trial (called the "jurisdictional hearing" in California). The Los Angeles County Bar Association has proposed that any admissions or confessions made by a juvenile to someone preparing an investigation for the court be inadmissible in any criminal proceeding. These proposals are well thought out, and could be used as a chart for the Committee's hearings.

The Judiciary Committee also should consider whether, as is the case in the U.S. Senate, it would be wise to create a subcommittee with jurisdiction over juvenile justice. The evolving and continuing importance of this subject might well call for the special attention and expertise that would warrant creating such a subcommittee.



### C. ALCOHOLICS AND THE CRIMINAL COURTS

The F.B.I.'s Uniform Crime Reports showed almost two million arrests in 1967—one out of every four in the United States—for the offense of public drunkenness. The arrest and processing of all such offenders involves a wasteful and expensive effort by the police, prosecutors, courts and corrections officials.

In the past few years there has been a trend toward separating alcoholics from the criminal population. Two federal courts of appeals have held that a chronic alcoholic cannot be punished for being drunk in public. "Although his misdoing objectively comprises the physical elements of a crime, nevertheless no crime has been perpetrated because the conduct was neither actuated by an evil intent nor accompanied with a consciousness of wrongdoing, indispensable ingredients of a crime."

The United States Supreme Court refused to go so far, stating that both the level of knowledge concerning the treatment of alcoholism and the number of facilities currently available for such treatment are so inadequate that requiring treatment of alcoholics outside the criminal process as a constitutional mandate would be premature:

Faced with this unpleasant reality, we are unable to assert that the use of the criminal process as a means of dealing with the public aspects of problem drinking can never be defended as rational. The picture of the penniless drunk propelled aimlessly and endlessly through the law's "revolving door" of arrest, incarceration, release and re-arrest is not a pretty one. But before we condemn the present practice across-the-board, perhaps we ought to be able to point to some clear promise of a better world for these unfortunate people.

There are two distinct problem areas associated with the law's handling of chronic alcoholics. One is the substantive question whether alcoholism should be treated criminally. The other question concerns (1) the wisdom of clogging judicial and correctional facilities with people whose only crime has been to get drunk in public and (2) the associated problems should this class of cases be taken out of the ordinary criminal system.

A serious administrative problem might occur if alcoholics were no longer put in jail for their misconduct. The report of one Presidential Commission described the void that was left in one city when the local United States Court of Appeals refused to allow criminal treatment of chronic alcoholics without creating alternative facilities. As the Supreme Court later said, "It would be tragic to return large numbers of helpless, sometimes dangerous and frequently unsanitary inebriates to the streets of our cities without even the opportunity to sober up adequately which a brief jail term provides."

In recent years Americans have become increasingly conscious of the crime problem. Greater time and resources are being devoted to

the apprehension and trial of criminals. At the same time, the Supreme Court has insisted that we assure criminals the whole range of procedural safeguards guaranteed by the Constitution. For example, every defendant should be given an opportunity to have a lawyer and to prove his innocence. But our criminal justice system is not equipped to deal with the increase in the number and length of trials. One judge in Los Angeles estimated that a mere five percent increase in not guilty pleas would cause the entire system to collapse. Unless the level of resources devoted to the operation of the criminal justice system is increased drastically, the effect of these increased procedural safeguards will be to impair the capacity of the system to cope with its rapidly increasing intake.

Taking the necessary steps to effectuate such an increase in resources for more police, more prosecutors, more judges and more jails is a serious commitment. It is appropriate to look for alternatives to the criminal justice system as a means for certain social controls.

In his recent book, "The Limits of the Criminal Sanction," Herbert Packer, Vice Chancellor of the Stanford Law School, has suggested that legislators re-examine the uses now being made of the criminal sanction in order to decide which are indispensable and which might, with safety and with some gain to the public welfare, be abandoned. According to Packer, "The behavioral content of the criminal law has expanded enormously over the past century, mainly because declaring undesirable conduct to be criminal is the legislative line of least resistance for coping with the vexing problems of an increasingly complex and interdependent society. As a result we have inherited a strange melange of criminal proscriptions ranging from, on the one hand, conduct that offers the grossest kind of threat to important social interests, to conduct whose potentiality for harm is trivial or non-existent."

We must weigh carefully the importance to society of preventing, as opposed to prosecuting, certain kinds of conduct. Astonishing though it may seem, there are no data describing how the time of the personnel or the billions of dollars spent on law enforcement are divided among various categories of criminal activity. Nonetheless, it is obvious that the more uses to which we put the criminal process, the more we diffuse the resources we are willing to devote to it. Every hour of police, prosecutorial, judicial, and correctional time that is spent on marginal uses of the criminal sanction is an hour lost to the prevention of serious crime. In Packer's words, "The criminal sanction is the law's ultimate threat. . . the sanction is the answer uniquely coercive and, in the broadest sense uniquely expensive. It should be reserved for what really matters." If there are readily available alternatives that avoid the use of the criminal sanction in areas that are not crucial, they must be carefully weighed.

The area of conduct that Packer recommends removing from the orbit of the criminal sanction is the "victimless crime." This category includes private, consensual sex offenses, obscenity, abortion, alcoholism, narcotics and gambling. Removing such conduct from the criminal process would help to relieve many of the problems currently plaguing law enforcement. Of all his suggestions, the one area of conduct particularly ripe for removal from the criminal system is alcoholism.

At present, one county official in California estimates that over 50 percent of the arraignments in municipal court are for alcoholics whose only crime has been to get drunk. The mass influx of these cases has contributed to an "assembly line" system of justice in the lower courts.

According to reports from observers in various parts of the state, the system for trying misdemeanants is geared to getting guilty pleas as quickly as possible. Only between four and seven percent of misdemeanor cases go to trial. It has been estimated that only 32 seconds is devoted

to sentencing in each case. Division 58 of the Los Angeles Municipal Court, which handles drunkenness charges in the metropolitan Los Angeles area, processes between 200 and 250 drunk cases a day. Offenders are brought into the court for arraignment in groups and told of their rights. They are also told that it will be much faster for them to plead guilty since it takes at least 30 days (often spent in jail) to get a trial. Thus, they frequently waive counsel and plead guilty immediately.

The system has been described by one observer as follows:

The bailiffs bring in the defendants from the jail in groups of about 20. The men stand in two lines behind a three-foot high horizontal bar which separates the defendants from the rest of the courtroom. After the defendants have filed into the court the judges repeat the following rubric:

'You men are all charged with being publicly drunk. Do any of you plead not guilty?' (The judge pauses about five seconds to see if there are any 'not guilty' pleas.) 'All guilty, answer to your name as it is called.'

Although defendants may be guilty of something, they may not understand exactly what it is they are guilty of. By waiving counsel they also waive any opportunity for plea bargaining. They may not be told anything about the possible sentence for the crime to which they have pleaded guilty. When they are sentenced to terms which turn out to be much longer than they had expected, they may become very cynical about the judicial process.

There is no transcript of the arraignment proceeding. It is impossible to know anything about the information upon which the judge has acted. A defendant has no appeal from the proceeding.

One way to allow for the reduction of guilty pleas at arraignment and the unnecessary influx of cases which overwhelm the lower courts would be to remove cases of simple alcoholism from the system. As Mr. M. Robert Montilla, Director of the Model Community Correctional Project in Stockton, has said, "The drunk is the main glut in the system, forcing the court to practice systematic brutality against the poor."

In San Joaquin County, a Model Community Alcoholic Treatment Program is awaiting funding by the United States Public Health Service. The program will replace judicial consideration and jail commitments of alcoholics with detoxification in a hospital and a follow-up, out-patient program.

Reports from similar programs in St. Louis and New York indicate that detoxification alone reduces recidivism. In addition, it may save the county money since hospital treatment will make many alcoholics eligible for state and federal Medicaid and Medi-Cal funds. They are not eligible for this assistance when they are in jail.

The follow-up program will provide medical and psychiatric care to treat medical side-effects of alcoholism, such as liver ailments, and the psychiatric causes of alcoholism. It will also provide temporary homes in dormitories for men with no place to go. (Jails are currently used as a humane alternative to the streets for many of these men, especially during the winter.)

Such a treatment program, in addition to relieving the crowded institutions, could remove more than half the current overloaded jail population. The jails could then concentrate on becoming the kind of correctional institutions that are needed to treat the real criminals.

Hearings should be held to inquire into these issues. Experts should be questioned to determine the best scientific judgment on whether alcoholism so eclipses men's free will as to warrant barring recourse to traditional criminal punishment. Statistical and logistical information should be gathered to estimate the impact of alcoholic cases on the present judicial system. Experts should be called for advice in designing treatment methods to deal with the special problems of alcoholics in or out of the regular system.



#### D. PROTECTIVE DETENTION

The problems surrounding the American bail system have received considerable national attention in the past decade. Particularly, criticism has been made of the facts that: (1) the money bail system inherently discriminates against the poor; (2) the power to allow or withhold bail is manipulable and has often been used as a form of punishment or to proselytize and for other ulterior purposes; (3) it has spawned the world of bondsmen who have accumulated too much power and have had corrupting influences on the official participants in the administration of justice; and finally, (4) the money bail system is less utilitarian than other simpler and fairer techniques for assuring the presence of defendants at criminal trials.

The Assembly of the California Legislature through its Committee on Criminal Procedure has begun consideration of a new bail reform bill. The Judiciary Committee has supported this legislation and should continue its cooperation with the Criminal Procedure Committee to assure early passage of this bill.

A related issue which has not been considered by bail reformers generally and which is not within the treatment of the bail reform bill presently before the Legislature is the problem of preventive or protective detention. The purpose of bail is to assure the presence of an accused at trial. That one should not be incarcerated simply for the lack of money to buy a bail bond is an obvious and incontrovertible truth; this policy is within the province of the pending California bail reform bill. The other side of the problem of pretrial release is the problem of pre-trial detention and the related question: What about the accused who can afford bail and who presents no risk of flight who is a danger to the community if he is free pending trial?

If a defendant poses a danger of this kind—injuring witnesses, destroying evidence, committing further crimes and the like—there presently are no adequate procedures to assure his incarceration pending trial. Thus, there is no way to assure the public safety of the community. To fill this vacuum, judges frequently set extraordinary high bail, in effect denying certain defendants of their freedom before trial without candidly admitting that this is what they are doing.

Consideration should be given to this problem. The importance of the problem of crime in the streets needs no repetition in this report. It should be sufficient to point out that there is great public concern over rising crime rates and the need for assuring public safety. In this respect, pretrial criminal procedures do not adequately come to grips with a serious problem; nor is this problem resolved by pending bail legislation.

While related, the problems of pretrial release and preventive detention are separate. Parallel legislation and hearings concerning

the various policy issues in this area would complement the pending bail reform legislation and could resolve a critical problem left in its wake. Several important issues are raised by the prospects of legislation of this kind and they should be considered during hearings.

First, the Committee should attempt to establish empirically the clear need for legislation of this kind. How frequently do men repeat offenses, or get re-arrested or re-indicted pending their trials? Statistical evidence addressed to this question is necessary to support legislation of this kind.

Secondly, experts should be called to discuss the constitutional propriety of any scheme of detention without full trial. Opinions vary on the constitutionality of suggested preventive detention legislation (there is, it should be noted, one federal law authorizing the practice in one specific situation) and the matter should be debated openly and fully. What does preventive detention do to the presumption of innocence? To the right to trial by jury? Or indictment by grand jury? Due process of law?

Finally, the hearings should attempt to define appropriate procedural protections which must be designed to guard defendants from excessive or abusive uses of any such pretrial detention power. In what cases should it be authorized? What criteria should judges use to predict future criminality? What specific protections—counsel, appeal, trial preference, special detention quarters, etc.—should be guaranteed in this limited category of cases to minimize potential abuses?

Few issues in the arena of public debate are so incendiary as "law and order" is now. Hearings on this question would come to grips with one segment of the problem of rising crime rates and also would demonstrate the complexity and evasiveness of the crime problem. Out of such hearings might come the first state legislation to meet and resolve one of the most difficult and challenging issues of criminal justice and court discretion.

## E. EXPANDED USE OF CITATIONS

One simple technique which can be used profitably to decrease the extraordinary volume of minor cases which unnecessarily clog the criminal justice system and thus to ease the strains on the lower criminal courts, is provided by the expanded use of citations.

The citation (called a summons elsewhere) may be used in minor cases to dispose of a case simply. The citation expeditiously charges one with an offense and as quickly as possible releases him without jail, bail, or the cranking up and invocation of the whole judicial machinery. (The parking ticket is the most obvious example of this technique.) The arrest and bail process is replaced by a simple matter of paperwork notifying the person to appear for trial. Already used in millions of minor cases in some states, the expanded use of the summons or citation for misdemeanor cases and even for some felonies is a wise course.

In a majority of the states and in all federal courts, summonses may be issued by lower-court judges instead of arrest warrants at the time of the complaint or after indictment. Local practice determines whether it can be used as an alternative to arrests in misdemeanor cases or felony cases, or both. Its use (on the increase around the country) spares the police as well as the courts administrative troubles and allows the defendant to avoid the punitive aspects of pretrial detention.

Police summonses also may be issued at the time of arrest where the police are not required by law first to seek arrest authority from a court. The authority exists in the majority of American jurisdictions for on-the-spot arrests in misdemeanor cases; but police summons authority along with or in lieu of arrest and bail does not exist in most places. Police summonses could be used profitably in a variety of instances: instead of arrest, on-the-spot but after an arrest, and in the police station sometime shortly after the arrest.

A 1967 amendment to the California Penal Code allows the police to issue a citation instead of arresting a person who is suspected of having committed a misdemeanor. The law provides that an arresting officer need not take a suspect to the police station, but may release him immediately once he has given him a citation. If the officer does arrest the suspect, he may be released by the police on his recognizance after he has been booked and fingerprinted at the station.

Reports from experienced observers in different counties indicate that there have been two problems with the administration of this 1967 amendment. First, the police have hesitated to take the risk of releasing a suspect on the spot and without first taking him to police headquarters. And since internal police department policies require approval by the

department chief before an officer may issue a citation for any non-traffic offense, the officer must take the time to travel to headquarters with a suspect, although his release poses no risk to the community.

The second hindrance to widespread use of citations is that the sheriffs who administer the jails lack the power to release suspects arrested by other police agencies.

The arresting police officer may not want to take the chance of releasing a suspect without first checking on his family or employment. This may take time, and the suspect may be put in jail while it is done. Once the officer has taken a suspect to a jail, and officials have decided that it is safe to release him, he should be released on recognizance and saved from any more time in jail. This would be economical for the community as well as fair to the man.

But since the jails are run by sheriffs, once suspects arrested by police departments are put in jail, they can no longer be released. A technical change in the law giving sheriffs the power to release suspects arrested by other police agencies would make the citation law more useful.

The Criminal Procedure Committee already has held hearings on the use of citations. Testimony from Contra Costa County, where the practice has been used extensively, shows that approximately 72 percent of those arrested for misdemeanors have been successfully released with citations prior to their trials. The Sheriff of San Joaquin County has used citations extensively, too. With the Criminal Procedure Committee or to complement their work, the Judiciary Committee should examine the need for clearer, more implementable citation procedures. New York's experience in this regard points the way.

The Vera Institute of Justice in New York City has successfully evaluated the use of a station-house summons to replace arrest and bail. This technique, though allowing something less than on-the-spot release, nevertheless avoids the problems of arrest and bail quickly (if not immediately) and significantly (if not completely). If instead of prolonging the incarceration of a person who is charged with a crime, the police quickly issued that person a summons calling for his appearance later at arraignment or trial, there would be no need for bail or jail.

The Manhattan Summons Project, begun several years ago, incorporates the Vera technique at the local precinct police station. Vera personnel (it could be any official or volunteers from private organizations; in some places, VISTA volunteers are used) are stationed at the police station. Then, with the cooperation of the police, and in only certain specific kinds of cases, the Vera staff conducts its interviews of defendants to establish eligibility for disposition of the case through a summons instead of arrest.

The desk officer at the police station is the final decision-maker, but he uses the Vera report much in the same way as the judges do under the Vera bail project. If the summons is used, Vera assumes the supervisory role to assure the defendant's presence. This procedure is all accomplished in a matter of minutes or hours, and it avoids the penal aspects of this early part of the criminal process. In one observer's words: "During these interviews the mood of the prisoners shifts from hostility and suspicion to glimmering hope. Perhaps it is the need to talk to someone - perhaps it is the lack of uniformed and official brusqueness - not one prisoner has refused to cooperate."

During a 10-month appraisal of about 700 minor misdemeanor cases Vera recommended release 67 percent of the time. The police rejected the recommendations in only a few of these cases. Of these test cases, only a small fraction of the ultimate dispositions included jail sentences. Most cases resulted in suspended sentences, acquittals, dismissals, or fines. Thus, the avoided pretrial incarcerations resulting from Vera's supervision were particularly critical.

Every arrested defendant must be taken to jail, booked, fingerprinted, questioned, and eventually brought to court. The police must accompany defendants through the beginning steps of the judicial process until the arraignment, when the court takes over. Police are detracted from their primary responsibilities of detecting and preventing crime. Facilities such as cars and cells, and custodial personnel, are diverted. These administrative chores are expensive, time-consuming and unproductive. And, of course, the human savings to defendants in terms of the practical corollaries of their individual freedom are inestimable.

The attitude of the police to this kind of reform has not been merely cooperative but enthusiastic. In a speech, New York City's Deputy Police Commissioner pointed out that the experiment is saving the police department thousands of hours of manpower and is responsible for significant savings of hitherto useless public expenses. Costs of welfare and detention have been reduced considerably with no corresponding economic or social costs. The proportions of these savings could be vastly increased by the expanded use of summons.

Would this work in the cases of more serious crimes? According to the results in New York and according to one report to a national Governor's Conference it can and, in fact, it already has been working well in some places.

One recent study of the use of the summons throughout the nation concluded:

...we have now had sufficient experience with summons in a wide variety of situations - in many different areas of the country - to know that most of the fears concerning summons as an alternative to arrest and bail are unfounded. Where a carefully planned summons program has been undertaken, its utility has been hailed by the law enforcement officials who were originally most skeptical. And where summons hasn't proved out, or where it has been grudgingly or inadequately used, analysis shows that the police have had poorly defined authority and inadequate standards from which to work. If the offenses for which summons may be issued are plainly understood in advance by the police and the courts; if the criteria for citing or releasing prisoners are agreed upon and properly articulated to the police administering the program, the program works. In short, the record in those cities where summons programs have been successful should provide a strong incentive for other jurisdictions to consider expanded use of summons as an aid to more effective, fair and humane law enforcement.

The Legislature should look into the employment and expansion of variations of summons-citations techniques as one sensible way of resolving a number of problems in the pretrial stages of the administration of justice.

## F. ADMINISTRATION OF JUSTICE DURING RIOTS

The urban riots which have exploded in countless American cities during the last few years are a grim symptom of a society in serious trouble. Solutions to the deep and complex causes of these riots obviously are beyond the province of the Judiciary Committee. Nevertheless the experience of those riots do underscore one critical problem which should be considered; that is, preparing the administration of justice system to cope with the unusual and extraordinary problems which arise during situations of mass disorders. In this one respect the Legislature could take the lead in discerning and outlining the steps that need to be taken to prepare state and local justice systems to cope with this critical aspect of emergency situations of mass disorder.

Our system of criminal justice is, at best, imperfect. And at that it is essentially a system which presumes to deal in a calculated way with single acts of crime. Its aims are to apprehend and prosecute individuals; essentially, they are neither preventive nor restorative aims. Thus, it should come as no surprise that this system fails when confronted with emergency situations arising out of mass disorder where the overriding

goals must be to protect people and property and to restore peace and order consistent with constitutional law.

The participants, the processes, the very laws themselves are inept in coping with mass riots rooted in social protest.

How can the right to counsel, the right to a speedy trial or the right to arraignment guaranteed by the Constitution be assured when the justice system is inundated by a mass influx of cases? What happens to the constitutional right to bail when the public is panicked about rioting in the streets? How can the police process and the prosecution prove cases when chaos prevails, evidence is lost and confusion reigns? What extra steps need to be taken to avoid convicting the innocent or losing cases against the guilty? What mechanical or administrative steps need to be anticipated to provide special facilities for detention, trials, transportation and communication in emergency situations of mass disorder? What new laws need to be passed to provide for proper and adequate official responses to emergencies of this kind?

These aspects of a social system which has failed so many of its people as to generate riots become the more worrisome when that society's system of justice cannot afford or devise a way to bring about peace and justice. Our system for the administration of justice is inadequate if it is not capable of assuring order and peace in communities; it compounds our serious riot problems when it confronts rioters with the same short-sighted inequities and unjust prejudices that caused them to resort to rioting in the first place.

Even since the Report of the Kerner Commission and its recommendations for emergency planning, few American communities have devised programs to deal with the special problems arising within the administration of justice during the riots. When American cities were rioted last spring,

after the assassination of Martin Luther King, it was as if the problem was new and had not received national attention for over a year. Since that time only a handful of American communities have taken the necessary steps to meet such future contingencies .

A model plan designed for the District of Columbia has been sent to the Committee. Notice should also be taken of the prototype plan for civil disorders published by the American Bar Association's section on criminal law, entitled "Bar Leaders and Civil Disorders," and of the recommendations of the National Advisory Commission on Civil Disorders .

The involvement of the broadest segment of the community in the problems of resolving riots is crucial. American communities react admirably to natural disasters; they react frighteningly to social disasters. An important part of any community emergency plan must be to educate local leadership to appreciate that a riot is a community disaster and that all parts of the community must help to end its wrath. In the past, a riot has been the signal for a pitched battle between established antagonists drawing on old arguments. One of the basic features of this emergency program must be to discourage this attitude and to encourage community participation in the quelling of riots in the most sensible way.

Community planning for an emergency administration of justice program should include, along with agents of the local bench, bar, district attorney's office, parole office and other relevant government agencies, representatives from community programs such as civil rights and OEO organizations, welfare groups and law schools.

These participants should devise their local program as soon as possible and disseminate it to key participants. Individuals who are not part of any establishment but who are representative of the Negro ghetto should be consulted to determine the legitimate demands of the potential subjects of such a program and to assure that their attitudes are reflected in the plan.

The important point must be stressed: Solving the problems in the administration of justice during a riot is less crucial to the life of California communities than solving the problems giving rise to riots. This is particularly true of the administration of justice process. If justice is not apparent and if the system does not work, the final recourse of dissatisfied people before rebellion is lost. Because of the timely, hopefully temporal importance of addressing the problems which inevitably arise during any variety of mass social disorder, hearings should focus on this one area. Planning is important and can make a difference. The Legislature should take the lead.

## G. CORRECTIONS

The general public seems to care little about prisons and prisoners, wrongly assuming that the subject of corrections concerns only questions of punishment or deterrence. Proof of the position that reformation must be at least a part (if not the most crucial part) of correctional planning is made painfully evident by present recidivism statistics.

The criminal law process is preoccupied with stopping crime and catching and convicting criminals. Once a criminal is caught, tried and incarcerated, interest wanes. Figuratively, our prisons are the sand into which, ostrich-like, society sticks its head to avoid thinking about what comes next. This last stage in the criminal law process is of crucial importance; the criminal process has no end without a working system of corrections.

The corrections system is a vital social institution. According to a report of the National Council on Crime and Delinquency: "On any given day it is responsible for approximately 1.3 million offenders. In

the course of a year it handles nearly 2.5 million admissions, and spends over a billion dollars doing so." In California alone, \$230 million are spent each year in corrections. Although more than half this money (\$120 million) is spent at the state level, only 4 percent of the offenders entering the criminal justice system each year ever go to a state institution. The other 96 percent remain in the counties on probation or in jail.

Nationally, 1.3 million people are under correctional authority; about a third of this population are in jail; the rest are abroad on probation or parole. Nevertheless, almost a half million individuals are in American jails daily; about a seventh of these are juveniles. Nine out of ten inmates are men and 60 percent are under 35 years of age (over one-quarter are under 25, and about 10 percent are teenagers).

In California at the end of 1967, 30,210 persons, including juveniles, were in state penal institutions, and 28,242 people were in city and county institutions. There were 83,517 adults and 91,224 juveniles on active probation, and 12,002 adults and 14,788 juveniles on parole.

The State's responsibility for these people and its stake in their future is critical. According to recent congressional hearings, about 200,000 offenders are released from jail each year. It has been estimated that 50 to 70 percent of those released return to jail.

While prisons make some distinction between crimes for the purpose of incarceration, there is far too little consideration of the differences among criminals or the need for careful classification. While most criminals are similar in that they are poorly educated young men from underprivileged social and economic backgrounds, their problems are strikingly different. According to the recent Report of the President's Crime Commission:

Some seem irrevocably committed to criminal careers; others subscribe to quite conventional values; still others, probably the majority, are aimless and uncommitted to goals of any kind. Many are disturbed and frustrated youths. Many others are alcoholics, narcotics addicts, victims of senility and sex deviants. This diversity poses immense problems for correctional officials, for in most places the many special offender groups must be managed within large, general-purpose programs. The superintendent of an institution must meet the challenge of especially hostile and violent inmates, respond appropriately to those who are mentally disordered, guard against smuggling and use of narcotics, provide instruction and supervision for the mentally retarded, and handle the dangerous and intricate problem of sexual deviance—all within a locked and artificial world.

The correctional system is ill-equipped to cope with this demanding problem. While about 120,000 individuals are employed by the corrections system nationally, only about 20 percent are personnel concerned with the treatment and rehabilitation of convicts; the other 80 percent are responsible for maintenance and custodial functions. Those who are employed are over-worked and frequently have neither the education nor the training to meet their difficult challenge.

The institutions themselves are not adequate to meet the volume and variety of modern correctional work. Many American prisons are over 100 years old. Most prisons are grotesque. And they are very expensive to maintain. The average annual cost per offender nationally in 1965 ranged from about \$1,000 per misdemeanor to about \$2,000 for adult felons, to about \$3,600 for juvenile offenders. The average cost of maintaining one adult prisoner in California in 1966-67 was \$2,628, excluding capital outlay.

State correctional institutions for adults in California are overcrowded. According to Lawrence Stutsman, Deputy Director of the Department, for years California has been building new institutions to keep up with its burgeoning correctional populations. However, it remains behind 2,000-3,000 beds. The Department wants the Legislature to appropriate \$30,000,000 for a new institution in San Diego. Before appropriating more money for more institutions, the Legislature should examine the alternatives.

The Probation Subsidy Act has been in effect in California since July 1, 1966, providing payments to counties for the development of probation services for offenders who are kept in the community instead of being sent to state institutions. It reduced commitments from the counties to state institutions by 3,814 in the first two years of its operation. The Youth Authority for the first time has extra space in its institutions for juveniles. Nonetheless, the institutions for adults, under the jurisdiction of the Department of Corrections, continue to be overcrowded.

Now that the Probation Subsidy Program has reduced the intake of both the Youth Authority and the Department of Corrections, there seems no good reason why institutions should remain overcrowded. In California, the average sentence served in a state institution is 36 months. This figure has gone up by 6 months in the last year and a half. Other states have much shorter sentences. In Wisconsin, for example, the average sentence served is 16-18 months.

The Department of Corrections reports that it costs about \$2,700 a year to maintain a prisoner in a state institution. The long terms now being served and the rising cost of keeping inmates in prison, in addition to the reduction in the number of persons entering state institutions as a result of the Probation Subsidy Act, means that it is now costing more money to keep fewer men in prison.

The Department's Master Plan assumes that for the next twenty years state institutions will continue to be used at their present rate. Since existing institutions are overcrowded and the Department has already determined that some of them are so old and inadequate that they must be replaced, such use will involve an enormous expenditure of capital to build new institutions. The California Youth and Adult Corrections Agency has estimated that another \$1 billion in capital outlay will be required by 1975.

To reduce the overcrowding and increase the ability of the correctional system to rehabilitate offenders, the Legislature could profitably consider three principal problem areas within the field of corrections. First, a review of sentencing practices should focus on how long sentences should be and who is best equipped to determine the length of sentences. Second, the Legislature should look into the possibility of subsidizing and improving county jails to make them the key facilities for the rehabilitation of offenders at the local level. Third, attention should be given to improving and increasing non-institutional correctional programs; intensive community treatment, probation and parole. The Legislature could do much toward solving the prison population crisis and improving the quality of state corrections institutions while avoiding the necessity of financing an additional institution by proceeding in these three directions.

A. Sentencing

Some California corrections officials feel that the rehabilitative functions of prisons have been oversold. As one leading spokesman put it, "You don't change people by locking them up. Rehabilitation is not best done in institutions. Our system is primarily one of control." Another official feels that we cannot expect gains from institutionalization, but can only hope to neutralize the adverse effects of the experience on individual inmates. If we cannot make the institutional experience effective,

we could at least increase the efficiency of the system and reduce its cost.

California has an indeterminate sentence law. A minimum and a maximum sentence for each crime is written into the Penal Code. Except where the crime is murder, a judge merely sentences a defendant for the period provided by the statute. After a prisoner has been in the institution for 6 months, his case is reviewed by the Adult Authority and his sentence is fixed. The Legislature has left the sentencing authority great latitude. For example, the sentence for forgery is from 6 months to 14 years. In theory, an inmate may be paroled after he has served one-third of the statutory minimum sentence, but this almost never occurs.

According to Richard McGee, past corrections chief for the state and now Director of the Institute for the Study of Crime and Delinquency, the theory behind indeterminate sentencing is to have experts in correctional treatment tailor sentences to fit each offender. But Dr. McGee, who earlier favored the indeterminate sentence, now feels that its purpose may have failed.

Members of the youth and the adult paroling authorities are not particularly qualified to make sentencing determinations. These authorities are composed of laymen appointed by the Governor. They generally interview each prisoner for 15 minutes. The Youth Authority is required by law to see each ward at least once a year. The Adult Authority, on the other hand, has discretion in deciding when to see an inmate and may not see prisoners that often. The Youth Authority is reported to follow regularly the recommendation of institutional staff members. Thus, if the purpose of separate sentencing authorities is to have judgments independent of the staff's, it is not being fulfilled. The Adult Authority, on the other hand, has discouraged staff members from making recommendations. With increased public concern over rising crime waves, the Adult Authority is

reportedly less ready to release men early. Officials quickly realize that they are not subjected to public pressure for keeping people in prison; only for the alternatives are they criticized.

On the other hand, the Women's Board of Terms and Paroles, which is responsible for paroling female prisoners, has recently reduced the length of sentences by almost one half. According to Dr. McGee, these reductions have not had the effect of raising the rates of recidivism.

A legislative review and analysis of the results of different sentencing policies would be timely and useful. The reports, entitled Deterrent Effects of Criminal Sanctions and Crime and Penalties in California, that were prepared for the Assembly Committee on Criminal Procedure by a staff (headed by Robin L. Lamson) of the Assembly Office of Research, are enlightening and will provide the committee with interesting insights into the effects of sentencing. In one respect, the Legislature itself may have defeated the purpose of indeterminate sentences by requiring extremely high minimum sentences for some crimes. In the area of the use and sale of narcotics, statutes provide for particularly long minimum sentences.

At present, paroling authorities operate in a private setting. No transcript is made of proceedings. Prisoners are not permitted to bring their attorneys. Members of the boards are not required to state reasons for their decisions. There is no provision for appeal from even the most arbitrary determination.

Perhaps a prisoner who has served out the statutory minimum sentence and not been released should have the right to petition a court for release. The court could hold a new hearing and consider the broad question: Is the prisoner ready for release? Such a system exists in Maryland, under that state's system of indeterminate sentences for "defective delinquents." On the other hand, courts could be confined to considering only whether the paroling authority has abused its discretion (the usual reason for court reversal of administrative decisions).

There has been little thought about where the releasing function should be located. Should it be given to the Department of Corrections? At present, the Department is operating a system of institutions with no control over the gatekeepers at either end. The department is responsible for the costs of institutions, but the Director of the Department has no control over the one factor—length of sentences—that influences costs most. Nor can he determine how many people come into the institutions under his control.

The Adult Authority deals with only one part of the correctional process, the length of sentences. It has no responsibility for operating institutions or for supervising offenders on parole.

A different sort of control problem might arise if lengths of sentences were a decision of the Department of Corrections. The Department is concerned with the number of beds it has available in institutions. Thus some people fear that the length of sentences might be made to depend on the room in an institution at a particular point in time.

Should some kind of super-body be established to serve as a Board of Appeals from decisions of the Adult Authority? Such a Board also could be given ultimate responsibility for corrections. Then, at least one group could oversee the whole problem and be better able to balance the competing values. These and other questions could be considered during hearings on sentencing practices.

B. County Jails

Another way to avoid the need for additional state institutions is to increase the resources of county jails. In 1964, testimony presented to one group which conducted a study of probation in California revealed that many judges sentence offenders to state institutions because they feel that the institutions are the only place where the necessary treatment

facilities are available. The situation has not changed since 1964. Improving the state system while failing to devote sufficient resources to the counties attracts clientele who could be treated better locally. According to Allan Breed, Director of the Youth Authority, once an offender has been to a state institution, members of his community may treat him as something of an intruder.

By the time an offender gets to a state institution, it may be too late for any treatment which might arrest his criminal career. With respect to misdemeanors and minor crimes by juveniles, the situations where many professionals feel that treatment has the best chance, an offender's contacts with the system may be counter-productive. Lesley Wilkins, Dean of the School of Criminology at Berkeley, has suggested that prisons should not pretend to be rehabilitative. Rather, resources should be used at an early stage to prevent people from becoming criminals. Mr. Wilkins' ideas were echoed both by officials of the Department of Corrections and by local citizens advocating better community treatment.

Experts in corrections throughout the state agreed that more resources should be devoted to the county jails. The principal advantage in using jails instead of state prisons is that offenders may be kept close to home. Thus, programs such as work release and overnight or weekend furloughs are feasible. Offenders also have a better chance to preserve their family ties, jobs and community contacts—an important way for them to avoid future criminal activity.

A plan to subsidize county jails could be modeled after the present system of subsidizing county probation. The state could pay the counties to keep in local jails certain offenders who ordinarily would be sent to state prisons. A state subsidy plan for county jails would have two advantages. First, the jails would have sufficient resources to hire competent personnel and develop rehabilitative programs. They could

obtain educational and vocational training services from the local community. Perhaps jails could specialize in certain types of vocational training. Communities might agree to contract for and use these facilities for people who might benefit from special programs. The other advantage of a jail subsidy program is that the state would have a means of enforcing standards on county jails. At present the Board of Corrections publishes a set of minimum standards for jails. Some of these standards have been made mandatory by statute. Nevertheless, many counties fail to follow the standards.

The Penal Code provides for Advisory Committees for Adult Detention, to be formed in each county. Two members are to be appointed by the Board of Supervisors, two by the Sheriff and two by the Presiding Judge. The committees are charged with the annual inspection of the jails and annual reports. However, according to the Chairman of the Committee in San Francisco, no Advisory Committee has been formed outside of San Francisco.

The San Francisco Committee made a thorough inspection of the local jails last year. It published a report of its findings, entitled San Francisco Adult Detention Facilities, in March 1968, making several recommendations which, if followed, could go far toward improving the county jails. But according to the report, implementation of the committee's recommendation may be impossible unless the present system of having jails run by the county sheriffs is replaced by a system of city and county correction departments.

The authors feel that the police once wanted to administer the jails so that they could be in a better position to get confessions from the inmates. Since the Supreme Court has sharply limited the use of confessions in criminal trials, there is less reason for the police to run jails. County sheriffs often are former police officers with no special training or interest in

corrections. At least in San Francisco, little effort has been made to introduce current rehabilitative techniques into the jails.

Once county jails come to be recognized as treatment centers for the prevention of future crime, the state could use its subsidies to the county to ensure that jails meet high standards. Surveys of conditions and special programs in different counties would be helpful.

C. Community Treatment

In addition to shorter sentences and better jails, a further step toward reducing the population of state prisons is to treat more offenders in the community. The probation subsidy program is an important step in this direction. Commitments to state institutions by the counties have been reduced. In return, the state has already given the counties more than \$22 million for the development of community probation programs. As yet there has been no survey of the use to which the subsidies have been put.

The Youth Authority has nine community treatment programs to which children may be sent in place of its residential institutions. According to Dr. Marguerite Warren, Director of Research for the Community Treatment Project, the success rate of these programs has been higher than the success rate for children in the institutions.

There have been no experiments by the Department of Corrections with intensive community treatment for adults in place of institutionalization. Intensive treatment in the community requires a high ratio of staff to offenders (although not so high as the ratio required in institutions). But the caseloads of probation officers are so high (reportedly each officer in the Adult Division of the San Francisco Probation Department has to supervise up to 300 cases) that intensive treatment is impossible. Probation has become in effect a suspended sentence.

It would be safe and wise to sentence some offenders who otherwise would be sent to institutions to community programs if adequate supervision is provided.

Services that currently can be found only in the state prisons must be made available at the community level. Judges, particularly in the less affluent counties, have said that they frequently sentence to state institutions people who could probably succeed on probation in the hope that they will receive special psychiatric or vocational services there. This type of service could be provided in the community without difficulty.

Several changes in the present operation of the California probation system have been suggested.

Judges are criticized for sentencing offenders to probation for terms that are unnecessarily long. Correctional authorities agree that the first few months are the critical period of probation. After that, a probation officer's time could be better spent elsewhere. From the point of view of the probationer who has successfully completed the first few months of probation, the restrictions thereafter imposed by probation may be onerous, reducing his opportunities for employment and mobility. Either the probation officer or the sentencing judge should be able on his own or upon request to review cases periodically to determine whether a probationer is ready to be released.

Once a probationer has successfully completed his term, he would be benefited by automatic expungement of his criminal record. At present the record cannot be expunged without a pardon by the Governor (for an adult) or a court proceeding (for juveniles).

To follow either alternative requires greater sophistication and resources (it is difficult to proceed without counsel) than is possible for most probationers. In many cases, a cleared record could make the

difference between a job or no job. It should be possible for a person's record to be cleared without the need for any complicated proceedings.

Another problem is the length of time an offender is required to remain in jail while a probation officer prepares a presentence report for the judge. At present, even for a minor crime, a person may have to remain in jail for two weeks while a probation officer prepares his report.

One of the advantages of probation is that it enables the offender to resume his ties with his family and his job. Thus it may be crucial that he not be institutionalized for any length of time.

The Model Community Correctional Project in Stockton, a branch of the Institute for Study of Crime and Delinquency, is experimenting with pilot project under which a short report about an offender could be prepared in one day. The report would focus on a person's roots in the community, leaving out any effort to explore his deep criminal motivations. The form of the report has been developed by the Vera Foundation in New York for use with misdemeanants. This experiment should be followed and its successes incorporated in general practices.

Another complaint about the current probation system concerns the control of local probation departments by the courts. Only in Los Angeles County does it appear that probation officers are responsible to the Board of Supervisors. In the other counties, probation officers are the only county officials who are neither appointed by the Board of Supervisors nor elected.

There are several problems associated with court control of the probation system. First, there is no continuity of responsibility for probation. The judge who appoints probation officers may change every year. In addition, one probation department may have duties to perform for several courts. As one observer put it, "It is an illusion that the Probation Department works for the courts; it works for no one."

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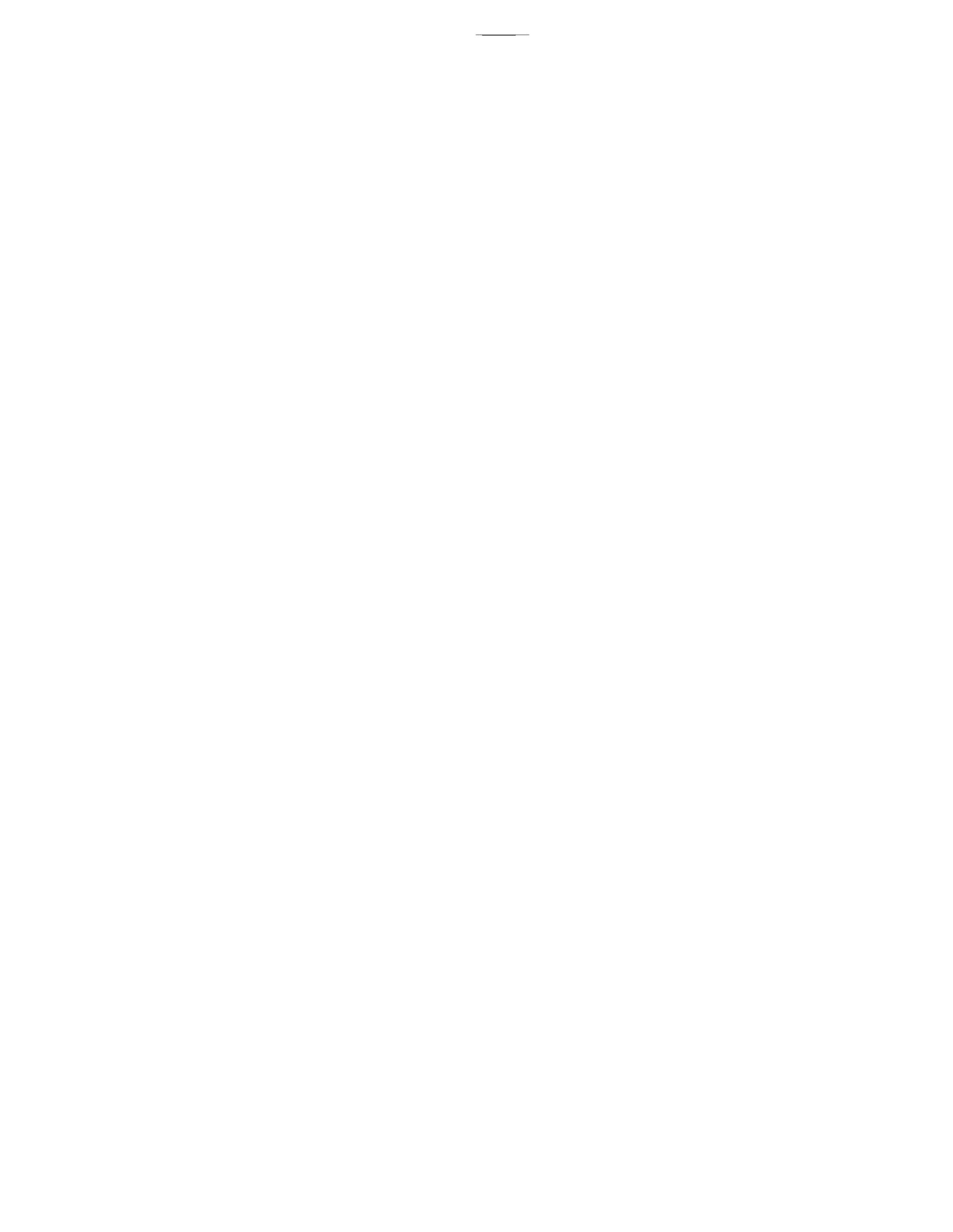
The responsibility for probation departments increases the administrative duties of local judges, causing collateral problems for the county. Only a small percentage of the probation department's work is done directly for the courts. Except for the presentence investigations, the function of the probation department is to supervise offenders after court disposition of their cases. Such supervision requires increased resources. Judges have not taken the lead in obtaining additional resources for probation. Nor have boards of supervisors been willing to allocate sufficient resources, since probation has not been considered their responsibility.

The Bay Area Social Planning Council has recommended that, at least in the juvenile area, judges should be relieved of all non-judicial functions.

The probation departments themselves may be burdened with administrative responsibilities for which they are not equipped. In San Joaquin County, for example, the Probation Department runs an orphans' home. Not only does administration of a home for orphans seem ill-suited to a probation department, but the present system also costs the county more. If this responsibility were given to the Department of Public Welfare, the county would be reimbursed for most of its expenses by the state and federal governments.

Perhaps, the state's system of parole, currently administered by the Department of Corrections for offenders released from state institutions, also should be administered at the community level. Parole officers controlled by the community may be better able than state officials to deal with the community services that offenders need, such as schools, employment agencies and social agencies.

It is also important to develop some form of after-care for people who have been released from jail. Perhaps the most crucial time for an offender occurs immediately after he gets out of jail. At present convicts are released from county jails with no money, no supervision and no help, making exits from jails little more than "revolving doors." Some sort of post-incarceration assistance in readjusting to the community must be provided, or the same conditions that caused an offender to commit a crime in the first place, coupled with the added strains of having been away from the community, will land men back to jail.



## II. CIVIL JUSTICE

### A. PERSONAL INJURY LITIGATION

Every day 150 Americans are killed and 10,000 injured while driving on the highways. The automobile is the greatest killer and maimer in the United States. It is also the cause of a fantastic administrative problem in the courts.

The method currently employed by all American jurisdictions to settle tort claims by accident victims is expensive and time-consuming. Particularly in California with its burgeoning population and large number of automobiles, the time has come to seek better methods for adjudicating accident cases.

In 1965 a Committee on Personal Injury Claims of the California State Bar noted in its report to the Board of Governors that the central fact of the present system of handling claims for personal injuries resulting from automobile accidents is that the system requires a showing of the defendant's fault before there can be an award of reparation for injury. The Committee posed the question whether the present emphasis

on the fault of the person alleged to have caused the accident should be replaced by an emphasis on compensation of the victims of accidents. Although committee members could not agree on whether the traditional requirement of fault is basically unsound, a substantial number felt that the system should be altered fundamentally.

According to reports, the ultimate solution probably lies in the adoption of a system of compulsory insurance that would provide compensation without regard to fault. Marc A. Franklin, Professor of Law at Stanford, suggested in the May 1967 Virginia Law Review that compensation for all—not just automobile-accident victims—be paid out of a government operated insurance fund. Professors Keeton and O'Connell proposed adoption of such a system in their book, Basic Protection for the Traffic Victim. Even some of the insurance companies that once were opposed to the idea of no-fault liability have come to support it. The American Insurance Association has suggested that the states institute a system adapted from the Keeton-O'Connell proposal.

A similar system has already been successfully instituted in the field of workmen's compensation. Other countries have begun to adapt the no-fault liability system to accident cases. In Western Australia, all automobile cases have been removed from judicial proceedings. A Royal Commission in New Zealand has recommended that a similar step be taken in that country replacing court trials with simple administrative determinations of the amount of recovery necessary to compensate a victim for his loss. Such a system avoids lengthy adversary proceedings that unnecessarily take up large amounts of court time to determine which party was at fault.

If it is thought that an immediate change to such a system of compensation in California would be too drastic for public acceptance, there are intermediate steps that could be considered.

One would be the adoption of a comparative negligence statute. Under the present law, the plaintiff's action for compensation may be completely barred if the defendant can prove that the plaintiff's negligence contributed to the accident. In fact, juries may balk at such an unjust result and make some reduction in the plaintiff's recovery to account for his own negligence. There is no way for judges to police the computation of damages by the jury when no standards for reduction in damages exist.

This practice increases the uncertainty of an already uncertain system. Since neither party can guess what a jury will do in a particular case, both sides are encouraged to gamble on a jury trial instead of settling a claim. When the parties do settle, insurance companies have been charged with reducing claims to account for this possibility that plaintiffs' entire claims might be defeated if they went to trial.

Under a system of comparative negligence, the jury is instructed that it should reduce the size of the plaintiff's recovery by the proportion which his negligence bears to the defendant's. The jury's computations are shown to the judge so that he may check their accuracy.

Wisconsin and Arkansas now have comparative negligence statutes. The rule of comparative negligence has also been adopted in Great Britain. In addition, the Federal Employment Liability Act and the Jones Act use comparative negligence standards. Figures from New South Wales, where a comparative negligence statute was adopted 18 months ago, might be instructive on the subject of the cost to insurance companies of such a system.

Berkeley Professor John Fleming has suggested some other ways in which the present California statutes related to tort damages could be changed. First, the rule, developed by the courts, that if a husband commits a tort the community property is liable, while if the wife commits a tort the community property is not liable, should be changed. The theory behind the present rule is that the husband controls the community property. The rule makes little sense, however, since it may allow a wife to escape from paying for her torts and may discourage a family from keeping adequate insurance on the wife's car. According to Professor Fleming, no other community-property state has such a rule. The community property should be liable no matter which owner commits the tort.

An additional change suggested by Professor Fleming is to modify the statute dealing with contribution by joint tortfeasors. The present statute only goes half way toward a solution. It provides that one defendant can get contribution from another who is responsible for the tort only if there has been a joint judgment against both of them. This is a good rule, since a separate action by one defendant against the other for contribution would necessitate a relitigation of the question, who was negligent. At present, however, there is no way for a defendant to force a joint tortfeasor to come into the original action by the plaintiff unless the plaintiff himself has chosen to sue the joint tortfeasor. Consequently, it is left to the plaintiff to determine whether one defendant may get contribution from the other.

Yale Law Professor Fleming James has criticized all systems that provide for contribution, since he feels that the system enables a corporate defendant with a "deep pocket" to pass part of the loss among

to an individual defendant who is less able to bear it. The question of who should bear losses from accidents is one of policy and should be carefully considered. But once a state has made up its mind to establish a system of contribution, Professor John Fleming feels that it should not be left to the plaintiff to decide when contribution may occur.

Judge George Brunn of the Berkeley Municipal Court has suggested a further procedural change for accident cases. He feels that jury trials in personal injury cases should be eliminated. He thinks that most jury trials are requested by defendants or their insurance companies for the purposes of delaying the trial. (Judge Brunn points out that it presently takes about two years to get a trial by jury in Berkeley.) A person who has been injured and needs money quickly may be pressured into a quick and disadvantageous settlement.

In Great Britain, although a trial by jury is theoretically available in personal injury cases, juries have not been demanded in automobile accident cases for many years. British commentators have concluded that a jury has no place in automobile cases.

In the area of manufacturers' liability for injuries caused by defective products, the California Supreme Court has replaced the requirement of negligence by the manufacturer with a system of strict liability. Although the Court's approach has gone far to compensate injured consumers, some commentators have noted that present tort law places the entire liability for compensation on the manufacturer. They suggest that members of the distributive chain should be able to allocate the risk of defective products by contract. Slight modifications of the warranty provisions of the Uniform Commercial Code would enable a contractual approach to the problem. Kenneth R. Weaver of

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the Small Business Administration has enumerated some recommended changes in an article appearing in the October 1966 issue of the Virginia Law Review. While this is not a subject related only to automobiles, it is an area that might warrant statutory treatment.

## B. THE PROBATE PROCESS

Few areas of the administration of the law so irritate as many members of the general public as does the probate process. This is an area of the law which almost everyone comes in contact with at some point, usually a time of stress. Too often, people take away from their contact with the probate system a hostile attitude to the law. The popularity of Dacey's book, How to Avoid Probate, demonstrates the reaction of the general public to the way the law handles the passing of estates at death.

Everyone who acquires or inherits from an estate is affected by probate law. Wills transferring property must be established in a probate court before they pass title. In cases of intestacy, descent and the distribution of property are covered by statutes and intestate estates also are processed before the probate courts.

While there are no national statistics providing the numbers of testate and intestate estates, it has been estimated that about half of all estates are testate and half intestate. In any event, all estates are processed in the probate courts and their administration gives rise to

costs and delays as well as questionable practices which are worthy of this Committee's consideration.

The following subjects lend themselves to examination during hearings into probate reform.

Appointments and Fees of Guardians Ad Litem and Appraisers.

Guardians ad litem represent, in a particular lawsuit, the interests of a minor, incompetent, unborn or unascertained person who may become interested in property involved in the litigation. Appraisers set values on the property of estates. Judges in some places have been criticized for appointing their friends and political supporters to these lucrative positions for patronage purposes.

The California State Comptroller's office has been accused of using its power to certify appraisers (local judges may appoint appraisers only from the Comptroller's list) for political advantages. To meet this criticism, the present Comptroller sought legislation abolishing this system, but that bill was defeated. The fees of guardians ad litem, the method of their appointments, the quality and quantity of their work, and their actual values could be reviewed.

Guardians are appointed to care for the persons and property of minors and incompetents. Guardians of property must secure court permission for virtually any action taken in carrying out their duties. Worth inquiry are the questions: are guardians needed; should they be given wider discretion; and should they be specially trained public officials (as in Canada)?

Are California attorneys overpaid by fees based on statutory percentages of estate values? Or must they spend so much time on estates that they are generally underpaid? How do fees relate to the quality and quantity of their work? How diligent are attorneys in handling

estates? Are attorneys actually necessary for this work? Could some or most estates be administered properly by non-lawyers?

Fees of Executors and Administrators. Banks, trust companies, and relatives of the deceased also serve as executors and administrators. (In many states, an attorney also is appointed to represent the estate in court.) Answers to such questions should be sought: who generally is appointed, by wills or courts, to administer estates; are their fees reasonable in relation to work done; are professionals necessary, or could trained laymen administer most estates?

Fees of Attorneys. Under most conditions, an estate must be administered by an administrator or executor before the property actually is distributed. It is a common practice for attorneys to seek and receive appointments as executors of estates. It is a common public criticism that attorneys' fees for this work are unduly high, and that attorneys cause unnecessary delays closing estates.

Costs and Delays Imposed by Ancillary Administration. Most states, California included, require a judicial proceeding, or even the appointment of a local administrator, if a foreign decedent leaves property within their jurisdiction, despite the fact that the estate already may have been probated in the decedent's state or residence. The value of this practice in California should be assessed.

Conduct and Qualifications of Judges. Most states have separate probate courts. In these jurisdictions, the probate judges generally are not required to have any legal education. In some states, judges are elected; in virtually all other states, there are no restrictions on the governor's power of appointment. Missouri, however, provides that judges be appointed on recommendations of state and local bar associations.

implications of property transferral at death. A very significant amount of property passes on death without going through the probate process: through such avenues as life insurance, social security survivorship benefits, property in joint tenancies with right of survivorship, property in inter vivos trusts, and community property. These alternative sources of property transferral also could be analyzed as part of the proposed hearings, to put into context the extent and impact of the probate process and to evaluate their suitability as complementary methods of transferring title to property.

Perpetuities. Related to the problems of probate are the laws which regulate trusts. In this area, one California statute has been criticized by law professors. According to UCLA law Professor Jesse Dukeminier, "All the perpetuities experts in the state would vote to get rid of one confusing statute, California Civil Code, Section 715.8. We need nothing in its place."

In Professor Dukeminier's article written in the August, 1967 California Law Review, he pointed out that this particular section, enacted in 1963 to overrule a district court of appeals decision (later reversed by the California Supreme Court), makes it possible to create private trusts of unlimited duration. This is a clear violation of the classic rule against perpetuities.

Professor Lewis Simes joins Professor Dukeminier in urging repeal of S.715.8. Edward Halbach, Dean of the Law School at Berkeley, also has questioned the constitutionality of the section.

The present California statute, according to these experts, violates the policy of the rule against perpetuities because it allows wealth to be tied up in trusts indefinitely. The purpose of the prohibition is to achieve the benefits of a turn-over of wealth and eliminate

deadhand control. As Harvard Law Professor Simes has written, "The rule against perpetuities strikes a fair balance between the desires of members of the present generation, and similar desires of succeeding generations, to do what they wish with the property which they enjoy."



### C. EXPANDING LEGAL REPRESENTATION

In recent years, there has been a great emphasis nationally on providing legal representation to indigents charged with committing crimes. Less attention has been paid to the necessity for legal counsel in civil cases. At present, two groups lack adequate representation: indigents who cannot afford to pay any money for a lawyer; and members of low and middle income groups who can afford to pay something, but who cannot meet the fees charged by private attorneys without significant sacrifices.

#### A. Free Legal Services

The erosion of respect by the disadvantaged for the rule of law has increasingly been punctuated by strident calls for "law and order" by the middle and upper classes of American society. The alienated and disaffected in American society are urged to shun violence and instead to obtain redress through means sanctioned by law. But, as Robert F. Kennedy said when he was Attorney General, "to the poor man, 'legal' has become a synonym for technicalities and obstruction, not for that which is to be respected. The poor man looks upon the law as an enemy, not as a friend. For him the law is always taking something away." If the

functioning of our legal system does not facilitate resolution of any man's grievances, those who admonish him to confine his protest to legal channels are, in effect, telling him to ignore his problems.

Many of the poor people's disputes are with the merchants who sell them goods, the landlords who own their dwellings, and the government agencies that are created to assist them in their needs for income, shelter, and education. For the solution of such disputes, both the substantive law governing day-to-day conduct and the legal procedures for applying the law operate against the poor. The poor man needs a lawyer to counsel him against signing unfair leases and contracts, to advise him of his rights, and to go to court for him as a last resort. He also needs to bring about substantive changes in the law to assure it will operate fairly. Finally, he needs to have better access to the courts or to other less costly, less time-consuming mechanisms for settling his disputes.

The Supreme Court has required that an indigent defendant in a criminal case be provided an attorney at every step of the proceeding. It has not yet imposed a similar requirement in civil cases.

The poor cannot afford private attorneys. When they have problems that require legal assistance, they have little idea where to go. In The Poor Pay More, David Caplovitz reported that when a group of low-income consumers was asked where they would go for help if they were being cheated by a merchant or salesman, almost two-thirds replied that they did not know. More than half of those who had some idea said they would go to the Better Business Bureau. Very few mentioned legal aid or a private attorney.

There has been some change since Caplovitz wrote in 1963. Since 1965, community law offices have become a major federally supported undertaking of the Office of Economic Opportunity. Its legal services program runs 850 law offices staffed by more than 1,600 full-time lawyers, who service over 40,000 cases each month.

In two representative California legal services projects, California Rural Legal Assistance and the San Francisco Neighborhood Legal Assistance Foundation, enthusiastic and knowledgeable young attorneys are capably handling as many legal problems as they can. But they cannot do enough. John F. Moulds, III, Director of the Marysville Office of C.R.L.A., reported that due to a lack of personnel, his office must turn away 75 percent of the clients who come there for help. And to the north of Marysville there are no legal service offices at all.

The following figures were cited by James Lorenz, C.R.L.A. Director:

California Rural Legal Assistance provides legal representation to people residing in approximately 17 counties, with a combined population of 2,475,586, according to the 1960 U.S. census. (These counties are: Imperial, Kern, Tulare, Santa Barbara, San Luis Obispo, Monterey, Santa Clara, Santa Cruz, San Benito, Sonoma, Yuba, Sutter, Stanislaus, Madera, Merced, San Joaquin and Fresno.

C.R.L.A. does not have offices in all these counties, nor does it conduct office hours in all of them, but frequently, "out-of-county" clients will travel to C.R.L.A. offices to secure legal representation.)

In 1967, our nine regional offices handled more than 10,500 cases involving approximately 15,000 people. An additional 15,000 or so were eligible for C.R.L.A. services, but were declined representation because we did not have enough legal resources available.

The directing attorneys of three of our regional offices estimate that the number of clients who we were able to handle compose no more than 10 percent, and more

likely 5 percent, of all the people in those areas eligible to receive legal assistance from us but who did not. So, we conservatively estimate that there were a minimum of 150,000 in the counties served by us who were eligible for legal services but who did not receive help.

Greater resources need to be devoted to offices that can provide free legal services to the poor. In addition, other ways of securing representation should be provided by the State and local governments.

Some states have begun to experiment with the use of law students to represent indigents in administrative hearings and minor court cases. In Massachusetts, the Harvard Law School currently sends 150 law students to court under the supervision of attorneys. In the District of Columbia, law students have been authorized to practice in the Small Claims Court under the direction of their professors. New Jersey has a similar program. Students would be useful in representing indigents in simple or non-contested cases.

As well as providing necessary manpower, this approach would provide some much-needed practical experience in legal education. Edward Barrett, Dean of the law school at Davis, has suggested providing law students with some clinical experience representing people who cannot afford lawyers as part of the regular law school curriculum. A seminar and a paper could integrate the practical experience with the students' academic program.

Representatives of the Conference of California Law Schools met in September, 1967 and unanimously proposed adoption of an amendment to §6125 of the Business and Professions Code which would permit law students to participate in supervised internship programs. The students

would provide legal services for indigents or work for governmental agencies. The Committee might well consider taking action on the proposed amendment.

A suggestion by Berkeley Law Professor Albert A. Ehrenzweig would enable private attorneys to represent people with valid claims regardless of their incomes. Ehrenzweig feels that in any civil action the prevailing party should be able to collect not only his court costs, but all reasonable attorneys' fees expended in the litigation. In all countries except the United States and Belgium, attorneys' fees are recoverable as part of the normal costs of litigation. The party who wins in court is thus able to come out of the experience as little damaged as possible. In an article that appears in the May 1966 California Law Review, Ehrenzweig quotes the Massachusetts Judicial Council: "On what principle of justice can a plaintiff wrongfully run down on a public highway recover his doctor's bill but not his lawyer's bill."

The Unruh Act on retail installment sales already provides that the prevailing party in a consumer case, whether he is the buyer, the seller or the holder of the note, be awarded reasonable attorney's fees as well as court costs.

B. Group Legal Services

In addition to the very poor, who can afford no legal services, there is a large group of people who could pay something, but cannot afford the fees charged by private attorneys. They do not qualify for assistance under Legal Aid or the OEO programs, and perhaps they should not be eligible for free legal services. They could participate, however, in some variation of the numerous, evolving group legal insurance programs, like the medical insurance programs that are currently in use in California.

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Various groups, notably unions and civil rights organizations, have joined to provide lawyers for members who need them. The United States Supreme Court ruled last year that a state bar association could not prohibit a union from employing a salaried attorney to represent union members who had claims for workmen's compensation. The Board of Governors of the California State Bar has proposed a rule that would limit group representation to a narrow range of activities, namely "common principal purposes" for which the group was formed.

This restriction is confusing. As James Lorenz, Director of C.R.L.A., testified to the Board of Governors on November 20, 1968, it leaves lawyers without a clear standard of which cases they may represent on a group basis. Suppose, for example, the salary of a union member is attached and an attorney is asked to represent the man pursuant to a group plan of the union. If the wage attachment might result in the loss of the member's job, the lawyer presumably could take the case. But if it is not clear whether the union member will lose his job as a consequence of the wage attachment and the only result of an attachment against him may be the loss of income, it is not clear whether the case is sufficiently related to the employment concerns of the union to justify the attorney in handling the case under a group plan. Or, assuming that the attorney may handle such a wage attachment case, in order to do so effectively he may have to defend separate actions relating to a number of debts which the union member has incurred. Are these actions sufficiently related to the original wage attachment? If the attorney represents the client on some but not all of the issues affecting his case, is he in danger of violating Canon 15 of the Professional Canons of Ethics which provides that a lawyer owes his entire devotion to the interests of his client and must raise for him every remedy and defense to which he is legally entitled?

The Bar's proposed restriction on group legal services also may lead to inequitable results, giving representation to some people while denying it to others with similar problems and levels of income. For example, a person who is a member of a senior citizens' organization could presumably receive legal help on a Medi-Cal application but someone who is a member of a labor union or consumer group could not. Consequently, the legal help available may depend on what organization a person belongs to. And if, by chance, the right kind of organization to accommodate his particular kind of legal problem is not available in his community, he may not receive legal help.

Adequate legal representation needs to be made available to more people and under more situations. Hearings conducted to assay the areas where representation is most needed and to determine the most appropriate means for development of programs to provide it would be timely and useful. The Legislature should work closely with the Bar Association and any other interested groups to insure that the crucial right to counsel is defined and developed to meet the needs of modern society.



#### D. PROCEDURAL REFORM

1. Consumers. When poor people come in contact with courts, it is usually because something is being taken away from them. Merchants from whom they buy goods and landlords from whom they rent living quarters use the courts as if they were collection agencies. The common experiences of the poor with the courts—chief symbol of "law and order"—are disillusioning.

Most poor families cannot meet the credit requirements of large retail stores. In addition, their low mobility frequently compels them to patronize merchants in their own neighborhoods. But, for good and for bad reasons, ghetto merchants (the big chains as well as the smaller neighborhood stores) typically provide smaller selection, poorer service, and higher prices than the department stores and discount houses patronized by people of greater means.

According to a recent study by the Federal Trade Commission, furniture and appliance retailers catering to the poor charge an average

of 60 percent more for merchandise than stores that deal with the general public. Thus, goods purchased for \$100 at wholesale sold for \$255 in the low-income outlets, compared with \$159 in general market stores.

The poor pay more and they also fail to pay more. Thus, ghetto merchants have come to use the courts as if they were collection agencies. Subsidized by the court costs collected from the debtor-defendants—the amounts of these costs with interest frequently exceed 40 percent of the debt—as well as by taxes paid by the community as a whole to run the courts, low-income market retailers in the District of Columbia went to court once for every \$2,599 of sales in 1966, as opposed to one suit for every \$232,299 of sales by general market retailers. "While general market retailers may take legal action as a last resort against delinquent customers, some low-income market retailers depend on legal action as a normal order of business," according to the FTC.

To date, most legislation relating to consumer matters has been confined to requiring candor in advertising propaganda, interest rates, and finance charges. Truth-in-lending and truth-in-packaging laws are for the suburbanites who have grounds for outrage but the sense and power to take care of themselves. These laws generally assume that consumers are equipped to deal with the business community on at least equal terms, shopping around for purchases and using every available legal tool in case of a conflict with the seller.

The California law relating to consumer credit sales is more enlightened than the parallel laws of most other states. Consequently, there appears to be little sentiment in the state in favor of adopting the

new Uniform Consumer Credit Code. Consumer groups point out that the code would raise interest rates on small loans to 36 percent and allow additional service charges. Furthermore, they predict that the act will be expensive for the state to administer.

However, the Legislature could hold hearings to look into several areas where specific abuses exist: sewer service, attachment of wages, the holder in due course doctrine, overbearing sales tactics, abuses of deficiency judgments, the practice of bringing suits for collection in distant parts of the state, and the costs of going to court.

Sewer Service. Most of the judgments against low-income defendants are entered by default. One reason for the preponderance of default judgments is that many defendants are unaware of their rights (some may be told by their creditors that appearance in court is unnecessary) or of the potential sources of legal help. In many cases, however, consumers fail to appear in court because they were never served with process. Some process servers simply throw away the summons and then swear that it was delivered; the defendant loses his case without ever having gotten to court or ever knowing about his case.

One organization estimated that two-thirds to three-quarters of the consumer-defendants in New York City are victims of such "sewer service." In Manhattan alone, the U.S. attorney there estimates, there are 1,000 default judgments a week in the civil court. Some process servers have sworn that they have personally delivered summonses to non-existent addresses and to different places at the same time. The willingness to execute such false affidavits has been attributed to the fact that process servers are reluctant to enter ghetto neighborhoods and that they are paid only for service which is completed; they are charged with using this as a rationalization for unethical practices.

"Sewer service" deprives a defendant of more than his money; Legal Aid attorneys report that their clients are incensed when informed of the loss of their right to a hearing: "I can't tell you how many times people come in here and we tell them they don't have a case, but they want to go to the judge anyway and tell him their story."

While studies have shown a high incidence of sewer service in urban areas (particularly New York City) no studies have been made of this practice in California. Legal services attorneys in the state strongly suspect that the practice exists.

The job of supervising the service of legal process belongs to local officials. In New York, Mayor John V. Lindsay has tried with little success to do away with private process servers and to return this function to the courts where it should properly reside. Because of the failure of local prosecutive action, United States Attorney Robert Morgenthau recently indicted four process servers and the owner of a process serving agency under the criminal sections of the federal Civil Rights Act. Morgenthau's theory is that sewer service unconstitutionally deprives defendants of their property under color of law. The Civil Rights Division of the Justice Department allegedly is looking into the possibility of prosecuting similar actions in other big cities. The key, however, lies in local prosecution.

While typical perjury and conspiracy statutes could be used to prosecute this practice, the Legislature should consider a specific consumer protection statute to cover this situation and to assure the integrity of the judicial system.

Wage Attachment and Garnishment. If a defendant has not been served with process, frequently the first time he hears of the action against him will be when his employer is served with a notice of wage garnishment. Garnishment laws have been under continuous attack as inconsistent with the governmental policy which promotes training people so that they can hold jobs and support their families.

Congress provided recently in the Consumer Credit Protection ("Truth in Lending") Act that no more than twenty-five percent per week of a debtor's disposable income may be garnished by creditors. The federal act does not preclude states from prohibiting all garnishment or from allowing garnishment of less than 25 percent of a person's wages. Nor does it prevent states from prohibiting the discharge of an employee because his wages are garnished.

A low-income wage earner may be incapable of supporting his family once a portion of his wages has been deducted. Employers are extremely reluctant to undergo the administrative expense of forwarding any percentage of an employee's wages to his creditors, and may prefer to discharge the employee. Unscrupulous collection agencies may consequently be able to use the threat of garnishment to coerce payment of unjustified debts. Judge George Brunn, of the Berkeley Municipal Court, in his 1965 article Wage Garnishment in California, raised the question of whether society should consider the threat of loss of employment as a legitimate device for the collection of debts. "We have given up imprisonment for debt; do we want to tolerate joblessness for debt?"

In A.B. No. 1208, the Legislature made a comprehensive revision of the California statutes relating to the exemption from

garnishment of debtors' wages. The Governor vetoed the bill, because of his belief "that the provisions relating to the absolute exemption of wages from attachment prior to judgment are too broad.

The Holder in Due Course Doctrine. A most exasperating encounter for consumers is their dealings with shifting creditors. In most states, the few consumers who do manage to raise their claims in court often find that their objections have been lost in a legal shell game of procedure. Frequently, a seller will sell his buyer's debt to a finance company. Then, when the buyer raises his defense of fraud, the finance company argues that it is a "holder in due course" and consequently not responsible for the wrongs of the merchants. Oddly, most courts still allow this defense, either out of naivete or doctrinaire allegiance to inapt rules. The doctrine was designed to facilitate the obtaining of credit in commercial transactions. It has no place in modern consumer loan transactions.

The holder-in-due-course doctrine makes it possible for a retail company to protect itself from a buyer's legitimate defenses by setting up a separate finance corporation. The retailer sells his faulty goods with full knowledge of their defects. The store then sells the buyer's note to its alter ego—the finance company. Unless the buyer can prove that the finance company had actual knowledge of the defects in the goods when it bought the note, the full price can be recovered.

The California Legislature ended this practice in the areas covered by the Unruh Consumer Credit Act, by amending Section 1804.2 of the Act in 1967 to abolish the privileged status of the holder in due course. It does not appear that legitimate finance companies have

been harmed by the demise of the holder in due course . Such companies can easily check on the reputation of the merchants whose contracts they regularly buy .

Large finance companies that buy quantities of consumer paper also have the bargaining power to force the retailers to take back paper when there are claims of fraud or substandard merchandise . Then, if the retailer wishes to preserve his market for paper in the future , he must buy back the paper from the finance company and deal with the complaining buyer himself .

In some states that have eliminated the holder in due course doctrine further policing by the courts has been necessary to avoid still another gimmick . Unscrupulous finance companies wishing to preserve the advantage of being insulated from buyers' legitimate defenses against sellers have attempted to stay out of the original sales transaction between the merchant and the consumer . Instead of doing business through installment sales contracts , the merchant takes the buyer across the street to his finance company , where he arranges a cash loan . The sale of goods can then be a cash sale , and the finance company hopes to avoid any connection with it . It is up to the courts to recognize that this is just another pseudo-relationship between merchants and finance companies allowing the former to escape from the responsibility for ethical business conduct and the latter from policing their sales transactions .

Hearings could inquire into whether this new way of circumventing the law has presented a problem in California . The problem could be avoided if the statute required all loans to state their purpose:

i.e., to buy a washing machine from the ABC Appliance Company. The loan agreement thus would make explicit the relationship that lurks in the background.

In the area of automobile financing, the Legislature has not reformed the law as thoroughly as it has in the Unruh Act. Section 2983.5 of the Rees-Levering Act has modified the status of the holder in due course, but it has not done away with it. The Act presently provides that a finance company that purchases a note from an automobile dealer must notify the buyer of the car that it now holds his note. The buyer then has fifteen days in which to inform the company in writing of any defenses it has against the seller. If the company receives no notice within the time allowed, it will be protected from any later defenses the buyer may wish to assert.

There have been complaints about the operation of the notice provision. Many defenses, such as the presence of serious but latent defects in the car, may not become evident within the fifteen-day period. Yet the buyer is forced to waive them. And some buyers may lack the sophistication to respond to the finance company's notice with a full statement of their defenses.

Should the holder-in-due-course rule be abandoned? In which instances? It has been called an 18th century doctrine with no place in the modern law of consumer sales. If the finance companies knew that defenses which might be raised against merchants could also be raised against them, they might insist that the dealers from whom they buy contracts deal fairly with the public. They could enforce the law in this industry effectively because their continued profits would

depend upon buying only valid contracts. Hearings on this doctrine and its modernization would be a useful way to bring a legal practice dating from the industrial revolution into harmony with modern commercial realities.

Recission of Contracts. Poor people are frequently pressured by overbearing sales tactics to buy things they do not really need and cannot afford. They may even be convinced to sign a document without knowing that it is a contract. Although such contracts can often be avoided by judicial action, going to court is an expensive, time-consuming and often forbidding process for the low-income consumer.

In Massachusetts the legislature has tried to compromise between unfairly holding buyers to hasty, coerced contracts and interrupting the proper course of business by making bargains indefinite. Consequently, it passed a "cooling off" statute covering door-to-door sales, the type of transaction in which overbearing sales tactics are most prevalent. The Massachusetts law allows the buyer who is sold goods in his home to cancel the contract by registered mail at any time before the end of the next business day.

A similar law that would permit victimized consumers to rescind contracts within a set period of time has been recommended as a cure for high-pressure sales by Jerome Carlin, Director of the San Francisco Neighborhood Legal Assistance Foundation. Allowing such an automatic cancellation of contracts written in passion or ignorance would avoid the need of having to sue or defend a suit to avoid contracts induced by high-pressure salesmanship.

Deficiency Judgments. Sellers formerly had both the right to repossess goods for which buyers failed to pay and the right to sue the buyers for "deficiency judgments" to cover any loss the sellers sustained on resale of goods. The practice led to such abuses that the Legislature provided in the Unruh Act that an unpaid seller (or the holder of the buyer's unsatisfied note) who repossesses consumer goods may not recover any deficiency from the buyer.

However, the Rees-Levering Act, which deals with sales of automobiles, was not changed to prohibit deficiency judgments on repossessed automobiles. Consequently, an automobile dealer may repossess and resell a car, and, since most judgments against consumers are taken by default, the dealer's statement of the costs of repossession and refurbishing the car, as well as the amount recovered from resale, will go unchallenged. In addition, even after the amount gained by the seller from resale has been established, it is extremely difficult to measure the reasonableness of the resale price of a used car. Finally, the Rees-Levering Act appears unclear as to whether a seller must resell a repossessed car at retail. Lawyers for consumers claim that dealers are getting rid of cars they recently sold at high prices to the defaulting buyers at wholesale or even as junk and charging the difference in price to the buyers.

An amendment to the Rees-Levering Act modelled after Section 1812.5 of the Unruh Act could end all of these abuses.

Location of Consumer Actions. Collection cases are sometimes characterized by a shift in the location of suits. This arises where merchants sell their consumer paper to finance companies in other parts

of the state or use distant collection agencies . If a collection company brings suit in a Los Angeles court against a defendant who lives in Northern California and who purchased his goods in Northern California, the expense of going to Los Angeles or hiring a Los Angeles attorney to contest a \$60 case will rule out the defendant's participation in the suit.

The Legislature sought to avoid this unscrupulous practice by providing in Section 1812.10 of the Unruh Act that suits on installment sales contracts may be brought only where the defendant lives or where he signed the contract. But when defendants do not appear in court, there is no one to object to the location of the suit. Thus the companies, although in clear violation of the law, may deprive consumers of their rights to appear.

The cure for the distant collection suits would be to require a plaintiff to show that his action was brought in the correct place, regardless of whether the defendant appears. A similar requirement already applies to suits for divorce .

Court Costs. Even if he gets to court, the cards often are stacked against the low-income litigant. Lawsuits are expensive, even when lawyers serve without fee. Most litigants must be prepared to pay the costs of filing, service, stenographers, jury subpoenas, depositions, and the subpoena and certification of various records. The costs of discovery, the method by which facts may be obtained from an opponent before trial, often put its benefits beyond the reach of the poor.

Even where a litigant may proceed to trial in forma pauperis, he will have little chance to appeal from an unfavorable judgment. The

United States Supreme Court announced twelve years ago that states must furnish free transcripts to defendants who wish to appeal in criminal cases. It has imposed no such requirement in civil cases. Civil appeals consequently may require the payment of filing fees and the costs of a transcript, and the posting of a bond to stay execution of the judgment. According to legal services attorneys, the California Supreme Court has gone so far as to require a filing fee before a motion for an in forma pauperis appeal can be filed.

Supreme Court Justice William O. Douglas has urged that the protections of the Fourteenth Amendment's Equal Protection Clause extend to civil as well as criminal matters. Douglas has advocated that in defining the rights of indigents the distinction between criminal and civil actions be abolished: "The Equal Protection Clause of the Fourteenth Amendment is not limited to criminal prosecutions. Its protections extend as well to civil matters. I can see no more justification for denying an indigent a hearing in an eviction proceeding solely because of his poverty than for denying an indigent the right of appeal... the right to file a habeas corpus petition...or the right to obtain a transcript necessary for appeal."

The Committee should inquire into the methods by which court costs could be abolished for all litigants. In the words of U.S. Court of Appeals Judge Wilbur Miller:

Why have we put the administration of justice by one of the three great coordinate branches of Government on a basis of pay-as-you-go? No one would ask the Executive Branch, or the Legislative Branch, to justify itself as a self-liquidating institution. The people are

perfectly content to pay for those services by way of taxes. Why should not the people be equally entitled to the services of the Judicial Branch of Government without being required to pay fees every time they turn around, or to take a pauper's oath in order to get into the courthouse...

2. Tenants. Few areas have so consistently caused disputes and bitterness among the poor as the landlord-tenant situation. Cries of "slumlords" are met by charges that the lower classes do not know how to treat decent property. Within this charged atmosphere are several areas of complaint which warrant attention. As one corporation lawyer unfamiliar with landlord-tenant law wrote of his first encounter with its inequities:

If you, like me, have recently witnessed such a scene: a summary proceeding for non-payment of rent where a slum dwelling lessee raised a defense of the lessor's failure to repair or to heat the premises and the court struck down that defense citing the doctrine of independent covenants and the doctrine against implied warranty of tenantability, then perhaps you, too, have had the sense of suddenly confronting a live vestige of an obsolete, even feudal, law.

The Legislature should hold hearings devoted to the modification of certain laws regulating the relationship between landlords and tenants. Three areas deserve particular attention: the obligations of the parties, the enforcement of housing codes and procedures for evictions.

Obligations of Landlords and Tenants. The low-income tenant in most cities faces a shortage of housing and inflated rent structures. In San Francisco, for example, virtually no low-rental vacancies exist. Unaided by counsel and handicapped by his lack of sophistication and bargaining power, the tenant may enter a verbal lease arrangement on a week-to-week basis, or may sign a written form which grants him nothing but the right to pay rent.

Even when the landlord promises in his lease to make a dwelling habitable, he may recover a judgment for unpaid rent without fulfilling his obligations. Courts in California continue to regard the lessor's covenants to repair and maintain premises as independent of the tenant's obligation to pay rent. (If contract principles were applied, one party could not force the other to perform unless he had met his part of the bargain. If equity principles were applied, one could not employ the law without himself acting lawfully.) Summary proceedings designed to collect rent from recalcitrant tenants may not even allow the tenant to raise his claim against the landlord for breaking his promises. Even where laws and court procedures do allow tenants to claim damages for their landlord's failures, damages from breach of the lessor's covenants are much more difficult to define and estimate in dollars and cents than unpaid rent and may be more difficult to prove as well.

A law has been passed in Maryland to prevent a landlord from evicting a tenant for nonpayment of rent when conditions in the dwelling are so bad that they constitute a serious threat to the tenant's life, health or safety. The landlord must have been notified of the conditions and failed to remedy them.

The Legislature should act to assure the equitable enforcement of obligations between landlords and tenants. Landlords should be required to include in every lease express covenants that the housing conforms to health and safety codes and will be kept in good repair—not an onerous obligation and one in conformity with good public policy. A standard lease form could be provided by law. Court enforcement of the tenant's covenant to pay rent should require that the landlord perform his covenants to repair.

Enforcement of Housing Codes. Municipal housing codes in the past have been enforced by city housing authorities only through actions for criminal penalties or condemnation of the property. Both classes of sanctions have failed their mission. Little criminal enforcement has been attempted since judges are often reluctant to jail landlords. To some judges used to dealing with violent crimes, violations of housing codes do not seem very important. As a result, they tend to treat violators lightly. A major landlord in the District of Columbia was granted so many postponements that by the fall of 1967 the same violations of housing codes existed that tenants had been reporting to authorities since 1964. As a result of recently invigorated law enforcement, this landlord was just given a jail sentence for 1,200 violations.

Fines may be so small that they constitute in effect a system of licensing mischief rather than an effective deterrent. Nor do tenants want condemnation. They may get as little as twenty-four hours' notice that their homes must be vacated. Condemnations often leave them with no place to go. Finally, the fact that many housing codes are out of date tends to hinder rather than help tenants in slum housing. Insistence on plaster walls in reconstruction, for example, may drive the cost of renovation beyond what is economic.

Thus, government enforcement of high housing standards has generally been nonexistent, and at best sporadic. According to reports of experts on urban affairs, city building departments have been interested primarily in original construction, to the advantage of the interests of the landlords. In addition, municipal departments are organized into diffuse bureaus which are often difficult to deal with and unresponsive, if not abusive, to the public.

New York statutes permit tenants of multiple dwellings to deposit rent money in court (instead of paying it to apartment managers or the landlord) for the purpose of financing essential repairs. In addition, the welfare department may withhold recipients' rent to be used for repairs. However, the instances where the funds withheld are sufficient to restore the building to anything approaching a habitable condition are relatively few.

The costs of repairing old and dilapidated buildings can be staggering. State governments have not allocated funds for low-interest rehabilitation loans to landlords. The federal government, on the other hand, has undertaken a rehabilitation loan program. In order to qualify for a three percent loan for the repair of his property, a landlord must own property located in: an area that the city has chosen for urban renewal; an area where the city has decided to concentrate its enforcement of housing codes; or an area that may soon require a widespread enforcement effort. Furthermore, the landlord's profits from the property cannot exceed certain limits. One complaint about the operation of the law has been that these limits may be unrealistically low; a landlord whose profits are large enough to enable him to make some repairs may nonetheless be precluded from rehabilitating an entire building.

In addition to making funds available for rehabilitation loans, Congress has made efforts to prod city governments to enforce their housing codes. In order to be eligible for urban renewal funds, a city is supposed to draw up and enforce a set of housing regulations. Congress imposed this requirement in order to prevent marginal neighborhoods from getting worse. And while an urban renewal project is in the planning stages, officials are supposed to continue to enforce code requirements in the renewal areas.

A statewide policy could be instrumental in raising housing standards. Housing codes could be reviewed and brought up to date. Landlords—and homeowners—could be helped to repair housing by advisory boards with experience in renovation and by low-interest rehabilitation loans made or guaranteed by the state.

Hearings could explore the present provisions for housing care enforcement by cities and counties. Should housing departments be reorganized? Should some responsibility for enforcement in this area be given to the state? Are higher fines or receiverships more realistic remedies than the ones which are currently available? Would provision for civil enforcement by the tenants themselves, either by suits against landlords to require repairs or by the appointment of receivers to make repairs, with rent money withheld in an escrow fund for reimbursement, be helpful?

Procedures for Evictions. Tenants who report code violations to housing authorities frequently face eviction by their landlords in retaliation. The courts in California have not acted to prevent retaliatory evictions.

Once a tenant has been evicted, he has lost his battle with the landlord. Consequently, it is crucial that he be given every opportunity to defend himself against an eviction. However, court procedures for

evictions have been designed not to help keep the tenant in his home, but to speed up the landlord's efforts to throw him out.

The action for unlawful detainer is the usual method of eviction in California. From notice to eviction—from the time tenant hears of the landlord's complaint until the time he finds his sofa and bed on the street—takes only three days, but does require that a tenant who knows enough to appear in court get a hearing. It has been reported that some judges, who consider the procedure unjust, regularly grant 10-day postponements to the evicted tenants.

An even more summary proceeding, the writ of possession, is authorized by statute. It provides no opportunity for a hearing. A landlord who swears in an affidavit that the tenant is indigent and unable to respond in damages, and posts a bond with the court may get a writ for immediate repossession and avoid the necessity of a hearing. Although some judges refuse to sign such writs, others are reported to allow the remedy to be used as a matter of course.

The Nevada Supreme Court recently found the writ of possession procedure unconstitutional. A similar ruling is alleged to have been made by a municipal court in San Francisco in the 1930's, but there is no record of the decision.

The question of eviction procedures could be resolved by legislation. The statute authorizing writs of possession should be repealed. The practice of retaliatory evictions could be stopped by a statute providing that any eviction occurring within a short period after a complaint by a tenant to housing authorities creates a presumption of a retaliatory eviction which the landlord must overcome.

The law regulating the relationship between landlords and tenants underwent what one urban law professor has called the "first substantial

change in 1,000 years" when the Michigan State Legislature enacted a new code of tenants' rights in July, 1968. The new Michigan laws require that every lease contain a pledge by the landlord that the premises are habitable and will be kept so. The tenant can sue if the landlord fails to comply with this covenant. Retaliatory evictions are prohibited. Code enforcement is made a civil rather than a criminal matter, enabling tenants to sue on their own to obtain enforcement. Tenants can get injunctions, seek repairs by the city with a lien against the landlord for the cost and withhold rent in an escrow fund for repairs.

The long overdue changes in the substantive law introduced by the Michigan statutes deserve to be emulated by other states. But for enforcement of the tenant's new rights against the landlord, the laws provide no alternative to the congested urban courts with their complicated procedures and obstacles to participation by the tenants whose housing is at stake.

3. Dispute Solving Mechanisms. Whether or not the court system needs more resources, it is felt by credible critics to be squandering existing resources. It is questionable (the subject will be treated more fully in Part III of this report) whether much of the business in the civil courts belongs there, or whether the amount of their work could be reduced significantly.

Undisputed Matters. Much court time presently is taken up with the consideration of various undisputed matters, such as uncontested divorces, name changes, adoption of children, the administration of small estates and the termination of joint tenancies. These matters are taken up by judges and lawyers less out of reason than habit. A person who, for some reason, wishes to change his name must go to court and pay a lawyer \$200 to \$300. The lawyer must appear in court, and the client must pay filing fees. The matter must be published in a legal newspaper at a cost of about \$30.

Legal services agencies are swamped with uncontested divorce cases. Taxpayers' money, which could be used to provide the poor with lawyers for more important matters, is being spent providing counsel for these cases. In many areas, where there are no tax-supported legal services, and for many people who cannot qualify for such services, divorce is out of reach. Society complains about high illegitimacy rates, but at the same time makes it difficult for people to get divorced, re-marry and have legitimate children.

The 1966 Report of the Governor's Commission on the Family made some recommendations which, if adopted, would reduce the adversary nature of divorce proceedings. The Commission suggested that the present emphasis on ascertaining which spouse is at fault should be replaced by consideration of the central question: Has the marriage broken down so that there is no likelihood it can be saved? Small changes in the law would facilitate this consideration and minimize the parties' hostility, instead of exacerbating it by introducing adversary methods.

The Commission recommended replacing the legal complaint by one spouse against the other with a petition asking the court to inquire into the continuation of the marriage; removing the specific fault grounds of divorce and replacing them with the standard of "breakdown of the marriage;" and eliminating fault as a consideration in division of community property and establishment of alimony payments.

The 1967 Family Court Bill (A.B. No. 1420) which grew out of the Commission's Report was not passed by the Legislature. Nevertheless, these three recommendations mentioned above would cost nothing to implement and could be adopted separately. They would represent a step toward developing alternatives to the adversary process and toward alleviating unnecessary pressure on the court.

Could administrative officials in courts in every county of the state be used as registries for registering and publicizing uncontested matters?

Berkeley Law Professor Justin Sweet is interested in the problem. He has suggested to State Senator Lewis F. Sherman that the Legislature consider the matter. Professor Sweet has found that in other countries, in particular Belgium, Italy, Israel and Switzerland, administrative procedures, simpler and less expensive than adversary proceedings, are used to resolve uncontested matters. Professor Sweet would be willing to testify about this subject.

Judges, lawyers and litigants have complained about the time and money required to go through judicial proceedings in uncontested cases, but no one is sure just how much time or how much money is involved. One estimate is that uncontested cases consumed more than ten percent of court time in 1966-67. (No information is available on the extent to which such cases were heard by commissioners rather than judges.) Hearings should be undertaken to determine how uncontested matters are currently handled; how much money they cost the litigants; and whether there are viable alternatives in limited but appropriate situations.

Small Claims Courts. The California Legislature has attempted to provide in the small claims courts a forum for the settlement of minor issues. The idea is for litigants to be able to come into court and have petty disputes resolved with a minimum of delay and expense. The spirit behind the creation of small claims courts has been abused by some corporations and occasionally by state agencies.

These courts often are captured by business interests who find them a useful tool for the collection of debts. A study of the Oakland-Piedmont Small Claims Court, published in the University of California

Law Review in 1964, showed that two out of three users were either business firms (jewelry and department stores, mail order houses, finance companies) or, to a lesser extent, local government agencies (principally the County of Alameda with claims for hospital services rendered and for unpaid taxes). Most (85 percent) of these organization plaintiffs filed several claims at a time, and most were frequent users of the court. Over 85 percent of the defendants in the Oakland-Piedmont Small Claims Court were individuals; the remainder were businesses or government agencies. It is principally the business community, not the poor, that reaps the advantage of the inexpensive and speedy processes of small claims courts.

In the small claims courts of many other states, there is a great disparity in representation. Corporations are represented by attorneys and individual defendants are not. California attempted to meet this inequity by forbidding attorneys in the small claims court. But under the California law, any officer of a corporation is allowed to prosecute his corporation's suit. And many of the corporate officers who go to this court to collect payments just happen to be lawyers. Even if the corporate agent is not an attorney, the procedure frequently pits a sophisticated business representative against an unskilled, often inexperienced poor person.

One way to equalize the procedures in small claims courts would be to guarantee both sides lawyers. But the introduction of attorneys could defeat the fundamental purpose of the small claims courts to settle disputes quickly and simply. These courts do serve a useful purpose, and they should be preserved for the benefit of litigants who do not use courts regularly and who need a forum to settle small disputes.

Those litigants who use the courts regularly in their businesses probably should be using the municipal courts or the justice courts, where

all parties can be represented by attorneys. One way to assure that frequent litigants use the regular courts would be to prohibit plaintiffs from bringing suit in small claims more than once a year. Another, and perhaps more easily enforceable, means of achieving the same objective would be to preclude corporations from suing in small claims courts. The California Code of Civil Procedure (Section 117(f)) already excludes all assignees from small claims. In New York only natural persons may bring suits in small claims courts.

Corporations, through their attorneys, would still be able to prosecute their legitimate collection claims, and the small claims court would be preserved for less sophisticated suitors who cannot afford attorneys and who lack the know-how and resources to prosecute claims in the higher courts.

Suits by corporations should not be moved from the small claims to the municipal courts without some assessment of the potential impact of the change on the workload of the municipal courts. (Small claims and municipal court cases often are handled by the same judges in the same courtrooms, but with different procedures.) Any hearings on this subject must also deal with this administrative question.

Two additional problems are associated with the current operations of small claims courts: the need to post bonds for appeals and the need for expeditious procedures to execute judgments.

If a small claims plaintiff loses his suit, he has no appeal. If the defendant loses, he has an appeal to the Superior Court, where he may have a trial de novo. But to appeal he must post a bond equal to the amount of the judgment against him in small claims court. C.R.L.A. currently is challenging the bond requirement for indigent defendants, seeking an "in forma pauperis bond."

Although plaintiffs may be able to manage in small claims without a lawyer, once they get a judgment, they have no idea of how to execute it. The need for a lawyer could be avoided if the sheriff's departments would help in executing judgments.

Hearings on the operations of the state's small claims courts would be worthwhile. Although California lower courts, particularly small claims, are neither as visible nor as impressive as the Superior Courts and the Supreme Court, they are vital in dealing with the mass of the small disputes that must be solved if citizens are to be treated justly and if they are to have confidence in their courts.

Arbitration. In addition to investigating the operation of standard judicial methods of adjusting small disputes, the Legislature might profitably explore alternatives that are less formal, expensive and time-consuming than the courts for resolving minor every-day grievances. Demonstration projects have been tried in some places to explore the possibility of using mediation and arbitration to solve some of the problems of the poor. While it is too early to evaluate their success, they represent an interesting trend.

Techniques developed to handle disputes among businessmen and between labor and management may provide the necessary means for rapid, indigenous settlement of disputes with a minimum of formality and expense. OEO has funded an arbitration project in the Hough area of Cleveland to deal with landlord-tenant disputes that are now taken to court, and a mediation service in Los Angeles, to facilitate settlement when parties are willing to discuss their dispute but unwilling to be bound in advance by a judicially enforceable arbitration decision.

A unique instance of arbitration between landlords and tenants has taken place in Boston under the auspices of the Rabbinical Court of Justice of the Associated Synagogues of Massachusetts. Because of

the religious sanctions available to the Rabbinical Court for the landlords involved, the parties entered a formal agreement on grievance procedures and committed themselves to abide by the decisions of a Board of Arbitration, a Board of Review and the Rabbinical Courts.

Equally imaginative are the steps taken by the American Arbitration Association to enter the field of dispute settlement by training neighborhood leaders who have knowledge of community problems in techniques for resolving conflicts. The Association's Center for Dispute Settlement is expanding the OEO project in Cleveland into a mediation-arbitration system which local merchants and landlords have agreed to use to resolve the conflicts which regularly occur between citizens and businesses. The Center expects to be invited to resolve disputes between landlords and organized tenants, as well as controversies over local control of schools, conflicts concerning urban renewal or Model Cities programs, problems involving welfare agency procedures for handling grievances, consumer-merchant disputes involving the quality of merchandise or the terms of sale and payment, claims of job discrimination, and direct-action confrontations such as boycotts and sit-ins. In order to maintain independence, the Center has not sought funds which could subject it to control by any government agency; and to bring local participation it is trying to raise money in the areas it will serve. Fees are expected to be based on a sliding scale, depending on the user's ability to pay. No set procedure is contemplated; rules will vary with the type of dispute at issue.

It may seem doubtful whether there are sufficient incentives for those who are favored by the legal system to agree to arbitration, but the experience of the Center, according to Samuel C. Jackson, Director of the Center and former EEOC Commissioner, has been that businessmen themselves have requested arbitration.

In light of recent events, could those who might expect to prevail in court be willing to forego their advantage in order to obtain the good will and business of the community? No court can enjoin the kind of destruction ghetto residents have shown themselves ready to cause. Ironically, the readiness to riot, decried by all who respect the law, may have provided a new balance of power which can be used to motivate a more relevant and modern rule of law.

The Legislature would enter a relevant, progressive and utilitarian area of inquiry by exploring these possibilities for legislation and regulation aimed at making the ideals of equal justice a reality.

#### New Developments in Resolving Landlord-Tenant Disputes.

More promising than specific statutory changes are some new developments in methods of expeditiously adjudicating disputes between landlords and tenants. Increasingly, the poor are organizing to secure, through group negotiation and arbitration, along with litigation, rights which would be beyond their reach if they were acting alone.

Tenant unions have succeeded in negotiating with landlords agreements which define the obligations of both parties and provide specific procedures for the resolution of disputes. New York State has enacted statutes legalizing collective action by tenants. The Legislature might look into the possibility of enacting a similar set of laws in California. Concerted action helps to avoid the reprisals, in the form of evictions, which may dissuade individuals from exercising their rights. In addition, group action makes it more difficult for the landlord to moot legal action by buying out individual litigants.

Arbitration by independent groups familiar with conditions in the neighborhoods involved has been successful in Cleveland and Boston. Extension of the use of arbitration between landlords and tenant groups, perhaps with state subsidies to get projects started, should be encouraged.

Citizens' Complaints About Government. It takes a great many lower and medium level employees using modest but crucial powers to move the machinery of our vast governmental structures. As federal, state and local agencies have proliferated and gained life and death grips over every aspect of our lives, powers have been delegated to minor functionaries who operate relatively out of sight and subject to little scrutiny or effective control. Anyone who has had difficulties trying to fill out some necessary government form or getting something registered, anyone who has argued with an ornery or intruding bureaucrat knows how irritating and exasperating this kind of encounter with government can be.

We all live with this fact of life. But the poorer and weaker of us, those of us who must rely on government daily for food, home and medical care and not just the luxuries of life, have no alternatives, no assistance, no leverage. And when this kind of frustration strikes at one's sick, one's children, or the very fundamental and personal rations of one's life, the victims feel that the system does not work for them.

Several countries have created a new office of ombudsman to provide redress for citizens with complaints about the bureaucracy. An ombudsman is supposed to be far enough removed from the internal workings of an agency to enable him to act as an objective critic, thereby assuring high standards of official conduct. He also must be prestigious and effective enough to possess the necessary influence over those officials he surveys. A congressional subcommittee has considered proposals to establish a limited office of Federal Ombudsman on a trial basis. (Jurisdiction would exist over selected agencies, and would be limited to one small section of the country.)

On the local level, OEO is sponsoring a demonstration project to test the effectiveness of the ombudsman as intermediary in disputes between cities and the municipal government in Buffalo, New York.

On the state level, bills to create the office of Ombudsman have been introduced in twenty-six states, but so far only Hawaii has enacted the proposal into law.

When he was Speaker, Assemblyman Unruh twice introduced Ombudsman bills (in the 1965 and 1967 sessions). The bill was passed by the Assembly but rejected by the Senate.

In the May 1968 Annals of the American Academy of Political and Social Science, Mr. Unruh stated that although Americans do not seem to have had any difficulty in understanding the Ombudsman institution, we lack information about existing procedures for handling citizens' complaints against government. The exercise of discretion by administrators in informal proceedings (not subject to judicial review) is in need of study.

In the District of Columbia, an experimental organization surveyed existing procedures for handling citizens' grievances and concluded that the means of challenging governmental action which do exist are inconsistent and difficult to fathom:

First, the array of procedures is hopelessly bewildering -- but this confusing variety from agency to agency is compounded by the fact that one can never assume, in approaching an agency, that there will be any procedure whatsoever. One finds oneself dealing not only with an incredible range and variety of procedures, but with an equally unpredictable absence of any procedure or mechanism whatsoever.

Second, these mechanisms which are available are of such a low level of visibility, and seem to be activated largely as a matter of discretion and

largesse by the agency that they cannot in many cases be said to exist at all as a matter of right, but only as a matter of the graciousness or conscientiousness of the officials involved.

. . . Nor can the complexity and absence of such procedures be viewed as affecting all citizens equally. Above all, the poor, the disadvantaged, those lacking education, those most subject to arbitrary decisions by officials and least equipped to challenge them (or even think they can challenge them) bear the greatest brunt of injury worked by these deficiencies.

This citizens' complaint center and information service operated for four months, aiming to bring the city's complaint mechanism and City Hall closer to the people and particularly to poor people. As a result, a centralized City Hall Complaint Center will be established to receive all complaints and inquiries and forward them to the appropriate governmental agencies. The Center will follow up on all complaints to see that appropriate action was taken. Also proposed was the creation of two new officials: a special expeditor in the Mayor's office with authority to prod agencies to action on complaints and a public protector—a sort of ombudsman—directly responsible to the City Council.

A study of available statewide procedures for airing grievances over the exercise of administrative discretion at the municipal level of government could be profitably undertaken. As Assemblyman Unruh has stated:

The message is clear. Further study is the common theme of legislators and researchers alike . . . . In the face of repeated urgings for more knowledge about citizen grievances and the way they are being treated by government agencies, it is apparent that a thorough reappraisal of the arguments now being advanced against the introduction of the Ombudsman in the states, and of the questions being raised about its feasibility, is both timely and essential.

It should be noted that this area is one which is of interest to foundations. The Ford Foundation, for example, recently funded very generously a Center for Community Change to evolve a working scheme for bringing people closer to the workings of local governments.

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### III. COURT ADMINISTRATION

#### A. INTRODUCTION

When he left the Supreme Court of the United States to direct the new U.S. Judicial Center, Tom Clark predicted that no more crucial work would face the legal system in the ensuing years than addressing the problems of court administration. Without a system which functions properly, all the ideals and goals of the law may be empty. Prompted by this same conviction, Chief Justice Earl Warren recently stated that when he leaves the Court he also intends to devote his energies to this same problem.

That two of the most sophisticated and experienced of the country's jurists have reached this same conclusion, that they both view this problem as so central to American justice, that they both would bypass all their opportunities and choose to focus their remaining energies and talent on this one task of improving the workings of the courts, is strong testimony of the importance of solving the problems of court administration. As the Chief Justice told the American Law Institute in 1966:

The world has already crossed the threshold into the space age. We are in times of rapid

change, when people are not willing to wait long periods for solution to their problems. . . . We live in a time when some of the world's oldest disciplines are reexamining their institutions and bringing their operations up to the demands and requirements of this age. The bench and the bar of this country have the responsibility, likewise, of ensuring that our system and our institutions are responsive to the challenges and requirements of the age in which we live.

People depend upon courts for decisions intimately affecting their safety and welfare in the broadest, fullest sense. To make these vital decisions, the courts require a large base of administrative and manpower machinery to process the paper and people that accompany each case, to assign, schedule, reschedule hearings and trials, to select and empanel juries, and to assemble all relevant and necessary information and records needed by the courts to make and support their decisions. Too often the combination of inadequate manpower resources of the judiciary and inefficient administrative procedures of the courts create hardships and injustices which, in recent years, have put the courts themselves on trial.

Recognizing what is at once this dilemma and this challenge, Senator Joseph Tydings introduced the National Court Assistance Act to the 89th Congress and asked:

What must the States and localities do to resuscitate their judicial systems? Certain broad areas quite clearly call for improvement, though it must suffice for the moment to identify them only in very general terms. The organizational structure of our courts too often fails to promote administrative efficiency. In most courts there are no effective procedures to gather and evaluate the information necessary for docket control. Nor has the adequacy of supporting facilities and personnel received

the attention it merits. These are the problems and the questions.

He then suggested a way to begin to develop answers:

It is time that the courts, after a half century of failure to solve their problems, enlist whatever expert help is available and appropriate to define and to eradicate causes of maladministration and undue delay. The courts may wish to consider the use of management consultants, who have rendered invaluable assistance to the business world. Where business techniques are appropriate to courts, such experts may be extremely helpful.

In undertaking this preliminary study, the Judiciary Committee has taken an important first step in the direction suggested by Senator Tydings. To define the chief concerns of the Legislature in improving the management of the court system of the State so that it is better able to meet the demands pressed on it by a growing and changing society is no simple task. But it is fundamental and a necessary one.

In summarizing its conclusions about the needs of the administration of justice in California, a distinguished group of Californians who met in 1966 at the University of California at Davis to discuss state problems reported:

. . . some of (California's) courts are overwhelmed by the pressure of legal business. Much must be done to meet the problems immediately upon the horizon. And we only dimly perceive what may be necessary in the way of radical adjustments in our legal institutions to meet the challenges of the ensuing decades. . . . existing pressures of numbers reflecting themselves in ever-lengthening court calendars may weaken and distort our traditional system to the point that it does not serve the values of administering justice with dignity to free individuals.

Significantly, the court system about which these concerns were raised is one in which progress already has been made to relieve some of the serious problems which plague most of the courts in the nation. The court system of California is the biggest and the busiest in the world.

- Among the resources committed to the courts are public facilities having a capital value of nearly \$30 million.
- More than \$100 million of public funds are expended annually for the payroll and operations of the courts.
- Penalty, fine and court revenues of nearly \$110 million are collected annually.
- More than 5000 people, including nearly 1000 judges, make up the full-time staff of the courts.
- Aside from the processing of nearly 5 million illegal parking filings annually, the courts administer the civil and criminal laws of the state directly to more than 1 out of every 4 Californians each year—over 5 million individuals annually.
- The civil disputes disposed of by the courts involve at least \$1 billion annually, not counting the backlog of cases still pending adjudication.

Justice is the business of everyone in the State. And by any test, the administration of justice in California is a very big business indeed. But the administration of justice is not a business that can be managed in the normal commercial or industrial sense. The objectives of the courts are infinitely more complex and their performance is much more difficult to measure.

Even so, justice which is too slow or which is served in an assembly line atmosphere is bad business management in any sense of

the word. Justice which is perceived by the public to be uneven or unfair gives the entire legal system a bad image. If people are to respect the laws which the system serves, they also must respect the institutions that administer them. The services of the courts must be readily accessible to all and the benefits which the public derives must outweigh the costs which the public must bear to have its justice.

Efficient management and effective control of the flow of business through the courts and of the access which the public has to the services of the courts alone will not ensure the quality of justice dispensed by the courts. Less than efficient management of the business of the courts, however, increases the effective costs of the system to the public—costs produced through delays in cases demanding attention; costs in time consumed unproductively in the conduct of judicial proceedings; costs in terms of personal and family hardships and inconveniences caused litigants in civil proceedings and defendants in criminal proceedings; and the costs of criminal acts committed by defendants awaiting trial or decision on appeal. Less than effective management and control of the business of courts also makes more difficult the deliberations of the judiciary and even can deprive the judiciary of the benefit of relevant information needed to aid and speed court decisions.

The substantive laws and the rights of litigants and defendants in court proceedings are useless if there are impediments to the effective management of the flow of court business, impediments created by limitations in the numbers and responsibilities of manpower and other resources of the court, by inefficient management policies and procedures, by faulty information handling and communications, and by awkward relations between court and the other branches of government with which it must deal.

## B. RECOMMENDATIONS

In conducting its survey and making its assessments, Operations Research, Inc. did not try to make judgments about the contents of California law or the quality of the administration of justice. Rather, it limited its inquiry to assessing the way in which the courts work. In conducting this work, Operations Research had the cooperation of many members of the Judiciary and of numerous administrative officials in and out of the state.

The report focused on each of the separate administrative steps in the judicial process. However, while it recognized the importance of evaluating and understanding these individual techniques in its review of California court administration, the report concluded that ultimate answers do not lie in their perfection alone. If computers are used to move records rapidly, if the calendaring and assignment system is perfected, if additional judges are added, if courthouses and courtrooms are designed better and made more functional, if better data-gathering procedures are developed—court administration will still face critical problems unless certain fundamental steps are taken.

It is our conclusion, for the reasons stated in detail in the separate ORI report, that two fundamental and essential courses should be pursued by the Legislature. First, facilities and procedures must be devised and implemented to measure the impact on court administration of individual actions such as the passage of new laws, the revocation or alteration of existing laws, new court decisions, changes in police practices, and the like. As the fuller ORI report makes abundantly clear, at present the Legislature and all other agencies of government operate without any awareness of how their actions will affect court administration.

Examples from the earlier parts of this report make this point graphically. If, as it is suggested in Part II, certain matters are shifted from the jurisdiction of small claims courts to other state courts, this might solve the problem that prompted the switch; but it might do havoc to the workload and personnel of the relevant courts. Also, in Part II, discussion was addressed to the question of expediting uncontested claims and to removing some perfunctory cases from the probate court system. Here again, it is critical in evaluating substantive steps such as these that the Legislature also understand what it will be doing to the affected judicial machinery at the same time.

It was made clear in Part I that reform of the juvenile court system will require attention to the subsidiary needs for staff and facilities which would inevitably be occasioned by these changes. Similarly, in dealing with alcoholics, aside from the substantive merits of removing certain cases from the traditional criminal justice system, reforms would result in new administrative disadvantages.

A second conclusion, intimately related to the first, is the need to establish minimum standards for court administration throughout the state. To do this better, data gathering mechanisms need to be developed and used. Then, along with creating some facility to reflect the impact

of proposed actions on the administration of the courts, there also would be information and officials to assure appropriate resources, facilities, personnel and procedures to assure the continued efficiency of court work.

## C. CONCLUSIONS

Each year witnesses an increase in the volume of cases in the California courts. And in each passing year the costs of operating the courts and the manpower resources of the courts also are increased—but not fast enough to cope fully with the backlog of business pending in the courts, much less the annual growth and change in demands for court services. If the resources of the courts for administering justice in California are to be adequately expanded or effectively managed, several measures to increase the productivity of each unit of present resources provided to the courts (including judicial manpower and budget dollars) should be taken:

- a. Removal from the purview of the courts of minor cases which flood the courts but which would be amenable to administrative disposition.
- b. Making more effective use of judge and court time through improved judge assignment procedures.
- c. More effective scheduling of the volume of cases ready for trial in order to maximize the time that courtrooms and judicial manpower are productively occupied.

- d. More effective administrative support of judicial resources to speed information needed for their operations and to provide the full scope of information and staff support they need to do their job most effectively.
- e. Expanding and more effectively managing the administrative staffs of the courts.
- f. Expanding the applications of computers and automatic data processing equipment for the support of the courts.

Realistic expectations for increasing the productivity of present resources of the courts will not be able to cope with the continually growing input of court business. Inevitably, the resources of the courts must be expanded—to provide more judgeships and more positions for quasi-judicial manpower (i.e., commissioners and referees). Effective support of these resources will require more court facilities (offices and courtrooms) and still more administrative and other support personnel. In short, effective administration of justice in California will require significant increases in investments of county and state tax income to accomplish necessary changes in the ability of the courts to do their work.

To ensure that the citizens of California not only get the quality of court services to which they are entitled, but that the costs are more effectively used, the Legislature of California should require that certain basic measures be taken:

- a. Determination of the numbers and mix of judgeships and supplemental judicial manpower (for example, commissioners and referees) needed to handle the workload of the courts effectively

and efficiently (both the present workload and that projected over a proper planning time).

- b. Establish and devise legislative means for enforcing minimum standards for county support of the courts (standards for administrative personnel, physical facilities and information management systems required to back up each judgeship) that will ensure that the judicial positions established by statute will not be constrained in their performance by inadequate staffs and facilities.
- c. Assure that the Legislature is fully apprised of the consequences of changes in State law on the performance of courts in order to prevent the business of the courts from being unduly impeded by new demands for court services resulting from changes in either the substantive law or law enforcement.
- d. Require that a continuing program be designed to monitor the performance of the courts and meet those demands for their services that signal necessary changes in court resources and management practices in sufficient time to allow appropriate legislative action.

Since adequate data on court operations and on the sources of court business presently are not available, a program is recommended to develop the specifications for such data, the methods for their analysis to provide the Legislature with essential information, and a system design and an implementation plan by which the Administrative Office of the California Courts can guide more effectively and continuously both the Legislature and the courts in solving their problems.

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**PROBLEMS IN THE  
MANAGEMENT OF  
THE COURTS  
OF CALIFORNIA**

**HARVEY D. KUSHNER AND HAROLD NISSELSO**

**17 January 1969**

**FOR: HONORABLE WILLIAM T. BAGLEY**  
Chairman, Judiciary Committee, California Assembly

## PREFACE

This report was prepared by Operations Research, Inc. (ORI) as part of a larger study of problem areas in the administration of justice in California. The full study was commissioned by the Committee on Judiciary of the California Assembly in a contract with Ronald L. Goldfarb and the law firm in which he is a partner, Kurzman & Goldfarb in Washington, D.C. The contract called for ORI to undertake that part of the study dealing with problems in managing the flow of business through the courts.

This report presents the results of ORI's survey and analyses. Results of the full inquiry and analyses of problems of criminal and civil justice in California are given in a separate report, Problems in the Administration of Justice in California, by Ronald L. Goldfarb, submitted to the Honorable William T. Bagley, Chairman, Judiciary Committee, California Assembly.

This second printing of the report by the California Printing Office contains some amendments and additions to the original text supporting the general conclusions about trends in court productivity. The amended text is that on pages 22 and 23, supported by further explanations given in Appendix C.

## SUMMARY

### THE PROBLEM

1. Management problems of the courts of California are those related to the flow and timely completion of the business of the courts—problems manifested in long delays before cases can begin trial and in further delays before they are decided. These are problems caused by imbalance between the volume of court cases and judicial resources—mainly the numbers of judges—available to try those cases. They are compounded when information and procedures for scheduling cases for trial and for assigning cases to judges do not make the most efficient use of available judicial manpower. And they cause still more delay and hardship when the administrative processes of the court are slow, inefficient, and incomplete in providing essential information, both for scheduling the court's business and for completing judicial decisions. These are the problems of the courts of California, together with requirements for their solution, which are addressed by this report.

## CONCLUSIONS

2. Each year witnesses an increase in the volume of cases in the California courts. And in each passing year the costs of operating the courts and the manpower resources of the courts also are increased-- but not fast enough to cope fully with the backlog of business pending in the courts much less the annual growth and change in demands for court services. If the resources of the courts for administering justice in California are to be adequately expanded and effectively managed, several measures to increase the productivity of each unit of present resources provided to the courts (including judicial manpower and budget dollars) are required:

- a. To reduce court workload: Remove from the purview of the courts minor cases which flood the courts but which would be amenable to administrative disposition.
- b. To directly increase court productivity: Make more effective use of judge and court time through improved judge assignment procedures and by more effective scheduling of the volume of cases ready for trial in order to maximize the time that courtrooms and judicial manpower are productively occupied.
- c. To improve administrative and management support of the judiciary: Provide more meaningful and timely information needed to schedule and control court operations and to provide the full scope of information and staff support needed by individual judges to do their job most effectively. To do this requires more effective

management of the administrative staffs of the courts (and, for most courts, expansion of these staffs) and expansion of the applications of computers and automatic data processing equipment for the support of the courts.

3. The staff resources of the Judicial Council of California are insufficient to investigate all of the possible alternatives to improve the management of the courts, particularly in face of the dynamic changes which the courts and their business are continually undergoing. In addition, information and reports now collected on the operations of the courts are inadequate for measuring what effects management change will have on the flow of business. Of more immediate importance, such information as is collected is inadequate to determine what is happening now to the flow of cases through the courts or to relate the workloads and proceedings of the courts to activities of other state agencies involved in the criminal justice system.

4. What can be realistically expected for increasing the productivity of present resources of the courts will not alone cope with the continually growing input of court business. Inevitably, the resources of the courts must be expanded—to provide more judgeships and more positions for quasi-judicial manpower (i.e., commissioners and referees). Effective support of these resources will require more court facilities (offices and courtrooms) and still more administrative and other support personnel. In short, effective administration of justice in California will require significant increases in investments of county and state tax income to accomplish necessary changes in the ability of the courts to do their work.

#### RECOMMENDATIONS

5. To ensure that the citizens of California not only get the quality of court services to which they are entitled, but that the costs are more

effectively used, the Legislature of California should require that certain basic measures be taken:

- a. To provide adequate judicial manpower: Determine the numbers and mix of judgeships and supplemental judicial manpower (for example, commissioners and referees) needed that will handle most effectively and efficiently the workloads of the different courts (both the present workload and that projected over a proper planning time).
- b. To ensure adequate support of the judiciary: Establish and devise legislative means for enforcing minimum standards for county support of the courts (standards for administrative personnel, physical facilities and information management systems required to back up each judgeship) that will ensure that the judicial positions established by statute will not be constrained in their performance by inadequate staffs and facilities.
- c. To ensure that the administration of justice is not compromised by legislative acts: Require that the Legislature is fully apprised of the consequences of changes in state law on the performance of courts in order to prevent the business of the courts from being unduly impeded by new demands for court services resulting from changes in either the substantive law or law enforcement.
- d. To ensure that the courts reach and maintain desired goals for efficient management of their business: Require that a continuing program be meaningfully designed to monitor the performance

of the courts in meeting the workload demands for their services and to signal needs for changes in court resources and management practices in sufficient time to allow appropriate legislative action.

6. Since adequate data on court operations and on the sources of court business presently are not available, these measures cannot now be properly designed. To enable such designs, a program is recommended to develop the specifications for such data, the methods for their analysis to provide the Legislature with essential information, and a system design and an implementation plan by which the Administrative Office of the California Courts can more effectively and continuously guide both the Legislature and the courts in solving their problems.

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## I. STUDY PERSPECTIVE

1.1 People look to the courts for decisions affecting the safety and welfare of the public-at-large as well as of the individuals who come or are brought directly to the court. But the making of decisions by the court requires a large base of administrative and manpower machinery—machinery to process the paper which accompanies each case, to assign, to schedule and (as is often necessary) reschedule hearings and trials, to select and empanel juries, and to assemble all relevant and necessary information and paper needed by the court both to make and support its decisions. The public often sees more of the grindings of this administrative machinery than it does of the attention of the bench. And it is often the combination of inefficient procedures of the administrative machinery of the courts as well as inadequate manpower resources of the judiciary that create the hardships and "injustice" of trial delay, and slow movement which has put the courts themselves on trial.

1.2 A distinguished group of Californians in 1966 participated in the University of California Assembly at Davis to discuss the problems of the administration of justice in this state. In the summation of their

conclusions, they expressed their deep concern with a central issue in the administration of justice in California:

" . . . some of (California's) courts are overwhelmed by the pressure of legal business. Much must be done to meet the problems immediately upon the horizon. And we only dimly perceive what may be necessary in the way of radical adjustments in our legal institutions to meet the challenges of the ensuing decades . . . existing pressures of numbers reflecting themselves in ever-lengthening court calendars may weaken and distort our traditional system to the point that it does not serve the values of administering justice with dignity to free individuals."<sup>1/</sup>

These concerns are shared by many others in the state who did not participate in that particular meeting, but who have addressed themselves articulately to these problems of the courts in many other forums.

1.3 Significantly, the court system which has raised these concerns is one in which much progress has already been made in relieving many of the serious problems which still plague most of the courts in the nation. But perhaps the most significant reason why more progress has not been made is the fact that the court system of California is the biggest and the busiest in the world.

1.4 In their sheer size, the dimensions of the court system of California indicate the scope and depth of its involvement in the society of the state—in terms of the resources which the state has committed to the administration of justice, and in the extent to which the courts are engaged with the protection of the safety and welfare of California's people.

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<sup>1/</sup> "The Courts, the Public, and the Law Explosion," report of the University of California Assembly, June 12-15, 1966, Davis, California.

1.5 What are some of the statistics which describe the scale of this involvement?

- Among the resources committed to the courts are public facilities having a capital value of nearly \$30 million<sup>2/</sup>
- More than \$100 million of public funds are expended annually for the payroll and operations of the courts<sup>3/</sup>
- Penalty, fine and court revenues of nearly \$110 million are collected annually<sup>4/</sup>
- More than 5000 people, including nearly 1000 judges, make up the full-time staff of the courts
- Aside from the processing of nearly 5 million illegal parking filings annually, the courts mete out justice under the civil and criminal laws of the state directly to over 5 million individuals annually—to more than 1 out of every 4 Californians each year
- The civil disputes disposed of by the courts involve at least \$1 billion annually, not counting the backlog of cases still pending adjudication.

1.6 Justice is the business of everyone in the state. And by any test, the administration of justice in California is a very big business indeed.

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<sup>2/</sup> Statement of A. Alan Post, Legislative Analyst, before Assembly Judiciary Committee, Sacramento, March 7, 1968.

<sup>3/</sup> Ibid.

<sup>4/</sup> Ibid.

1.7 But the administration of justice is not a business that can be managed in the normal commercial or industrial sense of the word since the objectives of the courts are infinitely more complex and their performance is much more difficult to measure. Even so, justice which is slow to be delivered or which is served in an assembly line atmosphere is bad business management in every sense of the word. Bad in the sense that justice which is perceived by the public to be uneven or unfair in its procedures, even if not in its ultimate decisions, gives the entire system of justice under law a bad "image." If the people are to respect the laws which the system serves, they must also respect the institutions they are forced to deal with whenever personal confrontations with the law and its administration occur. If the people are to respect the institutions which administer the law, the services of the courts must be readily accessible to all and the benefits which the public derives must outweigh the costs which the public must bear to see justice served.

1.8 Efficient management and effective control of the flow of business through the courts and of the access which the public has to the services of the courts will not in and of itself ensure the quality of justice dispensed by the courts. Less than efficient management of the business of the courts, however, increases the effective costs of the system to the public—costs produced through delays until judicial attention can be directly applied to cases demanding that attention—costs in time unproductively consumed in the conduct of judicial proceedings—costs measured in terms of personal and family hardships and inconveniences caused litigants in civil proceedings and defendants in criminal proceedings—and costs of criminal acts committed by defendants free awaiting trial or decision on appeal.

1.9 Just as importantly, less than effective management and control of the business of courts can make much more difficult the deliberations of the judiciary and can deny the judiciary (and the public they serve) the

full benefit of all relevant information which will better aid and speed the decisions of the court.

1.10 Understanding the problems and needs of the courts of California in their full perspective is perhaps the most important and difficult problem which stands in the way of their effective solution. Moreover, such understanding is needed to establish what the valid alternatives are which should receive highest priority.

1.11 Problems perceived by individuals concerned with the administration of justice in California and articulated by them—whether they are jurists, attorneys, prosecutors, police, legislators, litigants, defendants, academicians, or even court administrators and staff—almost invariably concern a relatively narrow, even if important, segment of the total environment and activity of the courts. Few people, even judges, are rarely engaged at any moment with more than a relatively small area of the court's activity. This is because the court system is as big as it is, has as broad an authority as it does, and is as pervasive as it is in its interaction with other agencies of government and society.

1.12 Furthermore, the demands on the courts for judicial services are constantly growing and changing, as are interpretations of and the volume and substance of the laws themselves. A consequence of these circumstances is that it becomes easy, especially for those most deeply involved and experienced in the administration of justice, to become the victims of their own experience—experience which already may be largely irrelevant in today's environment and which is likely to become totally obsolete in the near future.

1.13 There is no magic, all-inclusive approach to developing an effectively managed state court system, or for that matter for an individual court. Solutions to the management problems of the courts inevitably will be accomplished in an

evolutionary series of steps. As a matter of fact, California has produced, in its own history of improvements and progress in recent years, a model of the stages in such a process—progressive simplifications in court structure, step-by-step improvements in procedures and administration, modification in individual laws reallocating authority among the separate levels of courts, and a progressive expansion of the base of information about the performance of the courts needed to guide the process of continued improvements in administration, and especially to support arguments for periodically expanding the manpower resources of the courts.

1.14 In the face of these progressive changes there have been many countervailing pressures and many unanticipated changes. Among them are changes in criminal laws, the force of which has increased the input of business to the courts without there being simultaneous provisions for increasing the resources of the courts to cope with predictably increased workloads.

1.15 If what is past continues to be prologue, the projection of this history is one in which the expansion in resources and the modification of authority, rules, and procedures will continue to lag rather than to lead or keep pace with the growing and changing demands for justice. Moreover, continued reliance on planning methods which simply react to increased workloads by proposing new resource requirements that are tailored to the experience factors of previous practice simply embalms the inadequacies and inefficiencies of those practices in the administrative system. Serious problems of managing the business of the courts are not solved in this way, but at best are only transformed or transferred to degrade another part of the courts' operations.

1.16 Finding a "better" way is, however, a very difficult process, especially when it is necessary (and prudent) to make progress in a series of carefully

chosen, limited steps. In the case of step-by-step improvements in the management of a court system such as California has, each step represents one of many alternatives which might be taken at that time—alternatives which might be different approaches to the same problem, or separate approaches to different problems affecting different areas of the court system—alternatives which might each have different cost and benefit consequences. Furthermore, many instruments of change which require legislative action affect different constituencies in terms of who incur the costs and who derive the benefits. In these situations, an additional political dimension is interjected which can be more or less difficult to cope with depending at least in part on whether or not the cost and benefit impacts can be identified clearly and estimated with reasonable precision.

1.17 In short, the achievement of improvement in the management of the business of the courts is as complex an undertaking as are the operations of the courts themselves. To know with certainty whether or not many proposed changes will in fact cause an improvement, be ineffectual, or worse, even counter-productive, requires a more comprehensive understanding of the interactions of all the pressures and forces which simultaneously affect the operations of the courts than anyone seems now to have.

1.18 This is the perspective in which the management of courts of the State of California is viewed in the study which is reported here. This report, commissioned by the Honorable William T. Bagley, Chairman of the Judiciary Committee of the California Assembly, is not explicitly concerned with the substantive issues of law as administered by the courts—nor with issues having to do with the rights under the law of litigants and defendants in the proceedings of the courts. These latter issues and problems relevant to them are discussed in a separate report.<sup>5/</sup> What is addressed here are those problems caused by impediments to effective management of the flow of business

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<sup>5/</sup> Ronald L. Goldfarb, Problems in the Administration of Justice in California, 1969.

through the courts—impediments created by limitations in the numbers and responsibilities of manpower and other resources of the court, by management policies and procedures, by information handling and communications, and by the authority and relations of the court with the other branches of government with which it must deal.

1.19 Included in the report is an assessment of factors affecting the input of business to the different levels of courts, i.e., the demands on the courts for their services. The response of the courts to these demands in terms of how their resources are organized, allocated, scheduled, and managed to process their business is also assessed.

1.20 Limitations of time for this study have necessarily restricted it to be more of a survey of the scope of management problems and conditions of the California courts, rather than an in-depth study of specific improvement alternatives. Because of this, emphasis has been placed on assessing the conditions of business in the Superior and Municipal Courts of the state. These are the courts which have the most serious and pressing problems within the state, problems which are at least partially reflected in the higher level courts. Conclusions of the study and recommendations for needed actions to develop an adequately comprehensive understanding of the operations of the courts of the state and of the potential value (and costs) of alternatives to improve their operations are based on these assessments.

1.21 This report should be viewed as a beginning in a program urgently needed by the Legislature—a program that will determine what practical and cost-effective alternatives are available to the state to effect such improvements as are critically needed, and provide the advice and decision-information necessary to support implementing actions by the courts as well as by the Legislature.

## II. DEMAND FOR JUDICIAL SERVICES

### TRENDS IN GROWTH OF COURT WORKLOAD

2.1 The courts in California have experienced greater growth in demand for their services than any other judicial system in the world. The total number of filings in the California lower courts, which exceeded 11 million in 1967, has increased about 4 percent a year since 1959. Traffic filings, which were 85 percent of the total in 1967, have increased at a rate of 5 percent a year; nontraffic filings at a rate of about 4 percent a year. As measured by total annual case filings, the volume of the courts' business has paralleled the growth of the state's population and motor vehicle registrations.<sup>1/</sup>

2.2 But the actual workload of the courts has grown at an even faster rate. The proportion of felonies—the cases requiring the greatest amount of judicial time—has increased faster than those which take relatively little judicial attention. Felony filings in recent years have been rising at a rate twice that of the growth of the most crime-prone age groups in

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<sup>1/</sup> A more detailed analysis of trends in the growth of filings in California courts and their workload implications for the courts is given in Appendix A.

the state's population. Now totaling over 10 percent of the total number of cases entering the Superior Courts, felony proceedings occupy more than 20 percent of the courts' time. Since California law requires that criminal proceedings be given precedence over civil cases, the growing felony case workload already is a significant factor affecting the courts' ability to manage schedules for civil calendars.

2.3 On the basis of past and recent trends, the outlook augurs a continuing increase in the annual demand for court services—to almost 20 percent more in the next 5 years. But the increasing growth in felony filings which can be projected will cause the courts' annual workload demands to increase by more than 25 percent.

#### FORCES OF CHANGE AFFECTING THE COURTS

2.4 The courts are subject to an extraordinary set of pressures. The volume and character of their business depend on many forces external to the judiciary. These forces include the laws enacted or amended by the Legislature, new interpretations of laws by the United States and the California courts, intramural determinations by law enforcement agencies to enforce certain laws (or not to), and decisions made by private attorneys and public prosecutors to litigate or not.

2.5 The courts are vitally affected by these varied forces. Yet they cannot control, and can rarely even influence them. They can, however, be made aware of the probable trends in the activities of lawmakers, enforcement agencies and private attorneys, so that they will be able to manage current business efficiently and plan intelligently for the future.

#### Effects of Legislation

2.6 One of the most significant ways in which the State Legislature controls the operations of the courts is by passing laws (or amending

existing laws) that increase or decrease the number of cases that may be taken to court. The Legislature generally gives new laws searching review in its committee hearings and floor debates. However, at present the Legislature cannot be given an adequate assessment of the likely consequences of any statutory changes on the influx and processing of court cases.

2.7 It should be possible to give a reasonably accurate and comprehensive estimate of the most likely consequences of alternative courses of legislative action. Such estimates could be extremely helpful in assessing the effectiveness of each proposed act in achieving its intent and determining whether other court problems will be created, the costs of which may outweigh the expected benefits. In the case of bills which are likely to cause a surge in the workload (for example, the addition of felonies to the Penal Code), the Legislature should be fully informed of the impact on the other business of the court so that it can consider the total effects of the act on all aspects of the administration of justice. If the Legislature decides to enact such a law, it should be apprised of the additional court resources which the law will require and the additional measures necessary to ensure that the act accomplishes its purpose without impairing judicial performance.

2.8 Some recent legislation has imposed a burden on the courts without providing compensatory resources. An example is the recently passed "Dangerous Drug" Act (Assembly Bill No. 172), providing that a first offender found in possession of a drug such as marijuana can be charged with either a misdemeanor or a felony. The act was passed to facilitate the arrest and conviction of offenders formerly released by law enforcement officials or juries because of their feeling that the felony punishment was too harsh. Merits of the bill aside, one of its serious consequences for the courts was a surge in the number of drug arrests

and prosecutions which immediately resulted. Since the statute was passed without compensatory increases in court manpower, one of its effects has been to further increase the problems of the courts in coping with their case backlogs.

2.9 Another example of legislation that has produced an increased burden on the courts is Section 1538.5 of the Penal Code. This Act was endorsed as a valuable tool for district attorneys to help them to get reversal of Superior Court decisions on the admissibility of evidence. The Act also gave statutory sanction for defense attorneys to move for the suppression of evidence avowed to have been illegally seized. In Los Angeles County, it was reported that this change resulted in a significant increase in defense motions to prohibit the use of important evidence—the equivalent of as many as 2 or 3 Superior Court judges are said to be tied up hearing such motions. If a comprehensive assessment of the effect of the legislation had been made available to the Legislature beforehand, it might have been possible to consider the full impact on the courts of the act and to provide for the costs of implementing it.

2.10 In addition to the benefit of fuller information on general legislation, the Legislature would be aided by reviewing the actual effects of legislation enacted specifically to improve the management of the courts. For example, Assembly Bill No. 1822, enacted in 1962, changed the maximum jurisdiction of the Municipal Court from \$3,000 to \$5,000. The Judicial Council argued in support of the original bill (which had proposed a maximum of \$6,000). The Council contended that the difference between a \$5,000 and \$6,000 limit strongly influenced the extent to which the bill would usefully reallocate the workloads of the Municipal and Superior Courts, and a \$5,000 limit would be largely ineffective. The effect of the new \$5,000 limit could have been determined in a relatively short time after the legislation was passed, and the value of the legislation reassessed.

2.11 The Legislature ought to be able to expand its understanding of its own effectiveness by requiring periodic evaluations of the effects of past legislation. Such evaluations would be particularly profitable in the case of legislation considered to have special importance to the improved performance of the judicial system. One recent statute that is deserving of such evaluation is Senate Bill No. 471 which was passed in the 1968 session. The Act, making certain traffic violations infractions rather than crimes, was intended to reduce judicial workloads. But officers of the Los Angeles Municipal Court contend that the statute, as finally passed, will change neither the workload of the court, nor the costs of handling the workload.

2.12 What appears to be absent in the design of such legislation—even of basically sound bills—is a much more searching development of alternative approaches to procedures for different types of cases. Without the knowledge that such alternative exist, or of their implications for operation of the courts, the Legislature cannot be expected to effect significant improvement in the movement of judicial business.

#### Effects of Changing Interpretations of Statutes and Constitutional Rights

2.13 Unanticipated workload changes have come from sources besides the Legislature. Changing interpretations of existing laws by both state and federal courts affect the character and volume of demands on the courts for their services.

2.14 For example, there has been a significant shift recently in the way the Supreme Court has interpreted the constitutional requirements involving criminal procedures. The result has been an increased input of business to the courts, especially the Courts of Appeal. There has been considerable argumentation about the impact of Supreme Court decisions on the effectiveness of the criminal justice process. The extent to which the courts actually have been affected is a question which

probably will not be satisfactorily answered until more experience has been accumulated.

2.15 Measures to help the courts compensate for increases in workloads from changing legal interpretations include increases in judicial manpower and changes in procedures for handling special types of case-loads. For such responses to be carried out by the courts (or by the Legislature in support of the courts) before other areas of business are seriously affected, potential problem areas ought to be closely monitored.

#### Effects of Law Enforcement Activities

2.16 As as been pointed out, felony cases entering California's courts today demand about 20 percent of the courts' time. But this volume of crimes which now reach the stage of judicial proceedings represents only about 10 percent of all the crimes committed in California. It is precisely these facts—that criminal cases are among the most time-consuming of court business, and that there is a enormous volume of potential criminal prosecutions dependent on the activities of law enforcement agencies—that give these agencies the power to drastically effect the burden of crime on the courts.

2.17 Foremost among the factors influencing the criminal case workload of the courts are the resources available to the police and their effectiveness in solving the growing volume of crimes. As is the case in the courts, the resources of the police also have not been increased in correspondence with growing and changing demands for their services. Because of this, more than 75 percent of major crimes committed in California are uncleared. This figure represents a nearly 20 percent decrease in clearing such cases over the past 10 years. Another factor is the practices followed by police and prosectuion agencies in setting criminal charges. Between 40 and 50 percent of arrested felony suspects are released or charged with reduced offenses.

before reaching court. Without the extensive use of such discretionary authority to deal with cases outside the courts and to minimize charges wherever possible, the courts already would be faced with an impossible criminal workload. However, this discretionary treatment of criminal charges outside the courts presents certain problems. One is the considerable uncertainty in the continuity of practices by some police agencies and district attorneys' offices. Frequent changes in such policies and practices, often in response to public pressures, cause erratic fluctuations in the volume of cases reaching the courts. The prediction of criminal workloads is even more difficult in metropolitan counties (Los Angeles in particular) where the courts have to cope with several different city prosecutors' offices and police departments.

2.18 There is no simple cure for this problem. The situation would be helped by a continuing review of the policies and practices throughout the state in the handling of criminal cases prior to their presentation to the courts. One objective of such review should be to determine where codification by the Legislature of desirable practices is warranted; so that at least a part of the potential court business can be planned for on a consistent and predictable basis.

2.19 Information useful for such review is already being developed on a sample basis by the Bureau of Criminal Statistics of the State Department of Justice in what is probably the most advanced and best directed program in the nation to develop an understanding of the courses followed by criminal cases in the criminal justice system. However, additional analytical procedures and, most likely, expansion in the data inputs will be needed to convert this information into factors useful for planning in the court system.

### Effects of Decisions to Litigate

2.20 The workload of the courts also is influenced by the extent to which attorneys for private parties choose to demand their rights to judicial hearings or decide to settle out of court. Such decisions by attorneys with their clients may be influenced in part by the manpower resources of the law offices involved, by the pressures of other business, or by the level of fees for litigation. Their strategy also may be determined by their assessments of the way the court or a particular judge will respond to their actions. Tactics also may be determined by the ease with which attorneys for plaintiffs can use the court for questionable purposes—for example, for collection of usurious debts—and the ease with which attorneys for defendants can use judicial procedures for purposes of delay.

2.21 It would be desirable for the Legislature to have a better picture of the activities of private attorneys and their effect on judicial efficiency. Such a picture will require a significant research effort. When informed, the Legislature may wish to consider controlling some of the more serious practices and establishing some system to monitor the effects of activities of attorneys with respect to the courts, if not such activities themselves.

2.22 The future growth and change in demands for court services are rooted in the sources, volume and nature of business which is now entering the courts. Understanding the factors which underlie and affect these demands is one ingredient to development of a proper understanding of the management problems of the courts of California.~ But, one fact is clear—the volume of business being brought to the courts is inexorably growing. The way in which court services are supplied to meet the demands of changing court business also is of central importance to an understanding of court management problems. This section of the

report has provided an overview of the developing changes in conditions of business coming to the trial courts of California and some of the factors affecting that business. Responses that have been made to these changes in the way of increases in judicial manpower resources and in their management and support and some of the more significant results and problems of these responses are reviewed in the following section.



### III. RESPONSES TO INCREASED DEMAND FOR JUDICIAL SERVICES

3.1 To meet the increasing demands placed on the courts, various essentially uncorrelated measures have been taken. Judicial manpower has been increased, but in an irregular way. The Judicial Council has from time to time adopted administrative rules and procedures to effect limited, specific improvements. Isolated programs of basic changes have also been implemented by a few courts. But even in those courts some of the changes have only partly compensated for the increased workload. The overall response has been more to the immediate press of business than to any orderly plan to control the current backlog, much less the growing trend in the input of cases.

3.2 Statistical information collected from the courts by the Administrative Office of the California Courts gives a general picture of the trends in the resources and productivity of the courts. The reports of the Administrative Office do not permit correlation of changes in the performance of the courts with specific instances of increased resources or improvements in judicial management. They do, however, lend themselves to limited but illuminating speculation about the outlook for the courts and possibilities for legislative and judicial measures which could have

significant impact on the courts' ability to cope with their growing workloads.

#### TRENDS IN JUDICIAL MANPOWER

3.3 The courts have established pre-trial and quasi-judicial hearing procedures to dispose of many cases without requiring the use of the scarcest of court resources—the time of the sitting judge. They also use temporary judges (judges assigned temporarily from other courts, retired judges, and lawyers and commissioners sitting as judges), and quasi-judicial commissioners and referees. In recent years, total judicial manpower (judge plus "judge-equivalent" man-years of temporary judicial and quasi-judicial manpower) has included an increasing proportion of these auxiliary judges. In 1967 they amounted to over 14 percent of the total judicial manpower.

3.4 Despite the use of auxiliary manpower, the response of the system in expanding its judicial resources has lagged significantly behind the rate of increase in the business of the courts. For example, the annual filing of cases in the Superior Courts of the state has increased an average of 4.5 to 5 percent per year since 1962. Available judicial manpower at the Superior Court level also has steadily increased—but at an average rate of little more than 3 percent per year. As another example, annual statewide filings of nonparking cases in the municipal courts have increased at an average rate of almost 6 percent per year since 1962. Available judge and judge-equivalent resources of these courts also have increased, although less regularly than those of the Superior Court, at an average rate of over 4.5 percent per year for the past 5 years.

3.5 Administrative workloads of the courts have grown along with the judicial workloads. In fact, the administrative workload has probably grown faster, reflecting the growing gap between filings and dispositions.

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A meaningful assessment of the effectiveness of support resources throughout the state is not possible without more information than is currently available. However, a tentative assessment of a sample of county budgets for the courts indicates some of the possible disparities in support of the courts by different counties. No conclusions are possible concerning what kinds of management problems such disparities might cause, how they are manifested in court performance, nor what legislative changes might be desirable. But the significance of the support resource requirement is given some perspective by those currently provided by Los Angeles County for the Superior Court and Municipal Courts.

3.6 Los Angeles Superior Court, with 120 permanent sitting judges, is actually supported by two administrative arms: the Executive Officer of the court and his staff, and the County Clerk and the staff of his office. Direct employees of the court (the Executive Officer, his staff, and the commissioners, counselors and referees of the court) add up to a total of nearly 550 people, including about 125 court reporters. These positions, budgeted for in the current fiscal year, represent about 75 percent of the total authorized by the State Legislature.

3.7 The Office of the County Clerk supports the Superior Court in many essential functions, ranging from the processing of filings and case records, retrieval of records for court use, and provision of basic information on docket status. The total staff of the office of the County Clerk is similar in number to those directly employed by the Executive Officer of the Los Angeles Superior Court. However, since the County Clerk has other collateral functions, there must be some proportionate division of manpower and fiscal support among these functions and those in support of the court. Most of the County Clerk's budget of over \$5 million per year

is likely to be chargeable to the court, which carries its own annual budget of over \$11 million. What these figures show is that Los Angeles County spends somewhere between \$90,000 and \$130,000 per year to support each of its Superior Court judgeships.

3.8 The Municipal Courts of Los Angeles County, with 113 judgeships, is supported by an annual budget of over \$14 million—more than \$120,000 per judge. And neither the budget figures for the Superior Court nor the Municipal Courts include additional services rendered them by public defenders, by the Probation Department, and the Office of the County Sheriff.

#### TRENDS IN PRODUCTIVITY

3.9 Manpower statistics by themselves have limited value in assessing the true response of the courts to the demands of their workloads. The productivity of this manpower is the crucial factor. Overall court productivity can be measured, on an annual basis, in at least two ways: by the numbers of cases disposed of per unit of judicial manpower, or by the weighted number of annual hours of bench time per unit of judicial manpower in completing trial and non-trial proceedings.

3.10 The performance of the Superior Courts of the state is analyzed in Appendix C. The analysis for this study is made in terms of weighted annual hours of bench time per judge and judge-equivalent committed to the trial and non-trial business completed each year over the period from 1961 to 1967. Results of that analysis lead to the following very interesting results.

3.11 Statewide, the Superior Courts have managed each year to increase the total number of cases disposed of. But this has been largely accomplished by increasing the numbers of sitting judges and temporary judges each year (see paragraphs 3.3 and 3.4). Again statewide, the evidence discouragingly is that the average productivity of each unit of judicial manpower has remained

essentially unchanged for over 5 years. But behind this conclusion there is a dramatic contrast between the performance of the Superior Court of Los Angeles and that of the rest of the Superior Courts of the state.

3.12 From 1961 to 1967, the annual productivity per judge-equivalent in the Superior Court of Los Angeles averaged over 40 percent higher than that of the rest of the state's Superior Courts. This productivity has fluctuated widely in Los Angeles—from a low in 1963, which still was over 25 percent higher than in the other courts, to a high of over 50 percent greater productivity, the latter accomplished in the period 1961-1962 and since 1966. Outside of Los Angeles, the average annual productivity level of judge and judge-equivalents in the other Superior Courts has, in fact, remained almost constant, changing no more than a few percent up and down from year to year. The contrast with Los Angeles suggests that a considerable amount of valuable judge time in other jurisdictions may be unproductively lost due to inefficient scheduling of trials and in administrative and research chores which might be done by others. This does not mean, however, that the Los Angeles Superior Court has achieved all the administrative and management efficiency possible.

3.13 Given present trends in the growth of demand for judicial services and in the management of present supply of those services, the general outlook for effective management of judicial business by the California courts is a pessimistic one. The gap between growth in backlog and dispositions is a steadily growing one. No adequate measures are being taken that will permit the courts to take effective control of the flow of court business. The two primary areas where additional measures must be considered are the provision of adequate manpower resources to the courts and effective management of those resources.

3.14 Budgets for support of the Los Angeles County courts total about one-third that for the entire state, for the management of 40 percent or more of the court business of the state. But the central question which

cannot yet be answered is: first, are these already very considerable expenditures being as productively managed as they might be; and second, even if they are, are they sufficient for the courts to be as productive as they should be?

3.15 Available evidence says that the answer to this question is negative. The crucial problem, then, is to develop not just a more comprehensive understanding of the problems and needs of all of California's courts, but a specific program of legislative and administrative actions to remove both the resource and management deficiencies of the courts which most seriously degrade the quality of the administration of justice in the state.

#### COURT RESOURCES TO SUPPORT THE JUDICIARY

3.16 The courts have special problems in acquiring sufficient manpower and facilities. Although the courts in California are constitutionally an independent arm of government, they depend on the legislative and executive branches for their support. The State Legislature establishes the statutory numbers of positions for judges and other court employees, along with many of their terms of employment (including salary and retirement benefits). However, county governments control court budgets. Thus they control the number of support personnel the courts can hire as well as every other judicial resource, from the number of books in the law libraries to the provision of basic information on status of the workload by the County Clerk's office.

3.17 Even where the courts are in full command of their essential resources, they must ask other agencies of government for those resources and compete for their funds with still other agencies. The courts are at a disadvantage in this competition since the social benefits of their services to the public, as well as the political benefits of their services to the elected county budget-makers, are relatively obscure. Some

courts may have an easier time than others in acquiring what financial and other support they request. But, even where this is true, and especially where it is not, there is a need for some standardization of resources among the courts located in different counties if justice is to be served evenly for every citizen of the state, wherever he lives.

#### Determination of the Number of Judges

3.18 The Judicial Council,<sup>1/</sup> composed of judges and one member of each house of the Legislature, is charged with the responsibility for monitoring the workload of the courts and recommending increases in the number of judgeships to the Legislature. Required numbers of judges are based on analyses of workloads by the Administrative Office of the California Courts which is the staff of the Council. These analyses take into account the fact that different amounts of court attention are required for the disposition of different types of cases. In carrying out this responsibility, the Administrative Office of the Courts monitors the changing volume and type of caseloads in all the courts of the state. By applying workload weights (accounting for differences in time required for the courts to process different types of cases) to the numbers of different types of cases expected to be filed in the courts, based on past experience, the Administrative Office estimates the needs of the court for more judges.

3.19 A problem with the weighted workload method is that it has several built-in biases which prevent a fully rational projection of judgeship needs and which contribute to the lagging increase in judicial manpower resources. Apart from questions of the quality of the data used in the weights, the method embalms present and past rules, procedures, and methods of disposition which often are far from optimal for meeting

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<sup>1/</sup> A short summary of the origins, responsibility, and activities of the Judicial Council is given in Appendix B, as quoted from the "California Blue Book" of 1967.

the projected workload growth. Further, the method simply extends recent trends without accounting explicitly for all the significant factors which affect court workload. Removal of these deficiencies is possible, but the necessary additional data collection, research, and analysis are beyond the resources available to the Administrative Office of the Courts (and the individual courts), considering the commitments which they already must serve.

3.20 Legislative action to increase the number of judges must be initiated in Sacramento by a member of the Assembly who represents the county that wants the added judgeships. Thus, although a recommendation from the Judicial Council is the usual way to add judgeships, in practice the actual decision to enlarge the court must originate in the affected county and have the assurance that the county government is willing to provide the budgetary support needed for the position.

3.21 Legislation to provide for additional Municipal or Superior Court judgeships which has had the approval of the local government and the endorsement of the Judicial Council has not been contested in the Legislature. Although there is no reason to argue that such legislation should be contested, there is a question of whether the full impacts of such actions are adequately understood.

3.22 Among the questions deserving the attention of the Legislature is the costs of such decisions. A new judgeship brings with it not only the costs of the judge's salary, but all the additional costs of the facilities and staff which he will need to do his job effectively. There is at present no reliable source of cost information that could be used to estimate the related costs to the public of each new judgeship. The cost figures are not trivial. In addition to the cost of each judge's salary and retirement, there is the cost of the space which he used (judge's chambers, courtroom, etc.) and the administrative and clerical staff

needed to support him. One recent analysis indicated that the court building space to support a judge alone can cost more than \$25,000 per year and, if additional court construction is required, can represent a capital outlay of well over \$150,000 per judge.

3.23 The issue of costs to support a judgeship may not seem a critical one at the level of the State Legislature, given the expressed willingness of the county to supply its majority share. (State contributions amounted to less than 8 percent of the total expenditures for the state court system in fiscal year 1966-67.) The issue is not being suggested as relevant in any "costs" vs "benefits" framework, since the "benefits" to the public of any single judgeship cannot be estimated in a meaningful way. Nonetheless, the Legislature ought to be concerned with questions related to whether or not the considerable expenditures of the courts are being managed to make the judgeships already authorized as effective as possible.

3.24 The Legislature also ought to be concerned that each new judgeship which is authorized will be adequately supported by the necessary facilities and staff resources. If the Legislature in fulfilling its responsibility agrees to the need for a new judgeship, it must also exercise responsibility to see that the judgeship will be adequately supported. But the Legislature does not now have the necessary information to determine whether even the existing manpower resources are being effectively supported.

3.25 Between the state and county governments, there is an important dichotomy in the system of allocation of responsibilities for the courts. The state prescribes the numbers of courts, of judges, and of certain categories of court employees. The counties are required to pay for these personnel according to standards prescribed by the state. However, the counties provide for judicial support in the form of physical

facilities and in many categories of essential personnel according to their own, separately developed standards. Beyond salaries, county governments are not required to provide even a minimum level of support.

3.26 Such a system is typical of most of the court systems in the country. It has many potential vulnerabilities which should be of paramount concern to the State Legislature. Even with statewide standards of qualifications for court employees, a uniformity of court rules and procedures, and provision by the Legislature for the number of judges, there is no assurance that there will not be a wide disparity in the performance of the courts in different counties because of differences in the support of the courts by the county governments.

3.27 Each court must negotiate separately with its own county government for every item in its budget, no matter how trivial or vital. In fact, there is a wide disparity in fiscal support of the courts among different counties in the state.

3.28 In terms of expenditures to support each judge, not counting expenditures by the County Clerk's office, Los Angeles County spends well over \$90,000 per year to support each Superior Court judge, compared to the less than \$50,000 spent by San Diego County and the little over \$40,000 spent by Sacramento County. Los Angeles County also leads in expenditures to support Municipal Court judges—over \$130,000 per year per judge. Sacramento County spends over \$100,000 per year per Municipal Court judge, while San Diego County spends about \$90,000. These numbers may be compared with a statewide average expenditure per year, per judge (for all the levels of courts) of about \$100,000.

3.29 In themselves, such cost factors are not very illuminating and can be misleading if not considered in the perspective of the type of county (rural or metropolitan) and the numbers of particular kinds of cases

which make up the workloads of the courts. Further, they exclude other sources of costs which would have to be allocated among the services they provide to separate courts and among court and non-court functions. These sources include the offices of the County Clerk, Sheriff, Probation Department, District Attorney, and Public Defenders.

3.30 Meaningful analysis of the extent to which the performance of the courts is affected by county support is not possible with the available data. It is known that the improvements in the productivity of both the Municipal and Superior Courts in Los Angeles were accomplished with the help of expanded and strengthened resources for administrative support. Both the Executive Officer of the Superior Court and the Clerk of the Municipal Court of Los Angeles County have obtained over the past ten years relatively large and effective staffs and their own automatic data processing equipment. If more were known about the effects on judicial management of different levels of administrative support, the Legislature would have the information necessary to establish minimum standards of support for each judgeship throughout the state.

3.31 Edward C. Gallas served as the first Executive Officer of the Los Angeles Superior Court from 1959 to 1965. During his tenure, management improvements of major significance were accomplished which culminated in the productivity increases of that court achieved in the years 1962-64. In describing the problems of county-court relationships, Gallas has pointed out that the judiciary does not have the same leverage in dealing with the legislative and executive branches for its financial support as other departments of government:<sup>2/</sup>

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<sup>2/</sup> Edward C. Gallas, "Courts," Chapter 26, Guide to County Organization and Management, National Association of Counties, 1968, pp. 290-298.

"The working environment of the court and the county government and the continuing relationships of these two independent governmental agencies are tenuous. They are such that they will, unless understood and dealt with effectively, result in endless role conflicts. These conflicts will, in many instances, be at the administrative level.

". . . Among the most fundamental of the potential conflicts is the level of support of the court, and the extent to which the court should be responsive to the demands of the government agency that appropriates its money. A question is immediately raised as to the number of personnel, the appropriateness of equipment, suitability of quarters, the necessity for travel, the adaptability of court processes to mechanization, and similar matters, all of which have financial implications.

"The court, because of the very essence of its responsibilities, has had to stand aloof from statutory and financial compromises and from deals that smack of political manipulation or 'horse-trading' . . . .

"The adequacy of the facilities of the court, the appropriateness of the courtrooms, the decor of the judges' chambers, the air conditioning of quarters for the judge and the staff of the court are matters that typically have been delegated to the counties. With few exceptions, financial support for these things is made available to the court by the Board of Supervisors on the same basis as support for a county department. Since this is the case, the court soon finds the Board of Supervisors requiring it to submit a detailed budget for approval. In some places this has resulted in deals being made between the court and the supervisors for facilities, financial support, and salaries of the staff of the court. Courts have also had to seek county support in the legislative halls in order to obtain more judges to handle essential workloads, in financing of essential travel of judges, in hiring and setting salaries of staff not provided directly by the county, and so forth.

"In other places the relationship is not so friendly—and where it is friendly there is no reason to believe that all it will remain so. Courts, as they grow in size and

complexity, are becoming more aware of the business implications of their administrative activities. They sometimes resent—and properly so—involvement that borders on meddling by administrative representatives of the Supervisors in the internal affairs of the court."<sup>3/</sup>

3.32 An extreme example of what the conflict potential Gallas describes can come to developed recently in Wayne County, Michigan. Twenty-seven judges of the Third Circuit Court brought suit against the county, claiming that the court was denied funds for sufficient clerical staff and probation officers.<sup>4/</sup> This suit was decided in favor of the plaintiffs (by a judge of another court) and the county was compelled to provide an additional \$193,000 per year for 11 probation officers, 1 judicial assistant, and 8 clerks.

3.33 Such disagreements between the court and county rarely surface in public argument. But California has not been without its own public disputes. One such dispute was aired by the Chief Administrative Officer of the county of San Diego in his proposed budget to the County Board of Supervisors for fiscal year 1964-65.<sup>5/</sup> In recommending denial of a request by the Municipal Court of San Diego for items amounting to a total of \$10,900 (less than one percent of the total request), the Chief Administrative Officer made the following statement:

"AREA OF DISAGREEMENT

Four items, which are described below, were requested by the Municipal Courts but not recommended by staff. The Presiding Judge of the Municipal Court was, in conformance with the provisions of Sec. 115 of the Administrative Code, invited to review these matters with the Chief Administrative Officer and a mutually agreeable

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<sup>3/</sup> Ibid.

<sup>4/</sup> Time Magazine, December 13, 1968.

<sup>5/</sup> 1964-1965 Proposed Budget of the Chief Administrative Officer, City of San Diego, May 1, 1964, pp. 16.2 through 16.2-e.

time for the discussion was established. The court, however, subsequently declined the opportunity to discuss this matter with the CAO, indicating that the court did not consider itself to be in the same category as other requesting agencies. It was further indicated that it would make representations to your Board on this matter. State law (Government Code Section 29000 et seq.) and the ordinances adopted by your Board pursuant to the Government Code provisions call for the submission and processing of court budget requests in the same manner as for all departments of county government. The disinclination of the court's representatives to resolve the area of disagreement prior to submission of the CAO's recommendations to your Board is, therefore, both disturbing and unusual.

"The items not recommended are:

	<u>Item</u>	<u>Cost</u>
1.	Three Soundsciber Recording Devices	\$7,040
2.	One Movie Camera and Screen	925
3.	One Range of Files	935
4.	Ten Trips -	2,000
	3 to New York, 4 to the State Bar Convention of Judges, 3 to National Assn. of Municipal Court Judges in L.A. (8 added trips for Judges are recommended.)	
		\$10,900

"It is the CAO's opinion that the recommended reductions from the request are adequately supported:

1. With respect to the Soundscibers, the Board will recall that such a system was installed in Judge Martin's court a few years ago. Subsequently there was a request for another installation but it was agreed to defer it pending a record of experience with the present system. The current request is for installations in the courtrooms of Judges Hussey, Nottbusch and Bowman.

It is argued that the Soundscibers will reduce the need for added Court Reporters. A Soundsciber, however, cannot legally replace a Court Reporter.

The major benefit of the Soundscriber seems to be in connection with possible appeals from Municipal Court decisions. It appears that through the use of such recorded material the opposing attorneys can be assisted in reaching agreement as to facts and issues basic to the appeal. Such agreement by the attorneys is said to reduce demands upon judicial time.

Note, however, that the total appeals from all Municipal Courts in San Diego County (i.e., including North County, El Cajon and South Bay, as well as San Diego, involving, therefore, 22 Judges) amount only to the following:

	<u>1960-61</u>	<u>1961-62</u>	<u>1962-63</u>	<u>1963-64*</u>
Civil	56	38	56	51
Criminal (non-felony)	<u>17</u>	<u>29</u>	<u>23</u>	<u>23</u>
	73	67	79	73

\*Estimate

In the absence of real supporting data, therefore, the CAO does not feel justified in recommending the added units. Incidentally there are substantial installation costs in addition to the equipment costs. Further, this office has no information to the effect that the device is in common demand among other municipal courts in the state."

3.34 Apparently the Chief Administrative Officer of the county felt he had presented sufficient argument to override the opinion of the court. But the argument that the Soundscriber would save judicial time in connection with appeals might have been examined more closely. What was being requested was an investment of about \$7000 per year to aid in the processing of about 70 appeals per year. Such an investment, amortized over a 5-year period, would amount to little more than \$25 per appeal. This is the approximate cost of one hour of judicial time. A more meaningful argument, then, might be raised over the question of whether or not the use of the Soundscriber would save an average of 1 hour of judge time per appeal.

3.35 This Budget Report also recommended disallowal of part of the Court's travel request:

"With respect to the recommended reduction in the travel request, your Board should consider that the 1963-64 travel program contemplated 77 man-days of Judges' time away from the job, the 1964-65 request seeks 148 days away, and the recommendation would permit 106. The recommendation, therefore, provides for an increase of about 38% over 1963-64.

"The disagreement concerns several requested trips, as follows:

- a. Annual Meeting of California Conference of Judges, Santa Monica. Request 12 Judges attend; Recommend 8. Reason - There are 16 Judges. In 1963-64 the Board of Supervisors authorized attendance by 8. The conference involves 5 days away from the job.

There is no other activity in which regular workloads are handled where such a proportion of operating staff is authorized absence from the job for so long. When this became a problem some years ago in Los Angeles County, the Board of Supervisors adopted a formal statement of policy which authorizes "one-half of the Judges of each municipal court district, with a minimum of one per district, to attend at county expense, as provided in the Administrative Code, future annual Conferences of California Judges when outside of Los Angeles County." It is suggested that your Board consider a similar policy.

- b. Traffic Court Conferences

Request 2 Judges to Denver Conference,  
2 Judges to Fordham University Conference, and  
2 Judges to Berkeley Conference.  
Recommend 2 Judges to Denver, and  
4 Judges to Berkeley.

Reason - These conferences are similar, if not identical. There is little basis, therefore, for the East Coast trip. Actually, there is little reason to send the two Judges to Denver instead of to Berkeley. During his conversations with the Presiding Judge, however, the staffman was advised that even 4 Judges away at one time was too big a number! During 1963-64 only two Judges attended

Traffic Court Conferences, one at Denver and one at Los Angeles, although three were authorized.

- c. National Association of Municipal Court Judges Convention  
Request 3 Judges; Recommend none.  
Reason - There was no authorized attendance in 1963-64. In view of the already liberal recommendations for attendance at conferences for which there has been some precedent established, and in the absence of persuasive data outlining the benefits to the county, these additional trips cannot be recommended.
- d. American Judicature Society and A.B.A. Annual Conference, N.Y.  
Request 1 Judge; Recommend none.  
Reason - Same as 'c,' above." 6/

3.36 The dispute over attendance at professional meetings by the judges of San Diego County was over a matter of 32 judge-days out of an annual availability of over 12,000 judge-days in that county. Undoubtedly, there is no way to evaluate the contribution which those 32 days of exposure to the experience and knowledge of colleagues from other jurisdictions would make to court effectiveness. However, if the court could demonstrate that its productivity can be improved or at least maintained with such expenditures, it is reasonable to expect that the court is better equipped to determine the application of its own resources and the assignment of judicial time than is the executive (or, for that matter, the legislative) branches of government.

3.37 This example of a dispute between a court and a county government official points up the disagreement over what the standards of operational support for the court should be and who should set them. But beyond these questions, and even more basic and difficult to resolve, is the question of how the performance of the courts can be measured in a way which would permit a meaningfully objective evaluation of whether a court is wasting its resources.

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6/ Ibid.

3.38 Gallas has suggested one approach that would leave responsibility for determining the total size of the judicial budget with the county governments, while making the courts responsible for administering their own funds:<sup>7/</sup>

"Finances

The accommodation of the court to the county and vice versa can best be brought about if the county board of supervisors will assume that the court is doing as businesslike a job in the administration of their funds as the county departments. This means that the court should prepare its own budget, which should be submitted to the county board in its capacity as the appropriating body. It means that appropriations should be made in a lump sum, not subject to minute controls. Further, if the county board of supervisors has a chief administrative officer to whom it looks for advice, his responsibility should be to make a recommendation as to the appropriateness of the total request, giving his reasons in whatever form the board might request. The court should be held accountable only as to the reasonableness of its budget and the efficiency of its administration.

"Personnel

The court should be required to identify the number and compensation levels of its staff in order that the board of supervisors might evaluate the personal services portion of the lump sum budget that they are expected to provide. The county should try to persuade the court, if they regard personnel proposals of the court unrealistic, to scale them down to levels consistent with those which they consider to be appropriate. If such persuasion is without effect, they should cut the budget and hence the ability of the court to hire the number of staff proposed at the salaries, contemplated, but leaving it to the court to apply such cuts as they see fit.

"Judicial Expense

Some of the most sensitive budget items include the travel expenses for judges to judicial conferences; the providing of

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<sup>7/</sup> Gallas, op. cit.

automotive equipment to judges as compared to county officials, particularly supervisors; the scale of support in terms of rugs, drapes, and office furniture and equipment. These are all matters that are appropriate for review by the appropriating body, but in the final analysis, the real control, if a difference of opinion arises, will come with the public disclosure of waste by the court if it is being wasteful. Naturally, the supervisors must look at themselves and decide whether their own house is in order and whether their own pattern of expenditures as compared to standards they would impose on the courts are defensible before they accuse the judiciary of waste or inefficiency."

3.39 Alternatives for making sound progress toward improvements in court management and performance range from those suggested by Gallas to that of a centrally financed state court system. As long as the state does not provide substantial subsidies to the county court systems, it will be difficult for the Legislature to enforce uniform requirements. One possibility would be for the Legislature to hold hearings on a county's provision of essential categories of court staff and facilities when the county requests additional judgeships. If the necessary support is not being provided, the Legislature might withhold the new judgeships. But while reminding the county government of the need, such action does not solve the problem of the courts.

3.40 Still other alternatives are possible which might build on the traditional county-financed system while providing for statewide minimum standards for court performance and for essential categories of court staff and facilities. What the form, content, and scope of such standards should be to be both feasible and "cost-effective" requires much further research—but precedents for development and legislation of such standards already exist. In one form it is represented by the Legislature's provision for the numbers, qualifications and salaries of judges and other court employees—"standards" which already impose a mandatory minimum

financial requirement on the counties. In another form it is represented by the statutory conditions for maximum delays in trials in criminal cases. Development of still other standards that will be uniformly administered throughout the state, and improve both the efficiency and effectiveness of all courts in the state should be a priority concern of the Legislature.

#### MANAGEMENT OF JUDICIAL RESOURCES AND TRIAL SCHEDULING

3.41 In addition to increasing the manpower resources of the courts, applications of advanced management techniques to judicial business can do much toward making the administration of justice function without undue cost or delay. No court in the country today can claim (or support a claim) that it has made more than very modest progress in improving management effectiveness and efficiency compared to that which is needed and to what is possible. And there are few, if any, new court management measures which have been taken elsewhere that are not now, nor were, already in use in some California court. Areas in which management improvements have already been made in various courts in California but in which much more can and must be done include:

- More effective calendar management
- More timely augmentation of judicial manpower and temporary reassignment of judges
- More certain assurance that cases will be ready for trial when scheduled and that attorneys will appear for trial on schedule.

3.42 Effective implementation of such measures requires timely and complete information on the status of the courts' workload and on the status of cases pending before the courts—and, importantly, that specific information which is most relevant to court management decisions. To provide such information requires increasing use of computers and other automatic data processing equipment and more effective control

(or access) to such machinery by the courts. Some of the more valuable measures available to improve judicial management in the courts of California already have been taken, but with varying degrees of success, in the areas of calendar management, assignment of judicial manpower, and in control of civil case backlog.

### Calendaring

3.43 There are two basic alternatives for determining the assignment of judges to cases. One is to assign a single judge who will hear all the parts of a case. The advantage of such a system is that one judge becomes familiar with all aspects of each case, and there is no overlapping of work. The disadvantage is that substantial judge time may be wasted while there are lulls in the proceedings of their cases. In addition, when the parties are ready to argue each part of the case, they must wait until the judge who has been assigned to them is free.

3.44 The alternative, adopted generally by courts throughout California, is to establish "master calendars" for each judicial district. The presiding judge and his staff control the assignment of judges to cases and courts. Judges are assigned wherever they are needed. The advantage of the system is that it gives the presiding judge flexibility in reallocating judicial manpower in response to changes in the workload. One reason for its widespread use in California is the statutory requirement that criminal cases take priority over civil. With master calendaring, a judge assigned to the civil calendar or to another court may be transferred to criminal hearings whenever he is needed.

3.45 To be effectively applied, the master calendaring system requires timely information on the status of the courts' dockets. It must be closely monitored by the presiding judge (or by the calendaring judge or clerk) and frequently revised. Where such conditions have existed, notably in the Superior Court of Los Angeles, significant increases in the courts' productivity have been accomplished.

### Temporary Assignment of Judges

3.46 The Judicial Council is empowered by statute to assign judges temporarily to other courts to assist in the processing of particularly heavy workloads. Judges may be transferred to higher courts, to courts of the same level in other judicial districts, and even to lower courts (though only with their concurrence). In addition, the Council may assign retired judges, commissioners, lawyers, and referees to serve temporarily on the bench, augmenting the available number of regular judges. In 1967, the number of auxiliary judge man-years added to the courts in this way amounted to the equivalent of almost 25 for the municipal courts (less than 10 percent of the total number of judges) and almost 80 for the superior courts (over 20 percent of the total).

3.47 The ability to temporarily assign auxiliary manpower to judicial functions and to reassign sitting judges to assist other jurisdictions can be a great advantage in increasing the overall effectiveness of the courts and can accomplish significant economies in their operations. However, the different patterns of usage of judicial and quasi-judicial manpower among the different levels of courts and court jurisdictions in the state suggest that there might be significant, untapped potential for further improvements in the efficiency and economy with which their business is managed. The main source of such potential might lie in establishing more cost-effective combinations of permanent judicial and quasi-judicial manpower resources. There is, for example, a question of the relative cost-effectiveness of commissioner positions as compared to new judgeships. There are advantages and disadvantages to each position from a court management point of view. Commissioner positions cost less to support, and since they are not elected, but are appointees of the court (but to positions established by statute of the State Legislature), they can be held accountable for performance standards enforced administratively

by the courts themselves. On the other hand, judges are empowered to perform all judicial functions. This means that judgeships, while more expensive to support, provide manpower resources assignable at the pleasure of the court to any and every judicial function.

3.48 To answer questions related to the most cost-effective staffing of the court with judicial and quasi-judicial manpower requires data which are not now available. Among the data needed are those relevant to different costs of handling the courts' workload by alternative assignments of judge and commissioner manpower—including alternatives which might require legislation to increase the scope of assignments which the court, at its own pleasure, can give commissioners. And beyond the data on present court operations which are needed, further research and analysis of all the factors involved must be carried out before legislative recommendations can be warranted.

#### Certificate of Readiness Program

3.49 Delays by attorneys in scheduling cases for trial and in court proceedings during trial may be caused by the press of their other business or by a desire to postpone the resolution of a case for tactical reasons. Whatever their source, such delays can seriously hamper the efficiency of the courts, as well as cause undue hardships on plaintiffs and defendants alike. To prevent this, a number of California courts have been using an administrative device to impel attorneys to expedite their business with the courts. The Certificate of Readiness Program has proven extremely effective in those courts in which it has been determinedly implemented.

3.50 This program is one in which a plaintiff's lawyer, when ready for trial, files a Certificate of Readiness, stipulating that he has completed all pre-trial preparations and is ready to come to court when the court can schedule the trial. The defendant's lawyer has a short period

in which to respond. He must state that he, too, is ready for trial, or he must present reasons acceptable to the court for delay. Allowed such delay by the court, the plaintiff's lawyer can, after a specified period, call for the review of the court's decision. Until both parties certify they are ready for trial (after which no further delay will be excused), or until the court denies an additional postponement requested by defense counsel, the case is not put on the trial calendar.

3.51 The program enables a court to get a clearer picture of how many cases actually are awaiting trial. Many of the cases that have been considered "backlog" have turned out to have been settled out of court, or not to have completed all pre-trial procedures. In the first year the Certificate of Readiness program was implemented in the Los Angeles Superior Court, it reduced the backlog of civil cases by nearly two-thirds and reduced jury trial delay from 21 to 6 months. The Administrative Officer of the California Courts has reported that some other metropolitan courts have been able to guarantee cases certifying readiness an almost immediate trial.<sup>8/</sup>

3.52 At first opposed by the Bar, the program, where successful, has since won strong support among attorneys.

3.53 Some of the factors which contributed to the success of improved readiness procedures were cited in the Annual Report of the Judicial Council for 1966:<sup>9/</sup>

"In addition to firm continuance policy, courts have had the greatest success where other factors supplement readiness procedures; for example, (1) the court assumes firm control of the movement of cases from the time the memorandum to set the case for trial is filed until disposition; (2) attorneys

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<sup>8/</sup> Annual Report of the Administrative Officer of the California Courts, January 2, 1967, pp. 202 to 204.

<sup>9/</sup> Ibid.

can operate with predictability because the court's order of business is governed by rules and policies that are well understood by the Bar, are uniformly enforced and are consistently applied; (3) the court's departments are organized so as to maximize potential trial time; (4) the ratio of trial settings to departments is such that attorneys can rely on going to trial on the dates set and on trailing cases being kept to a minimum; and (5) trial dates are scheduled to follow pre-trials very closely on the assurance that cases are ready for trial."

3.54 The Certificate of Readiness program is, however, no more effective than the commitment of the court to its enforcement. But when it has been determinedly applied by Superior Courts in several counties, it has been a powerful tool for the Presiding Judge in helping to manage the calendar of the court and providing a realistic picture of the state of business pending in court.

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#### IV. REQUIREMENTS TO IMPROVE MANAGEMENT OF THE COURTS

4.1 The general outlook for the courts of California to be able to effectively manage their workloads is a pessimistic one, given present trends in growth in demands for their services and in the management of the supply of judicial services. The gap between growth in backlog and dispositions is a steadily growing one and no adequate measures are being taken or appear to be contemplated now that will permit the courts to overtake their workloads and take effective control of the flow of court business.

4.2 Although the courts of California are very much affected by forces beyond their control, there are compelling arguments that they can do much more to respond effectively to changes in their environment and workload. Evidence which has been produced in particular courts within the state court system shows that significant improvements in management effectiveness are possible. Measures responsible for such improvements include better management controls over judicial manpower assignments and expansion of both judge and administrative support manpower.

4.3 Better management controls and improved management procedures require information about the status of the workloads of the courts and

the performance of each functional activity of the court in moving the workload—information more comprehensive and more meaningful for these purposes than is now available. For example, information is needed to develop a much better understanding than is now available of the administrative resource requirements imposed by the various kinds of cases processed by the courts.

4.4 Resources of the court which support the judiciary—commissioners, administrative staff facilities, other services, etc., are costly and grow more so each year. Expansion of such resources to meet the growing demands on the court is undoubtedly necessary. But such expansion as will be needed in future years ought to be accomplished in as cost-effective a way as possible. This means that the system which is to be expanded at the same time ought to be made as efficient as is possible. In fact, the determination of how this best can be accomplished should be the first priority concern of both the State Legislature and the courts.

4.5 There is clear evidence that the productivity of all the courts of California can be improved and that civil trial delay for those who seriously desire to come before the court can be considerably reduced. At the same time that economies are made in individual functions of the courts, it is not clear (and is in fact unlikely) that significant improvements in the performance of all the courts can be accomplished without increased resources and, therefore, increased costs. But it is also clear that further investments and expenditures on the California courts can be made to work much more efficiently and effectively in the service of justice.

4.6 With respect to the provision of manpower resources for the courts, the Legislature exercises the most important control—that of the numbers and salaries of the employees of the court, judges included. However, county governments are not required to provide even a minimum level or standard of support (beyond salaries) for those positions that might be

needed to ensure the effective performance of their duties. Importantly, the Legislature now does not have information available to it that would be necessary to determine whether or not the manpower resources it has provided for are being effectively supported. The Legislature ought to concern itself with the question of whether or not the considerable expenditures of the courts are being managed as effectively as they might be to make the judgeships which already are authorized as effective as they can reasonably be expected to be. Furthermore, the Legislature ought also to be concerned that each new judgeship which is authorized will be adequately supported by such additional facilities and staff resources as are required to accomplish the purpose of the judgeship. To ensure such support, uniform standards should be developed and enacted that will require each county to provide personnel and facilities necessary for effective administrative support of the courts.

4.7 With respect to the additions and changes in civil and criminal law made by the Legislature that affect the flow and management of the courts' business, the Legislature is similarly handicapped by a lack of adequate information. The full impacts on the administration of justice of such laws and on their implications for changes in resources required by the courts to cope with their effects cannot be determined with available data.

4.8 For administrative rules and procedures to be consistent with the demands of the business being managed, those who make the rules must be fully informed of the condition of the courts' workload. At present, the courts lack much of the information that is required to develop rational management policies and to provide timely warnings of problems requiring management attention. A problem is that most data which are available must be derived from county clerks' offices which are not controlled by the courts and whose resources and operations

often are dictated by factors other than court exigencies. Much of the information required for the analysis of the full spectrum of alternative measures which the courts and the Legislature should consider is not now being collected by anyone.

4.9 Both special surveys and continuing systems for collecting information are needed to enable the courts and the Legislature to choose among the various alternative measures which might be adopted to make the courts more efficient. The Administrative Office of the Courts should be the appropriate agency to collect the information that is required. This office has already contributed importantly to improvements in the management of the courts through its recommendations for increases in manpower and improved rules and procedures. However, its ability to be even more effective is impaired by a limited staff. In order for necessary management information to be provided, a comprehensive program is needed to analyze the operations of the courts, and to develop analysis systems and procedures which will produce answers to the questions most relevant to Legislature and court management decisions. Such a program should also result in a data collection system for the courts which will continuously provide meaningful and up-to-date reports on the performance of the courts in meeting their workload demands.

#### ROLE OF COMPUTERS IN THE COURT

4.10 The role of computers in the court is singled out for separate discussion for two reasons. First, the courts' business moves on a veritable flood of paper documentation; and if nothing else, modern technology has given the courts electronic data processing machinery to answer this problem. And the promise attributed to computers to support the courts potentially goes far beyond improvements in recordkeeping alone—promises which must be carefully evaluated before the major expenses involved in computerized systems can be justifiably undertaken.

4.11 Paradoxically, the computer (or, more precisely, automatic data processing (ADP) equipment) is the most overrated and at the same time under-appreciated tool for aiding in court management. Dramatic improvements in court productivity and reduction in backlog have been attributed to the installation of new data processing systems. In the accomplishments that have occurred, however, the computer has been only one element of the solution—necessary, perhaps, but far from sufficient. Significant improvements invariably have been accomplished by a combination of conditions, viz.,

- The institution of vigorous executive control over management operations (usually by a determined presiding judge with strong executive skills and an able administrative staff)
- The availability of comprehensive information of the state of business of the court (generally produced with the help of an ADP system)
- A significant increase in the number of judges assigned to the court.

4.12 On the other hand, most courts have not appreciated the potential role of the computer in providing essential information to enable effective control of the flow of judicial business. The use of ADP equipment by the California courts is growing, but it is still restricted primarily to the performance of routine clerical chores. Even where it is used to provide information on the status of the docket for calendaring (for example, in Los Angeles and San Diego counties), the role of the machine is to summarize information from case records to aid in what is a completely manual decision process. The data processing machinery is not used to provide analytical information which could make management of the calendar much more effective.

4.13 There are several impediments to extending the use of ADP equipment by the courts. Most courts in California get their ADP services from

other agencies of the county and can increase their own use of such services only to the extent that competing workload demands permit. The courts' own budgets must be sufficient to cover the added services. Even the courts which have their own tabulating and data processing equipment are so committed to responding to the pressures of day-to-day business that they can only expand the uses of their ADP systems very gradually.

4.14 Norbert A. Halloran, a management analyst in the Administrative Office of the U.S. Courts, recently wrote an article in Judicature magazine in which he summarized applications of ADP in the courts that indicate the possibilities which are available if their costs can be justified. The possible applications fall into three categories: data processing; information retrieval; and analysis and planning.

4.15 Data Processing Applications. Applications of the automatic data processing to record keeping and accounting types of functions is well understood and has been widely used in business. For this reason, and because its usefulness is most readily demonstrated, this type of application is the one found most commonly in the courts. For example, the most frequent application of ADP equipment by California courts is in maintaining the tremendous volume of records of traffic citations in the state. At least a dozen counties use ADP in this way. The type of equipment generally used is business data accounting machinery. This machinery does not have the data storage and computational capabilities that would be necessary for more analytical management support functions.

4.16 There are several possible applications of computers to processing of judicial data, few of which are now being done. They include: keeping accounts of all fines, fees, and bonds; preparing standard docket records, notices, and documents; and preparing documents resulting from routinized proceedings (e.g., summons and "alias" summons, default judgment orders, garnishment orders, and various writs of execution).

4.17 Information Retrieval Applications. The application of data processing to information retrieval requires building a reference file or library from which information can be efficiently retrieved as needed. Major costs may be involved in building the library, and determining what should go into it will require a study of its own. If techniques for abstracting text for automation are required, further effort and significant increases in system cost will be involved. Since a file that is not continually updated will lose its value over time, new inputs must be continually and systematically entered. In an ongoing system, the costs of such data collection and automation are likely to represent the major costs of the system. Further, operating costs for the computer system will be heavily dependent upon the frequency with which the file must be updated or searched, and the economic viability of the system may turn on this point.

4.18 There are a number of examples of possible application of ADP to information retrieval functions of the courts, essentially none of which are in use. These include: sending pre-trial and trial setting notices and other calendar information; monitoring the approach of statutory or court-prescribed deadlines for pleadings, filing of motions or other actions; searching past or pending trial court case records for information about points of law involved, jury instructions, court rulings, names of attorneys involved, size of verdicts or settlements, etc.; selecting, impanelling and accounting for the compensation of jurors; accounting for the whereabouts of criminal defendants; and monitoring case-by-case progress of both the criminal and civil calendar.

4.19 Analysis and Planning. Managerial applications of computers are distinguished by the fact that decision rules or data analysis programs must be created to instruct the computer. For example, if the computer is automatically to provide assignment schedules for a calendaring judge to review and accept or revise, it must have rules programmed

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by which it is to draw relevant data from docket status and court workload files and carry out the computations required to arrive at an assignment schedule that satisfies the constraints of the bench, bar, and public. Because the processes involved are frequently not well understood, applications of this type currently are regarded with suspicion in the courts.

4.20 Examples of the application of computers to analysis and planning are: calendaring judge assignments; scheduling court appearances and trials; coordinating attorneys' appearances to prevent conflicts; determining needs for auxiliary judicial manpower and calendaring their assignments; projecting court workload and signalling needs for expansion of the number of judges and other court manpower.

4.21 In a number of California courts, these types of management decisions are aided by information assembled and tabulated by ADP machinery. By and large, "improvements" in such data systems have been successive ad hoc changes which add to the reporting burden without significantly improving the decision process. (It is both interesting and significant that some presiding judges maintain their own private tabulations of data on their courts, recorded by their own hand on the familiar legal-length yellow-foolscap of the profession.) In part, this situation might be attributed to the suspicion of the validity of automated analysis programs. But fundamentally, it is the result of the lack of an overall understanding of the management problems of the courts and, in fact, of the absence of an articulation of the logical procedures which already are being followed in the making of essential day-to-day management decisions.

4.22 Important as it can be to improving court management, to automate many of the more essential management analysis and planning functions of the courts is an expensive and time-consuming task. It would be difficult to justify many such efforts unless there can be a sharing

of the expenses (and the benefits) of the needed data collection, processing, and reporting systems by more than one court and, where practical, by other agencies which are closely involved with the courts. This is one area of governmental activity where broad integration of the management of information is practical, can offer major economies, and whose benefits can be widely appreciated not only by participating courts but by the public at large. But the problems of integrated and shared computer systems are many and their costs are of major proportions. Even relatively small steps in such directions require searching study and careful planning efforts which remain to be undertaken to support such decisions for the courts of California.

#### COURT ADMINISTRATION

4.23 In recent years, Los Angeles County has come to serve as a model for improvements in judicial management. Filings in Los Angeles Superior Court have increased at an average annual rate of more than 4-1/2 percent over the past 5 years while judicial manpower has increased at a much lower rate. In the face of this, productivity in the Los Angeles Superior Court has significantly improved. The extent to which specific management procedures and controls were responsible for the increased productivity requires a much more comprehensive analysis than this study permitted. But three measures seem significant. One was the establishment of the position of Executive Officer of the Court and an administrative staff employed by the court and responsible through him directly to the court. The second was the improvement and automation of information on the status of the docket, accomplished through the court's own administrative staff. The third was the use of this information by presiding judges who were both determined and able effectively to manage the business of the court.

4.24 In view of the potential contributions of strong executive leadership in judicial administration, it would be valuable to explore alternative ways to ensure that such leadership is provided for the courts in their day-to-day management. At present, the courts of most judicial districts assign all administrative responsibility to the Presiding Judge who can shoulder or delegate as much or little of this burden as he chooses. This office is filled for terms of up to 2 years by one of the sitting judges, according to some system of rotation, seniority or election. Because of the influence of this position on court management effectiveness, perhaps presiding judges should be specially chosen for their administrative abilities. Or perhaps non-judicial executive-administrative offices should be established for each court that will have broader responsibilities for coordinating the flow of court business and for making court management decisions within prescribed policy guidelines acceptable to the judges and the Judicial Council. This is, perhaps, one of the most difficult of all the problems of management in the courts of California, dependent as it is on the personalities and personal relations of all the people—especially the judiciary—involved. But it also is the most critical of all the courts' problems and, therefore, deserves the most searching examination to find workable solutions.

APPENDIX A  
TRENDS IN GROWTH OF FILINGS IN CALIFORNIA COURTS

A.1 The total number of filings in the California lower courts has increased since 1959 at a rate equivalent to about 4 percent a year. Traffic filings have increased at a rate equivalent to about 5 percent a year, and nontraffic filings at a rate equivalent to about 4 percent a year. Gross changes in the numbers of filings over this period are shown in Table 1 for Municipal and Justice Courts, and in Table 2 for Superior Courts, at the end of this appendix.<sup>1/</sup>

A.2 The growth in the total numbers of filings has paralleled the growth of the state. The rate of traffic filings per 100 motor vehicle registrations has shown only relatively small year-to-year increases or decreases, and has not changed essentially since 1959 (Tables 3 and 4). The rate of nontraffic filings per thousand population has shown a similar pattern, but with an upward trend equivalent to about one-half of one percent a year.

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<sup>1/</sup> Even when they exhibit trend, rates of filings vary from year to year. Therefore, comparisons between any two selected years will differ according to the particular years selected. The discussion in this section is based primarily on trends in filings and rates of filings. FY 1959-60 is taken as the beginning year to facilitate comparisons with data in Crime and Delinquency in California: 1966, Bureau of Criminal Statistics, California Department of Justice.

A.3 Within this relatively stable pattern of total filing rates, individual categories of proceedings have shown different patterns of change. These have implications for the courts which will be examined below.

#### Municipal and Justice Courts

A.4 The growth in the total numbers of filings in Municipal and Justice Courts has closely paralleled the growth of the state for both traffic and nontraffic filings (Table 3). The composition of filings by category of procedure has, however, shown changes of interest. Criminal filings per 100,000 population have consistently decreased each year because of a consistent decrease in misdemeanor filings; and civil filings per 100,000 population have consistently increased each year except for FY 1966-67, the last year of the period considered (Table 4).

#### Superior Courts

A.5 Total filings in Superior Court per 100,000 population have shown an upward trend equivalent to about 1 percent a year (Table 5). Filing rates per 100,000 population for both juvenile and criminal filings have shown an upward trend since 1963. Of the major categories of other proceedings, rates of filings per 100,000 population for "Probate and Guardianship" filings and for "Divorce, Separate Maintenance and Annulment" filings have remained essentially the same since 1959 with some year-to-year variation,<sup>2/</sup> and similarly for rates of filing per 100 motor vehicle registrations for "Personal Injury, Death and Property Damage." The rate of filings per 100,000 population for all other filings has shown an upward trend equivalent to about 3 percent a year.

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<sup>2/</sup> It should be noted that marriage rates per 1,000 population have increased consistently in California each year during this period, from 6.6 in 1959 to 7.2 in 1967.

TRENDS IN FILINGS BY CATEGORY OF PROCEEDINGS

Criminal Filings

A.6 Felony and Felony Preliminary Filings. The rates of both felony and felony preliminary filings per 100,000 population have increased fairly consistently since 1959 (Table 6). Prior to 1965, these increases paralleled the increases in the population aged 10 to 39, but since then have been about twice as large.<sup>3/</sup> Data are not available to pinpoint the increases that may be due to narcotic and drug law offenses. According to Bureau of Criminal Statistics data, the increase in arrests per 100,000 population aged 10 to 39.<sup>4/</sup>

A.7 It is significant to consider the 1966-67 felony preliminary filing rate per 100,000 population of 370.1 in Municipal and Justice Courts, and the corresponding felony filing rate of 240.7 in Superior Courts, in relation to the felony arrest rate of 603.0 reported for 1966 by the Bureau of Criminal Statistics and the corresponding rate of 2,187.0 for felony crimes reported in the seven major offense groupings included in the Uniform Crime Reports.<sup>5/</sup> The relative magnitudes of the court filing rates to the arrest rate is consistent with the estimates of the Bureau of Criminal Statistics that only 55 percent of adult felony arrests result in a felony preliminary filing and only 37 percent in a felony filing.<sup>6/</sup>

A.8 Clearly, changes in the degree of success of the police in resolving felony crimes reported, and in the decisions of prosecuting

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<sup>3/</sup> This age group has been used by the Bureau of Criminal Statistics as a base for felony arrest rates, on the ground that persons in this age group commit about 90 percent of the state's felony crime. See Crime and Delinquency in California: 1966 and California Criminal Justice Digest 1960-1967.

<sup>4/</sup> Ibid.

<sup>5/</sup> Ibid.

<sup>6/</sup> Ibid.

agencies as to whether defendants in felony arrests are to be prosecuted for a felony, a misdemeanor, or released without any further prosecution, could have enormous impact on the level of felony proceedings in the courts.<sup>7/</sup> Using the workload weights of the Administrative Office of the Courts, an analysis indicates that such proceedings accounted for about 20 percent of the need for judgeships in both Municipal and Superior Courts in FY 1966-67 (Tables 7 and 8).<sup>8/ 9/</sup> This conclusion derives from the relative demands for judicial manpower of different types of cases (as shown in Tables 9 and 10).

A.9 Nontraffic Misdemeanor Filings. The rate of nontraffic misdemeanor filings per 100,000 population has decreased consistently each year since 1959 (Table 6). Data have not been published in sufficient detail to analyze this pattern. However, a special tabulation for the Los Angeles Municipal Court suggests that this pattern may result from a decreasing number of filings for intoxication and an increasing number of filings for other nontraffic misdemeanors.<sup>10/</sup> The net effect is a shift in the direction of requiring additional judge time.

A.10 The data on filings for intoxication suggest further questions as to the potential impact on the Municipal and Justice Courts of changes which might occur with changes in the treatment of misdemeanor

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<sup>7/</sup> It should be noted, of course, that prosecution for a misdemeanor instead of a felony, or release without prosecution, may be fully justified by the facts of the case.

<sup>8/</sup> Report on Superior Court Weighting System—Study of 1967 Time Report from Selected Courts, Administrative Office of the California Courts, Judicial Council of California, February 9, 1968 (Draft).

<sup>9/</sup> Judgeship Needs—Los Angeles Municipal Court (SB 1073), Memorandum to the Chairman of the Judicial Council from the Administrative Office of the Courts, April 30, 1968.

<sup>10/</sup> Ibid.

offenses.<sup>11/</sup> Such proceedings accounted for about 20 percent of the need for Municipal Court judgeships in FY 1966-67 according to the workload weights of the Administrative Office of the Courts (Table 7).

#### Juvenile Filings

A.11 The rate of juvenile filings per 100,000 population has increased consistently since 1961 (Table 5). Roughly half the increase appears to be due to an increase in the population aged 10 to 17, and half to an increase in the rate of filings per 100,000 population aged 10 to 17.<sup>12/</sup>

#### Civil Filings

A.12 Nontraffic Filings in Municipal and Justice Courts. The rate of nontraffic civil filings per 100,000 population has shown only small year-to-year changes, with a slight increase in the proportion of Small Claims filings (Table 4).

A.13 Civil Filings in Superior Courts. The major categories of filings—Probate (etc.), Divorce (etc.), and Personal Injuries (etc.)—have shown fairly stable filing rates per 100,000 population, with only small year-to-year increases or decreases (Table 5). However, other civil filings have shown an upward trend in their role per 100,000 population.

A.14 Traffic Filings. The rates of traffic filings in Municipal and Justice Courts per 100 motor vehicle registrations have been fairly stable. There has been a small relative increase in the proportion of nonparking violations which create demands for the time of judges.

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<sup>11/</sup> The President's Commission on Law Enforcement and Administration of Justice, The Courts, U.S. Government Printing Office, Washington, D.C., 1967.

<sup>12/</sup> This age group is used by the California Bureau of Criminal Statistics as a base for juvenile rates.

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Sufficient data are not available to analyze trends for the selected major traffic violations and other nonparking violations separately.

#### OUTLOOK FOR GROWTH IN DEMANDS ON THE COURTS

A.15 Summarizing the trends in filings in the lower courts, the outlook is for a growth in civil filings and misdemeanor filings at about the rate of growth in the state, and a continued growth in the felony filings at about twice the rate of growth of the population. The growth in the need for judgeships will be somewhat greater than this because of the relative increase in the categories of filings that require less bench time according to the workload weights of the Administrative Office of the Courts.

A.16 Changes in the demands on the courts arising from criminal filings which may be affected by the police, prosecuting agencies, and legislation governing misdemeanors, have a potential impact as significant as anticipated growth of the State.

TABLE 1

FILINGS IN MUNICIPAL AND JUSTICE COURTS BY TYPE OF PROCEEDING:  
FISCAL YEARS 1959-1960 AND 1966-1967

Type of Proceeding	No. of Filings (thousands)		
	Fiscal Year 1959-1960	Fiscal Year 1966-1967	Percent Change
<u>Nontraffic filings</u>			
Criminal filings:			
Felony preliminaries	44.2	71.6	61.9
Misdemeanors, not elsewhere classified	487.8	506.6	3.9
Total	532.0	578.2	8.7
Civil filings:			
Small claims	264.0	405.1	53.5
Other civil, not elsewhere classified	233.9	311.8	33.3
Total	497.8	716.9	44.0
All nontraffic filings	1,029.8	1,295.1	25.8
<u>Traffic filings</u>			
Illegal parking	3,865.8	5,148.8	33.1
Nonparking filings	2,997.9	4,326.2	44.3
Total	6,863.7	9,475.0	38.0
<u>All filings</u>	7,893.5	10,770.1	36.4
Source: Annual Reports of the Administrative Office of the California Courts, Judicial Council of California.			

TABLE 2  
 FILINGS IN SUPERIOR COURTS BY TYPE OF PROCEEDING:  
 FISCAL YEARS 1959-1960 AND 1966-1967

Type of Proceeding	No. of Filings (thousands)		
	Fiscal Year 1959-1960	Fiscal Year 1966-1967	Percent Change
Juvenile	41.5	58.0	39.8
Criminal	30.5	46.5	52.4
Other:			
Probate and guardianship	51.0	57.6	13.1
Divorce, separate maintenance, and annulment	84.6	109.6	29.5
Personal injury, death, and property damage	35.0	47.9	37.0
Eminent domain		9.4	
Civil actions, not elsewhere classified	61.1	88.5	59.9
Insanity and other infirmities	35.0	23.3	-0.6
Appeals from lower court	1.5	2.9	93.6
Habeas corpus	.9	3.1	255.3
Total	257.5	342.2	
All filings	329.5	446.7	35.6

Source: Annual Reports of the Administrative Office of the California Courts, Judicial Council of California.

TABLE 3  
 TRAFFIC FILINGS IN MUNICIPAL AND JUSTICE COURTS PER  
 HUNDRED MOTOR VEHICLE REGISTRATIONS:  
 FISCAL YEARS 1959-60 TO 1966-67

Fiscal Year	All Traffic Filings Per Hundred Motor Vehicle Registrations	Percent of Traffic Filings For Violations Other Than Illegal Parking
1966-67	87.3	45.7
1965-66	87.4	45.4
1964-65	87.1	44.7
1963-64	88.1	44.2
1962-63	85.3	43.6
1961-62	85.2	44.2
1960-61	88.0	43.7
1959-60	88.0	43.7

Sources: Data on filings from Annual Reports of the Administrative Office of the California Courts, Judicial Council of California; data on motor vehicle registrations as reported to the U.S. Bureau of Public Roads.

TABLE 4

NONTRAFFIC FILINGS IN MUNICIPAL AND JUSTICE COURTS  
PER THOUSAND POPULATION: FISCAL YEARS  
1959-60 TO 1966-67

Fiscal Year	Nontraffic Filings per Thousand Population			Percent of Criminal Filings for Felony Preliminaries	Percent of Civil Filings Other Than Small Claims
	All Nontraffic Filings	Criminal Filings	Civil Filings		
1966-67	67.0	29.9	37.1	12.4	43.5
1965-66	69.8	30.6	39.2	11.3	43.0
1964-65	69.2	31.3	37.9	10.0	43.2
1963-64	68.4	31.5	36.9	9.3	42.8
1962-63	67.5	31.7	35.9	9.6	44.4
1961-62	68.4	33.2	35.2	8.9	47.0
1960-61	68.9	34.2	34.7	8.3	46.0
1959-60	66.1	34.2	32.0	8.3	47.0

Sources: Data on filings from Annual Reports of the Administrative Office of the California Courts, Judicial Council of California; data on population from estimates prepared by the California Department of Finance for use of state agencies.

TABLE 5

FILINGS IN SUPERIOR COURT PER 100,000 POPULATION:  
FISCAL YEARS 1959-60 TO 1966-67

Fiscal Year	Filings per 100,000 Population							
	All Filings	Juvenile	Criminal	Other Filings				
				All Other Filings	Probate and Guardianship	Divorce, etc.	Personal Injury, etc.	Other Filings
1966-67	2,310.0	300.0	240.7	1,769.3	298.2	556.7	247.7	666.7
1965-66	2,302.3	294.6	226.4	1,781.3	313.1	442.2	259.0	657.0
1964-65	2,254.4	282.1	205.8	1,766.5	313.1	540.5	255.1	657.8
1963-64	2,209.6	276.0	198.5	1,735.1	314.1	545.5	246.2	629.3
1962-63	2,151.3	271.4	203.2	1,676.7	307.5	536.6	235.4	597.2
1961-62	2,125.3	260.3	207.6	1,652.4	313.6	532.8	231.2	574.8
1960-61	2,180.8	281.5	214.4	1,684.9	307.4	528.7	237.1	611.7
1959-60	2,115.7	266.4	196.1	1,653.2	327.2	543.3	224.5	557.7

Source: Data on filings from Annual Reports of the Administrative Office of the California Courts, Judicial Council of California; data on population from estimates prepared by the California Department of Finance for use of state agencies.

TABLE 6

CRIMINAL FILINGS IN CALIFORNIA LOWER COURTS PER 100,000 POPULATION:  
FISCAL YEARS 1959-60 TO 1966-67

Fiscal Year	Superior Court Criminal Filings per 100,000 Population	Municipal and Justice Court Criminal Filings per 100,000 Population		
		Total	Felony Preliminaries	Nontraffic Misdemeanors
1966-67	240.7	2,989.9	370.1	2,619.8
1965-66	226.4	3,055.8	347.7	2,708.1
1964-65	205.8	3,126.6	314.2	2,812.4
1963-64	198.5	3,149.4	293.6	2,855.8
1962-63	203.2	3,166.8	302.6	2,864.3
1961-62	207.6	3,315.6	296.5	3,019.1
1960-61	214.4	3,418.4	306.2	3,112.2
1959-60	196.6	3,415.5	283.9	3,131.6

Source: Data on filings from Annual Reports of the Administrative Office of the California Courts, Judicial Council of California; data on population from estimates prepared by the California Department of Finance for use of state agencies.

TABLE 7

DISTRIBUTION OF JUDGESHIP NEEDS BY CATEGORY OF PROCEEDING,  
 BASED ON WORKLOAD WEIGHTS: MUNICIPAL COURTS,  
 FY 1966-1967

Category of Proceedings	Percent of Judgeship Needs		
	All Municipal Courts	Los Angeles Municipal Court	Other Municipal Courts
<u>Nontraffic filings</u>			
Criminal filings:			
Felony preliminaries	20.7	21.8	20.3
Misdemeanors, not elsewhere classified:			
Intoxication	3.0	3.6	2.8
Other misdemeanors	17.9	14.9	18.9
Civil filings:			
Small claims	11.1	7.7	12.3
Other civil, not elsewhere classified	24.8	24.6	24.9
<u>Traffic filings</u>			
Nonparking filings:			
Selected major traffic violations	14.6	9.5	16.4
Other traffic	7.9	17.9	4.4
<u>Total filings</u>	100.0	100.0	100.0

Source: Data on filings from Annual Report of the Administrative Office of the California Courts, January 8, 1968; workload weights from Judgeship Needs—Los Angeles Municipal Court (SB 1073), memorandum to the Chairman of the Judicial Council from the Administrative Office of the Courts, April 30, 1968.

TABLE 8  
 DISTRIBUTION OF JUDGESHIP NEEDS BY CATEGORY OF PROCEEDING,  
 BASED ON WORKLOAD WEIGHTS: SUPERIOR COURTS,  
 FY 1966-1967

Category of Proceedings	Percent of Judgeship Needs		
	All Superior Courts	Superior Court of Los Angeles	Other Superior Courts
Juvenile	9.0	5.6	11.4
Criminal	20.7	25.8	17.1
Probate and guardianship	5.4	4.6	6.0
Divorce, separate maintenance, and annulment	12.8	11.7	13.7
Personal injury, death, and property damage	28.1	30.0	26.7
Eminent domain	6.4	7.6	5.4
Other civil	15.3	12.9	17.1
Insanity and other infirmities	1.6	1.1	2.0
Appeals	0.6	0.7	0.5
Habeas corpus	0.1	0.0	0.1
All filings	100.0	100.0	100.0

Source: Data on filings from Annual Report of the Administrative Office of the California Courts, January 8, 1968; workload weights from Report on Superior Court Weighting System—Study of 1967 Time Report from Selected Courts, Administrative Office of the California Courts, Judicial Council of California, February 9, 1968 (Draft).

TABLE 9

JUDGESHIP NEEDS PER 1,000 FILINGS BASED ON  
WORKLOAD WEIGHTS: MUNICIPAL COURTS

Category of Proceedings	No. of Judges Needed per 1,000 Filings	
	Los Angeles Municipal Court	Other Municipal Courts
<u>Nontraffic filings</u>		
Criminal filings:		
Felony preliminaries	0.83	0.67
Misdemeanors, not elsewhere classified		
Intoxication	0.03	0.03
Other misdemeanors	0.22	0.22
Civil filings:		
Small claims	0.07	0.07
Other civil, not elsewhere classified	0.15	0.22
<u>Traffic filings</u>		
Nonparking filings:		
Selected major traffic violations	0.17	0.25
Other traffic	0.02	0.03
<p>Source: Based on workload weights in <u>Judgeship Needs—Los Angeles Municipal Court</u> (SB 1073), memorandum to the Chairman of the Judicial Council from the Administrative Office of the Courts, April 30, 1968.</p>		

TABLE 10  
 JUDGESHIP NEEDS PER 1,000 FILINGS BASED ON  
 WORKLOAD WEIGHTS: SUPERIOR COURTS

Category of Proceedings	No. of Judges Needed Per 1,000 Filings
Juvenile (approximately)	0.65
Criminal	1.86
Probate and guardianship	0.39
Divorce, separate maintenance, and annulment	0.49
Personal injury, death, and property damage	2.45
Eminent domain	2.84
Other civil (approximately)	0.73
Insanity and other infirmities	0.29
Appeals	0.88
Habeas corpus	0.10

Source: Based on workload weights in Report on Superior Court Weighting System—Study of 1967 Time Report from Selected Courts, Administrative Office of the California Courts, Judicial Council of California, February 9, 1968 (draft).

APPENDIX B\*  
THE JUDICIAL COUNCIL

*Judicial Council*

A Judicial Council of 11 judges was established under a 1926 constitutional amendment. The Constitution was amended in 1960 to provide for a council of 18 members and in 1966 the number was raised to 21 members: The Chief Justice of California, one Associate Justice of the Supreme Court, three judges of courts of appeal, five judges of superior courts, three judges of municipal courts, two judges of justice courts, four attorneys, and one member of each house of the Legislature. The Chief Justice is chairman and appoints the judge members for two-year terms. The attorney members are appointed by the Board of Governors of the State Bar for two-year terms, and the Assembly and Senate each designate one of their members to serve on the council. All members serve without compensation. The Clerk of the Supreme Court is secretary.

Under authority of the 1960 amendment the Judicial Council, in 1961, appointed an Administrative Director, Mr. Ralph N. Kleps, and authorized him to head its newly created Administrative Office of the California Courts. The administrative office is the staff agency of the Council through which action is taken to carry out Council policies. Consolidated within it is a legal staff for preparation of the legal research basic to recommending improved procedural rules and constitutional and statutory amendments, and a statistical research staff to collect, analyze and report judicial statistics. The staff also engages in the development of programs for assisting in solving the administrative and management problems of the courts on a statewide basis through the adaptation to court use of proven business and public management techniques. In addition, the administrative office serves as a liaison for all the courts and for state and local agencies concerned with judicial administration.

In order to improve the administration of justice, the Constitution directs the Council to survey judicial business and make recommendations to the courts, to make recommendations annually to the Governor and the Legislature, and to adopt rules for court administration, practice and procedure not inconsistent with statute. The Council may exercise such other functions as may be provided by law.

\* Excerpt from California Blue Book, 1967.

The Constitution imposes on the Chairman of the Council the duty to expedite judicial business and equalize the work of the judges and to provide for the assignment of any judge to another court, but only with the judge's consent if the court is of lower jurisdiction. Retired judges may be assigned with their consent to any court. Assignment of judges from courts with light caseloads to those with crowded calendars has helped greatly to reduce congestion and delay in the courts. More than 3,400 assignments are now issued by the Chairman annually.

The Council has adopted rules of procedure for the various courts. These rules are set forth in a publication entitled *California Rules of Court* and include rules on appeal for the Supreme Court and courts of appeal, rules on appeal to the superior court, rules for the superior courts, rules for the municipal courts, rules for censure, removal or retirement of judges, and miscellaneous rules relating to trial courts including a rule on bail in criminal cases and a uniform traffic bail schedule. A rule applicable to all courts relating to photographing, recording, and broadcasting in courtrooms was adopted by the Council effective January 1, 1966. From time to time these rules have been amended to simplify procedure or otherwise improve the administration of justice.

At the request of the 1943 Legislature the Council made a survey of the procedure of California administrative agencies and the judicial review of their decisions. The work of the Council resulted in the enactment in 1945 of the Administrative Procedure Act requiring uniform rules of practice and procedure in issuing, suspending, and revoking professional and business licenses or similar rights and privileges. (Government Code, Sections 11500 et seq.)

Pursuant to a request of the Legislature in 1947, the Council made a study of the organization, jurisdiction, and practice of the California courts exercising jurisdiction below the superior court, and recommended a plan for uniform reorganization. A constitutional amendment was adopted in 1950 which made possible the reduction in the number of courts below the superior court from 768 to 400, and replaced seven different types of courts, some of them with overlapping jurisdiction, by but two, municipal and justice courts. There is now one type of trial court below the superior court in each judicial district, either a municipal or justice court. County boards of supervisors have authority by statute to divide their counties into judicial districts, change the boundaries, and create or consolidate districts. (Government Code, Section 71040.) The Judicial Council is charged by statute with the duty of submitting its recommendations to boards of supervisors concerning consolidation and enlargement of judicial districts with a view toward creating a greater proportion of full-time judicial offices, equalizing the work of the judges, expediting judicial business, and improving the administration of justice. (Government Code, Section 71042.)

In 1955 the Legislature authorized the Council to promulgate rules providing for pretrial conferences in civil cases in the superior and

municipal courts. (Code of Civil Procedure, Section 575.) The enactment of this statute was the result of many years' study of pretrial by the Council during which time pilot studies were conducted in certain superior courts. Rules relating to pretrial conferences were adopted effective January 1, 1957, as amendments to the superior court rules. The rules governing pretrial conferences and other pretrial procedures have been extensively revised in recent years with a view to enabling the courts to manage their calendars effectively without imposing any substantial burden upon attorneys.

The Legislature in 1959 requested the Council to study automobile accident litigation and report its recommendations for making the handling of such cases speedier, less expensive and more certain. The results of this study together with recommendations for legislation were reported to the 1961 Legislature (*Eighteenth Biennial Report of the Judicial Council of California*, pages 17-80).

The Legislature in 1961 enacted a completely revised Juvenile Court Law which provides that the Judicial Council shall hold conferences for juvenile court judges and referees, and establish rules governing practice and procedure in the juvenile courts (Welfare and Institutions Code, Sections 569 and 570). The first institute for juvenile court judges and referees was held in June 1962. A study based on problems discussed at that institute appears in the *Nineteenth Biennial Report of the Judicial Council* (page 69). Juvenile court institutes were also held in 1963, 1964, and 1966. Transcripts of proceedings of all of the institutes have been published and distributed to all juvenile court judges.

Under the authorization of Section 68551 of the Government Code, enacted pursuant to the council's recommendation, the Judicial Council may conduct institutes and seminars for the purpose of orienting judges to new judicial assignments, keeping them informed of new developments in the law and promoting uniformity in judicial procedure. Statewide sentencing institutes for superior court judges were held in 1965 and 1966, and institutes for municipal and justice court judges covering traffic laws and other lower court matters were held in 1964, 1965, and 1966. Transcripts of the proceedings were published and distributed to all judges of the respective courts.

Statistics are compiled from reports which all courts are required to file with the Judicial Council. This data assists the Council in meeting its constitutional responsibility to survey the condition of business in the courts and aids the Chairman in fulfilling his duty to expedite judicial business and equalize the work of the judges. These statistics are utilized in reporting to the Governor and the Legislature on the judicial manpower needs of the courts and in the analysis of other problems relative to the administration of justice. The Reports of the Council and the Administrative Office of the Courts to the Governor and Legislature contain a compilation of statistics for all courts in the state.

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- Hon. Gordon L. Files, Presiding Justice, Court of Appeal, Second Appellate District, Division Four, State Building, Los Angeles
- Hon. Fred R. Pierce, Presiding Justice, Court of Appeal, Third Appellate District, Library and Courts Building, Sacramento
- Hon. Joseph A. Rattigan, Associate Justice, Court of Appeal, First Appellate District, Division Four, State Building, San Francisco
- Hon. Leonard M. Ginsburg, Judge of the Superior Court, Tulare County, Visalia
- Hon. Thomas Kongsgaard, Judge of the Superior Court, Napa County, Napa
- Hon. George A. Lazar, Judge of the Superior Court, San Diego County, San Diego
- Hon. Homer B. Thompson, Judge of the Superior Court, Santa Clara County, San Jose
- Hon. Donald R. Wright, Judge of the Superior Court, Los Angeles County, Los Angeles
- Hon. Donald B. Constine, Judge of the Municipal Court, San Francisco Judicial District, San Francisco
- Hon. Claude M. Owens, Judge of the Municipal Court, Anaheim-Fullerton Judicial District, Anaheim
- Hon. Harold C. Shepherd, Judge of the Municipal Court, Los Angeles Municipal Court District, Los Angeles
- Hon. Robert J. Duggan, Judge of the Justice Court, El Cerrito-Kensington Judicial District, El Cerrito
- Hon. Richard C. Eldred, Judge of the Justice Court, Pacific Grove Judicial District, Pacific Grove
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## APPENDIX C

### ANALYSIS OF PRODUCTIVITY OF THE STATE SUPERIOR COURTS

#### Productivity Measures

C.1      There are a number of ways in which productivity of the courts can be measured and analyzed, depending upon the aspect of court operations that is to be studied. For this study, analysis interest centered on the question of effective utilization of the time of judges. One measure of productivity for this purpose is the number of cases disposed of per unit of judicial manpower. This is not satisfactory, however, because of the widely differing amounts of court time involved in different categories of proceedings and different methods of disposition. For example, criminal filings represented about 10 percent of Superior Court filings in fiscal year 1966-67 (Table 2, Appendix A), but were estimated to account for about 20 percent of judgeship needs (Table 8, Appendix A). Tables 7 to 10 in Appendix A illustrate this observation more generally.

C.2 The measure of productivity adopted for this report is the weighted annual hours of bench time per judge-equivalent man-year. The figure for weighted annual hours of bench time accounts for the mix of types of cases and methods of disposition reported by the courts, and the average bench time required for each. Bench time includes the time needed for both trial hearings and non-trial hearings such as settlement, pretrial, probation, detention, and other hearings occurring before and after trial.

C.3 Because the objective of the study analysis is to examine changing patterns in the utilization of the time of judges, rather than to estimate judgeship needs, standard time factors for dealing with combinations of various categories are used for all the years covered in the analysis.<sup>1/</sup> As procedures are modified to permit the disposition of cases with less judge-equivalent bench time than indicated by the standard time factors, productivity as reflected by the measure used will go up, and vice versa. It will also go up as the proportion of their time that judges (and/or judge-equivalents) can spend on the bench increases.

C.4 A particularly interesting property of this measure of productivity is that productivity can be increased by avoiding "dark courtrooms," such as caused by ineffective control of calendaring, or inadequate support services, without judges spending less time per case disposed of. This point is considered more fully in the discussion of the analysis results below.

#### Judge-Equivalent Man-Years

C.5 The judge-equivalent man-years are an estimate of the total man-years available to the courts from their own judges and additional judicial assistance furnished them for conducting their business.

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<sup>1/</sup> A more direct approach would be based on special time studies of court operations. These, however, were not within the scope of the study.

C.6 Within the judge-equivalent man-year figures, additional assistance is that by temporary judges (judges assigned temporarily from other courts, retired judges recalled for service, and lawyers and commissioners sitting as judges), and quasi-judicial commissioners and referees.<sup>2/</sup> In this productivity analysis, man-years for regular judges are taken as the number of Superior Court judgeships authorized, less the man-year equivalent of days of assistance provided to courts other than Superior Courts. Man-years for judge-equivalents are estimated from the total days of assistance to Superior Courts reported to the Administrative Office of the California Courts, less days of assistance provided by Superior Court judges assigned to other Superior Courts. The judge-equivalent man-years used in the analysis are the sum of these two figures. For computing judge-equivalent man-years for the Superior Court of Los Angeles and for the balance of the state Superior Courts, account was taken of assistance exchanged between the two groups.

C.7 To the extent to which vacancies exist in authorized judgeships, the productivity measure will be subject to a downward bias. During a period of expansion in the number of judgeships, some time will inevitably be lost between the authorization of a judgeship and the filling of the position, and this will introduce some downward bias. The correction introduced in the analysis reflected the approval of new judgeships within a given year, but some overstatement of judicial man-years may remain where appointment or election dates differed from dates of authorization or where temporary vacancies occurred for other reasons. These potential biases are not considered significantly to affect year-to-year productivity comparisons.

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<sup>2/</sup> See, for example, Annual Report of the Administrative Office of the California Courts, January 8, 1968, Section F, "Judicial Assignments and Assistance," pp. 109-113.

### Weighted Annual Hours of Bench Time

C.8 The weighted annual hours of bench time used in the analysis are simply an estimate of the bench time required by judges and judge-equivalents to get the work done for the cases reported as disposed of, based on the standard time factors. The method adopted for computing weighted annual hours of bench time parallels that used by the Administrative Office of the California Courts to compute weighted workloads for estimating judgeships needs, but with some significant differences.

C.9 Weighted workload factors as computed by the Administrative Office weight the number of filings reported by category of proceedings according to an estimate of average bench time needed to dispose of them. Totals of weighted workloads for all categories are converted into an estimate of judgeship needs by dividing them by an agreed-upon figure for average judicial time available during a year for hearings on the bench.<sup>3/</sup> Average bench time used for each category of proceedings is a weighted average of the times required according to the method of disposition.

C.10 Weights for each type of case computed by the Administrative Office of the Courts assume the same mix of dispositions and the same ratio of total dispositions to filings by category of proceeding as in the year from which the weights were derived. But the method used in this report's analysis applies the original estimates of average bench time per case to the actual method of disposition reported in each year for each category of proceeding.

### Data Sources

C.11 Data on numbers of dispositions by category of proceedings and method of disposition are taken from the annual reports of the Administrative Office of the California Courts. Estimates of average bench time

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<sup>3/</sup> Ibid., Section C.6, "Weighted Caseloads," pp. 88-92.

for the individual category of proceedings and method of disposition classes, which are used as the standard time factors in the analysis, are derived from estimates developed by the Administrative Office.<sup>4/</sup>

C.12 The time estimates developed by the Administrative Office of the California Courts are computed on a per-filing basis rather than on a pre-disposition basis. Converting those estimates to a per-disposition basis is straightforward for trial hearing time. For non-trial hearing time, since all filings are eventually disposed of, it was assumed that non-trial hearings per disposition are the same as shown for non-trial hearings per filing. To the extent that filings increase faster than dispositions, an upward bias in the estimated time per disposition would result from this assumption.

C.13 Test of Reasonableness. The time estimates cited are based on an 11-court study conducted in 1967 by the Administrative Office of the California Courts which excluded the Superior Court of Los Angeles. Therefore, the bench time weights should reasonably reflect the level of judge-equivalent bench time for the Superior Courts outside of Los Angeles. The analysis made in this study indicates an average of weighted annual hours of bench time per judge-equivalent of slightly over 780 hours for these courts over the 6 years included in the study, with a high figure of approximately 800 hours in 3 of the 6 years. This is within the range of 750 to 850 hours of bench time per year per judge which appears in publications of the Administrative Office of the Courts.<sup>5/</sup>

C.14 Superior Court of Los Angeles. A principal objective of this analysis is to compare the relative effectiveness in utilization of time of

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<sup>4/</sup> Report on Superior Court Weighting System—Study of 1967 Time Report from Selected Courts, Administrative Office of the California Courts, Judicial Council of California, February 9, 1968 (Draft).

<sup>5/</sup> See the discussions in the references cited in footnotes 3 and 4.

judges of the Superior Court of Los Angeles with that of the aggregate of other Superior Courts of the state. To do this, the analysis must use the same standard time factors for both sets of courts to indicate any basic differences in administration and management of judicial resources. Accordingly, the time factors used are those derived from the 11-court study by the Administrative Office of the Courts. If hearing and trial procedures in the Los Angeles courts result in different time factors than elsewhere in the state, then the weighted annual hours of bench time per judge-equivalent man-year will be different. But should markedly different time factors exist, then this in itself suggests a condition which deserves special investigation.

#### Analysis Results

C.15 Results of the analysis made in the study are shown in Figure C.1. In this figure, annual productivity indices are compared that were estimated for the Superior Court of Los Angeles with the aggregate of the rest of the state's Superior Courts and with the aggregate of all the Superior Courts. The productivity levels resulting from these groupings of the courts are significantly different, as the figure shows.

C.16 In the aggregate, the productivity of all the Superior Courts (in terms of weighted bench hours per judge-equivalent man-year) has changed very little since 1961. Excluding Los Angeles Superior Court, the average productivity of the rest of the Superior Courts has been virtually a constant (the 6-year average productivity level is 784 bench hours per judge-equivalent man-year, varying by no more than 4 percent from year to year). The productivity level of the Los Angeles Court, while it fluctuated widely from year to year, still had a 6-year average which is 40 percent higher than that of the aggregate of the rest of the state's Superior Courts. (Note that even at its minimum, the productivity level of the Los Angeles Court is 25 percent above that of the rest of the state's courts.)

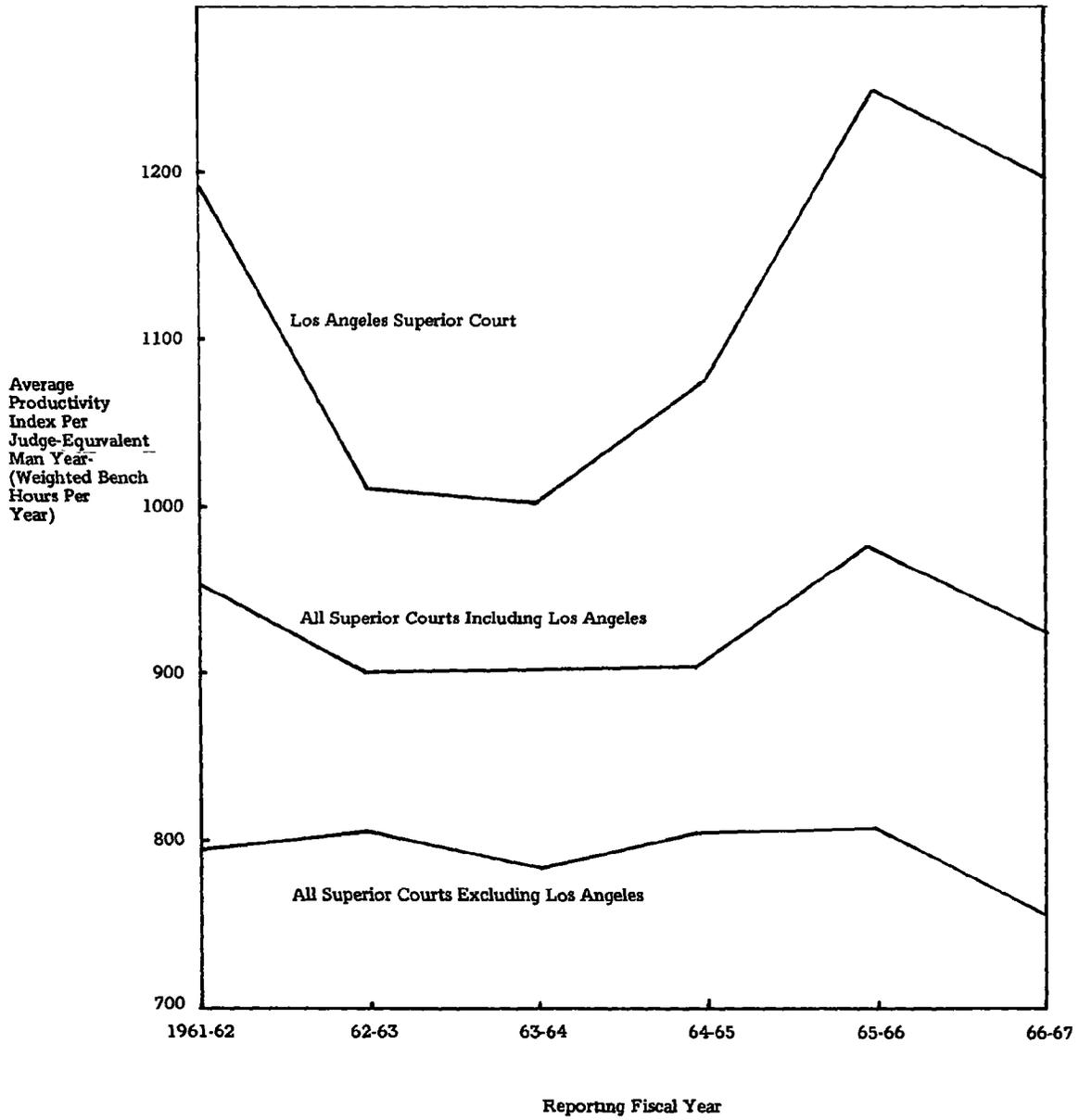


FIGURE C.1. ANNUAL PRODUCTIVITY LEVELS OF STATE SUPERIOR COURTS

C.17 The generally higher level of productivity in the Superior Court of Los Angeles is probably due to a number of factors. Among them is the development of relatively effective control over trial schedules and effective calendar management, including judge assignments. The cost to achieve such control included that of expanding the court's administrative resources to produce the necessary management information and to assist the judges in various administrative and research chores. The Administrative Office of the Los Angeles Court, together with the Clerk's Office, afford the greatest proportionate support of the judiciary in the state.

C.18 The wide fluctuations in productivity levels in Los Angeles demonstrate the importance of effective management of all the courts' resources by the team of Presiding Judge and Executive Officer of the court. The high productivity level indicated in the 1961-62 period was reached while Justice Louis Burke (now of the California Supreme Court) was Presiding Judge and Edward Gallas was the first Executive Officer of the Court. This level was reached again in the 1965-66 period while Judge Kenneth Chantry was Presiding Judge. After Gallas resigned there was some loss in productivity, but the value of the Administrative Staff which was developed is evident in the continuing high trend.

C.19 Undoubtedly there is still room for significant improvement in the performance of the Superior Court of Los Angeles. But the possible improvement for other Superior Courts is considerably greater and more important to achieve. Specifically which measures and what additional administrative resources are required that would be the most cost-effective to implement remain to be determined.