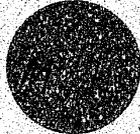


# The Justice System Journal



Volume 16/1 ■ 1992

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**Delays in Indian Courts: Why the Judges Don't Take Control**

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**Judge**

**Another Judge**

**and Judges**

*Wasby*

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# Research Note: Measuring Trial Court Consolidation\*

*Victor E. Flango and David B. Rottman\*\**

*Simplifying court structure is one of the key features of court unification. After examining changes in court structure over the past 15 years, this research explores the usefulness of three new indicators of consolidated trial court structure. Berkson's index was first updated, replacing 1976 data with data from 1987. This replication found that trial court consolidation increased during the period under study. Next, a more straightforward conception of court structure was used to supersede Berkson's index. Finally, this measure of court structure was combined with three nonorganizational measures—the proportion of limited jurisdiction judges to all judges, extent of court jurisdiction, and jurisdictional clarity—to form an index of trial court consolidation.*

## Overview

Court unification has been a central platform in the judicial administration reform agenda since Pound made his famous address to the American Bar Association in 1906 on the "Causes of Popular Dissatisfaction with the Administration of Justice" (Pound, 1906). Indeed, Dahlin (1986:4) claims that the "remedy of unification continues to be the basic prescription for court modernization." Even arguments for a more decentralized consultative model of court unification (Gallas, 1976) do not necessarily imply that fragmented trial courts are desirable. The word *unification* covers many aspects of court reform. Carbon

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\*\* Victor E. Flango, Ph.D., and David B. Rottman, Ph.D., are both with the Research Division of the National Center for State Courts.

and Berkson (1978:2) identified 22 court reform items, which they distilled into four dimensions of court unification: simplified organizational structure, centralized management, centralized rule making, and centralized budget process and state financing. Of these, the most basic is trial court consolidation. Indeed, Ashman and Parness (1974: 29-30) contend that one statewide trial court of general jurisdiction is all that is required for unification.

## Trial Court Structure

Although the court reform movement can be credited with inducing a number of changes in the state courts, "probably the most significant change has been in streamlining and consolidating the courts" (Glick, 1982, p. 26). For the most part accomplished since 1960 (Ashman and Parness, 1974), consolidation is designed to replace structural and jurisdictional fragmentation with "court systems that are pleasing in terms of simplicity and clarity of organizational lines" (Handberg, 1982, p. 104).

The continuing and intuitive appeal of unification is based upon a simple, streamlined court structure. As Berkson and Carbon (1978:4) argue, "If there is a single element that might be considered the heart of court unification it is the consolidation and simplification of court structure." Lawson (1982:284) predicted that no change would occur over the 1980s in the number of structurally unified courts. Our evidence, however, suggests that structural consolidation has become more prevalent in recent years. Trial courts in 19 states became more structurally consolidated, and trial courts in 3 states became less so between 1975 and 1987. An updated and more refined set of empirical measures of trial court consolidation can help judges, court managers, state level policymakers, reformers, and researchers identify states with similar court structures and, thus, determine the impact of court structure on court management, financing, and other potential consequences of trial court consolidation.

### A. Berkson's Measure of Trial Court Consolidation

Berkson's (1978) index of trial court consolidation has been sufficiently robust to stand the test of time. If data from 1987 are substituted for data from 1975, Berkson's index of court consolidation can be replicated. Berkson assigned each of the four variables on the consolidation index a value between one and four, with four representing the highest degree of consolidation. The *number of courts* is coded so that states with only one trial court receive four points, states with two trial courts receive three points, states with three trial courts receive two points, states with four trial courts receive one point, and states with five or more trial courts receive no points. For the *general jurisdiction* variable, Berkson assigns four points to states with one trial court of general jurisdiction, as well as to states with either one or no courts of limited jurisdiction. To measure consolidation of *limited jurisdiction courts*, four points are allocated to states with no more than one court of limited jurisdiction, two points to states with two such courts, and no points to those states with three or more limited jurisdiction courts. The presence of separately administered *specialized courts* is

quantified in the Berkson coding scheme by assigning four points to states with no courts of special jurisdiction, two points for one or two special courts, and no points if three or more specialized courts are present. The scores on the four variables are then added for each state to obtain the scale value, with a score of 16 representing complete trial court consolidation.

Scores on Berkson's scale of court consolidation increased since 1971 in 19 states, remained the same in 24, and were lower in 7 states (**Table 1**). The greatest changes during the 12-year period are extensive trial court consolidations in Kentucky, Minnesota, and Missouri. Shifts in the opposite direction followed from the creation of an administrative court in Maine, a water court in Montana, and a county court in Wyoming, as well as through the upgrading of a limited jurisdiction court to general jurisdiction status in Vermont.<sup>1</sup>

Berkson's degree-of-consolidation measure depends upon the judgment of analysts. For example, if a state has consolidated all its trial courts but retains departments with distinct subject matter and geographic jurisdiction, should the court be counted as one court? Does it matter if courts have identical subject matter jurisdiction but different routes of appeal? Should municipal courts of record be distinguished from municipal courts that have the same jurisdiction but are not courts of record?

Several additional ways to measure trial court consolidation that are designed to supplement or refine Berkson's measures are explored here. A more direct classification of states into three categories based upon degree of trial court consolidation is proposed later in this article (Table 3). This single structural measure is straightforward, easily understood, and fairly well reflects Berkson's index. States classified as most consolidated either have only one general jurisdiction court or one general jurisdiction and one limited jurisdiction court. The American Bar Association recommends consolidating all trial courts into one court with a single class of judges assisted by legally trained judicial officers (ABA Standards, 1974: 2, revised 1989). This principle is sometimes modified to embrace both a single trial court that has two or three classes of judges and a single trial court whose jurisdiction does not include municipal matters (Lawson, 1982, p. 275). The least-consolidated states have either three or more limited jurisdiction courts or three or more special jurisdiction courts. The middle category contains states with court organizations that are partially consolidated, with two courts of general, limited, or special jurisdiction.

Roughly one-third of the states currently fit into each category. Fifteen states and the District of Columbia have consolidated court structures. Nineteen states are partially consolidated, and 16 have court systems complex enough to warrant placement in the limited consolidation category. Essentially, this threefold classification reflects the same qualities of court consolidation as Berkson's index, if the states with scores of 15 to 16 are

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1 Data on trial court structure is from *State Court Caseload Statistics: Annual Report 1988*, Williamsburg, Va.: National Center for State Courts, 1990. The lower unification scores that we report for Colorado, Oklahoma, and Oregon may reflect differences either in which adjudication bodies are counted as a court (we treat the Oklahoma Tax Review Court and the Colorado Water Court as separate court systems; Berkson apparently did not) or whether municipal and justice of the peace courts are always regarded as courts of limited jurisdiction (our decision rule) or sometimes as courts of special jurisdiction (apparently Berkson's conclusion in some states). Data on the other variables are from National Center for State Courts (1990).

**Table 1**  
**The Degree of Consolidation in Trial Court Structure**

State	Total Number of Trial Courts	Number of General Jurisdiction Courts	Number of Limited Jurisdiction Courts	Number of Special Jurisdiction Courts	Berkson's Index 1975	Index 1987
<b>Most Consolidated</b>						
District of Columbia	4	4	4	4	--	16
Idaho	4	4	4	4	16	16
Illinois	4	4	4	4	16	16
Iowa	4	4	4	4	16	16
South Dakota	4	4	4	4	16	16
Alaska	3	4	4	4	12	15
Florida	3	4	4	4	15	15
Hawaii	3	4	4	4	15	15
Kansas	3	4	4	4	12	15
Kentucky	3	4	4	4	8	15
Minnesota	3	4	4	4	6	15
Missouri	3	4	4	4	4	15
North Carolina	3	4	4	4	15	15
Virginia	3	4	4	4	15	15
Wisconsin	3	4	4	4	12	15
<b>Consolidated</b>						
Connecticut	3	4	4	2	11	13
Arizona	2	4	2	4	12	12
California	2	4	2	4	12	12
Maryland	2	4	4	2	12	12
Nevada	2	4	2	4	12	12
New Jersey	2	4	4	2	4	12
North Dakota	2	4	2	4	9	12
Washington	2	4	2	4	9	12
West Virginia	2	4	2	4	11	12
Maine	1	4	4	2	12	11
Nebraska	1	4	4	2	9	11
Oklahoma	1	4	4	2	12	11
Alabama	1	4	2	2	6	9
New Hampshire	1	4	2	2	9	9
Utah	1	4	2	2	9	9
Wyoming	1	4	0	4	12	9
New Mexico	0	4	2	2	8	8
Rhode Island	0	4	4	0	8	8
South Carolina	0	4	2	2	4	8
Vermont	2	0	4	2	11	8
<b>Least Consolidated</b>						
Colorado	0	4	2	0	8	6
Georgia	0	4	0	2	4	6
Louisiana	0	4	0	2	6	6
Massachusetts	0	4	2	0	6	6
Montana	0	4	0	2	9	6

*continued on next page*

**Table 1 (continued)**  
**The Degree of Consolidation in Trial Court Structure**

State	Total Number of Trial Courts	Number of General Jurisdiction Courts	Number of Limited Jurisdiction Courts	Number of Special Jurisdiction Courts	Berkson's Index 1975	Index 1987
<b>Least Consolidated</b>						
Ohio	0	4	0	2	6	6
Oregon	0	4	0	2	8	6
Pennsylvania	0	4	0	2	6	6
Tennessee	0	4	2	0	2	6
Texas	0	4	0	2	2	6
Michigan	0	0	2	2	2	2
Arkansas	0	0	0	2	2	2
Delaware	0	0	0	2	2	2
Indiana	0	0	0	2	0	2
Mississippi	0	0	0	2	2	2
New York	0	0	0	2	0	2

classified as having a consolidated trial court structure and states with scores of 0 to 6 are classified as having complex structures. The differences are whether Massachusetts and Wisconsin should be counted as states with consolidated trial courts, and how to classify Wyoming. The Trial Court of Massachusetts was established in July 1978 to consolidate the state courts and to better use the extensive court resources of the Boston metropolitan area. The consolidated Trial Court of the Commonwealth is formed of seven separately administered departments. The individual departments retain significant autonomy. There is a single salary scale for all of the court's justices. Therefore, Massachusetts could be classified as either most or least consolidated. By our criteria, Wisconsin would fit in the most-consolidated category, and Wyoming would be counted among the least-consolidated states. Berkson's index would put these states in the middle category.

## B. Alternative Measures of Consolidation

To assist in our classification of the three states and to further refine or supplement the measures, three other indicators are suggested and measured against the "base" structural measure. These are the proportion of judges serving on courts of limited jurisdiction, the extent of major trial court jurisdiction, and the degree of overlap in jurisdiction between levels of courts.

### 1. Percentage of General Jurisdiction Judges

Logically, the more consolidated a state's trial courts, the higher the percentage of a state's judiciary that should serve on courts of general jurisdiction. Certainly in states that only have one trial court, general jurisdiction court judges necessarily constitute 100 percent of

**Table 2**  
**Extent of Jurisdiction and Overlapping Jurisdictions**

Extent of Jurisdiction	Overlapping Jurisdiction			
	1. Consolidated	2. Mainly Consolidated	3. Mixed	4. Complex
1. <i>Most Extensive</i> —All Cases	District of Columbia Idaho Illinois Iowa Massachusetts Minnesota South Dakota	Connecticut Kansas Maine Missouri Wisconsin	Hawaii North Dakota Vermont	Oklahoma Georgia Indiana Louisiana
2. Core Jurisdiction Plus Juvenile and DWI		Alaska California Florida North Carolina	Alabama Nebraska South Carolina	Pennsylvania Texas
3. Core Jurisdiction Plus Juvenile		Maryland New Jersey Virginia Washington	Arizona Colorado Montana Wyoming	Arkansas Mississippi Ohio Oregon
4. <i>Least Extensive</i> —Core Jurisdiction Only		Kentucky Nevada	Michigan New Hampshire New Mexico Rhode Island Utah Wyoming	Delaware New York Tennessee

the state's judiciary. In states with one court of general jurisdiction and one court of limited jurisdiction, general jurisdiction judges might be expected to represent about half of all judges. In states with multiple courts of limited and special jurisdiction, general jurisdiction court judges should constitute a smaller proportion of all state judges.

This measure was only weakly related to a simplified trial court structure. When reoriented to measure the percentage of judges who are judges in courts of limited jurisdictions, however, the relationship was as strong as expected. In **Table 3**, a score of "1" represents a state with no limited jurisdiction judges, "2" equals fewer than 60 percent of the judges serving in limited jurisdiction courts, "3" is between 61 and 80 percent of all judges serving in courts of limited jurisdiction, and a "4" indicates that more than 80 percent of all judges serve in limited jurisdictional courts.

## 2. Extent of Jurisdiction

It seems sensible to expect a strong relationship between the degree of trial court structural consolidation and the extent of jurisdiction in general jurisdiction courts. In states with a single trial court, the jurisdiction of general jurisdiction courts must encompass everything from felony criminal cases to domestic relations cases to traffic offenses. On the other hand, in states that have separate family courts, probate courts, and traffic courts, the jurisdiction of general jurisdiction courts should be much less extensive. Analysis of court jurisdiction reveals that nearly all general jurisdiction courts handle felony, tort, contract, real property, domestic relations, and civil appeals cases. These constitute the core set of cases common to all courts of general jurisdiction. Courts that handle only these types of cases have the least extensive jurisdictions. To this core set of cases, a second group of states adds jurisdiction over juvenile cases—both criminal offenses and child-victim petitions. In a third group of states, the major trial court's jurisdiction includes not only the core cases and juvenile cases but also driving while intoxicated (DWI) or driving under the influence (DUI) cases. In the final group of states, which ought to contain the most structurally consolidated court systems, the main trial court exercises jurisdiction over all cases, including the aforementioned categories, as well as traffic cases, ordinance violations, and sometimes parking violations.

## 3. Concurrent Jurisdiction

Overlapping or concurrent jurisdiction is one explanation for why extent of major trial court jurisdiction may not be as closely related to structural consolidation as expected. Court systems that are least structurally consolidated can also have extensive jurisdiction if there is overlapping jurisdiction between the general jurisdiction court and courts of limited or special jurisdiction. Overlapping jurisdiction occurs because legislatures sometimes create new courts in lieu of increasing the size or jurisdictions of existing courts (Callendar, 1927: 22-24).

For the District of Columbia and the six states with only one trial court of general jurisdiction and no courts of limited or special jurisdiction, there is no possibility of overlapping jurisdiction, and so these states are "most consolidated" on both measures. The remaining 44 states have at least a two-tier court system and, thus, the potential for overlapping jurisdiction. States classified as "mainly consolidated" have two court levels, but all limited jurisdiction courts have uniform jurisdiction (i.e., identical authority to decide cases). The 16 states classified as "mixed" have two court levels that overlap in jurisdiction, and the 13 states classified as "complex" have several limited jurisdiction courts with jurisdictions that overlap with each other and with the courts of general jurisdiction. A comparison of the extent of jurisdiction with overlap in jurisdiction finds that the two are related, but definitely separate, indicators (see **Table 2**).

A close relationship also exists between the structural and jurisdictional aspects of court consolidation. The most structurally consolidated courts tend to have the most

**Table 3**  
**Trial Court Consolidation**

State	Structure	Limited Jurisdiction Judges as Percent of all Judges	Overlapping Jurisdiction	Extent of Jurisdictional Consolidation	Index
District of Columbia	1	1	1	1	4
Idaho	1	1	1	1	4
Illinois	1	1	1	1	4
Iowa	1	1	1	1	4
Massachusetts	1	1	1	1	4
Minnesota	1	1	1	1	4
South Dakota	1	1	1	1	4
Kansas	1	2	2	1	6
Missouri	1	2	2	1	6
Wisconsin	1	2	2	1	6
Connecticut	2	2	2	1	7
Florida	1	2	2	2	7
Alaska	1	3	2	2	8
Hawaii	1	3	3	1	8
Virginia	1	2	2	3	8
California	2	2	2	2	8
Maine	2	3	2	1	8
Vermont	2	2	3	1	8
Kentucky	1	2	2	4	9
North Carolina	1	4	2	2	9
Maryland	2	2	2	3	9
Nebraska	2	2	3	2	9
New Jersey	2	2	2	3	9
Washington	2	2	2	3	9
North Dakota	2	4	3	1	10
Oklahoma	2	3	4	1	10
Indiana	3	2	4	1	10
Alabama	2	4	3	2	11
Arizona	2	3	3	3	11
Nevada	2	3	2	4	11
South Carolina	2	4	3	2	11
Louisiana	3	3	4	1	11
New Hampshire	2	3	3	4	12
New Mexico	2	3	3	4	12
Rhode Island	2	3	3	4	12
Colorado	3	3	3	3	12
Georgia	3	4	4	1	12
Pennsylvania	3	3	4	2	12
Utah	2	4	3	4	13
West Virginia	2	4	3	4	13
Michigan	3	3	3	4	13
Montana	3	4	3	3	13
Ohio	3	3	4	3	13
Oregon	3	3	4	3	13

*continued on next page*

**Table 3 (continued)**  
**Trial Court Consolidation**

State	Structure	Limited Jurisdiction Judges as Percent of all Judges	Overlapping Jurisdiction	Extent of Jurisdictional Consolidation	Index
Oregon	3	3	4	3	13
Texas	3	4	4	2	13
Wyoming	3	4	3	3	13
Arkansas	3	4	4	3	14
Mississippi	3	4	4	3	14
Tennessee	3	3	4	4	14
Delaware	3	4	4	4	15
New York	3	4	4	4	15

extensive jurisdiction and the least amount of concurrent jurisdiction among courts. In other words, streamlining the organization increases the breadth of jurisdiction, reduces jurisdictional overlap, and, thus, achieves one of the main goals of court unification. (See **Table 3** for the final index of trial court consolidation.)

## Conclusions

This article has examined one key aspect of court unification—trial court consolidation. Updating the Berkson index of trial court consolidation to 1987 revealed that the trend toward consolidation continues. On a methodological note, the research has shown that trial court structure itself is a more straightforward and parsimonious measure of trial court consolidation than Berkson's four-variable point system. The structural measure proposed here was closely related to three nonstructural measures of consolidation (proportion of total judges who serve on limited jurisdiction courts, extent of jurisdiction, and concurrent jurisdiction) to form an index of trial court consolidation that integrates jurisdictional and structural measures. Even though this index is an improvement over its predecessor, the coding scheme upon which it is based still requires some judgment. Although most reasons for classification are clear, the extent to which Massachusetts is unified still depends upon interpretation. The other states with an index score of "4" are clearly consolidated. The relationship between trial court consolidation and other components of a unified court system is a topic for later research. **jsj**

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