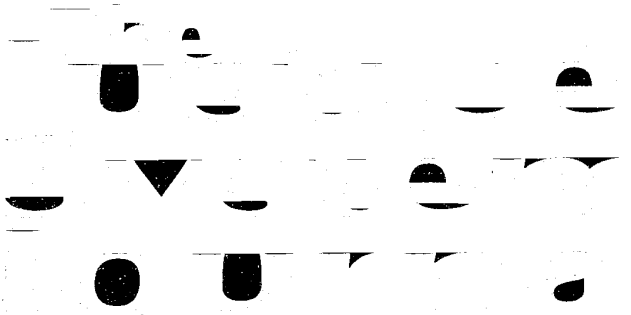

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Court Unification and Quality of State Courts[1]

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Court unification is nearly synonymous with court reform and, indeed, is the basic prescription for court modernization. The basic elements of court unification, including trial court consolidation, defined jurisdiction, centralized management, state-level financing, merit selection, and centralized rulemaking, have been endorsed by the American Bar Association and other influential groups as ideals to be attained. The purpose of this research is to evaluate the basic premises of unification. Are states that most closely approximate the unification ideal "better" in any way than states that do not?

To conduct an evaluation, a measure of court quality is needed. This research uses the concurrent jurisdiction of state and federal courts over diversity-of-citizenship jurisdiction as the yardstick to test the principles of unification. In diversity cases, which sometimes involve disputes between citizens of different states, litigants and their attorneys often have a choice between filing in state court or filing in federal court. An important consideration in that choice is the overall competence of the judiciary. This research uses that choice as an indirect, unobtrusive measure of the quality of state courts. Attorneys who choose to file in state courts when a federal option is available are "voting with their feet." Conversely, attorneys who choose to file in federal courts when a state option is available may be making a comment on the quality of state courts.

Of the indicators of court unification, only the trial court consolidation and method of judicial selection were mildly associated to preference for state or federal court. Attorneys and their clients are not more likely to choose state

[1] Data on diversity-of-citizenship jurisdiction was collected for another purpose under a grant (SJI-88-14L-B-070) from the State Justice Institute to the National Center for State Courts (NCSC). This article is part of a larger work completed as part of the Court Executive Development Program of the NCSC's Institute for Court Management. The views expressed, however, are those of the author and not of the funding agency or the NCSC. The reviews of Dr. Roger Hanson, Dr. David Rottman, Dr. Steven Wasby, and the anonymous reviewers, as well as the the editorial assistance of Carol Flango and the word-processing skills of Pam Petrakis, are gratefully acknowledged.

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courts over federal courts in states that are administratively or financially centralized. State courts are preferred slightly in states where trial courts are consolidated and where judges are selected by either nonpartisan selection or the merit plan. To the extent that quality of judges made a difference in forum selection, state courts where judges are chosen by nonpartisan election or merit selection have the edge. This finding suggests that standards that would bar all forms of election be reconsidered. Obviously, one reason for these findings may be that the measures of court quality and court unification were inadequately operationalized. The research poses the question of whether a hierarchical court management system, manifested as the grail of court unification, can be reconciled with a coordinate decentralized court process rooted in the adversary system. It suggests that less effort be spent fitting American courts to the European, hierarchical ideal of unification and that more effort be devoted to reengineering courts to better coordinate caseflow with agencies over whom courts do not exercise control, but with whom they must cooperate.

> ". . . issues of administration are in fact, issues of the basis of judicial power and issues of court structure and administration . . . are, at bottom, substantive policy issues."—*Harry P. Stumpf*

> ". . . in complicated situations efforts to improve things often tend to make them worse"—*Jay W. Forester*

Court unification is a concept broad enough to encompass court reform itself. Dahlin (1986) said, "The remedy of unification continues to be the basic prescription for court modernization." Historically, unification has been defined to include not only streamlined court organization, but also the centralized management, uniform rules of civil and criminal procedure, a centralized budget process, state financing, centralized rulemaking, and a court personnel system that includes merit selection of judges (Gazell, 1971; Berkson and Carbon, 1978). This article evaluates key standards of court unification as promulgated in the American Bar Association/Judicial Administration Division's *Standards Relating to Court Organization* (February 1974, amended February 1990). These *Standards* are influential not only because they carry the *imprimatur* of the American Bar Association, but also because the endorsements have incorporated such previous prestigious recommendations as Pound's (1937; 1940), the ABA's Model Judicial Article (1962), the Presidents' Task Force Report on the Administration of Justice (1967), and the National Advisory Commission's Report on Criminal Justice Standards and Goals.

Ever since the *Standards* were originally recommended by the ABA Section on Judicial Administration, under the leadership of Chief Judge John J. Parker, adopted by the House of Delegates in 1938, and expanded as a result of efforts by New Jersey Chief Justice Arthur T. Vanderbilt (1949), they have contained endorsements of the basic elements of court unification. Yet, the basic premises of unification have never been tested empirically. In the words of Hays (1977:129),

> For approximately seventy years the concepts of unification, consolidation, simplification and centralization have been taken as articles of faith, members of the academic and legal communities have accepted these precepts to be correct because intuitively they 'sounded correct'.

The National Center for State Courts (NCSC) and the Bureau of Justice Assistance have produced a set of outcome-oriented performance standards by which trial courts can evaluate themselves and improve their performance (Commission on Trial Court Performance Standards, 1990). Although a vast improvement over previous attempts to establish standards, the performance-oriented standards cannot be used to evaluate court unification among states because they permit states to choose among goals, and, hence, among performance criteria.

This study proposes to take advantage of the concurrent jurisdiction in diversity-of-citizenship cases to evaluate the concept of court unification. Can the choice between state courts and federal courts in diversity cases be used as an indirect, unobtrusive way of measuring the relevance of court unification? Are litigants and their attorneys who consistently select state or federal courts, when a choice is available, conveying a message about the quality of state courts by essentially voting with their feet (Brieant, 1989)? If so, does quality as inferred from choice of forum in diversity cases correlate with some or all characteristics of court unification? In a survey of 1,642 litigating attorneys, Flango (1991b: 14) found that overall competence of the judiciary (as well as the residence of their clients) were the most important considerations to all attorneys when making the forum choice between state courts and federal courts.

Court Performance and Court Unification

A. Federal Diversity Cases—The Standard of Comparison

The central problem in evaluating the usefulness of unification is finding a measure or set of measures to use as a standard of comparison. The availability of concurrent jurisdiction in diversity-of-citizenship cases provides one potential measure. Chief Justice Warren E. Burger (1980) told the American Law Institute that state court and federal court dockets are becoming more and more alike and asked "whether these signs mean that the federal system may be on its way to a *de facto* merger with the state court systems, with litigants free in most, if not all, cases to choose a federal court or state court depending upon *what they perceive as to the quality of relief they obtain*" (emphasis added).

The rationale for using choice of forum as a standard is that lawyers and their clients evaluate the comparative quality of federal and state courts every time they choose to file a diversity case. The choice between state and federal courts is used here as an indirect, unobtrusive measure of quality of state courts (Webb et al., 1970). If lawyers and their

[3] Research by the National Center for State Courts has established a correlation between filings in civil cases and state population (Court Statistics and Information Management Project, 1986.)

clients sometimes choose state courts and sometimes choose federal courts, the choices should balance out, and diversity filings in federal courts should roughly follow state population.[3] If litigants and their attorneys consistently select federal courts when a choice is available, is this not a statement about the quality of state courts? Survey evidence (Flango, 1991b: 41, 52) indicates not only that overall competence of the judiciary is the most important consideration in choice of forum, but that attorneys who consider competence important tend to prefer federal courts over state courts.

Comparing actual diversity filings with filings expected based upon population was chosen because it clearly illustrates choices made between state and federal courts when state population is removed as a consideration.[4] The decision to file in state or federal court then becomes a clear evaluative criteria. States are listed in population order in **Figure 1.**[5] If diversity filings in U.S. District Courts were proportional to population, California should have the largest number of diversity filings and Wyoming should have the smallest. To the extent that diversity filings do not follow this descending pattern, the federal courts receive a disproportionately larger or smaller share of diversity cases. If attorneys file fewer diversity cases in federal court than expected based on the state population, one could interpret this as a vote of confidence in state courts. Conversely, if attorneys file more diversity cases in federal courts than expected, they may lack confidence in state courts.

The differences between estimated filings and actual filings are reported as percentage ratios in **Figure 2.**[6] Low percentages indicate that fewer tort and contract diversity cases were filed in federal court than expected based upon population.[7] This preference for state courts by attorneys and their clients is labeled "State." Conversely, high numbers

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[4] An alternative method of controlling for population effects is simply to measure diversity filings per capita. Because expected filings were estimated based upon population, however, use of the per capita measure leads to exactly the same results as the percentage measure used here. Before the analysis is done, however, diversity property cases must be removed from the diversity totals. Previous research (Flango and Boersema, 1990:418) has shown that diversity property cases obscure the relationship between filings and case volume. Foreclosures in the Northern District of Illinois (and to a lesser extent Indiana) alone accounted for two-thirds of the real property filings in federal courts. Accordingly, only tort and contract diversity filings are used in this analysis.

[5] The actual tort and contract diversity figures as well as the estimates of the number of diversity cases that would be expected if filings were a result of population alone are presented in **Figure 1.** 1987 was selected as the year for analysis because the most recent data on court structure and management, *State Court Organization*, used 1987 as a base year. (The National Center for State Courts is updating this book to 1992.)

[6] Initially, a straight percentage difference between actual diversity filings and diversity filings expected based on population was used. But this measure was not satisfactory because the percentage difference was unlimited on the positive side of the scale (e.g., a 545 percent difference in the District of Columbia) but limited to a 100 percent difference on the negative side (zero filings). The relative percentage difference (A-B)/(A+B) gives a measure that ranges between -1 through 0 to +1 and is thus a better way to present the results.

[7] Regression analysis is the standard technique used to estimate the effect of the explaining variable (in this case, population) on the variable to be explained (diversity filings). Estimates of diversity filings per state based on regression analysis are fairly accurate. Because regression requires that data be normally distributed, because population is so closely related to case filings, and because regression estimates are influenced by extreme data points, *in this particular instance,* inferring the proportion of diversity cases from proportion of state population actually produced slightly better estimates of diversity filings than did regression analysis.

Figure 1
Number of Diversity Cases—1987
(States listed in population order)

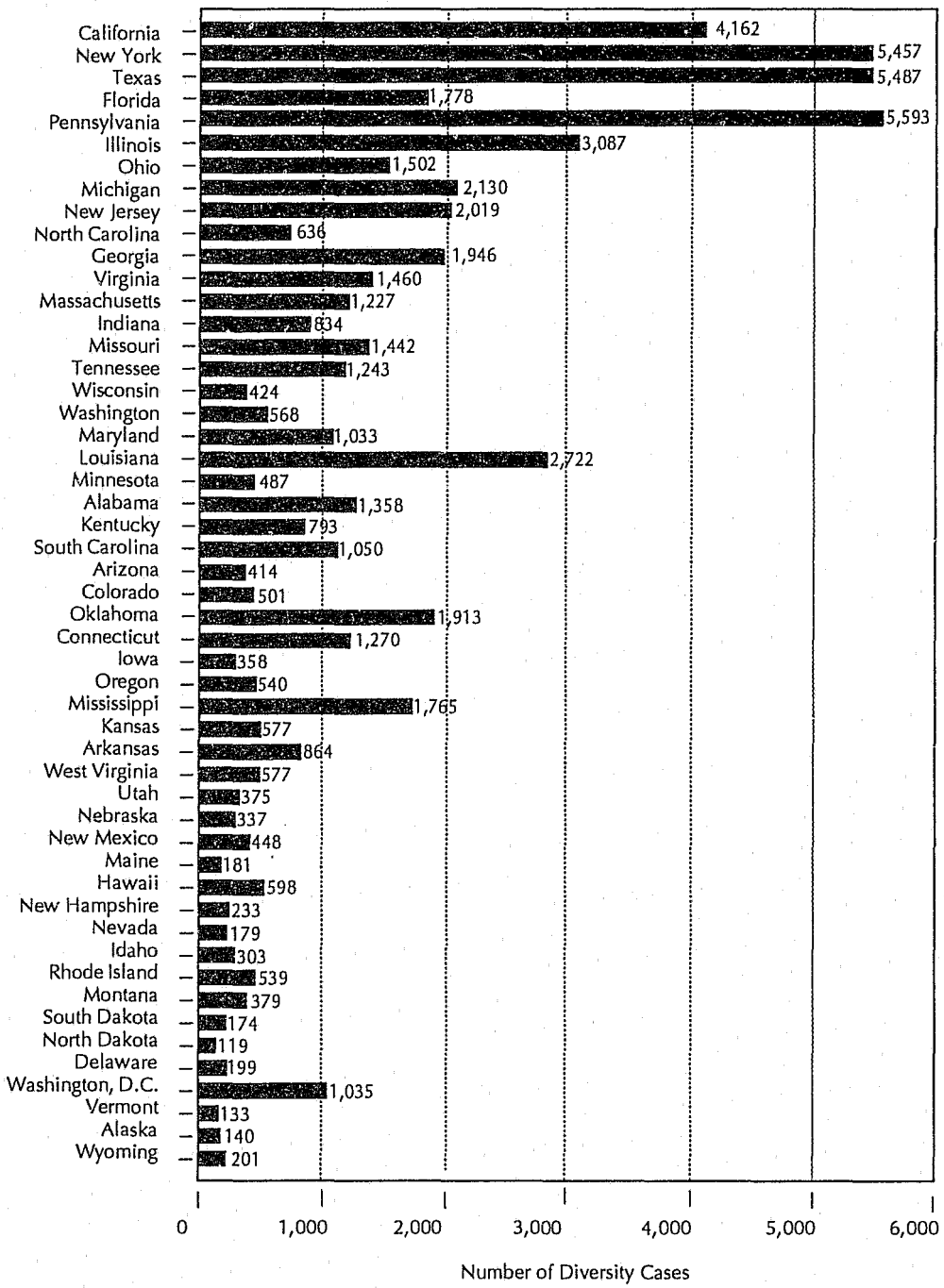
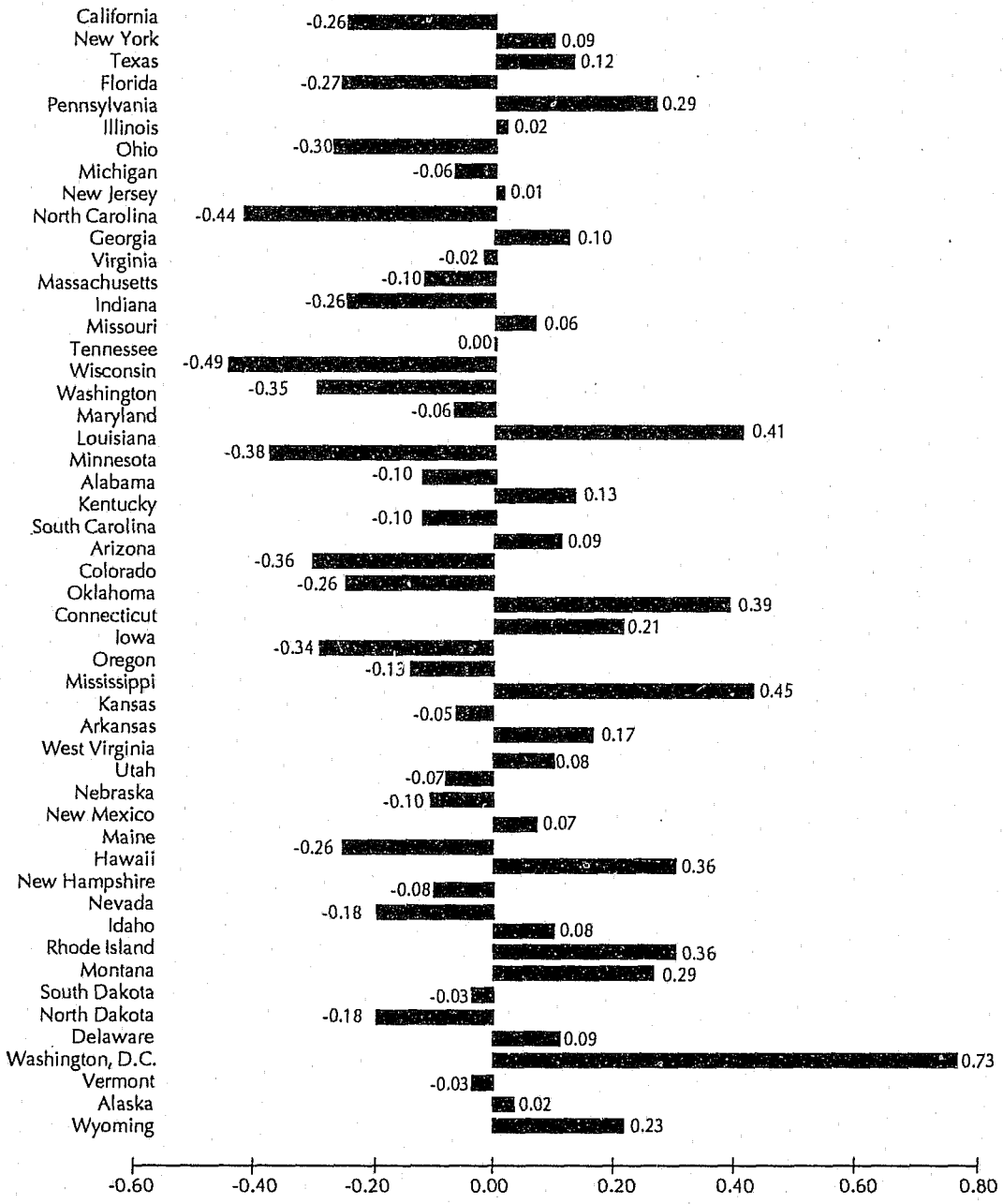


Figure 2
Proportionate Difference Between Tort and Contract Diversity Cases Filed in Federal Courts in 1987 and Estimated Filings Based on Population



and percentages indicate a preference for federal courts. In the middle quartiles, the preferences are less intense. A mild preference for state courts is labeled "State/Federal," while a mild preference for federal courts is indicated by the label "Federal/State."

Diversity cases filed in U.S. district courts by each state in the years 1976, 1977, 1986, 1987, and 1988 were intercorrelated to ensure that these findings were not an artifact of the particular year chosen for analysis. That analysis revealed that 1987 was not an atypical year. However, on May 18, 1989, Congress increased the jurisdictional limit on federal diversity cases from $10,000 to $50,000 (Judicial Improvements and Access to Justice Act). This change in law reduced diversity filings by 10,000 between 1989 and 1990 (C. Flango, 1991:11). A change of this magnitude requires a reanalysis of the data. Eliminating the less burdensome cases from federal courts should make the classification of state courts even clearer. **Figure 3** replicates, with 1990 data, the analysis conducted on 1987 diversity data. (**Figure 3** is based upon data presented in Appendix Table 2).

Only one classification changed drastically between 1987 and 1990. Ohio was classified as a state preference in 1987 and a federal preference in 1990. That difference however, can be explained by the large number of asbestos cases (3,415) filed in 1990 (Flango, 1991a).

B. Measuring Court Unification

Section 1.10 of the ABA Standards expresses the general principle that

> . . . the aims of court organization can be most fully realized in a court system that is unified in its structure and administration, staffed by competent judges, judicial officers, administrators, and other personnel, and that has uniform rules and policies, clear lines of administrative authority, and a sufficient unified budget.

Figure 4 provides a list of the six components of court unification, the measures of each, and the expected relationship of the measures to unified and decentralized models of court organization.

1. Trial Court Consolidation

Consolidation evolved as a reaction against fragmented court systems. The arguments in favor of trial court consolidation relate less to organizational structure per se than to the *consequences* of structure. Sources quoted in Berkson and Carbon (1978:18) cite as the primary benefits of trial court consolidation flexibility in personnel assignments, flexibility in use of faculties, and the economic savings that result from these. Arguments against trial court consolidation include the loss of local control, the difference in the nature of the work between general jurisdiction and limited jurisdiction court judges, and increased costs.

The threefold classification of states used here is based upon degree of trial court consolidation, as proposed by Flango and Rottman (1992). 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 recommended consolidation of all trial courts into one court with a single class of judges assisted by legally trained

Figure 3
Number of Diversity Cases—1990
(States listed in population order)

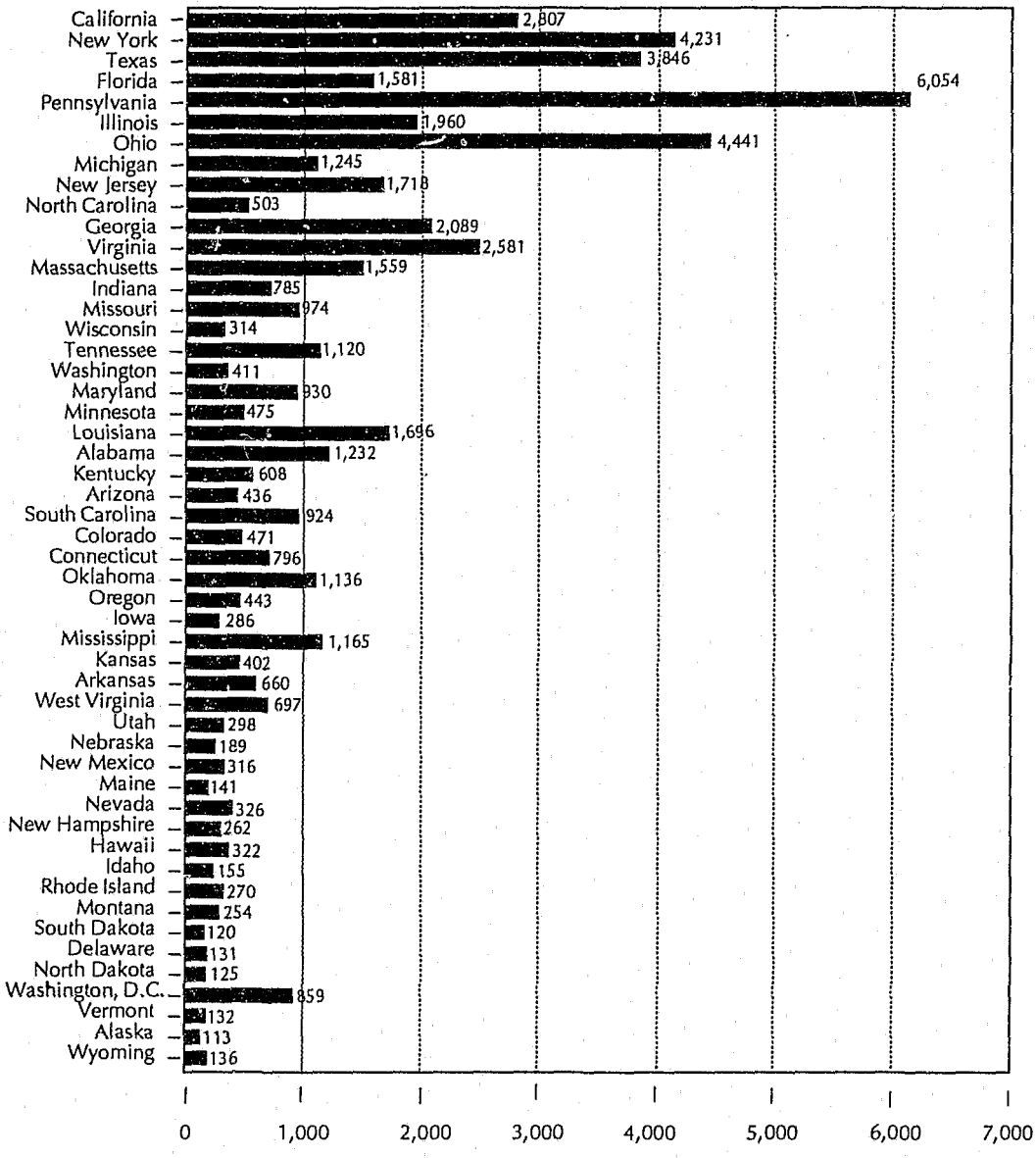


Figure 4
Measures of Court Unification and Decentralization

Trial Court Consolidation	Unified	Decentralized
1. Number of trial courts in the state.*	Fewer	Many
2. Number of courts of general jurisdiction.*	One	More than one
3. Number of courts of limited jurisdiction.*	None or one	More than one
4. Presence of specialized courts.*	No	Yes
5. Trial court organizational consolidation.	High	Low
6. Number of general jurisdiction judges.	High ratio to total judges	Low ratio to total judges
7. Presence of intermediate appellate court.	Yes	No
8. Appeals per capita.	High	Low
Uniform Jurisdiction		
1. Extensiveness of jurisdiction, the variety of cases handled.	Narrow	Extensive
2. Extent of overlapping jurisdiction.	No overlap	Overlap
Centralized Management		
1. State administrative office has authority to select trial court administrators.*	Yes	No
2. Administrative office sets the salary of trial court managers.*	Yes	No
3. The number of trial court administrators in state courts of general jurisdiction as a proportion of the number of general jurisdiction court judges.	High proportion	Low proportion
4. State court administrators salary as proportion of supreme court justices.	High proportion	Low proportion
Central Financing		
1. State administrative office of courts' reviews of local court budget submissions.	Yes	No
2. Percentage of general jurisdiction judges salaries funded from state sources.	High	Low
3. Source of funding for general jurisdiction court administrators.	State	Local
4. The percentage of court funding that comes from state sources.	High	Low
5. The preparation of the budget by the administrative office of the courts.	Yes	No
Judicial Selection and Tenure		
1. Judicial selection.	Appointment	Election
2. Term of office.	Longer	Shorter
3. Mandatory retirement age.	Yes	No
4. Proportion of nonlawyer judges.	Low proportion	High proportion
Central Rulemaking		
1. Extent of court authority over procedural rules.	Shared authority with legislature.	Exclusive court authority.
2. Extent of adoption of federal rules of procedure.	Federal rules of procedure	Local rules of procedure.

* Measures of court unification used by Berkson (1978).

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. Flango and Rottman (1992) also proposed the proportion of general jurisdiction judges be used as another measure of trial court consolidation.

Another proposed measure of court consolidation is the presence of an intermediate appellate court to review more court decisions, thus ensuring more consistency among decisions of trial courts within states. The proportion of appeals per population was suggested as another indicator of the importance of trial court supervision, i.e., the more appeals taken, the more conflicting trial court decisions could be reconciled. These two variables, however, were not associated with other measures of court consolidation.

2. Uniform Jurisdiction

A. Extensiveness of Jurisdiction. It seems sensible to expect a strong relationship between the degree of trial court structural consolidation and the extensiveness 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, handling only the basic felony, tort, contract, real property, domestic relations, and civil appeals cases. Between these extremes are one group of states whose major trial courts have jurisdiction over the basic core of cases and juvenile cases (both criminal-type juvenile offenses and child-victim petitions) and another group of states, whose jurisdiction includes driving while intoxicated or driving under the influence (DWI or DUI) cases as well as the aforementioned core categories.

B. Overlapping Jurisdiction. 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. Clear and distinct jurisdictional boundaries reduce the risk that cases will be disposed on jurisdictional grounds rather than on the merits. For the six states and the District of Columbia, with only one trial court of general jurisdiction and no courts of limited or special jurisdiction, there is no possibility of overlapping jurisdiction. The remaining 44 states have at least a two-tier court system and thus the potential for overlapping jurisdiction.

Because the impact of trial court consolidation cannot be separated from the impact of jurisdictional consolidation, an index of consolidation was constructed using four indicators: organizational consolidation, ratio of limited jurisdiction judges to all judges, extensiveness of jurisdiction, and extent of overlapping jurisdiction. The index values range from four for the most consolidated states to fifteen for the least consolidated (Flango and Rottman, 1992).

3. Centralized Management

Berkson (1981) used four indices to measure centralized management. Administrative supervision over lower courts' personnel was measured by extent of supreme court authority to reassign lower court judges and the degree to which state court administrators supervise trial court administration. Centralized management was also measured by the degree to which the state court administrative office was involved in research, dissemination of information, long-range planning, and research assistance to courts. In his reanalysis, Flango (1981:254) found that the assignment power of the supreme court did not correlate with other indicators of centralized management. The four indicators of centralized management used in this research are:

- state administrative office has authority to select trial court administrators,
- administrative office sets the salary of trial court managers,
- the number of trial court administrators in state courts of general jurisdiction as a proportion of the number of general jurisdiction court judges, and
- the ratio of the state court administrators' salary to that of the state supreme court justices as an indicator of the status of the administrative office.

Only the first two variables clustered as hypothesized. The third variable that clustered with those two variables was unexpected—extent of adoption of federal rules of procedure. The index ranges from three to eight, with three representing a state in which the state administrative office of courts selects trial court administrators and sets their salary and in which courts use the federal rules of procedure.

4. Centralized Financing

A major purpose of court unification is to allocate resources where they are most needed and to relieve local governments from the burden of financing the courts. Centralized financing strengthens the vertical lines of authority from courts of last resort to trial courts. This centralizing tendency in financing was a reaction against the requirement that courts be self-supporting. The arguments in favor of central budgeting are: the judiciary can develop its own goals without executive interference, the preparation and presentation of the budget is simplified, and planning and equity in resource allocation are promoted (Berkson and Carbon, 1978:38). The arguments against central budgeting are that it does not guarantee adequate funding and places too much power in state courts of last resort. Indeed, some opponents of centralized budgeting question the wisdom of moving toward a single source of funding rather than more diversified funding strategy that incorporates both state and local sources (Lim, 1987:14). Baar (1975) questions whether unitary budgeting, with its concomitant centralized control, can be adapted to the needs of various local courts.

Berkson's only indicator of state financing was the percentage of funds for the judiciary that comes from state rather than local sources. He used three indicators to measure centralized budgeting (1978): Baar's data on budget preparation, the extent of executive branch participation in budget making, and the role of the gubernatorial item veto in the budgetary process. Flango's (1981:257) empirical reanalysis of the Berkson data showed that the latter two indicators were not related to the other measures of centralized budgeting, state financing, or centralized management. In this research the following five measures of centralized financing were attempted, but only the first three

are related:

- administrative office of courts' reviews of local court budget submissions,
- percentage of general jurisdiction judges' salaries funded from state sources,
- the percentage of court funding that comes from state sources,
- source of funding for general jurisdiction court administrators, and
- the preparation of the budget by the state administrative office of the courts.

5. Selection and Tenure

Elections are preferred by those who value responsiveness and accountability, whereas appointment is favored by those who value judicial independence as the key to impartiality. Court unification in general is related to selection because unification eliminates the need for part-time judges and nonlawyer judges. With court unification, moreover, the opportunity to gain experience in courts of limited jurisdiction is lost.

Is merit selection a component of court unification? The ABA as well as the American Judicature Society consider "merit selection" as the most modern form of judicial selection.[8] Appointment by the governor, one of the key components of merit selection, is another method of centralizing power at the state level.

Merit selection is compatible with unification to the extent that it fosters professionalism. Merit selection also insulates judges from the electorate by having them run for office unopposed. In general, selection methods that require long terms of office tend to encourage independence and to permit professionalism time to take root. Another relationship between merit selection and unification is procedures for removal from office, which are controlled by fellow judges through the use of commissions on judicial conduct. Presence of a mandatory retirement age was the third measure included under selection and tenure because it has implications for turnover in judicial office.[9] Unification would appear to imply a mandatory retirement age in order to ensure orderly transitions. Short terms of offices and frequent elections ensure rotation in office, and so a mandatory retirement age would not be necessary. The fourth measure is the proportion of judges who are not lawyers. Nonlawyers are most likely to be chosen by election to fill positions in courts of limited jurisdiction, and these courts would not exist in a unified court.

The four variables making up the selection and tenure set did not cluster together as expected. The proportion of nonlawyer judges and method of selection were separate variables, independent of each other and of the other independent variables as well. A shorter term of office was related most closely to local, rather than state, financing.

6. Rulemaking

[8] Section 1.10 of the ABA Standards recommends that judges be selected on the basis of professional competence and experience"... through a merit system of appointment." Section 1.20 explicitly states that the "Election of judges should be abolished." Yet, research on *appellate* judges has shown that selection procedure has little effect on types of judges selected or on their decisions (Flango and Ducat, 1979; Dubois, 1980; Atkins and Glick, 1974). Recent research on a small group of state trial judges also found that judges selected under the merit system were no less responsive to public concern over drunken drivers than were elected judges (O'Callaghan, 1991).

[9] Section 1.24 recommends a retirement age of 70, except where prohibited by federal law.

Judicial self-determination is the primary rationale for court control of rulemaking. Section 1.30 of the ABA Standards recommends that "the authority to promulgate rules of procedure and administrative policy should be vested in the members of the state's supreme court." Judge-made rules are more flexible than statutes, and can be promulgated more expeditiously and more precisely. The arguments against vesting the courts of last resort with rulemaking authority are that rulemaking is a legislative function, and many procedural issues may have substantiative consequences (Parness and Korbakes, 1973:18).

Two indicators of judicial rulemaking are:

- extent of court authority over procedural rules, and
- adoption of federal rules of procedure.

With respect to authority, 19 state courts of last resort have exclusive power to make procedural rules—the state legislature plays no role at all. Rulemaking authority is shared with the legislature in another 17 states, but rules promulgated by the supreme court do not go through a formal approval process. In the remaining 14 states, the legislature is authorized to adopt, amend, or repeal rules of procedure (Knoebel and Pankey, 1989).

The second indicator is the extent to which Federal Rules of Civil Procedure have been adopted by state courts (Oakley and Coon, 1986). Reformers have advocated adoption of the Federal Rules as a method of achieving uniformity among states in civil procedure. Classifications of states according to this variable are:

- "replica," essentially similar procedures for state and federal courts;
- "notice pleading," strong affinity and content and organization to the Federal Rules;
- "fact pleading," demand more factually specifically in pleading and operative according to procedures not substantially similar to Federal Rules; and
- "fact code," states with neither notice pleading nor rules-based procedural system in common with the Federal Rules.

The two indicators of central rulemaking did not correlate with each other as expected. Conformity with federal rules of procedure was associated with centralized management, as noted above, but was also related to state funding of trial court administrators. Court authority over procedural rules was related to requirement of a mandatory retirement age. These relationships exist statistically, but not logically, unless each set of independent variables is linked by a sequence of other independent or intervening variables.

Findings
Court Unification and Quality of State Courts

The revised empirical measures of court unification will now be associated with quality of state courts as measured by choice of forum in diversity cases. The index of trial court consolidation is divided into four categories of consolidation to compare with the four categories of court quality as measured by preference for state courts. When measured as continuous variables, those states in which lawyers and their clients preferred state courts averaged eight in the index and those states that preferred federal court averaged ten, but the difference was not large enough to be statistically significant. Litigants from

Figure 5
Trial Court Consolidation and Court Quality (1987)

	Choice of Forum			
Degree of Consolidation	**Prefers State Courts**	**State/Federal**	**Federal/State**	**Prefers Federal Court**
1. Most Consolidated	Florida Iowa Minnesota Wisconsin	Kansas Massachusetts South Dakota Missouri	Connecticut Idaho Illinois	District of Columbia
2. Consolidated	California Indiana Maine North Carolina Washington	Virginia Kentucky Maryland Nebraska North Dakota Vermont	Alaska New Jersey	Hawaii Oklahoma
3. Less Consolidated	Arizona Colorado Ohio	Michigan Nevada New Hampshire Oregon Utah	Alabama Georgia New Mexico South Carolina Texas West Virginia Wyoming	Louisiana Montana Pennsylvania Rhode Island
4. Least Consolidated			Arkansas Delaware New York Tennessee	Mississippi

states with consolidated court systems are nearly as likely to prefer federal courts as they are to prefer state courts. Similarly, there was no clear pattern between degree of trial court consolidation and quality of state courts, perhaps because the expected frequency of 51 states among 16 cells is small (see **Figures 5** and **6**). If indices of court quality and consolidation are dichotomized so that a 2-x-2 table is formed along the double lines in **Figures 5** and **6**, a mild relationship between court consolidation and court quality emerges.

The relationship between centralized management and court quality was not statistically significant, which means that state-level management did not lead to a preference for state courts. Similarly, the relationship between centralized financing and court quality was not statistically significant.

Preference for state courts is associated with nonpartisan elections and preference for federal courts is somewhat more likely in states that select judges by partisan election (see **Figure 7**). This is consistent with conventional wisdom. That wisdom, however, would also have us believe that state courts would be chosen more often more in states in which merit selection is prevalent and that association does not exist even when selection procedures are dichotomized into two categories of merit selection versus other selection procedures. However, the relationship between merit selection and nonpartisan election together, compared to all other methods of judicial selection, is associated with court

Figure 6
Trial Court Consolidation and Court Quality (1990)

	Choice of Forum			
Degree of Consolidation	**Prefers State Courts**	**State/Federal**	**Federal/State**	**Prefers Federal Court**
1. Most Consolidated	Florida Iowa Minnesota Wisconsin	Idaho Illinois Kansas Missouri	Connecticut	District of Columbia
2. Consolidated	California Indiana Maine Nebraska North Carolina Washington	Alaska Kentucky Maryland North Dakota South Dakota	Hawaii New Jersey New Mexico Vermont	Oklahoma Virginia
3. Less Consolidated	Arizona Michigan	Colorado Oregon Utah	Alabama Georgia Montana Massachusetts Nevada New Hampshire Rhode Island South Carolina Texas Wyoming	Louisiana Ohio Pennsylvania West Virginia
4. Least Consolidated			Arkansas Delaware New York Tennessee	Mississippi

quality as measured by choice of forum. This relationship between method of selection and court quality is independent of the relationship between trial court consolidation and court quality because no relationship exists between court consolidation and method of judicial selection.

Conclusions

To the extent that choice of forum measures quality of state court systems, this research has found only a mild relationship between court quality and trial court consolidation. Attorneys and their clients do *not* more often choose state courts over federal courts in states that are administratively centralized/or financially centralized. Some evidence exists that the quality of the judges does make a difference to forum choice, but judges in these states are just as likely to be chosen by nonpartisan elections as by merit selection. Perhaps court standards recommending the abolition of all elections, partisan or nonpartisan, need to be reconsidered.

Obviously, one reason for these findings is that the operational measures of court

Figure 7
Trial Court Judge Selection and Court Quality

Percentage Difference	1987	1990
State	Arizona*[1] **California** Colorado* **Florida** *Indiana* Iowa* Maine **Minnesota** *North Carolina* **Ohio** **Washington** **Wisconsin**	Arizona* **California** **Florida** *Indiana* Iowa* Maine **Michigan** **Minnesota** Nebraska* *North Carolina* **Washington** **Wisconsin**
State/Federal	Kansas* **Kentucky** Maryland* Massachusetts* **Michigan** Nebraska* **Nevada** New Hampshire **North Dakota** **Oregon** **South Dakota** Utah* Vermont* Virginia	Alaska* Colorado* **Idaho** **Illinois** Kansas* **Kentucky** Maryland* Missouri* **North Dakota** **Oregon** **South Dakota** Utah*
Federal/State	*Alabama* Alaska* *Arkansas* Connecticut Delaware* **Georgia** **Idaho** *Illinois* Missouri* New Jersey *New Mexico* *New York* South Carolina *Tennessee* *Texas* *West Virginia* Wyoming*	*Alabama* *Arkansas* Connecticut Delaware* **Georgia** Hawaii* Massachusetts* **Montana** **Nevada** New Hampshire New Jersey **New Mexico** *New York* Rhode Island South Carolina *Tennessee* *Texas* Vermont* Wyoming*
Federal	District Of Columbia Hawaii* **Louisiana** **Montana** *Mississippi* **Oklahoma** *Pennsylvania* Rhode Island	District Of Columbia **Louisiana** *Mississippi* **Ohio** **Oklahoma** *Pennsylvania* Virginia **West Virginia**

[1]Merit selection for two largest counties, nonpartisan election in the others.
Bold = Nonpartisan election *Italics* = Partisan election * = Merit selection

quality and court unification are inadequate and more research is needed to improve on the measures used here. Another explanation is that the hierarchical unification model emphasizing simplification, standardization, and routinization is incompatible with a coordinate, decentralized court system. (Damaska, 1986). A recent text (Stumpf, 1988:98) says, "In general, American courts—especially state courts—are outmoded organizations attempting to deal with increasingly complex issues." A typical reaction to technically complex cases is to create special courts, i.e., science courts. Note the irony of this proposal: to create specialized courts that would reduce the degree of trial court unification. A further irony is that the ABA Standards recommend hierarchy at the very time when the business organizations of the future are expected to be "flatter," with fewer levels of management. (Drucker, 1988:48).

A more coordinate structure may be the prototype for the court of the future. This decentralized model corresponds well to the interorganizational perspective of Martin and Maron (1991) because it encompasses:

(1) interdependence among organizations;
(2) the importance of local legal culture and negotiated orders;
(3) the anti-hierarchical nature of the judicial process;
(4) diffuse decision making in trial courts; and
(5) the courts' role as system integrator.

Some principles of "reengineering" the modern corporation may apply to court management as well. Hammer (1990: 108-110) suggests organizing around outcomes, rather than tasks; having the departments that produce information also process it; using databases and telecommunications to get the benefits of scale usually associated with centralization, while maintaining the benefits of flexibility and service usually associated with decentralization; coordinating while activities are in process, rather than after they are completed; and placing the decisions where the work is performed. Several action proposals of the Conference on the Future and the Courts (Zweig, et al: 1990) including adding technology, increasing access, and diverting classes of disputes, are sharp departures from traditional hierarchical notions of court unification (reform).

What will the modern court organization look like? The basic theory underlying court unification is to divide tasks and then coordinate; decentralize then recentralize. Size and complexity have destroyed this model (Waterman, Peters, Phillips, 1980). At a certain level of size and complexity, courts must decentralize. Organization designers must spend their time not on how to divide tasks, but how to coordinate caseflow, especially among agencies over whom courts do not exercise control. The "postunification" approach to court organization is gaining strength and the traditional concept of a hierarchical, court management model has given way to "coordinated decentralization" (Lipscher and Conti, 1991).

Creative models of decentralization need to include not only courts themselves, but relationships among courts and other independent agencies, including social service agencies that service litigants. Discussions of sharing administrative resources, such as juror lists or courtroom space, between state and federal courts may be a precursor of future

Appendix

Table 1
Tort and Contract Diversity Cases Filed in Federal Courts in 1987 and Estimates Based on Population

States	Population 1987 (in thousands)	Total filings (torts and contracts)	Percent of Population	Estimates (based on population)	Difference (between actual and population estimate)	Percentage Difference	Percentage Ratio
Wisconsin	4,807	424	1.97	1,240	-816	-66	-0.49
North Carolina	6,413	636	2.63	1,654	-1,018	-62	-0.44
Minnesota	4,246	487	1.74	1,095	-608	-56	-0.38
Arizona	3,386	414	1.39	873	-459	-53	-0.36
Washington	4,538	568	1.86	1,171	-603	-51	-0.35
Iowa	2,834	358	1.16	731	-373	-51	-0.34
Ohio	10,784	1,502	4.43	2,782	-1,280	-46	-0.30
Florida	12,023	1,778	4.94	3,102	-1,324	-43	-0.27
California	27,663	4,162	11.37	7,136	-2,974	-42	-0.26
Indiana	5,531	834	2.27	1,427	-593	-42	-0.26
Colorado	3,296	501	1.35	850	-349	-41	-0.26
Maine	1,187	181	0.49	306	-125	-41	-0.26
North Dakota	672	119	0.28	173	-54	-31	-0.18
Nevada	1,007	179	0.41	260	-81	-31	-0.18
Oregon	2,724	540	1.12	703	-163	-23	-0.13
Massachusetts	5,855	1,227	2.41	1,510	-283	-19	-0.10
Nebraska	1,594	337	0.65	411	-74	-18	-0.10
Kentucky	3,727	793	1.53	961	-168	-18	-0.10
New Hampshire	1,057	233	0.43	273	-40	-15	-0.08
Utah	1,680	375	0.69	433	-58	-13	-0.07
Maryland	4,535	1,033	1.86	1,170	-137	-12	-0.06
Michigan	9,200	2,130	3.78	2,373	-243	-10	-0.05
Kansas	2,476	577	1.02	639	-62	-10	-0.05
Vermont	548	133	0.23	141	-8	-6	-0.03
South Dakota	709	174	0.29	183	-9	-5	-0.03
Virginia	5,904	1,460	2.43	1,523	-63	-4	-0.02
Tennessee	4,855	1,243	1.99	1,252	-9	-1	0.00
New Jersey	7,672	2,019	3.15	1,979	40	2	0.01
Illinois	11,582	3,087	4.76	2,988	99	3	0.02
Alaska	525	140	0.22	135	5	3	0.02
Missouri	5,103	1,442	2.10	1,316	126	10	0.05
New Mexico	1,500	448	0.62	387	61	16	0.07
Idaho	998	303	0.41	257	46	18	0.08
West Virginia	1,897	577	0.78	489	88	18	0.08
New York	17,825	5,457	7.32	4,598	859	19	0.09
South Carolina	3,425	1,050	1.41	884	166	19	0.09
Delaware	644	199	0.26	166	33	20	0.09
Georgia	6,222	1,946	2.56	1,605	341	21	0.10
Texas	16,789	5,487	6.90	4,331	1,156	27	0.12
Alabama	4,083	1,358	1.68	1,053	305	29	0.13
Arkansas	2,388	864	0.98	616	248	40	0.17
Connecticut	3,211	1,270	1.32	828	442	53	0.21
Wyoming	490	201	0.20	126	75	59	0.23
Montana	809	379	0.33	209	170	82	0.29
Pennsylvania	11,936	5,593	4.90	3,079	2,514	82	0.29
Rhode Island	986	539	0.41	254	285	112	0.36
Hawaii	1,083	598	0.44	279	319	114	0.36
Oklahoma	3,272	1,913	1.34	844	1,069	127	0.39
Louisiana	4,461	2,722	1.83	1,151	1,571	137	0.41
Mississippi	2,625	1,765	1.08	677	1,088	161	0.45
District of Columbia	622	1,035	0.26	160	875	545	0.73
Totals	**243,399**	**62,790**		**62,790**	**0**		
Average	4,773	1,231	1.96	1,231	0.14	18	-0.00
Standard Deviation	5,208.61	1,363.94	2.14	1,343.69	780.50	92.44	0.25
Median	3,296.00	636.00	1.35	850.00	-9.00	-4.00	-0.02

Source: Extrapolated from data provided by the Administrative Office of the U.S. Courts.

Appendix

Table 2
Tort and Contract Diversity Cases Filed in Federal Courts in 1990 and Estimates Based on Population

State	Population 1990 (in thousands)	Total Filings (torts and contracts)	Percentage of Population	Estimates (based on population)	Difference (between actual and population estimate)	Percentage Difference	Percentage Ratio
District of Columbia	607	859	0.24	131	728	554	0.74
Pennsylvania	11,882	6,054	4.72	2,582	3,472	134	0.40
Mississippi	2,573	1,165	1.02	558	607	109	0.35
Virginia	6,187	2,581	2.46	1,346	1,235	92	0.31
Ohio	10,847	4,411	4.30	2,353	2,058	87	0.30
Louisiana	4,220	1,696	1.67	914	782	86	0.30
West Virginia	1,793	697	0.71	388	309	79	0.28
Oklahoma	3,146	1,136	1.25	684	452	66	0.25
Georgia	6,478	2,089	2.57	1,406	683	49	0.20
Montana	799	254	0.32	175	79	45	0.18
Alabama	4,041	1,232	1.60	875	357	41	0.17
Wyoming	454	136	0.18	98	38	38	0.16
Hawaii	1,108	322	0.44	241	81	34	0.14
Arkansas	2,351	660	0.93	509	151	30	0.13
Nevada	1,202	326	0.48	263	63	24	0.11
Rhode Island	1,003	270	0.40	219	51	23	0.10
South Carolina	3,487	924	1.38	755	169	22	0.10
Massachusetts	6,016	1,559	2.39	1,308	251	19	0.09
Connecticut	3,287	796	1.30	711	85	12	0.06
Vermont	563	132	0.22	120	12	10	0.05
New Hampshire	1,109	262	0.44	241	21	9	0.04
New York	17,990	4,231	7.14	3,907	324	8	0.04
Delaware	666	151	0.26	142	9	6	0.03
Tennessee	4,877	1,120	1.94	1,061	59	6	0.03
Texas	16,987	3,846	6.74	3,688	158	4	0.02
New Jersey	7,730	1,718	3.07	1,680	38	2	0.01
New Mexico	1,515	316	0.60	328	-12	-4	-0.02
Alaska	550	113	0.22	120	-7	-6	-0.03
North Dakota	639	125	0.25	137	-12	-9	-0.05
Maryland	4,781	930	1.90	1,040	-110	-11	-0.06
Missouri	5,117	974	2.03	1,111	-137	-12	-0.07
Utah	1,723	298	0.68	372	-74	-20	-0.11
Illinois	11,431	1,960	4.54	2,484	-524	-21	-0.12
South Dakota	696	120	0.28	153	-33	-22	-0.12
Kentucky	3,685	608	1.46	799	-191	-24	-0.14
Kansas	2,478	402	0.98	536	-134	-25	-0.14
Oregon	2,842	443	1.13	618	-175	-28	-0.16
Idaho	1,007	155	0.40	219	-64	-29	-0.17
Colorado	3,294	471	1.31	717	-246	-34	-0.21
Indiana	5,544	783	2.20	1,204	-421	-35	-0.21
Michigan	9,295	1,245	3.69	2,019	-774	-38	-0.24
Florida	12,938	1,581	5.13	2,807	-1,226	-44	-0.28
Arizona	3,665	436	1.45	793	-357	-45	-0.29
Nebraska	1,578	189	0.63	345	-156	-45	-0.29
Maine	1,228	141	0.49	268	-127	-47	-0.31
Minnesota	4,375	475	1.74	952	-477	-50	-0.33
Iowa	2,777	286	1.10	602	-316	-52	-0.36
California	29,760	2,807	11.81	6,462	-3,655	-57	-0.39
Washington	4,867	411	1.93	1,056	-645	-61	-0.44
North Carolina	6,629	503	2.63	1,439	-936	-65	-0.48
Wisconsin	4,892	314	1.94	1,061	-747	-70	-0.54
Totals	**248,709**	**54,713**	**1**	**53,996**	**717**	**1**	**0.00**
Average	4,877	1,073	1.94	1,059	14	14.41	-0.02
Standard Deviation	34,556.70	7,614.80	13.89	7,502.48	882.24	47.56	0.23
Median	3,487.00	608.00	1.38	755.00	9.00	1.00	0.01

cooperation that meshes better with the modern, coordinate type of judicial system (Flango and Gibson, 1992). **jsj**

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