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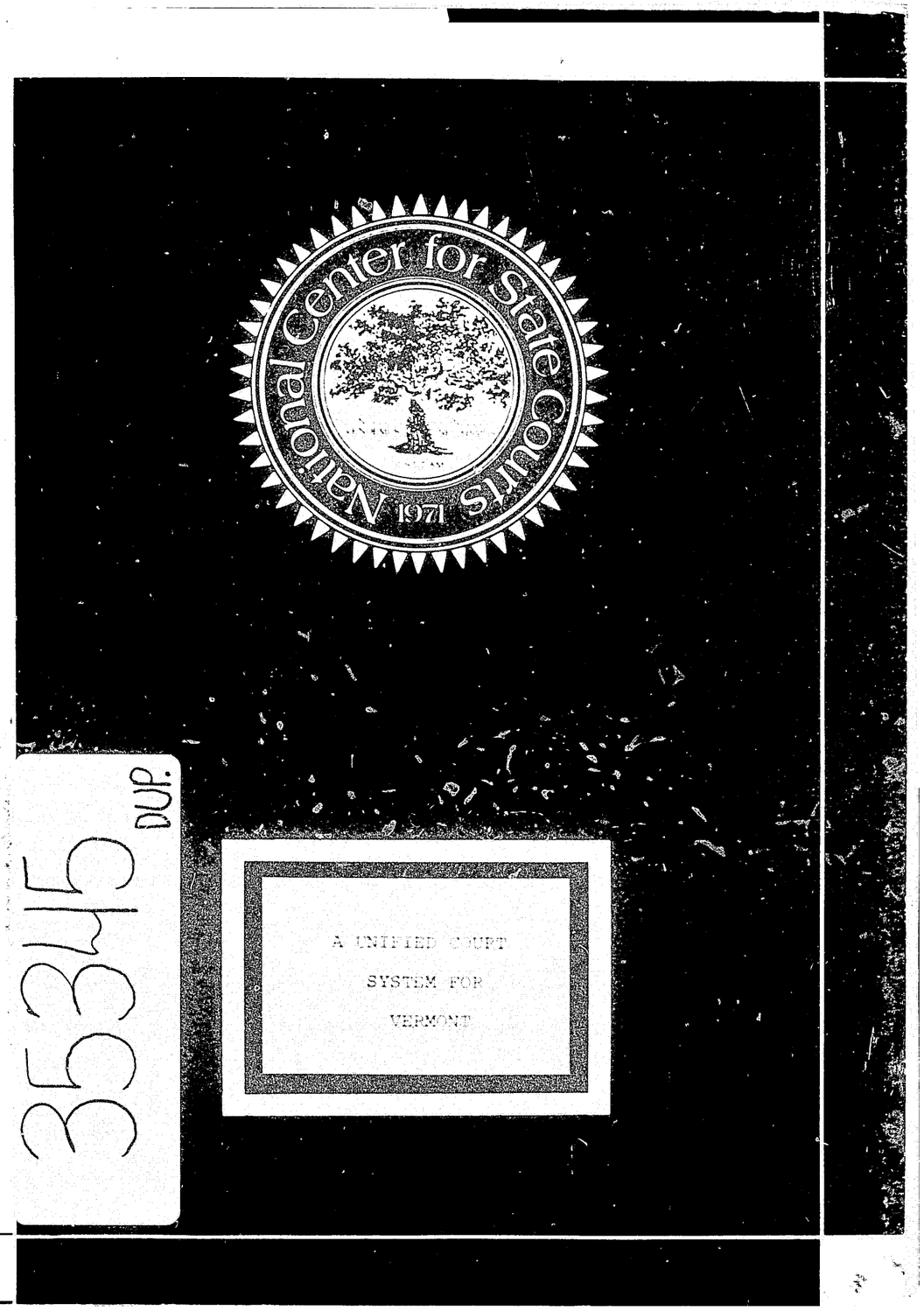

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December 15, 1974

A UNIFIED COURT SYSTEM FOR VERMONT

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December 15, 1974

Honorable Albert W. Barney, Jr.
Chief Justice, Vermont Supreme Court
and Chairman, Advisory Committee
on Court Unification
111 State Street
Montpelier, Vermont 05602

My dear Chief Justice:

We are pleased to transmit to you, as Chairman of the Advisory Committee on Court Unification created by Joint Resolution R-76 of the Vermont General Assembly (1973 Adjourned Session), our report, "A Unified Court System for Vermont," prepared pursuant to the contract between the State of Vermont, Judicial Branch, and the National Center for State Courts, dated July 22, 1974.

We have prepared a summary of the report which appears immediately following this letter of transmittal. This summary must, however, be read in the light of the full supportive documentation which is included in the report.

It has been a distinct pleasure for us to participate with you in the conduct of this study. We intend, of course, to continue to meet with you and the members of the Advisory Committee to complete our remaining work in the areas of drafting legislation and a superintendence document as well as assisting in such public hearings as the Committee may schedule.

Very truly yours,

Samuel Domenic Conti

Samuel Domenic Conti
Regional Director

sdc/gt

SUMMARY OF THE REPORT

A unified court system improves justice by insuring that all courts treat citizens in the same way by establishing uniform rules and practices, ending duplication of personnel and conflicts among courts, encouraging efficient administration and supervisory authority in a streamlined system, and making best use of available judges and facilities on a full-time basis. All these improvements will cut the operating cost of the courts, as will a centrally-audited financial management system with a single budget.

More than ten years ago, those who proposed and established the District Court of Vermont recognized that in the future Vermont courts must have full-time judges supported by a centrally-directed administrative framework. Other needed improvements included appointment of judges, through a selection process rather than biennial legislative elections, clear enunciation of the Supreme Court's administrative and disciplinary leadership of the court system, upgrading of courthouse facilities and modernization of old jurisdictional divisions and court procedures.

In the last decade, a statewide District Court was created, many procedural reforms have been accomplished, a state Court Administrator was appointed and most significant of all, a constitutional amendment was ratified. The judicial amendment (Proposal V) provided first for establishment of a unified court system, to be led by a Supreme Court endowed with clear administrative power and disciplinary authority. Second, it prescribed appointment of judges for six-year terms after a screening process. Third, to create the unified judicial structure, the amendment permitted reallotment of court jurisdiction, division of courts into geographic and functional districts, and elimination of the requirement that courts be held in every county. The judicial powers of Justices of the Peace were eliminated.

The changes made in the past ten years and the reorganization called for by the constitutional amendment create a firm ground for the problems of the present court system to be confronted directly in the design of the unified court system. These problems include fragmented court jurisdiction, lack of flexibility in use of available courthouses, delay of cases, untrained personnel, different court practices in different areas, insufficient supervision, need for an improved personnel promotion and compensation system, duplication of court staff, use of untrained part-time judges, excessive judicial travelling, lack of control of calendars by the court, insufficient law clerk support, insurance of fair judicial selection procedures, need for regular motion days, a non-functioning judicial council, over-specialized judges and dispersed staff appointment and removal power.

We recommend that existing Vermont trial courts be combined into a single court of general jurisdiction. (Because probate judges are elected, by provision of the Vermont Constitution, and are not required to be lawyers, integration of the Probate Court into the single trial court should be accomplished in stages.) The new trial court, to be called the Superior Court of Vermont (also a constitutional requirement) should be divided into three geographic regions -- Southern, Northeastern and Northwestern -- with each headed by a Presiding Judge. Each county should become a judicial district within one of the three regions (Grand Isle and Essex Counties should be combined with adjacent counties). All judges of the new Superior Court should rotate among the Judicial Districts within one of the regions but not generally between regions. A new position of Magistrate should be created, initially in six densely-populated locations, to hear traffic and small claims matters under the direct supervision of the Presiding Judges of the Superior Court.

All clerks' offices in all counties should be combined. Each Judicial District should have one office headed by a District Clerk. The three largest offices, one in each region, will be headed by Administrative Clerks responsible for coordinating clerical operations throughout each region.

The Chief Justice of the Supreme Court, as administrative head of the court system, should designate the three Presiding Judges and allocate the Superior Court Judges and Magistrates to the respective regions after consulting with the Presiding Judges and the Court Administrator. The Presiding Judges should assign judges and magistrates to Judicial Districts based on a master state schedule of court sessions prepared by the Court Administrator.

Clerks will then prepare session calendars which group all cases into three areas, called dockets: civil, criminal and family. (When Probate Court is merged into the new Superior Court, probate matters can form a fourth docket or be divided between the civil and family areas.)

District Clerks, deputy and assistant clerks, Registers of Probate, and court reporters should be appointed by the Court Administrator with the Presiding Judge's approval. The Presiding Judges will each designate court officers according to standards developed by the Court Administrator. Law clerks to aid the trial judges of each region should be added.

Rules, regulations and standards governing all court procedures and personnel practices should be promulgated by the Supreme Court. A system for rule recommendations to be made to the Supreme Court should be established.

All courthouse facilities should be evaluated by a Courthouse Standards Commission which will prepare an overall improvement plan. In each Judicial District, court facility planning, priority setting, and determination of the county tax rate should be the responsibility of a Court Committee composed of the Assistant Judges, the Presiding Judges of the region and the Court Administrator. The judicial functions of the Assistant Judges should be abolished.

By the end of their current four-year terms, Judges of Probate should be required to qualify as attorneys. When probate judges become lawyers, the Probate Court should be integrated into the new Superior Court (a Constitutional amendment should eventually be adopted to end the requirement that Judges of Probate be elected). When probate judges join the unified trial court, their number should be reduced and they should share in the court's general jurisdictional responsibilities. The registers should be trained and certified to perform all administrative processing of uncontested matters and should be assigned, one to a Judicial District, to become a distinct unit of the District Clerk's office.

In large Judicial Districts, one judge will be assigned to hear civil, criminal or family matters for six months or a year. In smaller districts, a single judge will hear all three dockets in weekly or biweekly groupings. Judges should receive special training for each area and one judge in each region should be assigned to supervise the new family dockets in the region and the court support staff assigned to handle these matters.

Small claims cases, to be tried largely before Magistrates, should be heard in non-working hours to permit citizens to represent themselves. Forms and procedures should be simplified. An increased execution fee, to be paid by the debtor, should be allowed the sheriff in order to encourage collection of small claims judgments. A limit should be set on the number of times one person can sue in small claims court each year.

Courthouse improvements should concentrate on upgrading county courthouses and adding needed new facilities at locations adjacent to these courthouses. Courthouses should eventually contain two jury courtrooms, at least, and a hearing room for non-jury trials. Each courtroom requires support facilities now often lacking or insufficient in Vermont: conference and witness rooms, jury rooms, prisoner holding cells, clerical and court reporter working space, law libraries, storage facilities, and toilets. Federal funding available for courthouse facility improvement should be obtained and used.

The Supreme Court, in its exercise of ultimate policy-making and administrative authority in the Vermont court system, should offer firm support to the Chief Justice, the Presiding Judges, and the Court Administrator in their direct administration of the courts. The office of Supreme Court Clerk should be separated from the office of the Court Administrator. The Court Administrator should be aided by a deputy and assistants, each assuming direct responsibility in the respective areas of: a)financial management, facilities and planning; b)personnel, training and court reporter services; c)statistics, information and case scheduling; and d)liaison, judicial service, and secretary for the court system, committees and the Judicial Council.

Personnel, compensation and retirement systems must be adequate to insure that qualified judges and non-judicial employees are attracted to and remain part of the unified court system. Judicial elevation should not be automatic and should be based on ability rather than seniority. While trial judges and magistrates should be considered for promotion, neither Supreme Court Justices nor Superior Court Judges need all have trial bench experience. The Chief Justice and the Presiding Judges should be compensated for their administrative duties. The other Supreme Court Justices and Superior Court Judges should be paid at equal respective rates.

The Chief Justice should be given the power, now exercised by the Governor with respect to executive agency heads, to fix salaries of judges, the Court Administrator, and his assistants within a range above the base salary set by statute. Non-judicial employees should be compensated within ranges at each grade permitting increases based on longevity, experience and merit. Performance of non-judicial employees should be regularly evaluated and notice given of promotion opportunities.

The budget for the unified court system should be prepared by the Court Administrator's office under the supervision of the Chief Justice and the Presiding Judges. The budget should be presented by the Chief Justice, or the Court Administrator on his behalf, to the legislature. While the budget may be submitted by the Governor and the executive branch should retain its power to comment on and recommend with respect to the judicial branch budget, the executive should not be authorized to eliminate or reduce court budget requests made to the legislature.

The county tax should be retained as a direct source of revenue for the unified court system. The Court Committee in each district will set the tax rate to cover first the non-court county expenses (determined by the Assistant Judges), and then the sum needed for court improvements. A minimum statutory tax rate should be set: the revenue available after non-court needs are met will be used first for court improvements and subsequently will be paid to the state in return for assuming the obligations of regular court operations once facilities are improved to the extent prescribed by the Courthouse Standards Commission.

Reduction in the number of probate judges, registers, and County and District Court Clerks and ending the judicial functions of Assistant Judges are estimated to more than exceed in amount the added costs of increasing the pay of trial judges and court reporters to present Superior Court level, addition of staff to the Court Administrator's office, upward adjustment of most clerks' salaries, addition of law clerks to serve the trial-level judges, and appointment of magistrates.

The Judicial Council should be reorganized to be able to provide the courts with recommendations for improvement and general administrative policy. With membership composed of designated judges from the Judicial Council, lawyers and laymen, the Board of Judicial Inquiry should assess allegations of disability and misconduct in determing what disciplinary measures should be recommended as necessary for imposition by the Supreme Court. A two-term limit should be placed on service of members of the Judicial Selection Board to prevent creation of an independent power clique. State's Attorneys must be required to be legally trained and admitted to the Vermont bar. The courts should assume a more active role in supervising the operations of probation and corrections agencies which serve the courts, particularly with respect to presentence investigations.

The Court Administrator should insure that the same forms and procedures are being employed in a uniform manner throughout the system. A weighted caseload record of court time should be kept.

Chapter XV of this report outlines those steps in implementing a unified court system which will require statutory change and those which may be accomplished by revision of court rules.

An analysis of the problems involved in implementing a unified court system during a time of adverse economic conditions and the approach proposed to be taken in this regard is contained in the Foreword appearing on pages viii and ix.

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ACKNOWLEDGMENTS

During the course of this study we were impressed by the concern shown by participants in the Vermont court system and government for the issues raised, and by their willingness to provide us with a good deal of their time, energy and information.

To all the persons we interviewed we express our appreciation and our hope that we have reflected their concerns in this study, whether or not we have agreed with their views. In all instances we have sought to address the specific issues they raised and to substantiate the reasons for our recommendations.

Without the special help of the following persons this report could not have been written. To all go our warmest thanks.

The staff of the Office of the Court Administrator: Messrs. Lawrence J. Turgeon and Stephen J. McPherson, and Mmes. Hazel M. Stevenson and Irene M. Hilliard, all of whom provided us with information, arranged appointments and transportation, and were always willing to be of assistance

County Clerks Edward J. Cashman of Burlington and Mrs. Elizabeth L. King of Bennington, who spent many hours explaining how their offices and the system operated

Henry F. Black, Esq., Chairman of the Vermont Bar Association's Judicial Systems Committee, and the members of the committee, who invited us to their meetings and discussed many of the issues in this report with us

The Superior Court of Vermont, which devoted a large part of its monthly meeting to discussing the issues in this report with us

Professors L. J. Gould and Samuel Hand of the University of Vermont, who explained much of the history, structure and style of Vermont to us

Hon. Sterry R. Waterman, a member of the 1937 Report committee, who offered interest and assistance

David Orrick, Esq., formerly Vermont Court Planner, who was most willing to review our findings and discuss our conclusions

FOREWORD

This report outlines a plan for action. In March of this year, voters in Vermont decided that the state courts should be unified. Our task in preparing this report was to find out how well the courts have been serving the people and what changes should be made to produce the unified court system that the constitutional amendment ratified by the voters prescribed.

Since the time we began our research and analysis leading to this report, bad economic conditions in the United States, but particularly in Vermont, have created a justifiably hostile atmosphere for changes in government. The air is particularly poisonous for proposed changes which cost money.

Our job was to determine the current effectiveness of the courts and to design the best unified judicial system for Vermont. We have tried to meet this challenge set for us as consultants for the Advisory Committee on Court Unification. Basing our conclusions on analysis of court functions in Vermont and throughout the United States, we have tailored nationally-set standards to the specific needs of Vermont. We believe the resulting plan is the best one for Vermont.

But we have prepared this report with still another, more immediately vital goal in mind. We have worked to recommend a court unification plan which will keep costs close to present levels if not below them. Because of the current economic picture, we recognize that some parts of the new system will need to be introduced over a longer

span of time than might otherwise have been necessary.

Clearly, new facilities cannot be expected to arise as quickly as might have been hoped. Some recommended improvements will be tested as pilot programs in a few, selected places before they are expanded throughout the state.

But rather than feeling that hard times require postponement of any improvements, we instead regard economic adversity as the strongest argument favoring any well-conceived effort to introduce more efficiency, productivity and rationality to Vermont's courts.

The Vermont electorate voted for a unified court system to serve the people during good and bad times. Some may suggest that small, unconnected court units spread out across the state are capable of providing adequate service today. We disagree.

The unified court system ratified by the voters will have a strong central administration supported by clearly-defined regional and local leadership connected to all parts of a full-time system. Improved calendaring of cases, reporting of court statistics and location of judges and courtrooms will permit the courts to do their job more efficiently and fairly.

Unified courts will save money for everyone who must use them. Unifying the judicial system is also the best way to reduce the costs of operating the courts.

I. What is a Unified Court System?

Although many reports studying the Vermont state courts have urged that steps be taken to unite many separate courts into an efficient, economical system, few have outlined the actual working structure of a unified court system or the reasons why it is a preferred form of court organization. The goal of this study is to provide this needed analysis so the citizens of Vermont can understand what a unified court system would look like in their state. In March 1974, they voted for such a system: we try in this report to show them how to develop and introduce the unity for which they voted.

The first principle of court unification is recognition of the judicial branch as a separate, integral part of state government. Once the courts are viewed as a responsible governmental arm capable of managing its own affairs (as the executive and legislative branches do), the structure of a unified judicial system begins to emerge into full view.

For when the courts become a unified branch of government, they should be able to prepare, submit and manage their own budget; recruit, hire, evaluate, promote, and remove their employees; determine in an organized manner their internal operating rules and procedures; and plan for their future professional, financial and operating needs.

However, to assume this independent status, the courts

must "get themselves together," as today's parlance puts it. Starting from a group of courts organized and operating in differing fashions for varying reasons, a unified system aims to align the diverse working patterns on an even operating plane.

The unified system is characterized by simple jurisdictional divisions - a trial court and an appellate court, both statewide. Rules of practice and procedure are the same in every trial courtroom. All courts are administered according to the same standards: financial and case records are maintained similarly in all areas and the same forms are filled out in identical fashion. Although judges may be assigned at times to hear one or a few kinds of cases, all trial judges in a unified system are trained and capable of hearing any case that may come before them.

In order that both the judges and non-judicial personnel be prepared to approach all matters they encounter with like competence, the unified court system stresses a continuing program of education, training and conferences for all personnel.

While proper procedures should be established to direct all policy suggestions and ideas for improving the system to the leadership, responsibility for consistent policy-making and ultimate administrative

authority in the unified system must be vested in the highest court, the Supreme Court, which in practice should delegate day-to-day exercise of its powers to the Chief Justice of the Supreme Court, who acts as the administrative head of the judicial branch.

Not surprisingly, unified court systems are not always uniform. Large states adapt the basic principles of unified organization for the more complicated structures needed to serve densely-populated areas. Small states are better able to adhere to the simple concepts of unification. The American Bar Association Standards Relating to Court Organization recognize that the system must vary to suit the character of the population: "the structure of the court system should be simple, consisting of a trial court and an appellate court, each having divisions and departments as needed...The judicial functions of the trial court should be performed by a single class of judges, assisted by legally trained judicial officers." (ABA, Standards Relating to Court Organization (Approved Draft, 1974) §1.11 at 3.4.)

Similarly, the National Advisory Commission on Criminal Justice Standards and Goals recommends that "all trial courts should be unified into a single trial court with general criminal as well as civil jurisdiction." (Courts (1973), Std. 8.1 at 164.) Nevertheless, the National Advisory Commission admits that complete unification is not an accomplished fact, but a goal toward which almost all state court systems

are still striving. The Commission compares states which have not yet remodeled older systems (characterized by many part-time judges, fee systems, justices of the peace without legal training, scattered administration and entirely local financing) with others featuring a single, state-wide court staffed by full-time, legally-trained judges who hear all kinds of cases throughout the state according to the same procedural rules and administrative practices (Ibid. at 164-65).

It can be seen, then, that a unified court system is not something a state either accepts or rejects. Rather, it is the generally-accepted goal toward which state court systems can aim even if local needs, customs or circumstances require the state to vary the way in which basic principles are applied.

A good example of an increasingly unified structure in a state with a population only moderately larger than Vermont is the court system in Idaho. The statewide trial courts of general jurisdiction - the District Courts - hear all cases. Smaller cases are assigned to the magistrates division of the District Courts. The five-member Supreme Court of the state is responsible for 1) administering and supervising the unified and integrated statewide court system, 2) supervising judicial education programs and the state law library, 3) control and management of the Supreme Court building, and of the fiscal operations of the Idaho Judicial System, 4) supervision and

control of the operations of the Idaho Judges Retirement Fund, and 5) supervision of the Idaho State Bar.

The Court Administrator assists in administering and supervising the integrated and unified judicial system, maintaining liaison with the legislature, and has developed a court management information system which uses the state data reporting facilities of the State Auditor to process daily operations reports. In each of the state's seven judicial districts, a district trial court administrator assists the senior district judge in his statutory duty of administering the District Court there. His work involves preparing and managing the local court budget, assisting in preparation of case calendar control, assignment of judges, management of court facilities and operating supplies, supervision of statistic gathering, analysis of administrative systems and procedures, preparation and review of local practice and procedure rules, supervision of staff personnel, records management, application for and administration of federal grants, participation in making uniform rules for all the District Courts, overseeing the selection and management of juries, acting as troubleshooter for delays and complaints and providing information to individuals having contact with the District Courts in his area.

A broad set of goals which a unified system can achieve has been outlined by the ABA (Standards Relating to Court Organization, supra, §1.12(a) commentary at 20-23). These

are listed below, along with a brief description of where Vermont now stands with respect to each:

1) Goal: elimination of differences in court policy which "have more practical and visible consequences for the general public"

   Vermont: cases are treated in a more individualized manner in Superior Court than in the District or Probate Courts largely because of tradition and caseload size

2) Goal: ending duplication of effort and conflict of purpose on the part of court personnel

   Vermont: three sets of clerks or registers - County, District and Probate - labor in each county, often duplicating and in conflict with the work of each other

3) Goal: closing the division between two systems, as in felony-misdemeanor splits in jurisdiction, handling a single caseload to reduce inefficiency in administration and ending "unjust and embarrassing discrepancies in the disposition of cases"

   Vermont: while there is no felony-misdemeanor split, the Superior Court only tries criminal cases where the possible sentence is life imprisonment or death; three separate trial courts require different administrative policies; and some discrepancies in disposition of cases arise from scanty supervision of the judges' individual exercise of discretion

4) Goal: ending the need of traffic tribunals to satisfy revenue expectations of local officials, resulting in procedural bias and exploitation of the public

   Vermont: this does not appear to be a problem in Vermont, since the ending of the judicial functions of Justices of the Peace also ended these problems

5) Goal: with respect to civil litigation, eliminating the need for each court to have separate filing systems, clerical staffs, process-servers, jury officials and lists, bailiffs, courtroom clerks, court reporters, motion calendars, trial lists and financial records

   Vermont: process-servers (the sheriffs) and jury management have been unified in Vermont, but the other personnel and procedures remain separate

6) Goal: facilitate disposition of actions involving different claims arising out of the same facts

   Vermont: a domestic relations problem, which often involves different matters arising from the same fact situation is currently divided among three courts

7) Goal: more efficient use of judicial manpower by arranging calendars on the basis of case type and estimated difficulty and duration of trial, rather than amount in controversy

   Vermont: these methods are not used in Vermont at present

8) Goal: "reduce or eliminate the tradition of second class justice that is associated with courts of 'inferior jurisdiction.'"

Vermont: there is a definite aura of "second class justice" associated with the courts below Superior Court, whether or not the perception is accurate

9) Goal: formulation of uniform court rules and administrative policies

Vermont: the Supreme Court has formulated rules of procedure but administrative policies vary in each state court

10) Goal: establishing a single administrative office to serve all trial court levels

Vermont: the Office of the Court Administrator has been established but does not currently serve all trial court levels fully, because of understaffing, the demands of serving the Supreme Court, resistance by the trial courts and insufficient Supreme Court support for trial court administration

11) Goal: selection of "a single presiding judge having general supervisory responsibility for all trial court levels"

Vermont: judges do not perform this function in any region or area of the state

12) Goal: integration of financial administration through a single budget, disbursement and accounting process

Vermont: this goal is closer to being achieved, although county involvement in court finances prevents ultimate attainment.

In summary, to unify the courts aims to attain the goals of flexibility (assigning judges and court personnel where needed through cross assignment, uniform practices and broad training), responsibility and accountability (clear lines of central authority), economy (use of support staff and court facilities by all as needed) and uniformity in dispensing justice (all cases receiving proper consideration).

II. The Present Structure of Vermont's Courts: An Overview

At present, there are four state courts in Vermont: the Supreme, Superior, District and Probate Courts. Only the Supreme and Superior Courts are specifically mentioned in the State Constitution (Vt. Const. II, §4). The District Court was created by statute (4 V.S.A. §436) as was the Probate Court (4 V.S.A. §311), although the Constitution specifically provides that Judges of Probate are to be elected to four-year terms, unlike other judges, who hold office by appointment (compare Vt. Const. II, §46 with §28c). Assistant Judges are also elected to serve four-year terms (Vt. Const. II, §45).

The Supreme Court

The Supreme Court of Vermont is the state's highest court and exercises largely appellate jurisdiction, although it may issue certain special writs on original application (4 V.S.A. §2). The Supreme Court is composed of five justices, one of whom is designated the Chief Justice (4 V.S.A. §4). It holds all terms at Montpelier (4 V.S.A. §8). The Court Administrator, by statutory provision, serves as Supreme Court Clerk (4 V.S.A. §§8, 651); he now also serves as the Court's Reporter of Decisions but this office is not bound statutorily to the other positions (4 V.S.A. §17). While the court has had

statutory "administrative and disciplinary control" of all state judicial officers, it only recently was given overall and ultimate responsibility, by Constitutional amendment, for administering the unified Vermont state court system (compare 4 V.S.A. §3 with Vt. Const. II, §§28b and 28d).

The Superior Court

Until the recent constitutional amendment, there was no Vermont Superior Court; instead the state had six (now seven) Superior Judges and fourteen County Courts in which the Superior Judges presided on a rotating basis. The current Superior Court is composed of seven Superior Judges, who continue to preside on a rotating basis in the fourteen counties (4 V.S.A. §111(a)). Of the three judges (one Superior Judge, who presides, and each county's two Assistant Judges) prescribed to sit in Superior Court, two form a quorum (Ibid.) The Assistant Judges, not generally lawyers, can form this quorum.

The Superior Court is a trial court of general jurisdiction but has, in practice, limited the exercise of its jurisdiction largely to civil cases, matrimonial proceedings, and matters in equity. The Assistant Judges do not sit in equity cases: for these proceedings, the Superior Judges act as Chancellors (4 V.S.A. §§111(a), 219). Except for major felony cases, usually limited to homicide, the Superior

Court has permitted its criminal jurisdiction to be exercised by the District Court (4 V.S.A. §§439, 442).

In addition, the Superior Court is empowered to hear appeals from administrative agency proceedings and to try cases originating in Probate Court on a de novo basis (4 V.S.A. §113, 12 V.S.A. §2553, 2555). There is no intermediate appellate court in Vermont. The Superior Court sits in every county of the state, with the Superior Judges as a group recommending the schedule of terms to the Supreme Court for promulgation. Two terms per year are normally held in most counties. Between these, occasional motion days may be scheduled, depending on the state caseload and the residence locations of the judges.

The County Clerks, who are appointed by the Assistant Judges, with the concurrence of the Superior Judge presiding in the county at the time, and serve at their pleasure, serve as clerks of the Superior Court in each county (4 V.S.A. §§651, 24 V.S.A. §171). Court reporters are appointed by the presiding Superior Judges as needed (4 V.S.A. §791). Sheriffs designate deputies to serve as court officers (32 V.S.A. §808).

The District Court

The District Court of Vermont is a statewide court divided into six multi-county units, each of which contains circuits equal to the number of counties within the unit (4 V.S.A. §§436, 444(a)). There are eleven judges, each of whom is assigned to one unit (in which he must reside after appointment) except for two judges who serve a total of five smaller counties (one judge rotates among three

counties; the other between two)(4 V.S.A. §444). While the system permits transfer of judges as is necessary, in practice, there are very few inter-county assignments (Ibid.).

Although created as a trial court of limited jurisdiction, the District Court has steadily increased its area of activity to include almost all criminal business except for homicides, civil cases (not involving real estate) up to $5,000, traffic matters, juvenile cases, mental health commitments, and small claims proceedings (4 V.S.A. §§437, 439, 440, 441, 32 V.S.A. §632(8), 12 V.S.A. §§5531, 5532, 18 V.S.A. §179, 23 V.S.A. §2201 et seq). Each circuit is served by a clerk, who is appointed by the Court Administrator with the advice of the District Judge assigned to that circuit. The same procedure governs appointment of court reporters (4 V.S.A. §691). The court officer may be the county sheriff, any county sheriff within the unit, or a constable (4 V.S.A. §446).

Always sitting in the same location (with the two exceptions), the District Court is in continuous session, although in certain counties, different types of matters, such as juvenile hearings and criminal arraignments, are heard on designated days each week (4 V.S.A. §436, Sup. Ct. Admin. Orders Nos. 3, 5, and 8).

The Probate Court

There are 19 Probate Courts in Vermont; nine counties each constitute probate court districts themselves, while the five southern counties of Orange, Windsor, Windham,

Rutland, and Bennington are each divided into two districts (4 V.S.A. §§271, 273-277). The Probate Court exercises entirely original jurisdiction in probate of wills, settlement of estates, adoptions, guardianships, name changes and uniform gifts to minors (4 V.S.A. §311). Judges of Probate are elected in each district for four-year terms (Vt. Const. II, §46). Registers are appointed in each district by the Court Administrator with the advice and consent of the probate judge (4 V.S.A. §357).

There is no requirement that Judges of Probate be attorneys and a majority of the present judges are lay citizens. The absence of this requirement accounts for the existence of the right to trial de novo in Superior Court for cases originating in Probate Court (See 12 V.S.A. §2553 and cases discussed in commentary thereto). Judges are paid according to a statutory scale determined originally by the level of business in each district: none serves full-time (32 V.S.A. §1142).

Appointment of Supreme Court Justices, Superior Judges and District Judges

Supreme Court Justices, Superior Judges and District Judges are all appointed for six-year terms by the Governor and take office upon confirmation by the Senate (Vt. Const. II, §28c). The appointments are made from a list of candidates certified by the Judicial Selection Board, whose members are chosen by the Governor, the legislature and the Vermont Bar Association (4 V.S.A.§601; see Chapter XIII).

After completing a term, a judge or justice may choose to give notice of desire to continue in office, at which time his name is submitted to both houses of the Legislature. If a majority of each house approves, the judge is continued in office for another term. If he is not approved, the appointment procedure is used to fill the vacancy (Vt. Const. II, §28c).

Administration of the Courts

Since 1967, the Court Administrator has been charged with administration of the state court system: his duties are as prescribed by the Supreme Court (4 V.S.A. §21, Sup. Ct. Admin. Orders Nos. 2, 4 and 12). The statutes provide him with additional powers of judicial and clerical assignment: he may assign judges in the event of emergencies or illness. He exercises approval power over the original appointment of district court clerks, probate registers, and district court reporters (4 V.S.A. §§74, 357, 444, 691).

The recent constitutional amendment clarified the overall power and responsibility of the Supreme Court for administration of the state court system (Vt. Const. II, §28b). By administrative orders, the Supreme Court had previously enlarged the limited powers conferred by statute upon the Chief Superior Judge and the Chief District Judge, who are

now charged with significant administrative responsibility for their respective courts (Sup. Ct. Admin, Orders Nos. 23, 24, 4 V.S.A. §§71, 603). There is no Chief Probate Judge: as all the judges are part-time, there have been no instances of excessively large caseloads to date (see Table 22).

Rule-Making and Removal Powers

The Supreme Court has exclusive power to make rules for all Vermont courts (Vt. Const. II, §28d, 12 V.S.A. §1). The Supreme Court also has general disciplinary power over all judges (Vt. Const. II. §28c), which includes power of suspension. However, exclusive power of removal is conferred by the constitution on the General Assembly in the form of impeachment (Vt. Const. II. §53, 54).

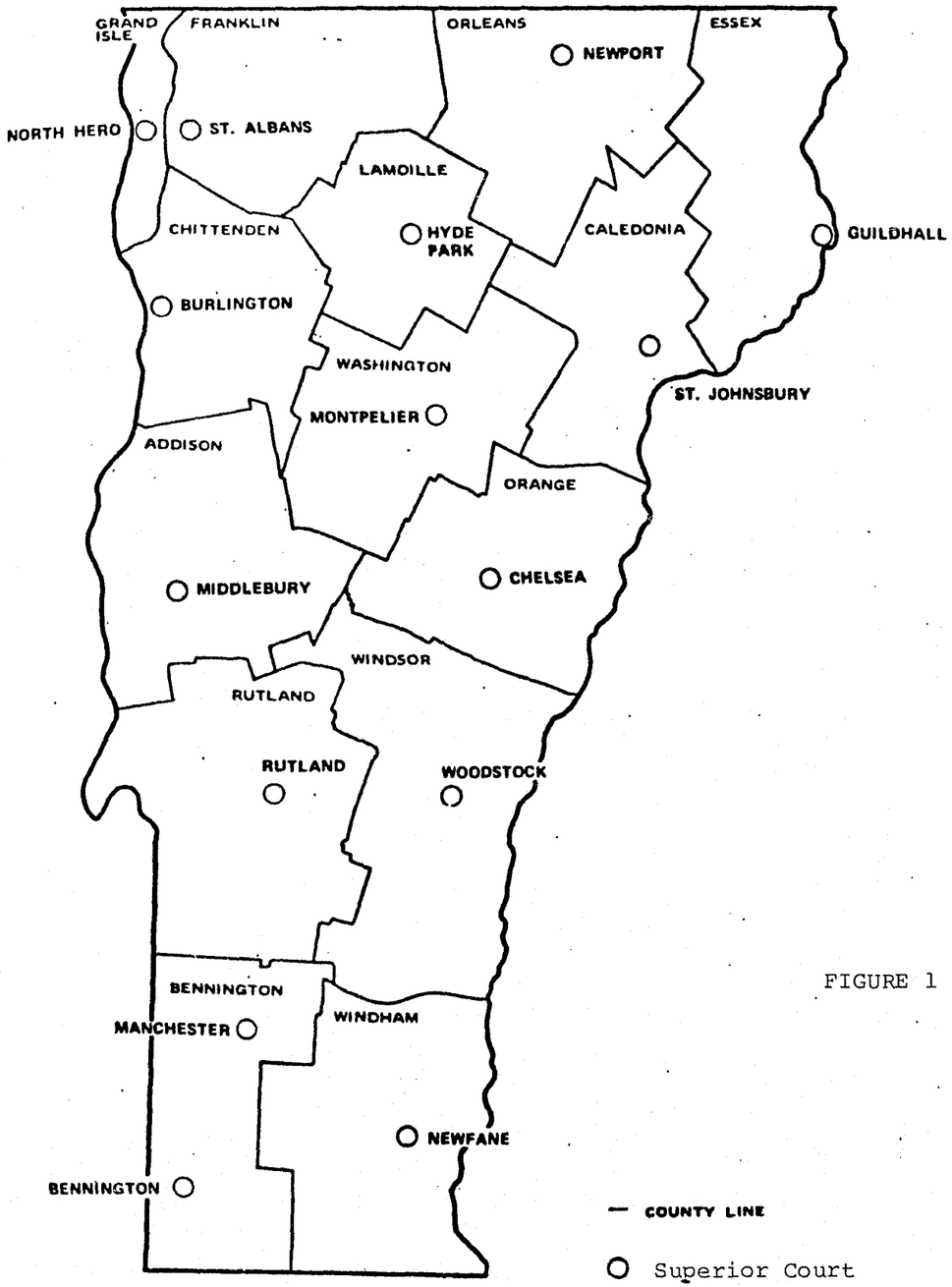


FIGURE 1

SUPERIOR COURT LOCATIONS

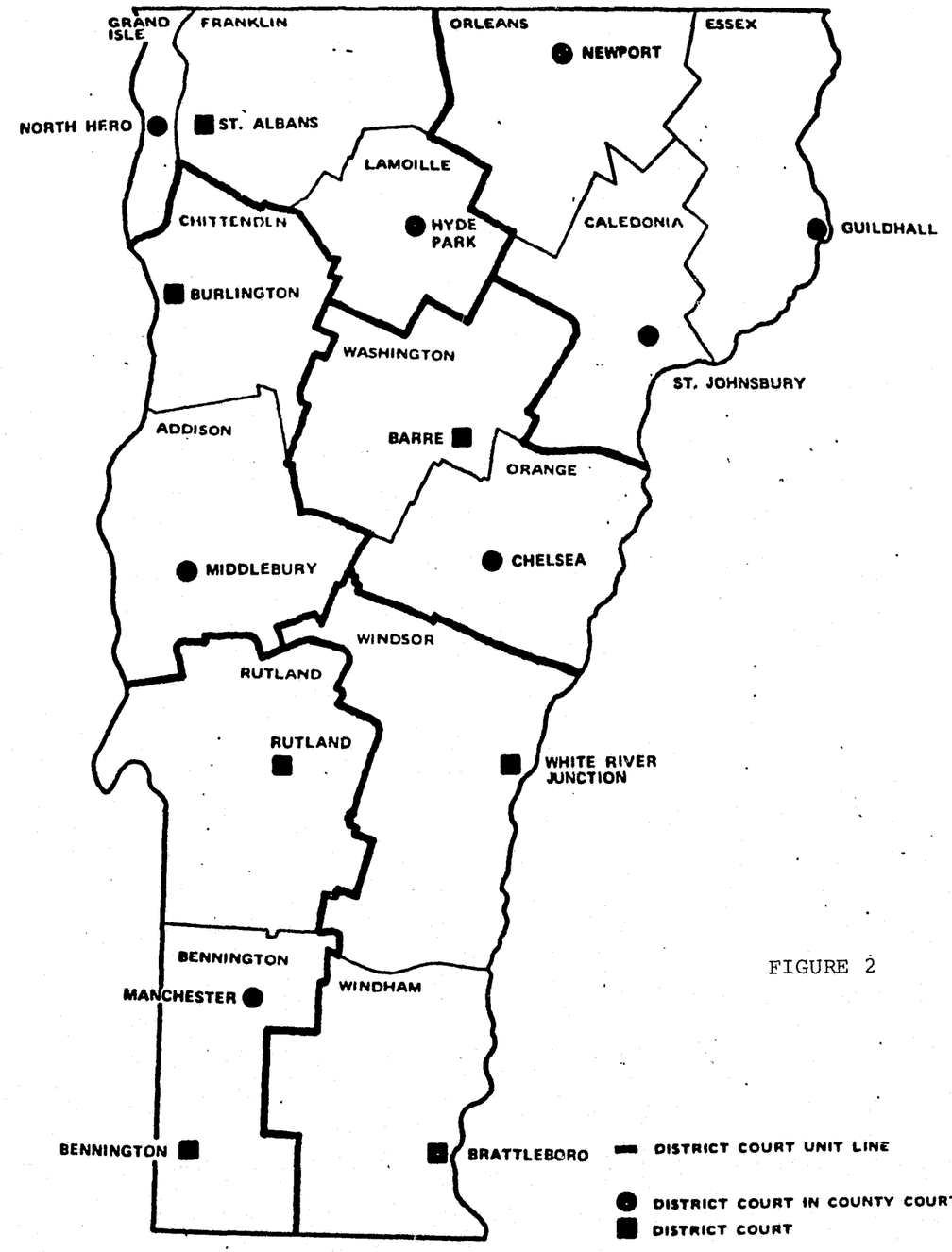


FIGURE 2

DISTRICT COURT LOCATIONS

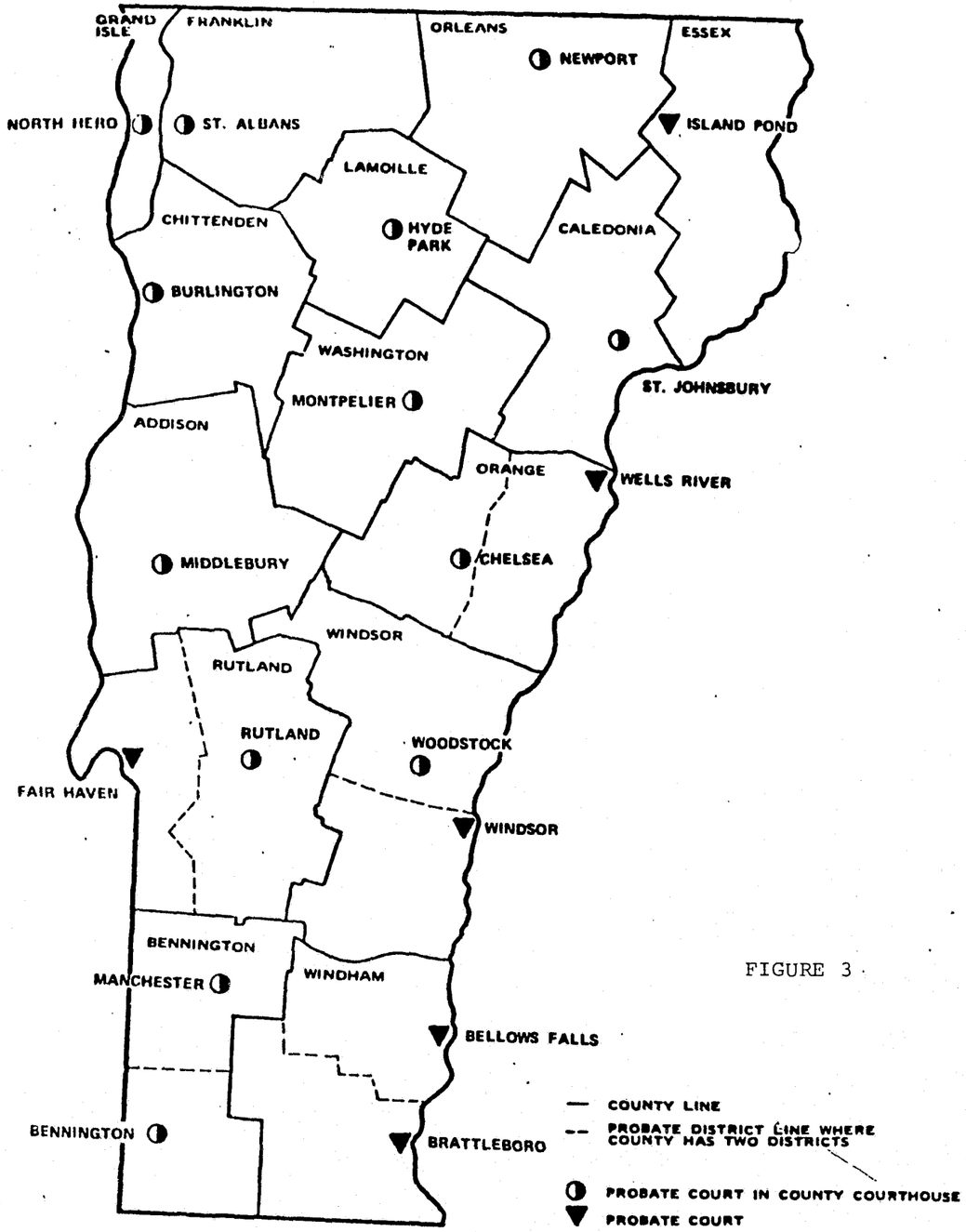


FIGURE 3

PROBATE COURT LOCATIONS

III. The Path to Court Unification: A Brief History

In March 1974, the Vermont electorate ratified Proposal V thereby amending the state constitution to provide for a unified state judicial system. This final phase of the amendment process was the result of many years of thought and activity by the Vermont citizenry, bar, judiciary and legislature directed toward establishment of a unified court structure.

Before attempting to analyze the viability and problems of the present court structure or to recommend how a unified system should be shaped, we should recall the steps in the history of Vermont's courts which have led both to the present judicial structure and the recent constitutional amendment which was intended to revamp the existing system.

While traditions run strong in the Vermont courts, several important changes have occurred over recent years. Many more have been proposed. Although studies of the courts have been made every few years and reports written, few of these have assessed the system as a whole: most have limited their scrutiny and conclusions to parts of the structure. Nevertheless, an analysis of these past proposals and changes must precede our analysis and recommendations.

A. The Courts

Of the state's four existing courts -- the Supreme, Superior, District and Probate Courts -- only the District Court, created in 1967 from the scattered independent Municipal Courts, is a wholly new or even drastically changed tribunal. The Supreme and County Courts were organized in substantially their present form shortly after the beginning of this century (in 1974 the County Courts were renamed the Superior Court: since they had always been presided over by Superior Judges, the change was purely one of name).[1]

Subsequent to the establishment of the Supreme and County Courts, the "ladder" system of lock-step judicial promotion came to govern the filling of vacancies. Judges ascended from the junior Superior Judge's position through the ranks of the Superior Judges to become Chief Superior Judge, thence to the Supreme Court and eventually to the Chief Justice's chair--if they lived long enough. The traditional route has only been bypassed four times.[2]

---

[1] The currently existing Supreme and Superior Courts have changed little since their establishment in the Judicial Act of 1906 (No. 63, Acts of 1906), which split the Superior Judges from the Supreme Court. Previously, there had been one large (membership varied from three to seven) Supreme Court and numberous forms of Circuit and County Courts. The Supreme Court was enlarged to its current size in 1908 (No. 57, Acts of 1908). Until 1974, the Superior Judges remained at their 1906 level of six (Acts of 1973, No. 159, Adjourned Session [1974]).

[2] An extensive analysis of the judicial elevation tradition is contained in W.C. Hill, Vermont Judiciary and the Tradition (M.A. thesis, Univ. of Vt., May 1968). The author is currently Chief Superior Judge.

Until the ratification of the constitutional amendment, the Supreme Court Justices and Superior Judges were elected every two years by the state legislature, which is officially known as the General Assembly. Indeed, their positions were filled purely by the biennial order of election which, except for the four occasions, always followed seniority strictly. The amendment provides for all justices and judges (except Assistant Judges and Judges of Probate) to be appointed by the Governor from a list of candidates certified by the Judicial Selection Board. Senate confirmation of nominees is required. (Vt. Const.II, §28c). There have not been any vacancies on the Supreme Court since ratification.

District Court Judges (and their predecessors, Municipal Judges), Judges of Probate, Assistant Judges and Justices of the Peace were never included in the promotion ladder. Only this year, for the first time, was a District Judge promoted to the Superior Court.

B. Reports and Changes

Very few changes which might be made in the Vermont court system have not already been recommended. Most prior studies consist largely of conclusions. This practice may be traced to the in-state and in-system member ship of the various study committees: as judges or lawyers,

the members assumed that other persons involved in the court system were equally aware of existing conditions.

1. The 1937 Report

Despite its brevity, the Report of the Special Commission to Study the Judicial System of Vermont in February 1937 merits respect: while its recommendations were not adopted, most have been reiterated in later years. Not surprisingly, having investigated the same subjects in parts of our research program, we generally agree with 1937 report's conclusions, which included recommendations to combine the courts in the two smallest counties, Essex and Grand Isle, with the courts in the respective adjacent counties; merger of Probate Courts in two-district counties--the southern counties-- to form single-county districts; elimination of the judicial functions of Assistant Judges; and creation of a separate part of the courts to handle juvenile proceedings.

As is the case with many of the other reports, the 1937 study only considered a scattered group of subjects relating to the state courts. The system itself was not subjected to any general analysis of function and performance.

2. The 1944 Bar Association Committee Study

In 1943, Dean Roscoe Pound of Harvard Law School addressed the Vermont Bar Association on the subject of "Improving the Administration of Justice" (1943 Vermont Bar Association Proceedings, 41-61). The Dean urged adoption

by Vermont of principles of modern court organization, including unification, conservation of judicial power, flexibility and responsibility (Ibid. at 47). He also expressed the view that Vermont was not making the best use of what he felt were large numbers of judges, that many procedures were archaic, and that strict adherence to common law rules resulted in an excessive number of appeals (Ibid. at 52).

In response to the Pound address, the bar association appointed a special committee to study his recommendations and report on what changes it believed should be made. In its report (1944 Vermont Bar Association Proceedings, 56-72), the committee recommended the following changes in the Vermont court structure and operation:

a) continuous terms for County (now Superior) Court in each county to enable trials and motions to be heard when convenient for all concerned (Ibid. at 64)

b) reducing the number of Municipal Courts (Ibid. at 66)

c) merger of the two-district county Probate Courts (Ibid. at 68)

d) creation of a Judicial Council (Ibid. at 71) and

e) grant of rule-making power to the Supreme Court (Ibid.).

The 1944 report was instrumental in causing the establishment of the Judicial Council in 1946 and the granting of some rule-making power to the Supreme Court in 1949. The other recommendations were not implemented.

3. The 1955-1956 Report

The 1955-1956 Report of the Interim Commission to Study the Vermont Court System limited its inquiry to the Municipal, Probate and Justice of the Peace Courts. Recommendations contained in the report called for limiting the powers of the Justices of the Peace (these powers were removed entirely by the recent constitutional amendment), eliminating three of the nineteen Probate Courts, making probate fees uniform (which was done), extending Municipal Court civil jurisdiction, and revamping court rules regarding jury selection, docket control and fees.

While the commission stated that Municipal Court reorganization was warranted and that districts should be consolidated further, it made no specific recommendations. Nor did it enter the political squabble then occurring with respect to making the probate judges appointed rather than elected and specifying the judges' salaries by statute in place of salaries directly related to collections. Eventually, salaries of the Judges of Probate were statutorily set and the fee basis was abandoned. However, the change cannot be credited to the 1955-1956 report.

4. A District Court for Vermont (1963)

In 1963, Governor Philip Hoff, himself a firm advocate of judicial reform (see P. Hoff, "Modern Courts for Vermont," 52 Judicature (March 1969) 316-20), requested the Vermont Bar Association to recommend changes in the Vermont court system. The result was the preliminary report of the Special Committee on Revision of the Vermont Court System, entitled A District Court for Vermont, which called for replacement of the part-time Municipal Courts and Justices of the Peace by full-time judges sitting in one District Court divided into a smaller number of districts.

The committee envisioned eight full-time judges assigned to five districts, with a chief district judge who would try cases and act as the court administrator. Full-time clerks, judicial appointments from a Judicial Selection Board list, increased judicial compensation and broader jurisdiction were recommended.

The product of a committee entirely composed of judges and lawyers working under the aegis of the bar association, the 1963 report preceded the actual creation of the District Court by almost four years. But the report came much closer than the 1955-1956 study to charting the course the state courts would eventually follow: the bar association committee recognized that full-time judges and clerks were

needed if modern courts were to emerge from the ancient structure of rural justices and local Municipal Courts. The need was also seen for District Judges to be appointed and to be compensated at a reasonable level if competent candidates were to be found.

Finally, the committee included two recommendations, which, had they been implemented, might have resulted in a more successful District Court than now exists:

a) the new judges were to rotate within their multi-county districts on a similar but reduced scale to the Superior Judges;

b) the Chief District Judge was assigned ten specific administrative duties to perform.[2]

5. Judicial Branch Study Committee, Legislative Council Report on Proposal No. 5 (1966)

In 1966, the Legislative Council authorized a study of the judicial branch which anticipated the constitutional amendment which was to emerge in 1970 and eventually achieve ratification in 1974. The 1966 report was the first study

[2] These duties were to: 1) hold court when necessary, 2) reassign judges as needed, 3) fix court days and hours, 4) set vacations, 5) prescribe recordkeeping procedure, 6) collect statistics and arrange for their publication, 7) prepare and submit budget, 8) report annually to the Chief Justice, 9) establish appropriate court offices and facilities, and 10) convene at least annual court meetings to discuss several classes of matters.

of the courts which attempted to assess the entire system rather than selected components. The committee recommended a unified court system in no uncertain terms:

> As soon as reasonably possible the Vermont constitution should be amended to provide for a unified court system including an appellate division (supreme court) and a trial division (cf. civil, criminal, domestic, probate, juvenile, et al) with judges selected in a uniform way, paid reasonable salaries and sitting in districts determined by the supreme court. The financing of this court system would be entirely the obligation of the state. (1966 Report at 16)

The committee observed further, "We can no longer countenance a situation where people in the less populated areas are denied the same quality of justice as those in the urban centers." (Ibid. at 6) The report called for judicial assignment according to "need as determined by a full-time court administrator." (Ibid.) With regard to part-time judges, the committee noted:

> ... the complexity of legal problems and effective administration of justice require all courts today to be presided over by persons with adequate legal training, working full-time, with realistic pay and with a term of office sufficiently long to attract competent attorneys away from a successful practice. To appreciate the importance of safeguarding the rights of defendants, even at the lowest level of procedure, one need only refer to the much publicized recent decisions of the Supreme Court of the United States. It is doubtful that the rights of the defendants as enunciated by the Supreme Court can be successfully sustained and protected by anyone who lacks legal experience and training. (1966 Report at 7)

The 1966 report's specific recommendations can be outlined as follows:

1) clear enunciation of the Supreme Court's rule-making power in constitution and statutes

2) determination of full-time judicial districts on the basis of caseload by the Supreme Court and the Court Administrator--in this respect, the District Court was seen as a pacesetter for the other courts

3) removal of matrimonial, adoption and commitment matters to District Court

4) designation of all judges following the judicial selection process of board certification, gubernatorial appointment and senatorial confirmation

5) cross-assignment of Superior and District Judges

6) Probate Court merger in two-district counties and requirement that Judges of Probate be attorneys

7) appointment of all law clerks, secretaries and clerical assistants by the Supreme Court with the assistance of Court Administrator

8) increase in judicial salaries

9) increase in maximum amount of small claims jurisdiction

10) construction of new court buildings, libraries and filing systems upon unification of the system and state assumption of court operating expenses

11) consolidation of separate entry, trial and judgment fees

12) creation of the position of Court Administrator to be appointed by the Supreme Court

13) elimination of Assistant Judges constitutionally; prior to that, termination of their judicial functions by statute

14) requirement that state's attorneys be attorneys

15) court appointment of jury commissioners and expansion of jury list

16) eventual absorption of Probate Courts into the unified court system and elimination of Judges of Probate; prior to constitutional amendment, merger in two-district counties and transfer of adoptions and commitments to District Court

17) elimination of judicial powers of Justices of the Peace

18) calling a constitutional convention to amend that document as needed.

Clearly, the 1966 report deserves recognition as the first thorough analysis pointing the way to a modern court system. Some of its recommendations were adopted immediately: the Court Administrator's post was established in 1967, fees were consolidated, and the jury selection system was revamped and made uniform for both trial courts.

Other recommendations found their way into the constitutional amendment proposal: change from counties to judicial districts, elimination of judicial functions of Justices of

the Peace, and selection of Supreme Court Justices and Superior Judges by the judicial selection process established for District Judges. Law clerks were added some years later. Committment proceedings were transferred by statute in 1973 (4 V.S.A. §436a).

The recommendations which were not followed form the starting point of our analysis. Those changes proposed in 1966 but not adopted are still needed. Most important of all, the concept of the unified court system, which permeates the constitutional amendment, follows closely the concept of the merged system envisioned by the 1966 study committee.

6. Constitutional Commission Report (1971)

The Report to the General Assembly of the Constitutional Commission dated January 5, 1971, relied in large measure upon the 1966 report of the Judicial Branch Study Committee for justification of the recommended amendment. Between the two reports, the Commission reported:

> ...while some degree of unification has occurred through the creation of the district court, still the county courts, courts of chancery, probate courts and justices of the peace remain separate and distinct; nor can these various courts and judicial officers be brought fully within a unified court system except with the authorization of constitutional amendment. (Commission Report at 30)

The Commission in effect endorsed the 1966 report's recommendations, stating in particular:

> It is felt that the supreme court should have administrative control of all of the courts of the state, and disciplinary authority concerning all judicial officers and attorneys at law in the state.
>
> As regards the subordinate courts it is the opinion of the Commission that, rather than specifying the structures and jurisdiction of the courts in detail, the Constitution instead should give responsibility for establishing these courts to the General Assembly, and should provide that they may be divided into geographical and functional divisions, with jurisdiction as specified by law or by rules of the supreme court. This will permit the General Assembly to create a unified judicial system with sufficient flexibility to be adapted to changing needs without the necessity of frequent amendment of the Constitution. (Commission Report at 31)

Unfortunately, the amendment proposal as enacted was not identical to the form recommended by the Commission. First, the Superior Court was included in the definition statement of the unified system which in the Commission draft merely read "a Supreme Court and such subordinate courts..." (Compare Vt. Const. II, §4 with Commission Report at 33) Further, Assistant Judges and Probate Judges were retained as constitutional, elected officers despite their omission by the Commission, and forced retirement was delayed until whichever came later, the end of the judge's term or the end of the calendar year, permitting in effect, retirement to be postponed from age 70 to 75.

6. The Judicial Constitutional Amendment (Proposal V)

It is necessary to outline exactly what changes were accomplished by the amendment ratified in March 1974:

1) Courts need no longer be maintained in every county (Vt. Const. II, §4);

2) The judicial power of the state is explicitly vested in a unified judicial system (Ibid.);

3) Assistant Judges, Judges of Probate, State's Attorneys and Sheriffs now stand for election for four-year terms instead of two-year terms (Ibid. §45);

4) Justices of the Peace cannot exercise judicial powers except when commissioned as magistrates by the Supreme Court (Ibid. §47);

5) The Supreme Court has administrative control of all courts and disciplinary authority concerning all judicial officers and attorneys (Ibid., §28b);

6) All courts except the Supreme Court may be divided into geographical and functional divisions as provided by law or Supreme Court rule not inconsistent with law (Ibid.);

7) Jurisdiction of such divisions is as provided by law or rules not inconsistent with law (Ibid.);

8) State courts may exercise law and equity jurisdiction as provided by law or rules consistent with law (Ibid.);

9) All appointments of state judges are to be made by the Governor from a list presented him by a judicial nominating body (Ibid., §28c)

10) The Governor may make recess judicial appointments but all appointments must be confirmed by the next session of the State Senate (Ibid.)

11) All appointed judges hold office for six-year terms and may give notice to continue, upon which notice the legislature votes on the question of the judge's continuance; continuance is won unless a majority vote against the appointee's continuing in office (Ibid.)

12) The Chief Justice may appoint retired justices and judges to perform special assignments as permitted under Supreme Court rules (Ibid.)

13) All justices and judges must retire at the end of the calendar year in which they reach 70, or at the end of the term of election during which they are serving when they attain 70, whichever date occurs later[3] (Ibid.)

14) The Supreme Court may suspend all justices and judges for such cause and in such manner as may be provided by law (Ibid.)

15) The Supreme Court may make administrative, practice and procedural rules for all courts but any such rule may be revised by vote of the legislature (Ibid., §28d).

[3] The retirement rule was held to apply to Assistant Judges, who are elected officials, in Aronstam, et al v. Cashman, No. 154-74, and Horican, et al v. L'Ecuyer, No. 155-74 (Vt. Supreme Ct., decided Aug. 19, 1974).

7. Judicial Council Reports

The Judicial Council was established in 1946 and is required by statute to report biennially to the legislature on the state of the courts (4 V.S.A. §562). The reports have increased in size over the years but except for the more extensive statistics, do not provide a comprehensive account of court performance and needs. Recommendations regarding the future increased role of the council are set forth in Chapter XIII of this report. Nevertheless, in tracing the path to court unification, some of the council's biennial reports contain indications of the direction in which the system was heading.

Signs that the system which had basically remained unchanged since 1908 was undergoing stress surfaced in 1962:

> Unlike in previous years, we find that the County Courts are now for the first time unable to maintain a current basis. This is due to a number of factors, including litigation in connection with highway land condemnation. The chief of the superior judges informs us that in his opinion this situation in time will tend to correct itself and he does not consider it necessary to make provision for an additional superior judge at this time. No doubt this situation should be reviewed from time to time until it has stabilized itself. (Ninth Biennial Report of the Vermont Judicial Council (1962) at 3)

It should be remarked that the situation did not stabilize itself--caseloads have grown ever larger ever faster--but the several Chief Superior Judges resisted requesting an additional judge until 1973, when one was added; the Superior Court has indicated it now believes another additional judge is warranted.

An expression of dissatisfaction with the Assistant Judges was contained in the 1964 report:

> Generally, the assistant judges are untrained in the law. For the most part they are unfamiliar with technical principles and rules of judicial proceeding. (Tenth Biennial Report (1964) at 4)

Six years later, in 1970, after a Court Administrator had joined the system, it was suggested:

> Now that the patterns of operation have been established, more attention will have to be given to assisting the courts to cope with caseloads by training our clerks in the preparation and managing of court calendars, the analysis of statistics to determine problem areas and the assignment of judges to insure full-time utilization of their time. (Thirteenth Biennial Report (1970) at 3)

Evidently this had not been accomplished two years later, when it was noted:

> It was hoped that time and resources might have been found during the biennium to come to the assistance of the overworked clerks of the courts in the nature of training sessions and improvement of manggement procedures. In the next biennium a real effort will be made to bring the benefits of modernized business methods and training opportunities to our non-judicial personnel. (Fourteenth Biennial Report (1972) at 3)

While this training has still not been accomplished, another problem had arisen to plague the clerks:

> Though the Judges' bench time has increased, the clerks and their clerical assistants are bogged down with the paperwork which the new [uniform traffic ticket] system requires and as a consequence, the clerks are not able to keep up with the important work of preparing progress and hearing calendars for the more serious work without letting the traffic offenses processing get into hopeless arrears. There is no doubt that additional clerical personnel will be required unless there is a diversion of such matters as traffic offenses out of the judicial system.(Ibid. at 6)

8. Preliminary Facilities Study (1972)

In 1972, an independent study of court facilities in Vermont was completed by Space Management Consultants, Inc. Report on a Preliminary Study of Judicial Facilities for the State of Vermont provides a thorough inventory of the existing deficiencies in Vermont court facilities. Numerous problems relating to the adequacy of facilities were found: substantial work would be required at virtually every location to meet the standards used in the report. While the report provides a useful inventory and catalog of facilities deficiencies, the study was preliminary in nature and thus did not contain a facilities improvement plan or schedule.

IV. Problems Confronting the Present Court System

In order to determine what form of court structure is best suited to Vermont, we first found it necessary to examine the problems of the present system. Conclusions drawn from analysis of these problems can then be employed in designing the proper form of court organization in Vermont.

1. Fragmented criminal and family jurisdiction. At present, most criminal cases are tried in District Court. Homicide trials, however, take place in Superior Court. This division of criminal jurisdiction has been justified by the usually larger court facilities for use in Superior Court homicide trials. Nevertheless, the very rarity of Superior Court criminal trials makes continuation of divided jurisdiction improper. Indeed, some Superior Judges have never tried a criminal case; the current system allows them little chance to acquire the vastly increased experience necessary for criminal judges today.

Family matters in Vermont have been divided among all three trial-level courts: matrimonials in Superior, juveniles in District, and adoptions and guardianships in Probate Court. Much sentiment observed in the state for creation of a family court has been stimulated by this existing split of responsibility. If, for example, parents of a child in trouble seek a divorce, and, as often is the case, the

parents' squabbles underlie the child's problems, these separate aspects of a family's problems cannot be handled in any one court; instead, solutions must be pursued in several.

2. Lack of court flexibility. Vermont courthouses in which more than one judge can hold court at a time are few. This limits the extent to which additional judges can be assigned to clear up backlogs in several parts of the state. Although cross-assignment power exists between courts, the isolation of Superior Court from District Court and the isolation of the District Judges from each other has made cross-assignment largely theoretical: an administrative possibility which has been used only in instances of emergency or illness.

3. Delay of cases. While the number of cases which have been pending for extended periods in the Vermont courts is significant (see Tables 1 and 8), the types subject to delay provide a clearer indication of where organizational changes in the court system are most needed. For example, only one-third of the small claims cases pending in District Court at the beginning of the second quarter of 1974 were disposed of by the end of the quarter. These usually simple cases should be subject to the least delay in an efficiently operating system: requiring a filing in settled cases would also improve operations. Civil cases in District Court are also backed up. Both these delays are frequently blamed by District Court personnel on Supreme Court Administrative

Order No. 17 requiring criminal cases to be handled as the first priority. Nevertheless, in our examination of the courts, these delays are also caused by lack of flexibility in assigning judges, insufficient court facilities, absence of supervision of individual District Courts by the Chief District Judge and Court Administrator, failure of court personnel to communicate with attorneys, and unwillingness of certain judges to act expeditiously in hearing kinds of cases they dislike.

4. Untrained personnel. The staff in both County Clerks' and District Court Clerks' offices are insufficiently trained to carry out their duties effectively. Although this problem can only be overcome through regular training of personnel at central training sessions, preparation and distribution of clerks' manuals will help to increase uniformity and regularity of procedures. Training sessions should emphasize aspects of work in a clerk's office, such as calendaring, less receptive to instruction by manual.

5. Disparate court practices. Lawyers and clients should expect that the same rules will be followed in all courts. Personal dislike of certain procedures, such as omnibus hearings in criminal cases, on the part of some judges, should not be tolerated. Docketing, case-scheduling practices, pre-trial procedures and record-keeping should be uniform throughout the state. Indeed, until records which serve as the basis for judicial statistics are kept

uniformly, it is almost impossible to assess the needs for added court personnel. In particular, calendaring and judicial assignment must reach optimum efficiency before appointment of additional judges can be justified.

6. Lack of effective supervision. At present, the Vermont court system operates without sufficient supervision of performance by judicial and support personnel. The Supreme Court has attended to its own cases. The chief judges of the trial courts have not required clerks to follow uniform procedures nor supervised the operations of the courts they head in the manner prescribed by the Supreme Court's administrative orders. The Court Administrator has not filled this existing supervisory vacuum.

To be sure, until passage of the recent constitutional amendment, the Supreme Court's disciplinary power over the entire court system was subject to question; the Chief Superior Judge is hampered by his lack of appointive power over County Clerks and Assistant Judge control of county courthouses; development of isolated District Courts has made supervision of each more difficult; and lack of solid support from the Supreme Court has made the Court Administrator's job undefined and thus more difficult. Nevertheless, the existing situation has also resulted from refusal, reluctance or inability of individuals to assume and exercise responsibility. Those serving

in court supervisory and administrative positions cannot expect to win popularity contests: successful administration requires people to be told to do many things they don't want to do.

7. Absence of modern personnel promotion and compensation system. These problems exist among both the judges and the non-judicial support structure of the system. Poor District Judge morale can be traced to the fact that only recently was any District Judge promoted to Superior Court. Superior Judges and Supreme Court Justices ascend the rungs of a "ladder" promotion system which has only been "broken" a few times in over sixty years. If District Judges are selected in the same manner as Superior Judges, there appears no good reason why their promotion should not occur regularly. Moreover, the Supreme Court's handling of criminal appeals should benefit by appointment of judges with extensive criminal law experience.

Seniority has no place in a modern court system. Judges should be assigned administrative duties on the basis of capability. Chief Judges and Chief Justices should be appointed. Some members of the bench will not be suited to supervision and administration. They should not be elevated to positions of authority because they are "next in line."

Non-judicial personnel should be placed in a rationally-

designed system which provides for regular evaluation, compensates for relocation in connection with promotion, and informs staff members of promotional opportunities. Compensation should be similarly structured.

8. Substandard facilities. The lack of flexibility caused by insufficient facilities has been previously discussed. But a previous study by Space Management Consultants, Inc.,[1] showed that facilities are substandard throughout the court system. Law libraries, jury deliberation rooms, prisoner-holding cells, judges' chambers, clerical offices and toilet facilities all need improvement in many places, most frequently in the District Courts but also in many county courthouses. A plan to improve facilities is outlined in chapter X, infra.

9. Wasteful duplication of court personnel effort. In most counties there is no need for more than one clerk's office to serve all courts in the county. Aside from improving administrative coordination of all court business, combining the clerks' offices will permit one staff employee in a single office to perform full-time a function such as calendaring now done part-time by several persons in different offices. In addition, judges will be less able to claim the individual loyalty of

[1]Report on a Preliminary Study of Judicial Facilities for the State of Vermont (1972).

particular clerical personnel. We have observed instances of clerks who regularly work with one judge refusing to provide adequate service to visiting or added judges.

10. Use of part-time judges, with no judicial training. It is unfair to provide one set of litigants with legally trained judges while these judges are unavailable to others. Aside from unfairness, use of non-legally-trained judges reduces available judicial time, when spent, for example, in hearing Superior Court trials de novo of contested probate matters. The increased complexity of our society has made it difficult for lay judges to cope with the law as it now exists; Vermont recognized this fact when the judicial functions of justices of the peace were eliminated. In no other state do lay judges participate in, much less have the opportunity to dominate, Superior and Probate proceedings. Part-time judges, even if legally trained, are inevitably faced with conflicts of interest, especially in small communities. For training to produce the most benefit and for supervision to be most effective, judges must be attorneys and serve full-time.

11. Excessive travelling by Superior Judges. While travelling by Vermont judges may be inevitable since some areas will never have enough judicial business to require a full-time judge, we also believe that in a state made up of small communities, limited rotation of judges is valuable in maintaining independent judicial perspectives, even if

stationary judges seem more efficient in theory. Rotation of judges, however, should be carefully regulated to avoid situations where judges travel the length of the state to hold court for one day or where judges travel to more than half the state's counties in a given year. As judges increasingly must prepare findings of fact in court-tried cases, travel becomes even more time-wasting (see Table 21).

12. Lack of control of calendars by the court. When attorneys determine when a case is placed on the trial calendar waiting list, judge-shopping inevitably occurs, particularly where judges rotate. In addition, allowing attorneys to determine how fast cases progress deprives litigants of the court's help in getting their cases decided promptly. The courts should control the time allowed for discovery and other pre-trial proceedings and placement of cases on the trial calendar. Judges should allow trained clerks to handle scheduling under court supervision. Judicial time should be reserved for hearing and deciding cases and preparing opinions and findings.

13. Insufficient law clerk support. The trial judges need research and drafting support supplied by law clerks. The Supreme Court relies heavily on law clerks to help in its work; the need of the trial judges is equally great. A judge should be able to devote his time to hearing cases: use of law clerks is far more economical than adding judges.

14. Insuring fair judicial selection procedures. While a judicial nominating board is consonant with the recommendations of all nationally-prepared standards of judicial selection, the judicial selection board must operate in a clearly fair and proper manner. Any selection board which must screen and certify some candidates, while rejecting others, will always face opposition, particularly from those not chosen. It is therefore vital that no one group of individuals remain on the selection board to constitute a self-perpetuating establishment. For this reason alone, membership on the board must be limited to a defined number of terms.

15. Need for motion days in a term system. While court terms may remain a necessity in areas lacking sufficient business to warrant a full-time judge, the present Superior Court term system has been unable to meet the need for regular motion days in smaller and medium-sized counties where the interval between terms is lengthy. With regionalization, increased attention to the needs of counties in a region should be more readily available and should be mandated.

16. Non-functioning judicial council. The present Judicial Council is almost non-functioning. Its membership should be selected by the Chief Justice of the Supreme Court

from the judges of all courts and areas of the state. The council should serve as an advisory body to the Chief Justice and the Supreme Court on matters of policy and should be employed by the courts in dealings with the legislature. It may also be designed to serve as a formal court or board of inquiry with respect to cases involving judicial misconduct.

17. Overspecialized judges. In Vermont, Superior Judges have increasingly become civil judges while District Judges handle mainly criminal business. Rotation of judges among such specialized divisions "helps to assure that members of the court are familiar with the entire range of the court's functions and responsibilities and to prevent specialized divisions from becoming the preserve of individual judges." (ABA, Standards Relating to Court Organization (Approved Draft, 1974), §1.11(b) commentary at 8). Judges who handle entirely criminal caseloads become worn down more rapidly by the routine of the criminal calendar; for this reason alone, judges should not be assigned to a single kind of work for an indefinite period. In addition, recruitment of more qualified candidates for appointment to the bench will be aided by knowledge that judges are not confined to any one area of the law.

18. Dispersed staff appointment and removal power. Authority to appoint clerks, assistant clerks and court officers is now dispersed among judges, assistant judges, sheriffs, clerks, and the Court Administrator (See, e.g.,

4 V.S.A. §§446, 651, 691 and 24 V.S.A. §171). This authority should be centralized in the Court Administrator subject to the approval of the appropriate supervising judge. In the same way, removal power over these employees should be centralized. These changes will permit effective administration and supervision as well as promote uniformity within the state system, while eliminating job opportunities for political favorites.

V. A New Vermont Judicial Structure

Summary

The best method of unifying the Vermont court system, as well as providing a mechanism to solve the system's problems outlined in the previous section, is to combine the state's existing trial courts. Along with consolidation of the trial courts should be a new framework which separates to the greatest extent possible those aspects of the courts which are adjudicatory--that is, forums for trial of contested proceedings--from those which are administrative.

A combined trial court, following the language of the Vermont Constitution (Vt. Const. II, §4), should be called the Superior Court of Vermont. It would consist of the present judges of the current Superior and District Courts, and would be capable of including the Judges of Probate in the future. The unified trial court should exercise general jurisdiction, including all civil, criminal, equity and family matters. The relationship with the present Probate Courts is discussed below.

Certain routine areas of the court's business, including traffic matters, small claims, name changes, and certain minor criminal offenses not involving the possibility of imprisonment should be delegated to

judicial officers who will form a part of the court. These judicial officers or magistrates should be legally trained, should reside in the counties they serve, and should perform those duties assigned to them by the court.

For purposes of organization, the new Superior Court should be initially divided into three geographic regions, which correspond with the three regions introduced in the recent Superior Court revamped rotation: Southern, Northeastern and Northwestern. Each region should be headed by a Presiding Judge who should be responsible for supervising the operation of the entire court in his region, including the magistrates performing judicial duties.

The present courthouse facilities would be retained for the new court's use, but combining all trial courts will allow emphasis to be placed on the county courthouse as the center of judicial activities in an area so that new facilities may be added within or near the existing county courthouses. Except for two new or remodeled District Court facilities, in Burlington and St. Albans, the District Court should be relocated in the county courthouse in counties where the court is not already located there, or new facilities for its use should be built at or near the county courthouse.

Judges in each region should rotate within their region, but not, in the usual course, outside it. County and District Court Clerk's Offices would be combined in each county. While most of the functions of counties in Vermont have been transferred to other governmental units, their geographic size and the location of the courthouses make the counties useful units for court organizational purposes. We believe that the counties, therefore, should be retained as judicial units since we have concluded that Vermonters want courts to remain reasonably near most places in the state, although transportation has improved and roads are cleared in the winter.[1] However, it is clear that there is insufficient judicial business in either Grand Isle or Essex County to justify maintenance of facilities in those counties. Our conclusion merely reiterates the recommendation contained in the 1937 Report of the Special Commission to Study the Judicial System of Vermont:

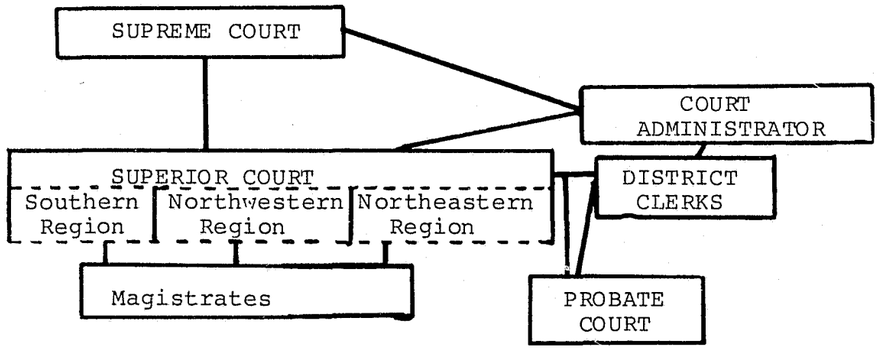
> ...we would call to the attention of the legislature the fact that there is not a lawyer practicing in Grand Isle county, and by the same token any litigation handled within that county is disposed of by attorneys travelling to the county seat, largely from Franklin or Chittenden counties. The state might be saved some money and the public interest of the inhabitants be as well served by having the various judicial functions of the county transferred to another county or counties. (Rpt. of the Spec. Comm. to Study the Jud. System of Vt., Feb. 13, 1937, at 7)[2]

[1] See the discussion of changes in mobility in Vermont on page 148, infra.

[2] It should be noted that a recent survey by the Office of the Court Administrator disclosed that there are still no lawyers practicing in Grand Isle County (although one resides there) nor do any practice in Essex County. (Survey of Number of Attorneys Including Judges Admitted to Practice in Vermont By Counties as of Nov. 1, 1974, Office of Court Administrator, State of Vermont).

Proposed Vermont Court System

Intermediate Phase



Proposed Vermont Court System

Final Phase

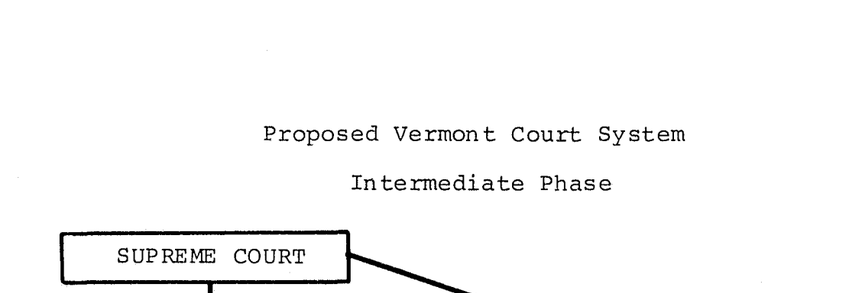


FIGURE 4

Present Vermont Court System

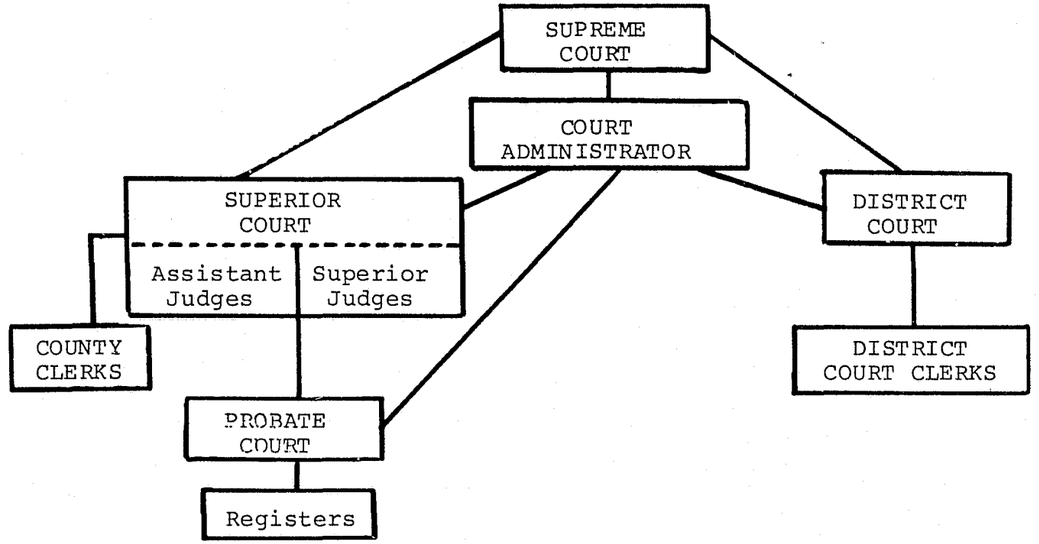


FIGURE 5

Therefore, we recommend that the counties become the judicial districts of the new Superior Court, except that Grand Isle be included with Franklin, and Essex be divided between Orleans and Caledonia.[2]

Need for a Combined Trial Court

A combined trial court will introduce a rational structure for the unified court system mandated by the recent Constitutional amendment. Organizing the trial courts in a single unit is the preferred way of achieving uniformity throughout the court system. By making all judges and magistrates responsible first to the region's Presiding Judge, and then to the Chief Justice and the full Supreme Court, a definite pattern is created for supervising courts to insure that they are run properly in all locations while also providing every judge and judicial officer with a direct route to bring problems and criticism to the top. While the Supreme Court has been given ultimate responsibility for and should exercise final authority over the entire system, this power should in practice be held and exercised by the Chief Justice of the Supreme Court in his capacity as administrative head of the judicial branch.

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[2] The following towns of Essex County should be included with Caledonia County: Concord, Lunenburg, Victory, Guildhall, Granby, East Haven and Maidstone. The remaining area should be included with Orleans County.

Obviously the combined trial court will eliminate jurisdictional fragmentation since one court will hear all kinds of cases. Existence of the combined court will testify to Vermont's willingness to give criminal matters as much attention (in judicial time and fiscal support) as most civil cases now receive.

A combined bench will permit the greatest flexibility in judicial assignment. In smaller areas, a single judge will provide sufficient judicial manpower to hear all cases: civil, criminal, family and equity. In larger areas, judges can be assigned to hear these matters on separate dockets and more judges will be available to help reduce backlogs in the courts with the longest delays.

Division of the single trial court into three regions conforms to general principles of judicial administration and the recommendations of the National Advisory Commission on Criminal Justice Standards (Courts (1973), Std. 9.3 at 183), all of which recommend establishment of judicial districts containing a minimum of five judges. The current District Court never contains more than one judge in a circuit, while the Superior Court bench is entirely transient throughout the State. These principles are based on experience which has shown that efficient judicial administration requires a sufficiently large unit for effective supervision and economical administration to be realized.

Uniting the clerks of all courts into one office in each county will permit better coordination by both the judges and the Court Administrator. Personnel in each office can be assigned specific functions since staffs will be larger: one assistant clerk can take charge of calendaring, another of recordkeeping, while another assumes responsibility for performing daily clerical functions in the courtrooms. Such division of labor at fewer locations will permit better and more regular training of clerical personnel. Reduction of the number of offices and unifying all personnel will also result in gradual elimination of disparate court practices as clerks learn to do things the same way all over the state and the Court Administrator is able to exercise more effective supervision over performance by all system employees.

A single court will contain enough judges and non-judicial employees for a modern personnel promotion and compensation system to be instituted. Employees in clerks offices can be classified according to duties, experience and longevity. A special place on the scale can be set for judicial officers performing administrative functions. And judges on the single trial bench can be placed in a system where assignment as Presiding Judge or promotion to the Supreme Court can be considered on a systematic basis related to ability.

A single trial court divided into regions will reduce excessive judicial traveling. While good reasons exist for judicial rotation, these can be served through rotation of judges among the several counties of a region. Currently the Superior Judges, who largely handle civil matters, rotate, but there is now no rotation of criminal judges in the District Court. The regional system will reduce the excessive traveling of the current Superior bench while meeting the equally important need of the District Judges to rotate.

The single trial court organized on a regional basis will be capable of gaining control over its calendars. Terms in each area can be organized to reduce conflicts between counties, particularly between jury sessions in adjacent locations, and the court can exercise control of the calendar now held by attorneys in many locales.

A single bench will allow judicial selection procedures to be made uniform for all sitting trial judges and provide a clear means of allotting membership on a reconstituted and effective judicial council. Regional division of the bench will permit efficient assignment of law clerk support to each region.

Most significant of all, the single trial court will allow judges to discharge judicial responsibilities in all areas of the law. This will end the routinization which comes from overspecialization but will allow the assigning judges to where the trial judges of each region in the locations where they are needed and, where possible, according to the preferences of the individual judges, provided only that rotation of a judge among the different areas of the law occurs on a reasonably regular basis. But the different personalities of the judges, which will doubtless include some judges who would like to rotate from civil to criminal cases every six months and others who would prefer to hear one or the other types of case for one or two years, can be best accomodated in a single court rather than in separate tribunals, each with its own narrowly defined jursidictional area.

While the remainder of this report contains analysis and recommendations outlining how each area of the court system should perform in accord with the general plan, we believe some general, fundamental recommendations should be set forth at this point:

I. THE VERMONT TRIAL COURTS SHOULD BE COMBINED INTO A SINGLE TRIAL COURT OF GENERAL JURISDICTION.

INITIALLY, THE NEW COURT WOULD INCLUDE THE PRESENT SUPERIOR AND DISTRICT COURTS; THE PROBATE COURT SHOULD BE COMBINED WITH THESE AT A LATER TIME.

II. THE NEW VERMONT SUPERIOR COURT SHOULD BE DIVIDED INTO THREE GEOGRAPHIC REGIONS, WITH EACH OF THE COURT'S THREE REGIONS HEADED BY A PRESIDING JUDGE. THE REGIONS SHOULD BE FORMED BY JOINING THE COUNTIES AS LISTED:

SOUTHERN	NORTHWESTERN	NORTHEASTERN
Rutland	Chittenden	Washington
Windsor	Addison	Caledonia
Bennington	Franklin	Orleans
Windham	Grand Isle	Orange
		Essex
		Lamoille

III. EACH COUNTY SHOULD BECOME A JUDICIAL DISTRICT WITHIN A REGION, EXCEPT THAT GRAND ISLE COUNTY SHOULD BE COMBINED WITH FRANKLIN COUNTY, AND ESSEX COUNTY SHOULD BE DIVIDED BETWEEN ORLEANS AND CALEDONIA COUNTY.

IV. JUDGES OF THE SINGLE TRIAL COURT SHOULD ROTATE WITHIN ONE GEOGRAPHIC REGION AND AMONG THE JURISDICTIONAL AREAS OF THE COURT.

V. A NEW POSITION OF JUDICIAL OFFICER OR MAGISTRATE SHOULD BE CREATED. THESE OFFICERS SHOULD BE ASSIGNED BY THE COURT TO CERTAIN SECTORS OF THE COURT'S JURISDICTION, INCLUDING TRAFFIC MATTERS, AND SMALL

CLAIMS HEARINGS; EVENTUALLY, THEY MAY ALSO BE GIVEN THE EMERGENCY OR REGULAR RESPONSIBILITY TO ISSUE WARRANTS, SET INITIAL BAIL, AND RECEIVE GUILTY PLEAS TO TRAFFIC AND PETTY OFFENSES.

VI. ALL CLERKS' OFFICES SHOULD BE COMBINED IN EACH COUNTY.

VII. WHEN NEW COURT FACILITIES ARE CONSTRUCTED IN EACH COUNTY, THEY SHOULD BE LOCATED WITHIN OR ADJACENT TO THE EXISTING COUNTY COURTHOUSE SO AS TO CENTRALIZE JUDICIAL OPERATIONS.

VIII. MORE JUDGES AND NON-JUDICIAL PERSONNEL WILL BE NEEDED IN THE SOUTHERN THAN IN THE OTHER TWO REGIONS BECAUSE OF ITS HIGHER CASELOAD.

Alternative Organizational Structures

Although we recommend the adoption and institution of the court structure described above, it is our responsibility to provide alternative methods of organization of the court system in the event that the recommended plan cannot be followed.

One alternative organizational scheme would call for the state's trial courts to be divided into the units in which the current District Court is apportioned. Each of the six units would be headed by a Presiding Judge who would report to the Chief Judge of the entire trial court. The Presiding Judges of each unit would assign the judges within the unit. The Presiding Judge personally would retain responsibility for most of the current, largely civil, Superior Court jurisdiction. The other judges would be assigned to the criminal, family, and eventually, probate areas in each district. The judges would not rotate outside their districts, which would be:

1. Windham and Bennington
2. Rutland and Windsor
3. Chittenden and Addison
4. Washington and Orange
5. Franklin, Grand Isle and Lamoille
6. Caledonia, Orleans and Essex

The advantages of this alternative include reduction in judicial travelling and consequent reduction in judge-shopping; increased judicial presence and hence supervision of the clerks, court officers and other non-judicial personnel in each district; and maintenance of the traditional jurisdictional lines of the present court system while improving the administrative structure.

While these advantages are genuine, we believe they are heavily outweighed by the drawbacks of the "district" alternative. First, the only significant improvement provided by this system would be clearer administrative units and unchanging judicial personnel to supervise their operation. Jurisdictional fragmentation would still occur. Flexibility in assigning judges would be severely limited to the few judges assigned to the district. The absence of any one judge would result in very heavy burdens on the rest or in significant added case backlogs in the district.

Instead of a relatively small group of supervising judges as would be created in the recommended plan (the Chief Justice of the Supreme Court and the three Presiding Judges), this alternative would have a Chief Judge and six Presiding Judges (in addition to the Chief Justice), all expected to maintain normal caseloads. The result would likely be no improvement in supervision of the courts, or supervision taking six or seven different forms. In the same way, court practices in each district would remain disparate. In addition, a two-county district allows little room for non-judicial employees to be promoted.

Most important, judges would continue to be over-specialized: Presiding Judges would largely run the civil side; the remaining judges would be left with criminal, family, traffic, juvenile, and small claims work.

Another alternative method of court organization would create a single trial court but divide it into divisions based on jurisdiction; civil, criminal, family, and probate. In this system the organizational schemes of the present courts might be maintained while the administrative structure was revamped. This alternative would in no way reduce overspecialization of judges and the other problems of the present court system. It would establish the basis of equality

of all judges but would go no further. While it might satisfy those who would like a unified court system in appearance, adoption of this alternative would be unwise since it merely provides the facade of unity while maintaining all existing institutions in the divided court system under a slightly different rubric.

Single Presiding or Chief Trial Judge

Although sentiment exists for creation of the post of Chief Judge of the trial courts (or Presiding Judge of the entire new Superior Court) in Vermont, we firmly believe that this would be an unwise step. The three recommended Presiding Judges will each be able to pay close attention to the needs of their regions, each of which includes at least four counties and five trial judges. A single Chief Judge would merely become an added and unnecessary layer of administration.

Should the Presiding Judges disagree, the Chief Justice of the Supreme Court stands ready to resolve such conflicts, which must be expected to occur infrequently. To those who argue that this has not been the role of past Chief Justices, we emphasize the importance of recognizing in theory and fact the need for the Chief Justice to be the system's administrative head if a truly unified court system is to be achieved.

Use of Statistical Analysis of Vermont Court Performance

The tables accompanying the next chapter indicate the caseloads of the Superior, District and Probate Courts for the years 1972 and 1973. In addition, statistics are included showing aging of cases, an analysis of the days Superior Judges sat in each of the state's counties and a rough analysis of the Superior Court caseload in Bennington County on a weighted-caseload basis. We have also assembled caseload statistics by the proposed regions of the new Superior Court. Dispositions for 1973 have been arranged pro forma to show how they would have been distributed among the subject-matter dockets of the new Superior Court.

All these measures are limited in the meaning which may be drawn from them and hence in their ultimate usefulness. They may be viewed as the best statistical measures available: the inefficiencies of the present system's calendaring, judicial assignment, and continuance policy precluded investment of significant amounts of time in developing wholly new statistics. Part of the implementation process of a unified system should be institution of a modern statistical reporting system for the management and information needs of the courts. This will enable a record of performance to be maintained from the outset for the evaluation and monitoring of the new system. Nevertheless, in certain instances we

did generate our own data; in others, we recast existing figures into more useful frameworks.

1. Structural Limits. The disparate calendaring, assignment and continuance practices prevailing in Vermont trial courts bar a complete portrayal of current judicial performance based on use of existing statistics. Clerks prepare their calendars in different manners: lack of sophistication in calendaring combined with short advance notice of court sittings means that much time may be lost which could be used in a more efficient system were clerks to follow a uniform calendaring procedure.

The statistical data with respect to the days the Superior Judges sat in the different counties indicates that the amount of traveling which occurred in the sample year significantly reduced the time available for court sittings. Further, the varying practices with respect to granting or denial of continuances cause much time to be lost. This loss can be attributed to lack of uniform procedures. In addition, the present rule requiring that continuances be granted when all counsel agree reduces the operational efficiency of the system (V.R.C.P. 40(c)(1); see Chapter XI, D, for analysis of this problem.)

Moreover, it was not possible to gather reliable District Court sitting time statistics comparable to those for Superior Court. The District Judges do not rotate; information as to county sitting days is unavailable. While

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1 OF 3

all the District Judges are stated to be serving full-time in single locations (the exceptions are the two judges who sit in, respectively, two and three small counties), caseloads are obviously not identical in every county and hence courtroom time is not equivalent. These records must be kept in the future to gather the most useful information concerning court performance and efficient use of time.

Because of these structural limitations on any present effort to analyze the Vermont courts statistically, it is difficult to calculate exactly how many judges, for example, the state needs now and will need in the future. This report contains recommendations, however, as to how procedures may be improved so that such measures may be made to yield solid support for future analysis of judicial and non-judicial personnel and facility needs.

2. Reliability of Statistics Used. The following comments define the use which should be made of the statistics contained in this report.

a. The caseload figures for the Superior Court are significantly lower than those for District Court. This difference can be explained by the presence on District Court dockets of many small, short-duration cases in comparison to the Superior Court caseload. The difference in number of dispositions cannot by itself be used to compare the two courts. Caseload statistics should not differ between types of cases, except for gross divisions such as civil, criminal,

juvenile or matrimonial.

b. The statistics relating to Superior Court sittings in each county represent our effort--the first ever attempted in the state, to our knowledge--to analyze where and for how long the Superior Judges sat in a given year. These statistics were supplied by a survey of the County Clerks, who in many instances relied on records in their files not prepared for this use, the Assistant Judges' notes and the admittedly imperfect memories of the sources. The statistics generally do not include time spent in preparing findings and opinions and do not take into account personal circumstances of the judges during the given year. For this reason, these statistics show the travel of each judge and the amount of judicial business in each county but cannot be regarded as indicators of the efficiency, productivity or working time of the individual judges.

c. The weighted-caseload statistics for Bennington County are included because of an unexpected opportunity we discovered to analyze one medium-sized county on these advanced principles of analysis. Weighted caseload is a means of determining how the court spends its sitting time, what kinds of cases occupy what length of time and what improvements may be made in court procedure to increase judicial productivity. A suggested form for keeping records on a weighted-caseload basis is included as Appendix A.

No county typifies the entire state. Bennington's peculiarities--existence of two shire towns, proximity to New York and Massachusetts lending a resort character to certain areas, presence of Bennington College--make it unique; unfortunately, there are similarly peculiar characteristics for each of Vermont's other counties: Chittenden has one-fourth of the state's population, Franklin and Orleans have large quantities of Canadian "border" cases, Essex and Grand Isle have very small populations, and other counties have had, now have, or will have interstate highway construction which has significantly affected caseloads. The Bennington figures should be viewed with all these factors in mind.

VI. Analyzing Existing and Recommended Structures of the New Superior Court

To outline what the structure of the new Superior Court should be, a complete analysis of the functioning of the present Superior and District Courts must first be completed.

A. The Present Superior Court

Compared with the huge caseload of the District Court, the Superior Court appears at first glance to share few of the same problems. Nevertheless the Superior Court faces a much bleaker future unless court reorganization is successful. Between 1970 and 1973 the court's backlog of cases increased by almost 43 percent. In civil cases, which form the most significant part (56 percent) of the court's jurisdiction, 32.7 percent of the caseload as of September 30, 1974, had been in the court for more than one year and over 7 percent had been filed for over two years. Tables 1 through 7 tell the story of the Superior Court's increasing burden.

Indicative of the trend are the rises in cases filed, dispositions and backlog between 1970 and 1973, when the numerical size of the bench remained constant (as indeed it had from 1906 to 1974). While the court now has another judge, the changes in the caseload size and character require

a complete overhaul of the court's practices: the court is seeking an eighth judge now, but until the institution itself is revamped, additional judges will not resolve the growing problems.

Delays have grown and backlog has increased while the court's very general, statutory grant of jurisdiction has been progressively self-narrowed. At one time almost all felony cases were tried in the Superior Court's predecessor, County Court; now, only homicides are tried here rather than in District Court, which has become the state's principal criminal court.

That major changes in the court's operating structure are needed to cope with its increasing backlog is not readily conceded by its judges (Written communication, see p. 69, fn. 3). The tradition of the court as a tribunal to hear major civil and criminal cases belies its present status: in a few years the Superior Court has become virtually a civil court. Large numbers of criminal cases which were capable of speedy disposition no longer are brought in the Superior Court. The judges have had to accustom themselves to the new, lengthy civil proceedings characteristic of our rapidly-changing society: interstate highway condemnation controversies, zoning and environmental disputes (e.g., the landmark Vermont land use statute "Act 250"), and administrative agency review proceedings.

As trials by judge rather than jury have increased, the judges have recognized the increasing burden of preparing findings of fact and opinions, without benefit of law clerks or regular secretaries. The amounts claimed in civil cases frequently are inflated to meet the court's jurisdictional minimum since lawyers recognize that many District Court circuits are incapable of keeping their civil calendars moving because of their level of criminal business, which is required to take precedence.

The Superior Court apparently has survived without undergoing extreme crises to date because there was a good deal of breathing space until a few years ago. The pay was low[1] but the hours were good. The law libraries in the various county courthouses were meager but there were few findings or opinions to write. The generally harmless and ineffectual institution of Assistant (Side) Judges was tolerated because the side judges generally played little part in the proceedings. Recently the Assistant Judges in one county overruled the presiding (Superior)

[1] In 1957, for example, Superior Judges were paid $10,000 a year. H.F. Black, "Some Observations Relative to Vermont's Judicial System," 1957 Vermont Bar Association Proceedings, at 11.

judge in a constitutional challenge to a highway bypass project: while the case is still pending on appeal to the Supreme Court, the Superior Judges have recognized that the side judges are no longer a harmless bit of deference to tradition when six weeks of valuable court itme (spent trying the highway case) are involved.

Underlying all of the developing problems of the Superior Court is a loose, uncoordinated administrative structure. The Assistant Judges in each county control the county courthouse where the court sits, although the state pays a large part of the maintenance costs (24 V.S.A. 71-74). They also appoint the County Clerk, by statute the clerk of the Superior Court in each county (24 V.S.A. 171), but who also must exercise non-court functions and clearly owe first allegiance to the Assistant Judges, at whose pleasure he serves.

The Supreme Court now is empowered to schedule the Superior Court terms (4 V.S.A. §115), but the Superior Judges together determine their precise schedules of rotation. Once these are set, the judges meet monthly and the Chief Superior Judge, who, as noted earlier, attains his position solely by seniority, maintains regular contact by telephone with the other

members of the court. Under the present system, however, there is little he can do to rectify problems since his court operates on a term schedule uncoordinated with the backlog and filing statistics provided on a quarterly basis. Although the Supreme Court has given the Chief Superior Judge a number of administrative responsibilities (Sup. Ct. Admin. Order No. 24), the system joins non-responsive County Clerks and Assistant Judges with a rotating judiciary that is never present in one place for more than a term to insure that its will is followed. This has prevented effective administrative control by the Chief Judge or the judges as a group.

The Superior Judges, to be sure, share to greater or lesser extents a belief that changing the structure of their court will mean sacrificing membership on a prestigious tribunal which has operated until now without apparently grave problems. It is the intent of this report to prove that the problems facing this court, as well as the rest of the Vermont judicial system, are real; it is also our goal to show the judges that reorganization to meet new needs will not diminish their role in the operation and administration of the court.

a. Terms and Rotation

The changes which have already been made in the term system have been a tentative, cautious response to the growing problems of the Superior Court. The state has been divided into three regions, called "Circuits". The Circuits -- South, Northeast and Northwest -- have been further sub-divided into "Divisions". Within each of the three respective Circuits, each of the state's three largest counties -- Chittenden, Rutland and Washington -- forms a Division in itself. The remaining counties in each Circuit form the Circuit's other component Division.

The ranking judges by seniority have each been made Senior Judges of the respective Circuits. Each is joined on a Circuit by one of the three junior judges. The Chief Superior Judge remains at large to serve where needed. The addition of one judge this year has made this system possible. The Chief Judge has spent most of his time in helping each of the judges assigned virtually full-time to Chittenden and Rutland, the two largest counties, each capable of providing sufficient business for two full-time Superior Judges for much of the year.

Assignments have been made on the basis of the anticipated needs of the various counties. The judges have tried to maintain relatively equal levels of backlog throughout the state, but the peculiarly bad conditions of Rutland

County--only one jury courtroom, a clerk who abdicates too much of his responsibility for calendaring, an inefficient District Court which adds to the Superior caseload, and an exceptionally litigious bar (perhaps made so by their knowledge of the inefficiencies of the county's courts)--have made Rutland a particular trouble spot.

Chittenden County was badly behind schedule until recently: an agressively efficient clerk and the regular presence of a second judge brought conditions up to a satisfactory level. Absence of a second judge seems certain to cause relapse into serious delay, despite the best efforts of a restructured, well-run clerk's office.

The ability of the court to adjust to problem situations is severely limited: when a long case clogs a county's calendar, there is usually neither an extra courtroom nor a spare judge to help out. Even if a judge in a "light" Division completes the calendar, the calendaring practices of the clerks give him little ability to forecast the immediate future level of cases in that county or in others. This problem is accentuated by lawyers' control of calendars: the parties are permitted to continue any case, upon mutual agreement, for up to two years. Traditionally, the bar has not pushed cases along if the other side resists; the reason lies in the size of the caseload: since it

takes almost two years to get a case to trial anyway, there is little reason to ruffle legal feathers by making vain efforts to accelerate.

Since at least two judges hold court in each county each year (until the new system took effect, the judges moved much more than that: in 1973, each judge visited an average of 9 out of the state's 14 counties, a figure which would be even higher if rotation to the two small counties accounting for only 17 court days in the year were excluded - see Table 21), the lawyers have great opportunity for judge-shopping. This practice is frequently employed in matrimonial cases: almost every lawyer in the state is aware of which judge to wait for or in which county to initiate his case in divorce matters.

As has been previously stated,there are good reasons for the rotation system, sufficient for us to recommend that the practice be adopted, as modified, in the entire trial court level. Vermont is a state with only two cities having populations in excess of 15,000.[2] In a small town milieu, stationary judges are likely targets for courthouse cliques: rotation has provided the Superior Judges with breadth exceeding the bounds of a single county. Nevertheless, there is no need for judges to rotate through the entire state. A four or

2 Vt. Dept. of Budget and Mgt., Vermont Facts and Figures (1973) at 46-53.

five-county region provides a significant range of locales for a judge to avoid ensnarement by the bar or citizenry of any single or few places.

There is also no need for the court to wait until the case is on the trial list for supervision to begin. Many state and federal courts now regulate the progress of discovery. Pre-trial conferences or memoranda require eousel to narrow issues and shake loose cases without substance. Representing the public, the judge must act for the litigants, not their lawyers, in moving cases through the system rapidly and regularly. If a case requires extra-lengthy discovery time, it can be treated in the necessary manner. Vermont, however, does not have the huge amount of complex and corporate litigation burdening the dockets of many large-state (or unusual small ones, such as Delaware) or Federal courts.

Lack of court control over the calendar relates directly to terms. Between terms, the court now exercises no control over cases. Such a situation plays into the hands of parties or attorneys who seek to force a cheap settlement or abandonment of a solid case.

If a calendar collapses unexpectedly, there often is insufficient time to schedule work for another judge in another county. Even when the judges are all motivated by professional pride, high morale and judgments of colleages, as well as

the efforts of an active Chief Judge to keep things moving, the system is structured against efficiency, particularly in the area of calendaring: the 1973 table, even after account is taken of varying vacation schedules from year to year or illnesses, shows significant differences in the days each judge was sitting. Some of these differences relate to personal variations in approach to the work, and travel to small, distant places with light caseloads accounts for another portion, but the built-in deficiencies of the Superior Court structure account for most.

The Superior Judges thus face a dilemma. They are probably working harder than ever to stay in the same place or fall slightly behind. Many of them find themselves writing their findings when they get home after a full day and a long journey.

An additional problem of the term system occurs with particular frequency in medium or small-sized counties. Lengthy intervals between terms result in crushing caseloads when terms open; lawyers complain most, however, about the long intervals between motion days after a term ends. Where there are no spare judges, motion days are held on short notice when a judge happens to break free. Often these sessions are regulated in frequency by locations of the judges' residences.

While the expenses of travelling Superior Judges are substantial (this year's travel bill for the judges and their travelling court reporters is estimated at about $47,000)[3], the biggest expenses are hidden: lost time in travel and the days lost through inefficient calendaring and short notice of judicial availability.

b. Assistant Judges

The Vermont tradition of Assistant Judges (also called side judges)--traditionally lay judges who sit on the Superior Court in each county and can outvote the presiding Superior Judge--has been recommended to abolition by study committees and reports for many years. No other state has retained lay judges on this court level in the last 75 years.[4] Recently, the Supreme Court ruled that the Assistant Judges (popularly called "side judges") must retire at the same age as other judges: half the complement of side judges will take office for the first time this year owing to that number of mandatory retirements.

While some Vermonters are fond of recalling the history of side judges as a line of defense against tyranny (although the story often is told that the side judges originated as a check upon the unbridled tyranny of the royal judges in pre-Revolutionary days, the Assistant Judges actually came into existence in the 1830's as a measure to counteract a large number of full-time judges who came from outside Vermont

[3] State of Vt., Judicial Budget, Fisc. Yr. 1976/1977 Biennium, at 37.

[4] Recommendations to eliminate the Assistant Judges were made in 1937 (Report to the Spec. Comm. to study the Judicial System of Vermont, Feb. 13, 1937), and 1966 (Judicial Branch Study Committee, Report to the Legislative Council on Proposal No. 5, Dec. 29, 1966, at 25-26). The latter report discusses the absence of lay judges in all other states since 1898 at the latest (Ibid.).

and were not trusted locally to act in consonance with state traditions),[5] perpetuation of the lay judgeships has long outlived its usefulness.

Our research and observation have indicated that lay judges play little part in trials, are unable in practice to rule on evidentiary questions since they lack legal training, and serve only to introduce improper elements of partiality into judicial proceedings. In the past the side judges have been most noted for taking little part in proceedings. The only cases in which they have become involved are matrimonial custody cases and criminal sentencings. The Superior Judges have observed to us that the side judges bring a thorough knowledge of the population of each county to the custody proceedings and have, by their advice concerning the character of parties, prevented the rotating Superior Judges "from making fools of ourselves." Similar knowledge of parties has been used in pressuring the Superior Judges to agree to lighter sentences in criminal cases where the side judges are familiar with and favorably disposed towards defendants.

We have discussed with many persons in the court system a recent case in Rutland Superior Court in which the Assistant Judges believed that they were better able than the presiding Superior Judge to perceive the community's will in a constitutional challenge to a proposed highway bypass.

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5 A. Nuquist, Town Government in Vermont (1964) at 208-09.

Therefore, they overruled the presiding Superior Judge. Elections, referenda and public debate serve to indicate what the people want their government to do. When a matter reaches the courts, a judge and jury must act on the law and the facts. The avenue of appeal is available if one side is not content with a court's decision. The courts are not the proper arena for resolving issues on a political basis.

While these incidents of side judge activity may appear to inject a needed dose of humanity into a coldly efficient system in an increasingly impersonal age, they have no place in a fair, modern judicial system. There is no need for side judges in today's courts: interests of parties should be advanced in argument by counsel before all present in court, not in chambers where no one is present to rebut side judge partisanship.

Superior Court Caseload

The Superior Court total caseload (Table I) has steadily increased since 1970. While new cases were still being filed in increased numbers in 1973, filings have not increased at as high a rate as previously. The court's difficulty in keeping up with its caseload is reflected by the slower rate in increase of dispositions over the three-year period: dispositions increased by 21.5 percent in 1971, by 12.5 percent in 1972 and only by 9.5 percent in 1973. Backlog has consequently risen by increasing rates each year.

The 1974 total caseload figures for Superior Court will be most significant in indicating how much effect the judge

added earlier this year will have on the court's statistical performance. It is our estimate that the increased complexity of cases, combined with a 50% increase in filings since 1970, will require more substantial changes in Superior Court operations - clerical and calendaring procedures, among other practices - than mere addition of judges.

Superior Court civil caseload (Table 2) is the major component of the court's work. Matrimonial matters (Table 3) occupy small segments of time and are often used to fill calendar gaps (uncontested cases). Criminal cases (Table 4) are few, but are the least susceptible to statistical analysis because when homicide trials occur - even if their frequency comes to resemble that of eclipses - they assume massive portions of the court's time. The figures for the last four years do not bear out the Superior Court's stated conclusion to us: "It appears that there are more murders being committed in the State of Vermont recently than was true before the advent of the Vermont District Court."[6] The miscellaneous cases have increased, though (Table 5), and are likely to continue to do so. These cases include probate trials de novo, administrative agency appeals, zoning appeals, and certain equity matters. New kinds of miscellaneous cases, such as environmental cases and tax appeals, seem destined to proliferate, as is indicated

[6] Written communication to National Center for State Courts from the Vermont Superior Judges, Oct. 21, 1974.

in the weighted-caseload analysis of Bennington County Superior Court.

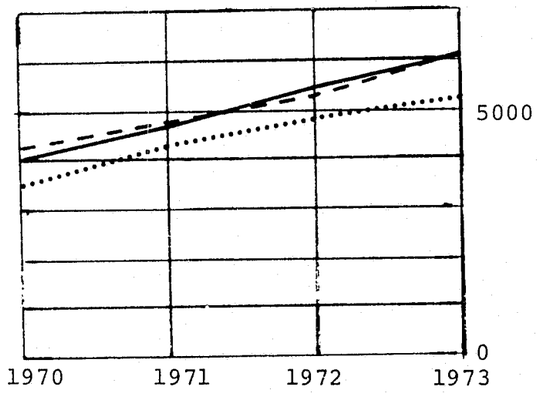
While jury trials in Superior Court fell off sharply in 1971 and 1972, only to rise again in 1973 (Table 6), trials by the court without a jury increased 52% from 1970 through 1973. While court trials tend not to last as long as jury proceedings, this increase places an added burden on the trial judge to prepare findings of fact.

From 1971 to 1973, while the absolute number of cases increased in all age categories of Superior Court cases (Table 7), the percentages of old cases decreased, indicating that while backlog has grown and necessitates changes in the court's structure and operation, the court's policy of attending to the oldest cases has had an effect. Cases more than two years old comprised 7.9 percent of the total caseload at the end of 1971, and cases more than one year old formed a third (33.3%) of the total caseload. By the end of 1973, cases older than two years equaled 5.3 percent of the caseload and 29.3 percent of the cases were older than one year.

TABLE 1

TOTAL SUPERIOR COURT CASELOAD

Year	Cases Initiated During Year (Filings)	Cases Disposed of in Year (Dispositions)	Cases Pending at Year End (Backlog)	--Increase In-- Filings	Disposition	Backlog
1970	4,008	3,534	4,272	---	---	---
1971	4,682	4,295	4,793	674	761	521
1972	5,468	4,835	5,329	786	540	536
1973	6,073	5,298	6,104	605	463	775



LEGEND

Filings

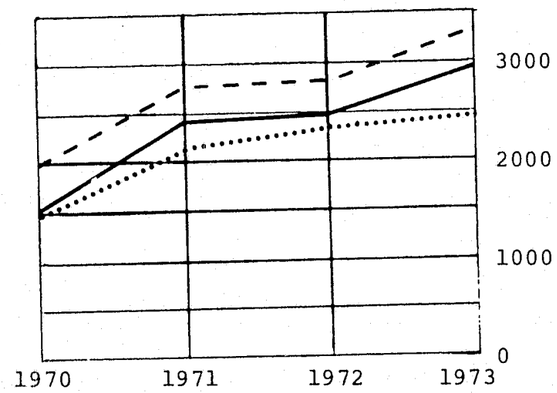
Dispositions

Backlog

TABLE 2

SUPERIOR COURT CIVIL CASELOAD

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1970	1,504	1,476	1,992	---	---	---
1971	2,406	2,138	2,783	982	662	791
1972	2,486	2,331	2,823	80	193	40
1973	2,957	2,447	3,333	471	116	510



LEGEND

Filings

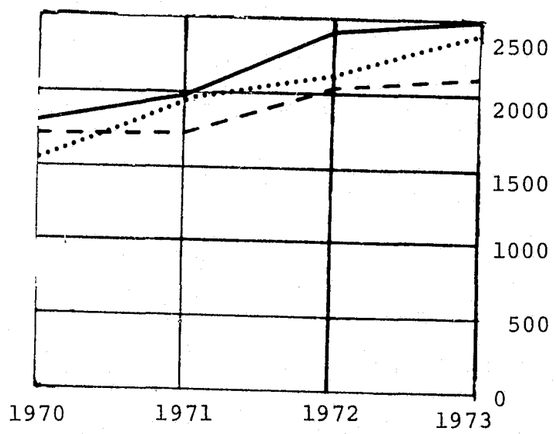
Dispositions

Backlog

TABLE 3

SUPERIOR COURT MATRIMONIAL CASELOAD

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1970	1,799	1,554	1,721	---	---	---
1971	1,981	1,959	1,745	182	405	24
1972	2,428	2,147	2,043	447	188	298
1973	2,498	2,414	2,127	70	267	84



LEGEND

Filings

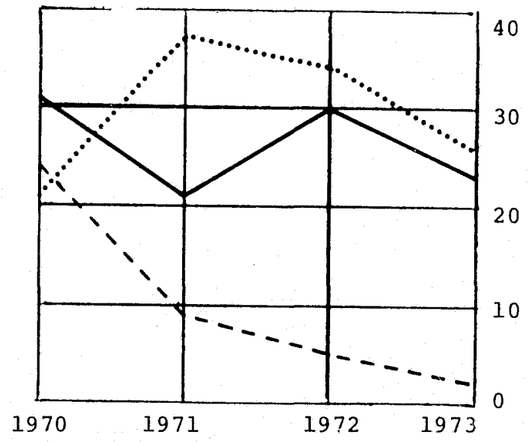
Dispositions

Backlog

TABLE 4

SUPERIOR COURT CRIMINAL CASELOAD

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1970	31	21	24	--	--	--
1971	21	37	9	(10)	16	(15)
1972	30	34	5	9	(3)	(4)
1973	23	26	2	(7)	(8)	(3)



LEGEND

Filings

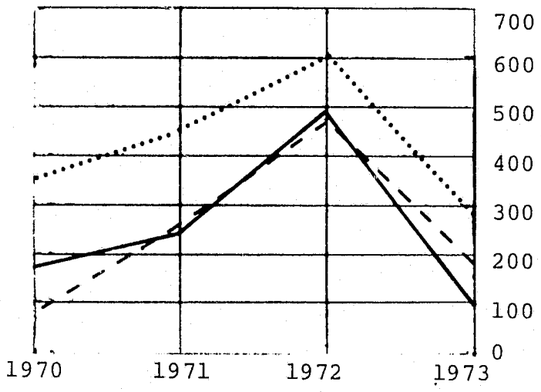
Dispositions

Backlog

TABLE 5

SUPERIOR COURT MISCELLANEOUS CASES

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1970	598	412	523	---	---	---
1971*	203	99	233	(395)	(313)	(290)
1972	458	250	441	255	151	208
1973	532	344	629	74	94	188



LEGEND

Filings

Dispositions

Backlog

TABLE 6

SUPERIOR COURT COURT AND JURY TRIALS

Year	Jury Trials	Change	Court Trials	Change
1970	116	--	474	--
1971	89	(27)	552	78
1972	58	(31)	699	147
1973	72	14	721	22

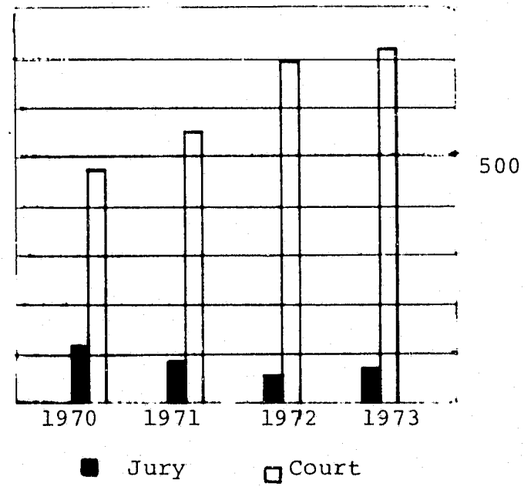


TABLE 7

AGE OF SUPERIOR COURT TOTAL CASES
1971 and 1973

Date December 31, 1973	Number Pending at End of Year	Under 6 Months	6 Mos. to 1 Year	1 to 1 1/2 Years	1 1/2 to 2 Years	2 to 3 Years	3 Years or Over
Civil	3333	1412	804	528	335	199	55
Criminal (Felony)	2	2	0	0	0	0	0
Marital	2127	* 17	29	252	109	34	3
Miscellaneous	629	386	50	196	44	30	3
TOTAL	6091	1800	2600	976	488	263	61
December 31, 1971							
Civil	2783	956	720	470	288	169	65
Criminal	9	3	4	1	1	0	0
Marital	1745	* 12	1296	241	122	84	2
Miscellaneous	233	144	45	8	1	31	4
TOTAL	4470	1103	2065	720	412	284	71

* Data on age of marital cases under 6 months period were not provided for in the Vermont Judicial Statistics for either 1971 or 1973

B. The Present District Court

The Vermont District Court's present problems appear entirely different from those faced by the Superior Court: beneath the surface, however, the difficulties are remarkably similar. Increasing backlog, large caseloads, inefficient administration and lack of flexibility in judicial assignment and courtroom availability exist in District Court to the same or a greater extent than in the Superior Court.

The accompanying tables indicate that as criminal caseload has risen, civil calendars have been given short shift. Small claims cases have been entirely neglected in some counties. Juvenile matters claim a large part of the court's time. Routine but important procedures occupy much of the court day: arraignments in the courtroom and processing of traffic tickets in the clerk's offices.

When it was created in 1967, the District Court represented a large forward step in upgrading the quality of justice in Vermont. It replaced a scattered, completely unconnected group of Municipal Courts staffed with part-time judges. The District Court, in fact, is being worn down by its own success. As the court took hold, recognition of the existence of a new, full-time trial court of limited jurisdiction resulted in transfer of a large part of County (Superior) Court criminal jurisdiction to District Courts, which was permitted to try criminal cases where the maximum

penalty is imprisonment for a term less than life (4 V.S.A. §439). State's attorneys, forced to try misdemeanors in District Court, began to concentrate most of their work in one court--District Court, since Superior Court showed no signs of longing to exercise its joint felony jurisdiction.

As a result, the District Court has become the state's criminal court. While homicides alone statutorily (4 V.S.A. §439) remain in Superior Court (most probably because of the publicity and prestige attached to their trial rather than the stated justification of lack of facilities in District Court[6]), District Court processes the entire remaining range of criminal business.

Ordered by the Supreme Court to give first priority to disposition of criminal cases (Supt. Ct. Admin. Order No. 17), the District Court has been forced to push civil and other matters, except for juvenile proceedings (also given priority), to the back of the calendar. Progress calendars, which require counsel merely to take some action in a case or risk dismissal of the action, have taken the place of court trial schedules in many places.

As with Superior Court, there is little flexibility in the District Court to deal with the caseload pressure. While judges are assigned to two or three-county units, in practice one judge remains in one place (the statute, 4 V.S.A. §444(a),

6 One opinion we frequently encountered took the view that if the District Court is capable of trying major criminal cases on the order of kidnapping or rape, no valid reason exists to draw the line at homicide.

even limits the amount of time he can travel) handling the business of one county (with two exceptions for two groups of sparsely-populated counties). Instead of using judges on the District bench, acting judges have been appointed in emergency situations (compare 4 V.S.A. §445 (District Court acting judges) with 4 V.S.A. §74 (Superior Judges)).

District Court facilities, with two principal exceptions, are woefully inadequate. The court with which most of the state's citizens come into contact offers the least presentable picture to the visitor. In most locations dignity is entirely absent: the Rutland District courtroom is crowded into a dark, shabby loft above stores in the middle of the city business district, the White River Junction court-room is housed in the poorly-suited layout of an old U.S. Post Office, and the Barre District courtroom is crowded into a public building adjacent to a noisy hockey rink and refreshment stand. Judicial morale, if not dampened by the routine nature as well as the size of the caseload, is reduced by the shabby appearance and confined space of most of the rented District Court facilities.

However, unlike the Superior Court, where encrusted custom, statute and procedure can be blamed for many of that court's shortcomings, the District Court can trace most of its difficulties to inadequate and inefficient administration. While all the District Judges are purportedly full-time judges, there clearly are variations

between counties of large and small populations in the time required to deal with case volume as reflected in the accompanying Table 17. No statistical or record-keeping procedures, such as weighted caseload, have been instituted to supply continuing feedback as to the court's efficiency level. Case volume and age are insufficient measures.

In short, the District Court does not suffer from the intrusive dukedoms of Assistant Judges or County Clerks. More supervision and administration is needed to supplant the present atomized structure of virtually independent circuits, resembling the ancient city-states in the present ability of each to go its own way.

By administrative order, the Supreme Court assigned the Chief District Judge administrative responsibility to (1) examine District Court statistics, inquire into their causes, determine remedies and recommend solutions to the Chief Justice; (2) recommend to the Court Administrator the assignment or reassignment of all Judges and non-judicial personnel to any District Court unit as deemed necessary to "provide for the proper conduct and the expeditious dispatch" of the court's necessary functions; (3) schedule and preside over meetings of District Judges to be held at least quarterly; (4) establish committees when necessary to study and recommend improvement in systems, forms and records; (5) investigate or cause to be investigated complaints about District Court operation; and (6) attend to other administrative matters assigned by the Chief Justice (4 V.S.A. §603, Sup. Ct. Admin. Order No. 23). The legislature further recognized the Chief District Judge's additional administrative responsibilities and provided for compensation accordingly (32 V.S.A. §1003(a)).

Although we are aware that the Chief District Judge receives statistical reports on case age and volume regularly and that quarterly meetings of judges have been instituted, no further steps appear to have been taken to exercise administrative authority. Administration of the District Court has been limited to assembly of case volume and age statistics, maintenance of existing personnel, and arrangement, by the Court Administrator, for court to be held in emergency, illness or other absence situations. Only at present has planning become a part of District Court facility improvement. The recent budget submission for the judicial branch submitted through the Court Administrator's office outlined the priority of District Court facility improvement needs.

The Supreme Court has preferred to retain the Court Administrator in his role as Supreme Court Clerk. The highest court thus shares the responsibility with the Chief District Judge and the Administrator for the lack of cohesion in the District Court system.

By administrative order, the Supreme Court should make clear the need for the Court Administrator to increase his supervisory and administrative activity in these courts.

Disparate practices are more prevalent in District than in Superior Court. Some judges dislike the omnibus hearings prescribed by V.R.Cr.P. 12: we have spoken with lawyers who report that insistence on such hearings occurs only at the peril of alienating the county's stationary criminal judge; one District Judge we interviewed stated that he felt the omnibus hearings were a waste of time: clearly lawyers who sought them in his court were risking loss of judicial courtesy vital to maintenance of practice in that locale.

Disintegration of District Court into little principalities is reflected by the personal loyalty shown individual judges by the clerks who serve, in each instance, at judicial pleasure. As previously mentioned, we have observed situations where a clerk's fealty to the regular judge of the area has prevented another judge, specifically assigned to clear the first judge's calendar, from performing his job. Instead of acting decisively to resolve this intolerable situation, the Supreme Court and Court Administrator have instead transferred the added judge to another location.

Rotating the present District Judges, as the recommended plan provides, will permit the court's non-judicial personnel to serve the system rather than one judge. Meanwhile the judges will not stagnate in a single location.

The need for stationary judicial authority to preside over emergency arraignments, juvenile hearings or warrant issuances can be met by establishing a group of judicial officers or magistrates to whom these duties would be assigned, along with regular authority over traffic and small claims matters. In addition, the court schedule and locations of judges can be known at all times by local court and police personnel so that the judges can be located when needed.

District Court Caseload

District Court cases are so numerous as to render analysis difficult because of the immediate large impact any influencing factor exercises on the total number of cases. It should be recognized that filings of new cases almost doubled from 1970 to 1973, an increase of 34,309 matters (Table 8). Dispositions more than doubled, however, so backlog is only about 3000 cases higher than it was three years previous.

The most important question to be answered is how much more the District Court can absorb. While traffic cases, which affect the clerical staff more than the judges, increased (Table 13), criminal caseload fell (the criminal figures (Table 10) are confusing because traffic was formerly included). Civil caseload (Table 11) has remained steady, largely because most of the civil dispositions are voluntary, since the court does not give high priority to civil matters. Juvenile cases, requiring large time investment, have increased (Table 12).

Small claims, which gets little attention and less result (see Table 14 and Chapter IX) have stagnated. District Court jury trials (Table 15) have escalated 40 percent from 1970 to 1973, while court trials surged to five times their 1970 level.

The most egregious delay in the Vermont courts occurs with respect to District Court civil cases (Table 16), although the lag was reduced by the end of 1973. At that time 16.9 percent of civil cases were over three years old (at the end of 1971, 22.3 percent of civil cases were more than three years old.) An examination of the District Court caseload apportioned among the counties indicates that caseloads vary significantly in the counties (Table 17). Clearly, all judges do not face the same workload.

TABLE 8

TOTAL DISTRICT COURT CASELOAD

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1970	38,153	33,857	17,339	---	---	---
1971	46,846	45,198	17,960	8,963	11,341	621
1972	62,842	60,749	20,054	15,996	15,551	2,094
1973	72,192	71,720	20,572	9,350	10,971	518

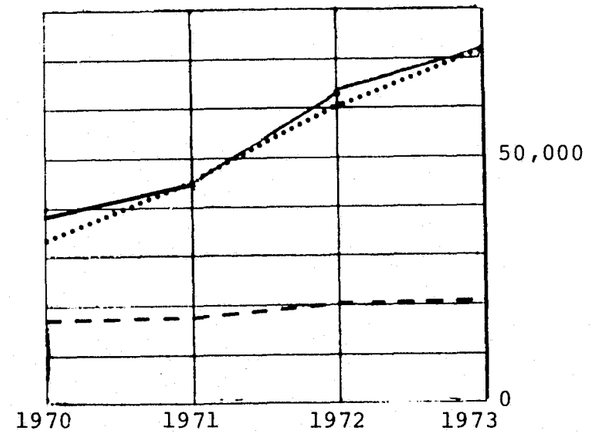
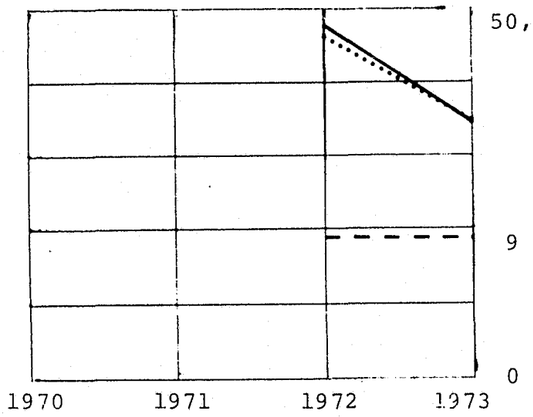


TABLE 9

TOTAL DISTRICT COURT CASELOAD WITHOUT TRAFFIC
(Traffic was not identified separately until 1972)

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1972	47,524	46,107	19,108	---	---	---
1973	34,473	34,706	18,921	(13,051)	(11,401)	(187)



LEGEND

Filings

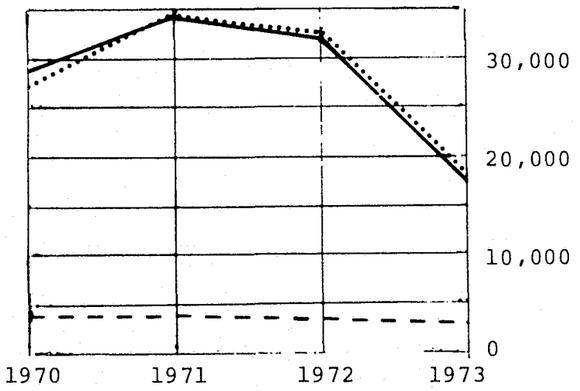
Dispositions

Backlog

TABLE 10

DISTRICT COURT CRIMINAL CASELOAD

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1970	28,802	27,205	3,868	---	---	---
1971	34,302	34,340	3,960	5,500	7,135	92
1972	31,980	32,636	3,577	(2,322)	(1,977)	(383)
1973	17,364	17,895	3,046	(14,616)	(14,468)	(531)



LEGEND

Filings

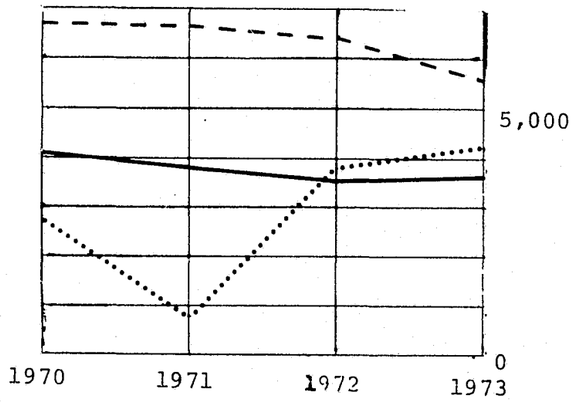
Dispositions

Backlog

TABLE 11

DISTRICT COURT CIVIL CASES

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1970	4,034	2,718	6,705	---	---	---
1971	3,762	786	6,682	(272)	(1,932)	(23)
1972	3,501	3,768	6,415	261	2,982	(267)
1973	3,641	4,475	5,573	140	707	(842)



LEGEND

Filings

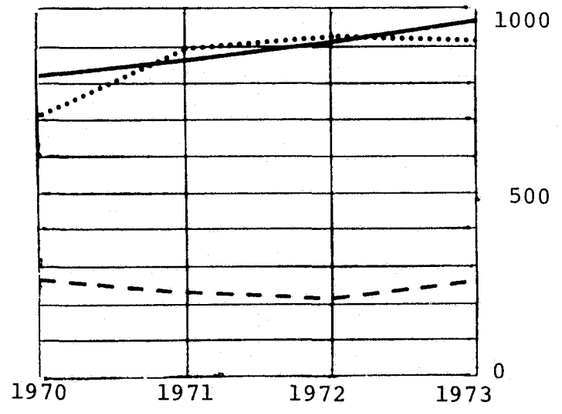
Dispositions

Backlog

TABLE 12

DISTRICT COURT JUVENILE CASES

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1970	819	712	270	---	---	---
1971	862	897	235	43	185	(35)
1972	909	930	214	47	30	(21)
1973	967	918	263	58	(12)	49



LEGEND

Filings

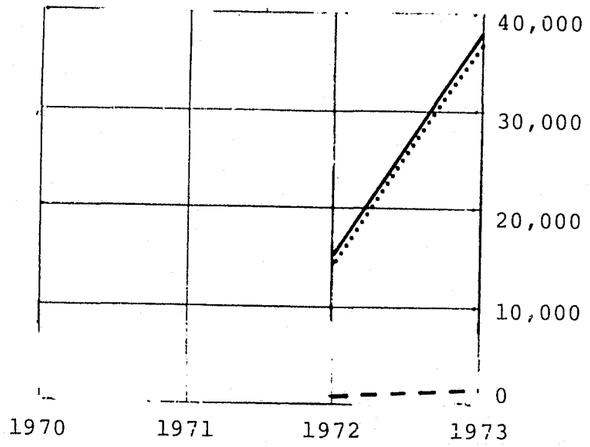
Dispositions

Backlog

TABLE 13

DISTRICT COURT TRAFFIC CASES
(Not compiled separately until 1972)

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1972	15,318	14,372	946	---	---	---
1973	37,719	37,014	1,651	22,401	22,642	705



LEGEND

Filings

Dispositions

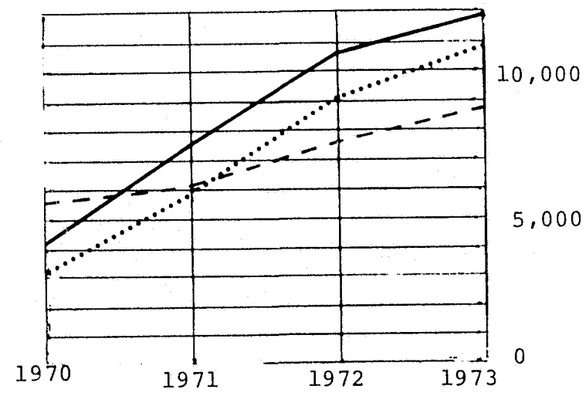
Backlog

TABLE 14

DISTRICT COURT SMALL CLAIMS CASES

Year	Filings	Dispositions	Backlog	---Change In--- Filings	Dispositions	Backlog
1970*	4,185	3,111	5,611	---	---	---
1971	7,541	5,963	6,042	3,356	2,852	431
1972	10,701	9,098	7,645	3,160	3,135	1,603
1973	11,926	10,919	8,726	1,225	1,821	1,081

* 1970 figures incomplete. All cases filed over 5 years and from one circuit omitted.



LEGEND

Filings

Dispositions

Backlog

TABLE 15

DISTRICT COURT JURY AND COURT TRIALS

Year	Jury Trials	Change	Court Trials	Change
1970	158	--	274	--
1971	210	52	479	205
1972	223	13	504	25
1973	222	(1)	1039	535

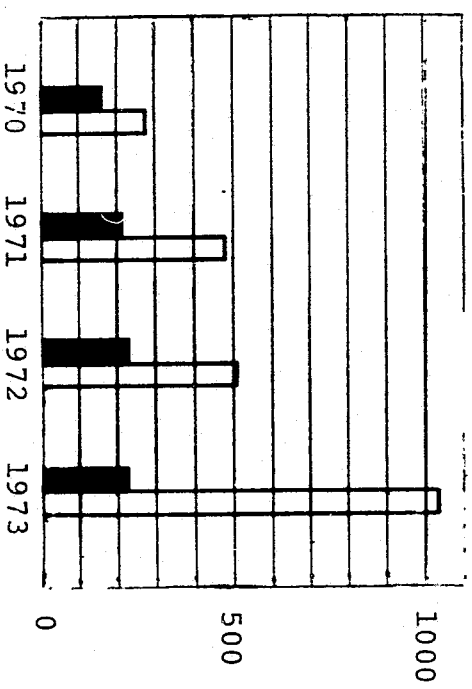


TABLE 16

AGE OF DISTRICT COURT CRIMINAL AND CIVIL CASES
1971 and 1973

Date	Number Pending at End of Year	Under 6 Months	Under 1 Year	1 to 1 1/2 Years	1 1/2 to 2 Years	2 to 3 Years	3 Years or Over
December 31, 1973							
Felony	659	504	94	16	29	4	12
Misdemeanor	2387	1588	439	182	48	82	48
Civil	5573	1418	1129	755	725	606	940
TOTAL	8619	3510	1662	953	802	692	1000
December 31, 1971							
Felony	619	388	83	91	30	24	3
Misdemeanor	3341	2090	628	381	155	78	9
Civil	6682	1388	1179	1013	812	801	1489
TOTAL	10642	3866	1890	1503	997	903	1501

TABLE 17
1973 District Court Caseload
By Counties
(Excluding Traffic)

Counties	Filings	Dispositions	Backlog
Chittenden	5,806	5,941	3,147
Rutland	4,050	3,786	3,605
Washington	3,407	1,407	3,033
Windsor	4,114	4,240	1,849
Windham	4,215	4,362	1,002
Franklin	2,664	2,379	1,256
Bennington	1,821	1,601	653
Addison	1,778	1,776	386
Caledonia	1,833	1,162	1,881
Orleans	1,735	2,129	455
Orange	821	1,518	292
Lamoille	1,469	1,240	1,117
Grand Isle	192	171	65
(Waterbury)	127	102	25
TOTAL	34,032	31,814	18,766
(without Waterbury)	(-127) 33,905	31,712	18,741

C. Operation of the New Superior Court

1. Presiding Judges. The Presiding Judge of each of the three regions should be selected on the basis of administrative ability, rather than seniority, by the Chief Justice of the Supreme Court in his capacity as administrative head of the judicial branch. While the judges assigned to each region should meet on a regular schedule to consider and resolve problems facing the court and to set policy for its operation, the Presiding Judge of each region should exercise administrative judicial authority in that region.

2. Judicial Assignment. All trial judges should be assigned to the three respective regions by the Chief Justice of the Supreme Court, acting with the advice of and consultation with the Presiding Judges and the Court Administrator. The Presiding Judges should then each assign the judges of their respective regions to the districts and subject jurisdictions as needed.

Assignment of judges should be based on a state calendar prepared annually by the Office of the Court Administrator in consultation with the judges. The state calendar will estimate, based on past experience and statistical data, for how long and in what locations trial judges will be needed to hear cases in the civil, criminal, and family jurisdictional areas of the court.

The state calendar should specify dates for court sessions throughout the state. Design of the calendar will take into account the goal of scheduling, to the extent

possible, jury and court sessions, respectively, or civil and criminal sessions, respectively, in adjacent districts to minimize attorney conflicts. Actual conflicts in an attorney's schedule should be resolved by the Presiding Judge, or if two regions are involved, by the two Presiding Judges concerned; all resolutions of conflicts should be made according to guidelines to be prepared by the Supreme Court in consultation with the Judicial Council.

The Presiding Judges should also prepare a schedule of all judicial vacations, educational and professional program attendance, regional judicial conferences, and other interruptions in the calendar. The schedule should be submitted to the judges of the region for approval and should be consistent with statewide guidelines.

3. Dockets and Calendaring. Every case filed will be assigned to the civil, criminal or family docket by the combined clerk's office in each district. The Presiding Judges and the Court Administrator will receive frequent reports of the size and status of dockets in each district. Based on these reports, the Presiding Judge can adjust judicial assignments or reassign judges as needed. Receipt of the state calendar from the Court Administrator's office will permit the clerks in each district to prepare their session calendars for each docket.

Assignment of judges to each district will depend on the size of the dockets at each location. It will be possible for one judge to be assigned to a smaller district where by his continuous presence he will be able to deal with

all business: civil, criminal and family - in week-length calendars for each area. In larger districts, individual judges will be assigned to the respective dockets. Facilities should eventually be capable of housing enough judges in the two largest cities of the state so that three judges or more will be able to be assigned to deal with the three dockets individually or larger caseloads in any one area.

The gradual development of this process will eventually spell the demise of the term system, while the courts will retain the advantages of judicial rotation. The term system is disappearing throughout the United States. Its abolition is long overdue in most places: it can only function efficiently "when all or almost all cases filed in the period previous to the beginning of a term can be resolved during that term. Once this pattern is broken, it is difficult to re-establish equilibrium and an excessive backlog begins to develop."[7] The most serious drawback of court terms in the absence of administration between terms when no judge is on the scene. Attorneys are under no pressure to show progress in moving cases to conclusion. Motions requiring immediate hearing are forced to await the sudden appearance of a judge or the next regular term. The clerical staff is alternately overburdened and underutilized.

4. Personnel. The unification of the state's trial courts will require the offices of the County Clerk and District Court Clerk in each district to be combined. The

[7] Institute of Judicial Administration, The Supreme Judicial Court and the Superior Court of the State of Maine (N.Y.: Jan. 1971) at 14.

new office will perform clerical functions for each new judicial district and maintain all dockets, calendars and records. As previously discussed, uniting these offices will permit clerical employees to be assigned specialized duties--calendaring, recordkeeping, courtroom work, communications--and will result, given proper administration, in greater uniformity of form and practice throughout the state's courts.

At present the County Clerks (who serve as clerks of the Superior Court in each county) are appointed by the Assistant Judges of each county (24 V.S.A. §171). The District Court Clerks are appointed by the Court Administrator with the advice of the District Judges in each circuit (4 V.S.A. §691). Neither of these selection methods is satisfactory. The County Clerks have been forced to serve the Assistant Judges, who are tangential officials in the system. The District Court Clerks have in practice been chosen by each of the District Judges and the problems arising from this one-to-one loyalty have been noted earlier. We therefore recommend that the new District Clerks for each region be appointed by the Court Administrator with the approval of the Presiding Judge of the respective region. In this way, the Administrator will be able to act after evaluating the qualifications of candidates while the Presiding Judge will have the interests of all the judges and non-judicial employees of the region in mind when he approves the appointments.

Court reporters are currently appointed in Superior Court by the presiding Superior Judge at each term (4 V.S.A. §791) and in District Court by the Court Administrator with the advice of the District Judge for the circuit (4 V.S.A. §691). They should be designated by the Court Administrator with the approval of the regional Presiding Judge, with both steps governed by standards approved by the Supreme Court. Court officers, now designated by the sheriff in all courts (32 V.S.A. §§808, 1592; 4 V.S.A. §446) should be appointed by the Presiding Judge according to standards developed by the Court Administrator. Other non-judicial employees should be appointed by the Court Administrator with the consent of the Presiding Judge.

In this way the Presiding Judges will retain direct control over the employees in each region, while the Court Administrator will play the role suited to his capability in the non-judicial personnel field as well as represent the interests of the state court system as a whole.

Law clerks should be added to serve the new Superior Court on a regional basis and should be hired in the same way that the Supreme Court law clerks now are selected.

Rules, regulations and standards governing personnel recruiting, hiring, promotion, discipline, removal and retirement should be promulgated for the entire system by the Supreme Court, acting on the recommendation of the Court Administrator.

5. Court Policy and Rule-making. Rule-making power for the entire Vermont court system is vested in the Supreme Court (Vt. Const. II, §28d), subject only to the legislature's power to revise any rule promulgated by the Supreme Court. Rules with respect to civil, criminal, and appellate procedure have been instituted pursuant to this power as specified in 12 V.S.A. §1 to prescribe and amend general rules with respect to pleadings, practice, procedure and forms for all actions and proceedings in all Vermont state courts. The Supreme Court also has specific rule-making power to establish certain court fees not set by statute (32 V.S.A. §1 403).

We believe that centralized rule-making power as now exercised by the Supreme Court is the best means of maintaining uniform practices in a unified court system. An advisory committee should continue to be used to review the existing rules regularly, propose changes and new rules, and review any rules and proposals submitted to it by the Supreme Court. The committee should consist of the Presiding Judges, members of the bar designated by the Vermont Bar Association, and legal scholars selected by the Chief Justice of the Supreme Court. The Court Administrator should act as secretary of this committee, and staff assistance should be provided as needed (ABA Court Organization Standards, supra, §1.31 and Commentary at 71-75).

In this way, a continuing mechanism to insure regular scrutiny of court procedures can be created to consider views other than those of judges and court personnel. The advisory committee should not take the place of the Judicial Council in helping to formulate court policy (discussed infra in connection with the Judicial Council) nor of regular meetings of the judges in each region to discuss and determine matters of court policy in each region.

The need for the Presiding Judges continually to evaluate the effectiveness of the courts in their regions in administering justice cannot be overstressed. These judges should recommend changes in organization, jurisdiction, operation or procedures whenever they believe these would increase court effectiveness. While the judges in each region should be empowered to institute local rules of court, to take effect upon the approval of the Supreme Court, these rules should be used only when particular circumstances demand them, since Vermont is a small enough state for uniform rules of statewide application.

6. Assistant Judges. We have stated above our reasons for our recommendation that the judicial functions of the Assistant Judges be eliminated.

Of more significance is the administrative role of the Assistant Judges. The side judges are the highest elected county officers, whose major powers are control of the county pursestrings, the courthouses, and appointment of the County Clerk (24 V.S.A. §§131, 133, 171). Side judges possess no qualifications for selecting clerks. Nor should they be able to disrupt statewide administration of a unified system.

Nevertheless, the one function the Assistant Judges are intended to perform which is worth retaining--local participation in operation and planning of court facilities--merits more detailed scrutiny. While the Assistant Judges have frequently blocked needed courthouse improvements in the past, as long as they remain constitutional officers they should play a role in court administrative decision-making, particularly with respect to financial aspects, as representatives of their electorates.

The Assistant Judges have the power to set the county tax rate, which is collected with the larger-sized town taxes and cannot exceed five percent (24 V.S.A. §133). In the past, their unwillingness to raise the county tax rate above a bare minimum needed to run the courthouse has hampered necessary improvements: the delay in constructing the needed new Chittenden County courthouse exemplifies this

attitude. There are excellent reasons, which we will discuss further in connection with court financing generally infra, for preserving the county tax as funding source for the court system. Continued use of the county tax for court purposes will likely mean retention of the Assistant Judges as county officials.

Since the Assistant Judges will continue to serve as constitutional officers responsible for county administration, until a constitutional amendment is adopted, whether or not they sit as judges in court, we would expect them to take part in court facilities decisions.[8] However, the side judges should no longer exercise absolute power over these matters. In each county, a committee consisting of the two Assistant Judges, the Presiding Judge of the region or a designated representative, the Court Administrator or a designee, and a representative of the state building department should determine the court facility improvement priorities to which the county tax revenues should be applied and the county tax rate needed.

Clearly, this recommended system involves a more complicated procedure than many court administration experts might suggest. Nevertheless, from our interviews with Vermont officials, attorneys and citizens, as well as

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[8] In connection with our discussion of court facilities planning, infra, we explain how these suggested county facilities committees can interact with the Courthouse Standards Commission which would be responsible for evaluating courthouses and determining a statewide plan for improvement.

from our observation of the existing facilities and courts themselves, we sense that Vermonters want to retain a significant measure of local control in their government. And in evaluating the condition and servicability of the county courthouses, we can only conclude that the locally-controlled structures, the county courthouses, have been maintained and in many instances, renovated, to serve the judicial system in a far more successful manner than the state-operated District Court facilities. This is not to say that most of the county courthouses are now capable of meeting either the present or future demands which will fall on them. Nevertheless, they are closer to attaining this status than the completely unsatisfactory facilities of most District Courts. In the same vein, the American Bar Association has observed, "Insofar as county or city governments still make contributions to court budgets, provision must be made to apportion cost burdens among them in a fair and practical way." (ABA Court Organization standards, supra, §1.12(c) commentary at 27).

Therefore, we are able to recommend this method of taking local interests into account in court facility planning. In a unified system, much improvement will be needed (as discussed in connection with facilities, infra) to upgrade, and in many instances, relocate, present District Court facilities to provide sufficient space in or near county courthouses for the unified system to function properly.

Areas which refuse to cooperate in facility planning will only hurt their own citizenry in diminishing the quality of courts in the area. We anticipate that younger, more vibrant Assistant Judges can be counted on to represent the citizens who elected them with these facts fully in mind.

7. Venue. With the institution of a unified court system divided into three geographic regions, Vermont venue (12 V.S.A. §§402, 403, 405) and jury selection (4 V.S.A. Ch. 25, 12 V.S.A. App. VII) statutes should be revised to take the regions into account. Revisions to permit all cases to be tried at any district court center within a region should not be enacted to make it possible for plaintiffs in civil cases or prosecutors in criminal proceedings to harass defendants by instituting actions at distant, inconvenient locations within a region consisting of several counties. The venue extension should be predicated on needs which may arise to transfer cases because of present abilities to process matters more speedily and efficiently in physical facilities of varying quality throughout the regions and the state.

We specifically do not recommend that extended venue or jury selection power be employed except where necessary to reduce backlogs significantly in the transition period to a fully unified system with sufficient facilities at all locations capable of handling each district's business promptly. However, we do believe that the Presiding Judges should be given sufficient power in these areas to be able to carry out their responsibilities for the proper operation of the courts in each region.

8. Magistrates. We have previously recommended that a new category of judicial officer be created to handle assigned responsibilities in certain parts of the new Superior Court's jurisdiction, such as traffic, and other areas suitable to their use, such as small claims. Another analysis of how these magistrates may also potentially be utilized lists among their functions: conduct of preliminary and interlocutory hearings in criminal and civil cases, presiding over disputed discovery proceedings, receiving testimony as a referee or master, hearing short causes and motions, and sitting in lieu of judges by stipulation or in emergency. (ABA, Court Organization Standards, supra, §1.12(b), commentary at 24). The commentary continues:

> These functions can be classified into two general types. The first is the hearing of parts or stages that are before regular judges in their main aspects. The other is presiding over the trial of smaller civil and criminal matters under the general authority and supervision of regular judges. In the latter capacity, the judicial officer would perform the functions now performed in many instances by judges of courts of limited jurisdiction. This arrangement economizes the time of the regular judges and recognizes the fact that smaller civil and criminal cases ordinarily require different legal skills, experience, and authority, particularly the the capacity to function fairly and efficiently in handling large volumes of cases. At the same time, it brings the trial of smaller cases within the ambit of the principal trial court and makes them subject to the supervision of its judiciary. It can serve also as a training ground for judicial advancement. (Ibid., at 24-25).

We recommend that legally-trained magistrates of this kind be appointed, through the same selection process governing appointment of judges, to handle traffic and small claims matters. Initially, magistrates should be appointed in six major locations: Burlington, Rutland, Brattleboro, White

River Junction, Barre and St. Johnsbury. Their assignment to other locations and further duties should await evaluation of their performance of the responsibilities assigned to them in the traffic and small claims fields. In this way, the initial six magistrates will form a pilot program.

It should be emphasized that the major purpose of creating magistrates' positions is to provide a new group of legally trained officers to hear certain categories of cases and to be available in a locality to handle emergency matters. Added jurisdiction should not be assigned until substantial experience has been gained in the original traffic and small claims areas. While the magistrates are likely to be chosen from the ranks of younger lawyers and obviously can provide a useful training ground for future trial judges, the magistrates should not be regarded as a repository for any categories of matters the trial judges prefer to avoid handling. If the use of the magistrates is not carefully monitored, the history of the District Court's growth could repeat itself. This is not the purpose of establishing the posts.

We believe that initiation of this position should be coupled with reduction of all traffic violation cases to the status of infractions, except for certain serious offenses such as driving while intoxicated, reckless driving, driving while a license is suspended or revoked, homicide by motor vehicle and eluding police officers in a motor vehicle. This recommendation has been made previously by the National Advisory Commission on Criminal Justice Standards and Goals, Courts (1973) Std. 8.2 at 168).

In connection with these changes, the National Commission also stated that penalties should be limited to fines, license suspensions or revocations, and compulsory attendance at driver training and educational programs. It was also recommended that violators be permitted to enter pleas by mail except in repeater or accident cases, that jury trials not be available, that hearings be held before law-trained referees where the government's burden of proof is by clear and convincing evidence, and that rules of evidence "should not be applied strictly." (Ibid.) Entry of waivers and pleas in these instances is now permitted in Vermont.

We do not find fault with the recommendation that the right to jury trials be eliminated in traffic cases. This change will require amendment of the Vermont Constitution since the Supreme Court has held that traffic-case defendants are constitutionally entitled to jury trials (State v. Becker, 130 Vt. 153, 287 A.2d 580 (1972)). At present very few jury trials are held in traffic cases. But as long as the right exists, defendants will be able to stall proceedings by demanding a jury trial in these cases. If the citizens of Vermont want to retain this right in lieu of a more efficient court system, they will have an opportunity to vote on the amendment if it is twice approved by the legislature and submitted to the electorate for ratification.

We do believe, however, that there should be no relaxation of the rules of evidence in traffic cases. Nor should review of these cases be limited to appeal to an appellate division of an administrative agency, as the National

Commission recommends. Abuses resulting from relaxations of traditional protections have occurred in states such as New York which have permitted these changes. Compliance with the rules of evidence is not an excessive burden for any court worthy of the name: frivolous appeals to the judges of the new Superior Court will doubtless receive scant attention.

Regional Statistics

Table 19 shows how the caseloads would be apportioned among the three regions proposed for the unified court system. It can readily be seen that the Southern region will be the busiest and the Northeastern region the lightest. In apportioning judicial resources, however, it is necessary to remember the different characteristics of the regions: the Northeastern region is geographically unconcentrated and extends over a large area; the Northwestern area is well balanced, with Chittenden county accounting for 20 percent of the caseload of all existing courts; and the Southern region has several large population centers, all of which need judges much of the time. The facilities problems of the Southern region aggravate the ability of the courts there to dispose of their large caseload.

There is less variation among the regions when the proposed dockets of subject-matter jurisdiction in the new Superior Court are used to apportion the 1973 caseload as it would be divided under the proposed unified trial court system (Table 18).

Indeed, while the Southern region would handle the plurality of the criminal docket, the Northwestern region would have the largest civil docket and the Northeastern region the most family cases. When probate cases are included, the proportions revert to the anticipated Southern, Northwestern, Northeastern ranking; however, until the system is implemented, the apportionment of the probate cases among the civil and family dockets cannot be accurately assessed.

It should be observed, however, that the regions appear to be well drawn for the purposes of judicial assignment. Each of the regions has the highest caseload in one of the three docket areas; this situation lends itself to assignment of judges within the region on an even basis among the dockets.

TABLE 18

Case Disposition in 1973 of the Current
Superior, District, and Probate Courts Apportioned Pro Forma
to the Jurisdiction Dockets of the Proposed Superior Court Regions
I. Recapitulation

Regions	Criminal	Civil	Family	Probate	Total No. of cases for Regions and the percentage relative to the total state caseload.
	Superior & District figures combined Percentage of the total criminal cases for the state*	Superior & District Civil combined & miscellaneous Percentage of the total civil cases for the state*	Superior Marital District Juvenile Probate Guard. & Adoption combined Percentage of the total family cases for the state*	Estate & Trusts & Probate Misc. Percentage of the total Probate cases for the state*	
Southern Region	6,910 40.8%	2,923 33.1%	1,974 32.9%	1,254 40.4%	13,061 37.5%
Northwestern Region	5,190 30.7%	3,554 40.3%	1,932 32.2%	983 31.9%	11,659 33.5%
Northeastern Region	4,821 28.5%	2,345 26.6%	2,091 34.9%	846 27.4%	10,103 28.8%
TOTAL	16,921 100.0%	8,822 100.0%	5,997 100.0%	3,083 99.7%	34,823 99.8%

* Small claims cases and traffics were not included in this case disposition table.

Case Disposition of the Current Superior, District and Probate Courts Apportioned Pro Forma to the Jurisdiction of the Proposed Superior Court

II. Southern Region

Counties	Criminal	Civil	Family	Probate	Total	%
Rutland	2,286	707	724	456	4,173	11.9%
Windsor	2,405	653	423	302	3,783	10.9%
Bennington	1,059	485	333	251	2,128	6.1%
Windham	1,160	1,078	494	245	2,977	8.5%
TOTAL	6,910	2,973	1,974	1,254	13,061	37.5%

Case Disposition of the Current Superior, District and Probate Courts Apportioned Pro Forma to the Jurisdiction of the Proposed Superior Court

III. Northeastern Region

Counties	Criminal	Civil	Family	Probate	Total	%
Washington	1,588	1,458	931	276	4,253	12.2%
Caledonia	829	164	348	146	1,487	4.3%
Orleans	875	218	290	131	1,514	4.3%
Orange	525	211	247	143	1,126	3.2%
Essex	277	21	61	37	396	1.1%
Lamoille	727	273	214	113	1,327	3.8%
TOTAL	4,821	2,345	2,091	846	10,103	28.8%

Case Disposition of the Current Superior, District and Probate Courts Apportioned Pro Forma to the Jurisdiction of the Proposed Superior Court

IV. Northwestern Region

Counties	Criminal	Civil	Family	Probate	Total	%
Chittenden	2,955	2,138	1,223	556	6,872	19.7%
Addison	790	940	309	204	2,243	6.4%
Franklin	1,316	431	371	183	2,303	6.6%
Grand Isle	129	45	29	38	241	.7%
TOTAL	5,190	3,554	1,932	983	11,659	33.5%

TABLE 19

CASE DISPOSITIONS IN 1973 OF SUPERIOR, DISTRICT AND PROBATE COURTS APPORTIONED TO PROPOSED REGIONS

I. RECAPITULATION

Region (Population)	Superior Court Total	Superior Court Percent	District Court Total	District Court Percent	Probate Court Total	Probate Court Percent	Region Total With Sm.Cl. & Traf.	Region Percent	Region Total Without Sm. Cl. & Traf.	Region Percent
Southern (159,075)	2,161	41.3%	29,546	42.7%	2,128	36.7%	35,996	30.0%	13,061	38.9%
Northwestern (158,253)	1,734	33.1%	23,497	33.0%	1,908	33.0%	63,135	52.7%	10,947	32.6%
Northeastern (127,002)	1,295	25.5%	17,527	24.5%	1,744	30.3%	20,566	17.2%	9,579	28.5%
State Total (444,330)					443,500					
STATE	5,231	99.9	71,426	100.2%	5,780	100.0%	119,697	99.9%	33,587	100.0%

CASE DISPOSITIONS IN 1973 OF SUPERIOR, DISTRICT, AND PROBATE COURTS
APPORTIONED TO PROPOSED REGIONS
II. REGION AND TYPE OF MATTER

Region and Population	Superior Court						District Court							Probate Court					
	Civil	Matr.	Crim.	Misc.	Total	%	Civil Sm.Cl.	Juv.	Crim.	Traff.	URSEA & Misc.	Total	%	Estate & Trust	Guard	Adopt	Misc.	Total	%
Southern (159,075)	994	984	15	168	2,161	41.3%	1,259	435	6,895	16,501	183	29,546	42.7%	721	684	190	533	2,128	36.7%
Northwestern (158,253)	848	780	8	98	1,734	33.1%	1,874	249	5,182	13,336	100	23,497	33.0%	437	629	274	568	1,908	33.0%
Northeastern (127,002)	605	650	3	78	1,295	25.5%	1,392	234	4,818	7,197	210	17,527	24.5%	460	758	140	386	1,744	30.3%
Court Total	2,447	2,414	24	344	5,231	99.9%	4,475	967	16,096	37,014	199	71,426	100.2%	1,618	2,071	604	1,487	5,780	100.0%

1973 DISPOSITIONS OF
SUPERIOR, DISTRICT AND PROBATE COURTS
APPORTIONED TO NEW SUPERIOR COURT REGIONS

III. SOUTHERN REGION

County - Pop.	Superior Court: Civil	Matr.	Crim.	Misc.	Total	Percent
Rutland (52,637)	459	366	5	25	855	16.34%
Windsor (44,082)	184	201	2	55	442	8.44%
Bennington (29,282)	114	196	8	35	353	6.74%
Windham (33,074)	237	221	0	53	511	9.76%
TOTALS (159,075)	994	984	15	168	2,161	41.28%

Units	District Court: Crim.	Juv.	Civil	Sm.Cl.	Traff.	USRCA & Misc.	Total	Percent
Rutland	2,281	95	191	1,237	3,185	32	6,971	9.75%
Windsor	2,403	88	220	1,461	6,283	74	10,529	14.74%
Bennington	1,051	93	199	236	2,615	22	4,213	5.89%
Windham	1,160	159	649	1,339	4,418	55	8,767	12.27%
TOTALS	6,895	435	1,259	4,273	16,501	183	29,546	42.65%

Districts	Probate Court: Estates & Trusts	Guardianship	Adoption	Misc.	Total	Percent
Rutland (40,758)	206	123	70	170	569	9.8%
Fair Haven (11,879)	36	60	10	44	150	2.6%
Windsor (24,693)	98	107	23	62	290	5.0%
Hartford (19,389)	84	100	24	58	266	4.6%
Bennington (20,368)	68	102	15	86	271	4.7%
Manchester (8,084)	68	33	9	29	139	2.4%
Westminster (12,376)	54	51	17	36	158	2.7%
Marlboro (20,698)	107	108	22	48	285	4.9%
TOTALS (158,245)	721	684	190	533	2,128	36.7%

1973 DISPOSITIONS OF
SUPERIOR, DISTRICT AND PROBATE COURTS
APPORTIONED TO NEW SUPERIOR COURT REGIONS

IV. NORTHWESTERN REGION

Superior Court

County - Pop.	Civil	Matr.	Crim.	Misc.	Total	Percent
Chittenden (99,131)	573	498	2	78	1,151	22.00%
Addison (24,266)	134	101	6	13	254	4.85%
Franklin (31,282)	121	169	0	7	297	5.65%
Grand Isle (3,574)	20	12	0	0-	32	.6190%
TOTALS (158,253)	848	780	8	98	1,734	33.11%

District Court

Units	Crim.	Juv.	Civil	Sm.Cl.	Traff.	USRCA & Misc.	Total	Percent
Chittenden	2,953	139	1,408	1,408	1,362	79	14,112	19.75%
Addison	784	43	156	784	2,143	9	3,917	5.48%
Franklin	1,316	66	287	694	2,827	16	5,204	7.28%
Grand Isle	129	1	23	16	195	2	366	.51%
TOTALS	5,182	249	1,874	2,856	13,336	106	23,497	33.02%

Probate Court

Districts	Estates & Trusts	Guardianship	Adoption	Misc.	Total	Percent
Chittenden (99,131)	209	366	220	347	1,169	20.2%
Addison (24,266)	121	134	31	83	369	6.4%
Franklin (31,282)	92	113	23	88	316	5.5%
Grand Isle (3,547)	15	16	0	23	54	9%
TOTALS (158,253)	437	629	274	568	1,908	33.0%

1973 DISPOSITIONS OF
SUPERIOR, DISTRICT AND PROBATE COURTS
APPORTIONED TO NEW SUPERIOR COURT REGIONS

V. NORTHEASTERN REGION

Superior Court

County - Pop.	Civil	Matr.	Crim.	Misc.	Total	Percent
Washington (47,659)	288	237	0	26	491	9.33%
Caledonia (22,789)	96	122	1	24	243	4.64%
Orleans (20,153)	75	83	0	8	166	3.17%
Orange (17,676)	74	117	0	20	211	4.03%
Essex (5,416)	19	20	2	0	41	.78%
Lamoille (13,309)	113	71	0	0	184	3.51%
TOTALS (127,002)	605	650	3	78	1,295	25.51%

District Court

Units	Crim.	Juv.	Civil	Sm.Cl.	Traff.	Misc.	Total	Percent
Washington	1,588	72	982	1,295	2,963	162	7,062	9.88%
Caledonia	828	66	37	224	1,147	7	2,176	3.04%
Orleans	875	35	106	1,084	955	29	3,104	4.34%
Orange	525	34	112	842	1,132	5	2,650	3.71%
Essex	275	8	2	11	178	0	474	.66%
Lamoille	727	19	153	334	822	7	2,061	2.88%
TOTALS	4,818	234	1,392	3,790	7,197	210	17,527	24.51%

Probate Court

Districts	Estates & Trusts	Guardianship	Adoption	Misc.	Total	Percent
Washington (47,659)	132	256	57	144	589	10.2%
Caledonia (22,789)	106	130	30	40	306	5.3%
Orleans (20,153)	57	155	17	74	303	5.2%
Randolph (10,646)	41	43	13	30	127	2.3%
Bradford (7,030)	44	33	7	28	112	2.0%
Essex (5,416)	23	28	5	14	70	1.2%
Lamoille (13,309)	57	113	11	56	237	4.1%
TOTALS (127,002)	460	758	140	386	1,744	30.3%

Judge-Court Days

The days spent in court by the pres
in 1973 confirm the amount of judicial b
county, as well as the fact that there h
more traveling than even the Superior Ju

Regionalization will reduce the exc
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TABLE 20

SUPERIOR COURT OF VERMONT

CASE DISPOSITIONS AND JUDICIAL DAYS IN COURT

Calendar Year 1973

County	Cases Disposed of	% of Total Cases Disposed of	Backlog at end of 1973	% of State Backlog	Judge-Court Days	% of Total Days
Chittenden	1151	22.00	1257	20.6	220	18.09
Rutland	855	16.34	1019	16.7	223	18.34
Washington	491	9.38	798	13.0	161	13.24
Windham	511	9.76	457	7.5	117	8.06
Windsor	442	8.44	688	11.3	95	7.81
Bennington	353	6.74	436	7.1	87	7.15
Franklin	297	5.65	288	4.7	62	5.10
Addison	254	4.85	128	2.1	70	5.76
Caledonia	243	4.64	324	5.3	68	5.59
Orleans	166	3.17	210	3.4	49	4.03
Orange	211	4.03	198	3.2	25	2.06
Lamoille	184	3.51	246	4.0	41	3.37
Essex	41	0.78	43	.7	12	0.99
Grand Isle	32	0.61	12	.2	5	0.41
TOTALS	5231		6104		1216	

Source: Case dispositions are from judicial statistics compiled quarterly by the Office of the Court Administrator. Judicial days in court were obtained from survey conducted among County Clerks and are based on their records and, in some instances, records maintained by Superior Judges, Assistant Judges and Court Reporters.

TABLE 21

SUPERIOR COURT OF VERMONT

JUDICIAL DAYS IN COURT

Calendar Year 1973

County (in decreasing order of population)	Total	Chief Judge Hill	Judge Larrow	Judge Billings	Judge Martin	Judge Underwood	Judge Gibson
Chittenden	220(1)	6	52		110	47	
Rutland	223(1)	60½	9½	17	58	2	79
Washington	161	79			3	19	60
Windsor	95			34	19	43	
Windham	117(1)		45	34			2
Franklin	62	3	26	34		2	
Bennington	87	1	38	12	1		36
Addison	70	26	12	19		11	4
Caledonia	68	31			2	20	15
Orleans	49			25	25	1	
Orange	25	2		3	10	1	12
Lamoille	41	12	14			15	
Essex	12				1	11	
Grand Isle	5	1	2				
Totals	1216(1)	221½	198½	180	229	172	208
Number of Counties Visited	14	10	8	9	9	11	7

Average Number of Days per Judge ... 198 1/3

Average Number of Counties Visited ... 9

(1) County totals include 26 days Judge Morrissey (subsequently named to Superior Court) held court in Windham (17), Chittenden (5) and Rutland (4).

Source: Survey of County Clerks (see Table 20).

Weighted Caseload Analysis

The weighted caseload analysis for the winter 1973-74 term of the Superior Court, Bennington County, held at Bennington, provides a glimpse of the kind of information this method of recordkeeping can supply. The record consists of the time court opened; the time each matter begins and ends, the docket area of the matter (e.g., civil, criminal, matrimonial, tax appeal), and the disposition of the matter; each of these entries was not kept in our Bennington sample. (In fact, these records were only kept by the clerk on her own initiative for her own use.) Another useful entry not made in Bennington is a more precise description of the type of matter (e.g., sales contract, property damage, personal injury, manslaughter, defamation, property tax appeal).

The Bennington term lasted 44 days. Two months later a five-day session was held, mainly to hear short matrimonial matters and motions. In the main term, 60 civil matters, 104 matrimonials and 34 tax appeals were heard. Since many matters were taken "under advisement" by the court, we could not develop comparative totals of dispositions from this data.

There were three trials which lasted a day or more. One, lasting 1 1/2 days, was a civil case. The two others, 1 day and 1 1/2 days in length, respectively, were tax appeals. Deducting these matters and the days they were heard, the court

averaged about five matters a day. Records of time were not precise enough to estimate the average time spent on each matter. The records supported our expectation that day calendars were frequently not full, though. On some days, upwards of ten or twenty motions or uncontested matrimonial matters were heard. On others, only one or two motions or other short hearings were heard.

Tax appeals were the only instances where consolidation of cases occurred. They also took up more time on the average than other cases. While some individual tax appeals and civil cases occupied close to full days each in certain instances, no matrimonial matter appeared to last more than a half hour. Most were heard in half that time.

The five-day spring session, except for the fact that there were no trials of significant length, repeated the pattern of the main winter term in microcosm. Civil matters cases totalled 17, matrimonials reached 38 and there were 5 tax appeals. The daily matter-heard average was 12, but it should be remembered that this session was held only to hear short matrimonials and motions.

The weighted caseload records indicate the need for calendaring to be done further in advance of court days, particularly in places like Bennington where the term only lasts for about two months.

The Bennington County Clerk kept these records for reference

by her staff in their work. Clearly, however, these records help her and the staff to learn how to calendar more effectively in the future.

The judicial statistics for the quarter ended March 31, 1974, showed that her office performed comparatively well in the quarter in which part of the recorded term was held. In that quarter, Bennington was one of only four counties in which civil case backlog fell. It was one of five counties which reduced its matrimonial backlog, and heard by far the most miscellaneous cases, a category in which backlog was almost halved (these cases were largely the tax appeals).

It can therefore be seen that even a limited use of weighted caseload techniques of statistical recordkeeping has resulted in an increased consciousness in the clerk's office of the impact different kinds of matters have on calendaring and operational efficiency. We have been encouraged to learn that the Court Administrator intends to introduce a coordinated system of weighted caseload recording shortly.

The recommendations below summarize the major conclusions of the preceding analysis:

I. THE PRESIDING JUDGES OF THE THREE REGIONS OF THE NEW SUPERIOR COURT SHOULD BE SELECTED BY THE CHIEF JUSTICE OF THE SUPREME COURT ON THE BASIS OF ADMINISTRATIVE ABILITY, NOT SENIORITY.

II. TRIAL JUDGES SHOULD BE ALLOCATED TO THE REGIONS BY THE CHIEF JUSTICE IN CONSULTATION WITH THE PRESIDING JUDGES AND THE COURT ADMINISTRATOR; THE PRESIDING JUDGES SHOULD THEN ASSIGN TRIAL JUDGES TO DISTRICTS AND SUBJECT-MATTER JURISDICTION DOCKETS AS NEEDED, BASED ON THE MASTER STATE CALENDAR PREPARED BY THE COURT ADMINISTRATOR.

III. CLERKS SHOULD PREPARE SESSION CALENDARS FOR EACH SUBJECT DOCKET FOR THE TIME SPECIFIED BY THE STATE CALENDAR, WHICH WILL DIVIDE SESSIONS INTO SEGMENTS OF AT LEAST ONE WEEK EACH CONSISTING OF ONE OF THE SUBJECT AREAS: CIVIL, CRIMINAL, OR FAMILY MATTERS.

IV. WHEN CLERKS' OFFICES ARE COMBINED, EMPLOYEES SHOULD BE ASSIGNED SPECIALIZED DUTIES TO MAXIMIZE EFFICIENCY AND UNIFORMITY.

V. A. THE CLERK FOR EACH DISTRICT SHOULD BE APPOINTED BY THE COURT ADMINISTRATOR WITH THE APPROVAL OF THE PRESIDING JUDGE OF THE REGION.

B. COURT REPORTERS SHOULD BE DESIGNATED BY THE COURT ADMINISTRATOR WITH THE APPROVAL OF THE PRESIDING JUDGE AND GOVERNED BY STANDARDS APPROVED BY THE SUPREME COURT.

C. COURT OFFICERS SHOULD BE APPOINTED BY THE PRESIDING JUDGE ACCORDING TO STANDARDS DEVELOPED BY THE COURT ADMINISTRATOR.

VI. OTHER NON-JUDICIAL EMPLOYEES SHOULD BE APPOINTED BY THE COURT ADMINISTRATOR WITH THE CONSENT OF THE PRESIDING JUDGE.

VII. LAW CLERKS SHOULD BE ADDED TO THE CENTRAL LAW CLERKS' OFFICE TO SERVE EACH REGION.

VIII. RULES, REGULATIONS AND STANDARDS GOVERNING PERSONNEL PRACTICES IN ALL COURTS SHOULD BE PROMULGATED BY THE SUPREME COURT UPON THE RECOMMENDATION OF THE COURT ADMINISTRATOR.

IX. THE SUPREME COURT SHOULD APPOINT AN ADVISORY COMMITTEE TO PROPOSE AND REVIEW RULES AND PROPOSED RULE CHANGES.

X. THE JUDICIAL FUNCTIONS OF ASSISTANT JUDGES SHOULD BE ABOLISHED.

XI. COURT FACILITY PLANNING, PRIORITY SETTING, AND DETERMINATION OF THE COUNTY TAX RATE SHOULD BE THE RESPONSIBILITY OF A COMMITTEE IN EACH DISTRICT MADE UP OF THE ASSISTANT JUDGES, THE PRESIDING JUDGE OF THE REGION, AND THE COURT ADMINISTRATOR. A STATE COURTHOUSE STANDARDS COMMISSION WILL EVALUATE COURTHOUSES BASED ON STATEWIDE STANDARDS AND AN OVERALL PLAN.

XII. VENUE AND JURY SELECTION MACHINERY SHOULD BE EXTENDED TO BE COTERMINUS WITH REGIONAL BOUNDARIES ONLY IN ORDER THAT CASES MAY BE REASSIGNED WHEN FACILITIES IN ONE LOCATION PERMIT SPEEDIER PROCESSING TO REDUCE LARGE CASE BACKLOGS.

XIII. MOST TRAFFIC VIOLATIONS SHOULD BE REDUCED TO INFRACTIONS; HOWEVER, RULES OF EVIDENCE SHOULD NOT BE RELAXED IN TRAFFIC HEARINGS NOR SHOULD APPEALS BE LIMITED TO ABUSES OF DISCRETION.

VII. Probate Court

Hardly a problem exists in the Vermont state court system for which it hasn't been suggested that Probate Court solve. Some would turn it into a family court. Others would make the Judges of Probate act as local magistrates. Still others regard the probate judges as an underutilized judicial resource to be cross-assigned to the other trial courts as needed.

Not surprisingly, none of these ideas posits a perfect solution. If one had, no doubt it would have been accepted long ago. Before we make our effort at finding a function for this unusual court in a unified court system, a brief survey of the problems involved in dealing with the court as part of a combined structure is in order. First, the problems to be overcome are listed:

1. Part-time judges. Not one of the 19 probate judges spends all his time on court work. The Judge of Probate for the Chittenden District is closest to full-time: in that light, consider how far the judges in the smaller, half-county districts are from serving as full-time jurists. Part-time judges cannot devote their whole selves to their court work. Furthermore, even though they are barred from practicing in their jurisdictional field, the prospect of conflicts of interest abounds. Probate law has long been regarded as one of the most important pillars of a community's stability and at

the same time, has long been the most profitable area of legal practice. Neither of these facts justifies continued use of part-time judges to deal with critical issues and powerful counsel.

2. Lay probate judges. For almost the same reasons that require the end of the part-time probate judge era, the day of lay judges in this field must also close. Indeed, there is further factor: until all Judges of Probate are attorneys, almost all contested proceedings in Probate Court will continue to be shams, mere rehearsals for the real trial de novo in Superior Court (12 V.S.A. §2553). But ending the reign of lay probate judges is a much more serious step than abolishing the judicial functions of the Assistant Judges in Superior Court. Vermont lay probate judges have taken pains to help citizens involved in probate of small estates to emerge from the process as rapidly and with the least cost possible. Because of the small size of many districts, the judges have been able to devote their time to this work. Large proportions of the estates processed are handled without the need and cost of lawyers.

Once the court is restructured, this local, friendly atmosphere will inevitably be endangered. But in this instance the problems are too great to permit continuation of the status quo. In response to the contention that nineteen Probate Courts are needed to bring justice closer to the people,

it has been observed:

> ...There may be some merit to this proposition, but on the other hand, it tends to ignore the practical facts of life as they exist at this present time, and tends to presume that in Vermont we continue to travel by horse and buggy or by ox-cart, instead of the automobile. Where thirty miles to attend court meant a days' drive by horse and buggy, today it means less than an hour's drive and, in fact, would require nearer thirty minutes than one hour. Our economy has changed. It is a mobile economy with many people driving many miles each day to work. (H.F. Black, "Some Observations Relative to Vermont's Judicial System," 1957 Vermont Bar Association Proceedings at 10)

If the proposed model probate code is adopted, most estates will be admitted to probate administratively. The contested cases must be given a proper, final trial the first time. Conflicts of interest, real and potential, must be eliminated from the bench.

3. Administrative need. The people who work full-time in Probate Court are the Registers of Probate. They do most of the administrative work and most of the court's work is administrative. Notifications are made, papers checked, commissioners' reports assembled and documents recorded (4 V.S.A.§358 The probate judge reviews the work of the register, but an experienced register (as most are) gives the judge little chance to detect error. Probate Court needs coordination of the Registers of Probate with a few judges to review the registers' work and to try the small number of contested cases (see Table 22).

4. Judicial qualifications. Many registers have been promoted to probate judge when vacancies have occurred. Unfortunately, none of the qualities which assure a good Register of Probate satisfy the requirements for a competent Judge of Probate. The judge must review the operation of the administrative process in a matter; the register is only trained to perform administrative work. The judge must consider the legal issues in cases and conduct trials; the register lacks legal training. The Probate Court should be converted to an administrative section of the District Clerks' offices from which contested cases would be sent to designated judges in the unified trial court.

5. Political thickets. In every state, the court with probate jurisdiction inevitably is a prime source of judicial patronage in the form of guardianships and trusteeships. Vermont is no different: past proposals to change the Probate Court have been bitterly resisted by politicians of all stripes. Once the motivation for resistance is recognized, all the more reason exists for even stronger demands by the public for removal of the court from politics.

6. A place for family court? While we have been told that Probate Court should be converted to the often-proposed Family Court in Vermont, none of the principal advocates of a family court favor this step. We suspect

they do not support the change because they recognize that placing family matters in Probate Court is merely an attempt to resolve the major problem of fragmented family jurisdiction by dumping all of it into the nearest available, half-filled, judicial container.

Probate Court is not suited to become family court. Neither the judges nor the non-judicial staff have any experience in the family law field except for adoptions, guardianships and commitments: it has previously been recommended by several study groups that these areas be removed from Probate Court jurisdiction.

Family matters should be placed together on a separate docket in the new unified Superior Court, which should be bolstered with specially-trained staff to permit the family caseload to be processed properly.

Probate Court Caseload

While probate cases have increased, these courts remain part-time operations. If the Probate Courts are merged into the unified trial court, it will be important to determine how much court work (as opposed to administrative processing by the registers) is likely to be contributed to the new Superior Court caseload. Total probate cases have risen (Table 22) as have backlogs. A major increase occurred in estates and trusts (Table 23) proceedings, where backlog rose 32.3 percent between the end of 1971 and the end of 1973. Guardianship cases nearly doubled in the same

two-year period (Table 24). Adoption proceedings remained constant (Table 25). Miscellaneous probate proceedings -- name changes, premarriage matters, uniform gifts to minors and vital records -- have increased but backlog has been reduced (Table 26).

The major areas of increase, therefore, are estates and trusts proceedings, and guardianships. The estates and trusts matters are largely administrative in nature. Contested proceedings should be tried directly in Superior Court (they now end up there for trial de novo) as they will be in the proposed unified system. Guardianships will be placed on the family docket of the new Superior Court. The remainder of the probate caseload will be apportioned between the civil and family dockets. Once the Probate Courts are fully absorbed into the unified trial court, it would appear that by the registers assuming responsibility for administrative processing, there will only be enough court work coming from the traditional probate jurisdiction to justify retention of a small number of the present Judges of Probate.

TABLE 22

TOTAL PROBATE COURT CASES

Year	Cases Initiated During Year (Filing)	Cases Disposed In Year (Disposition)	Cases Pending at End of Year (Backlog)	Increase In Filings	Increase In Dispositions	Increase In Backlog
1971	7,265	4,273	3,810	--	--	--
1972	8,609	4,360	4,768	1,344	87	958
1973	9,424	4,077	5,827	815	(283)	1,059

TABLE 23

Probate Court Estates And Trusts Cases

Year	Filings	Disposition	Backlog	Increase In--- Filings	Disposition	Backlog
1971	3,385	1,453	2,449	---	---	---
1972	4,286	1,610	2,962	901	157	513
1973	4,933	1,618	3,592	727	8	600

TABLE 24

Probate Court Guardianship Cases

Year	Filings	Disposition	Backlog	Increase In--- Filings	Disposition	Backlog
1971	1,260	448	1,077	---	---	---
1972	1,758	398	1,590	498	(50)	513
1973	2,267	368	2,071	509	(30)	481

TABLE 25

PROBATE COURT ADOPTION CASES

Year	Filings	Dispositions	Backlog	Increase In Filings	Increase In Disposition	Increase In Backlog
1971	824	713	111	---	---	---
1972	798	689	109	(26)	(24)	(2)
1973	717	604	113	(81)	(85)	4

TABLE 26

PROBATE COURT MISCELLANEOUS CASES

Year	Filings	Dispositions	Backlog	Increase In Filings	Increase In Disposition	Increase In Backlog
1971	1,232	1,112	156	---	---	---
1972	1,333	1,257	76	161	145	(80)
1973	1,340	1,289	51	7	32	(25)

Miscellaneous cases include Premarriage, Name Change, Uniform Gifts to Minors and Vital Records.

TABLE 27

PROBATE COURT MENTALLY ILL-COMMITMENT CASES

Year	Filings	Dispositions	Backlog	Increase In Filings	Increase In Disposition	Increase In Backlog
1971	564	547	17	---	---	---
1972	434	406	31	(130)	(141)	14
1973	167	198	0	(267)	(208)	(31)

These cases were transferred to the Waterbury circuit of District Court at the end of 1973.

The Present Probate Staff

As with many of the judges, clerks and other personnel in Superior and District Courts, we detected high motivation among the Probate Court staff, particularly the registers and judges. In many respects, however, the present duties of Registers of Probate are already substantial. While we explain next why we believe probate judges should be classified with other trial judges for all purposes, including compensation, we think it necessary to emphasize that if registers' responsibilities are increased further, they should be paid commensurately. Even when in the past judges' tasks have been rendered irrelevant in light of certain trial de novo, the registers have performed at the same primary level of responsibility.

In the past many registers have been promoted to probate judge; since this move is unlikely to occur with the same frequency when probate judges are required to be lawyers, we think it vital that registers be placed at a high level of a carefully-structured personnel system for non-judicial employees. For the same reasons, we regard it as highly important that the lay probate judges who do not become attorneys be permitted to retire at the normal retirement pension level. These lay judges have displayed dedication to helping the public and should be properly rewarded for their service.

Recommended plan for reform

Until the positions of Judges of Probate become appointive, to be filled only by qualified attorneys in the same manner as other judicial positions (certification by the

to be met; the shift from election to appointment requires further constitutional amendment. While we believe the Constitution should be so amended at the earliest possible date, we do not feel that the need for this change (unlike the requirement for legally-trained judges) should postpone integration of the Probate Courts into the unified structure.

Once the Probate Courts are staffed by judges who are lawyers, the number of Judges of Probate and probate districts (both statutory in nature) should be drastically cut to equal the work provided for a bench of full-time probate judges. These judges can be integrated into the unified trial court bench of the new Superior Court. They gradually will perform the same duties of all Superior Judges while the other Superior Judges share the probate work. Registers of probate will be sufficiently trained and certified to perform administrative processing subject to litigation of contested or questioned matters in Superior Court.

In this way, the registers (one per judicial district) will remain to handle most of the work of the present court while being given the responsibility of completing most matters and helping the public as the court has in the past, without sacrificing a judicial role.
Judicial Selection Board, appointment and confirmation (4 V.S.A. §601-603), the Probate Court cannot be fully integrated into the unified court system. We suggest a reasonable time be set for the attorney qualification (which may be enacted by statute)

The merger of probate jurisdiction into a unified trial court has been accomplished in Idaho, where the magistrates division of the unified trial court handles probate matters (2 Idaho Code, Code of Civil Procedure, §§1-103, 1-2208 (1973 Pocket Part) at 2, 36). At some point, the new magistrates may be given most supervisory responsibility over the registers' administrative processing of matters; until then the judges of the new Superior Court will be responsible for supervision of his work. Integration of probate court jurisdiction into a unified trial court has been recommended in Kansas (see "Recommendations for Improving the Kansas Judicial System," Report of the Kansas Judicial Study Advisory Committee, 13 Washburn L.J. (Spring 1974) at 297-300).

In the interim period until Probate Court can be fully merged into the new Superior Court, it may prove most expeditious to permit one Probate Judge in each new judicial district to perform the functions to be assigned to magistrates. The remaining Probate Judges will continue to perform existing duties.

Recommendations

I. THE STATUTES SHOULD BE AMENDED TO REQUIRE THE SAME QUALIFICATIONS FOR PROBATE JUDGES -- LEGAL TRAINING AND EXPERIENCE IN PRACTICE -- NOW REQUIRED FOR APPOINTED TRIAL JUDGES.

II. THE CONSTITUTION SHOULD BE AMENDED TO PROVIDE FOR APPOINTMENT OF THESE JUDGES IN THE SAME MANNER AS ALL TRIAL JUDGES ARE NOW SELECTED.

III. ONCE ALL PROBATE JUDGES ARE LAWYERS, THE COURT SHOULD BE INTEGRATED INTO THE NEW SUPERIOR COURT. THE NUMBER OF PROBATE JUDGES SHOULD BE REDUCED TO MEET THE NEED FOR FULL-TIME JUDGES IN THE PROBATE FIELD. BUT THE PROBATE JUDGES SHOULD BE PLACED ON THE NEW SUPERIOR COURT TO ROTATE AMONG DISTRICTS AND JURISDICTIONAL FIELDS AS WILL ALL SUPERIOR JUDGES, WHO NOW CAN BE ASSIGNED TO HEAR PROBATE MATTERS.

IV. REGISTERS OF PROBATE SHOULD BE TRAINED AND CERTIFIED TO PERFORM ALL ADMINISTRATIVE PROCESSING OF UNCONTESTED MATTERS.

V. ONE REGISTER SHOULD BE APPOINTED PER JUDICIAL DISTRICT (A TOTAL OF 12). THE REGISTERS AND THEIR OFFICES SHOULD BE MERGED INTO THE COMBINED DISTRICT CLERKS' OFFICES AS A DISTINCT SECTION OF THOSE OFFICES.

VI. AS PROBATE JUDGES BECOME LEGALLY TRAINED, EACH PROBATE DISTRICT SHOULD BE INTEGRATED INTO THE UNIFIED SYSTEM IN THE MANNER PRESCRIBED.

VII. PROBATE JUDGES SHOULD BE REQUIRED TO BECOME LAWYERS BY THE END OF THE CURRENT FOUR-YEAR TERM.

VIII. Family Court

A family court for Vermont has been proposed for many years. The most recent bill introduced (H. 50, 1973) called for establishing a five-district division of the District Court to exercise jurisdiction over adoption; annulment, separation and divorce; bastardy; delinquent, unmanageable and neglected children; guardianship, except testamentary guardianship and guardians ad litem; and all actions under the Uniform Desertion and Nonsupport Act and the Uniform Reciprocal Enforcement of Support Act (H. 50, 1973, §2).

While legislative hearings have been held on this bill (House Judiciary Committee, Jan. 10, 1974), a family court has not been established to date. It appears to us that the reason for the lack of progress in this area lies in the need to coordinate operation of a family court with the existing and projected court system.

We agree with the advocates of the family court in the belief that family legal matters, as specified above, should be placed together for adjudication. In this way, related cases can be considered at the same time by jurists who have the capability to deal with the particular needs of family legal problems and who are given the time and support services required for adequate consideration and disposition of these cases.

Need for Change in Court Treatment of Family Matters

Opponents of a Vermont family court have asserted that cases are being processed with reasonable dispatch. However, the existing problems in treatment of family matters by the Vermont state courts are not solely related to dispositions but instead to the manner in which these cases are handled.

We have encountered many complaints about the rarity of occasions when Vermont courts are able to consider the status of a family as a viable unit rather than attending separately to arising from the underlying dysfunctions of the family group. The most experienced family law-conscious judges are found in District Court, where juvenile cases are heard. Probate Court only sees family problems from the adoption and guardianship viewpoint, while Superior Judges are limited to purely matrimonial matters, cut off from the juvenile caseload arising subsequent to custody decisions. District Court jurisdiction is not broad enough to deal with the need. As one of its judges has stated:

> ...if a person under eighteen is in Juvenile Court (District Court) and it appears he is there because of some basic family problem, then a Family Court would be able to apply a remedy to the young person and also apply a remedy to the balance of the family to settle and hopefully resolve the whole situation at one time.[1]

We have been told of other problems which demand a solution providing for combining these divisions of jurisdiction

[1] Letter of District Court Judge G.F. Ellison to Rep. E.L. Jarrett, Jan. 8, 1974.

in a court which will possess the time, expertise, facilities and inclination to treat them with the thoroughness now missing. These difficulties include:

1) Rigidity. A staff member of the Department of Social and Rehabilitation Services has reported:

> The legalness and threatening atmosphere of courts lead also into rigid decisions: to commit or not commit, to give custody to one or another, and so on! There has been some effort to allow for movement within the statutes, but not near enough. A family court should allow the plan to fit the specific needs of the child. Perhaps to be formulated in a round table discussion with the judge. There should be room for mandatory review in less than two years if it appears necessary.[2]

2) Prejudice Against Removal From Home. Many judges are reportedly inclined to remove a child from a dangerous home environment only as a last resort.

> "...almost no amount of proof that the parents are unable ever to care for the child is sufficient for the judge to relinquish parental rights. This type of judge entertains the same fantasies that the parent does of a miraculous change." [3]

3) Formality. While juvenile proceedings must conform with U.S. Constitutional requirements of notice, right to counsel, confrontation and cross-examination, and self-incrimination privilege, and proof beyond a reasonable doubt (In re Gault, 387 U.S. 1 (1967); In the Matter of Samuel Winship, 397 U.S. 358 (1970); Ivan v. City of N.Y., 407 U.S. 203 (1972)), it has been suggested that family

[2] Staff communication to Vt. Asst. Dir. of Soc. Services (Oct. 29, 1974).

[3] Ibid. (Nov. 12, 1974).

law judges should be able to conduct courtroom proceedings in a more informal manner to facilitate more flexible approaches and solutions. In addition, proper representation of children is needed.

4) Inconsistency. It has been asserted that judges have interpreted laws differently: while the presence of one parent is required by law, some judges hold hearings without one. Some State's Attorneys show less interest than others in moving cases forwarded to them by the Department of Social and Rehabilitation Services ("SRS"). In addition, employees of the social rehabilitation services department have been appointed guardians ad litem, although these people may not be parties in juvenile proceedings. All these inconsistencies indicate the need for promulgation of standard procedures, and supervision and training of judges assigned to family work.

5) Judicial posturing. Judges hearing juvenile cases are reportedly disposed to deliver repeated lectures and warning to young people "instead of allowing the young person the right to assume responsibility for his own acts and take the legal consequence of his actions." Contrarily, SRS staffers "have witnessed a judge reprimanding the child for his or her unmanageable behavior when the report clearly shows the child has been reacting appropriately to a poor house situation."[4]

[4]Staff communications to Vt. Asst. Dir. of Soc. Services (Oct. 22 and 28, 1974).

The preceding recitation of problems indicates to us that treatment of family matters in Vermont courts is not satisfactory at present and suffers from the fragmenting of the area. The next question to be faced is determination of the best way of improving the situation.

Integrating but Identifying Family Cases

Many states have established Family Courts which are independent from the general jurisdiction tribunals.[5] While a separate family court would clearly represent an improvement from the present system, we believe Vermont can do better. Vermont is small enough to function more smoothly with a unified court system rather than separate courts. While a wholly united structure could easily prove unwieldy in New York, the advantages of flexibility and efficiency, as well as coordinated supervision and best use of resources, should be aimed for in Vermont.

Indeed, the advocates of a family court in Vermont have indicated their satisfaction with inclusion of family jurisdiction in special sessions of a unified system.

[5] New York and Rhode Island are two nearby examples. New York's Family Court, however, does not possess matrimonial jurisdiction.

> In our opinion, the better alternative is to establish a Family Division within a unified Superior Court or District Court. A Family Division must be provided with sufficient support and auxiliary staff to reach its full potential.[6]

This view closely parallels our recommended course. Rather than establishment of a separate division in the new Superior Court, we would urge that family matters be assigned to a separate docket. As Dean Roscoe Pound told Vermonters in 1943:

> Instead of setting up a new court for every specialized task, we should provide an organization flexible enough to take care of new tasks as they arise and turn its resources to new tasks when those to which they were assigned cease to require them. The principle must be not specialized courts but specialized judges dealing with their special subjects when the work of the courts is such as to permit, but available for other work when the exigencies of the work of the courts require it. (R. Pound, "Improving the Administration of Justice," 1943 Vermont Bar Association Proceedings at 48)

In large districts, the family docket will require the full-time attention of a single judge, who will rotate as the other judges but may well be assigned to the family docket more frequently by preference. In lesser-populated districts, where one judge may be able to handle most court business, family matters should be docketed together for hearing. The judge may hear a week of civil matters, next a week of family proceedings. Therefore, in these locations, the family work will be heard as a unit. The five travelling

[6] "Comments of the Governor's Committee on Children and Youth Regarding Vermont Court Reorganization" (by J. Taylor, member, GCCY), Nov. 7 1974, at 4.

judges proposed by adherents of a separate family court would be unlikely to hear family cases in any one location on a more regular basis.[7]

To add solid support to the concept of a family docket capable of adding broader capabilities to the hearing of family matters, we recommend special training of all new Superior Judges in family law theory and practice and assignment by the Presiding Judge in each region of a Superior Judge to supervise the family docket in the region and resolve inconsistent and substandard court practices in the family field.

In addition, sufficient support staff should be provided to service the family docket: clerical employees should operate under the aegis of the court, while case-workers and social service personnel remain independant of the court so as not to prejudice the adjudicatory function of the judge. But insuring that family supportive services are provided by the agencies should form a vital part of the family aspect of court business. This concept underlines the entire philosophy of dealing with all legal matters involving the family at one time. As Judge Lisa Richette told a recent Vermont conference on "Juvenile Justice and Child Placement--The Alternatives":

> Similarly ignored is the state's failure to provide supportive services to families in a preventive way. The [Vermont Committed Children] Study deals only with the child, the child! But the child cannot be viewed as an isolated phenomenon. The child is part of an organic living unit which is a family of some kind.

[7] Ibid. (Appendix dated Nov. 13, 1974).

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> Maybe the family really means one psychological parent...But that, at least, makes two people -- parent and child -- that have to be considered in this scheme of things, and not just one. (Judge L.A. Richette, Phila. Ct. of Comm. Pleas, address to Gov. Comm. on Children and Youth conference, "Juvenile Justice and Child Placement -- The Alternatives" (May 8, 1974) at 16).

In organizing the family docket and staff in the new Superior Court, care must be taken to avoid exclusive reliance on the now-disputed principle which has dominated juvenile justice: the "best interests of the child" as discerned by courts and social agencies.[10] While the agencies should play a significant role in aiding disposition and handling of family cases, the interests of the child often demand independent representation and advocacy. Social services agencies must not be regarded as the exclusive representatives of the child in court and the court should not regard itself as a sufficient advocate of the child's interest:

> I would not like to see the whole new concept of child advocacy, a very important concept, addressing human beings intervening on behalf of the child's rights as well as on behalf of the child's needs, relegated to the position of a stepchild of the justice system. I am very opposed to our delegating as a human society, the definition of human rights and human needs to one monolithic kind of agency, be it a bureaucracy, court system, a welfare or any other single unit....I would suggest that advocacy in its broadest sense can mean not merely working to protect the rights of children but to extend the whole range of understanding of what children basically need. (Judge Richette, op.cit., at 23-24).

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[8]The new point of view is represented by the already-acknowledged seminal work: J. Goldstein, A. Freud and A. Solnit, Beyond the Best Interest of the Child (1973).

Recommendations

I. FAMILY CASES SHOULD BE ASSIGNED TO THE FAMILY DOCKET OF THE NEW SUPERIOR COURT. ROTATING JUDGES ASSIGNED TO THE DOCKET IN LARGE DISTRICTS WILL WORK FULL-TIME ON FAMILY MATTERS WHILE JUDGES IN SMALLER AREAS WILL TREAT FAMILY CASES AT ONE TIME (E.G., A WEEK FOR EACH DOCKET: CIVIL, CRIMINAL AND FAMILY).

II. ONE JUDGE IN EACH REGION SHOULD BE DESIGNATED BY THE PRESIDING JUDGE TO SUPERVISE THE FAMILY DOCKETS FOR THE REGION AND THE SUPPORT STAFF WHICH THE COURT SHOULD BE GIVEN TO HELP ON THESE MATTERS.

III. SPECIAL TRAINING OF JUDGES IS MANDATORY IF THE PITFALLS OF PAST TREATMENT OF FAMILY MATTERS ARE TO BE AVOIDED.

IV. THE COURT SHOULD RECOGNIZE THAT IT IS NOT THE EXCLUSIVE ADVOCATE OF THE CHILD'S "BEST INTEREST" IN JUVENILE AND OTHER FAMILY PROCEEDINGS. WHEN ADVISABLE, ADVOCATES SHOULD BE APPOINTED TO REPRESENT CHILDREN AND OTHERS PREVIOUSLY REPRESENTED BY THE COURT.

IX. Small Claims Cases

Everyone agrees that small claims cases are currently treated improperly in Vermont. These cases are relegated to the bottom of the District Court priority pile, lack simplified forms and procedure to permit citizens to handle their cases without a need for lawyers, offer no inducement to the sheriff's offices to elicit successful execution of judgments entered, and serve in the end as a government-sponsored collection agency for businesses, utilities and municipalities.

A basic misconception of small claims underlies these faults in the present system. Judges tend to regard the cases as unimportant because they deal with small amounts of money and hence are worthy of a low rank in the priority scale. Sheriffs see little profit in executing small judgments. The rules in existence permit large corporate, business or municipal plaintiffs to foist on the clerk of District Court their normal job of drafting and serving complaints (12 V.S.A. §5532). As a result, the forms and procedures remain complex and unfriendly to individual lay plaintiffs. Failure to recognize the true purpose of small claims leads to frequent suggestions that the way to improve the situation is to reduce the small claims maximum jurisdictional amount (it is now $250) (12 V.S.A. §5531). Not only should the maximum not be reduced, but processing of small claims cases should be over-hauled to produce an efficient, workable system which will

permit the maximum to be raised.

A survey we conducted of small claims cases in Chittenden and Washington District Courts showed that the great proportion of small claims plaintiffs were corporations (contrarily, most defendants were individuals) and that in all surveyed cases, judment (when reached) was for the plaintiff. Records as to the time between the start and conclusion of cases were too unclear to permit obtaining of useful data with respect to delay.[1]

There are several ways to improve handling of small claims cases. First, the new group of legally-trained Magistrates should be given these matters to hear. These officers will reside in the community and be available to hold sessions at night for working people to attend.

Second, small claims court was originated to provide a special place for the individual citizen to secure speedy resolution of a low-valued claim. These courts should not be available - as they now are - for use as collection agencies. The drafting-and-forwarding services provided were intended to help individual plaintiffs unfamiliar with the process but are most frequently resorted to by large plaintiffs seeking

[1] Some analysis of delay can be found in The Forgotten Court: A Report on the Operation of Small Claims Court in Vermont (Vt. Public Interest Research Group, Oct. 1973). The study observed: "Small claims court only becomes an onerous process in those cases where an individual brings suit and his case requires a hearing, or when an individual defendant chooses to contest a claim." (Ibid. at 7).

to economize on their legal bills. As a result, the state pays their bills in the form of clerical time lost on this work.

Third, forms and procedures should be simplified. No one should be denied the right to his own attorney but the judicial officers should be particularly watchful of the unrepresented party's rights in a case where one side appears by counsel. Forms should be rewritten to be easily comprehended by persons without legal training. A booklet should be prepared for distribution to individual plaintiffs explaining the court's procedures.

Fourth, a special incentive to sheriffs to insure improved efforts to execute small claims judgments should be set: the sheriff's fee to be collected from judgment debtors should be unrelated to size of judgment (since all are for limited amounts) but should be increased by statute.

Balancing Interests

Treatment of small claims cases is not as susceptible to instant improvement despite the implication of the discussion thus far. A delicate balancing of interests must be maintained or the entire benefit of this special court may be lost.

For example, while corporate plaintiffs should not be given privileges unavailable to them in normal proceedings (as they get at present in the form of the drafting service provided all small-claims plaintiffs), the pendulum should not reduce their chance of obtaining a fair hearing to the point where they automatically appeal every ruling. Small

claims cases present the same problem as exists with respect to consumer credit: if interest rates are artificially kept very low and debtors' rights extended to the point where collection becomes highly improbable, credit will dry up. On the other hand, total absence of regulation of interest rates and unrestrained collection practices are not acceptable to the public. A balance must be struck.

Therefore, while some states (New York is one[2]) have totally barred corporate plaintiffs from small claims court, we would instead require such plaintiffs (and corporate defendants) to prepare and serve their own papers and be represented in court by counsel. This would make it more difficult for the court to be used as a cheap collection agency.

Further, an appeal process should be retained. If legally-trained judicial officers hear these cases, there is no reason for trials de novo. Appeals should not be significantly less burdensome than they ordinarily are, since there exists a strong interest in encouraging acceptance of judgments. Nevertheless, an avenue should be available to any litigant who feels he was unfairly treated.

We therefore recommend:

I. SMALL CLAIMS CASES SHOULD BE TRIED BEFORE LEGALLY-TRAINED JUDICIAL OFFICERS.

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2 N.Y.C. Civ. Ct. Act §1809.

II. CORPORATE PARTIES SHOULD BE REQUIRED TO PREPARE THEIR OWN PLEADINGS AND BE REPRESENTED BY COUNSEL AT SMALL CLAIMS HEARINGS AND TRIALS.

III. SESSIONS SHOULD BE HELD AT NIGHT SO THAT WORKING CITIZENS MAY HANDLE THEIR OWN CASES.

IV. FORMS SHOULD BE RADICALLY SIMPLIFIED SO THAT AN ATTORNEY WILL NOT BE NECESSARY.

V. PROCEDURES SHOULD ALSO BE SIMPLIFIED AND THE COURT SHOULD TAKE SPECIAL PAINS TO SAFEGUARD THE RIGHTS OF AN UNREPRESENTED PARTY WHERE ANOTHER PARTY IS REPRESENTED BY COUNSEL.

VI. SHERIFFS' EXECUTION FEES IN SMALL CLAIMS COLLECTIONS SHOULD BE INCREASED TO PROVIDE A SPECIAL INCENTIVE TO EXECUTE SMALL CLAIMS JUDGMENTS. THE FEE WILL BE PAID BY THE DEBTOR.

VII. THE JURISDICTIONAL LIMIT IN SMALL CLAIMS CASES SHOULD BE RETAINED AT ITS PRESENT LEVEL; WHEN THE NEW SYSTEM BECOMES FULLY OPERATING, CONSIDERATION SHOULD BE GIVEN TO RAISING THE MAXIMUM CLAIM TO $500.

VIII. WHILE APPEALS SHOULD BE ALLOWED, THE APPELLATE PROCESS SHOULD REMAIN UNCHANGED TO ENCOURAGE ACCEPTANCE OF JUDGMENTS BUT PERMIT RECOURSE TO PLAINTIFFS ASSERTING UNFAIR TREATMENT.

X. Courthouse Facilities

The problems facing the Vermont state courts that have been aggravated by insufficient or inadequate facilities include lack of flexibility to deal with caseloads varying in quantity and character, insufficient space for attorneys, judges and court non-judicial personnel to carry out their duties properly, and diminished dignity of the courts and the judicial process in the eyes of jurors, witnesses, civil litigants and criminal defendants.

A summary of what facilities a courthouse should contain was provided by the courthouse evaluation commission created in the neighboring state of New Hampshire, the first state in the nation to establish a panel to assess the adequacy of court facilities:

> It is important, first of all, to remember what a courthouse should be. It should be a hall of justice for the serious deliberations of a court and jury which should be completely isolated from the legislative and executive branches of government.
>
> A courthouse should not be a warehouse for welfare supplies, or a location for private banking or a convenient political headquarters or offices for county administrators or a bar association meeting place or offices for social welfare organizers, or an army, navy and marine recruiting center, or a distribution center for motor vehicle registration plates, or quarters for religious, sectarian or patriotic groups, or a place to locate offices of the Economic Opportunity programs. Many of these functions are undoubtedly important and in the public interest, but they do not belong in the courthouse.
>
> Members of the public should not have to go through or by a sheriff's office or police headquarters or cell blocks in order to attend hearings....A criminal case should not, if there are alternatives available, be tried in a building

> housing law enforcement officials whose members may have either served the writ or summons or made the arrest or are witnesses for the prosecution. A citizen should not have to have his case tried in a courtroom adjoining the offices of an elective official.
> (Report of the New Hampshire Court Accreditation Commission on the Accreditation of Court Facilities (Sept. 1973) at 3).

Vermont is not uninformed as to which of its court facilities need upgrading. A Report on a Preliminary Study of Judicial Facilities for the State of Vermont was issued in 1972 by Space Management Consultants, Inc., facilities specialists. While the 1972 report was admittedly preliminary in nature, it targeted immediate upgrading needs in the system, provided an inventory of existing facilities and spotlighted general problems. The report obviously was unable to consider the impact of the introduction of a unified court system on its recommendations; therefore, revisions in some goals are needed. We have included an outline of general observations about facilities needs; specific improvements at each location should be based on an updating of the 1972 report to take the needs of the unification of the system into account. Our outline is followed by an analysis of the more difficult issue of how the needed facilities improvements should be accomplished.

General Facilities Needs of the Courts

1. Flexibility in the form of more than one jury courtroom at every location is required. The largest district

in each of the three regions of the new Superior Court must receive primary attention. Each of these locations--Chittenden, Rutland and Washington--now requires at least two jury courtrooms. Upon completion of the new courthouse now under construction, Chittenden will have three. Other districts require at least two jury courtrooms. Since the Federal District Court in Vermont does not use more than two of its six (Burlington, Rutland, Brattleboro, Montpelier, St. Johnsbury and Windsor) courtrooms at any one time, arrangements should be made for regular use of these well-distributed facilities when needed.

The experience of the New Hampshire evaluation commission is illuminating in this regard:

> We would add that no new Superior Courthouse should be constructed without at least two courtrooms for jury trials. With the increase in population and consequent increase in caseloads it may be desirable to assign two or more judges in any county at any time a backlog of cases exists. Experience has shown that two judges working together dispose of many more cases than two judges working separately. (Report of N.H. Comm., op.cit., at 6)

2. Every location should also have at least one hearing room which can be used for non-jury trials. Not only will this goal's achievement provide added flexibility to the unified system to cope with predicted increases in caseloads and the requirements of a bolstered family docket, but the added hearing space will be needed to handle the sharp growth in non-jury trials as well as the needs of the probate caseload when the Probate Courts are integrated into the unified court system.

3. While county courthouses are invariably overcrowded, the most severe space situations have arisen in those counties where Superior, District and Probate Courts all occupy the same building. Nevertheless, a judicial center for each judicial district is the preferred aim of the system. It permits the most efficiency and flexibility. "The ideal appears to be one courthouse in each county or judicial district to house the Superior, District and Probate Courts." (Report of the Judicial System Committee of the Vermont Bar Association, September 1974, at 2). Emphasis should be placed on renovating county courthouses where possible and constructing new buildings, additions, or adjacent structures where needed. In this way, the greatest advantage of existing structures will be gained. With two state-owned exceptions (Burlington and St. Albans), the separate District Court facilities (the remainder are leased premises) are not satisfactory; they should only be retained until leases expire and alternative facilities are obtained. Instead, a plan should be prepared in each district to outline the steps needed to attain the goal of a judicial center serving all citizens in the judicial district upon court unification. Absorption of the two-district counties of Probate Court should be included in the plan.

4. Existing courthouses generally lack attorneys' conference rooms, witness waiting rooms, public waiting spaces, adequate jury deliberation rooms, temporary prisoner holding facilities, public and staff toilets, law library locations apart from conference rooms or judges' chambers, working space for clerks and court reporters, and adequate storage areas and facilities.

5. Non-court offices, such as Selective Service, State's Attorneys, social welfare offices and private attorneys' offices should be removed from the courthouses when the space is needed for court functions. Most of these offices have already been moved. Sheriffs pose a larger problem. While in an ideal court facility, the sheriff's presence should be minimized, the immediate needs of the courts in Vermont require the presence of some prisoner holding facilities in the courthouse and hence the limited presence of the sheriff's office.

Plan to Improve Facilities

Immediate implementation of a unified court system will require temporary use of all existing facilities in the most efficient manner possible. Clearly required, however, is a soundly conceived system for accomplishing the goal of upgraded and improved facilities.

A commission to evaluate the adequacy of existing courthouse facilities in Vermont, styled on the lines of the New Hampshire accreditation commission, should be established and funded by the state.[1] The New Hampshire commission included a trial court judge, a Supreme Court justice, representatives of the legislature and the bar association, and a public

[1] "A Commission on Courthouse Facilities should be established for the purpose of the development, maintenance and implementation of adequate standards. This would be similar to the Commission which presently exists in the State of New Hampshire. The appointment of the members of the Commission should be made by the Chief Justice with lay representation on the Commission." (Vt. Bar Assn. Jud. Systems Committee report, supra, at 1).

member (a newspaper editor). The commission will need architectural and technical consultants in its work.

At present, county courthouse improvements are financed, along with other county expenses, by the revenue from the county tax; the tax rate is determined by the two Assistant Judges of each county but cannot exceed five percent (24 V.S.A. §133). District Court facilities are in state-owned structures or in ones leased by the state. Probate Court facilities, normally in the county courthouse except for the two-district counties and a few other places, are supported by the county.

State assumption of courthouse financing and support is a generally accepted principle.[2] We believe, however,

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[2]It may even become a mandatory principle. While the question has apparently neither been raised nor adjudicated with respect to court systems, analysis of financing methods for Vermont court facilities requires mention of the constitutional challenges which have been made to locally-differing financing structures for support of another obligation of a state, viz., schools. By a 5-4 vote, the U.S. Supreme Court, applying a "two-tier" equal protection analysis, found that local school district financing of education, with variations in both tax base and rate between districts, did not create a "suspect wealth classification" or violate a "fundamental right" of federal constitutional stature, (and hence making unnecessary scrutiny to ascertain whether any compelling state interest justified inequality) San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 36 L. Ed. 2d 16, 93 S.Ct. 1278 (1973). However, state courts have found that financing of a state constitutional obligation, e.g., education, through imposition of varying tax rates by local districts with different tax bases, can violate state constitutional guarantees: in one instance, fulfillment of the mandate of a "thorough and efficient" school system was held deficient, Robinson v. Cahill, 62 N.J. 473, 303 A.2d 273 (1973) cert. denied, 414 U.S. 976:

> A system of instruction in any district of the State which is not thorough and efficient falls short of the constitutional command. Whatever the reason for

(footnote continued on following page)

that strong local traditions of self-government in Vermont combined with the advisability of retaining the county tax as a direct source of revenue to finance court facilities improvement constitute valid reasons for continuing to use the county (which, with two exceptions, will be identical to the new Judicial District) and its taxing power to finance court facility maintenance improvement.[3]

> the violation, the obligation is the State's to rectify it. If local government fails, the State Government must compel it to act, and if the local government cannot carry the burden, the State must itself meet its continuing obligation. (303 A.2d at 294)

Another ruling following the Supreme Court but with a different result owing to reliance on a state constitution - finding that a state constitution made education a fundamental right requiring strict scrutiny of a financing system and concluding that no compelling state interest justified the existing system - was Milliken v. Green, 389 Mich. 1, 203 N.W. 2d 457 (1972). See generally "The Supreme Court, 1972 Term," 87 Harv. L. Rev. 57 (1973) at 105-116.

Since the Vermont constitution contains many provisions regarding the state's responsibility in maintaining a court system (e.g., Vt. Const., I, §§10, 12; II, §§4, 28), any financing system for courts must be proposed in light of the possibility that at some time it may be held that the state must be responsible for financing a unified court system by a statewide structure to raise revenue. Conceivably the U.S. Supreme Court could also require elimination of financing of a state court system which varies between areas of the state.

In short, any court financing system should be designed and implemented with regard to the possibility that future constitutional rulings may bar local variations within a statewide court system.

[3] Our observations of local opinion regarding court facilities leads us to conclude that Vermonters are likely to agree with the New Hampshire courthouse evaluation commission's view that "A courthouse does not have to present an artistic atmosphere or be a building whose occupants share lush quarters...It should be modest in size, in good taste, dignified in appearance, functionally efficient, of simple design and placed in an adequate setting." (Report of N.H. Comm. at 4). A recent perception of the Vermont courthouse tradition was contained in D. Orrick, "Vermont Courthouses: Studies in Dignity," Vermont Life (Summer 1974), 46-51.

Retaining the county tax as a source of revenue for the courts, however, means continuing to allow the county a voice in the decision-making process involved in raising and spending county funds. At present, the Assistant Judges exercise total authority over these matters. While renovations and improvements in some county courthouses have been made in recent years, we do not believe that the appropriating power should rest exclusively with the Assistant Judges. Instead, a committee in each county composed of the Assistant Judges, the Presiding Judge of the region (or a representative), the Court Administrator (or a representative), and a representative of the state buildings department should determine the plan for court facilities improvements and decide how much revenue will be needed from county tax collections to finance the improvement plan.

Regular operation of court facilities and maintenance of existing and improved facilities should be paid for by the state. A statute should establish a minimum level of county tax to be paid to the state for use in financing court operations; the minimum rate will apply to areas where improvements are completed and the court facilities accreditation commission has approved the courthouse as complying with its standards.

Evaluation by the commission of the improvements required to qualify a courthouse for accreditation will enable the court system leadership to receive federal grants if these are available because of recognition that relinquishment of federal district court jurisdiction, if it occurs, will add to the burdens of states and counties. Evaluation of facilities needs will also permit access by the unified court system to funding by the federal Law Enforcement Assistance Administration to improve criminal justice. This funding is administered in each state by a state planning agency connected to the executive branch (in Vermont, the agency is the Governor's Commission on the Administration of Justice) and consequently presents problems of executive branch intrusion in the operation of the judicial branch. Although we believe independence of the courts must be maintained in all respects, this avenue to needed financing of facilities and improvements should not be shunned because of the danger of executive branch intrusion.

Recommendations

I. VERMONT COURTHOUSES MUST BE PLANNED TO SERVE PRESENT AND FUTURE POPULATIONS AND CASELOADS.

II. ALL COURTHOUSES MUST BE FLEXIBLE: TWO JURY COURTROOMS SHOULD BE AVAILABLE AT EACH DISTRICT JUDICIAL CENTER. EVERY COURTHOUSE SHOULD HAVE AT LEAST ONE HEARING ROOM SUITABLE FOR NON-JURY TRIALS.

III. COURT FACILITIES SHOULD BE LOCATED IN OR ADJACENT TO EXISTING, OR IF NEEDED, NEW COUNTY COURTHOUSES.

THESE COURTHOUSES SHOULD SERVE AS DISTRICT JUDICIAL CENTERS.

IV. ATTENTION SHOULD BE PAID TO SUPPORT FACILITIES LACKING IN VIRTUALLY ALL COURTHOUSES: CONFERENCE AND WITNESS ROOMS, JURY ROOMS, PRISONER HOLDING CELLS, TOILETS, CLERK AND COURT REPORTER WORKING SPACE, SEPARATE LAW LIBRARIES, AND ADEQUATE STORAGE FACILITIES.

V. WHERE THE COURT REQUIRES THE SPACE, NON-COURT OFFICES SHOULD BE REMOVED FROM COURTHOUSES, BUT THE PRESENCE OF SHERIFFS TO OPERATE TEMPORARY PRISONER HOLDING FACILITIES IN THE COURTHOUSE WILL BE REQUIRED.

VI. ALL FACILITIES MUST BE USED IN AS EFFICIENT MANNER AS POSSIBLE TO IMPLEMENT A UNIFIED COURT SYSTEM.

VII. A COURTHOUSE STANDARDS COMMISSION SHOULD BE CREATED TO EVALUATE VERMONT STATE COURT FACILITIES AND SPECIFY IMPROVEMENTS REQUIRED FOR ACCREDITATION.

VIII. WHILE THE STATE SHOULD ASSUME RESPONSIBILITY FOR ALL COURTHOUSE OPERATION AND MAINTENANCE, THE COUNTY SHOULD RETAIN POWER TO DETERMINE THE IMPROVEMENT PLAN AND THE COUNTY TAX RATE REQUIRED TO FINANCE THE UPGRADING. WHERE IMPROVEMENTS ARE COMPLETED AND FACILITIES ACCREDITED, A MINIMUM COUNTY TAX SET BY STATUTE SHOULD BE ADDED TO STATE REVENUES FOR USE IN COURT OPERATION AND MAINTENANCE.

IX. THE IMPROVEMENT PLAN AND TAX RATE SHOULD BE DETERMINED BY A COMMITTEE IN EACH COUNTY COMPOSED OF THE ASSISTANT JUDGES, THE REGIONAL PRESIDING JUDGE, THE COURT ADMINISTRATOR AND A REPRESENTATIVE OF THE STATE BUILDINGS DEPARTMENT.

X. ALL FEDERAL FUNDING AVAILABLE FOR COURTHOUSE FACILITY IMPROVEMENT SHOULD BE SOUGHT AND USED WHEN AVAILABLE.

XI. Court Administration

Effective court management is the linchpin on which the successful administration of any modern court system can create an environment for the effective dispensing of justice. However the courts are organized, their performance will be shaped by the degree to which a well-conceived administrative structure can coordinate the work of judges, clerks, reporters, court officers and other employees of the courts. Contrary to speculation expressed prior to the completion of this report, we do not intend to recommend a complex and expensive administrative structure for the Vermont state courts. Our analysis was conducted with a view to determining what the courts will need in order to maintain a high standard of service to the citizenry: today's system can be designed to assume tomorrow's burdens. More than ten years ago the Vermont county courts, for the first time, could not handle their caseload on a current basis and the need for administration became apparent. Our hope is to produce a plan by which all courts can return to processing cases on a current basis.[1]

To this end, we discuss below the administrative role of the Supreme Court and its Chief Justice, the functions of the Office of the Court Administrator, the institution of modern personnel and compensation systems in the courts, recommended clerical procedures and recordkeeping, the financing and

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[1] Ninth Biennial Report of Vermont Judicial Council (1962) at 3.

budget of the courts, and the functions and role of the Judicial Council. Each of these aspects of court administration is vital to proper operation of the judicial system.

A. The Supreme Court

All court systems require leadership to set policy and supervise administration of the courts. While some have recommended that the highest state court serve as policy-maker for the system with the Chief Justice assigned to exercise administrative supervisory authority over the structure (ABA Court Organization standards, supra, §1.11(d) and (e) at 4), others believe that all power to lead and supervise the courts should be placed directly in the entire Supreme Court(Natl. Advisory Comm., supra, Std. 8.1 commentary at 164).

We agree that ultimate policy-making and administrative authority in the Vermont court system should be exercised by the Supreme Court, as provided in the recent Constitutional amendment (Vt. Const. II, §28b). Nevertheless, effective management requires that an individual, not a committee, direct the policy as set by the Supreme Court:

> In the court system the supreme court makes the policy and the chief justice ensures that this policy is carried out. Failure to fix this responsibility in some individual would leave the court system without a head. (Kans. Jud. Study, supra, at 363-64).

Particular areas in which the Chief Justice should provide leadership and supervision include assignment of judges to regions; procedures for assigning non-judicial personnel;

the court system's finances; a program for continuing education; planning and operations research; representation of the courts to other governmental branches and the public; and general superintendence of the courts (see ABA Court Organization Standards, supra, §1.33(d) at 81).

The Chief Justice must also take charge of organizing an annual judicial conference, leading a revitalized Judicial Council, and perhaps instituting an annual report to the legislature on the state of the courts. Now that the office of Chief Justice is appointive, the administrative responsibilities of the post require selection to be made on the basis of professional and administrative ability rather than seniority. While seniority as the principal criterion for selection has prevented disputes over candidates which many regard as unseemly, it offers no other advantages.

However he is selected and whatever duties he is assigned, the Chief Justice must be willing to use his prestige for the benefit of the courts. The job is a demanding one, for he must direct one busy appellate court and share its workload while supervising the operation of every other court in the state.

The other Justices of the Supreme Court must take an active part in policy-making for the system. The Constitution requires them to participate in rulemaking,

discipline and general administrative control. They must be willing to support the Chief Justice, whose power and authority as chief judicial officer of the state derive from his position as head of the Supreme Court.

The most important supervisory role the Chief Justice must play is his leadership of the system's judges. It is often remarked that judges can only be led by one of their own. Styles differ, but the Chief Justice must exercise his supervisory authority in support of the Presiding Judges who more directly oversee the trial bench.

The Supreme Court as Appellate Court

Until now, of course, the Supreme Court's work has entirely concerned its appellate rather than administrative duties. This is an appropriate place to assess the court's future role as appellate tribunal.

The Vermont Supreme Court needs no revision in organization to serve as the unified court system's single appellate court. It has experienced no difficulty to date in keeping up with its caseload, although the provision of law clerks two years ago undoubtedly postponed, possibly indefinitely, any inability of the court to cope with the increased quantity of appeals. There appears no reason at this time to recommend an increase in the court's size. We would stress the continued need of law clerks, who are part of the structure of all the nation's highest state and appellate courts, except that we feel confident that the court has no intention of reverting

to operation without their aid.

The Supreme Court should be prepared to take steps in the future if and when caseload increases substantially from its present level. First, the court may desire to control its caseload. At present most appeals are of right: (e.g., 4 V.S.A. §2, 12 V.S.A. §2351); a discretionary power is common to many state and federal appellate trabunals.[2] Second, the court may increase its use of brief per curiam decisions in case which pose no new question of law meriting a full-length opinion. Third, the institution of an appellate screening process using staff attorneys to review cases as they arrive at the court may prove useful if caseload size or backlog warrant. (See D. Meador, Appellate Screening (1974), a report on the appellate justice project conducted by the National Center for State Courts.) Lastly, the organization of an intermediate appellate court should be considered if caseload or backlog are of sufficient size.

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[2] One device to speed processing of appeals is use of the motion to affirm, permittting the appellee to proceed without briefing where he believes the appeal is clearly routine or frivolous. In Delaware, this rule has been used more frequently each year. (Del. Sup. Ct. R. 8(2); See National Center for State Courts, Study of the Delaware Supreme Court and the Administrative Office of the Courts (1974) at 91-92.)

B. Court Administrator

At present, the Office of the Court Administrator includes as staff the Court Administrator, the Deputy Court Administrator, the Director of Judicial Administrative Services, a Fiscal Officer and secretarial support. As previously mentioned the Court Administrator is also the Supreme Court Clerk by statute (4 V.S.A. §21); the Deputy Administrator similarly is Deputy Supreme Court Clerk. The Court Administrator also serves now as Supreme Court Reporter of Decisions. Appointment of the Director of Judicial Administrative Services by the Court Administrator was authorized by Supreme Court Administrative Order (No. 20): his responsibilities are largely in the budget, finance, management and facilities field. (The Court Administrator has been given formal responsibility for these areas by Sup. Ct. Admin. Orders Nos. 2.4 and 12).

The central court administrative office should be organized to be headed by a Court Administrator who should establish administrative policies and guidelines under the supervision of the Chief Justice and who should work with the Presiding Judges in employing and overseeing personnel to implement the policies and guidelines. The several functions[3] of the office should include:

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[3]These outlines of the several administrative functions represent an amalgam of recommendations contained in the ABA Court Organization Standards, supra, §1.41(a) at 65; the Natl. Advisory Comm. on Criminal Justice Standards and Goals, Courts volume (1973), Stan. 9.1 at 176; Friesen, Gallas and Gallas, Managing the Courts (1971) quoted in D. Nelson, Judicial Administration and the Administration of Justice (1974) at 883; as well as our own concepts derived from experience in other states considered in relation to Vermont's needs.

1. Budget. In order to present a coordinated budget for the entire state court system, the administrative office should coordinate presentation from the entire system through the final preparation and submission. Responsibilities in this area should eventually include an internal accounting and auditing program for the courts supervised by the Court Administrator.[4]

2. Personnel. The administrative office should establish uniform personnel policies, standards and procedures governing recruitment, hiring, evaluation, promotion, in-service training, discipline, removal and compensation of all non-judicial personnel in the court system.

3. Statistics and Information. The administrative office should define management information requirements in order to develop a complete statewide system to provide uniform records, information and statistics. At least annually, the office should issue an official report on the judiciary indicating in both statistical and narrative form the developments and activities of all the courts during the preceding year.

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[4] The State Auditor of Accounts should continue to oversee the outside audit program for the court system.

4. Liaison. The Court Administrator and his office should assume the responsibilities of representing the courts in their dealings with other government agencies with respect to the establishment, maintenance, and use of courtrooms, chambers and offices, and should act as liaison on all management matters to state agencies, the legislature, the county financing panels, the sheriffs, the probation department, bar associations, civic groups, news media,and other private and public groups having an interest in the administration of the courts.

5. Planning. The process of determining objectives and analyzing programs prior to their implementation is an important aspect of any managerial project. The administrative office should initiate organization, systems and procedure studies relating to the courts' business and administration, decide among possible projects and develop multi-year plans for needed programs.

6. Training. A coordinated effort by all administrative personnel must be made to provide ongoing in-service training for all personnel in the system including judges, clerks, and other support personnel. The Chief Justice and the Judicial Council will assume responsibility for determining the form of continuing judicial education.

7. Secretariat. The administrative office should act as secretary to the Judicial Council and to meetings of committees of judges and other court groups, should arrange meetings and prepare agendas, and should disseminate reports, bulletins and other official information.

8. Facilities and Property. The administrative office should represent the courts in dealings with local officials, architects and builders, supervise construction of major physical facilities, and establish standards and procedures for acquisition of equipment, leased facilities and other supplies and services. In addition, the administrative office should maintain property control records and conduct periodic inventories to reconcile the records.

9. Supervision. Supervision is a prime function of the administrative office with respect to the non-judicial staff but the concept we envision assumes a broader scope. To supervise a court system is to know how it is working and what is happening in all diverse parts, not merely to oversee employees for to detect malfeasance or nonfeasance.

In our view, supervision includes checking, for example, to see how well the calendaring process is functioning, how efficiently the jury system is working, and how quickly transcripts of trials are prepared. A good court administrator should be interested in the output and morale of the organization, not only or primarily whether an individual employee sits at his desk for the length of the work day.

The present structure of the Office of the Court Administrator has not been designed to bear these responsibilities. At one time the Administrator may have been able to perform the functions of Supreme Court Clerk and Reporter of Decisions in addition to being an effective Court Administrator. The increased caseload of the entire court system along with rise in Supreme Court business have made this possible no longer. The position of Court Administrator should be separated from the other two posts, which at present can be filled by one individual.

National standards-setting groups, such as the ABA and the National Advisory Commission on Criminal Justice Standards and Goals, have called for regional and local trial court administrators as offshoots of the state administrative office of the courts. While a case could be made for immediate appointment of these executives at the regional level, we cannot at this time justify establishment of an added layer of administrative personnel in Vermont's regions.

Instead, the new offices of the District Clerks should assume administrative responsibilities for their respective judicial districts. In order that persons in these positions can assist the Presiding Judges and the Court Administrator by performing administrative functions at the local level, administrative ability must be a major criterion in the selection of the District Clerks. Therefore, the pool of candidates for these posts should include persons with administrative

experience, whether or not they are now serving as County Clerks or District Court Clerks.

In each region, the District Clerk in the largest district should serve as the Administrative Clerk of the region and work closely with the Presiding Judge and the Office of the Court Administrator in performing administrative responsibilities.

In the seven years since the Court Administrator became part of the Vermont court structure, it has been recognized that the job can no longer be combined with the office of Supreme Court Clerk. In the future, as populations and caseloads increase, regional court administrators may prove to be a necessary addition to maintain an efficient court system. We would prefer, however, to add these positions when the need has become apparent, rather than impose a model system into which the Vermont courts must be placed.

Recognition by the courts that the District Clerks must have administrative capabilities will permit creation of a managerial framework which will result in all components and members of the Vermont court system realizing that they are part of one statewide court system, not any one court or locality.

Staffing the Administrative Office

The best way to determine the size of the staff required by the Office of the Court Administrator must begin by assessing how many people are now required to perform the recommended functions discussed above and the actual functions now handled. As previously mentioned, there are now five employees in the office. If the position of Supreme Court Clerk is separated from the Court Administrator's role, the total would be four employees, since the present position of Court Administrator and Deputy Administrator, as Supreme Court Clerk and Deputy Clerk, would, under the present staffing, become one administrative position and one Supreme Court clerical employee.

Thus with four full-time employees, the administrative office now coordinates a single budget for the system, assembles judicial statistics, engages in planning for the courts, acts as secretariat for the courts, maintains liaison with other government agencies, and is involved in the personnel staffing of the system. In addition, the office has begun to turn its attention to facilities planning for the court system.

Of the functions discussed, what remains to be done by the administrative office? While the office has performed well in its budgeting function, institution of regular auditing throughout the system is only beginning to become

standardized. Involvement of the office in the personnel function has been limited largely to initial hiring. Of more significance is the absence of a personnel system providing opportunities for promotion, evaluation and training within the court structure for non-judicial employees.

The court information and statistical system has been built from scratch in the past seven years. Caseload statistics are assembled quarterly, but there are no controls or checks on the validity of the data forwarded to the central office. There has not yet been any use of information for weighted caseload techniques to provide a clearer account of how court time is spent.[5] As we have stated earlier, until the courts function more efficiently in scheduling terms and calendaring cases, the usefulness of any statistics will be limited.

The administrative office has been effective in maintaining liaison with other government agencies, with the exception of the Governor's Commission on the Administration of Justice. As indicated by the judicial branch's refusal to apply for federal Law Enforcement Assistance Administration funds administered by the Governor's Commission, there appears to be a basic conflict in goals between this agency and the courts.

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[5] A suggested form for use by clerks in recording weighted caseload information is attached as Appendix A. We have been advised that the Court Administrator is scheduling the start of weighted caseload statistical recordkeeping soon.

The courts, citing the state's depressed economic activity (see Judicial Budget, Fiscal Yr. 1976/1977 Biennium, Judicial Branch, State of Vermont, pp. 18-20), contend that federal funds should be used to maintain basic court priorities, while the supervisory board of the Governor's Commission apparently is unwilling to accept this view as opposed to considering funding of particular, limited-duration projects. The conflict also relates to the perhaps inherent conflict in the LEAA program between the state executive and judicial branches. While there are strong arguments for both viewpoints, we believe that continuation of this dispute only results in depriving the courts of funds which other components of the justice process in Vermont -- police, prosecutors, defenders and corrections -- are using and which increase the burdens of the court system.

The ability of the administrative office to engage in long-term planning has been limited, in part by the impending reorganization of the system, but also by the present depressed economic condition of the state. While the office has employed a Court Planner in the past, there is no such employee on the payroll now.

Training remains a major need of the system. The biennial Judicial Council reports quoted in Chapter III indicate the hopes expressed in this area as well as the lack of accomplishment; if any court system is to operate efficiently, regular training of non-judicial employees,

particularly new employees, is critical. The current system displays lack of uniformity and efficiency, clear symptoms of training lapses.

The administrative office has served as a secretariat for the system, although many of the courts and judges are not in regular contact. Involvement in facilities planning and property control are administrative office activities squeezed between other scheduled work.

The last function, general supervision in the broadest sense, is the area in which the administrative office falls most short of the objectives. While emergencies or illnesses impel the Court Administrator to arrange for acting judges and temporary clerical and other non-judicial employees, the administrative staff does not carry out an effective program of general superintendence. If it is to fulfill this and the other functions not now performed as intended, as well as to undertake added responsibilities such as preparation of a state calendar for the system, the Office of the Court Administrator will require additional staff.

We would divide the functions of the office into four major areas. When available revenue permits, each area should be the responsibility of a full-time staff member and sufficient secretarial support. The areas are as follows:

a) financial management, audit, and control; facilities and planning

b) personnel, training, court reporters and transcript services

c) statistics, information and calendar

d) secretariat, liaison and judicial service

This format leaves one principal area -- supervision or general superintendence of the system -- and this function we would place in the position of Court Administrator, as well as the responsibility for overseeing and making decisions based on the work produced by the four area staff members.

Organization of the Court Administrator's office on this basis -- a Court Administrator, four professional staff members and secretarial support as needed -- will establish an administrative structure capable of dealing with the increasing burdens of the court system and of tying together a system spread out across a wide geographic area not always easily traversed in all seasons.

It should be recalled that the Supreme Court Clerk's office will be separate in this format, and will require a Clerk-Reporter to oversee the court's clerical operation, an assistant clerk to perform much of the work and the courtroom duties, and sufficient secretarial support for the office and the justices. This office, as with all the District Clerk's offices, should be subject to supervision by the Office of the Court Administrator.

Recommendations

I. THE ADMINISTRATIVE OFFICE OF THE COURTS SHOULD BE ORGANIZED FUNCTIONALLY TO MAKE PROFESSIONAL STAFF MEMBERS RESPONSIBLE FOR PARTICULAR AREAS OF THE OFFICE'S FUNCTIONS. THE AREAS SHOULD BE DIVIDED AS FOLLOWS:

   A) FINANCIAL MANAGEMENT, AUDIT, AND CONTROL; FACILITIES AND PLANNING

   B) PERSONNEL, TRAINING, COURT REPORTER AND TRANSCRIPT SERVICES

   C) STATISTICS, INFORMATION AND CALENDAR

   D) SECRETARIAT, LIAISON AND JUDICIAL SERVICE

II. THE COURT ADMINISTRATOR SHOULD BE AIDED BY FOUR STAFF MEMBERS, ONE ASSIGNED TO EACH AREA, AND SUFFICIENT SECRETARIAL SUPPORT STAFF.

III. THE OFFICE OF SUPREME COURT CLERK AND REPORTER OF DECISIONS SHOULD BE SPLIT FROM THE OFFICE OF THE COURT ADMINISTRATOR.

IV. INSTEAD OF APPOINTING REGIONAL OR LOCAL TRIAL COURT ADMINISTRATORS, THE DISTRICT CLERK OF THE LARGEST DISTRICT SHOULD BE NAMED ADMINISTRATIVE CLERK OF THE REGION TO PERFORM ADMINISTRATIVE RESPONSIBILITIES AS ASSIGNED BY THE PRESIDING JUDGES AND THE COURT ADMINISTRATOR. ALL DISTRICT CLERKS SHOULD BE RESPONSIBLE TO THE PRESIDING JUDGES AND THE COURT ADMINISTRATORS IN PERFORMING THESE FUNCTIONS ON THE LOCAL LEVEL IN EACH DISTRICT.

C. Personnel and Compensation

Both judges and non-judicial personnel in a unified court structure require a fair personnel system to govern selection, promotion, discipline and retirement in a systematic manner. (Judicial selection and discipline are discussed separately, infra.) The need for a promotional system in the judiciary, now absent except between the Superior and Supreme Courts, merits consideration in connection with the promotion network for non-judicial personnel.

Judicial elevation cannot in any way become automatic. While the selection system should consider judges already on the trial bench for appointment to vacancies, the process must always be sufficiently flexible to allow designation of outstanding practicing attorneys and legal scholars. A young lawyer entering the system as a Magistrate (the new class of judicial officers proposed to be assigned initially to hear small claims and traffic cases) should be rescreened by the Judicial Selection Board (4 V.S.A. §601) when he has acquired sufficient experience at the magistrate level to be considered for a vacancy on the trial bench of the new Superior Court. In a similar manner, members of the new Superior Court bench should expect to be considered by the Chief Justice for appointment as Presiding Judge of one of the three regions and by the Judicial Selection Board for appointment to the Supreme Court. As an appellate tribunal, the

Supreme Court need not be composed entirely of former trial judges (ABA Court Organization standards, supra, §1.21(a)(ii) at 40) but may include "a variety of practical and scholarly viewpoints." (Ibid.)

Such a promotion system for the judiciary would supplant a morale-weakening system where District Judges, with one recent exception, have been systematically denied consideration for elevation to a higher court, while Superior and Supreme Court Judges have only been promoted in a lock-step process based solely on seniority. Judges of Probate have also been excluded from the promotion system.

Non-judicial personnel should be placed in a uniform system of position classification and level of compensation. A system of open, competitive application, examination and appointment of new employees should reflect the special requirements of each type of position with regard to education, professional certification, experience and proficiency. (Ibid., §1.42(a)(ii) at 92). In the future, the Court Administrator should be selected on this basis. He should be chosen by the Chief Justice upon the concurrence of the Supreme Court, and should be subject to removal in the same manner. The Administrator should select his staff, subject to the approval of the Chief Justice. Confidential employees of the courts, such as law clerks and secretaries, should be selected by the justices and judges to serve at their pleasure.

It is also vital that the system contain procedures for periodic evaluation of employee performance, notification of promotion opportunities and decisions concerning promotion. Discharge or any discipline must be based on good cause and subject to review by a higher authority than the immediate supervisor. The system should hire on a non-discriminatory basis. It should be compatible with the employment system in the executive department, so that transfer may be possible without loss of compensation, benefits or experience rating. (Ibid., (iii),(iv) and (v) at 92)

The present court system has seven levels of judicial compensation: the Chief Justice of the Supreme Court, the Associate Justices of the Supreme Court, the Chief Superior Judge, the Superior Judges, the Chief District Court Judge and the District Court Judges (32 V.S.A. §1003(c)). Probate judges' salaries vary according to the legislative perception of the business of the districts (32 V.S.A. §1142(a)).

Judges should receive salaries appropriate to their official responsibilities (ABA Court Organization Standards §1.23 at 58). Vermont has recognized that the Chief Justice and Chief Judges of the Superior and District Courts have administrative responsibilities in addition to their judicial duties and provides additional compensation. The Chief Justice of the Supreme Court receives $1500 more than the associate justices, the Chief Superior and District Court judges both receive $1000 more than their brother judges (32 V.S.A. §1003 (c)).

The Justices of the Supreme Court receive larger salaries than the Superior and District Court judges. (In this regard, the Vermont statute agrees with ABA Court Organization Standards §1.23 at 58.) However, a more heated issue concerns the salary difference between the Superior judges and the District Court judges.

The District Court of Vermont is unlike the District Courts in neighboring states such as Massachusetts, New Hampshire or Maine, where the criminal and civil jurisdiction is more limited. As a result of the Vermont statute (4 V.S.A. §439) that grants the district court limited criminal jurisdiction to try all criminal cases with a maximum penalty of imprisonment for a term less than life, the bulk of the criminal jurisdiction even in serious cases can be and is handled in the District Court. District judges have become proficient both in the rules of evidence and conducting of jury trials because they are now, in effect, handling the entire criminal caseload except homicides. Yet, they receive a salary which is substantially ($3100) less than the salary of the Superior Judges. This difference in salary is 13% of a District Judge's salary.

The difference between the salary of an Associate Justice of the Supreme Court and a District Judge is $7200, or 31%, of the District Judge's salary. This chasm does not represent the "small" difference between trial and appellate judicial

pay that ABA Court Organization Standard §1.23 at 58 recommends. We think that the district judges' workload and responsibilities are now comparable to those of the Superior judges. We think that the Vermont compensation statute, 31 V.S.A. §1003(c), reflects tradition and deference rather than fairness and accurate analysis of the facts.

Judges should also be fully reimbursed for travel, lodging and incidental expenses in attending court sessions, official meetings, programs of judicial education and training and attendance at an annual meeting of the judiciary or the legal profession (ABA Court Organization Standards, supra, §1.23). The Vermont laws provide only that the Justices of the Supreme Court, Superior Judges and Judges of Probate, while away from home or office on official duties, should be reimbursed for expenses (32 V.S.A. §1261). District Judges (32 V.S.A. §1116 (b)) and Assistant Judges (32 V.S.A. §1141(a)) enjoy a similar provision. This general rule permits the Court Administrator, subject to Supreme Court review, to determine what constitute official duties. Subsequently, it may prove necessary to codify by rule the eligible conferences and meetings.

The new unified court system should include six more equitable levels of judicial compensation: Chief Justice of the Supreme Court, Associate Justice of the Supreme Court, Presiding Judge of the Superior Court, Judge of the Superior

Court, and Magistrate. Probate judges should be continued to be paid as they are at present. Their numbers should be drastically reduced as they are integrated into the new Superior Judge, when remaining Judges of Probate should be paid at the level of Superior Judges.

Vermont statutes currently permit the Governor as head of the executive branch to fix the salaries of heads of departments and agencies with a range extending to a maximum amount 50 percent above the base salary set by statute (32 V.S.A. §1003(b)). It has been suggested to the State Employees Compensation Review Board that the Chief Justice as head of the judicial branch be given a similar power to set the salaries of judges. The intent of the proposed statute can best be grasped by being presented here as follows:

> (c) Each officer of the Judicial Branch named below is entitled to an annual salary of not less than the base salary shown for that position. The Chief Justice shall fix the salary of such officers on initial appointment by the Governor and upon review and subject to the maintenance of internal equity and appropriate compensation relationships among the existing positions within the court system. The Chief Justice may also grant to each of these officers periodic pay increases consistent with the conditions and the level of adjustment provided for those appointive heads of departments and agencies within the Executive Branch as listed in the preceding section (b). However, the Chief Justice shall receive a salary fifteen hundred dollars greater than that received by any judicial officer under his jurisdiction, but no salary adjustment shall result in an amount in excess of that amount provided for the Governor in the preceding section (a). The Presiding Judges shall each receive a salary one thousand dollars greater than any judicial officer serving under his jurisdiciton. Base salaries for the officers of the Judicial Branch named below are established as herein listed:

Justices of the Supreme Court, each	$
Judges of the Superior Court, each	$
Magistrates, each	$
Court Administrator	$
Deputy Court Administrator	$
Assistant Court Administrators, each	$

We agree with this proposal to give the Chief Justice a power to adjust salaries in the judicial branch in the way that the pay of executive officers is fixed.

Judicial compensation should relate to executive and professional salary levels outside the government. In Vermont, although the judges have on average been younger than in some states,[6] they are generally older than senior personnel in the executive and legislative branches. It is therefore not appropriate to tie judicial salaries too closely to the level of legislative pay, as is now done. Responsibilities of executives and attorneys are more closely related to the complexity and significance of judicial tasks: salaries should similarly correspond. Already, judicial salaries in Vermont, while not low in comparison with other state government compensation levels, do not compare favorably with professional legal compensation. While a judge cannot expect to earn income equivalent to the most successful private practitioners, the distance should not be so vast as to prevent, in effect, an experienced attorney from accepting a position on the bench. We have been advised, too frequently to discount on grounds of self-serving statements, that the travel requirements of

[6] C.H. Sheldon, "The Uniqueness of State Legal Systems: Nevada, Utah, and Vermont," 53 Judicature (1970) 333, at 337.

the Superior Judges (even as modified under the proposed rotation plan) have, in combination with the significant salary reduction involved in joining the court, led a number of veteran attorneys to decide not to be candidates for judicial positions.

Retirement and Other Benefits

Pensions, medical insurance and payment of expenses incident to work should be granted for judges and full-time, non-judicial personnel. Unless retirement benefits for judges are adequate, qualified judicial candidates will not be attracted. Similarly, retirement provisions for non-judicial employees should be related to those for comparable executive branch employees.

All Vermont judges are required to retire at the age of 70 years (Vt. Const., II, §28c). A mandatory retirement age conforms to the recommendations of both the American Bar Association (Court Organization Standards, supra, §1.24 at 63) and the National Advisory Commission on Criminal Justice Standards and Goals (Courts, Std. 7.2). Vermont should expand the retirement provision to permit judges who have reached the compulsory retirement age and are still able to perform judicial duties to be assigned to sit at the need and call of the Chief Justice (for Supreme Court Justices) and the Presiding Judges (for Superior Judges).

Vermont's pension system for the judges is part of a comprehensive state retirement system (3 V.S.A. §456). Judges are eligible for benefits under the retirement system upon reaching the age of 65, or at 62 if they have completed 30 years of credited service (3 V.S.A. §455(a)(13)). The normal pension is two-fifths (2/5) of the judge's salary at retirement (3 V.S.A. §459 (b)(3)(A)). Those judges who have served more than 12 years receive an additional allowance of 3 1/2 percent of the judge's salary at retirement for each year exceeding 12 years of service. However, the salary cannot exceed the judge's salary at retirement (3 V.S.A. §459 (b)(3)(B)). A similar provision is made for the Judges of Probate (3 V.S.A. §459 4(A)(B)).

Vermont retirement system allows the justices or judges to retire early if the judge has either completed 30 years of credited service or has attained the age of fifty-five and completed 13 years of service (3 V.S.A. §459 (c)(1)).

Although the Vermont retirement system, therefore, does not provide the recommended judicial pension of three-quarters (3/4) of the judge's salary (ABA Court Organization standards, supra, §1.24 at 58) unless the judge has earned it through the additional retirement allowance provision (3 V.S.A §459(b)(3)(B) or 3 V.S.A. §459 (4)(A)(B)), needed improvement of the system should be made at a time when the state is economically capable of upgrading the retirement provisions on a comprehensive basis. We discuss below some of the reasons why judicial

retirement requires basic policies different from other government sectors. We trust this will serve to identify goals toward which the system should strive to attain when possible.

The state government must provide security to individuals who have devoted major portions of their working lives to public service. Retirement plans should be designed to provide sufficient benefits to allow judges to retire when they no longer can perform at full capacity. A more liberal accidental and other disability pension system will permit disabled judges to retire voluntarily: if a pension system provides a low level of benefits, such judges may resist efforts to persuade them to retire (ABA Court Organization standards, supra, §1.23 commentary).

The Vermont State Retirement System is designed to include a sizable proportion of younger people in its covered group in comtemplation that a substantial number of the contributors will never receive benefits because they leave the system for other employment before becoming eligible. The conditions are reversed in the judicial pension scheme, which covers a group of relatively older people, almost all of whom will remain in the system until the point of eligibility (Ibid., §1.23 commentary).

Therefore, the inclusion of the judges in a comprehensive state retirement plan or system, as is now the case in Vermont, is the best method for actuarial reasons. Nevertheless, the special needs of judges and their unusual status resulting from their late entry into the state system must be treated as sui generis.

The accompanying table indicates the judicial and non-judicial compensation levels which we recommend for the personnel system of the unified courts.While we do not include longevity or merit increases for judges (whose salaries will be adjustable by the Chief Justice upon enactment of the proposal set forth at p.205 , supra), ranges permitting such raises should be provided for most non-judicial employees.

Judicial salaries should not differ among judges of equivalent rank (ABA Court Organization Standards, supra, §1.23 commentary at 61). Any differentiation among judges of the same court based on longevity is tantamount to establishing varying levels of judicial quality on a court where all share equal responsibility. Use of merit increases is ill-advised for the same reason.

The compensation of non-judicial employees does deserve increment based on experience and improved performance over time. The levels of Court Administrator and Deputy Court Administrator should be regarded as professional positions subject to the concepts governing judicial pay.[7] Below those levels, ranges of compensation should be established, permitting the Court Administrator to increase the pay of a non-judicial employee, within levels N3 to N7 (see table on page 209), based on experience and merit. All non-judicial employees should be evaluated at least semiannually by their immediate supervisor and their status reviewed by the Presiding Judges and the Court Administrator. Use of this system of review should be

[7]The Court Administrator's salary should be fixed at a level no less than the salary of a Superior Court judge and his deputy and assistants at proportionally lower levels.

integrated into the recently-established procedures governed by the State Employees Compensation Review Board (3 V.S.A. §§324, 325).

We feel that this system will prove a workable and equitable one. Establishment of a structured personnel and compensation system will permit all non-judicial employees to know where they stand, to receive regular evaluation of their performance and to be rewarded in a systematic manner for their experience and high quality work.

FIGURE 6

JUDICIAL AND ADMINISTRATIVE COMPENSATION LEVELS

J1	Chief Justice of the Supreme Court
J2	Associate Justice of the Supreme Court
J3	Presiding Judge of the Superior Court
J4	Superior Judge
J5	Magistrate
A1	Court Administrator
A2	Deputy Court Administrator
A3	Assistant Court Administrator

NON-JUDICIAL COMPENSATION LEVELS

N1	Supreme Court Clerk
N2	Administrative Clerk
N3	District Clerk
N4	Court Reporter I
	Register of Probate
N5	Deputy District Clerk
	Court Reporter II
N6	Assistant Deputy District Clerk
	Secretary I
	Stenographer I
	Typist I
N7	Secretary II
	Stenographer II
	Typist II

Non-judicial compensation levels should be set as ranges within which the Court Administrator can adjust salaries based on longevity, experience and merit.

Recommendations

I. THE PERSONNEL, COMPENSATION AND RETIREMENT SYSTEMS FOR JUDICIAL AND NON-JUDICIAL EMPLOYEES SHOULD BE ADEQUATE TO INSURE THAT QUALIFIED PERSONS ARE ATTRACTED TO AND REMAIN IN THE UNIFIED COURT SYSTEM. ALL COMPENSATION SHOULD BE AUTOMATICALLY ADJUSTED ANNUALLY FOR INCREASES IN THE COST OF LIVING INDEX.

II. JUDICIAL ELEVATION CANNOT BECOME AUTOMATIC: ALL SUPREME COURT JUSTICES NEED NOT HAVE TRIAL BENCH EXPERIENCE; TRIAL JUDGES AND MAGISTRATES SHOULD ENTER THE COURT SYSTEM IN EXPECTATION THAT THEY WILL BE CONSIDERED FOR PROMOTION WHEN VACANCIES OCCUR. EXCLUSIVE USE OF SENIORITY FOR ELEVATION SHOULD BE ELIMINATED.

III.A. JUDGES AND MEMBERS OF THE COURT ADMINISTRATIVE STAFF SHOULD BE PAID BASE SALARIES SUBJECT TO ADJUSTMENT BY THE CHIEF JUSTICE IN THE MANNER IN WHICH THE GOVERNOR FIXES SALARIES OF EXECUTIVE DEPARTMENT HEADS.

B. NON-JUDICIAL EMPLOYEES SHOULD BE PLACED IN A UNIFORM PERSONNEL CLASSIFICATION AND COMPENSATION SYSTEM. COMPENSATION OF THESE EMPLOYEES SHOULD VARY IN RANGES PERMITTING INCREASES BASED ON EXPERIENCE AND MERIT.

IV. PERFORMANCE OF NON-JUDICIAL EMPLOYEES SHOULD BE EVALUATED PERIODICALLY AND NOTIFICATION OF PROMOTION OPPORTUNITIES DISSEMINATED.

V. THE CHIEF JUSTICE AND PRESIDING JUDGES SHOULD BE COMPENSATED FOR PERFORMING ADMINISTRATIVE RESPONSIBILITIES. ALL OTHER TRIAL JUDGES IN THE NEW SUPERIOR COURT SHOULD BE PAID AT THE SAME RATE.

VI. RETIREMENT PROVISIONS SHOULD EVENTUALLY BE UPGRADED FOR JUDICIAL PERSONNEL TO CONFORM WITH GENERALLY RECOGNIZED STANDARDS ESTABLISHED TO SUIT THE DIFFERENT PERSONNEL CHARACTERISTICS OF JUDGES.

D. Procedure and Recordkeeping

This report is not intended to provide a wholly revised set of procedural rules for the Vermont court system. It is necessary to identify those aspects of Vermont court procedure which have affected the operations of the courts in an adverse manner and thus require change in order to conform to the goals of a unified judicial system.

Generally, Vermont procedural rules--the Vermont Rules of Civil Procedure, Criminal Procedure, and Appellate Procedure; and the District Court Civil Rules--are highly satisfactory and conducive to efficient disposition of litigation. The three sets of Vermont civil, criminal and appellate rules are closely patterned after their Federal counterparts. The District Court Civil Rules are a modified version of the Vermont Rules of Civil Procedure, simplified to suit the smaller civil cases of District Court.

However, we have noted two problems stimulated by the rules. First, the civil rules (V.R.C.P. 40 (c)(1) and D.C.C.R. 40(c)(1)) require continuances to be granted upon agreement of the parties in any action pending for less than two years. The effect of these rules is to create a legal atmosphere in which no one expects a case to be heard before two years

have passed. Lawyers, realizing that cases in their office can improve with age as the other side's witnesses and evidence fades from sight and memory, hesitate to press their opposing brethren. Besides, in many places, cases do not get called for trial until two years pass, even if counsel makes no attempt to delay. There thus is little point in a lawyer's investing energy before that point is reached.

The worst result of the two-year rules is the strengthening of the assumption that nothing much need be done until an action has been waiting two years. Judges stress that lawyers never complain about the rule, few seem to care what litigants think about these delays.

A solution to this problem would include (a) assumption of control over calendars by the courts, and (b) abolition of the automatic two-year continuance rule and its replacement by a rule permitting continuances only upon good cause shown.

Another rule which has not aided efficiency because of the discretion it permits is V.R.C.P. (and D.C.C.R.) 78, which allows the presiding Superior Judge in each county to schedule motion days when he wishes. Although the rule states that motion days should be scheduled "at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of...", the proviso--"Unless local conditions make it impracticable"--opens the way to long intervals between motion days in small and medium-sized counties.

In the unified trial court, the Presiding Judges should be required by the Chief Justice to schedule motion days at regular intervals in every district. While this policy would insure regular scheduling, inclusion of specified motion days by the Court Administrator in the state calendar prepared by his office should result in even more effective implementation of this policy.

Recordkeeping

At present the major defects in Vermont court record-keeping lie largely outside the ambit of the records themselves. Identical forms are often completed and used in entirely dissimilar ways depending on the courthouse. Inefficient calendaring and unsupervised processing of case statistics have limited the usefulness of current records except to ascertain the facts of an individual case.One major function of

the Office of the Court Administrator must be the monitoring not only of the statistics from each court but of the methods used in collecting and assembling them. Because this kind of supervision has not existed to date and since we have noted that clerks use many different recordkeeping systems, the currently-issued judicial statistics must be used warily.

First, the administrative office must insure that all clerks are using the same forms in the same way. Second, methods of assembling data must be standardized. Third, clerks or court reporters should record data to develop weighted caseload statistics: time should be kept of the court day, detailing length and kind of trials, hearings, motions and other proceedings. Only in this way can the efficiency of a court be accurately assessed.

Once all offices and personnel are maintaining case records in the same way, the caseload and weighted caseload[8] statistics might be considered for programming on a computer for speedy assembly and use. But it is much more important that uniformity in recordkeeping procedure be achieved first.

Maintenance of old records is also a problem in Vermont. Many courthouses store old records in unsuitable rooms, closets, attics or cellars where the aged, fragile papers are exposed to the elements or subject to the depredations of unauthorized interlopers. One solution to this problem is

[8]See suggested form attached as Appendix A.

to place these records on microfilm. It has also been proposed that records more than fifty years old be gathered for storage in one specially-constructed facility. The soon-to-be-vacated county courthouse in Burlington has been suggested for this use. Use of microfilm or even more advanced (and more space-conserving) reduction methods appears the best solution to this problem, since preserving all old documents has become increasingly cumbersome and expensive as quantities of paper pile up while storage space exists only at premium costs. Rules for disposal of documents no longer needed by the courts or others should be enacted. Records of historical value should be assessed and preserved by the state librarian or archivist.

While not directly a part of the court system, a more disconcerting records problem strikes the visitor to Vermont intent on conducting a land title search or other real estate matter. Unlike the practice in most neighboring states, land records in Vemront are maintained at the town level of government by town clerks (24 V.S.A. §1161). Town clerks in Vermont are often part-time, albeit powerful, officials. Land located in two or more towns necessitates several journeys to inspect all relevant records. As the system now operates, land records are frequently kept only at small, widely scattered locations where hours of availability are minimal.

Vermont land records should be housed in a central location. A program should be prepared to provide

for gradual duplication and transfer of these records. In this way, records will be available for easy use and their continued existence assured.

Recommendations

I. THE COURTS SHOULD ASSUME CONTROL OF THEIR CALENDARS. ONCE THE COURT FINDS THAT ENOUGH TIME HAS PASSED FOR DISCOVERY AND MOTIONS TO BE MADE, CONTINUANCES SHOULD ONLY BE GRANTED FOR GOOD CAUSE.

II. MOTION DAYS SHOULD BE SCHEDULED IN THE STATE CALENDAR AND THE PRESIDING JUDGES SHOULD INSURE THAT THESE DAYS OCCUR REGULARLY IN ALL DISTRICTS.

III. THE COURT ADMINISTRATOR SHOULD MAKE CERTAIN THAT CLERICAL FORMS AND RECORDS ARE USED AND COMPLETED IN THE SAME MANNER THROUGHOUT THE STATE; ASSEMBLY OF JUDICIAL STATISTICS SHOULD BE MONITORED.

IV. WEIGHTED CASELOAD RECORDS OF A COURT'S ACTIVITY SHOULD BE KEPT BY THE CLERK OR COURT REPORTER.

V. ONCE RECORDS ARE KEPT IN A UNIFORM MANNER, COMPUTERIZATION SHOULD BE CONSIDERED TO PROVIDE SPEEDY ACCESS TO STATISTICAL DATA.

VI. OLD COURT RECORDS SHOULD BE STORED ON MICROFILM OR IN ANOTHER REDUCTION-STORAGE SYSTEM. PROCEDURES FOR DISPOSAL OF DOCUMENTS SHOULD BE INSTITUTED.

XII. Financing the Unified Court System: Costs and Budgeting

Despite Vermont's inclusion in a recent list of seven states which have implemented unitary judicial budgeting,[1] the Vermont courts are not at present "a comprehensive system in which all judicial costs are funded by the state through a single budget administered by the judicial branch."[2] Realizing that the courts do not yet operate on one budget, however, should precede recognition of the advanced steps toward centralized financial management and budgeting which the Vermont judicial system has already taken. In any case, unitary budgeting in Vermont cannot be accomplished within the present structure which divides financing of the courts between the state and the counties.

The present structure is a potpourri of appropriations, expenditures, taxes, funds, and receipts. Nevertheless, the tool for uniting the financial management of the courts exists: the judicial branch prepares its own budget, through the Office of the Court Administrator, which bears the title "Judicial Budget" over the Chief Justice's name, for submission to the Governor and the legislature. Once all revenue sources and all costs are included in this budget, a fully unified budgeting system will be attained.

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[1]The list is contained in G. Hazard, et al., "Court Finance and Unitary Budgeting," 31 Yale L.J. 1286, 1293 fn. 17 (1972) (reprinted by ABA Comm. on Stds. of Jud. Admin. as Supporting Studies-1 in 1973).

[2]Ibid.

However, a financial system suited to Vermont's courts does not, in our view, necessarily involve immediate institution of the single revenue-source, state-funded judicial finance program prescribed by the national standard-setters (e.g., ABA Court Organization standards, supra, §§1.50-1.53). Instead, we recommend a unified budget built on both state and county funding. However, unlike the existing uncoordinated (and frequently incomprehensible) structure, we propose a system in which the responsibilities of all participants are clearly identified and effectively organized to operate as a cohesive whole.

The Present Program

Vermont's current court financial system has evolved through a history of divided responsibility for operation of the state courts. The Supreme Court is funded by the state, although until a few years ago, the Washington County Clerk, whose office is partly financed by state and by county funds, served as the court's clerk (the position of Supreme Court Clerk was created in 1967, 4 V.S.A. §8). The District Court, established in 1967 as a state-wide court divided into multi-county units, is entirely funded by the state. Only with respect to the Superior and Probate Courts do the counties retain significant responsibilities.[3] The counties must provide,

[3]The counties are responsibile for providing, furnishing and equipping chambers for Supreme Court Justices residing in the county and courtroom space for the District Court "when such use does not conflict with the use of the building by the other courts..." (24 V.S.A. §71).

furnish and equip a suitable courthouse for these courts (24 V.S.A. §71), provide fireproof storage space for these courts (Id.), provide offices and equipment for sheriffs (whose salaries are paid by the state; 24 V.S.A. §73 and 32 V.S.A. §1182), provide adequate telephone service for the county courthouse, county clerk, probate court and sheriff (24 V.S.A. §75), maintain a law library (24 V.S.A. §76) and acquire and own land needed for these purposes (24 V.S.A. §77). The county must pay the salaries of deputy county clerks (24 V.S.A. §176 - the County Clerk is paid by the state) and of sheriff's deputies not employed to transport prisoners (32 V.S.A. §1182).

The state must pay the expense of lighting and heating the county courthouses and all probate offices (24 V.S.A. §74). The state also pays a portion of the cost of janitorial service connected with the Superior and Probate Courts (24 V.S.A. §72). In the 1974 fiscal year, the state paid the following operating costs for the Superior Courts: janitorial services; electricity; water; sewage; fuel oil; telephone (toll calls); per diem pay of Assistant Judges; salaries of court officers, Superior Judges, County Clerks, and Court Reporters; office supplies; juror and witness fees; electronic equipment for judges and reporters; and travel expenses for judges and reporters.

The Proposed Structure

In connection with court facilities (see Chapter X, supra)

we have discussed the advisability of maintaining the county tax (24 V.S.A. §133) as a direct source of revenue for the judicial branch. As previously mentioned, to retain the tax, it will likely be necessary to continue to provide a role for the counties in the financing structure. Although prescriptions for a wholly state-funded system offer the advantage of greater simplicity and absence of complication[4] (see ABA Court Organization standards, supra, §1.50 et seq.), observation in Vermont has convinced us that local involvement in the court financing decision-making process is desirable in light of recent recognition (as evidenced by the appearance of revenue sharing and the county budget hearings now required by 24 V.S.A. §133) that local participation should be encouraged.

We have previously outlined how the new financial structure should be organized (see p. 179, supra.) but a brief summary is useful at this point. In place of the present control of county courthouse construction and maintenance by the Assistant Judges of each county, we would substitute a Court Committee in each judicial district composed of the Assistant Judges,[5]

[4]As discussed at length in footnote 2 to Chapter X, supra, total state funding may prove to be constitutionally required in the future.

[5]In the three proposed multi-county judicial districts, all four Assistant Judges involved (two from each county) would form as a group the same voting representation on the Court Committee as in the one-county districts.

the regional Presiding Judge (or a representative), the Court Administrator (or a representative), and a representative of the state buildings department. This committee should possess the power to determine, in response to the evaluation of the court facilities in the judicial district by the courthouse standards commission, how court facilities should be improved and how much county tax revenue will be needed to finance the improvements. In this way a local voice in determining the kind of court facilities in each area will be retained, but the Assistant Judges will no longer be able to avoid all improvements. In practice we think this system will accomplish a simple and desirable purpose: state planners will be required to consider local feelings in the process of improving facilities.

There remains no justification, however, for dividing responsibility for supporting court personnel between the state and the counties. The new District Clerks will perform county (as opposed to court) functions as an adjunct to their court responsibilities. There is not enough distinctly county work to require retention of County Clerks as separate positions. County non-judicial expenses claim a very small portion of the county tax collections. These expenses should continue to be paid from the county tax receipts. However, a minimum county tax rate should be set by statute.[6] The Court Committee may increase the minimum rate to finance the improvements determined to be necessary. Once improvements are completed, the minimum

[6]The maximum county tax is now set at 5 percent by 24 V.S.A. §133(b).

tax should be paid to the state for use to finance regular operation of the courts in the district. At that time, the state will assume responsibility for regular courthouse operation (see Figure 7). The Assistant Judges will continue to be responsible for overseeing county non-judicial functions.

Once this structure is implemented, judicial budgeting will become a unitary process as the state assumes responsibility for financing the operations of all courts. As at present, the budget should be prepared by the court administrative office under the supervision of the Chief Justice. The Judicial Council should advise and consult in the preparation of the budget (ABA Court Organization standards, supra, §1.51(a) at 102). The Chief Justice or the Court Administrator on his behalf should present the budget to the legislature. Although the Governor is required to submit a budget covering all agencies, the judicial budget should be submitted by him to the legislature in the following recommended manner:

> Statutory changes should be made to provide for presentation of the judicial budget to the legislature directly by the judicial branch. The executive branch should retain its power to "comment on and make recommendations concerning the budget for the court system, or court unit as the case may be, but should not be authorized to eliminate or reduce budget requests made to the legislature." (Ibid., §1.51(b)).

The budget process now followed by the Vermont judicial branch includes establishing of projections of court operations and corresponding financial requirements for longer periods

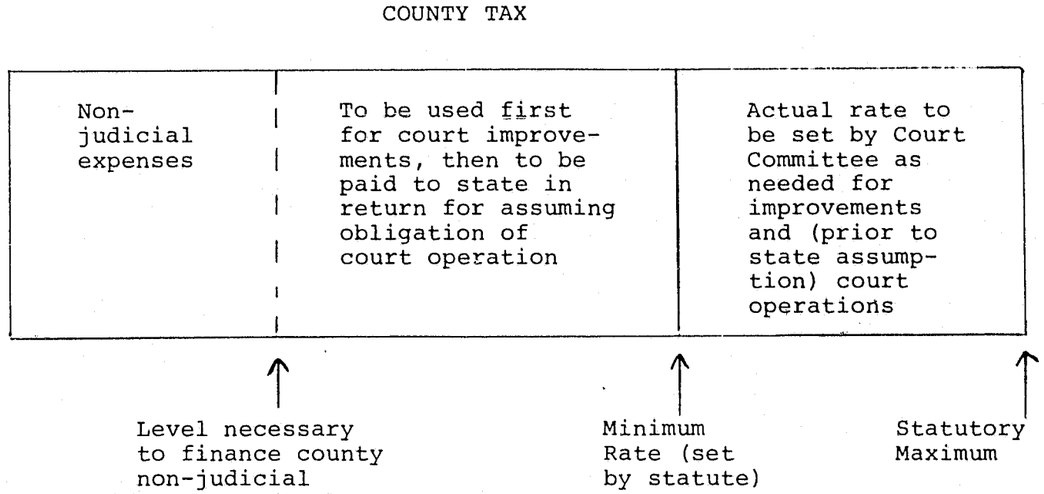

Figure 7. Apportionment and Determination of County Tax

(Ibid., §1.52). Once the state assumes responsibility for regular operations of all courts, the fiscal administration procedures already used for the District Courts can be applied generally to centralize financial management in all courts. This includes systems of payroll accounting, supplies, equipment and service vouchers, and processing of court-collected monies (Ibid., §1.52(b)). Data processing should be used so far as practicable.

The statement by the judicial branch in the current budget justification of requests (Judicial Budget, Fiscal Yr. 1976/1977 Biennium, at 17) with respect to fine and fee collection conforms to the prescribed standard (ABA Court Organization standards, supra, §1.53 at 106-07) and deserves commendation:

> Although 32 V.S.A. §544 permits the courts to use funds collected from fines and fees to defray some of their operating costs, it is the policy of the Judicial Branch that the purpose of fines and other costs imposed through judicial proceedings is to enforce the law and not to provide direct financial support for themselves or for any other agencies associated with our justice system. All revenues from fines, penalties, and fees levied by the courts are deposited directly into the State General Fund. (Emphasis original.)

The budget justification then points out that court receipts nearly equaled appropriations. While we agree that efficiencies likely to result from improved organization of a unified court system should result in increased receipts which may equal or exceed court operating expenditures, we do not believe that the level of receipts should affect the determination of judicial

branch appropriations. There is no rational connection between these two figures: the courts should be funded as a vital service of the state regardless of their total contribution to the State General Fund.

The Cost of Unification

Calculation of the cost of unifying the Vermont court system can be analyzed by determining what positions in the current court structure will be eliminated or modified in the transition and what new posts will be created. Since court facilities needs have already been analyzed with a view to improvements, the cost of improvements should remain comparable under the unified system. New facilities which are needed in any event should be constructed to permit all court activities to be located in or near the county courthouse.

Existing Positions to be Eliminated or Changed	Comparable Position in Unified System
Court Administrator, Supreme Court Clerk and Reporter of Decisions (1)	Court Administrator (1) Supreme Court Clerk and Reporter of Decisions (1)
Deputy Court Administrator and Deputy Supreme Court Clerk (1)	Deputy Court Administrator (1)
Director of Judicial Administrative Services (1) Fiscal Officer (1)	Assistant Court Administrators (3)
Chief Superior Judge, Chief District Court Judge (2)	Presiding Judges (3)
Superior Judges (6) District Court Judges (10) Judges of Probate (19)	Superior Judges (total of 15; when Probate Court is merged, added judges may be needed to bolster the total bench's capacity to handle this work - the number will be low since probate judges are now part-time and the present complement (19) far exceed present needs) Magistrates (6)

Existing Positions to be Eliminated or Changed	Comparable Position in Unified System
County Clerks (14) District Court Clerks (13)	District Clerks (12)
Superior Court Reporters (9) District Court Reporters (12)	Superior Court Reporters (21)
Registers of Probate (19)	Registers of Probate (12)
Law Clerks (5)	Law Clerks (8)
Assistant Judges (28)	Assistant Judges (28; but now will only be paid for non-judicial county duties and participation in Court Committee functioning)
Deputy Clerks Court Account Clerks (there are at present a total of 11 District Court Deputy Clerks and Court Acct. Clerks - total number of Deputy County Clerks not available)	Deputy District Clerks (at least one for each district and probably more for most districts; total unlikely to exceed present complement)

We have not estimated the precise number of secretarial, typing and stenographic positions needed for the unified court system. It is likely that these will remain constant and that the reduction in number of clerical offices will permit both consolidation of personnel and increased ability to estimate precise support staff needs.

Court reporters have served as secretaries to the Vermont trial judges. This practice appears to have grown up from the rotation system of the Superior Court, where the reporter travels with the judge and is not based in any one place. Use of reporters as judges' secretaries has declined elsewhere because of the possibility of conflicts between the dual

responsibilities. These problems as well as the volume of work may ultimately require these positions to be divided. Retention of the rotation system for trial judges makes solutions difficult, but one projected goal might involve assignment of one member of the District Clerk's staff to perform secretarial duties for the judges in the district when needed, while remaining an employee of the clerk's office.

A summary analysis of the changes in positions as detailed above follows:

a) Administrative: 2 added positions

b) Judicial:
1) upgrading of one trial judge to Presiding Judge
2) addition of 6 magistrates
3) eventual elimination of all but a small number of 19 current probate judges
4) payment of Assistant Judges by the counties in relation to county tasks

c) Clerical:
1) establishment of 12 District Clerks to replace 27 County and District Court Clerks
2) need for at least 1 and almost always more Deputy District Clerks but the total number of clerical personnel is unlikely to exceed the present level
3) reduction in number of probate registers (19) to number of districts (12)
4) eventual need for Clerk's Office staff personnel to perform secretarial work for judges
5) separation of Supreme Court Clerk post from Court Administrator position

d) Reporters: appointment of 21 Superior Court Reporters in place of current 9 Superior Court and 12 District Court Reporters, allowing 1 per judge and 3 substitute/extras

e) Law Clerks: increase of 3 to serve new Superior Court

It can be seen that an increase in personnel should occur only in the areas of administrative personnel and law clerks. In both areas, it has been generally recognized that there are currently insufficient personnel to perform existing or desired responsibilities: administrative - need for effective administration at trial court level; law clerks - need for law clerks to serve trial judges.

In the judicial area, if the current salaries of probate judges are applied to creating three Superior Judgeships to absorb the probate work and six magistrates (at $18,000 each), the net cost is reduced by $88,700. In addition Assistant Judges now receive a total of $63,000 annually in per diem pay - this will be drastically reduced if Assistant Judges no longer perform judicial functions.

While the total number of clerical personnel will probably be less than at present, particularly in view of recommended reduction of probate registers to one per district, we do not expect that savings will be large in this area because District Clerks and senior Deputy District Clerks should be compensated at a level commensurate with their increased responsibilities. Costs of court reporters appear likely to increase in the future because Vermont salaries for this personnel are too low to be competitive with neighboring states.

In summary, it can be seen that the recommended personnel changes involved in implementing a unified court system are not likely to result in a need for massive increases in court funding. It is not likely that total expenses will be reduced. But in a unified court system, money appropriated will be expended more efficiently and the performance of the courts will improve substantially.

XIII. The Judicial Council, Board of Inquiry and Judicial Selection in Vermont

Judicial Council

The current Judicial Council (4 V.S.A. §§561-562) is inadequate to meet the needs of modern courts and, in particular, a unified court system.

The purpose of a judicial council is to provide the courts with continuous and enlightened criticism, coupled with detailed recommendations for improvement through legislation. In addition, the Council should propose policy for administration of the courts to the Supreme Court.

To insure an active, effective Judicial Council, Supreme Court rules should be promulgated in place of the Vermont Judicial Council statute. At present, the Council contains six members: the Chief Justice of the Supreme Court or a designated Associate Justice, the Court Administrator, two attorneys and two laymen appointed by the Governor. The Council should be headed by the Chief Justice. The chairmanship should not be delegated to an Associate Justice. The Council membership should include the Presiding Judges for the three proposed Superior Court regions, four Superior Judges (selected by vote of that court) each with a particular interest in one of the four areas of Superior Court jurisdiction (civil, criminal, family and probate), as well as three judges who sit in the three most populous judicial districts.

A representative of the Magistrates, a probate judge (for as long as the Probate Court remains a separate entity) and the State Court Administrator should also sit on the Council.

While lawyers and laymen should be encouraged to provide constructive advice to the courts, through court advisory panels and bar committees, the Judicial Council should consist exclusively of members of the judicial branch. "It should not include in its membership persons who, while having legitimate interest in the courts, are nevertheless in positions where they may from time to time have interests that conflict with those of the court system." (ABA Court Organization standards, supra, §1.32 commentary at 77-78.)

The size of the body should be kept small enough to assure cohesiveness, but the current membership of six is too few. The proposed membership base should prove broad enough to insure both consideration of divergent opinions on proposed solutions to problems and the support of the judiciary on behalf of agreed-upon improvements. The proposed size of the Council (13) is in accord with the ABA standard (§1.32 at 76) that calls for 12 to 15 members.

Members appointed by the Chief Justice or chosen by the judges as a group will be accountable to the Supreme Court and the trial courts, not the legislative or executive branches of government.

The Court Administrator, a Council member, should act as executive secretary for the Council and his staff should provide staff support. (See Mass. S.J.C. Rule 3:16, N.J. Court Rule 1:35 (judicial conference), and Pa.Sup.Ct. 301 et seq.)

The Council's current duties include a continual study of the organization, rules and methods of procedure and practice of the Vermont judicial system (4 V.S.A. §561). The Council also must report biennially to the legislature on the state of the judicial system with recommendations, if any, for modification. The Council may also suggest practices and procedure to the judiciary (4 V.S.A. §562).

These responsibilities should be expanded and better defined. The Council should propose administrative policy to the Supreme Court, including improvement of court calendaring processes, judicial assignment, responsibilities of judges and non-judicial personnel and financial management.

Because the statutes call for study of the courts as well as biennial reports, the Council must be able to appoint committees to study particularly complex issues with necessary staff (per Mass. S.J.C. Rule 3:16).

In other jurisdictions lack of funds has limited the performance of judicial councils. To avoid this, funds for the operation of the Vermont Judicial Council should be included specifically in the Judicial Branch budget. This will obviate any need for the Council to compete for appropriations as an independent entity and will maintain the integrity of the judicial branch.

The Judicial Council is not required to meet at specified times under present law. The rules should provide for regular meetings. Furthermore, the Chief Justice should be able to convene additional meetings when necessary.

Board of Judicial Inquiry

The only procedures now provided for discipline and removal of Vermont judges are suspension by the Supreme Court (Vt. Const. II, §28c) or impeachment in the General Assembly (Vt. Const. II, §§53, 54). These methods, as implemented in the Rules of the Supreme Court for Disciplinary Control (eff. Dec. 14, 1965; 12 V.S.A. App. I, Pt. IV), do not permit effective steps to be taken in instances of physical and mental illness or unfitness, lack of judicial temperament, and breaches of judicial ethics.

Furthermore, removal of a judge by impeachment is both cumbersome and expensive. Often a judge who becomes the target of such a procedure tends to conclude he has no choice but to resist, since his integrity will be compromised by resignation. Impeachment is also inappropriate when directed at a judge, who, though mentally or physically ill, may have engaged in no wrongful behavior.

It is vital that a workable procedure be created in Vermont to represent the public interest while preserving the independence of the judiciary. Since the Judicial Council will contain approximately 13 members, a smaller group must be chosen to carry out judicial inquiry responsibilities. Members of the Board should include three trial

judges from the Judicial Council designated by the Chief Justice, the Court Administrator, two lawyers chosen by the Vermont Bar Association and a layman appointed by the Chief Justice. Absence of lawyer and lay members leads inevitably to charges that the judiciary is concealing its dirty linen.

The Board's authority should include the power to receive and investigate complaints concerning judges, to conduct hearings, to make recommendations for compulsory retirement of disabled judges and to recommend sanctions against judges it determines to have been guilty of misconduct. (ABA Court Organization standards, supra, §1.22(a) at 51.)

Complaints and subsequent proceedings should be kept confidential by the Board. If it recommends that the Supreme Court act, the record of proceedings may then be made public by the Supreme Court. The Board should receive and investigate all complaints coming to its attention from whatever source:

> Except in the most extreme situation, the requirements of verification and disclosure of identity stifle complaints and thereby frustrate the objectives of securing public confidence in the courts' willingness to police themselves. The provision that the investigation be confidential has proven to be an abundant safeguard for the judge who has been unfairly accused (Ibid., §1.22 commentary at 56).

The Board should first preliminarily investigate complaints and where appropriate, request the judge to respond or supply relevant information. It should end an investigation when satisfied that no substantial evidence exists to show mis-

conduct or disability, or that satisfactory remedial action has been undertaken or agreed to by the affected judge (Ibid., §1.22 at 51-52).

When it appears that compulsory retirement, removal or discipline may be warranted, a formal hearing should be held. The judge should be given a written statement of the charges against him and be represented by counsel. The case against him should be presented by counsel for the Board. Both sides should be able to subpoena witnesses and documents or objects and to use normal civil discovery procedures prior to the hearing. The Board should be authorized to order testimony taken and a report made by a fact finder where necessitated by the burden of Board work or the complexity of a case.

Upon completion of the hearing, the Board should render findings of fact and conclusions. If it concludes that dismissal of the complaint is proper, it should so order; if otherwise, the findings and conclusions should be transmitted with the record of proceedings and recommendation of disposition to the Supreme Court (Ibid., at 52).

The Supreme Court, on the basis of the Board report, should determine the disposition of the case. The Court's authority to require a disabled judge to retire, and to censure, suspend or remove a judge from office should be conferred by legislation pursuant to the Court's disciplinary powers (which specifically include the power to suspend) provided in the state constitution (Vt. Const. II, §28c).

We realize that establishing a Board of Judicial Inquiry will be viewed by some judges as a threat to the traditional independence of the judiciary. However, once such a system is established, the majority of judges are likely to view it as an effective measure to protect the judiciary "from the bad effects of retaining on the bench those few of their number, who, through ill health, advanced age, or misconduct, are no longer qualified for judicial office" (ABA, §1.22 at 55).

Judicial Selection

The difficult problems of judicial discipline and removal emphasize the importance of strong and careful judicial selection procedures. Vermont's statutory procedures are now contained in the Constitution (at II, §28c) as amended this year. The constitutionally-required nominating body is the Judicial Selection Board created by 4 V.S.A. §601. The 11 members are chosen as follows: two appointed by the Governor, three chosen by the Senate, three by the House, and three by the bar. The members serve two-year terms and elect their own chairman (4 V.S.A. §601).

Board members submit to the Court Administrator a list of all candidates. The administrator then discloses to the Board information regarding any professional disciplinary action taken or pending with respect to a candidate. This information must be kept confidential. A list of certified candidates is submitted to the Governor

who makes all appointments (except for Assistant Judges and Judges of Probate, who are popularly elected).

Vermont's law already requires legal or judicial experience (for five of the ten years preceding appointment) for appointment to the trial bench (4 V.S.A. §602).

We have found little to criticize in the judicial selection process. However, there are two respects in which improvement is required: review of candidates for the Supreme Court and limitation of terms of Board members to prevent a self-perpetuating establishment.

Taking the question of Supreme Court appointments first, it should be recognized that the qualifications for appointment to an appellate court are not the same as for the trial bench. Some members of the court should have trial court experience but there is room for legal scholars and other kinds of practitioners with facility in expression of ideas and facility in exchanging views and adjusting differences of opinion. If, as we have recommended, elevation to the Supreme Court no longer occurs in lock-step fashion, the Selection Board must begin to evaluate candidates based on these broader standards rather than trial-court seniority alone.

In order that a small group of persons cannot dominate selection of Vermont judges for an indefinite period, we believe that no member of the Board should serve more than two terms.

Recommendations

I. AN ACTIVE JUDICIAL COUNCIL TO PROPOSE ADMINISTRATIVE POLICY AND CONDUCT A REGULAR REVIEW OF THE OPERATION OF THE JUDICIAL SYSTEM SHOULD BE ESTABLISHED THROUGH REVAMPING OF THE PRESENT COUNCIL. THE COUNCIL SHOULD CONSIST OF THE CHIEF JUSTICE, THE PRESIDING JUDGES, FOUR SUPERIOR JUDGES (BY COURT VOTE) REPRESENTING THE AREAS OF JURISDICTION, THREE JUDGES FROM THE MOST POPULOUS DISTRICTS, A MAGISTRATE, A PROBATE JUDGE (UNTIL MERGER) AND THE COURT ADMINISTRATOR.

II. A BOARD OF JUDICIAL INQUIRY SHOULD BE CREATED TO EXAMINE ALLEGATIONS OF JUDICIAL DISABILITY OR MISCONDUCT AND REPORT ITS FINDINGS TO THE SUPREME COURT FOR ACTION. THE BOARD SHOULD INCLUDE THREE TRIAL JUDGES, TWO ATTORNEYS AND A LAYMAN.

III. THE DIFFERENT QUALIFICATIONS FOR APPELLATE JUDGES SHOULD BE RECOGNIZED AND EVALUATED IN FUTURE BOARD SCRUTINY OF CANDIDATES FOR THE SUPREME COURT.

IV. MEMBERS OF THE JUDICIAL SELECTION BOARD SHOULD NOT BE PERMITTED TO SERVE MORE THAN TWO TERMS.

XIV. The Roles of State's Attorneys and Sheriffs in the Unified System

Sheriffs and State's Attorneys are elected in each county for four-year terms (Vt. Const. II, §45). These officials play major roles in any judicial system; however, we do not believe that the recommendations made in this report with respect to the courts require any significant change in the jobs of Sheriffs or State's Attorneys. We have not studied the operations of these offices except to the extent required by their interaction with the court system.

State's Attorneys

While it has previously been suggested that the office of State's Attorney be eliminated (Jud. Branch Study Comm., Leg. Council, "Study of the Judicial Branch" (1966) at 27, see Ch. III, supra, at 27 ff.), the recommendation called for prosecution duties to "be entrusted either to district attorneys or assistant attorneys general who are legally trained." We see no reason to eliminate State's Attorneys; however, we believe they must be legally trained and admitted to the Vermont bar.

The existing powers of the Attorney General to exercise the authority of a State's Attorney, supervise and assume responsibility for prosecutions, where necessary, are sufficient (3 V.S.A. §§152, 153, 157).

If the courts in Grand Isle and Essex counties are combined as recommended in Ch. 5, supra, with adjacent counties to result in a total of 12 judicial districts in the state, it

would seem advisable to merge the State's Attorneys' offices in those two counties with the offices of the counties with which the two are joined. When there are no courts in a county, there is scarce reason to continue operation of a State's Attorney's office.[1]

The unification of the trial courts is likely to simplify the operating procedures of State's Attorneys' offices. There will only be one trial court in the judicial district for the office to service. Criminal cases will be grouped together on a calendar for the district's criminal docket. Separation of family matters on a different docket should allow juvenile matters to benefit from treatment in conjunction with the hearing of all matters affecting the family and the increased attention of other agencies present in addition to the State's Attorney.

Sheriffs, Probation and Corrections

While the ancient and still powerful offices of Sheriffs in Vermont should be subjected to a complete study beyond the scope of this inquiry, we feel that these officials, as well, indeed, as the entire probation and correctional system, should be brought more closely within the scrutiny of the courts.

Problems of performance by the sheriffs and the probation and correctional service have come to our attention in connection with their effectiveness in implementing the decisions of the courts. Although, for example, probation officers are

[1]The offices in Grand Isle and Essex counties, as well as Lamoille County, are currently staffed by part-time State's Attorneys who are permitted to maintain private legal practices (24 V.S.A. §361a).

currently part of the corrections department, plans should be made to provide a court-operated office to prepare pre-sentence reports.

The failure of sheriffs to execute return executions of judgment with dispatch (or at all) in small claims cases and the problems of divided responsibility for maintaining and operating jail and temporary holding facilities have been apparent. The statute (24 V.S.A. §73) which required the county to maintain a jail was amended in 1967 to eliminate county maintenance as well as the sheriff's jail duties to operate the jail (former 24 V.S.A. §297). But the sheriffs remain responsible for transporting prisoners (24 V.S.A. §296). We have observed instances of difficulties occurring in the transportation and temporary holding of prisoners for trial. Assistant Judges have not been willing to provide appropriate holding space in county courthouses and long journeys by sheriffs' employees between the courts and correctional facilities have resulted.[2]

Operations of probation and correctional systems have received closer attention recently from courts across the nation. Vermont has not been without prison riots and other disturbances in ancient (the state prison at Windsor is one of the oldest in the nation) correctional facilities. The Commissioner of Corrections has wide ranging authority to make pro-

[2]Sheriffs serve as or provide court officers and transport prisoners between the courts and correctional facilities (see citations at pp. 12-13, supra, and 24 V.S.A. §296).

bation and parole decisions, exercisable, for instance, to renew furloughs indefinitely (28 V.S.A. §808). An independent study of sentencing and related matters is currently under way in Vermont; upon its completion we recommend that the operations of the sheriffs and the department of corrections be given a thorough examination by the courts to insure that these offices are carrying out the policies of administration of justice as determined by the courts.

Although it is hard to justify continuation of State's Attorneys' offices in counties where courts have been combined with those in larger adjacent counties, we are unable to recommend that sheriffs' offices in the smallest counties be eliminated until a further examination of the overall operations of sheriffs and the corrections department is made. As law enforcement officers, sheriffs perform functions in a community in addition to matters requiring appearance in court. It may be advisable to merge the offices, but we are not prepared at this time to recommend this step be taken without further study.

There does not appear to be any need, however, for continuation of the office of High Bailiff, who seems only empowered to act upon the confinement, incompetence or vacancy in the office of the sheriff (24 V.S.A. §§331-333).

Recommendations

I. STATE'S ATTORNEYS SHOULD BE REQUIRED TO BE ADMITTED TO THE STATE BAR AS A QUALIFICATION FOR OFFICE. THE OFFICES IN GRAND ISLE AND ESSEX COUNTIES SHOULD BE COMBINED WITH THE ADJACENT STATE'S ATTORNEYS' OFFICES IN THE MANNER RECOMMENDED FOR THE COURTS IN THOSE COUNTIES.

II. A THOROUGH STUDY SHOULD BE MADE OF HOW JUDICIAL DECISIONS ARE IMPLEMENTED BY SHERIFFS, PROBATION AND CORRECTIONAL AUTHORITIES AND STEPS TAKEN TO INCREASE COURT SCRUTINY OF THESE AGENCIES.

III. THE OFFICE OF HIGH BAILIFF SHOULD BE ELIMINATED.

XV. Implementing a Unified Court System

The steps necessary for implementation of a unified court system in Vermont will follow two major paths - statutory change by legislative action and promulgation of rules by the Supreme Court. In at least one instance, further constitutional amendment is recommended but not crucial to implementation. The recommended changes are listed below according to whether statutory or rule change is needed:

By Constitutional Amendment

Elimination of positions of Judges of Probate

By Statute

1. Creation of unified trial court, the Superior Court of Vermont in place of present Superior, District, and eventually, Probate Courts
2. Creation of added positions for Superior Judges and Magistrates as part of new Superior Court
3. Creation of new court financing system, including establishment of Court Committees for each judicial district to determine facilities improvement plans and county tax rate, determination of minimum rate, and assumption by state of court operating costs
4. Creation of Courthouse Standards Commission to evaluate court facilities
5. Reduction in number of probate districts and judgeships
6. Authorization of Chief Justice of Supreme Court to serve as administrative head of the unified system

7. Combination of all clerks' offices in each judicial district and institution of new appointment procedures for clerks and other court personnel
8. Revision of judicial compensation levels and authorization of non-judicial employees compensation system
9. Provision of uniform judicial selection and disciplinary procedures
10. Authorization of law clerk assistance
11. Extension of venue and jury selection to regional boundaries
12. Abolition of judicial functions of Assistant Judge
13. Reduction of most traffic violations to infractions subject to administrative disposition and court authority
14. Establishing bar membership as qualification for probate judges and State's Attorneys and four-year deadline for qualification
15. Limitation of annual number of small claims suits per plaintiff and increase in small claims maximum jurisdictional amount
16. Upgrading of retirement provisions
17. Centralization of land records
18. Authorization of use of microfilm or other data storage retention devices to store court records

By Court Rule or Order

1. Division of Superior Court into regions and districts, and by subject-matter jurisdiction dockets
2. Establishment of procedure for designation of Presiding Judges

3. Assignment of traffic and small claims jurisdiction to Magistrates
4. Standard procedure for judicial rotation in Superior Court
5. Promulgation of uniform calendaring procedures and continuance policy
6. Outline of Supreme Court overall control of court processes
7. Establishment of overall state calendar and motion days for unified court system
8. Creation of court rules advisory committee
9. Integration of Probate Court
10. Designation of judges to supervise family dockets
11. Scheduling of small claims sessions outside usual court hours
12. Promulgation of simplified small claims forms and procedures
13. Adoption of court facilities requirements: number of jury and hearing courtrooms, etc., standards recommended by courthouse standards commission
14. Organization of Office of Court Administrator
15. Separation of Supreme Court Clerk's office
16. Establishment of Administrative Clerks' posts
17. Establishment of judicial information system and weighted caseload recordkeeping
18. Establishment of data storage procedures

APPENDIX A

VERMONT SUPERIOR COURT

Weighted Caseload Index

Date ☐ ☐ ☐ Month Day Year

Superior Court for_____Region in County of_____.

Name of Judge sitting_____.

CLOCK TIME		DOCKET					PLACE		AMOUNT OF TIME		ACTIVITY
From	To	Type Docket	Case Number	No. of cases consolidated	civil case	criminal case	Chambers	court	hour	Min.	e.g. Arrangement, Motions Pretrial Conference, Jury trial, etc.

APPENDIX B

Methodology

Preparation of this report began in June 1974. It included the following elements:

(1) In-depth interviews with members of the Vermont court system, state government, bar and citizenry (listed below) and consultants both within and outside Vermont. As a result of these interviews, we were able to determine in some depth the scope of the issues to be addressed in the study of how Proposal V amending the judicial provisions of the Vermont Constitution should be implemented.

(2) Basic research into the historical, statutory and court rule foundations for Vermont judicial institutions and practices, and review of systems in other jurisdictions.

(3) Gathering of statistics as described under the heading "Statistical Analysis of Vermont Court Performance" in Chapter V, supra.

(4) Use of consultants to analyze the Vermont situation in light of experience drawn from other U.S. jurisdictions.

(5) Several meetings with groups directly involved and interested in the implementation of Proposal V, including the Advisory Committee on Court Unification, to which this report is directed, the Superior Court of Vermont, and the Judicial Systems Committee of the Vermont Bar Association.

(6) Discussion of our findings and preliminary conclusions with some participants in the Vermont judicial process.

CONTINUED

3 OF 4

Subsequent to submission of this report, we will continue to work with the Advisory Committee on Court Unification in drafting appropriate proposed legislation and court rules, as well as a superintendence document to permit efficient implementation of a unified court system.

The list of persons interviewed during the preparation of this report follows:

Hon. Albert W. Barney	St. Johnsbury
Hon. Maxwell L. Baton	Newport
Carl F. Bianchi, Esq.	Boise, Idaho
Hon. Franklin S. Billings, Jr.	Woodstock
Henry F. Black, Esq.	White River Junction
George Brockway	Woodstock
Mark Brown	Montpelier
Alden T. Bryan, Esq.	Burlington
Hon. L. John Cain	Burlington
Edward J. Cashman, Esq.	Burlington
Hon. Kimberley B. Cheney	Montpelier
Robert Chimileski, Esq.	Newport
Hon. Richard Cleveland	Montpelier
Hon. John P. Connarn	Barre
Hon. Edward J. Costello	Burlington
Hon. Rudolph J. Daley	Newport
Thomas M. Debevoise,II, Esq.	South Royalton
Hon. Hilton H. Dier, Jr.	Middlebury
John M. Dinse, Esq.	Burlington
John Dooley, Esq.	Burlington
Hon. Howard Douglas	Rutland
John H. Downs, Esq.	St. Johnsbury
Hon. George F. Ellison	White River Junction
Hon. Donald Ferland	Hyde Park
Miss Concetta M. Ferraro	Rutland
Roger C. Geckler, Esq.	Rutland
Maurice D. Geiger	North Conway, N.H.
Hon. Ernest W. Gibson, III	Montpelier
Prof. L. J. Gould	Burlington
Mrs. Ann L. Greene	Burlington
Hon. Carl S. Gregg	St. Albans
Prof. Samuel Hand	Burlington
David Harrison	Montpelier
Hon. William C. Hill	Burlington
Hon. Philip Hoff	Burlington

Hon. James S. Holden	Rutland
Paul F. Hudson, Esq.	White River Junction
Hon. Evelyn Jarrett	Burlington
Prof. Matthew A. Kelly	New York City
Duncan F. Kilmartin, Esq.	Newport
Mrs. Elizabeth King	Bennington
Hon. Glendon N. King	Northfield
Philip A. Kolvoord, Esq.	Burlington
Michael Krell, Esq.	Montpelier
Richard Lang, Esq.	Burlington
Peter F. Langrock, Esq.	Middlebury
Hon. Robert W. Larrow	Burlington
Hon. Patrick Leahy	Burlington
Carl H. Lisman, Esq.	Burlington
Prof. Ruth Lovald	Plainfield
Daniel J. Lynch, Esq.	St. Albans
Mrs. Geraldine Lynch	Manchester
Hon. Robert A. Magoon	Hyde Park
Hon. Stephen B. Martin	Barre
Mrs. Marilyn Maxwell	Newport
Hon. Edward G. McClallen	Rutland
Gregory A. McKenzie, Esq.	Montpelier
Stephen J. McPherson	Montpelier
Hon. Arthur Mooney	Newport
Hon. John P. Morrissey	Bennington
Hon. H. Russell Morss	Chelsea
Bruce B. Mosher	Montpelier
Hon. Russell Niquette	Winooski
Mrs. Jane W. Norman	Woodstock
Hon. Nora E. Olich	Montpelier
Mrs. Elaine G. Parker	Hyde Park
R. Allen Paul, Esq.	Burlington
Peter P. Plante, Esq.	White River Junction
Lloyd Portrow, Esq.	Burlington
Jeffrey B. Quittner, Esq.	Burlington
Mrs. Jane D. Richardson	Burlington
Robert Rosenberg, Esq.	Burlington
Myron Samuelson, Esq.	Burlington
Steven Schuster, Esq.	Burlington
Mrs. Beverley Smith	Montpelier
Hon. Frederick Smith	Burlington
Hon. Milford Smith	Rutland
Hon. Lewis F. Springer, Jr.	St. Johnsbury
Barry F. Steinhardt	Plainfield
Hon. R. Kent Stoneman	Montpelier
Alan Sylvester, Esq.	Burlington
Jeff Taylor, Esq.	Rutland
Hon. Lawrence J. Turgeon	Montpelier
Gerard F. Trudeau, Esq.	Middlebury
Hon. Sterry R. Waterman	St. Johnsbury
Hon. Robert E. West	Montpelier
Bruce Westcott	Montpelier
Hilton A. Wick, Esq.	Burlington

SUMMARY OF COSTS

Component	Present	Recommended	+ or -
Judges	$715,400	$609,000	-$106,400
Clerks	656,630	554,000	-$102,630
Reporters	228,740	260,988	+$32,248
Supreme Court and Court Administrator	298,370	361,695	+$63,325
			-$113,457

FURTHER COSTS TO BE CUT BY UNIFICATION:

BUILDING MAINTENANCE (FEWER BUILDINGS)

SECRETARIAL COSTS (FEWER OFFICES)

TRAVEL (LESS LENGTHY ROTATION OF JUDGES)

FUEL (FEWER BUILDINGS)

JUDGES

Present		Recommended Interim		Recommended for Implementation	
7 Superior Judges (Chief at $26,800) (Judges at $25,800)	$181,600	3 Presiding Judges (at $28,000)	$ 84,000	3 Presiding Judges (at $28,000)	$84,000
11 District Judges (Chief at $23,700) (Judges at $22,700)	250,700	15 Superior Court Judges (at $27,000)	405,000	15 Superior Court Judges (at $27,000)	405,000
19 Probate Judges	220,100	12 Probate Judges/ Magistrates*	170,400	6 Magistrates (at $20,000)	120,000
28 Assistant Judges	63,000				$609,000
	$715,400	7 Probate Judges	61,700		
			$721,100		

*Districts of Addison, Bennington, Caledonia, Chittenden, Franklin, Hartford, Lamoille, Marlboro, Orleans, Randolph, Rutland and Washington designated for magistrates at $1000 supplement each.

CLERKS AND REPORTERS

Present		Recommended	
14 County Clerks at average of $11,543	$161,600	3 Administrative Clerks at $20,000	$ 60,000
13 District Court Clerks at average of $10,613	137,970	9 District Clerks at $15,000	135,000
11 Deputy District Court at average of $7,785 and Court Accountant Clerks	85,640	12 Deputy District Clerks at $10,000	120,000
14 Deputy & Asst. County Clerks	98,000*	14 Assistant District Clerks at $8,500	119,000
19 Registers at average of $9,127	173,420	12 Registers at $10,000	120,000
	$656,630		$554,000
9 Superior Court Reporters	$111,860	21 Court Reporters	$260,988
12 District Court Reporters	116,880		
	$228,740		

*Since county financial reports do not disclose individual salary figures, we have estimated an average expenditure of $7000 per county for an assistant clerk. This estimate, made purely for the purpose of this comparison, is most likely a very low figure.

SUPREME COURT AND COURT ADMINISTRATOR'S OFFICE

Present		Recommended	
Supreme Court		**Supreme Court**	
Five Justices	$151,000	Five Justices	$151,000
Five Law Clerks	61,410	Supreme Court Clerk	20,000
		Eight Law Clerks (3 added to serve Superior Court)	96,195
Court Administrator's Office		**Court Administrator's Office**	
Court Administrator and Supreme Court Clerk	$ 25,800	Court Administrator	$ 27,000
Deputy Administrator and Deputy Clerk	14,070	Deputy Administrator	22,500
Director, Judicial Administration Services	22,020	3 Assistant Administrators at $15,000	45,000
Fiscal Officer	14,610		$361,695
Research 6 Statistical Specialists	9,460		
	$298,370		

END