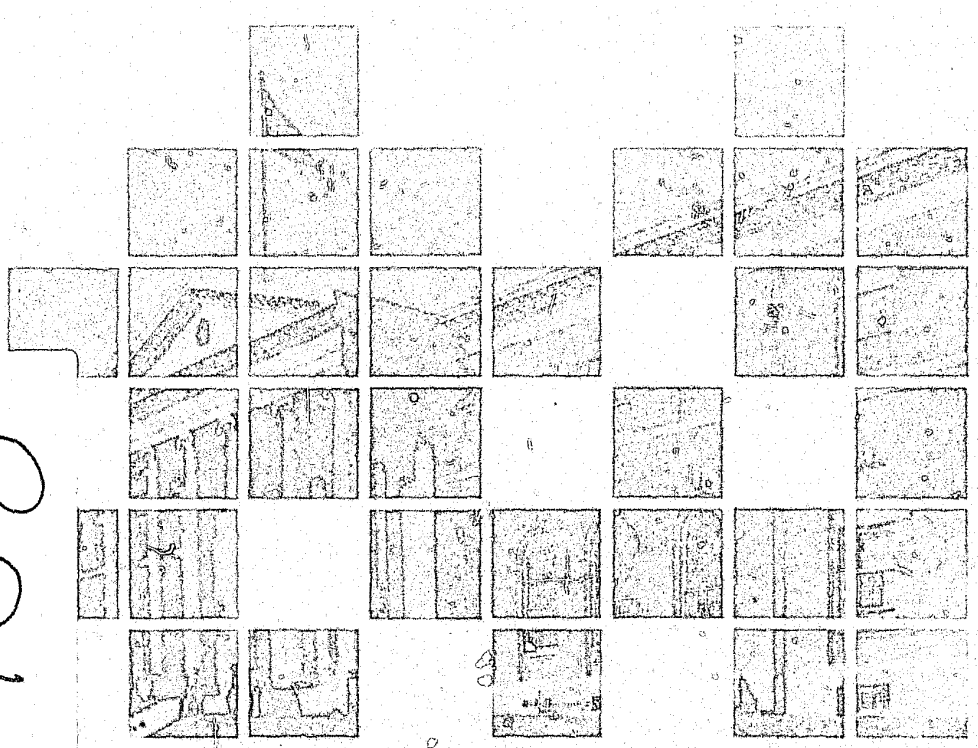
Court Unification:
History, Politics and Implementation



National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
U. S. Department of Justice

Court Unification: History, Politics and Implementation

by
Larry Berkson and Susan Carbon
with the assistance of
Judy Rosenbaum

August 1978

National Institute of Law Enforcement and Criminal Justice
Law Enforcement Assistance Administration
U. S. Department of Justice

National Institute of Law Enforcement
and Criminal Justice
Blair G. Ewing, Acting Director

Law Enforcement Assistance Administration
James M. H. Gregg, Acting Administrator

This project was supported by Grant Number 76-NI-99-1024 awarded to the American Judicature Society by the National Institute of Law Enforcement and Criminal Justice, Law Enforcement Assistance Administration, U. S. Department of Justice, under the Omnibus Crime Control and Safe Streets Act of 1968, as amended. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U. S. Department of Justice.

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FOREWORD

Since the turn of the century, court unification has been one of the more controversial issues facing the American judicial system. This report presents a working definition of court unification, summarizes the arguments for and against it, and describes the experience of 11 states which have unified their court systems.

Although no empirical data on the value of unification are presented here, the report contributes a much-needed historical and analytical perspective to the unification debate, and suggests avenues for research and evaluation. The National Institute will draw upon the insights presented in this report in planning future research on court unification.

Blair G. Ewing
Acting Director
National Institute of Law Enforcement
and Criminal Justice

COURT UNIFICATION PROJECT STAFF

Project Director
Allan Ashman
Director of Research

Principal Investigator
Larry Berkson
Visiting Fellow
American Judicature Society

Associate Investigator
Susan Carbon

Staff Attorney
Judy Rosenbaum

Research Attorney
Karen Knab

Methodologist
John Ryan

PREFACE

This study is designed to explore the concept of court unification. Its purpose is fourfold. The first objective is to trace the evolution of court unification throughout the twentieth century (Chapter I). The fundamental goal of this exercise is to develop a collective definition of the concept.

The second objective is to investigate the concept's principal strengths and weaknesses (Chapter II). The analysis is based mainly on a review of contemporary literature, but the alternatives offered for organizing and managing state court systems throughout the chapter are supplemented with information obtained from on-site observations.

Third, the politics of achieving court unification, including the obstacles which activists are likely to encounter, are examined in detail (Chapters III–IX). General principles are proposed to guide those who desire to effect the innovation in their states. Additionally, a concrete plan of action is outlined to aid individuals actually involved in a unification campaign.

The fourth objective of the study is to examine the problems encountered by those attempting to administer various aspects of court unification (Chapter X–XI). Means by which to ameliorate these problems are suggested. It should be noted that the study is not designed to empirically evaluate the concept of court unification. This subject, however, is touched upon in the final chapter.

The data for the study are derived from printed sources and indepth investigations of court unification movements in eleven states. The details are elaborated upon in Chapter III and will not be discussed at this juncture. However, three items should be noted. First, anonymity was guaranteed those who were interviewed during the course of this study. Therefore, at times comments will be enclosed in direct quotes but the source will not be cited. Second, the words "reform," "modernize," and "improve" often are used synonymously with the term "unify" or "unification" to avoid repetitious terminology. Third, the terms "state bar" and "bar association" are used interchangeably. No attempt was made, for the purposes of this study, to distinguish unified from non-unified bars.

A review of the literature on court unification is being published as a separate monograph by the United States Government Printing Office (Susan Carbon and Larry Berkson, *Literature on Court Unification: An Annotated Bibliography*). It contains a bibliographic essay and an annotated bibliography. The essay presents an overview of the literature and notes its deficiencies. The bibliography contains over 275 entries.

As with any undertaking of this magnitude, the authors are deeply indebted to a large number of individuals. One of the foremost debts is owed to Carolyn Burstein, the Project Monitor, who strongly supported funding this atypical prescriptive package. Without her, the project never would have commenced. She provided continual assistance and encouragement throughout the duration of the project. To her we extend our deepest appreciation.

Another individual who cannot be adequately thanked is Allan Ashman, the Project Director. From the very outset he served as the "guiding light" for the study. His invaluable experience in similar research endeavors was utilized time and again to help overcome difficult problems. He carefully read every chapter

making substantive comments, as well as innumerable suggestions on how to improve the manuscript's readability. To him we also are deeply appreciative.

Similar roles were played by Carl Baar, Geoffrey Hazard, Harry Lawson and Harvey Solomon, members of the project s advisory committee. Their suggestions at the initial stages of the project, as well as their comments on each of the chapters, substantially contributed to the successful completion of the study. To them we extend a hearty thanks.

PART 1
COURT UNIFICATION IN PERSPECTIVE

CHAPTER I. A HISTORICAL OVERVIEW

Since the turn of the century the concept of court unification has been pivotal in nearly every attempt to reform state court systems. Its principal advocate was Roscoe Pound who, in 1906, delivered a seminal address to the American Bar Association. Pound charged that this nation's courts were archaic in three respects.[1] First, there were too many courts. Their multiplicity created duplication, waste and inefficiency. Second, he argued that concurrent jurisdiction in diversity of citizenship cases was needless, unnecessary and out of place in modern society. Finally, he claimed that there was a great waste of judicial manpower in the system. Pound pointed out that because of rigid jurisdictional boundary lines, idle judges were not free to lend aid to others whose dockets were overly congested. Needless judicial time was also expended, he claimed, in the intricacies of federal jurisdiction and the obsolete distinctions between law and equity. Pound also was appalled by the seemingly unrestricted practice of granting new trials, especially in civil cases.

Pound attributed these problems to the fact that America had copied the British system "at a time when English judicial organization was at its worst."[2] To remedy the situation, he advocated adopting a variation of the solution suggested by designers of the English Judicature Act of 1873. According to Pound, its chief features were: (1) to set up a single court, complete in itself, embracing all superior courts and jurisdictions; and (2) to include in this one court, as a branch thereof, a single court of final appeal.[3] In other words, there was to be a court of first instance which would retain all original jurisdiction and a second court, a court of appeals, to handle all reviewing jurisdiction.

In 1909, largely due to Pound's influence, the American Bar Association adopted the essence of these ideas.[4] In subsequent speeches Pound observed that there were three main points involved: the organization of judicial personnel, the organization of judicial business (court structure), and the organization of judicial administration.[5] He perpetually advocated "unifying" each of these areas. He reiterated these notions decade after decade, culminating in his famous 1940 article entitled, "Principles and Outline of a Modern Unified Court Organization."[6]

Pound's initial cries for a modernized, equitable and efficient judiciary were heard during a time when society was concerned with change of great magnitude. The early 1900's is commonly referred to as the Progressive Era because of radical responses to the hardships which had gradually beset the American citizenry following the end of the Civil War.

Between that time and the outbreak of World War I, the development of industry, the influx of immigrants, the growth of cities and the concentration of wealth in an elite class contributed to a profound social and demographic upheaval. No longer were the majority of citizens small town farmers of colonial heritage. Rather, they were urbanites, many of whom had recently immigrated. The influx was so rapid that city governments were largely unable to provide public services, not to mention more basic needs such as housing.

Bribery, patronage and corruption permeated state and city governments. Public trust became obsolete. And participation by minorities was virtually unheard of.

By the turn of the century, however, muckracking journalists began exposing these conditions. Their revelations inspired and horrified reformers into promoting social justice. In addition to the countless proposals for ameliorating the social and economic

[1] See Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice," reprinted in *Journal of the American Judicature Society*, 20 (February, 1937), 178–87.

[2] Roscoe Pound, "Organization of Courts," *Journal of the American Judicature Society*, 11 (October, 1927), 69, 75. See also Roscoe Pound, *Organization of Courts* (Boston: Little, Brown and Co., 1940).

[3] Pound, "Organization of Courts," *supra* note 2, at 77–78.

[4] *Ibid.*, at 78.

[5] *Ibid.*

[6] Roscoe Pound, "Principles and Outline of a Modern Unified Court Organization," *Journal of the American Judicature Society*, 23 (April, 1940), 225–33.

plight of the American, Progressives particularly favored expanded popular participation in government. Their desire to keep government close to the people led them to promote reform mainly in the legislative and executive branches of government. For example, direct primaries, direct election of senators and the enfranchisement of women were instituted during the Progressive Era. To give citizens more control over their representatives, Progressives also advanced as reforms the initiative, the recall and the referendum.

It was in this context of reform that Roscoe Pound first proposed that changes should be made in the judicial branch of government. However, his ideas were not universally supported; in fact, they often were met with strong opposition. As R. Stanley Lowe described the impact of his 1906 address, "the sensitivites of many judges and complacent lawyers in his audience were stung by these allegations. . . ."[7] This was evidenced by the fact that a resolution to print 4,000 copies of his speech was roundly defeated following lengthy and laudatory defenses of the courts, interspersed with impatient denunciations of Pound's assertions.[8]

As a result of this opposition, efforts at unification proceeded very slowly and often were met with defeat. As time progressed, the advocates of Pound's philosophy enlisted the aid of numerous allies. Among them were the American Judicature Society, Arthur T. Vanderbilt, later Chief Justice of the New Jersey Supreme Court, and several scholars and practitioners. Wide support for Pound's ideas developed during the 1960's, and today his position on court reform is accepted by a majority of individuals and organizations working in the field.

Increasing interest in the concept during recent years has aroused great concern over its specific meaning. Indeed, a review of the twentieth century literature on court unification reveals only a limited consensus about its dimensions. There seems to be nearly as many definitions as there are individuals with ideas about how courts "ought" to be organized. Thus before proceeding, an attempt is made to clarify the concept by culling from the literature a "collective definition." The weaknesses of such an approach are obvious. It is unlikely that the definition will be accepted in its totality by anyone. Nonetheless, it is crucial to establish a common framework from which to discuss and understand the concept, and to provide the foundation for subsequent chapters.

As with many emerging concepts, academics, practitioners, jurists and commission reports have expressed a multitude of conflicting interpretations regarding the elements of court unification. Often the phrase has been used interchangeably with court reform in general. Table 1–1 illustrates the large number of topics which, from time to time, have been included under this rubric.

Table 1–1
Possible Elements of a Unified Court System

1. Rule-making authority vested in the supreme court.
2. Assignment power vested in an administrative judge.
3. Simplified court structure.
4. Elimination of justice of the peace courts.
5. State financing of courts.
6. Greater use of judicial councils.
7. Merit selection system for choosing judges.
8. Judicial qualifications commissions.
9. Abolition of lay judges.
10. Use of parajudges.
11. Full-time judges.
12. Mandatory retirement age for judges.
13. Judicial compensation commissions.
14. Appointment of a professional court administrator.
15. Professional administrative staff.
16. Unified bar.
17. Requirements for statistical records keeping.
18. Decriminalization of public drunkenness and minor traffic offenses.
19. Operation under modern rules of criminal and civil procedure.
20. Transcription of all pretrial court proceedings.
21. Uniform appeals procedures.
22. Independent personnel plan for non-judicial employees.

Perhaps the broadest present-day categorization is found in the recommendations of the National Advisory Commission on Criminal Justice Standards and Goals:

> State courts should be organized into a unified judicial system financed by the State and administered through a statewide court administrator or administrative judge under the supervision of the chief justice of the State supreme court.
>
> All trial courts should be unified into a single trial court with general criminal as well as civil jurisdiction. Criminal jurisdiction now in courts of limited jurisdiction should be placed in these

[7] R. Stanley Lowe, "Unified Courts in America: The Legacy of Roscoe Pound," *Judicature*, 56 (March, 1973), 316–317.
[8] *Ibid.*

unified trial courts of general jurisdiction, with the exception of certain traffic violations. The State supreme court should promulgate rules for the conduct of minor as well as major criminal prosecutions.

All judicial functions in the trial courts should be performed by full-time judges. All judges should possess law degrees and be members of the bar.

A transcription or other record of the pretrial court proceedings and the trial should be kept in all criminal cases.

The appeal procedure should be the same for all cases.

Pretrial release services, probation services, and other rehabilitative services should be available in all prosecutions within the jurisdiction of the unified trial court.[9]

Generally, however, the field is circumscribed so that many of these considerations are not included.

To determine which elements are central to the concept, every important study of court unification beginning with Roscoe Pound's famous statement in 1906 through the American Bar Association's *Standards Relating to Court Organization* in 1974, was examined. Five basic components were found: consolidation and simplification of court structure, centralized management, centralized rule-making, centralized budgeting, and state financing.

Although the five elements are not identical to the ones derived from the literature by other investigators, they are similar. For example, Allan Ashman and Jeffrey Parness concluded that there are three basic principles of court unification over which there has been little disagreement: the necessity for a simplified state court structure, the need for centralized supervision of both a state's judicial and non-judicial personnel, and state assumption of all or a substantial part of the financial responsibility for its court system.[10] Omitted from the list by Ashman and Parness because "they appear to be inappropriate for inclusion," are such concerns as judicial selection and retention, the specific jurisdiction of a unified trial court, and the types and qualifications of judicial officers serving state trial courts.

Professor James Gazell claims that there are two basic components of the concept: administrative direction by a state's highest court over the entire judicial system and consolidation of various state courts.[11] The former embraces four components: a law authorizing the highest state court to make all rules of practice and procedure; the right of the highest state court to appoint managerial personnel for the rest of the court system, especially the chief judges and judicial administrators at the appellate and trial court levels; the right of the highest state court or its agents to assign all court personnel at will, including vertical and horizontal transfer of judges; and preparation by the highest state court of a yearly budget for the state judiciary.

Finally, Professor Geoffrey Gallas concludes that the concept is composed of four elements: the elimination of overlapping and conflicting jurisdictional boundaries; hierarchical and centralized state court structure with administrative responsibility vested in the chief justice and court of last resort; unitary budgeting and financing of the courts at the state level; and separate personnel systems administered centrally by the state court administrator covering a range of personnel functions and encompassing all personnel, including clerks of court.[12] Notably, Gallas omits such topics as judicial selection, compensation, tenure, retirement and removal, as well as decriminalization, the unified bar, judicial councils and abolition of lay judges, among others.

The omission of judicial selection, discipline and removal as essential elements is perhaps the most controversial. For example, after listing Professor Gallas' four components of unification, H. Ted Rubin suggests that to the compilation "should be added the merit selection of judges, with appointment by a governor from among nominations submitted by judicial nominating commissions. One other component," he continues, "would be a procedure for disciplining and removing judges who fail to adhere to norms of competency and stability."[13] Both reforms indeed have received wide attention in recent years. A review of the literature, however, reveals that neither reform falls within the

[9] National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington: Government Printing Office, 1973), p. 164.

[10] Allan Ashman and Jeffrey Parness, "The Concept of a Unified Court System," *DePaul Law Review*, 24 (Fall, 1974), 1–41.

[11] James A. Gazell, "Lower-Court Unification in the American States," *Arizona State Law Journal*, 1974 (1974), 653–87.

[12] Geoffrey Gallas, "The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach," *Justice System Journal*, 2 (Spring, 1976), 35–55. These have been accepted by H. Ted Rubin, *The Courts: Fulcrum of the Justice System* (Pacific Palisades: Goodyear Publishing Co., 1976), pp. 3–4.

[13] Rubin, *supra* note 12, p. 4.

collective definition of court unification. Perhaps this absence can be attributed to the fact that the unification concept is essentially one which focuses on the managerial and structural components of state court systems. From this perspective a system may be totally unified and yet utilize elected judges who are subject to removal and discipline by the traditional procedures of impeachment and removal, resolution and address, recall, challenge, assignment, reversal, and peer group persuasion or pressure.[14]

Another topic omitted which may create some degree of controversy is that of the intermediate appellate court. In his original critique of the American judicial system, Roscoe Pound did not contemplate intermediate courts of appeal.[15] Likewise in his later writings, he explicitly rejected the idea, stating that "there would be no need of intermediate tribunals of any sort."[16] The American Judicature Society and its representatives have generally agreed.[17] For example, in 1967, Glenn Winters wrote a compelling argument on behalf of consolidating intermediate appellate courts with supreme courts.[18]

But Winter's position appears to be in the minority, for most proposals within the past two decades have called for the creation of an intermediate court of appeals. The American Bar Association's Model Judicial Article (1962), the National Municipal League's Model State Constitution (1963), the American Bar Association's Standards of 1974, and the Minnesota Judicial Council Report of 1974 have all endorsed such a court, and others have given implicit approval.[19]

Despite the growing acceptance of intermediate appellate courts, they may not be essential to a unified system. There seems to be an unstated assumption in many proposals that intermediate courts of appeal should be established only in states burdened by extremely heavy caseloads. This notion was made explicit by the National Conference on the Judiciary:

> If the appellate caseload is too great for a single court to adequately perform its tasks of correcting errors, developing law and supervising the courts below, serious consideration should be given to creating an intermediate appellate court.[20]

A. Consolidation and Simplification of Court Structure

If there is a single element that might be considered the heart of court unification, it is the consolidation and simplification of court structure. At the beginning of the century, as noted earlier, Roscoe Pound wrote favorably of the English legislation which consolidated five appellate courts and eight courts of first instance into one Supreme Court of Judicature. The plan established a two-branch system that included a single court of final appeal and a single court of first instance. "This idea of unification," Pound stated, "has proved most effective," and deserved "careful study of American lawyers as a model judicial organization."[21]

1. **Trial courts.** Subsequent to Pound's admonition, nearly every academic, jurist, and commission report dealing with unification discussed this element. All are in agreement that the number of trial courts must be reduced, but controversy has developed over the exact number that should exist. Originally, Pound suggested that there be only one, but by 1940 he had revised his thinking and suggested that the single Court of Justice (Supreme Court of Judicature) be composed of three branches instead of two.[22] At the apex of the hierarchy, according to Pound, was to be a "single ultimate court of appeal." Next, there was to be a "superior court of general jurisdiction" for all civil and criminal cases "above the grade of small causes and petty offenses and violations of municipal ordinances."[23] Finally, county courts were to be organized to handle "small causes."

During the period between the two Pound statements, the American Judicature Society developed a

[14] See Steven Hays, "Discipline and Removal of State Court Judges," in Larry Berkson, Steven Hays, and Susan Carbon, *Managing the State Courts* (St. Paul: West Publishing Company, 1977), pp. 150–55.

[15] Pound, *supra* note 1, at 184.

[16] Pound, *supra* note 6, at 228.

[17] "Model Judiciary Article," *Journal of the American Judicature Society*, 3 (February, 1920), 132–41.

[18] "The Case for a Two-Level State Court System," *Judicature*, 50 (February, 1967), 185–87.

[19] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* (Washington: Government Printing Office, 1967), p. 83; and Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System* (Washington: Government Printing Office, 1971), p. 91.

[20] National Conference on the Judiciary, "Consensus Statement of the National Conference on the Judiciary," in *Justice in the States* (St. Paul: West Publishing Co., 1971), p. 266. See also Advisory Commission on Intergovernmental Relations, *supra* note 19, p. 88.

[21] Pound, *supra* note 1, at 183.

[22] Pound, *supra* note 6, at 225.

[23] *Ibid.*, at 226.

model judicial article at the request of the National Municipal League.[24] It called for creation of a general court of justice with three departments known as the supreme court, the district court and the county court. Its authors apparently contemplated that the county court should possess original jurisdiction over civil cases up to $500 and criminal misdemeanors. The district court was to have original jurisdiction in all cases except where exclusive jurisdiction was granted the county courts. Unfortunately the Parker-Vanderbilt Standards of 1938 made only passing reference to the fact that states should adopt a unified judicial system and did not discuss court structure explicitly. It is clear, however, that the American Bar Association committee which developed the standards did at least implicitly approve the two-tier trial court system.[25]

Since 1940 there has been mixed reaction to the two-tier trial court proposal. The Municipal League's Model State Constitution of 1942 withdrew its explicit endorsement of the system,[26] although the American Judicature Society continued its support.[27] By 1963 the League had again vacillated in its position and proposed that:

> The judicial power of the state shall be vested in a unified judicial system, which shall include a supreme court, an appellate court and a general court, and which shall also include such inferior courts of limited jurisdiction as may from time to time be established by law.[28]

The previous year, the American Bar Association had also called for a two-tier trial court system: a trial court of general jurisdiction known as the district court, and one trial court of limited jurisdiction known as the magistrate's court.[29] In 1967 the President's Commission on Law Enforcement and Administration of Justice intimated an acceptance of the two-tier system when it determined that Michigan had "provided for a fully unified court system, including one statewide court of general jurisdiction and statewide courts of limited jurisdiction. . . ."[30] Similarly the Advisory Commission on Intergovernmental Relations (1971) implicitly accepted the notion of a two-tier system when it stated that the North Carolina constitutional amendment of 1972 "provided for a unified judicial system consisting of a supreme court, superior court and district court."[31]

More recent commission reports explicitly have rejected the notion of a two-tier trial court system. For example, in 1971 the National Conference on the Judiciary prescribed that, "[T]here should be only one level of trial court. . . . Separate specialized courts should be abolished."[32] Similarly, the following year the National Advisory Commission on Criminal Justice Standards and Goals recommended that "[a]ll trial courts should be unified into a single trial court. . . ."[33] In 1974 the American Bar Association Commission on Standards of Judicial Administration also declared that "[t]he court of original proceedings should be organized as a single court."[34] That same year the Minnesota Judicial Council determined that a unified system "[h]as only one trial court."[35]

A number of scholars have also called for adoption of a single tier trial court. For example, Glenn Winters, former Executive Director of the American Judicature Society, has consistently opted for such a scheme.[36] Similarly, James Gazell has suggested that a single court is preferable.[37] Others have been reticent to take one position or the other, and still others have shifted their positions. Perhaps Allan Ashman and Jeffrey Parness best reflect the recent scholarly thinking on the subject.

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[24] "Model Judiciary Article," *supra* note 17.

[25] Arthur T. Vanderbilt, *Minimum Standards of Judicial Administration* (New York: The Law Center of New York University, 1949), p. 263. See also "Standards of Administration Adopted," *Journal of the American Judicature Society*, 22 (August, 1938), 66–71.

[26] "Model Judiciary Article and Comment Thereon," *Journal of the American Judicature Society*, 26 (August, 1942), 51, 53.

[27] *Ibid.*, at 53–54.

[28] National Municipal League, *Model State Constitution* (New York: National Municipal League, 1963), p. 12.

[29] Glenn Winters, "A.B.A. House of Delegates Approves Model Judicial Article for State Constitutions," *Journal of the American Judicature Society*, 45 (April, 1962), 279, 280.

[30] President's Commission on Law Enforcement and Administration of Justice, *supra* note 19. Another commission report of that year failed to assert an opinion on the subject. President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington: Government Printing Office, 1967), p. 156.

[31] Advisory Commission on Intergovernmental Relations, *supra* note 19.

[32] National Conference on the Judiciary, *supra* note 20.

[33] National Advisory Commission on Criminal Justice Standards and Goals, *supra* note 9.

[34] American Bar Association, *Standards Relating to Court Organization* (Chicago: American Bar Association, 1974), p. 17.

[35] Minnesota Judicial Council, *A Survey of Unified Court Organizations* (1974), p. 6

[36] See, e.g., "The Case for a Two-Level State Court System," *supra* note 18.

[37] James Gazell, "State Trial Courts: An Odyssey into Faltering Bureaucracies," *San Diego Law Review*, 8 (March, 1971), 275, 331. In a later article, he recognized the utility of both models. See Gazell, *supra* note 11, at 656–59.

> One state-wide court of general jurisdiction probably is all that is required within a unified court system. However, under certain circumstances, a state-wide limited jurisdiction court might function quite well and differ little from divisions of a single state-wide trial court of general jurisdiction which handles only minor matters. Consequently, it is possible for a system with two, three or even four levels of courts to be characterized as having a simplified court structure. The key lies not in the number of courts handling cases, but in the state's method for handling cases brought before its courts.[38]

2. **Alternate models of court structure.** As has been observed, considerable disagreement has prevailed over the exact structure which best typifies a simplified and consolidated state court system. Four principal models have emerged and are presented in Table 1–2. Pound's 1906 model has little support among modern scholars and in practice is found only in Idaho, Iowa and South Dakota.[39] The 1940 Pound model is much more popular among scholars but it too is found, in a pure sense, in only three states: Hawaii, Rhode Island and Virginia. This can be attributed primarily to the fact that 29 states have created intermediate courts of appeal.[40] The remaining states have more than two trial courts and thus do not fit the model.[41]

The 1962 ABA model exists only in Florida and North Carolina. The California and Maryland systems approach this model. Only Illinois adheres to the 1974 ABA model. With respect to those states having no courts of intermediate appeal, most do not fit the model because of the existence of an excessive number of trial courts. Alabama, New York, Oklahoma, Pennsylvania and Texas also have more than one intermediate appellate court.

3. **The collective definition.** To summarize, proponents of court unification generally agree that court structure should be consolidated and simplified. The collective definition holds that there should be no more than one intermediate appellate court, no more than one trial court of general jurisdiction, no more than one trial court of limited jurisdiction, and no specialized courts.

While there is some controversy over the following proposition, the trend appears to be in the direction of advocating the creation of a single trial court of original jurisdiction.

B. Centralized Management

1. **A brief history.** In its first and second drafts of the State-Wide Judicature Act (1914 and 1917 respectively), the American Judicature Society divided administrative responsibility for the judicial system between a council and the chief justice. For example, the power to appoint the clerk of the General Court of Judicature, as well as the authority to establish clerks' offices throughout the state, was vested in the judicial council.[42] The chief justice was granted authority to assign judges to the various divisions of the court, direct judges to perform judicial duties in two or more divisions, and transfer cases from one division to another.[43] In 1920 the National Municipal League offered a similar proposal. It envisioned that the judicial council would regulate the duties and business of the clerk and his subordinates, and all other ministerial officers.[44] On the other hand, the League's proposal authorized the chief justice to gather and publish an annual report which was to include statistics regarding the business of the courts and the state of the dockets at the close of each year.[45] The chief justice also was granted authority to nominate the clerk of the General Court of Justice and to assign district court judges to the districts.[46] Control over calendars and the assignment of judges in district and county courts was given to the local presiding judge.

The above proposals suggest that among early reformers, the idea of strong centralized management was still not fully developed. For the most part, Pound's admonition that "one high official of the court should be charged with supervision of the judicial business of the whole court,"[47] went unheeded. As the years passed it became increasingly

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[38] Ashman and Parness, *supra* note 10, at 29–30.

[39] See Law Enforcement Assistance Administration, *National Survey of Court Organization* (Washington: Government Printing Office, 1973), and 1975 *Supplement*.

[40] Alabama, Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Missouri, Montana, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Washington, and Wisconsin. Many of these states also possess an excessive number of trial courts.

[41] Alaska, Connecticut, Kansas, Kentucky, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, North Dakota, South Carolina, Utah, Vermont, West Virginia, Wisconsin, and Wyoming.

[42] American Judicature Society, "First Draft of a State/Wide Judicature Act," *Bulletin VII* (October, 1914), pp. 166, 168.

[43] *Ibid.*, pp. 93–94, 107.

[44] "Model Judiciary Article," *supra* note 17, at 138.

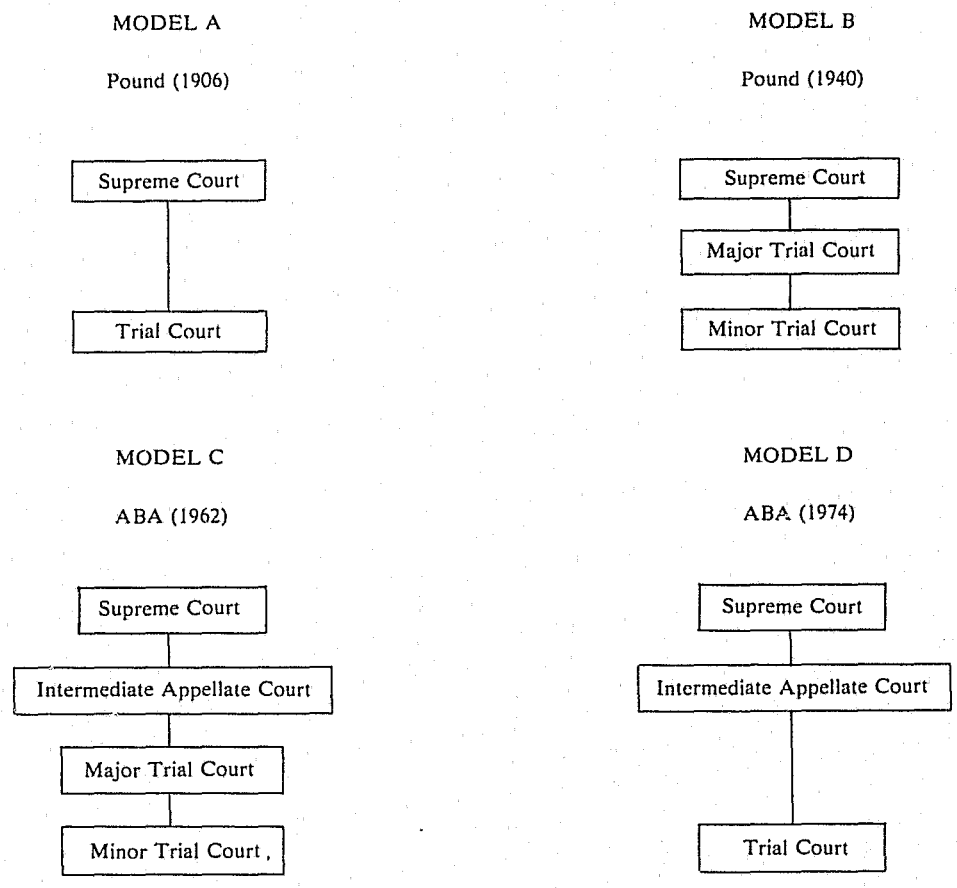
[45] *Ibid.*, at 137.

[46] *Ibid.*, at 139.

[47] Pound, *supra* note 2, at 80.

TABLE 1-2

Models of State Court Organization



apparent to reformers that if the courts were to be managed efficiently, administration of the system had to be focused in one agency and in one individual. The first major proposal in this respect came in 1938. In the famous Parker-Vanderbilt Standards, states were admonished to provide "a unified judicial system with power and responsibility in one of the judges to assign judges to judicial service so as to relieve congestion of dockets and utilize the available judges to the best advantage."[48] Commenting on the Standards in 1949, Arthur Vanderbilt listed eight principal facets of this aspect of court management: assignment of judges to specialized duties; reassignment of judges to different courts; reassignment of cases; uniform record keeping; periodic reporting by judges about their work; appointment of court personnel; administration of court personnel; and centralizing the financial affairs of the judicial branch.[49]

Subsequent to the Parker-Vanderbilt Standards, there were a large number of proposals which suggested that authority for managing the courts should be vested in the judiciary. These later proposals almost uniformly suggested that the chief justice of the state's highest court should be granted this responsibility. In his 1940 proposal, Pound again outlined his ideas regarding management of the judiciary:

> Supervision of the judicial-business administration of the whole court should be committed to the chief justice. . . . He should have authority to make reassignments or temporary assignments of judges to particular branches or divisions or localities according to the amount of

[48] "Standards of Judicial Administration Adopted," *supra* note 25, at 67.

[49] Vanderbilt, *supra* note 25, pp. 34–35.

work to be done, and the judges at hand to do it. Disqualification, disability or illness of particular judges, or vacancies in office could be speedily provided for in this way. He should have authority also . . . to assign or transfer cases from one locality or court or division to another for hearing and disposition, as circumstances may require, so that judicial work may be equalized so far as may be and clogging up of particular dockets and accumulation of arrears prevented at the outset.[50]

Pound noted that the chief justice might require assistance in his role as supervisor of the judicial system and as such, proposed that "competent business direction should be provided and the clerical and stenographic force be put under control and supervision of a responsible director."[51] He observed that, "[t]he judiciary is the only great agency of government which is habitually given no control over its clerical force."[52] He even went so far as to suggest that such officers might be needed in every branch, major division, or regional court. Thus, Pound became one of the first reformers to anticipate the need for court administrators. Moreover, it is clear that Pound did not envision court clerks assuming this position. Indeed, Pound was very critical of the posture court clerks had taken during the previous century. To him they were "independent functionaries" free from judicial control and administrative supervision.

In 1962, the American Bar Association specified that the state's chief justice should be deemed the executive head of the judicial system and that he should appoint an administrator of the courts and such assistants as necessary to aid in the administration of the courts.[53] The following year the National Municipal League issued an almost identical proposal.

Every major study since that time has advocated placing administrative responsibility for state court systems in the supreme court or chief justice and nearly all of the studies have called for the establishment of a court administrator's office to aid in the process. A significant variation has been the admonition that administrative authority be vested in a judicial council composed of representatives of all of the courts in the system or in members of the supreme court sitting as a judicial council. In either case it has been recommended that the chief justice should be the council's presiding officer. A version of the judicial council format currently is found in California.

While it is relatively simple to agree on who should possess central management authority, it is rather difficult to define just what that authority should entail. There is general consensus that the administrator should not handle judicial functions, including all aspects of adjudication and courtroom procedure. Unfortunately, the dichotomy between judicial and non-judicial duties is not always rigid. It is often difficult to decide whether a particular function, such as transfer and assignment of judges, is a judicial or non-judicial responsibility.[54]

Another contested question is whether trial court administrators should be appointed and supervised by the bureaucratically superior state court administrator's office. Recent commission reports have indicated that they should. For example, the National Advisory Commission on Criminal Justice Standards and Goals recommended that "[l]ocal trial court administrators and regional court administrators should be appointed by the state court administrator."[55] The Advisory Commission on Intergovernmental Relations recommended that offices of local trial courts "be headed by professional administrators and be under the general supervision of the state court administrator. . . ."[56] Under this system policies are developed at the top of the administrative hierarchy and percolate down to local units where they are implemented by trial level executives. Proponents of this approach contend that such a system is essential for coordination, accountability and continuity.

Recently, a number of reformers have taken exception to this position. For example, the American Bar Association has recommended that the trial court executive "be appointed by the presiding judge of the court in which he serves, with the advice and approval of the judges of that court, and should serve at the pleasure of the presiding judge."[57] Additionally, a number of writers have also questioned the wisdom of central appointment and control of

[50] Pound, *supra* note 6, at 229.

[51] *Ibid.*

[52] *Ibid.*, at 230.

[53] Winters, *supra* note 29, at 282.

[54] Steven Hays and Larry Berkson, "The New Managers: Court Administrators," in Berkson, Hays and Carbon, *supra* note 14, pp. 188–98.

[55] National Advisory Commission on Criminal Justice Standards and Goals, *supra* note 9, p. 183.

[56] Advisory Commission on Intergovernmental Relations, *supra* note 19, p. 39.

[57] American Bar Association, *supra* note 34, p. 89.

trial court administrators.[58] Nevertheless, the debate underscores the fact that centralized appointment and supervision is indeed a major component of the collective definition of court unification.

Other facets of centralized management are less controversial and are much more widely accepted. A perusal of recent studies and reports yields an enormous number of roles, functions, duties and responsibilities of state court administrators in a unified system.[59]

2. **Alternate models of management.** Four models of centralized management emerge from the literature (Table 1–3). Clearly, the American Bar Association's 1941 proposal is most widely accepted by the academic community. It is also the model adopted by the largest number of states. Indeed, all but one state, Mississippi, currently employ a court administrator and in nearly every instance this individual is appointed by the chief justice or supreme court.[60] In California, Georgia, Texas, and Utah, however, appointment is by a judicial council, and in Connecticut, where the administrator is a member of the supreme court, by the general assembly.

There appears to be a renewed interest in the California judicial council model. Recently two states, Georgia and Utah have adopted similar, albeit weaker, plans.

3. **The collective definition.** To summarize, a collective definition of court unification with respect to centralized management appears to be as follows:

- Administrative responsibility for the entire judiciary should be placed in the chief justice
- A state court administrator should be appointed to aid the chief justice in executing the latter's administrative responsibilities
- Local trial administrators should be responsive to requests by the top of the judicial hierarchy
- The assignment of judges and cases to equalize workload, and alleviate problems caused by vacations, illness and the like should be controlled by the supreme court
- The supreme court shoudl be responsible for the qualifications and hiring and firing of non-judicial personnel (including evaluation, promotion, in-service training and discipline)
- The supreme court should be responsible for space and equipment including standardizations
- The supreme court should be responsible for centralized records keeping and statistics gathering
- The supreme court should be responsible for financial administration, including budget preparation
- The supreme court should be responsible for the management of a continuing education program for all court related personnel
- The supreme court should be responsible for research for the state court system
- The supreme court should be responsible for planning for the state court system
- The supreme court should be responsible for the staff of the central administrative office
- The supreme court should be responsible for the dissemination of information about the operations of the state court system

C. Centralized Rule-Making

1. **A brief history.** In 1848 New York adopted the Field Code which eventually served as a model for the vast majority of other states. The Field Code divided responsibility for rule-making between the judiciary and the legislature and resulted in almost total legislative control.[61]

By the turn of the century, reformers became cognizant of the Field Code's negative effects and began to suggest alternatives. In October, 1914, the American Judicature Society published its first draft of the State-Wide Judicature Act which proposed vesting most rule-making authority in a council

[58] See Larry Berkson, "Selecting Trial Court Administrators: An Alternative Approach," *Journal of Criminal Justice*, forthcoming. See also Gallas, *supra* note 12; and Hays and Berkson, *supra* note 54.

[59] See especially American Bar Association, *The Improvement of the Administration of Justice* (Chicago: American Bar Association, 1971), pp. 20–28. See also President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts*, *supra* note 30; President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society*, *supra* note 30; Advisory Commission on Intergovernmental Relations, *supra* note 19; National Conference on the Judiciary, *supra* note 20, pp. 265–66; Committee for Economic Development, *Reducing Crime and Assuring Justice* (New York: Committee for Economic Development, 1972); National Advisory Commission on Criminal Justice Standards and Goals, *supra* note 9; Minnesota Judicial Council, *supra* note 35, pp. 17–19; and American Bar Association, *supra* note 34, pp. 2, 4.

[60] Rachel Doan and Robert Shapiro, *State Court Administrators* (Chicago: American Judicature Society, 1976), pp. 17–117, report all but three. Since that study, New Hampshire and Nevada have hired such personnel. The phrase "State court" administrator is used here in its broadest sense.

[61] See Vanderbilt, *supra* note 25, p. 514.

TABLE 1-3

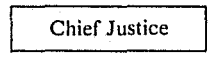
Models of Management

MODEL A

American Judicature Society (1917)

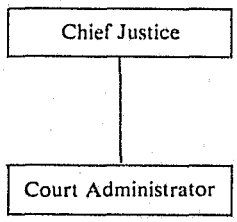
MODEL B

Parker-Vanderbilt Standards (1938)



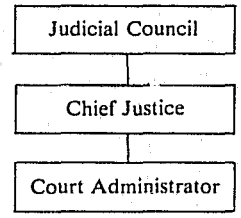
MODEL C

American Bar Association (1941)



MODEL D

American Bar Association (1974)



composed exclusively of state judges.[62] This position was reiterated in a second draft in 1917.[63] The council was granted authority to (1) reduce or expand the existing number of judges of any superior court division, (2) make rules prescribing the duties and jurisdiction of masters and district magistrates, (3) make, alter and amend all rules relating to practice and procedure, and (4) establish all rules and regulations with respect to clerks and jury commissioners. Similarly, the National Municipal League's Model Judicial Article, first published in 1920, placed rule-making power exclusively within a judicial council. The council's composition and authority closely paralleled that suggested by the American Judicature Society.[64]

In 1938 the American Bar Association recommended that rule-making power be vested in the "courts."[65] This is the first intimation that rule-making authority be placed other than in a judicial council. In 1940 Roscoe Pound was more explicit. He argued that rule-making power should be placed in the state's highest court.[66]

Two years later the National Municipal League adopted a revised judicial article which appeared to contravene the existing trend by recommending that rule-making authority be placed in a judicial council. The council was to be composed of judges, practicing attorneys, lay citizens, and members of the legislature. The article further suggested that the rule-making power be subject to ultimate regulation by the legislature: "The legislature may repeal, alter or supplement any rule of procedure by a law limited to that specific purpose. No such rule made by the judicial council shall be effective until published as provided by law."[67]

By 1962, proposals which vested rule-making power in any body other than the state's highest court were rare. In that year the American Bar Association made the following recommendation:

[62] American Judicature Society, *supra* note 42, pp. 137–39.

[63] American Judicature Society, "Second Draft of a State-Wide Judicature Act," *Bulletin VII-A* (March, 1917), pp. 77–80.

[64] "Model Judiciary Article," *supra* note 17, at 139.

[65] Vanderbilt, *supra* note 25, p. 506.

[66] Pound, *supra* note 6, at 233.

[67] "Model Judiciary Article and Comment Thereon," *supra* note 26, at 58.

> The Supreme Court shall have the power to prescribe rules governing appellate jurisdiction, rules of practice and procedure, and rules of evidence, for the judicial system. The Supreme Court shall, by rule, govern admission to the bar and the discipline of members of the bar.[68]

One year later, the National Municipal League followed suit and proposed that "[T]he Supreme Court shall make and promulgate rules governing the administration of all courts. It shall promulgate rules governing practice and procedure in civil and criminal cases in all courts."[69] However, in keeping with its 1942 recommendation, the League envisioned a role for the legislature, albeit a more limited one. In its 1963 recommendation the League provided that the rules could be changed by a two-thirds vote of the legislature's entire membership.[70]

Subsequent to the League's proposal, nearly every commission report, academic and jurist has recommended that rule-making authority be vested in the state's highest court. In 1967, the President's Commission on Law Enforcement and Administration of Justice implicitly did so,[71] as did the Advisory Commission on Intergovernmental Relations in 1971.[72] The National Conference on the Judiciary (1971) declared that "[T]he supreme court should possess power to promulgate rules of procedure and also rules of administration."[73]

The next year the Committee for Economic Development recommended that the chief justice "should be empowered to establish regulations requiring reasonable uniformity in the exercise of such duties as sentencing."[74] Similarly, in 1973 the National Advisory Commission on Criminal Justice Standards and Goals declared that: "The state supreme court should promulgate rules for the conduct of minor as well as major criminal prosecutions."[75] The 1974 American Bar Association Standards echoed this theme in its recommendation that "[t]he authority to promulgate rules may be vested in the members of the state's highest court."[76] Unlike other recent proposals, however, the ABA Standards also suggested the possibility of vesting such authority in a rule-making committee composed of judges, lawyers, legal scholars and representatives of the legislature. That same year the Minnesota Judicial Council recommended that rule-making authority be vested in the supreme court.[77]

Contemporary academics have accepted the idea that rule-making authority should be placed within the court. For example, James Gazell concludes that one component of a unified court system is that laws should authorize "the highest court in the state to make all rules of practice and procedure. . . ."[78] Similarly, Professor Gallas has included such authority in his delineation of the components of a unified state court system.[79]

2. **Alternate models of rule-making.** Historically, four essential models have evolved that suggest potential loci of rule-making authority. They are summarized in Table 1–4. Today, Model D most closely approximates reality in most state court systems. Thirty-two states vest the authority exclusively in the supreme court.[80] Eight states place it partially in the court and ten place it elsewhere, either in judicial councils or state legislatures. In 21 of the 32 states where the court has exclusive rule-making authority, the legislature has no veto power over rules promulgated by the court.

3. **The collective definition.** The collective definition of court unification with respect to rule-making seems to incorporate the following components: rule-making authority vested in the supreme court and unencumbered by legislative veto.

D. Centralized Budgeting

1. **A brief history.** Centralized (unitary) budgeting was not mentioned by early supporters of unification. Pound did not discuss the subject, nor was it mentioned in either of the American Judicature Society's drafts of the State-Wide Judicature Act, the National Municipal League's Model Judiciary Articles of 1920 and 1942, or the Parker-Vanderbilt

[68] Winters, *supra* note 29, at 282.

[69] National Municipal League, *supra* note 28, p. 14.

[70] *Ibid.*

[71] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts, supra* note 30, p. 83.

[72] Advisory Commission on Intergovernmental Relations, *supra* note 19.

[73] National Conference on the Judiciary, *supra* note 20, p. 265.

[74] Committee for Economic Development, *supra* note 59, p. 22. The committee contemplated that the chief justice would be advised by a judicial council.

[75] National Advisory Commission on Criminal Justice Standards and Goals, *supra* note 9.

[76] American Bar Association, *supra* note 34, p. 72 (emphasis added).

[77] Minnesota Judicial Council, *supra* note 35, p. 18.

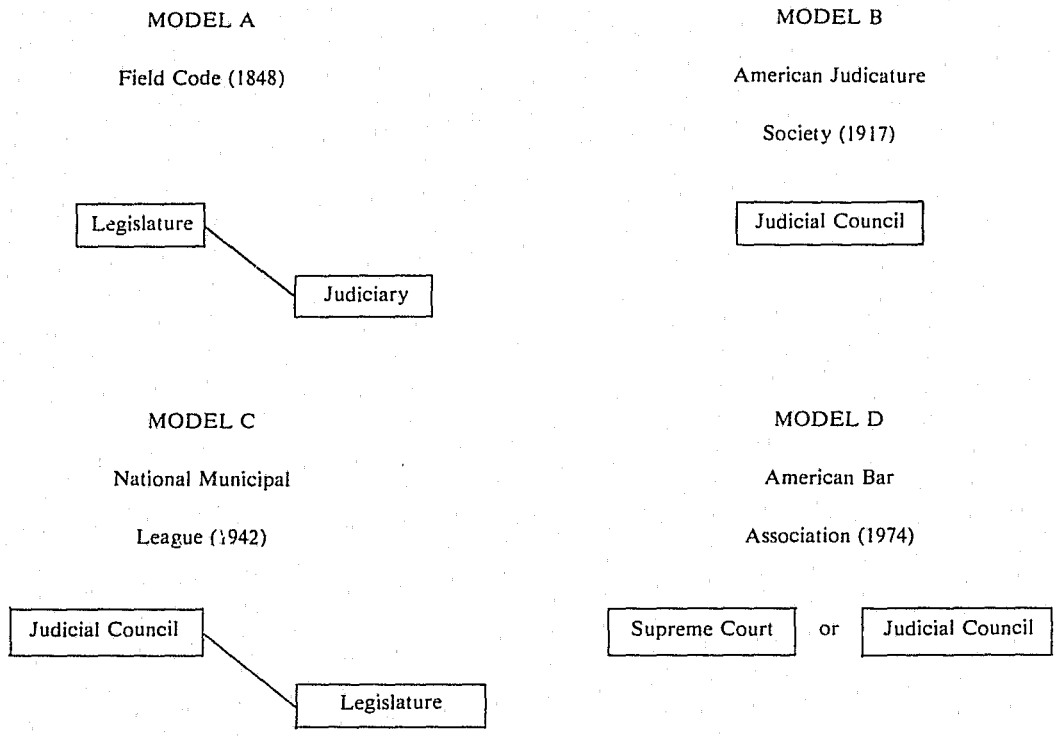
[78] Gazell, *supra* note 11, at 654.

[79] Gallas, *supra* note 12, at 35. See also Ashman and Parness, *supra* note 10, at 30.

[80] See Jeffrey Parness and Chris Korbakes, *A Study of the Procedural Rule-Making Power in the United States* (Chicago: American Judicature Society, 1973), p. 65.

TABLE 1-4

Models of Rule-Making



Standards of 1938. But in the past two decades, reformers consistently have adhered to the position that a state court system is not unified unless it utilizes a single central budget.

This sentiment was first expressed in the American Bar Association's Model Judicial Article of 1972 which called for the preparation and submission of the budget by a court administrator under the direction of the chief justice.[81] The following year the National Municipal League was more precise: "The chief judge shall submit an annual consolidated budget for the entire unified judicial system. . . ."[82] Although the concept was not discussed in the reports of the President's Commission on Law Enforcement and Administration of Justice, the Advisory Commission on Intergovernmental Relations, or the Committee for Economic Development, it was dealt with implicitly in the report of the National Conference on the Judicary in 1971. The conference charged the state court administrator with "developing and operating a modern system of court management, *including up-to-date budgetary techniques*. . . ."[83]

In 1973 the National Advisory Commission on Criminal Justice Standards and Goals specifically recommended that "[a] budget for the operation of the entire court system of the State should be prepared by the state court administrator and submitted to the appropriate legislative body."[84] The following year the American Bar Association stipulated that: "The financial operations of the courts, including salaries of personnel and operating and capital expenditures, should be managed through a unified budget that includes all courts in the system."[85]

The principal facets of centralized budgeting are more clearly defined than those of centralized management. The fundamental precept is that the budget be prepared centrally, preferably by the state court administrator. In addition, it is contended that

[81] Winters, *supra* note 29, at 282.

[82] National Municipal League, *supra* note 28, p. 14.

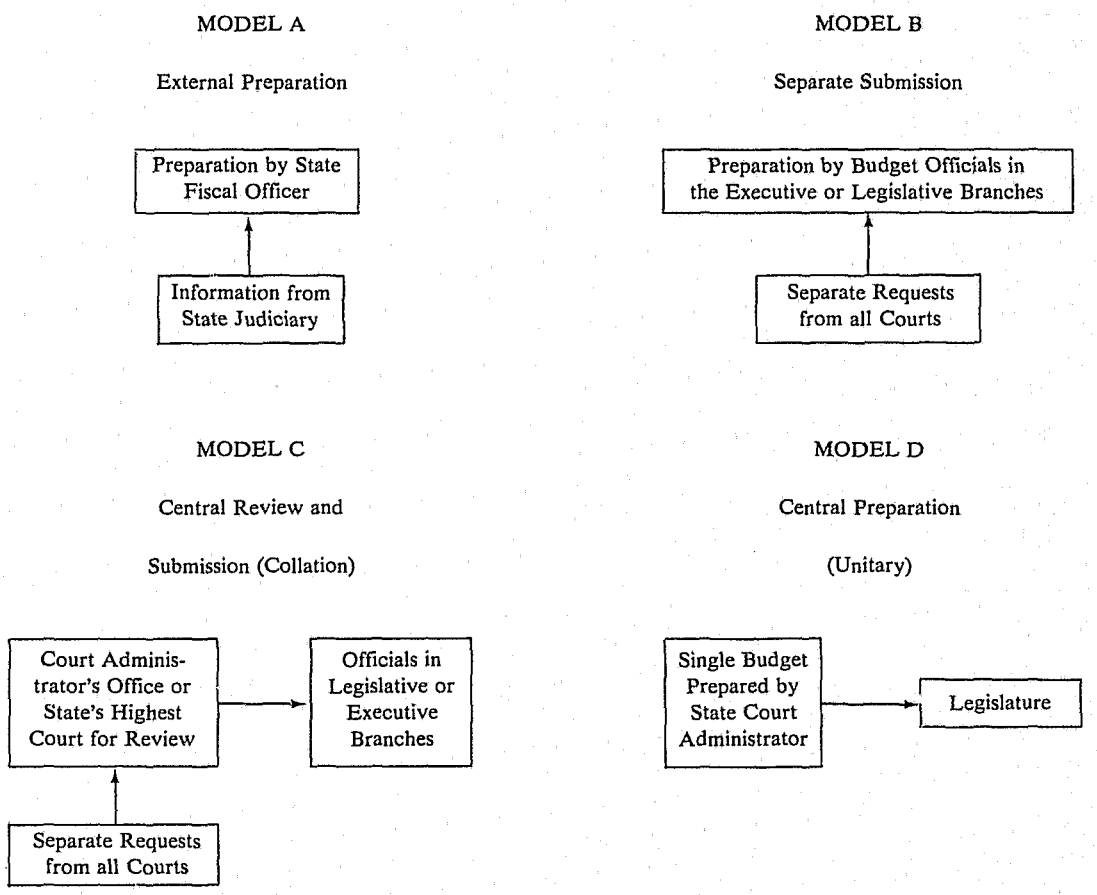
[83] National Conference on the Judiciary, *supra* note 20, p. 265 (emphasis added).

[84] National Advisory Commission on Criminal Justice Standards and Goals, *supra* note 9, p. 176. See also p. 164.

[85] American Bar Association, *supra* note 34, p. 3. See also p. 98.

TABLE 1-5

*Models of Court Budgeting**



*Derived from Carl Baar, *Separate But Subservient: Court Budgeting in the American States* (Lexington: D.C. Heath and Co., 1975), pp. 11-20.

the executive branch should not participate in the budget preparation process and should not have authority to revise the judicially prepared budget. Finally, the legislative role should be limited to appropriating requisite funds.

2. **Alternate models of budgeting.** Historically, few states have provided for the central preparation of judicial budgets, although 12 states approach this ideal today.[86] At the opposite extreme are states in which the budget is prepared outside the judiciary.[87] Between the poles are two variations. First are those states in which the budget is prepared locally, but is subject to review by a central staff and then passed along to the appropriate executive or legislative officials.[88] Second are those states in which different parts of the state court system prepare and submit separate requests to officials in the executive or the legislative branches.[89] Table 1-5 summarizes the four major models.

3. **The collective definition.** The collective definition of court unification with respect to centralized budgeting comprises the following basic tenets: a

[86] Alaska, Colorado, Connecticut, Hawaii, Minnesota, New Jersey, New Mexico, North Carolina, Rhode Island, Tennessee, Vermont, and Virginia. See Carl Baar, *Separate But Subservient: Court Budgeting in the American States* (Lexington: D. C. Heath, 1975), p. 13.

[87] States clearly within this category include: Georgia, Texas, Utah, West Virginia and Wisconsin. *Ibid.*

[88] States clearly within this category include: Arizona, Delaware, Idaho, Illinois, Michigan, Ohio, and South Carolina. *Ibid.*

[89] States clearly within this category include: Alabama, Maine, Maryland, Massachusetts, Missouri, Nebraska, Nevada, and Washington. *Ibid.*

judicial budget prepared centrally at the state level, and the executive branch without authority to revise it.

E. State Financing

1. **A brief history.** While state financing is related to centralized budgeting, it is still a separate and distinct topic.[90] Early reformers were not particularly concerned with state funding of the judiciary, although the National Municipal League did recommend in 1929 that "all remuneration paid for the services of judges and officials . . . shall be paid by an appropriation of the Legislature, and shall be reckoned as part of the expense of the judicial establishment. . . ."[91] All fees and fines were to be paid to the clerk who, in turn, would pass them along to the state treasurer. This recommendation remained substantially the same in the League's revised model of 1942.[92] The 1963 revision was even more explicit, stating that "the total cost of the [court] system shall be paid by the state."[93]

Nearly every commission since 1963 has recommended a similar approach. In 1967 the President's Commission on Law Enforcement and Administration of Justice recommended that all fines and fees be paid to the state treasury.[94] In 1971 the National Conference on the Judiciary admonished that "courts should be organized into a unified judicial system financed by and acting under the authority of the state government, not units of local government."[95] In later years both the Committee for Economic Development[96] and the National Advisory Commission on Criminal Justice Standards and Goals[97] also have recommended that states assume full responsibility for the financial support of the courts.

Although the American Bar Association's Model Judicial Article of 1962 did not contain reference to state financing, the omission was corrected in its 1974 Standards: "Responsibility for the financial support of state court systems should be assumed by state government."[98] Likewise, other investigators have cited state financing as a central element of unification.[99]

2. **Alternate models of financing.** Historically several methods have been used to fund the courts. Table 1–6 presents the major variations. During the colonial and revolutionary periods and during the eighteenth century, local fee offices supported much of the judicial structure and excessively generated revenues were paid to the local treasuries. As the nation became more urbanized and fee offices came under attack, court-generated revenues could no longer be relied upon to support the local judiciary. Consequently, schemes were devised in which at least part of the taxes collected locally were allocated to the courts. As the pressure to generate more revenue to support ever expanding court systems increased, states began sharing the burden.

Not surprisingly, there is great variation today in the amount of funds each state provides its judiciary. Seven states fund 80 percent or more of the judicial budget.[100] At the other extreme are states that fund less than 20 percent of the total judicial budget.[101]

3. **The collective definition.** With respect to state funding, the collective definition of court unification incorporates the principles that the state should finance the entire judicial system and that local fees and fines should be paid directly to the state treasury.

F. Summary

The concept of court unification has emerged as a leading reform during the course of the twentieth century. A review of the literature indicates that it comprises five elements: simplifying the judicial structure; placing management, rule-making, and budgetary authority in the state's highest court; and funding the entire judiciary from the state treasury. Essentially, court unification is a plan for organizing and administering state court systems. It is a hierarchical scheme; the state's supreme court is at the apex and directs the entire system below. It is very much akin to a military organization which utilizes chain-of-command relationships among its personnel. A unified system is thus very much unlike

[90] See Baar, *supra* note 86, p. 14.

[91] "Model Judiciary Article," *supra* note 17, at 141.

[92] "Model Judiciary Article and Comment Thereon," *supra* note 26, at 59–60.

[93] National Municipal League, *supra* note 28, p. 14.

[94] President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts*, *supra* note 30.

[95] National Conference on the Judiciary, *supra* note 20, p. 265.

[96] Committee for Economic Development, *supra* note 59, p. 21.

[97] National Advisory Commission on Criminal Justice Standards and Goals, *supra* note 9.

[98] American Bar Association, *supra* note 34, p. 97.

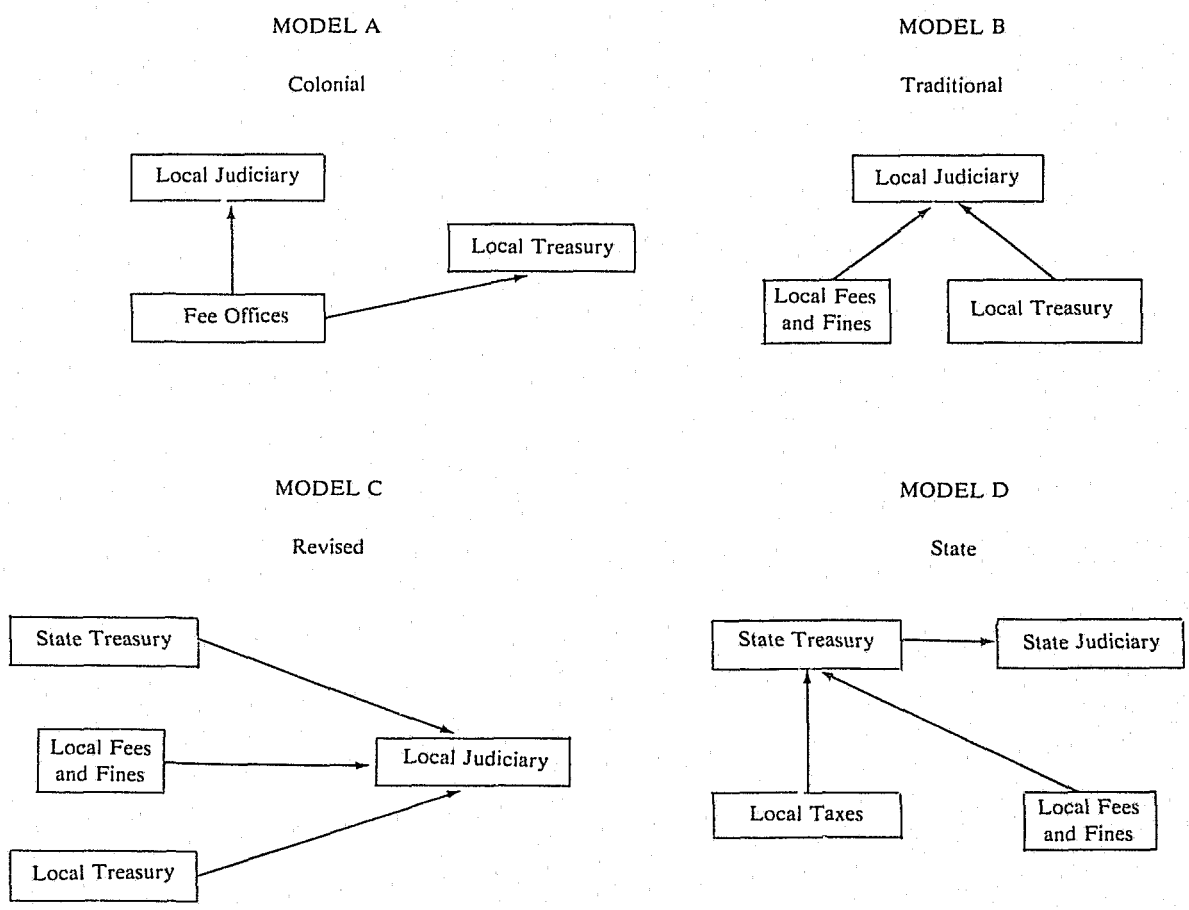
[99] Ashman and Parness, *supra* note 10, at 31; Gallas, *supra* note 12, at 35; and Gazell, *supra* note 11, at 660.

[100] Alaska, Connecticut, Hawaii, New Mexico, North Carolina, Rhode Island, and Vermont. See Baar, *supra* note 86, pp. 6–7.

[101] Arizona, California, Florida, Georgia, Mississippi, Michigan, Minnesota, Ohio, South Carolina, and Washington. *Ibid.*

TABLE 1-6

Models of Court Financing



the traditional judicial systems of this country which have been highly decentralized, and where local officials retain maximum control and autonomy.

At this juncture, however, an important caveat must be added. Despite the rigid nature of the concept, it must be remembered that the model is an abstraction, an "ideal type." In reality, field observations suggest that the so-called highly unified states do not rigidly adhere to the ideal. Indeed, rarely if ever does it appear that a chief justice or court administrator issues orders without first extensively consulting lower court personnel. It is clear that those at the apex have legal authority, but it is equally clear that they are extremely hesitant to exercise that authority unilaterally. Rather, in practice the system might be better viewed as one which is "mandatory consultative" and one in which personnel who were previously administratively independent of the system are now required to interact with all members of the judiciary. This fact is often ignored by critics of court unification.[102]

That court unification has become extremely popular is readily understandable. It offers a clear and simple solution to an extremely complex problem: how to manage "virtually unmanageable" courts.[103] Thus, the remedy of unification is one of reaction to a situation requiring immediate attention. The pattern is neither new nor novel. In parallel fields of administration, similar remedies have been proposed. For example, the solution to the highly decentralized, corrupt and unmanageable law enforcement agencies of the nineteenth century was to develop para-military organizations with strong cen-

[102] See Gallas, *supra* note 12.

[103] See Ernest Friesen, Edward Gallas and Nesta Gallas, *Managing the Courts* (New York: Bobbs-Merrill, 1971), p.v.

tral control. Similarly, in the field of education, local school boards were originally highly autonomous. Problems accompanying these "non-systems" gave rise to the placement of substantial authority in state boards.

In these two areas of administration, time and experience have contributed to further suggestions for reform. Generally, in both cases it is conceded that some degree of decentralization is required. As a consequence there has been a trend toward granting greater local autonomy to neighborhood police departments and local school boards. The cycle, centralization — decentralization — eclecticism, is very similar to the Hegelian dialectic: thesis, antithesis and synthesis. Whether the antithesis, court unification, is the "best" or even a "good" solution to the problem, or whether some sort of synthesis is required, is the subject of the next chapter.

CHAPTER II. ARGUMENTS SUPPORTING AND OPPOSING COURT UNIFICATION

Historically state judiciaries have been plagued with excessive fragmentation and dysfunctional autonomy. Courts were created to meet rising caseloads or to comply with public desires to have a "local" judge who would hold court conveniently at his home during evening hours. The number of courts increased so often that many states gave up in despair attempting to tabulate their number, type and location. Jurisdiction hopelessly overlapped among the courts causing cases to be aborted for technicalities. Judges possessed varying qualifications, some presiding over criminal trials with no legal training whatsoever. Each judge governed his fiefdom according to personal preference, with little regard to uniform rights of litigants. Politics and patronage characterized local justice. Indeed, "justice" had as many definitions and applications as the number of judges and number of litigants appearing before them. Moreover, court procedures varied extensively throughout the state. Lawyers were, for all practical purposes, confined almost exclusively to a limited geographic area.

Additionally, methods of financing varied. Many courts were required to be self-supporting, and in many instances were expected to support other areas of local government as well. As a result, laws were variously enforced depending, for example, on the residence of the offender and needs of the local political subdivision at the time. The most pervasive example is the use of speed traps to generate revenue, for example, to support local road construction. Laws were most commonly enforced when out-of-state drivers were in violation; additionally, the amount of fine levied was often dependent on the mood of the judge.

Because of the consequent loss of judicial credibility, scholars, academics and various national and state commissions throughout the past 70 years have advocated court unification as one method by which to ameliorate these problems. Because of its gradual evolution there has not been a clear understanding of its parameters. Thus opponents have assailed court unification as overly centralized and overly formalized without comprehending its practical effects. For this reason, the term "unification" now appears to have a number of negative connotations associated with it. In fact, to a certain extent, the term has become the red herring in judicial vocabulary. A more palatable and cogent term is offered: systematization.

Essentially court unification represents an attempt to *systematize* the judiciary, in other words, to provide it with a rational and coherent scheme in which to operate. Two principal objectives include reducing the organizational fragmentation which permeates traditional state judiciaries, and centralizing administrative decision-making responsibility at the state level in order to provide an acknowledged locus of authority. The underlying goal, once again, is to transform the "judiciary" into a judicial "system." Implicit in the concept of court unification is an attempt to minimize unchecked discretion in the management of courts in order to, in turn, minimize the presence of local politics in the judiciary.

Another principal objective of unification is to provide for flexibility and local adaptation of general statewide policies designed to systematize the judiciary. The trend prevalent in many states is toward the collective establishment of system-wide goals and policies, with local courts retaining discretion to adopt practicable implementing rules consistent with statewide guidelines, but simultaneously coexistent with local characteristics.

As such, it is really irrelevant whether a state adopts the collective definition of court unification. What is critical to consider is whether the objectives of a unified system can be met by a state's approach to systematizing the judiciary. For example, Allan Ashman and Jeffrey Parness suggest that simplification and rationalization are principal objectives of court consolidation. They contend that, "The key lies not in the number of courts handling cases, but in the state's *method* for handling cases brought before

its courts."[1] Similarly with respect to management, "the important aspects regarding supervision are that . . . it is occurring, . . . and [that] supervision is exercised primarily by members of the court system."[2]

The various approaches toward achieving systematization do not imply that one method is better than another. Indeed, countless demographic, geographic, political, cultural and historical variables must be recognized by each state in its attempt to proceed toward unification.

Therefore, the purpose of this chapter is to explore and analyze not only the hypothesized, but also the real, advantages and disadvantages of court unification. Additionally, the objective of this chapter is to synthesize the compelling arguments and to posit a variety of options available to achieve the goals of unification. The most compelling arguments are used to construct viable, eclectic alternatives for states contemplating unification. Because of the myriad differences in political environments, not only between states but among them, it is impossible to suggest exactly which options will be amenable to each jurisdiction. States must be flexible in their application of these measures, and must be willing to experiment beyond the suggestions discussed herein to devise a truly applicable system of unification.

A. Trial Court Consolidation

1. **Arguments supporting trial court consolidation.** A number of arguments have been advanced to support the concept of trial court consolidation. Generally they fall within five categories: flexibility in personnel resources; flexibility in the use of judicial facilities; procedural simplification including elimination of conflicting and overlapping jurisdiction; economy; and enhanced prestige.

a. *Flexibility in personnel resources.* Proponents of a consolidated trial court structure argue that such a system provides flexibility with respect to personnel. They claim, for example, that judges may hear cases without restriction as to subject matter, age or amount in controversy.[3] This allows judges to function as generalists, presiding over cases as exigencies dictate.[4] Moreover, it is argued, flexibility in the assignment of judges whenever possible facilitates matching judicial skills with cases which come before the court.[5]

Proponents also note the fact that although judges become generalists under a unified system, it does not preclude them from developing expertise in one particular area of the law. Often specialized divisions are created within the unified system, and judges may be assigned to these on a fairly permanent basis. As a result, proponents contend, the judiciary is able to take advantage of the expertise cultivated by specialists, and yet simultaneously retain the flexibility of assigning judges according to case demands.

Proponents argue that under a centralized system, judicial manpower can be maximized for two reasons: first, because judges may be assigned to any case according to need, and without jurisdictional conflicts; and second, because they have the capability through their experience as generalists to preside where needed. The benefit, argue proponents, is mitigating backlogs and, thus, enhancing efficiency.[6] Another asserted benefit is that flexibility in assignment promotes a more equitable division of workload.[7]

Similarly, it is argued that flexibility is provided in the realm of support personnel. Unlike a nonunified structure, all support personnel may be used interchangeably for any type of case.[8] At the same time, auxiliary personnel may become specialists

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[1] Allan Ashman and Jeffrey Parness, "The Concept of a Unified Court System," *DePaul Law Review*, 24 (Fall, 1974), 1, 30 (emphasis added).

[2] *Ibid.*, at 37.

[3] Governor's Select Committee on Judicial Needs, *Report on the State of the Massachusetts Courts* (1976) (Cox Commission), p. 14; David Minteer, "Trial Court Consolidation in California," *UCLA Law Review*, 21 (April, 1974), 1081, 1097; and Dorothy Nelson, "Should Los Angeles County Adopt a Single-Trial-Court Plan?," *Southern California Law Review*, 33 (Winter, 1960), 117, 125.

[4] Governor's Select Committee on Judicial Needs, *supra* note 3, p. 16; Allen Levinthal, "Minor Courts — Major Problems," *Journal of the American Judicature Society*, 48 (February, 1965), 188, 192; and J. Wesley McWilliams, "Court Integration and Unification in the Model Judicial Article," *Journal of the American Judicature Society*, 47 (June, 1963), 13, 17.

[5] Booz-Allen and Hamilton, Inc., *California Unified Trial Court Feasibility Study* (San Francisco, 1971), p. 60.

[6] Melvin Cohn, "Trial Court Reform — Past, Present and Future," *California State Bar Journal*, 49 (September-October, 1974), 444, 481, 482; James France, "Effective Minor Courts: Key to Court Modernization," *Tennessee Law Review*, 40 (Fall, 1972), 29, 31; John Freels, "Illinois Court Reform — A Two-Year Success Story," *Journal of the American Judicature Society*, 49 (April, 1966), 206, 209; Governor's Select Committee on Judicial Needs, *supra* note 3; Minteer, *supra* note 3, at 1089, 1099, 1102; and Kenneth O'Connell, "We Should Unify the Trial Courts in Oregon," *Oregon Law Review*, 51 (Summer, 1972), 641, 647.

[7] Booz-Allen and Hamilton, *supra* note 5; Governor's Select Committee on Judicial Needs, *supra* note 3, p. 15; and Minteer, *supra* note 3, at 1099, 1107, 1109.

[8] Governor's Select Committee on Judicial Needs, *supra* note 3.

and generalists in much the same manner as judges, depending upon the size and nature of the court.[9]

Consolidation also increases the number of multi-judge courts which in turn maximizes the advantages gained from flexibility.[10] Proponents assert that the advantages cited above can be maximized in these courts. For example, multi-judge courts provide substantial flexibility for judges whose case loads may be more evenly distributed. Similarly, these courts enhance flexibility in utilizing support personnel.

b. *Flexibility in use of facilities.* Proponents also argue that a consolidated system promotes a more efficient utilization of facilities. For example, courtrooms, deposition rooms, deliberation rooms and office space may be used by any judge and for any type of case, thus maximizing the use of available resources.[11] Further, it is argued, efficient use of available space may eliminate the need to construct new facilities.

The use of administrative facilities may also be coordinated and maximized. For example, clerks' offices and microfilms, and records storage space may be combined and consolidated into one system, thus, releasing space for other purposes.[12] Expensive equipment such as computers and electronic typewriters may be shared by larger numbers of personnel. The resulting economies, proponents claim, allow a greater variety of equipment to be purchased.

A final argument made on behalf of consolidation with respect to facilities is that newly constructed courthouses and related administrative facilities may be located at the most convenient site or sites, so that branch courts may be rationally located in the jurisdiction without regard to arbitrary political boundaries.[13]

c. *Procedural and administrative simplification.* One of the most commonly advanced arguments in support of trial court consolidation is that the establishment of a single general jurisdiction trial court allows for procedural simplification by eliminating overlapping and concurrent subject-matter jurisdiction.[14] If a court of limited jurisdiction is established, it is vested with exclusive jurisdiction.

Problems associated with overlapping and concurrent jurisdiction are legion. For example, simply choosing the appropriate court and filing the requisite forms is a confusing process. And if a case is dismissed for want of jurisdiction, the litigation process must begin anew. New forms must be filed by attorneys and processed by auxiliary court personnel. Additionally, scheduled use of courtroom space as well as attorney, litigant, and judicial time are wasted. It is also argued that by the time a case reaches trial, and then is dismissed for want of jurisdiction because of improper filing, litigants may be barred from undertaking further proceedings by statutes of limitation. Additionally, proponents assert, conflicts frequently arise over incongruous orders from judges in courts of concurrent jurisdiction.[15] However, proponents argue that under a unified system these problems are virtually eliminated. Cases are less likely to be dismissed because of procedural technicalities relating to questions of jurisdiction.[16] Conversely, abundant procedural and administrative efficiencies may be provided to all parties involved.[17]

A closely related procedural benefit advanced by proponents relates to appellate procedure. Under a nonunified system, appellate process is highly complicated. Appeals are heard throughout various lower trial courts, depending upon the court in which the action was initiated. This is a confusing and time consuming process for all parties involved. Proponents contend that under a unified system, these problems are eliminated and appellate procedure is greatly simplified.[18] There will be only one or two

[9] H. Ted Rubin, *The Courts: Fulcrum of the Justice System* (Pacific Palisades: Goodyear Publishing Co., 1976), p. 211.

[10] Minteer, *supra* note 3, at 1103.

[11] Booz-Allen and Hamilton, *supra* note 5; Geoff Gallas, "The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach," *Justice System Journal*, 2 (Spring, 1976), 35, 38; Governor's Select Committee on Judicial Needs, *supra* note 3; and Minteer, *supra* note 3, at 1090.

[12] O'Connell, *supra* note 6, at 645, 646.

[13] Minteer, *supra* note 3.

[14] Roscoe Pound, "Principles and Outline of a Modern Unified Court Organization," *Journal of the American Judicature Society*, 23 (April, 1940), 225, 231; and William Willoughby, *Principles of Judicial Administration* (Washington: The Brookings Institution, 1929), p. 259.

[15] Robert Hall, "Court Organization and Administration," *The Alabama Lawyer*, 28 (April, 1967), 148, 151; Levinthal, *supra* note 4, at 189; O'Connell, *supra* note 6, at 646; Lyle Truax, "Courts of Limited Jurisdiction are Passe," *Judicature*, 53 (March, 1970), 326; and Willoughby, *supra* note 14.

[16] William Brennan. "Efficient Organization and Effective Administration of Today's Courts . . . The Citizen's Responsibility," *Journal of the American Judicature Society*, 48 (December, 1964), 145, 149; Minteer, *supra* note 3, at 1111–12; and Traux, *supra* note 15, at 327.

[17] Booz-Allen and Hamilton, *supra* note 5; Los Angeles Municipal Court, "Resource Materials on Court Consolidation," October 18, 1973, pp. A–2, A–4; Minteer, *supra* note 3, 1103–04; and Willoughby, *supra* note 14, p. 258.

[18] Pound, *supra* note 14; and Willoughby, *supra* note 14, p. 258.

courts of first instance; therefore, nearly all appeals will be heard by a court which deals exclusively with appellate cases.

Another aspect of lower court consolidation which relates to administrative efficiencies involves the abolition of de novo procedures. Trial de novo is widely criticized by proponents of consolidation because it is costly and time consuming. In effect it allows two trials for petty cases.[19] Proponents contend that the process consumes excessive judicial and auxiliary personnel time and courtroom space and, thus, contributes to case backlogs. When de novo is abolished, it is argued, these inefficiencies are eliminated.

A final argument advanced by proponents relates to the administrative simplification derived from consolidated jury panels.[20] Under a unified system, it is argued, one panel may be called for the entire court of general jurisdiction. Those dismissed from one case are retained for possible participation in another. This also provides for tremendous economies with respect to use of auxiliary personnel in preparing jury lists, sending letters requiring juror appearance, and dealing with requested excusals.

d. *Economic benefits.* Proponents argue that numerous economic savings will result from trial court consolidation. In fact, most of the alleged advantages previously discussed are claimed to have economic implications as well.

For example, proponents argue that flexibility in the assignment of judges and auxiliary personnel allows for maximum use of their services, resulting in a greater output of resolved cases each year.[21] This provides economic savings to numerous elements in the civil and criminal justice system. Moreover, it is argued, functions and duties of judicial and auxiliary personnel may be consolidated in order to conserve time (and salaries) expended for repetitive and overlapping tasks.[22] By consolidating duties and responsibilities, it is hypothesized that certain positions may be eliminated entirely, thus providing substantial economic savings.[23]

Another area suggested by proponents wherein savings may be gained relates to the use of facilities and equipment. First, it is fiscally sound to maximize utilization of courtroom and office space, both in terms of time and physical layout. Additionally it is less expensive to maintain one large courthouse than to maintain several small, independent facilities.[24] Abundant savings are also gained from utilizing a single clerk's office and common library facilities for all judges.[25] Similarly, it is argued, economies can be gained from efficient use of equipment and clerical supplies. For example in Florida, over 16,000 individual court forms are utilized. The state court administrator's office has undertaken a study to ameliorate this situation.[26] Similarly in Alabama, it has been estimated that the 10,000 individual court forms could be reduced to 200–300 resulting in "sizeable savings."[27]

Countless economic benefits, proponents assert, can be gained by abolishing concurrent jurisdiction.[28] Improper filings are costly to litigants in particular who must pay for attorneys and filing fees.

Ancillary expenses are also incurred as a result of improper filings. For example, excessive administrative time is required to file the case; auxiliary personnel time, including court reporters, deputies and bailiffs is wasted; judicial time is required to review and dismiss the case; and courtroom space is unnecessarily monopolized.

Proponents contend that costs will be reduced when trial de novo is abolished. Finally, proponents contend that numerous costs may be conserved by consolidating jury panels. Not only do fewer letters need to be sent, thus indirectly saving support personnel salaries, but fewer citizens are required to appear within a given period, thus saving juror fees and reducing loss of gainful employment time.

e. *Enhanced prestige.* Proponents of trial court consolidation contend that the status and prestige of lower courts will be enhanced when all courts are absorbed into a single level general jurisdiction

[19] Levinthal, *supra* note 4, at 191; Truax, *supra* note 15; and Wesley Uhlman, "Justifying Justice Courts," *Judicature*, 52 (June-July, 1968), 22.

[20] O'Connell, *supra* note 6.

[21] Freels, *supra* note 6; and *ibid.*, at 646.

[22] Cohn, *supra* note 6, at 482; Governor's Select Committee on Judicial Needs, *supra* note 3, p. 15; Los Angeles Municipal Courts, *supra* note 17, p. A–2; Minteer, *supra* note 3, at 1088; O'Connell, *supra* note 6, at 641; and Pound, *supra* note 14.

[23] Cohn, *supra* note 6, at 482.

[24] Governor's Select Committee on Judicial Needs, *supra* note 3; O'Connell, *supra* note 6, at 645, 647.

[25] Booz-Allen and Hamilton, *supra* note 5; Los Angeles Municipal Court, *supra* note 17, p. A–4; and O'Connell, *supra* note 6.

[26] Susan Carbon, "Records Management: Obscure Components Requisite to Efficient Court Administration," in Larry Berkson, Steven Hays and Susan Carbon, *Managing the State Courts* (St. Paul: West Publishing Co., 1977), p. 329.

[27] C. C. Torbert, Jr., "State of the Judiciary Address," (an address presented to the Alabama State Bar, Birmingham, July 15, 1977).

[28] James Gazell, "Lower-Court Unification in the American States," *Arizona State Law Journal*, 1974 (1974), 653, 657.

court. Paul Nejelski, Deputy Assistant Attorney General, has noted that one problem of a nonunified system is that "lower courts are at the bottom of a rigid caste system."[29] He relates the perception of one distraught juvenile court judge who stated, "The lower courts are the latrine duty of the judiciary." As such they perceive themselves and their courts to be of a second-class stature.

Nejelski contends that status problems resulting from a hierarchical scheme, unfortunately, permeate the daily routines of lower court judges. He bemoans:

> In Connecticut, one main reason for the Court of Common Pleas merger with Superior Court was that the judges in misdemeanor cases could eat lunch at the same club as the judges who hear felony cases. The same problem is occurring with the bankruptcy judges and whether they should be Article III judges. In part this involves such basic questions as whether or not the bankruptcy judges get to use the same elevator as district court judges and other perquisites of office. That such status problems creep into the judiciary is understandable but regrettable.[30]

Nejelski suggests that at a minimum, lower court judges should receive "roughly equal pay and equal status" in order to ameliorate problems of hierarchy.[31]

Proponents contend that the establishment of a single court will eliminate the appellation "lower" or "inferior" from the judicial vocabulary. As a result, judges' self perceptions will improve because they will not be regarded as "inferior" court judges.[32] This in turn will facilitate judicial recruitment because highly qualified judges will not be forced to serve in courts labeled "inferior."[33] Moreover, consolidation often entails upgrading judicial qualifications. Frequently part-time and non-lawyer judges are excluded from the system. These higher qualifications will also help to elevate the level of prestige in the judges' and public's view.[34]

2. **Arguments opposing trial court consolidation.** Trial court consolidation is not a universally acclaimed judicial improvement. Critics offer three principal arguments against its adoption: the benefits of localism are diminished; it displaces personnel and is impracticable; and a consolidated system is more expensive.

a. *Diminished benefits of localism.* One of the principal arguments advanced by opponents of consolidation relates to the extent to which local courts are governed by the community. It is claimed that accountability is undermined in a unified system because each community no longer is represented by a resident judge.[35] The underlying purpose for such a system is to provide a judge who is a part of the community, who understands community-based needs, and who is sensitive to local customs. Under a unified system, opponents contend, judges serving these courts will no longer retain their autonomy. Moreover, they will be required to serve a jurisdiction encompassing more than one community and, thus, will lose their responsiveness to local needs. Local communities implicitly fear the loss of discretion and local favoritism which is undermined by unification.[36]

Another argument advanced by opponents relates to the proximity of judicial facilities to litigants.[37] While not considered to be a problem in cities, it is argued that rural facilities are likely to be consolidated and relocated, for example, in the county seat. As a result, litigants, witnesses and jurors must travel greater distances to reach the centralized courthouse and may incur temporal and economic losses.

b. *Displacement and impracticability.* Opponents contend that in the process of consolidating lower courts, a number of judicial and auxiliary personnel may be displaced. Lower court judges, in particular lay judges, may not be able to meet the higher qualifications established for judicial personnel under the new system. Additionally, they argue, the total number of judicial and auxiliary positions may be reduced, so that, regardless of qualifications, personnel employed under the non-

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[29] Paul Nejelski, "The Federal Rule in Minor Dispute Resolution," (an address presented to the National Conference on Minor Dispute Resolution, Columbia University School of Law, May 26, 1977).

[30] *Ibid.*

[31] *Ibid.*

[32] Jerry Beatty, *et al.*, *The Iowa Unified Court System* (Iowa City: University of Iowa, 1974), p. 10; Carl Bianchi, "Comprehensive Planning for State Court Systems," *Judicature*, 59 (August-September, 1975), 67, 70; and William Litke, "Courts of Limited and Special Jurisdiction," *The Alabama Lawyer*, 28 (April, 1967), 152, 155.

[33] Truax, *supra* note 15, at 327.

[34] Litke, *supra* note 32.

[35] Minteer, *supra* note 3, at 1093–94; and John Sherry, "The 1967 New York Constitutional Convention: An Opportunity for Further Court Structural and Jurisdictional Reform," *Syracuse Law Review*, 18 (Spring, 1967), 592, 598.

[36] Sherry, *supra* note 35, at 599.

[37] Minteer, *supra* note 3, at 1097–98.

unified system may be required to compete for the remaining positions.[38] Even if the unsuccessful candidates are given appointments in the new system, they are likely to be relegated to positions of lesser responsibility, thereby incurring a substantial loss in prestige, if not salary and benefits.

A number of arguments which are advanced against trial court consolidation relate to its suggested impracticability. For example, general jurisdiction judges often assert that there is a qualitative difference between limited and general jurisdiction judicial personnel, both in terms of experience and competence. It is argued, therefore, that it is "impractical" to elevate lower court judges to a general jurisdiction bench.[39]

Opponents also argue that if the "lesser" duties of inferior courts become the responsibility of superior court judges, it will be substantially more difficult to recruit and maintain qualified judges.[40] Indeed, such responsibilities are considered professionally and personally demeaning.[41] Opponents also argue on status and economic grounds that it is a ridiculous waste of money to pay highly competent judges to perform trivial tasks.[42]

Further, it is argued that if lower courts are consolidated, the opportunity to gain experience and attain greater competence will be lost. Opponents contend that lower courts can, and should, be utilized as a training ground or "career ladder" for higher positions.[43] This would provide novice judges with an opportunity to gain experience before assignment to cases involving matters of greater significance.

c. *Increased costs.* A frequently cited argument against trial court consolidation relates to expense.[44] Opponents contend that there are three major areas wherein expenses will be substantially increased in a unified system.

First, it is argued that there will be a variety of increased personnel costs if a consolidated system is adopted. For example, if one trial court of general jurisdiction is created to replace numerous specialized and limited jurisdiction courts, salaries of judicial personnel generally will be increased because of the higher qualifications required for all judges, and the requirement that they serve full-time. Additionally pension plans and other related benefits will have to be established and standardized for all judicial and auxiliary personnel.

Second, it is argued that judicial and administrative facilities will minimally have to be renovated to meet requirements of the new system, and new facilities may have to be constructed. Additionally, when all courts become courts of record, numerous costs are incurred, among them, acoustical renovation of the courtrooms to facilitate recording trials, as well as additional filing and storage space for court records and transcripts. Further, it is costly, proponents argue, to develop standardized forms and stationery for use throughout the state.

Third, it is argued that as jurisdictions increase in size, jurors and witnesses will be required to travel greater distances to the courthouse. As a result, the state will be required to pay additional expenses to cover mileage costs. Moreover, these people will be absent from their employment for longer periods of time causing indirect expenses to their employers.

3. **Analysis.** Two of the most compelling arguments in favor of trial court consolidation, and ones which are not addressed by opponents, relate to the enhanced flexibility and procedural simplification of the unified system.

Flexibility, both in terms of personnel and resources, is central to the advantages of a unified court structure. Judges and auxiliary personnel can be shifted as the exigencies require, and may conduct any type of case in any courtroom. Judges and staffs are no longer confined to exclusive geographic areas, and no longer are they restricted to limited subject-matter jurisdiction. A more equitable system is thus created whereby workloads may be equalized and litigants relieved of burdens caused by excessive court delays.

Procedural simplification provides rationality to the system. The cumbersome problems associated with systems that provide for overlapping and concurrent jurisdiction are virtually eliminated. Adoption of a single court of general jurisdiction not only provides abundant administrative and economic savings to all parties involved, but also provides for more simplified and expeditious litigation.

Another attractive argument advanced by proponents is that under a unified judiciary, fewer judicial

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[38] William Hart, "A Modern Plan for Wayne County Court Reorganization," *Michigan State Bar Journal*, 49 (December, 1970), 18, 20.

[39] Booz-Allen and Hamilton, *supra* note 5, p. 54. See also Minteer, *supra* note 3, at 1081, 1113, 1114–19.

[40] Minteer, *supra* note 3, at 1113, 1121–23.

[41] Booz-Allen and Hamilton, *supra* note 5, p. 55; and *Ibid.*, at 1124.

[42] Booz-Allen and Hamilton, *supra* note 5, p. 55.

[43] *Ibid.* See also Minteer, *supra* note 3, at 1113, 1119–21.

[44] William Burleigh, "Another Slant . . . Don't Consolidate the Trial Courts," *California State Bar Journal*, 50 (July-August, 1975), 266.

and auxiliary personnel will be required to operate the system. In Kentucky, for example, almost 1,200 lower court positions were reduced to approximately 125. But this is clearly atypical. More representative is the situation which occurred in South Dakota where 43 lower court positions were reduced by two to 41 after passage of the 1972 judicial article. In reality, most states provide for some form of grandfather provision to incorporate judicial personnel into the unified system. Those who would not otherwise be qualified are allowed to serve for various periods of time. Much the same applies to auxiliary personnel. Generally strong attempts are made to provide all employees with jobs, although at times their responsibilities may be altered somewhat.

Opponents' assertion that local communities should control the local judiciary is not compelling. First, "local" disputes are rarely confined exclusively to one community. Additionally, and perhaps more important, most citizens possess only meager information about the judges and courts they claim to "control."[45]

Opponents' claims that citizens will be burdened by being required to travel great distances also lacks substantial merit. They assume that new facilities will be constructed rather than existing ones renovated. In fact, new courthouses are expensive, and rarely are built. Furthermore, the on-site investigations indicated that where new facilities are being constructed, they are placed in essentially the same location, usually the county seat. They should also be reminded that no longer do we live in the horse-and-buggy days, when traveling throughout a county could reasonably be considered burdensome. Moreover, states can provide for circuit riding judges to further accommodate the public, as do Connecticut and Idaho.

Opponents' strongest claims appear to be in the area of cost. They note that salaries generally are increased and additional facilities often will be required. Witness and juror expenses will escalate because of increased travel. New computer, information, records and financial systems will add to the cost as will the personnel and facilities required to staff the state and regional court administrator's offices. While certain economies are possible, it is quite clear that overall expenses will rise.

But this is a characteristic found when new programs are developed, especially ones designed to deliver better service. And unification does set higher goals for courts than were previously operative. If states must improve their judiciaries, they cannot expect to do so without incurring additional expenses. They do not do so in any other area of public policy. For example, assume that the major state highway built ten years ago is in serious disrepair. It has been maintained through the years by repairing the chuck holes and shoulders. The materials originally utilized are now below standards. Further, the highway was designed to manage drastically less traffic than currently flows over its pavement. Accidents are numerous and traffic jams frequent. In general, service is poor and the problems have reached crisis proportions. Does the state expect to obtain a new highway without providing an increase in appropriations?

In this situation two alternatives are available. First, the state may opt for the nominal approach of continuing the piecemeal method of maintaining the road. This is the least expensive alternative on a short-term basis. However, it is also the least efficient, for the improvements are only superficial. Indeed, in the long-run, it will be increasingly more expensive to patch the patches.

The second option is to reconstruct the road. This latter approach involves stripping the highway and starting anew. Plans would contemplate a well-coordinated intrastate system designed to carry traffic as needed. The two-lane roads would be replaced by four or six lanes to meet current and future needs. Better quality materials would be used to insure durability and reduce accidents. In short, the emphasis would be placed on developing a quality system, providing modern-day service to all throughout the state. Again, would a state expect to obtain such a system without incurring additional expenses? Naturally the new system will require a greater capital outlay. But if competent, up-to-date service is desired, a financial commitment necessarily must be made. Similarly, if we wish to receive better judicial service, costs rise, but in turn we receive a modern, efficient judiciary capable of accommodating vastly increased societal needs of the future.

4. **Options.** In Chapter I, the collective definition of lower court consolidation was established. However, it was noted that the model is an "ideal" one; in reality, a consolidated system is not always arranged in the manner characterized by the definition. This is partly because numerous historical, political and environmental factors, unique in their combination in the various states, govern what is

[45] Minteer, *supra* note 3, at 1096.

practicable and effective.[46] Indeed, many of the arguments advanced in this chapter for and against consolidation are grounded in these same factors. For this reason, four options are offered as a means by which to progress toward the goals of a consolidated system. The options are designed to account for the most compelling arguments advanced by proponents and opponents of the measure.

The first option is fashioned after the Florida system. There, municipal, juvenile, county, JP, probate and small claims courts were consolidated into a unified two tier trial court system: the circuit court to handle cases of general jurisdiction, and the county court to handle cases of limited jurisdiction. Despite the fact that there is a clearly divisible court structure, and jurisdiction is exclusive, the system is highly flexible. With few exceptions, judges may be assigned interchangeably to either court as needed. In fact, one county judge has been presiding in the circuit court for the past eight months. The general weakness of this system is that the circuit judges rarely "go down" to the county court. Moreover, many of the rural county judges are underutilized. Indeed, it can be argued that Florida, for example, actually has too many judges because of the county court system.

The second option is exemplified by the one tier trial court structure, found in Idaho and South Dakota. These states provide specialized divisions within a single trial court. In 1969 Idaho consolidated probate, municipal and JP courts into a magistrate division of the district court. In 1972, the South Dakota electorate approved an amendment which eliminated all constitutional courts excepting the supreme court and circuit court. The amendment, however, provided that the legislature could establish limited jurisdiction courts. Accordingly, the legislature created a magistrate division of the circuit court.

The third option provides for the establishment of a single tier trial court, but allows for separate classes of judges. Kansas provides but one example. In 1976, the legislature abolished all courts of limited jurisdiction (with one exception), and transferred their jurisdiction to the district court. Simultaneously, three classes of judges were created to preside in the court: district court judges, associate district court judges, and district magistrate judges. While the first two classes can handle almost all cases, the magistrates are assigned primarily to cases of lesser magnitude.

A final option which may be utilized in adopting trial court consolidation is to upgrade lower courts generally, but to exclude one or two politically sensitive courts from the unified system. In Colorado, for example, the Denver probate, juvenile and superior courts are excluded from the two tier system for reasons which are analyzed in Chapter VIII. More recently, the Kansas legislature chose to exclude municipal courts from their "unified" structure.

In conclusion, the four options discussed above provide palatable and politically realistic alternatives to the collective definition of trial court consolidation. Each one has been adopted by a state that is considered highly unified. The incorporation of these options indicates that states can establish a consolidated system and yet remain responsive to local needs or political necessity.

B. Centralized Management

1. **Arguments supporting centralized management.** The utility of centralized management as a method by which to improve the state judiciary is widely contested. Proponents offer three principal arguments to support the measure: efficiency is maximized without jeopardizing effectiveness; intrajudicial and interbranch coordination and cooperation is enhanced; and uniformity and consistency are promoted.

a. *Efficiency*. The goal of centralized administration is not to create a highly rigidified, authoritarian structure, it is argued, but rather, to provide a rational system for managing state courts. While ultimate authority is grounded in one individual or body, the purpose is not to impose decisions and policies, but to obtain a locus of ultimate responsibility. As such, it is argued, one of the benefits which accrues from a centralized system is the elimination of indecisiveness and delay which are the inevitable result of a division of responsibility.[47]

[46] Paul Nejelski has most succinctly summarized this view. We need simplification of courts and procedures, but should not be caught up in the shibboleth of unthinking unification. There are differences between big and small cases, and they should be treated accordingly. And judges should be carefully selected as individuals for the different courts or specialized divisions. The judge who is appropriate to hear complex civil litigation may be inappropriate for small claims and vice versa. But the judges should not be treated any worse or better because of the court on which they sit. Nejelski, *supra* note 29.

[47] Bianchi, *supra* note 32; Carl Bianchi, "Effects of Progressive Court Administration on Legal Services and the Poor in New Jersey," *Judicature*, 55 (January-February, 1972), 227, 232; and Governor's Select Committee on Judicial Needs, *supra* note 3.

Proponents also argue that under a centralized system of management, judges may be assigned throughout the district or state in order to distribute efficiently and equitably judicial caseloads.[48] In effect, underoccupied judges are pressed into service to ameliorate delay and congestion in litigation.[49]

Another means by which a system of centralized management maximizes efficiency is with respect to support personnel. When courts are consolidated, the accompanying administrative offices and personnel can likewise be consolidated. Duplicative efforts which are rampant in a fragmented system are eliminated. For example, responsibilities of deputy court clerks may be consolidated so that one clerk may be assigned to an exclusive area of responsibility. At the same time, deputy clerks can be rotated among the areas of responsibility to maximize skills and overall competence.

b. *Intrajudicial and interbranch coordination and cooperation.* One of the most frequently cited arguments in support of centralized management is the idea that coordination is enhanced. With respect to the judicial branch, all administrative and judicial business is conducted within one system,[50] and participants are accountable to one body.[51] Conversely, a decentralized system or non-system of autonomous and independent courts and judges prevents effective management of judicial affairs.[52]

It is further argued that centralized administration facilitates the most efficient use of master calendars and judge pools, which in turn help to reduce conflicts in schedules between judges, litigants, and courtroom space.[53] Similarly, juror pools may be coordinated by encompassing a greater geographic area, and utilizing one central pool for a group of judges rather than a separate panel for each individual judge. A resulting by-product is a savings of time and money.[54]

Intrajudicial coordination is also enhanced, claim proponents, during the implementation of policy decisions.[55] Channels of communication are established so that managerial personnel have a clear understanding of their responsibilities.

Proponents contend that interbranch coordination and cooperation is facilitated through the creation of professional state court administrative offices.[56] They can serve as liaisons with the legislature. They can also provide continuous information and research assistance to inform the legislature in matters relating to the entire state judiciary. Proponents note that the absence of such a professional staff impairs effective interaction with the other branches of government. For example, it is argued that "law enforcement effectiveness has been deterred as courts are unable to administer their own internal affairs."[57] As Harry Subin has noted:

> The police department . . . is effected [sic] by the lack of resources at the court and by the consequent backlog of cases awaiting disposition there. Police officers are frequently forced to spend many hours simply waiting for their cases to be reached. Because delay is common, many cases require several appearances before disposition. The effect of this wasted time on police morale appears to be pronounced . . . the result is that many officers feel, and with some justification, that their efforts to apprehend offenders are futile.[58]

Ellis Pettigrew suggests that, "The effect of two sub-systems, one with a high degree of operational control — the police agency — and the other [the courts] with essentially little, if any, centralized administration is a definite dysfunctional intra-systems element."[59] He suggests that vesting a professional state court administrator's office with some degree of centralized control will ameliorate these interbranch conflicts.

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[48] Governor's Select Committee on Judicial Needs, *supra* note 3, p. 20; and Pound, *supra* note 14.

[49] Booz-Allen and Hamilton, *supra* note 5; Levinthal, *supra* note 4, at 189; and Willoughby, *supra* note 14, p. 258.

[50] O'Connell, *supra* note 6, at 645.

[51] *Ibid.*, at 641.

[52] Hall, *supra* note 15, at 150; Litke, *supra* note 32; and O'Connell, *supra* note 6.

[53] Levinthal, *supra* note 4; Minteer, *supra* note 3, at 1100; Pound, *supra* note 14; and Willoughby, *supra* note 14.

[54] Minteer, *supra* note 3, at 1089.

[55] Bianchi, "Effects of Progressive Court Administration on Legal Services and the Poor in New Jersey," *supra* note 47; Bianchi, *supra* note 32; Governor's Select Committee on Judicial Needs, *supra* note 3; O'Connell, *supra* note 6; and Willoughby, *supra* note 14.

[56] Booz-Allen and Hamilton, *supra* note 5; Joe Greenhill and John Odam, "Judicial Reform of Our Texas Courts — A Re-Examination of Three Important Aspects," *Baylor Law Review*, 23 (Spring, 1971), 204, 217.

[57] Ellis Pettigrew, "Court Administration Reform and Police Operational Effectiveness — A Critical Analysis," *Police*, 16 (February, 1972), 34, 36.

[58] Harry I. Subin, *Criminal Justice in a Metropolitan Court* (Washington: Government Printing Office, 1967), p. 117, quoted in *ibid.*, at 34.

[59] Pettigrew, *supra* note 57, at 35.

c. *Uniformity and consistency.* Proponents argue that under a centralized system of administration, clerical and administrative uniformity and consistency are promoted. For example, it is possible, advocates assert, to develop a statewide, uniform system for managing once disparate records and forms.[60] This simplifies litigation throughout the state by providing standardized forms that can be filed in any court. Additionally, it facilitates the development of a statewide classification scheme for filing cases. It is further noted that centralized administration promotes uniformity in the types and styles of files, cabinets and other clerically-related equipment. Finally, consolidating clerical operations allows for a system of central uniform purchasing to be established.[61]

Centralized administration, it is argued, also promotes uniformity and consistency in administrative operations. Because all courts are under centralized direction, the development of uniform sentencing, bail and fines schedules is encouraged in order to dispense uniform justice throughout the state.[62]

Proponents also advance the idea that a centralized system of administration promotes the development of a statewide judicial personnel plan. A personnel plan is considered desirable because it establishes standards relating to hiring, promotion, tenure and removal.[63] It also facilitates the development of a merit system for auxiliary personnel.[64] Several scholars have noted the potentially detrimental effects of local, rather than statewide, control over auxiliary personnel. Professor Geoffrey Hazard, for example, suggests that personnel standards cannot be developed if courts are staffed according to patronage rather than occupational proficiency.[65] Professor Steven Hays underscores this problem: "Local control over judicial personnel . . . inhibits the coordination and responsiveness of court systems to central control, in addition to providing a large reservoir of patronage positions for local political figures."[66]

d. *Miscellaneous arguments.* Proponents argue that a statewide system of administration, accompanied by professional administrators at the state and regional levels, relieves judges of myriad administrative responsibilities, including case flow management, supervision of auxiliary personnel, records management, statistics gathering, fiscal management and budget preparation. This allows judges to devote their energies toward their principal responsibility, and the one they are trained to assume, adjudication.[67] At the same time, the system allows the hiring of personnel who are interested in, and better prepared, to manage the courts than are legally-trained judicial personnel.[68] As a result, effectively managed courts attract better qualified judicial, managerial and auxiliary personnel.[69]

Proponents also suggest that statewide administration facilitates gathering uniform statistics from all courts.[70] This in turn facilitates both short term and long range planning to meet current and future needs of the judiciary.[71] Likewise, research projects may be undertaken to examine existing problems and suggest methods for improvement.[72] Professor Victor Flango, for example, suggests that professional court administrative offices can help obtain greater funds from state legislatures.[73] He notes:

> In the 25 states which had court administrators with fiscal duties, 16.6 percent of the criminal

[60] Booz-Allen and Hamilton, *supra* note 5; Governor's Select Committee on Judicial Needs, *supra* note 3, p. 19; Litke, *supra* note 32; Los Angeles Municipal Court, *supra* note 17, p. A–4; and Minteer, *supra* note 3, at 1089, 1103.

[61] Greenhill and Odam, *supra* note 56, at 215–18; and Hall, *supra* note 15.

[62] Minteer, *supra* note 3, at 1103–04; and O'Connell, *supra* note 6, at 646.

[63] Governor's Select Committee on Judicial Needs, *supra* note 3, p. 19; Hall, *supra* note 15; and O'Connell, *supra* note 6, at 648.

[64] Governor's Select Committee on Judicial Needs, *supra* note 3, p. 47.

[65] Geoffrey C. Hazard, Jr., Martin B. McNamara and Irwin F. Sentilles, III, "Court Finance and Unitary Budgeting," *Yale Law Journal*, 81 (June, 1972), 1286, 1297–98.

[66] Steven Hays, "Contemporary Trends in Court Unification," in Berkson, Hays and Carbon, *supra* note 26, p. 127.

[67] Steven Hays and Larry Berkson, "The New Managers — Court Administrators," in Berkson, Hays and Carbon, *supra* note 26, pp. 188–198; Bernadine Meyer, "Court Administration in Pennsylvania," *Duquesne Law Review*, 11 (Summer, 1973), 463, 467; O'Connell, *supra* note 6, at 648; and Joseph Tydings, "Courts of the Future," *St. Louis University Law Journal*, 13 (Summer, 1969), 601, 603.

[68] Hays and Berkson, *supra* note 67; and Meyer, *supra* note 67.

[69] Tydings, *supra* note 67, at 604.

[70] Greenhill and Odam, *supra* note 56, at 215–18; and Hall, *supra* note 15.

[71] Freels, *supra* note 6, at 211; Governor's Select Committee on Judicial Needs, *supra* note 3, pp. 14, 19; Los Angeles Municipal Court, *supra* note 17, p. A–2; O'Connell, *supra* note 6; and William Schwartz, "The Unification and Centralization of the Administration of Justice," *Judicature*, 51 (April, 1968), 337, 338–39.

[72] Greenhill and Odam, *supra* note 56.

[73] Victor Flango, "Court Administration and Judicial Modernization," *Public Administration Review*, 35 (November-December, 1975), 619–24.

justice budget was devoted to judicial activities as contrasted to 9.9 percent of the expenditures devoted to court operations by states which did not delegate financial responsibilities to the office of state court administrator. This clearly demonstrates that an Office of State Court Administrator with fiscal responsibilities can aid the judiciary in the competition for scarce criminal justice funds.[74]

Thus, he concludes, professional administrators "are successful financial representatives of the judiciary."[75]

Finally, through a state office of administration, training and refresher programs for both judges and auxiliary personnel may be developed. Programs can be developed to include instruction on matters of statewide and regional concern.[76]

2. **Arguments opposing centralized management.** Although centralized administration has been advocated almost uniformly throughout this century, it has recently been attacked critically. Opponents of a statewide system of administration pose three principal arguments against its adoption: a state judiciary is entirely too complex for one central administrative system; centralized administration fosters rigid bureaucratization; and centralized administration encroaches upon professional norms.

a. *Complex nature of the judiciary.* Opponents of centralized administration assert principally that local courts and local political subdivisions are heterogeneous bodies that can not, and should not be required to, conform to one statewide system. They argue that in the process of developing goals, policies and administrative procedures, the complexity and uniqueness of local sub-systems are disregarded.[77] Moreover, goals established at the apex of the judiciary may not be applicable to all lower courts.[78] The size and geographic dispersion or compactness of a jurisdiction, it is argued, dictate to a large extent the methods of administration. As such, it is not necessarily beneficial to have uniform procedures and administrative policies.[79]

Because local courts are unique and serve differing communities, and because centralized administration mandates a large degree of conformity, the goals of centralized administration, it is argued, do not comport with the variable needs of communities. A variety of innovative experiments which are necessary to arrive at solutions to individualized local problems, are discouraged under a centralized system.[80] Moreover, while there is a need for local flexibility in dealing with other organizations, such as law enforcement agencies,[81] only nominal local administrative discretion is ever contemplated under a highly centralized system.[82]

b. *Rigid bureaucratization.* Centralized administration has been characterized as a closed system approach to management, a system which has been rejected by other professional organizations including hospitals and public school systems.[83] Opponents argue that overcentralization, overformalization[84] and rigid management are encouraged by judges and court administrators at the expense of flexibility.[85] Yet, flexibility is needed to adjust to environmental differences, such as caseflow, and to resource dependencies, such as prosecution and defense agencies.[86]

The decision-making process under a highly centralized system, it is argued, is based on one's position in the bureaucratic hierarchy rather than on competence.[87] Power is emphasized rather than consensus and compromise.[88] This poses a related issue of whether it is efficacious to establish policy only at the apex of the system.[89] Opponents assert that the potential for support and compliance is reduced in the absence of widespread participation in this critical process.[90]

Frank Zolin, Executive Officer of the Los Angeles County Superior Court, suggests that a scheme of centralized administration in a highly populous state such as California would create a cumbersome and

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[74] *Ibid.*, at 622–23.

[75] *Ibid.*, at 623.

[76] Greenhill and Odam, *supra* note 56; and Meyer, *supra* note 67.

[77] Gallas, *supra* note 11, at 36; and Gazell, *supra* note 28, at 655.

[78] Gallas, *supra* note 11, at 44.

[79] *Ibid.*; and David Saari, "Modern Court Management: Trends in Court Organization Concepts — 1976," *Justice System Journal*, 2 (Spring, 1976), 19, 25.

[80] Rubin, *supra* note 9, p. 210.

[81] Gallas, *supra* note 11; and Saari, *supra* note 79, at 21.

[82] Gazell, *supra* note 28, at 658; and Saari, *supra* note 79, at 20–21.

[83] Gallas, *supra* note 11, at 37–38.

[84] Overformalization refers to the extent to which one's actions are standardized because of specialized rules and regulations which require compliance. For a more detailed discussion see Saari, *supra* note 79, at 21.

[85] Saari, *supra* note 79, at 19.

[86] Gallas, *supra* note 11, at 44; Rubin, *supra* note 9, p. 210; and Saari, *ibid.*, at 23, 25.

[87] Gallas, *supra* note 11; and Saari, *supra* note 79, at 20.

[88] Gallas, *supra* note 11, at 39.

[89] *Ibid.*; and Saari, *supra* note 79, at 25.

[90] Gazell, *supra* note 28, at 655.

needless superstructure. Moreover, he queries whether such a bureaucracy could meet the implicit goals of a unified system. He states:

> When you consider the size, number, and complexity of the trial courts in California, it is apparent that reorganization into a unified system will establish a new bureaucracy. A unified organization of thousands of employees physically decentralized in hundreds of work locations will create new, heretofore unknown problems of communication and coordination. Control and supervision of such a large, complex organization will be difficult.
>
> The trial courts in Los Angeles County alone represent a judicial organization larger than those found in 43 of the 50 states. To assume that unification of all trial courts of California into a single system will necessarily increase efficiency is fallacious.[91]

c. *Encroachments upon professional norms.* Opponents contend that as professionals, judges are more effective when they function autonomously in both their administrative and judicial business.[92] For this reason, it is claimed, judges resist centralized administration.[93] Opponents argue that the supreme court attempts to regulate local management through two methods: by appointing presiding judges; or by appointing trial court administrators.

It is claimed that judges resent having chief or presiding judges appointed by the supreme court because the process upsets their professional peer group arrangement.[94] As professionals, judges prefer to collectively select the chief judge of their region. Their administrative discretion is undermined when the supreme court assumes this responsibility.

It is also argued that judges resent the imposition of trial court administrators. It is claimed that judges enjoy exercising administrative discretion. But when trial administrators are introduced, many of their administrative responsibilities and much of their discretion is usurped.[95]

Thus in both situations described above, it is argued that little cooperation will ensue between the judges and the managerial officials imposed by the supreme court. As a result, in the state's attempt to achieve accountability, local management may be undermined.

d. *Miscellaneous arguments.* There are a variety of other arguments against adopting centralized administration. First, it is argued that a statewide uniform personnel system is impractical to establish. This is because the nature of the employees' work is dependent upon: the amount of business handled by the court; size of the jurisdiction; number of staff members (judicial, managerial and auxiliary personnel) in the office; the particular organization of workflow; and the individuals' abilities.[96] Thus opponents argue it is unwise to devise a single system applicable to every employee.

Second, it is argued, if a statewide personnel system is instituted, commitment of lower employees to the goals of the system will vanish.[97] Moreover, the system will tend to place greater emphasis on efficiency than on generating favorable employee attitudes.[98] Opponents claim that this will lead to a high rate of employee turnover which naturally works to the detriment of the judiciary.

Third, opponents argue that centralized administration is an expensive innovation. The cost of establishing a statewide personnel system with uniform salary schedules and benefits is but one example. Opponents also contend that funding trial court administrators is expensive.

Finally, it has been argued that no empirical tests have been undertaken to determine whether a highly centralized administration is more effective than a decentralized system in securing the implicit goals of efficiency and justice.[99] Opponents contend that great expense is involved in establishing a new bureaucracy and that the status quo is greatly disrupted; they question the efficacy of adopting centralized administration when no concrete benefits have been established.

3. **Analysis.** One of the strongest arguments in support of a unified system of administration is that efficiency is enhanced, yet without compromising the countervailing purpose of dispensing justice equitably. Proponents argue that centralized administration facilitates a more reasonable and flexible distribution of labor, and at the same time prevents the repetition of judicial and auxiliary responsibilities which characterizes a nonunified system.

[91] Quoted in Carl Baar, *Separate But Subservient: Court Budgeting in the American States* (Lexington: D. C. Heath and Co., 1975), p. 138.

[92] Gallas, *supra* note 11, at 41.

[93] *Ibid.*, at 42; and Saari, *supra* note 79, at 22–23.

[94] Gallas, *supra* note 11, at 42, 44; and Saari, *supra* note 79, at 22.

[95] Hays, *supra* note 66.

[96] Hazard, *et al.*, *supra* note 65, at 1299.

[97] Rubin, *supra* note 9, p. 210.

[98] Saari, *supra* note 79, at 20.

[99] Gallas, *supra* note 11, at 39.

Opponents, on the other hand, argue that efficiency will not be achieved because of unanticipated consequences of centralization. They argue that efficiency can not be achieved, for example, without a detrimental impact on employee attitude. Opponents intimate at times that allowing for flexibility in employee responsibilities should take priority over the pursuit of efficiency.

Another compelling argument of proponents relates to the coordination of the entire judicary which is (or can be) provided by the highest court, usually with the assistance of a state judicial administrator. Coordination among judges, jurors, auxiliary personnel and courtroom space is particularly enhanced. The strength of this argument is suggested by the fact that opponents rarely address it.

The argument that centralized management provides for a locus of authority is equally attractive. The extent and thrust of hierarchical direction actually utilized by the supreme court can be minimized by allowing decentralized decision-making. Thus the advantages of having an established and acknowledged locus of responsibility are realized, while at the same time, problems associated with rigid hierarchies are mollified. Thus, unlike a decentralized system, responsibility for experimenting with innovations and managing the entire system is delineated.

Another compelling argument offered by proponents is that a centralized system will promote uniformity in clerical operations. In a system of autonomous courts, all forms, files, stationery, filing procedures and the like are disparate from one jurisdiction to the next. Uniformity in this regard provides rationalization, simplification in litigation, and fiscal economies without infringing on any local discretion.

Perhaps the strongest argument in favor of centralized administration is its capacity for research, planning and experimentation. Opponents argue that local experimentation will be hampered if there is strong control from the top of the hierarchy.

The opponents' argument that centralized management will result in highly rigidified rules, policies and procedures is not persuasive. In practice, lower court personnel are not excluded from participating in the policy-making process. Indeed, in actuality this circumstance is rarely even contemplated by proponents of centralized administration.

The arguments by opponents that professional norms may be violated in a centralized system are much stronger. Judges clearly subscribe to the philosophy of judicial independence in the adjudication process. This attitude also permeates their thinking about administration. Nonetheless, in making use of a decentralized style of management, the supreme court and state court administrator's office can ameliorate most of the difficulties which may arise in the system. For example, decentralized recruitment systems may be established with only slight monitoring by the supreme court.

One of the most compelling arguments suggested by opponents is the fact that no empirical evidence exists suggesting that centralized administration is preferable. At least one scholar has noted, "You can't say that . . . the administration of justice is any better or worse . . . [in Georgia, a nonunified state, and Colorado, a highly unified state]. That would take measuring what actually happens in the courts. Measuring the output of justice . . . [N]obody has gotten around to doing that yet."[100]

Simply because there is no empirical evidence to "prove" that a unified system is better than a nonunified one should not prevent states from experimenting with the innovation. Indeed, it would appear unreasonable to delay reform when there is also no evidence to suggest that unification is not preferable, especially if the judiciary is in serious difficulty. Such situations may be likened to a ship sinking in the middle of the ocean. If a majority of the crew, including its wisest and most experienced members, believe that the bilge pumps are located in the bow, the captain would be foolish to order them to the aft.

4. **Options.** As was noted earlier in the section on trial court consolidation, a collective definition of each element was established in Chapter I. Yet the definition established for centralized administration was that of an "ideal" model. The options presented herein deviate somewhat from this ideal. They generally give greater recognition to the advantages of decentralized, local decision-making. All are in keeping with goals implicit in unification.

One of the principal options available to those who desire a system of centralized administration is to develop the concept of "participatory management." Participatory management and policy development can be effectuated in a variety of ways. For example, a judicial council may be created, consisting of judges representing all courts in the

[100] Russell Wheeler, remarks delivered at the panel entitled "Court Administration: National Applications of the Georgia Experience," American Society for Public Administration, Atlanta, Georgia, April 2, 1977.

state.[101] The council may be granted advisory power. Participatory management can also be effectuated through an advisory board of judges which may be convened when necessary to consider and evaluate new programs and policies. Another alternative is to establish an informal system of consultation with all judges. Regional and statewide meetings might be held in which all judges and managerial personnel are consulted about the development of new rules. In this manner, every member of the professional judiciary would have an opportunity to participate in the policy-making process.

The system of participatory management which exists in Colorado is acclaimed and recommended by others outside the state. Although on paper the Colorado judiciary is highly centralized, the emphasis is clearly on practical decentralization. Harry O. Lawson describes this system.

> The Colorado Supreme Court has been concerned with the dangers of overcentralization and resultant local impediments to the successful operation of the system, while at the same time recognizing the Court's constitutional administrative responsibilities. Accordingly, . . . [e]ach chief judge, who is appointed by the chief justice, is delegated the administrative responsibility for his district in line with fiscal, personnel and other administrative procedures established by the Supreme Court. The position of judicial district administrator has been created in most of the districts to provide the chief judge with competent administrative assistance.[102]

The Colorado Supreme Court has thus adopted the philosophy that, "administration of the trial courts should be decentralized as much as possible on the ground that overcentralization tends to reduce the interest and cooperation of the lower courts and their desire to participate in the operation and improvement of the court system."[103]

A second option available to those who desire a system of centralized administration is to adopt a scheme consisting principally of lower court management, and secondarily, of hierarchical management. Kansas provides an excellent example. In that state the supreme court, the state judicial administrator and the judicial council (which represents all levels of courts) collectively establish general policies for the state judiciary. Specific implementation of these policies is the responsibility of district-level officials. Local courts are required to adopt district-level plans consistent with the general guidelines and policies established earlier. At the same time, however, district-level plans are designed to meet individual geographic and demographic variations. These plans must be submitted to the supreme court and judicial administrator for approval.

Numerous advantages are provided by this system of management. First, it allows for extensive and individualized local participation. Second, it encourages innovation and experimentation. Local courts may then relate advantages or problems with a particular approach to the state judicial administrator's office, which then functions as a clearinghouse for the entire judiciary. As a result, local courts may capitalize on the experimentation of other courts in the state. Third, plans are designed to meet local needs and conditions; local courts are not required to adopt a singular statewide plan which may be inapplicable to the local environment. Fourth, the criticisms associated with extensive hierarchical management and overcentralization are avoided.

A third option available to those who desire a system of centralized administration relates to the establishment of a judicial personnel system. Two approaches appear reasonable. First, a merit personnel system may be established on a local level to account for individual characteristics and needs of the jurisdiction. Duties, qualifications and compensation could be established locally, but applied uniformly throughout the jurisdiction. This would allow for substantial flexibility, but still avoid some of the evils associated with political patronage. Such an approach typifies auxiliary personnel selection in Kansas. On the other hand, this approach may lead to disparity throughout the state in terms of salary and benefits provided for personnel with similar responsibilities.

The second approach is to develop a statewide judicial personnel plan. Clerks might be provided with appointment powers, although each appointment, including position and compensation, would require approval of the state administrative office or fit within its standards.

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[101] Rubin, *supra* note 9. For information on judicial councils see Russell Wheeler and Donald Jackson, "Judicial Councils and Policy Planning: Continuous Study and Discontinuous Institutions, *Justice System Journal*, 2 (Winter, 1976), 121–40.

[102] Letter from Harry O. Lawson to the Administrative Assistant to the Chief Justice of the Supreme Court of Oregon, November 9, 1970, quoted in O'Connell, *supra* note 6, at 648.

[103] O'Connell, *supra* note 6, at 648.

A fourth option available to those who desire a system of centralized administration relates to the selection of lower court managerial personnel. Rather than require that state authorities be exclusively responsible for the recruitment process, it is suggested that lower court personnel be given a role as well.

For example, it is suggested that chief or presiding judges might be selected jointly by state and local level officials.[104] This approach contemplates that the supreme court would establish general criteria for the position, but final selection would be determined by a two-thirds approval of the local judges.[105] As a result, administrative experience would supersede seniority as a criterion for selecting a chief judge.[106]

It is also suggested that a similar process be developed for selecting trial court administrators.[107] The supreme court once again would establish general qualifications for the position. Candidates would submit applications to the state judicial administrator for screening, after which a list of qualified applicants would be submitted to the relevant judges. At this point, either of two alternatives would be followed. The trial administrator either would be chosen by a majority of the judges with the chief judge retaining veto power,[108] or the converse approach: the chief judge would select the candidate initially, but with veto power retained by a majority of the judges.

As with trial court consolidation, a number of alternatives to achieving the goals of centralized management are available. Many have been adopted by states that are considered highly unified. Implicit in the options suggested above is the idea that a coordinated system must be developed, but that individual differences within the state, including political, demographic and geographic factors, must be taken into account to provide a truly effective system.

[104] Larry Berkson and Steven Hays, "Applying Organization and Management Theory to the Selection of Lower Court Personnel," *Criminal Justice Review*, forthcoming.

[105] Robert Doss, remarks delivered at the panel entitled "Court Administration: National Applications of the Georgia Experience," *supra* note 100.

[106] Robert Hall, remarks delivered at the panel entitled "Court Administration: National Applications of the Georgia Experience," *supra* note 100.

[107] Berkson and Hays, *supra* note 104.

[108] This approach is generally suggested by Rubin, *supra* note 9.

C. Centralized Rule-Making Authority in the Supreme Court

1. **Arguments supporting supreme court rule-making authority.** A multitude of arguments are asserted in support of vesting rule-making authority in the state's highest court. The arguments may be grouped into three major areas: the concept of judicial primacy in matters relating to the judiciary; the supreme court as the preferred rule-making body; and problems associated with legislative development of rules.

a. *Concept of judicial primacy.* Proponents of placing the rule-making authority in the supreme court rely initially on the Federalist Papers to support their contention that the judicial branch is independent and that it, therefore, should exercise primary governance over its own affairs. In Federalist No. 78, Hamilton wrote that, "The complete independence of the courts of justice is peculiarly essential in a limited constitution."[109] This philosophy has been construed by proponents as applicable to state courts.

Hamilton's admonition is based on the separation of powers doctrine. Proponents claim that the doctrine vests the courts with primary responsibility for regulating and monitoring their internal affairs. If courts are required to defer to the legislature, it is argued, they will be perceived as a legislative arm rather than an independent judicial branch of government.[110]

The separation of powers doctrine is considered the theoretical basis for another concept used to support the notion of judicial primacy, that of inherent powers.[111] This doctrine suggests that all judicial power is ultimately constitutional.[112] Basic to this doctrine is the notion that courts have the inherent responsibility of undertaking all reasonable steps to effect the efficient and equitable administration of justice.[113]

[109] Jack Weinstein, "Reform of Federal Court Rule-Making Procedures," *Columbia Law Review*, 76 (October, 1976), 905,914.

[110] Richard Kay, "The Rule-Making Authority and Separation of Powers in Connecticut," *Connecticut Law Review*, 8 (Fall, 1975), 1, 4.

[111] Jerome Berg, "Assumption of Administrative Responsibility by the Judiciary: Rx for Reform," *Suffolk University Law Review*, 6 (Summer, 1972), 796, 808.

[112] Frank Gibbes, "The Judiciary and the Rule-Making Power," *South Carolina Law Review*, 23 (Spring, 1971), 377, 381.

[113] Robert Hall, "Judicial Rule-Making is Alive but Ailing," *American Bar Association Journal*, 55 (July, 1969), 637. See also Berg, *supra* note 111; "Courts — Rule-Making Power — CPLR 3216 Held Unconstitutional as an Interference With the Inherent Power of the Court," *New York University Law Review*, 43 (October, 1968), 776, 785; and Gibbes, *ibid.*, at 386–87.

Proponents of placing rule-making authority in the supreme court argue that a specific constitutional statement providing the court with this power will prevent the legislature from interfering with the court's inherent responsibility. Moreover, consistent with the separation of powers doctrine, it precludes any legislative scrutiny over court-made rules.[114]

b. *Supreme court as the preferred rule-making body*. Proponents of placing the rule-making authority in the supreme court contend that it makes more sense to locate this authority in the court than in the legislature. For example, proponents argue that justices, rather than legislators, are the ones basically interested in improving the judiciary.[115] It is suggested that judges are more receptive and responsive to the needs for change than legislators.[116] Also, they are more inclined to review the rules and their impact periodically to determine if the needs are being met.[117]

Another reason why courts are considered by proponents as the preferred rule-making body is grounded in management theory. This literature suggests that the objectives and goals of an organization can not be achieved if its operations are controlled by members outside that organization. Analogized to the judiciary, proponents argue that priorities should be established by members of the judicial branch (in particular, members of the supreme court), not by those external to it such as legislative bodies.[118] Moreover, proponents claim that other governmental agencies are given authority to govern themselves; therefore, courts should likewise be vested with this power.[119] A final reason why courts should govern their own affairs, it is argued, is that the public tends to hold judges responsible for the proper functioning of the judiciary.[120] If judges are going to be held accountable, it is reasoned, they should be vested with authority which will allow them to perform their required tasks.

It is also argued by proponents that justices have a greater capacity to effect improvements than legislators. Two reasons are offered to support this argument. First, it is suggested that legal expertise is essential to developing a coherent body of administrative and procedural rules.[121] Thus, only those with legal training (i.e., judges) are equipped to carry out this task. Second, proponents contend that judges are most familiar with their own operations and needs.[122]

Proponents also claim that rules promulgated by a court are more flexible than statutes enacted by a legislature.[123] For example, rules can be addressed to specific needs of the judiciary and can be phrased in precise terms, unlike statutes which often are criticized for their ambiguity.[124] Additionally, rules can be promulgated at any time and with greater expediency.[125] Similarly, the process of amending rules to meet changing demands is claimed to be far less cumbersome than amending statutes.[126] Proponents contend that the capacity to maintain flexibility lies in small, discrete changes that are more readily effectuated by court rule, and generally do not tend to fare well in legislatures.[127]

A final reason offered by proponents, who suggest that the supreme court is the preferred rule-making body, is pragmatic in nature. The idea is perhaps best summarized in the following statement by E. Freeman Leverett of the Georgia Bar: "Experience . . . show[s] that the rule-making power is effective in practice only where favored by the highest state court, for unsympathetic interpretation can ruin any good law."[128] In other words, externally imposed rules are less likely to be effectively implemented than those drafted from within.

c. *Problems associated with legislative development of rules*. A vast number of arguments are offered against placing rule-making authority in leg-

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[114] Kay, *supra* note 110, at 28.

[115] *Ibid.*, at 34.

[116] Charles Joiner and Oscar Miller, "Rules of Practice and Procedure: A Study of Judicial Rule-Making," *Michigan Law Review*, 55 (March, 1957), 623, 643.

[117] Note, "Substance and Procedure: The Scope of Judicial Rule-Making Authority in Ohio," *Ohio State Law Journal*, 37 (1976), 364, 383.

[118] Berg, *supra* note 111, at 804–05.

[119] E. Freeman Leverett, "Georgia and the Rule-Making Power," *Georgia Bar Journal*, 23 (August, 1960), 303, 307.

[120] Howell T. Heflin, "Rule-Making Power," *Alabama Lawyer*, 34 (July, 1973), 263, 267; Joiner and Miller, *supra* note 116; and Note, *supra* note 117.

[121] Leverett, *supra* note 119, at 306; and McWilliams, *supra* note 4.

[122] Note, *supra* note 117.

[123] "Courts," *supra* note 113, at 776; and *ibid.*

[124] American Bar Association, *The Improvement of the Administration of Justice* (5th ed.) (Chicago: American Bar Association, 1971), p. 71; Brennan, *supra* note 16, at 148; and Leverett, *supra* note 119, at 306.

[125] McWilliams, *supra* note 4.

[126] Hall, *supra* note 113; Leverett, *supra* note 119, at 306; and Note, *supra* note 117.

[127] A. Leo Levin and Anthony G. Amsterdam, "Legislative Control Over Judicial Rule-Making: A Problem in Constitutional Revision," *University of Pennsylvania Law Review*, 107 (November, 1958), 1, 11.

[128] Leverett, *supra* note 119.

islatures. First, legislators are widely criticized for their lack of expertise in this arena.[129] They are characterized as amateurs who lack familiarity with judicial operations, problems and potential solutions.[130]

Because of this dearth of expertise, the statutes which legislators tend to adopt are criticized for their ambiguity, rigidity and inelasticity.[131] This in turn fosters unnecessary litigation based on technicalities, because such statutes are difficult to interpret.[132] Additionally, overly-rigid statutes are impractical because of the individualized nature of local court operations.

Legislators are also deemed inappropriate to develop rules for the judiciary because of their partisan nature.[133] It is argued that legislators are often motivated by a variety of irrelevant political considerations when drafting rules.[134] Consequently, they are likely to produce rules, it is claimed, that are the inevitable result of political compromise and therefore do not satisfy the needs of the judiciary.[135]

Proponents also argue that legislatures are too slow to respond to immediate and pressing needs of the judiciary. First, they note, legislatures in many states do not meet continuously.[136] In Kentucky, for example, the legislature is convened for only 60 days (which includes holidays and weekends) every two years. Second, it is argued, even when legislatures are in session, they can provide only intermittent attention to the courts because of the presence of countless other problems.[137] And third, legislatures are criticized for the habitually slow pace with which measures are enacted.[138]

Because of the infrequent attention that is provided to the courts in the legislature,[139] necessary changes are often long delayed. As a result, it is difficult to maintain currency of statutes to meet existing and future needs. Moreover, proponents claim, legislation is accomplished on a patchwork, piecemeal basis which ultimately results in an "incongruous hodge-podge" of statutes.[140]

Proponents also argue that long-range planning for the judiciary is impeded when legislatures exercise principal control over rule-making. They note, for example, that the membership of legislatures changes constantly. As a result, legislatures cannot thoroughly comprehend the history and purpose of a rule, nor can they spend any great time evaluating its impact in relation to current and future needs of the judiciary.[141] Additionally, when adopting statutes, proponents argue that consideration is rarely given to the entire code or how the new statutes will coincide with existing ones. They point to the Field Code of Civil Procedure to suggest what actually happens in practice. When it was adopted in 1848, 391 distinct sections were provided. By 1915, the number of sections had mushroomed to well over 3,000.[142] Thus, it is argued when legislatures are vested with authority to govern the judiciary, they will create a tangled and esoteric system which ultimately serves as an obstacle to the efficient and equitable administration of justice.[143]

2. **Arguments opposing supreme court rule-making authority.** Four principal arguments are made against vesting the supreme court with exclusive rule-making authority: a lack of safeguards exists; rule-making is a legislative function; the supreme court is an inappropriate body to promulgate rules; and the parameters of proper judicial rule-making are difficult to define.

a. *Lack of safeguards.* Opponents of vesting rule-making authority exclusively in the supreme court argue that it conflicts with the concept of checks and balances.[144] Opponents note that when the founding fathers adopted the doctrine of separation of powers, they simultaneously adopted an overriding philosophy that no branch of government should go unchecked. Indeed, as Professor Richard Kay of the University of Connecticut School of Law suggests, "It is in the protection against uncircumscribed power in any department of government that the real value of the separation of powers lies."[145]

Opponents note that the system of checks and balances applies not only to the federal government,

[129] Joiner and Miller, *supra* note 116.

[130] Berg, *supra* note 111, at 805; and Levin and Amsterdam, *supra* note 127, at 10.

[131] Joiner and Miller, *supra* note 116, at 642; and Note, *supra* note 117.

[132] American Bar Association, *supra* note 124; Joiner and Miller, *supra* note 116, and Leverett, *supra* note 119, at 306.

[133] Kay, *supra* note 110, at 34.

[134] Note, *supra* note 117; and Levin and Amsterdam, *supra* note 127, at 10.

[135] American Bar Association, *supra* note 124.

[136] Joiner and Miller, *supra* note 116, at 623.

[137] American Bar Association, *supra* note 124; McWilliams, *supra* note 4; and Sherry, *supra* note 35, at 599.

[138] Levin and Amsterdam, *supra* note 127, at 10.

[139] American Bar Association, *supra* note 124; and Leverett, *supra* note 119, at 306.

[140] Leverett, *supra* note 119, at 306.

[141] Berg, *supra* note 111, at 813.

[142] Leverett, *supra* note 119, at 306.

[143] Kay, *supra* note 110, at 34.

[144] *Ibid.*, at 4.

[145] *Ibid.*, at 41.

but to state governments as well. Specifically, opponents suggest that numerous safeguards are provided in the legislative process.[146] Legislators are subject to periodic public re-election; potential legislation must be approved by an executive, who also is subject to public removal; and statutes are subject to judicial review for constitutionality.

Yet no equivalent safeguards are provided when the court is charged exclusively with rule-making authority. Judicially-promulgated rules are not subject to scrutiny by the executive or legislative branches. Second, judges are deliberately insulated from politics. Only rarely are they subjected to public review (either through retention, election or disciplinary proceedings), and even when such activities occur, few are removed from office. Third, there is no direct public access to the judicial process of drafting rules as there is with statutory drafting.[147] As such, opponents contend that legitimacy is undermined. As Professor Kay suggests,

> The immunity from political interests of which judicial rule-making advocates boast may also insulate judges from legitimate public dissatisfaction with the procedural aspects of the judicial system.[148]

b. *Rule-Making is a legislative function.* Opponents suggest that not only does judicial rule-making violate constitutional notions, but that rule-making itself is actually a legislative function. Historical precedent is offered in support of this belief. In *Wayman v. Southard,*[149] Chief Justice Marshall asserted that rule-making is properly viewed as a legislative function, although it may be delegated in part to the courts.[150] Opponents also argue that the historical Anglo-American experience fails to demonstrate a compelling need for courts to exercise unfettered control over this power.[151] More recently, opponents note, the federal government has recognized that rule-making is essentially a legislative responsibility, although Congress in reality has delegated substantial responsibility to the judiciary.[152] Nonetheless, Congress retains ultimate control.

Rule-making authority which is delegated by Congress or state legislatures to the courts is almost uniformly classified as administrative or procedural, not substantive. Nonetheless, procedural rule-making is considered by many opponents to be "lawmaking of the most serious and significant kind."[153] Opponents contend that it rarely has been the sole prerogative of the courts.[154] It follows that legislatures should be responsible for enacting the rules and the judiciary should maintain its primary function, adjudication.[155]

c. *Supreme court as an inappropriate body.* Opponents contend that the supreme court is an inappropriate body to promulgate rules relating to an entire state judiciary. They argue that supreme courts are basically conservative institutions and are unwilling to assume new responsibilities.[156] Opponents also suggest that justices are steeped in a status quo mentality. Some contend that by the time judges reach the highest bench, they are so old that "all change seems abhorrent."[157]

Opponents also assert that courts lack accountability and credibility in promulgating rules. They contend, for example, that supreme court justices are too removed from actual practice to be concerned with the bar's problems.[158] It is also claimed that lawyers and litigants who are dissatisfied with a rule have no disinterested forum in which to assert their objection.[159] Additionally, it is argued that dispassionate decision-making is unlikely when a case arises based on an apparent conflict between a court-made rule, and the constitution or a statute.[160] It is also claimed that judges will be reluctant to criticize rules if they are promulgated by a higher court.

Opponents also claim that courts lack the capacity to draft cogent rules. First, it is argued that supreme court justices are too far removed from lower court trial proceedings to be fully informed of the ramifications of their problems.[161] Second, it has been suggested that justices are incapable of perceiving differences among lower courts which necessitate flexibility in the rules which are promulgated. And third, it is argued that supreme courts lack the political power and administrative cohesion which are necessary to create, implement and evaluate

[146] *Ibid.*
[147] Weinstein, *supra* note 109, at 934.
[148] Kay, *supra* note 110, at 36.
[149] 23 US (10 Wheat.) 1 (1825).
[150] Weinstein, *supra* note 109, at 929.
[151] *Ibid.*, at 923.
[152] *Ibid.*, at 927.
[153] Kay, *supra* note 110, at 40.
[154] Weinstein, *supra* note 109, at 926.
[155] *Ibid.*, at 907.
[156] Leverett, *supra* note 119.
[157] Levin and Amsterdam, *supra* note 127, at 13.
[158] Leverett, *supra* note 119; and *ibid.*
[159] Kay, *supra* note 110, at 41.
[160] Weinstein, *supra* note 109, at 934, 937.
[161] Hall, *supra* note 113, at 639; and *ibid.*, at 934.

rules, even if they are expressly permitted to do so.[162]

A final argument relating to the supreme court as an inappropriate body to promulgate rules relates to the expense involved. Opponents suggest that additional funds will be required to finance a staff that can study, devise and implement rules under the court's guidance.[163] This, they claim, will result in unnecessary duplication. They note that legislatures already possess on-going groups such as reference bureaus which undertake the performance of these functions.[164]

d. *Parameters of judicial rule-making are difficult to define.* Opponents argue that rule-making authority should not be vested exclusively in the supreme court because its parameters are difficult to define. Generally there are two types of rules: substantive and procedural. They note that while substantive matters are properly the domain of legislatures, scholars have suggested "A clearcut distinction for all purposes is impossible of formulation."[165] Indeed, most definitions are nebulous; substance and procedure are plagued with chameleon-like qualities.

Additionally, it is argued that many procedural issues have substantive ramifications.[166] Major United States Supreme Court cases testify to this fact. Opponents contend that because of the persistent difficulty of defining and categorizing the concepts of substance and procedure, the legislature, at the very least, should exercise concurrent authority with the supreme court over administrative and procedural matters.[167]

Additionally, opponents claim that two undesirable situations may result from unfettered supreme court rule-making. First, it is argued that courts will overstep their procedural powers and make determinations of policy. Such actions would invade the legislative prerogative of enacting substantive laws.[168]

A second undesirable situation may also occur. Opponents argue that even if the supreme court is granted exclusive rule-making authority, it will be reluctant to exercise the authority, fearing potential conflicts with the legislature. Thus, it will not be innovative and will refrain from taking action except when faced with an urgent need.[169]

3. **Analysis.** One of the most compelling arguments offered by proponents of vesting the supreme court with exclusive rule-making authority is that it is the appropriate body to promulgate rules. Courts, more than legislatures, are equipped with the experience and knowledge required to draft and implement rules. Indeed, judges are more familiar with their own operations, and therefore their needs and requirements. This argument is bolstered by the fact that the number of lawyer-legislators is rapidly declining. Indeed, the argument that state legislatures are composed of members retaining substantial legal expertise is now largely historic. The opponents' suggestion that the court is too far removed from both the practice of law and lower court problems appears to lack merit. Supreme courts simply are not that isolated, and rarely, if ever, do they promulgate rules without consulting members of the bar and lower court judges. Indeed, often they create bench-bar committees to conduct the initial study and rule preparation.

Another compelling argument offered by proponents is the idea that court-made rules are more flexible than legislatively-enacted statutes. Proponents note that courts are not constrained by infrequent legislative sessions, a constantly changing membership, and a variety of competing interests. As such, rules may be promulgated more readily than statutes, and their currency is more easily maintained. Rules are also more easily amendable than statutes.

What is most bothersome about the proponents' position is their insistence that the authority be placed exclusively within the court. Opponents note that although the three branches were envisioned to be independent, they never were intended to go unchecked.

United States District Judge Jack Weinstein suggests that "there has never been a fully compartmentalized separation of powers."[170] He finds support in a recent decision of the United States

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[162] Jeffrey Parness and Chris Korbakes, *A Study of the Procedural Rule-Making Power in the United States* (Chicago: American Judicature Society, 1973), p. 18.

[163] Gibbes, *supra* note 112, at 393.

[164] Weinstein, *supra* note 109, at 926.

[165] Joiner and Miller, *supra* note 116, at 635.

[166] Case Notes, "Courts — Rules of Court — Prejudgment Interest Rule Upheld — Expanding Court's Rule-Making Power Beyond 'Practice and Procedure,' " *Rutgers Law Review*, 27 (Winter, 1974), 345, 348.

[167] Levin and Amsterdam, *supra* note 127, at 37.

[168] *Ibid.*

[169] Allan Ashman, "Measuring the Judicial Rule-Making Power," *Judicature*, 59 (December, 1975), 215, 219; William Earl, "The Rule-Making Power of the Florida Supreme Court: The Twilight Zone Between Substance and Procedure," *University of Florida Law Review*, 24 (Fall, 1971), 87, 90; and Leverett, *supra* note 119.

[170] Weinstein, *supra* note 109, at 915.

Supreme Court which noted that the draftsmen of the Constitution perceived that "a hermetic sealing off of the three branches of Government from one another would preclude the establishment of a Nation capable of governing itself effectively."[171] Weinstein concludes, "Judicial independence cannot be absolute."[172]

4. **Options.** A collective definition of centralized rule-making was established in Chapter I. Variations among the environments and politics of the various states may dictate that it cannot be achieved. For this reason, two principal options are offered as a means by which to progress toward the implicit goals of the concept. The options are designed to incorporate the most compelling arguments advanced by proponents and opponents of the measure.

The first principal option is to vest the supreme court with non-exclusive rule-making authority. It differs most notably from the "ideal" model by allowing for some legislative review, consistent with the concept of checks and balances. Two scholars pinpoint the thrust of this approach. They state:

> The whole aim of the balance of powers . . . is the creation of a scheme whereby the courts may maintain an effective, flexible and thorough-going control over their own administration and procedure, with the possibility of ultimate legislative review in cases where important decisions of public policy are necessarily involved. This is the aim of safe efficiency: immediately practical, fundamentally democratic.[173]

The emphasis is still on primary control by the judiciary over its own affairs, but the concept of legislative review is introduced as a safeguard. Consistent with this perspective, the same authors offer the following constitutional statement.

> 1. The supreme court shall make rules governing the administration, practice and procedure, including evidence, of all courts in the state.
>
> 2. Such rules, or any statute enacted under this paragraph, may be repealed, amended or supplemented by the legislature by two-thirds vote of the members elected to each house, and any such enactment shall have the force and effect of statute during the six years next following the date of its taking effect and shall thereafter have effect as rule of court until repealed or amended by the supreme court or by the legislature.
>
> 3. In consideration of any bill proposing an enactment under this section, the chief justice of the state shall be given opportunity to be heard.[174]

A multitude of benefits result from this approach. First, it is consistent with the separation of powers doctrine and the concept of checks and balances. The courts may initiate action, but the legislature is empowered to curb abuses.[175] Second, the ubiquitous definitional problem of substance versus procedure is ameliorated by legislative review. Third, because this is a constitutional statement and not a statutory enactment, the court will be less reluctant to exercise its authority. Fourth, the requirement for a two-thirds review of the legislature discourages rash intervention into the judicial sphere. Moreover, the limitation permitting scrutiny of only policy matters, maintains substantial judicial independence.

The second principal option is to vest rule-making authority in a judicial council. Although judicial councils originated in the 1920's and spread rapidly, their existence and utility has declined within the past few decades. Today, however, there appears to be a "renewed interest" in the viability of councils. Russell Wheeler and Donald Jackson suggest this trend is attributable to the fact that, "Judges and court administrators are coming to realize that one part of effective management is effective and good faith *consultation* with various actors in the system."[176]

Judicial councils vary dramatically in their composition and authority.[177] The judicial council in the State of California is perhaps one of the strongest bodies of this sort. It is vested with constitutional authority to adopt rules for administration, practice and procedure. It is composed of 15 judges representing all courts, four members of the bar, and one member from each house of the legislature. The judicial council in Washington has a broader composition, but is created by statute and is vested with authority only to propose changes. Its members

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[171] Buckley v. Valeo, 424 US 1, 121 (1976), quoted in *ibid.*, at 916.

[172] Weinstein, *supra* note 109, at 916.

[173] Levin and Amsterdam, *supra* note 127, at 42.

[174] *Ibid.*

[175] Berg, *supra* note 111.

[176] Wheeler and Jackson, *supra* note 101, at 139 (emphasis added).

[177] See generally *ibid.*

include eight judges, three members from each house, a dean from each of the three accredited law schools in the state, five members of the bar, the attorney general, and one county clerk.

The benefits of councils are numerous. They provide for participation by judges in all state courts as well as members of the bar. A council maximizes judicial expertise,[178] and yet has direct participation of legislators to avoid the pitfalls of exclusive judicial involvement. The establishment of a permanent council also brings continuity to the study of judicial rules.

Regardless of whether non-exclusive rule-making authority is vested in the supreme court or in a judicial council, it appears highly desirable to obtain as much extra-judicial participation as possible. Two methods may be employed. The first method is to utilize an expert advisory committee.[179] At least two prominent jurists support this idea. Former Chief Justice Howell Heflin of Alabama contends that substantial participation from the bar would be helpful.[180] Similarly, Georgia Associate Justice Robert Hall suggests that in addition to the bar's participation, involvement of trial court judges is particularly necessary.[181]

The second method is to conduct public hearings on proposed rules.[182] In Connecticut, for example, open hearings are required at least once each year in order to allow the public to propose certain changes. Such a procedure lends legitimacy and credibility to the rule-making process.

D. Centralized Budgeting

1. **Arguments supporting centralized budgeting.** Four principal arguments are advanced in support of adopting a centralized system of budgeting: the executive branch is excluded from participation; simplification and economy are provided in the process; planning and equity in resource allocation are promoted; and benefits to the judiciary and legislature are provided.

a. *Executive is excluded from participation.* It is argued by proponents of centralized budgeting that one of the major advantages of a unitary system is that the executive branch is expected to be excluded from participation. Proponents claim this has three major advantages. First, it allows the judiciary to develop its own goals and objectives without executive interference.[183] Second it prohibits the executive from eliminating programs from budget requests before they reach the legislature. Third, the governor may be precluded from exercising a line item veto authority after the legislature has made its appropriation.

b. *Simplification and economy in the budgetary process.* Proponents of a centralized budget argue that it greatly simplifies the traditional process of budgetary preparation and presentation. They note that under a decentralized system, administrative control is conspicuously absent.[184] Conversely, under a centralized system, one state office is responsible for gathering all fiscal data and requests from throughout the state, and compiling a single judicial budget for presentation to the state legislature. They contend that chaotic budgetary processes, as illustrated in the State of Massachusetts, are avoided under a centralized system. The Cox Commission reports that in Massachusetts:

> There are 417 budgets, each prepared by separate officers or employees with scant regard to any other budget. There are separate budgets for each court and each of the 14 county sittings of the Superior Court. Most courts draw funds from both State and county; therefore there must a budget for each. Nor is this all. For each county sitting of the Superior Court and for 64 of the 72 district courts, four separate budgets are submitted for the funding of different salaries, services, equipment and building maintenance.[185]

Proponents also contend that a centralized budgetary process provides abundant fiscal and temporal savings. This, it is argued, is largely because only one office is required to gather information, prepare the actual budget, and present it to the legislature. Conversely, under a decentralized system, each court in the state must prepare its own budget.[186]

c. *Planning and equity.* Proponents claim that a centralized budget is a useful tool for judicial planning. Because one central office gathers all fiscal information and prepares a single overall budget, current programs can be analyzed, future needs can be predicted, system-wide goals can be formulated,

[178] Kay, *supra* note 110, at 35; and Weinstein, *supra* note 109, at 929.

[179] Weinstein, *supra* note 109, at 907, 939.

[180] Heflin, *supra* note 120.

[181] Hall, *supra* note 113, at 639, 640.

[182] Weinstein, *supra* note 109, at 907, 931, 943.

[183] O'Connell, *supra* note 6, at 648.

[184] Hazard, *et al.*, *supra* note 65, at 1294.

[185] Governor's Select Committee on Judicial Needs, *supra* note 3, p. 26.

[186] *Ibid.*

and statewide policies can be implemented.[187] As Carl Baar suggests,

> The development of annual budget requests and multi-year budget projections becomes an opportunity for components of a court system to examine their work patterns and provide information to the central judicial administrative office about their resource needs including needs for personnel, equipment, and space. The budget exercise also provides central court system administrators with an opportunity to develop and test management and performance measures suited to the distinctive needs of the judicial process.[188]

Conversely, proponents argue, under a decentralized system where countless budgets are prepared and numerous agencies fund the courts, none of these advantages can be realized.

Proponents also suggest that a centralized budget will more accurately account for the needs of the judiciary. They argue that an individual skilled in fiscal management will be made responsible for preparing the budget, unlike the situation in non-unified systems where local judges and clerks, who are responsible for preparing budgets, possess only nominal skills for doing so. They note that budget preparation is a highly sophisticated and complex process, and that without expertise, little comprehensive planning is possible.

Proponents of centralized budgeting also argue that resources and services can be distributed equitably throughout the state.[189] Auxiliary and judicial personnel can be assigned according to need, and property can be utilized communally so that no courts must labor under grossly inadequate conditions.[190] Proponents argue that this in turn helps insure more equitable dispensation of justice to the public. Conversely, the quality of justice provided will not be dependent upon wealth of the jurisdiction wherein one resides.

d. *Benefits to the judiciary and legislature.* Proponents of centralized budgeting note that a unitary budget can be beneficial to the judicial branch of government. First, as Carl Baar has suggested, greater internal judicial coordination in the budgetary process can be linked to less difficulty in obtaining funds from the legislature.[191] Second, proponents suggest that preparation of a single budget has the practical benefit of assisting the legislature in evaluating the judiciary.[192]

2. **Arguments opposing centralized budgeting.** Opponents assert that a unitary budget does not guarantee adequate funding; without sufficient resources, a unitary budget not only changes little, but may be entirely useless.[193] It therefore can be argued that courts still must fight the same political battles to obtain requisite funding, only on a different level. As one article has stated:

> Once a unified budget has been established, the influence of political pressure on administrative policymaking in the courts should diminish. But at the same time, the internalized bureaucratic politics within the judicial system will no doubt increase. Where a judge previously sought to provide for the needs of his court by influencing a local county supervisor or town chairman, he will now have to do so by influencing the court administrator, chief justice, or planning committee of his fellow judges.[194]

It may also be argued that a unitary budget is a highly sophisticated and technical device and that courts lack requisite expertise to construct such a budget.[195] Furthermore, not only is extensive substantive knowledge needed to prepare a cogent budget but, also, comprehensive and complex data, which traditionally have not been gathered, are required for the preparation process. Developing a statewide record keeping system is a cumbersome task, but is indeed a necessary prelude to an adequately prepared budget.

It is also suggested that a unitary budget may not be entirely effective in improving the judiciary. Carl Baar notes that certain local courts which have been able to develop financial resources may gain nothing from a unitary system and may even lose fiscal ground as the state allocates resources from richer to poorer jurisdictions. Therefore, Baar suggests that a unitary budget may "only place a

[187] Baar, *supra* note 91, p. 56; Hazard *et al.*, *supra* note 65, at 1294; and "Unitary Budgeting: A Financial Platform for Court Improvement," *Judicature*, 56 (March, 1973), 313–314.

[188] Baar, *supra* note 91, p. 168.

[189] "Unitary Budgeting: A Financial Platform for Court Improvement," *supra* note 187.

[190] Governor's Select Committee on Judicial Needs, *supra* note 3, pp. 26–27.

[191] Baar, *supra* note 91, p. 168.

[192] Governor's Select Committee on Judicial Needs, *supra* note 3, p. 27.

[193] "Unitary Budgeting: A Financial Platform for Court Improvement," *supra* note 187.

[194] Hazard, *et al.*, *supra* note 65, at 1300.

[195] Baar, *supra* note 91, p. 168.

heavier supervisory layer over trial court administrators."[196]

Centralized budgeting is also opposed for administrative reasons. In the state's attempt to provide for an equitable distribution of resources, a number of negative consequences are likely to result. It has been suggested that a centralized budget "implies substantial uniformity in procedure and court services."[197] To assure equality, it is claimed, the state will not be disposed toward providing any court with support services above a level regarded as "minimally sufficient."[198] As a result, uniformity may grossly inhibit local initiative.

Frank Zolin, Executive Officer of the Los Angeles County Superior Court, also suggests that excessive uniformity, implicit in a unitary budget, may undermine flexibility to develop new, experimental programs to meet future needs. He suggests that there will be:

> . . . a mandatory policy for a state budget officer to provide an equal level of financing for all courts under his control. Unified state budgeting will repeatedly place the state budget officer in the position of choosing between the financing of new, experimental programs and providing resources to a poorly financed court to bring it up to the generally accepted level of staffing. The pressures on the budget officer to bring the poorly financed court up to standard will be irresistible. How can he refuse to provide the level of clerical support, judges' libraries, and facilities that are generally available throughout the state to a jurisdiction that has heretofore been unable to provide them? I believe this will have an adverse effect on the efforts of well-financed courts to improve the administration of justice by the development of new programs.[199]

Zolin also argues that financial planning of the courts must be coordinated with other related justice agencies, and surmises that "unitary budgeting impedes interagency planning at the operating level" because of uniform, central guidelines.[200]

Finally, a unitary budget is criticized for the power it places in the state supreme court. It is argued that because of this authority, the court will be able to virtually ignore certain requests by local courts. Further, it is argued, the court is likely to use a strict mathematical formula to determine appropriations, rather than account for a number of differing factors presently utilized in the separate jurisdictions.[201] It is also argued that supreme court control over the budget will allow it to develop programs which may not be acceptable to lower courts.[202] Further, it is claimed, the court may use the budget as a tool for manipulating lower courts. Specifically, the court may withdraw funds from any lower court as a means by which to "punish those judges with whom it disagrees."[203]

3. **Analysis.** Unitary budgeting, it would appear, cannot be fully effectuated in the absence of full state funding. For this reason, the following analysis is predicated on the assumption that the state has assumed full fiscal responsibility.

One of the most attractive arguments in support of a centralized budget is the greater planning potential afforded by this measure. Under a decentralized system, which is characterized by fragmented courts and disparate sources of support, statewide planning for programs, goals and general policies is a virtual impossibility. Yet in a centralized system, programs designed to improve the judiciary can be developed, requirements for all state courts can be analyzed, and future needs can be more easily predicted in order to better cope with a changing judiciary.

Proponents also note with great justification that planning and policy formulation can be tremendously facilitated when the executive is excluded from participation in all phases of the budgetary process. Extraneous political considerations are less likely to influence judicial priorities. And, perhaps more important, the executive may no longer have an opportunity to eliminate programs or line items from judicial budget requests. In short, the judiciary will be allowed full benefits of co-equal status.

Perhaps the strongest argument offered by opponents of centralized budgeting is the fact that when a state develops the budget, it tends to establish uniform programs which may be inapplicable to local courts because of differing environmental, geographic or political factors. Moreover, through a unitary budget, the state attempts to equalize resources. As a result, local courts may have insufficient appropriations to experiment with programs on a local basis.

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[196] Carl Baar, "The Limited Trend Toward Court Financing and Unitary Budgeting in the States," in Berkson, Hays and Carbon, *supra* note 26, p. 278.

[197] Hazard, *et al.*, *supra* note 65, at 1299.

[198] *Ibid.*

[199] Quoted in Baar, *supra* note 91, p. 139.

[200] *Ibid.*

[201] Hazard, *et al.*, *supra* note 65, at 1300–01.

[202] Saari, *supra* note 79, at 30–31.

[203] *Ibid.*, at 31.

4. **Options.** With respect to unitary budgeting, no options have appeared primarily due to the fact that it is not as widespread as the other elements of unification. It is possible that some type of central review and submission might be developed instead of central preparation at the state level.

E. State Financing

1. **Arguments supporting state financing.** Two principal arguments are offered by proponents of state financing: local governments are incapable of adequately supporting a judicial system; and state financing is administratively sound.

a. *Local governments are incapable of supporting a judicial system.* Proponents of state financing argue that by comparison with state governments, local governments have poor tax bases and, therefore, are less able to adequately finance the courts.[204] It can be demonstrated statistically, they suggest, that state financing requires a smaller financial commitment of state funds than equivalent funding at the county level.[205]

Proponents of state financing also note that local governments must largely support themselves, including their courts, with property tax revenues. Property taxes have been criticized as regressive and burdensome to local counties.[206]

It is also argued that county boards, from which judicial appropriations are obtained, are extremely frugal in providing requested funds for local courts.[207] Proponents claim that in part, this is because county boards have only nominal familiarity with court operations. Moreover, courts have no constituency to lobby on their behalf at the local level.[208] Faced with competing demands for other public services, county boards are reluctant to appropriate all that is requested by the judiciary. Indeed, as notable scholars have suggested, "Adequate court funding . . . may depend on the degree to which appropriations for the trial courts can be made politically attractive."[209]

b. *State financing is administratively sound.* Proponents of state financing argue that the measure is administratively desirable for at least three reasons: it provides for a more equitable and economical system; it promotes research and planning; and it facilitates personnel management.

(1). EQUITY AND ECONOMY. Proponents argue that local financing creates an inequitable system of justice that can only be corrected through state assumption of financial responsibility. In particular, they suggest that local financing threatens judicial independence and, therefore, compromises justice.[210] For example, proponents contend that the fee system utilized in JP courts is designed to find litigants guilty in order to generate revenue for public services.[211] Proponents thus argue that state financing can remove the suspicion and possibility that judicial decisions are rendered to curry favor with local politicians. Indeed, at least one state court administrator has noted that courts can not be independent if they are expected to be the revenue-generating arm of local government.[212]

State financing, proponents contend, provides for an equitable distribution of court services.[213] Proponents argue that local government funding is characterized by grossly disparate levels of support, and that funding is based largely on the amount a court generates, rather than on need.[214] Additionally, they note that local governments do not spend their limited resources in equivalent ways. Therefore, ". . . the quality of court services varies dramatically according to the locality's ability to pay."[215] Under a state financed system, however, court services are provided according to demonstrated need, rather than on the relative wealth of a county.

State financing, proponents note, provides for numerous economies of scale.[216] Central purchasing in bulk is but one particularly economical example. Another is records management. Standardized forms can be developed so that central computer and

[204] See, e.g., Edward Pringle, "Fiscal Problems of a State Court System," (an address presented to the Conference of Chief Justices, Seattle, Washington, August 10, 1972).

[205] *Courts Master Plan – State of Mississippi* (Washington: Resource Planning Corp., 1976), p. 2.

[206] Daniel Skoler, "Financing the Criminal Justice System: The National Standards Revolution," *Judicature*, 60 (June-July, 1976), 32, 37.

[207] Jim Dunlevey, an address delivered to the panel entitled, "Structure and Financing of Judicial Systems," (National Conference of State Legislatures, Lincoln, Nebraska, May 6, 1977).

[208] Baar, *supra* note 91, p. 3.

[209] Hazard, *et al.*, *supra* note 65, at 1297.

[210] Governor's Select Committee on Judicial Needs, *supra* note 3, p. 28; Levinthal, *supra* note 4, at 191; and "Unitary Budgeting: A Financial Platform for Court Improvement," *supra* note 187.

[211] Dunlevey, *supra* note 207.

[212] *Ibid.*

[213] Hays, *supra* note 66, p. 128.

[214] Dunlevey, *supra* note 207.

[215] Hazard, *et al.*, *supra* note 65, at 1297.

[216] Governor's Select Committee on Judicial Needs, *supra* note 3, p. 28; Hays, *supra* note 66, p. 128; and Pringle, *supra* note 204.

storage systems can be established. These systems alone provide substantial savings.[217]

(2.) RESEARCH AND PLANNING. Proponents claim that state financing encourages research and planning within the judicial system, which is almost impossible when funds are derived from innumerable local entities.[218] Research and planning in turn are facilitated because state financing provides for a coherent pool of fiscal data.[219] The development and use of statewide management information systems is but one by-product of research.[220]

In particular, proponents argue that state financing allows for experimentation at local levels. Programs relating to judicial matters can be designed to meet individual local needs. Additionally, through experimentation, the state can keep abreast of new alternatives and plan for the future.[221]

(3.) PERSONNEL MANAGEMENT. Proponents contend that personnel management is facilitated through a system of state financing. In particular, they suggest that state financing facilitates the development of a separate personnel system which is impracticable under decentralized funding. They note that under a decentralized system, local funding fosters substantial control over auxiliary personnel selection. This in turn prevents the development of a personnel system based on occupational proficiency. However, as notable scholars have suggested, "Assumption of substantially all court costs by the state . . . would eliminate this patronage and would enable the central judicial administration to develop a uniform job classification scheme."[222]

State financing, it is argued, also facilitates temporary assignment of judges and auxiliary personnel throughout the state as needed. When all employees are under a uniform classification scheme financed by the state rather than the county, the resources of the state enable personnel, equipment and supplies to be relocated throughout the system as exigencies dictate.

Finally, there are at least three miscellaneous arguments offered by proponents of state financing. First, it is argued that courts serve a fundamental societal function which justifies the broadest possible form of governmental support.[223] Second, proponents claim that state financing eliminates the need for courts to utilize the inherent powers doctrine to obtain funding. Proponents claim that traditionally, "There [has been] . . . a reluctance to jeopardize the tripartite structure of government over a few dollars for a janitor's or stenographer's salary."[224] Moreover, to utilize the doctrine, the item requested had to be "indispensable" to the necessary functioning of the judiciary. However, under state financing, these situations are unlikely to occur. Third, proponents claim that state financing complements unitary budgeting and centralized administration,[225] and thus provides for a more cohesive judicial system.

2. **Arguments opposing state financing.** Opponents of state financing argue that when the state assumes fiscal responsibility for the entire judiciary, counties lose control over policy. They note that policies are ultimately established by the body which provides fiscal support. In short, dollars control policy. Thus, when local governments no longer fund local courts, they lose control over policy-oriented decision-making.[226]

Opponents also contend that when the state assumes fiscal responsibility, initiative in determining administrative solutions to individual local problems is lost. Instead, they argue, innovation only occurs at the state level where officials are isolated and do not understand local traditions, problems, needs and values.[227] Resolution of minor problems may not only be delayed, but may also be less satisfactory. As a result, state financing creates an unresponsive state-level bureaucracy to supervise local courts.[228]

State financing has also been opposed for a variety of administrative reasons. For example, Carl Baar notes that "[a]lmost every state which has substantially increased the level of state judicial financing has tied such an increase into increased state-level supervision of trial court expenditures."[229] As noted earlier in this chapter, centralized administration alone engenders substantial opposition; apparently resistance may be enhanced if the two measures are jointly advocated.

It is also argued that state financing imposes difficult administrative demands on local courts.

[217] For greater elaboration, see Carbon, *supra* note 26.

[218] Baar, *supra* note 91, p. 56; Hazard *et al.*, *supra* note 65, at 1294; and Pringle, *supra* note 204.

[219] Pringle, *supra* note 204.

[220] Hays, *supra* note 66, p. 128.

[221] Hazard, *et al.*, *supra* note 65, at 1298.

[222] *Ibid.*, at 1297–98.

[223] Hays, *supra* note 66, p. 128; and Skoler, *supra* note 206, at 38.

[224] Hazard, *et al.*, *supra* note 65, at 1289.

[225] Baar, *supra* note 91, p. 56; and Pringle, *supra* note 204.

[226] Suggested in, but not supported by Dunlevey, *supra* note 207.

[227] Gallas, *supra* note 11, at 45.

[228] Suggested in, but not supported by Skoler, *supra* note 206, at 38.

[229] Baar, *supra* note 196, p. 275.

Opponents contend that under a state financed system, all courts are required to plan for and justify their expenditures. Moreover, they must develop the capacity to evaluate current requirements and predict future needs. However, even with good data and extensive planning, it is difficult to predict all costs.[230] Expenses for juries, witnesses and medical exams are but a few of the most unpredictable costs.

Another argument offered by opponents is that state financing does not guarantee *greater* financing. State fiscal resources, like local government resources, are not unlimited. Therefore, the basic change is that courts must compete with state agencies, not local ones, for limited resources.[231] State financing thus encourages unrealistic expectations among members of the judiciary who may anticipate substantial increases in revenues from the state treasury.[232]

They also point out that some local courts are likely to receive reduced appropriations under a state financed system.[233] Opponents note that while a goal of state financing is to equitably distribute resources, such distribution implies that wealthy courts under a decentralized system may fare less well under a centralized scheme.[234] Moreover, the state legislature may attempt to place undue restrictions on judicial expenditures so that, in effect, a majority of courts are fiscally disadvantaged by a centrally financed system.[235]

Finally, opponents argue that state financing will lead to a more expensive judicial system.[236] They claim that if the measure is adopted, all judicial and auxiliary personnel salaries will be upgraded, as will the accompanying benefits. Establishing a new personnel system is another financial burden. Additionally, numerous administrative costs are incurred by transferring fiscal responsibility to the state level. Creating standardized forms and establishing and maintaining a statewide fiscal recordkeeping system are but two of many others.

3. **Analysis.** One of the most compelling arguments offered by proponents of state financing is that the measure provides for a more equitable distribution of fiscal resources throughout the state, which in turn fosters a more equitable dispensation of justice. Under a state financed system, courts are no longer dependent upon local government financing, which in many areas is inadequate. Fiscal appropriations will be determined according to the needs of a court rather than the wealth of a county in which the court is situated. This allows for a more equitable provision of resources throughout all courts.

Additionally, local courts under a state financed system are no longer expected to support themselves and numerous other public services, thus acting primarily as revenue-generating bodies. The incentive to find plaintiffs guilty in order to boost the local coffers is eliminated. Proponents argue with justification, therefore, that courts will be more disposed toward evaluating the merits of a case rather than the bottom line of the county checkbook.

Furthermore, once local governments no longer support the courts, their authority over auxiliary personnel is diminished. The measure facilitates the development of a personnel system based on occupational competence rather than on political favoritism. The employment of higher quality personnel in turn fosters a more efficient and equitable administration of justice. Further, the role that politics and patronage play in the recruitment process is reduced.

Opponents of state financing also present strong arguments to support their position. One of the most compelling is that local courts may lose substantial policy and administrative control when the state assumes funding. Their claim that dollars control policy is certainly a valid one. When local governments no longer contribute to fiscal support of the courts, responsibility for policy determination clearly shifts to the state level.

Another strong argument offered by opponents is that the needs and individual characteristics of local courts will be disregarded in the state's attempt to provide system-wide equity. They note that when the state assumes fiscal responsibility, it also attempts to develop system-wide programs that are not always applicable to each local court.

Additionally, opponents argue that local initiative is severely inhibited under a centralized system. When the state assumes financial responsibility, wealthy and innovative courts often are restricted in experimenting with expensive programs designed to meet individual differences among local courts.

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[230] Suggested in, but not supported by Pringle, *supra* note 204.

[231] Suggested in, but not supported by Pringle, *supra* note 204.

[232] Suggested in, but not supported by Harry Lawson, "Court Administration and Finance," in Citizen Leadership Conference on the Courts, January 30–February 1, 1975, *Reading Materials for Making Justice Work in New York State* (Chicago: American Judicature Society, 1975), p. 26.

[233] Suggested in, but not supported by Pringle, *supra* note 204.

[234] Suggested in, but not supported by Rubin, *supra* note 9, p. 210.

[235] Suggested in, but not supported by Pringle, *supra* note 204.

[236] Although not an opponent, Harry Lawson agrees. Harry Lawson, Comments at the National Conference of State Legislatures, Lincoln, Nebraska, May 6, 1977.

Partially, this is because their resources are funneled through the state to lesser advantaged courts so that funds simply are not available for experimentation.

4. **Options.** In Chapter I, a collective definition was established for state financing. As with the other elements of unification, this definition is considered "ideal;" in other words, it represents a model, and does not always take that form in reality. There are many reasons why the states' systems of budgeting do not comport with the ideal; many were advanced during the discussion of arguments supporting and opposing unitary budgeting. The most compelling arguments of proponents and opponents have been distilled and analyzed. An attempt is made to incorporate them into the options which follow in order to assist states in progressing toward the goals of a fiscally centralized system.

One major option exists with respect to state financing: namely, the state may assume partial, rather than full, fiscal responsibility. Two alternatives for partial state financing are available. First, the state may choose to support certain levels of courts, such as the supreme court and other appellate courts, while local governments continue to support trial courts. And second, the state may assume certain costs, such as personnel, while local governments maintain support for facilities and equipment.

Two principal benefits can be obtained from partial state financing. First, resources may be distributed equitably in proportion to the amount which the state supports. This allows, in turn, for a more equitable dispensation of justice throughout the state. And second, because local governments maintain some degree of financial support, they are able to participate in policy planning and experimentation at the local level.

CHAPTER III. UNIFICATION ACTIVITY IN ELEVEN SELECTED STATES

In Chapters I and II the major parameters and arguments surrounding court unification were discussed. The substantive content of each chapter was based primarily on library research. Such information taken alone, however, is insufficient to explore the dynamic facets of unification. To overcome this problem eleven states were selected for in-depth, on-site investigation. This represents the first attempt to explore the concept of court unification on a national, comparative and analytic basis.

A. Methodology

In selecting states for in-depth investigation, several variables were taken into account. The most important general factor was that each state chosen had to demonstrate experience with the unification process that would be instructive to other states attempting to unify their judiciaries. A number of specific criteria were utilized as well.

First, it was deemed desirable that selected states should range from those which are highly unified to those which are relatively nonunified. In order to achieve this objective, an assessment was made about the extent to which each state is unified. Approximately one-third of the states may be considered highly unified, one-third moderately unified, and one-third only minimally unified. Details on the methodology employed are reported in Appendix A.[1]

A second consideration was whether a state had been involved recently in unification activity. It was deemed relatively undesirable to select states involved with such reform prior to 1970. After all, there would be inherent limitations in attempting to conduct interviews about political and administrative events which occurred ten or twenty years ago (such as in Alaska and Illinois). Memories become vague and many of the individuals involved in achieving and implementing the reforms are not likely to be available for interview.

The necessity for determining the amount of unification activity within each state was also decidedly important. It was believed that states where an extensive amount of activity had taken place would supply more and better information than states where relatively little activity had occurred.

Activity was defined narrowly as the enactment of a statutory or constitutional revision or supreme court rule that *substantially altered* court structure, administration, rule-making, financing or budgeting in the direction of the unification model. Data were gathered on each of the states and two lists were developed.[2] The first contained those 26 states con-

[1] It should be emphasized that the tables presented in Appendix A do not incorporate the results of constitutional or statutory changes that have been implemented after September, 1976.

[2] The following is a chronology of the data-gathering process. Every issue of *Judicature* was examined from 1970 to date. A variety of other court-related materials were similarly scrutinized. These included: Council of State Governments, *Criminal Justice Statutory Index* (Lexington: Council of State Governments, 1975); *From the State Capitals – Judicial Administration* (Asbury Park, N.J.: Bethune Jones, 1975 to date); *Institute of Judicial Administration Report* (New York: Institute of Judicial Administration, 1973 to date); *LEAA Newsletter* (Washington: Department of Justice, 1973 to date); National Center for State Courts, *State Court Appellate Project Newsletter* (Denver: National Center for State Courts, 1976); National Center for State Courts, *Report* (Denver: National Center for State Courts, 1974 to date); and National Council on Crime and Delinquency, *Criminal Justice Newsletter* (Hackensack, N.J.: National Council on Crime and Delinquency, 1973 to date).

Also consulted were James Gazell, "Lower-Court Unification in the American States," *Arizona State Law Journal*, 1974 (1974), 653–87; *National Survey of Court Organization* (Washington: Government Printing Office, 1973), and 1975 *Supplement;* and Karen Knab (ed.), *Courts of Limited Jurisdiction: A National Survey* (Washington: Government Printing Office, 1977).

Additionally, questionnaries were mailed to each of the six regional directors of the National Center for State Courts. The directors were asked to supply in "yes/no" fashion, information on whether states in their region had enacted statutory or constitutional changes or promulgated supreme court rules relating to each of the five elements of unification (since 1970). The returned responses provided further information useful to the project.

Finally, staff members at the American Judicature Society were assembled to obtain a consensus on the level of activity in each state.

sidered actively involved in court unification since 1970, and the second, those 24 considered relatively inactive since 1970.

The "extent of unification" ranking was combined with the listing of active and inactive states to serve as the primary guide in selecting the states (see Table 3–1). However, other criteria were also deemed important: geographical diversity, population, degree of urbanization, and economic base of the state. Finally, it was determined that the components of court unification should be represented by at least one state rated high on each element.

TABLE 3-1

Extent of Unification Activity Since 1970

DEGREE OF UNIFICATION	RELATIVELY ACTIVE STATES	RELATIVELY INACTIVE STATES
HIGH		
	* Connecticut	Alaska
	* Florida	* Colorado
	Hawaii	Delaware
	* Idaho	Illinois
	Maine	New Mexico
	Maryland	North Carolina
	Oklahoma	Rhode Island
	* South Dakota	
	Vermont	
Moderate		
	* Alabama	Arizona
	Iowa	New Hampshire
	* Kansas	New Jersey
	* Kentucky	Pennsylvania
	Montana	Utah
	Nebraska	* Washington
	North Dakota	Wisconsin
	* Ohio	Wyoming
	Virginia	
	West Virginia	
Low		
	Georgia	Arkansas
	Louisiana	California
	Minnesota	Indiana
	Missouri	Massachusetts
	Nevada	Michigan
	* New York	Mississippi
	South Carolina	Oregon
		Tennessee
		Texas

RELATIVE DEGREE OF UNIFICATION

*Selected for on-site visits.

The above considerations guided the choice of eleven states for in-depth investigation: Alabama, Colorado, Connecticut, Florida, Idaho, Kansas, Kentucky, New York, Ohio, South Dakota and Washington. Connecticut, Florida, Idaho and South Dakota are highly unified and active. Alabama, Kansas, Kentucky and Ohio are moderately unified and active. On the other hand, New York is active, and yet is only minimally unified.

In terms of geographic diversity, Connecticut and New York represent the East-New England region of the country; Florida and Alabama, the Southeast; Colorado, Idaho and Washington, the West and Northwest; Kansas and South Dakota, the Plains; Ohio, the Midwest; and Kentucky, the Border states.

In terms of population, demographic, and economic variables, Connecticut, Florida, New York and Ohio are densely populated, industrialized states. The others are generally considered moderately or sparsely populated, and on a relative scale, far less industrialized.

With respect to the individual elements of unification, the trial courts of Florida, Kansas, Idaho, Ohio and South Dakota are highly consolidated; Alabama and Colorado have achieved a high degree of centralized management; Colorado, Idaho, Kentucky, Ohio and Washington exhibit elements of strong judicial rule-making authority; Colorado and Ohio have instituted unitary budgeting; and Alabama, Colorado, Connecticut, Idaho, Kentucky, New York and South Dakota have implemented or are about to implement state financing of their court systems.

The states also represent a wide variety of political experiences available for analysis. For example, Alabama, Connecticut, Kansas, and Ohio have been successful in achieving statutory changes relating to unification. Both Florida and South Dakota adopted constitutional revisions in 1972 and thus allow more extensive post-implementation analysis than states such as Alabama and Kentucky that only recently have adopted revisions. Colorado was specifically chosen because of its extensive experience in implementing unification, despite the fact that most activity there took place before 1970. Florida provides a unique example in that although it has adopted major constitutional revisions, the electorate defeated similar proposals earlier. Washington was chosen because the electorate recently defeated proposed revisions which would have further unified that state's system.

Once the states were selected, it was necessary to

determine the types of individuals who should be contacted during the on-site visits. Interviews were sought with supreme court justices, governors, court administrators, members of the bar, key legislators, members of citizens reform groups, members of the League of Women Voters, and lower court judicial and non-judicial personnel. The "reputational approach" was utilized to determine the specific individuals to be interviewed in each state. An initial list of names was provided by the American Judicature Society and members of the project's Advisory Committee. Brief, preliminary telephone interviews were conducted to determine whether the named individuals were indeed figures central to unification activity within their state. If so, appointments for personal interviews were scheduled. Additionally, they were asked to suggest other individuals who had been important in that state's efforts at judicial reform, thereby expanding the pool of interviewees.

Interview instruments were developed to elicit information about the project's two principal facets. First, two instruments were devised to determine the *tactics* which may be best utilized in accomplishing elements of unification. One was constructed for states which have adopted or defeated constitutional statements and the other for states which have enacted, or attempted to enact, statutory legislation. Second, four instruments were developed for the purpose of determining specific problems encountered in *implementing* each of the components of unification.

All of the instruments were designed in such a manner as to elicit a maximum amount of information. Each began with general open-ended questions and became more specific as they progressed. The instruments served simply as guides for the interviewers. Numerous other questions were posed which dealt with each state's (and participant's) individual activity. The interviews were undertaken in January, February, March and April of 1977. Typically they were conducted in the respondents' place of work and lasted more than an hour in length.

B. Political History

The later chapters of this book depict with great detail the problems, politics and people involved in a court unification campaign. They discuss the accomplishments gained, the defeats suffered and the strategies and tactics devised to achieve various reforms. The present chapter is intended to provide a context for the remainder of this book. It offers a brief political history of unification activity in each of the eleven states selected for in-depth investigation. The chapter discusses unification reforms only; it does not include the vast scope of related judicial reforms, such as merit selection of judges or judicial qualifications commissions, which frequently are instituted at the same time as unification. It is not intended to provide a complete history; rather it offers a scenario in which the drama of unification will be elaborated in succeeding chapters.

1. **Alabama.** The Alabama Constitution was amended more than 300 times between its adoption in 1901 and the mid 1970's. During this time the judicial article remained substantially as it had been drafted in 1875.[3] It established the constitutional courts and empowered the legislature to create other courts as it deemed necessary. This provision allowed for the proliferation of a fragmented court structure. Indeed, by 1973, 85 courts of limited jurisdiction served Alabama's 67 counties and 38 judicial circuits.[4] Many of these courts had concurrent jurisdiction and disparate procedural rules.[5]

As further evidence of the complicated nature of the court system, financing the courts, including the disbursement of costs and fees, varied across the state. The judges in some, but not all courts, were required to be lawyers. Additionally, both full time and part time judgeships were often found in adjoining counties of comparable population carrying similar caseloads. Rule-making authority was the prerogative of the legislature, and only a portion of this authority had been delegated to the courts.

One observer described the system as "analogous to a corporation with 38 branch offices at one tier of operation, with no board of directors or executive level management, and a second tier, the courts of limited jurisdiction operating even more independently, also having no board or executive level management."[6]

One of the earliest attempts to modernize the archaic court structure occurred in 1955, when the legislature established a commission for judicial reform to conduct what became the first study of the

[3] Howell T. Heflin, "The Judicial Article Implementation Act," *Alabama Law Review*, 28 (Spring, 1977), 215; Charles D. Cole, "Judicial Reform: The Alabama Experience," (an address presented to the Judicial Planning Advisory Committee, Minot, North Dakota, February 24, 1976).

[4] Cole, *supra* note 3.

[5] Ned Mitchell, "The Judicial Article Implementation Act: An Overview," *Alabama Lawyer*, 38 (January, 1977), 31.

[6] Cole, *supra* note 3.

Alabama rules of procedure in over 100 years.[7] The commission labored for the next 18 months, and in 1957 presented to the legislature a simplified set of rules. The new rules passed the house, but languished in the senate, where they never came to a vote.

Additional impetus for reform occurred in December, 1966, when the first Alabama Citizens' Conference on the Courts and the Law was held under the joint sponsorship of the Alabama Bar Association and the American Judicature Society. In the consensus statement prepared at the close of the conference the citizens offered specific recommendations for extensive reform of the judicial system.

The Alabama Bar Association appointed a liaison committee to work with the citizens' groups. The committee helped the citizens incorporate their recommendations into concrete legislation. Bills to amend the judicial article were introduced in both houses of the 1967 and 1969 legislatures. In 1969, the legislation was referred to the senate judiciary committee. The committee assignment is noteworthy, because in 1967 the legislation had been sent to the highway safety committee where it was immediately killed.[8] Nevertheless, neither the 1967 nor the 1969 legislation reached the floor of either house, and thus, no further action was taken.

The reform movement gained momentum in 1971 when Howell T. Heflin became Chief Justice of the Supreme Court. Heflin is universally credited with supplying both impetus and direction to judicial reform in Alabama throughout the next five years.

One of the first tasks Heflin undertook was to reduce the heavy case backlog of the state's appellate courts. He obtained authority from the legislature to increase the number of judges on the criminal court of appeals from three to five and to transfer cases among the appellate courts where necessary to dispense justice promptly but fairly. This new authority allowed three retired judges to be called into full time service and cases to be transferred from the court of criminal appeals to the supreme court. Additionally, a grant funding more law clerks for the court of criminal appeals was sought and obtained. By the beginning of the fall term in 1973 only six pending cases remained on that court's docket.[9]

Heflin worked with similar diligence to reduce the supreme court's backlog. He cleared the supreme court calendar in October, 1972, thus making it one of the few courts in the country with a totally current calendar.[10]

In September, 1971, at Heflin's urging, the legislature granted the supreme court the authority to promulgate a simplified set of procedure rules for the Alabama courts. Pursuant to its new authority, the supreme court appointed an advisory committee of 15 prominent judges, lawyers and academics to study Alabama procedure and to make recommendations for new rules.

The legislature also created the Department of Court Management in 1971. The statute creating the department designated the chief justice of the supreme court as the chief administrative officer of all trial courts of the state and authorized the department to help the chief justice provide prompt and efficient judicial administration. Additionally, in 1971 the legislature enacted a statute, which required mandatory retirement of all judges at age 70, and another which created a permanent commission to study the state's judicial system. The following year the electorate ratified a constitutional amendment abolishing JP courts.

In 1972 the supreme court received a report from the court rules advisory committee. Subsequently, it circulated copies of the proposed rules to every judge and lawyer in the state for their comments and suggestions. The court revised the proposed rules, based upon the recommendations of the committee and the criticism and suggestions solicited from the legal profession. On January 3, 1973, it promulgated new rules of civil procedure for the Alabama courts. The rules, which were modeled after the Federal Rules of Civil Procedure, became effective July 3, 1973. Between the adoption of the new rules and their effective date in July, the supreme court sponsored a comprehensive statewide education program about the new rules for lawyers, judges, clerks, court reporters, and other court affiliated personnel across the state.

In April, 1973, a second statewide citizens' conference was held to marshall citizen support for a proposed judicial article which would be submitted to the legislature when it convened the following month. Passage was delayed throughout the summer while opponents contested the merit of revising the article. After considerable parliamentary maneu-

[7] Howell T. Heflin, "Rule-Making Power," *Alabama Lawyer*, 34 (July, 1973), 263, 264.

[8] M. Roland Nachman, "Alabama's Breakthrough for Reform," *Judicature*, 56 (October, 1972), 112, 113.

[9] Robert Martin, "Alabama's Courts — Six Years of Change," *Alabama Lawyer*, 38 (January, 1977), 8, 12.

[10] *Ibid.* Additionally, by November, 1973, the state's circuit judges had reduced their civil case backlog by 11 percent and their criminal backlog by 14 percent.

vering on the last day of the term, the new article passed the senate by a 25–3 margin and the house of representatives by a 77–22 margin.[11]

The legislature scheduled a constitutional amendment referendum for December 18, 1973. During the interval between legislative approval of the new article and the December election, activist citizens organized a sophisticated and extensive statewide campaign to educate the voters about the provisions of the new article and to solicit their support. The drive for approval succeeded, and the amendment passed by nearly a two to one margin.[12]

Under the new article, Alabama's court structure consists of a supreme court; two intermediate appellate courts, one with jurisdiction of criminal appeals and one with jurisdiction of civil appeals; and a three tier trial court. At the trial level the circuit court is the court of general jurisdiction and the district court is the court of limited jurisdiction. In addition, two specialized courts from the former constitutional framework have been retained. A probate court remains in each county of the state, and municipal courts will be retained, unless a municipality elects to come within the district court system after December 27, 1977.

Although the new article consolidated more than 400 trial courts into a uniform three tier system, overlapping, concurrent jurisdiction between the circuit and district courts was not eliminated. The courts of appeals have appellate jurisdiction of cases heard in the circuit court, but appellate jurisdiction of all municipal and certain district court judgments must be tried de novo in the circuit courts.

In addition to effecting substantial changes in judicial structure, the 1973 article authorized a number of changes in court administration. It incorporated as part of the constitution the 1971 statute appointing the chief justice of the supreme court as the administrative head of the judicial system. It also gave the chief justice the authority to appoint an administrative director of the courts and a staff to assist in executing administrative responsibilities. Authority to reassign judges or call retired judges into service to maintain an efficient court system was also conferred, thus making constitutional a power that was already being exercised under legislation.

The new article also gave the supreme court explicit, constitutional rule-making authority over administrative, practice and procedural rules. Since 1973 the court has exercised this authority vigorously.

A number of provisions in the new article delineated judicial qualifications. For example, the article required judges to be lawyers and prohibited them from practicing law during their term in office. The requirement that all judges were to retire at age 70, which had been enacted the preceding year, was also retained.

Although the new article was partially self-implementing, a number of provisions required specific legislation to become effective. In April, 1974, Chief Justice Heflin appointed a 55-member Judicial Article Implementation Commission to draft the necessary implementing legislation.

After the legislature convened in May, 1975, the Implementation Commission submitted for enactment a 168-page judicial article implementation bill. The bill stalled in both houses for a period of time while its opponents objected to the allegedly excessive costs that state funding of an expanded judiciary would entail. However, supporters of the bill forestalled attempts to defeat it, and again, on the last day of the session, the bill passed the senate by a 30–0 vote and the house by a 100–1 vote.[13] Several weeks later, on October 10, 1975, Governor Wallace signed the bill into law, putting the new article into full force and effect.

Pursuant to the implementing legislation, a statewide merit personnel system for all auxiliary employees of the judiciary became effective October 1, 1977. Additionally, the legislation authorized state financing of the judicial budget to be implemented over a three year transition period. At the beginning of each fiscal year of the transition the state assumed the costs of an increased share of the judicial budget. By October, 1977, the state financed 90 to 95 percent of Alabama's judicial budget.[14]

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[11] Robert A. Martin, "Alabama Approves Judicial Article, Pay Raises, in Eleventh Hour Vote," *Judicature*, 57 (November, 1973), 173.

[12] Robert A. Martin, "Alabama Voters Approve New Judicial Article 2–1," *Judicature*, 57 (February, 1974), 318.

[13] Robert A. Martin, "Bill to Implement Reform Signed by Alabama's Wallace," *Judicature*, 59 (December, 1975), 255.

[14] Memorandum from Carl Baar to Larry Berkson and Susan Carbon, "Current Data on State vs. Local Court Financing," July 15, 1977, updating Carl Baar, "The Limited Trend Toward Court Financing and Unitary Budgeting in the States," in Larry Berkson, Steven Hays and Susan Carbon, *Managing the State Courts* (St. Paul: West Publishing Company, 1977). The tables in Appendix B do not reflect changes which have occurred as a result of implementing the new judicial article. For a more detailed discussion of the difficulties Alabama encountered implementing state financing, see Chapter XI.

2. **Colorado.** Colorado's court structure was established under the constitution of 1876 and remained relatively stable until it came under attack from lawyers and citizens alike in the middle 1950's. Among the reasons for the widespread dissatisfaction was the existence of three levels of trial courts (district courts, county courts and JP courts) with considerable overlapping jurisdiction and with appeals from the county and JP courts tried de novo at the next level. A number of county court judges and JPs were not lawyers, and many served as judges only on a part time basis. Additionally, no more than one judge could be elected to the county court of any county, regardless of the caseload burden in that county. This requirement led to extremely uneven case processing among the state's county courts, particularly in Denver.[15]

The supreme court had been vaguely granted "general superintending control" over the state's inferior courts, but these powers were neither well defined nor effectively exercised.[16] In addition, the chief justice, who was designated the principal administrative official of the judiciary, achieved that position, not because of administrative capabilities, but by an annual rotation among all supreme court justices.

Responding to the concern that the state's judicial system was inadequate to meet growing demands for an efficient and effective judiciary, the general assembly in the late 1950's established a committee to conduct a thorough study of the state court system. While the legislative committee tackled its assignment, the general assembly in 1959 initiated a reform of its own. It passed a statute dividing the state into six judicial districts and assigning one supreme court justice to supervise each district. The statute gave the justices administrative responsibility for the district under their control, with full powers to reassign judges within the district and to request assistance from the other districts if additional judges were still necessary. Similar legislation acknowledged the chief justice as the administrative leader of the judiciary, and to assist this individual in the task of administration, it established the office of judicial administrator. The judicial administrator became responsible for collecting and analyzing data on the operations of the courts and for recommending reassignment of judges to the chief justice wherever necessary to equalize caseloads.

The legislative council committee on the administration of justice submitted its recommendations in January, 1961, in the form of proposed amendments to Article VI of the constitution. The amendments passed the legislature later that year, and the electorate adopted them at the 1962 general election. They were slated to become effective in January, 1965. During its 1963–1964 session the general assembly deliberated upon and enacted the necessary implementing legislation.

The amendment and implementing legislation which took effect in January, 1965, provided Colorado with a restructured and administratively strengthened judiciary. The amendment abolished JP courts and upgraded the county courts to give Colorado a two tier trial court system with uniform jurisdiction. Exceptions to the two-tier structure were made for the city and county of Denver, where the newly created probate court and the juvenile court were given constitutional status, and for home-rule cities and towns, which were allowed to create municipal and police courts. Additionally, the superior court, a statutory court created in the 1950's, was retained with altered jurisdiction.[17]

Aside from the creation of an intermediate appellate court in 1969 to help reduce severe caseload and backlog problems confronting the supreme court, Colorado's court structure has remained relatively stable since 1964. Nevertheless, when consolidation occurred in the mid 1960's, it did not completely eliminate concurrent jurisdiction or de novo trials. The district and county court still have concurrent jurisdiction of numerous minor civil and criminal matters, and the district and superior court have concurrent jurisdiction of some civil matters.

Most appeals from the district courts and the Denver probate, juvenile and superior courts are heard on the record by the court of appeals. The district courts have appellate jurisdiction over final judgments from the county courts and municipal courts of record. The district court reviews most cases on the record, but may, in its discretion, direct that the case be tried de novo. The Denver superior court has jurisdiction over appeals or de novo trials from county, municipal, police and magistrate courts

[15] In 1959, for example, the single county judge in Denver handled 41 percent of the entire state's probate work and 46 percent of its mental health cases. *Citizens Committee on Modern Courts Trustee and Committee Chairman Workbook*, [Colorado] p. 4.

[16] Jim R. Carrigan, "The Colorado Judiciary Today," (unpublished manuscript, 1963), p. 2.

[17] The legislature first established the superior court to help process the burgeoning caseload in the Denver county court. It exists in each county with a population of 300,000 or more. Denver presently is the only such county. *Col. Rev. Stat.* sec. 13-7-101 (1974).

of the city and county of Denver. Appeals from the judgments of those municipal courts outside Denver which are not courts of record are tried de novo in the county court.

In addition to mandating substantial consolidation of the court structure, the 1962 constitutional amendment authorized an increase in the number of supreme court justices from seven to nine; permitted the members of the court to select one of their number as chief justice and strengthened the administrative authority of the supreme court. The amendment expressly vested authority to promulgate rules relating to practice, procedure and administration of the courts in the supreme court. However, it granted the legislature the right to prescribe simplified procedures for claims under $500 in county courts and for misdemeanor trials.

A number of provisions in the amendment were designed specifically to upgrade the quality of the judiciary. All judges in the supreme court, the district court, and the Denver probate and juvenile courts were required to be lawyers for at least five years before ascending the bench and, were prohibited from practicing law while serving on the bench.[18] The qualifications for county court judges were to be prescribed by the legislature; it has allowed for some part time and some nonlawyer judges in the least populated counties.

In 1966 a second constitutional amendment again strengthened the administrative authority of the supreme court. Although the chief justice had traditionally acted as the administrative head of the judiciary, and this authority had been acknowledged in the 1962 constitutional amendment, the 1966 amendment elaborated upon this authority. The amendment specifically authorized the chief justice to reassign judges throughout the court system and to call retired judges into active service whenever it became necessary to reduce case backlogs. The court has subsequently delegated this authority to the state court administrator. In addition, the amendment relieved the supreme court justices of their administrative duties over the district courts, and, instead, authorized the chief justice to appoint chief judges in each judicial district to exercise administrative supervision over the district.

The 1966 amendment also incorporated within the constitution, the 1959 statute which had created the position of state court administrator. Since 1966 this individual has been a constitutional officer appointed by the supreme court.

In January, 1970, pursuant to the 1963–64 implementing legislation, the state began financing the personnel, equipment, supplies and other expenses of all courts of record except the municipal courts (whether or not they are courts of record) and the Denver county courts. In addition to assuming all costs of operation, the state collects all revenues from the state financed courts. The most recent available statistics indicate that in fiscal year 1974–75 the state paid 70.4 percent of Colorado's judicial expenses.[19]

3. **Connecticut.** The Connecticut Constitution of 1818 established a supreme court and a superior court and empowered the legislature to create such additional inferior courts from time to time as it deemed necessary. Responding to this authority, the legislature created a multiplicity of trial courts during the next century and a half. By 1957, the state had 122 probate courts, 102 trial justice courts, 66 municipal courts, as well as miscellaneous others.[20] Nonlawyer and part time judges staffed a number of these courts. Of those judges who were lawyers, many continued to practice law during the time they served on the bench. Judicial compensation in the JP and the probate courts came from fees collected from the parties appearing before the judges.

The procedures governing the trial courts varied from one jurisdiction to another. As one critic has commented, "Any similarity in the handling of judicial business [by the JP courts, town courts and probate courts] is largely coincidental."[21] Moreover, in some cases the jurisdiction of the minor trial courts overlapped with the jurisdiction of the superior court (the general jurisdiction trial court). Most appeals from the limited jurisdiction trial courts were tried de novo at the next level.

Crowded dockets and long delays were the norm in some courts, while others had relatively small caseloads. Although the chief justice of the supreme court of errors (the state's highest court) had the power to reassign judges in the constitutional courts, this authority was not exercised for political reasons and thus was ineffective to solve the problem of uneven dockets in the lower trial courts.

Although they were unable to simplify this complicated court structure, Connecticut reform

[18] The legislative provision establishing the superior court required the judges of that court to meet the same qualifications as district judges. *Col. Rev. Stat.* sec. 13–7–105 (1974).

[19] Memorandum from Carl Baar to Larry Berkson and Susan Carbon, *supra* note 14.

[20] David Mars, "Court Reorganization in Connecticut," *Journal of the American Judicature Society*, 58 (June, 1957), 6, 8.

[21] *Ibid.*

movements had a venerable tradition. In 1927 the legislature created a judicial council to review and analyze the judicial system and to recommend improvements and reforms. During the first decade of its existence, the judicial council waged an abortive campaign to consolidate the minor courts of the state into a district court system. The council subsequently abandoned its effort; but its campaign apparently had a catalytic effect, because in November, 1938, the governor appointed a committee to study the minor court system. On the basis of the committee's advice, the legislature authorized minor changes in the lower level trial courts.[22]

Because none of the reform activity of the previous decade had resulted in major structural changes, the 1943 legislature established a commission to study statewide court consolidation. Although this commission chose not to recommend trial court integration, in 1950 both a legislative commission on state government organization and a committee of the state bar association recommended that the state consolidate its trial courts. By 1952, the bar committee had translated its recommendations into legislation, which was introduced in the 1953 general assembly. That same year, the judicial council resurrected its dormant campaign for court integration by introducing a separate court reorganization bill. In fact, in every legislative session from the 1950 Report of the Commission on State Government Organization until 1957, at least one court reorganization bill was introduced; but none was able to muster the necessary support.[23]

Although the 1943 Commission to Study the Integration of the Courts had not recommended court consolidation, it had strongly endorsed legislation to centralize the administrative authority of the judicial system. This legislation, which was ultimately passed in 1953, designated the chief justice of the supreme court of errors as the chief administrative officer of the judiciary. Additional concern about the administration of the judiciary led to the passage in 1957 of a second bill, which established the position of chief judge in each of the courts. The chief judges were appointed by the chief justice and had administrative responsibilities for their respective courts.

Three additional court integration bills reached the floor of the 1957 legislature, but all failed to be enacted. That same year, the supreme court of errors was given express statutory authority to adopt rules relating to pleading, practice and procedure in all courts of the state. Its power was expressly made subject to legislative veto over all or any part of the rules so adopted. This statute has apparently inhibited rather than encouraged supreme court rule-making, because the court has deferred to the legislature's ostensible authority in this area. With the exception of procedural rules for the constitutional courts, the court has not exercised its rule-making power to any great extent.[24]

In 1959, the cumulative efforts of the studies and recommendations of the various commissions and councils, which had spanned the previous thirty years, came to fruition when the general assembly passed the Minor Court Act. This statute, which became effective January 1, 1961, consolidated the trial justice, borough, city, town, police and traffic courts into a single state financed system of circuit courts.[25] The circuit court consisted of 44 judges who were appointed by the general assembly upon the nomination of the governor.[26] The new circuit judges were salaried by the state and were entitled to the same pension and retirement benefits as judges in the constitutional courts. Additionally, these judges were required to be attorneys and to devote full time to their judicial duties.

In 1965 Connecticut adopted a new constitution which, because of the number of reforms enacted in the 1950's, effected only minor revisions in the judicial article. One of the changes was renaming the supreme court of errors the supreme court. More

[22] The committee made two suggestions for improving the minor court system. The first suggestion, which was not adopted, was to create a district court system by dividing the court of common pleas into an upper appellate division and a lower trial division. The lower division would subsume all minor trial courts except the JP courts. The second recommendation, which was adopted, designated one JP in each town where there was no municipal court as a "trial justice" responsible for hearing only criminal matters.

[23] Mars, *supra* note 20.

[24] Jeffrey Parness and Chris Korbakes, *A Study of the Procedural Rule-Making Power in the United States* (Chicago: American Judicature Society, 1973), p. 27.

[25] The Connecticut constitutional courts have traditionally been state funded. When the minor court act brought the state's trial courts within the state financed system, the state court system became almost fully state financed. According to recent statistics, 99.4 percent of judicial department expenses were state financed in fiscal 1974–1975. Memorandum from Carl Baar to Larry Berkson and Susan Carbon, *supra* note 14.

[26] Charles W. Pettengill, "Court Reorganization: Success in Connecticut," *American Bar Association Journal*, 46 (January 1960), 58, 61. The method of appointing judges to the circuit courts, i.e., appointment by the general assembly upon nomination of the governor, brought the circuit court system in line with the method of judicial appointment which traditionally had been employed in Connecticut for judges of the constitutional courts.

significantly, in 1965 the general assembly passed a statute authorizing an associate justice of the supreme court to become chief court administrator. This justice was given the authority necessary to insure efficient administration of the judicial system, including the power to appoint chief judges for the various inferior courts and the power to transfer judges among the courts as needed. The chief court administrator was also authorized to appoint an executive secretary to supervise all nonjudicial business of the court system, including accounting, auditing, budgeting, personnel, statistics, planning and research.

The Probate Court Reform Act of 1967 marked the next significant reform. That act provided centralized administration over 1100 separate probate courts through the office of probate court administrator, a position filled by a superior court judge.

Although the 1961 Minor Court Act significantly reorganized the judicial structure, a decade later Connecticut still had five trial courts: common pleas, circuit, juvenile, probate, and superior. In 1971 the American Judicature Society and the Connecticut Citizens for Judicial Modernization (CCJM), an activist group, co-sponsored a citizens' conference on the courts. At the conclusion of the conference, the consensus statement recommended further trial court consolidation. Between 1971 and 1973 a number of different groups advanced various proposals for restructuring the courts. CCJM advocated an overall merger of the circuit, common pleas, juvenile and probate courts into the superior court. At the same time, the Judicial Council and Connecticut State Bar Association recommended eliminating the common pleas court by merging it into the superior court. A number of attorneys favored eliminating the probate court, while others supported creating a family court, which would have jurisdiction over matrimonial and juvenile matters.

In response to these suggestions the 1973 general assembly created a commission to study reorganization and unification of the courts. This commission submitted its final report to the legislature in March, 1974. That report recommended merging the circuit court into the common pleas court as a "first step toward ultimate consolidation of all principal trial courts into the superior court."[27] These recommendations were enacted into law that same year, and the new court structure became effective January 1, 1975.

The 1974 act, which merged the circuit and common pleas courts, also created a second commission to study proposals for further unification of the court system. This commission recommended merging the juvenile and common pleas courts into the superior court and submitted an extensive legislative proposal to achieve this goal. This legislation was similar to the position advocated by the bar association several years earlier, and the bar association now strongly supported the overall merger.

In June, 1976, the general assembly implemented the second phase of court consolidation that had been envisioned by the 1973 legislative commission and recommended by the 1974 study commission. It enacted legislation which authorized the merger of juvenile and the common pleas courts into the superior court effective in July, 1978. Thus, by 1978, court consolidation will have eliminated overlapping trial court jurisdiction and de novo trials. At that time, all cases, except probate matters, will be tried in the superior court and all but a few administrative appeals will go directly to the supreme court.[28]

In addition to consolidating the court structure, the 1976 legislation reassigned principal administrative responsibility for the judiciary to the chief justice of the supreme court. This legislation authorized the chief justice to appoint the chief court administrator, who no longer must be a supreme court justice. The court administrator will continue to appoint an executive secretary to administer the nonjudicial business of the courts. This statute also becomes operative in July, 1978.

It is uncertain what effect the 1976 legislation will have on the supreme court's traditional reluctance to promulgate rules. In the new legislation, the general assembly has retained its veto authority over all rules adopted by the courts. Moreover, the new legislation grants both the supreme court and the superior court rule-making authority over their respective courts, and this grant may have a further decentralizing effect on supreme court rule-making.

4. **Florida.** Prior to 1950, the Florida court system remained substantially as it had been established under the Constitution of 1885. Apparently, the impetus for reform began in 1953 with the creation of the Judicial Council, which was charged with the duty of conducting court studies and advising the

[27] Connecticut General Assembly, *Final Report of the Commission to Study and Draft Legislation for the Reorganization and Unification of the Courts* (March, 1974), p. 40.

[28] The tables in Appendix B do not reflect the changes that have taken place in Connecticut's court structure as a result of the 1974 and 1976 legislation.

legislature and the courts on all matters regarding the equitable administration of justice.

In 1955, upon the recommendation of the Council, the legislature passed and submitted to the electorate the first major revision of the judicial article. The voters approved the proposed amendments at the general election in November, 1956.

The 1956 amendment created three district courts of appeal to handle most appeals of right, thereby reducing much of the appellate burden on the supreme court. It also gave the supreme court authority to promulgate rules relating to practice and procedure, and it gave some administrative authority over lower level courts. Also included were provisions requiring members of the judiciary who first assumed office after June 30, 1956 to retire when they reached age 70 and allowing members of the judiciary to retire for disability and receive retirement pay.

The electorate approved limited amendments to Article V in the middle 1960's. A 1964 amendment added four new circuits, raising the total number to twenty.[29] A 1965 amendment allowed the creation of additional appellate districts. Pursuant to this amendment, the legislature subsequently created a fourth district court of appeals. The Judicial Administrative Commission was created by statute in 1965 to establish administrative policy for the Florida court system. The commission is composed of the chief justice of the supreme court, selected lower court judges, one state's attorney and one public defender. It assists the supreme court in supervising the courts and, with the state court administrator, provides administrative assistance in financial matters.[30]

Despite these changes, the structure and jurisdiction of the Florida trial courts remained among the most complex in the country.[31] In 1970, sources estimated there were 63 variations of court names, jurisdictions and relationships among the 67 Florida counties.[32] Moreover, part time or nonlawyer judges handled cases in the probate, small claims, juvenile and JP courts. Salary levels across the state were irrational, with some of the lowest paid judges performing judicial duties covering the greatest jurisdiction and calling for the most responsibility.[33]

In 1968 Florida adopted a new constitution, but this constitution left the judicial article completely intact. In response to dissatisfaction with the inadequacies of Article V, in 1969 the legislature approved a new judicial article for submission to the voters.

The 1969 article retained the reforms that had been adopted in 1956. In addition, it proposed the abolition of limited and special jurisdiction trial courts, except county courts in counties having a population under 100,000. Even in such counties, voters could choose to abolish the courts by local option. The business of all limited jurisdiction courts would be transferred to newly created magistrate courts.

Although the proposed article was ostensibly an improvement over the existing system, in essence it constituted a diluted compromise between the proponents and opponents of court reorganization and failed to muster large scale support. It contained no provisions for a uniform court structure, statewide judicial administration, state financing, state responsibility for judicial salaries or a full time judiciary composed exclusively of lawyers. Although it received limited support from the media, the proposed article was not backed by the Judicial Council, the Florida State Bar, or the Circuit Judges Conference, and it was defeated in the 1970 November general election.

In 1971, following a December address by Governor Askew at a special joint session, the legislature enacted a new judicial article which authorized major reforms in the Florida court system. The voters approved this article at a special election the following March, and it took effect January 1, 1973.

The new article establishes a two tier system of county courts and circuit courts with nonoverlapping, uniform jurisdiction throughout the state. All other trial courts were abolished, although to provide for orderly transition, municipal courts were phased out over a four year period ending in January, 1977.

Appellate jurisdiction is vested in the district courts of appeals and the supreme court, as before, although appeals from the county courts are heard in the circuit court of the circuit in which the county is located. The article specifies that the right of review is limited to the appellate process and that there are

[29] "Survey of Reforms: 1964–1966," *Judicature*, 50 (May, 1967), 293, 294.

[30] *Fla. Stat. Ann.*, sec. 43.16 (1974).

[31] *The Supreme Court of Florida* (1976), p. 19.

[32] "1969 Report: An Historic Decade Ends," *Judicature*, 53 (February, 1970), 270, 271.

[33] Talbot D'Alemberte, "Florida's Great Leap Forward," *Judicature*, 56 (April, 1973), 380, 382. D'Alemberte also notes that there had been several scandals in the municipal courts, as a result of which they had been the subject of an ABA investigation.

no trials de novo. The 1972 article also strengthened and consolidated the administrative authority of the courts. First, it vests the chief justice of the supreme court with ultimate administrative responsibility for the state judicial system. Additionally, it establishes the position of chief judge for the district courts of appeal and for the circuit courts. The chief judge for each district court is elected by a majority of the judges of the district and is responsible for administrative supervision of that court. Similarly, the chief judge of each circuit is elected by a majority of the judges of the circuit and is responsible for the administrative supervision of both the circuit and county courts within the circuit. The presiding judge of the circuit is authorized to appoint an executive assistant and administrative staff to carry out administrative duties. Eighteen of the twenty circuits have appointed local administrative staffs who are directly accountable to the presiding judge of the circuit and not to the state court administrator.

To satisfy judgeship needs, the article authorizes the supreme court to certify to the legislature on an annual basis the need for additional lower court judges. The power of the chief justice to transfer judges temporarily, as established in 1956, was retained.

In July, 1972 pursuant to its strengthened administrative authority, the supreme court promulgated a rule creating the office of State Courts Administrator. Oddly, no statute or constitutional provision legitimizing this office has been enacted, even though Florida administrators have worked for that goal since the creation of the office.[34]

The supreme court also retained its rule-making authority under the 1972 article, although all rules promulgated were subject to legislative repeal by a two-thirds vote of the membership of each house. The court has moved circumspectly in this area to avoid conflicts with the legislature.

Another provision of the article requires that all supreme court justices, district court of appeals judges, and circuit court judges be attorneys. County court judges also are required to be attorneys, unless the county in which they served had a population under 40,000 or they were otherwise excepted by general law. The article also specifies that all judges devote full time to their judicial duties.

5. **Idaho.** The 1890 Constitution of Idaho permitted the creation of a cumbersome judicial structure that was not substantially changed until the 1960's. It established a supreme court, a court of impeachment, a district court, a probate court, a JP court, and city or police courts in incorporated cities and towns, all of which presented a "jurisdictional briarpath" of overlapping judicial authority.[35]

Initially, five judicial districts were established, but the legislature was authorized to alter this number in its discretion. By 1966, eight new districts had been created, raising the total number to thirteen.[36] The district courts were uneven in caseload and service. In 1964, for example, courts in six of Idaho's 44 counties handled 51 percent of the 107,000 cases filed that year. However, those six counties employed a mere 16.6 percent of the judicial personnel of the state.[37]

The salaries of probate judges and JPs throughout the state differed widely. Neither probate judges nor JPs were required to be lawyers. Indeed, in 1964, only seven of the state's 44 probate judges and 11 of its 97 JPs were attorneys.[38]

Several unsuccessful efforts to reform the Idaho judicial system were attempted in the early part of the 20th century. In 1908 the electorate approved a constitutional amendment which would have abolished the probate court and transferred its jurisdiction to the district court. This reform did not become part of the constitution, because in 1909 the Idaho Supreme Court ruled the amendment had been improperly submitted to the voters.[39] In 1919 and again in 1949 attempts to consolidate the court structure met with failure. A judicial council was created in 1929, but by 1932 it had lapsed and was not resurrected until the mid 1960's.

A 1941 statute recognizing the inherent rule-making authority of the supreme court and a 1949 statute creating the office of coordinator of the courts were among the first reforms to be successfully instituted. The court coordinator was to be a supreme court justice named by the chief justice to serve a two year term. This officer became responsible for collecting information about the courts and reporting annually to the supreme court and the governor.

Throughout the decade of the 1950's the Idaho State Bar strenuously endorsed proposals to reform

[34] Steven W. Hays, "Court Management: The Administrators and Their Judicial Environment," (unpublished Ph.D. dissertation, Department of Political Science, University of Florida, 1975), p. 77.

[35] State of Idaho, Legislative Council Staff, *Report on Idaho Court Structure* (1966), p. 1.

[36] John Corlett, "The Evolution of a Modern Judiciary," *1976 Annual Report: The Idaho Courts* (1976), p. 2.

[37] *The Post Register,* August 25, 1966.

[38] *Report on Idaho Court Structure, supra* note 35, pp. 14, 17.

[39] McBee v. Brady, 15 Idaho 761, 96 P 216 (1909).

the judicial system by consolidating the court structure and improving the judiciary's administrative capacities. In 1961 the bar's campaign succeeded. That year the legislature approved a proposed amendment which abolished the constitutional status of JP and probate courts. The amendment also authorized the legislature to reform the court structure and to provide for centralized administration of the judiciary. It was subsequently ratified by the electorate in the 1962 general election.

The groups supporting reform decided, as a tactical matter, to amend the constitution before determining the specific structure of the new court system. Once they achieved the constitutional mandate for reform, they devoted their attention to the more difficult task of deciding the details of reorganization. During the next three years they debated the merits of various reorganization plans. Once a consensus was achieved, the bar urged the legislature to appropriate $35,000 for a legislative council committee to study the constitution and the court structure and to recommend specific implementing legislation for the 1962 Amendment.

The committee's preliminary recommendations, which it disseminated to the public in 1966, contained five major proposals for court modernization in Idaho. These proposals included: reestablishment of a judicial council; appointment of a professional court administrator by the chief justice; establishment of a consolidated trial court structure consisting of a district court, with magistrate divisions where needed; realignment of counties to reduce the number of judicial districts to seven; and institution of a non-political plan (following the Missouri and California models) for the selection, tenure, retirement, discipline and removal of district and supreme court justices.

The committee publicized its proposals across the state during the remainder of 1966 in a series of citizens' conferences held under the auspices of the American Judicature Society and the Idaho State Bar. As a result of feedback received from citizens participating in the conferences, the committee eliminated the proposal for a judicial selection, discipline and retirement plan from its final report, which was ultimately submitted to the legislature in early 1967.[40]

The remaining recommendations of the committee were incorporated into legislation, which was drafted and passed by the 1967 session. The legislature subsequently sent the entire package to Governor Donald Samuelson, who vetoed the section consolidating and simplifying trial courts on the ground that the measure would be too costly. Despite the gubernatorial veto, the 1967 legislation instituted three significant reforms in Idaho. It consolidated the judicial districts, reestablished a judicial council and created an administrative office for the courts.

To coordinate administrative responsibility, the administrative office created by the implementing legislation made each of Idaho's seven judicial districts into a separate administrative district. Each of the seven is managed by an administrative judge, who is assisted by a trial court administrator. Six of the seven trial court administrators are also magistrates who carry out judicial duties as well as administrative responsibilities.

The administrative judge of each district is chosen by the trial judges of that region. This judge coordinates statewide policies, handles case assignments and administers court records and nonjudicial personnel. The trial court administrator performs nonjudicial duties, such as answering complaints, disseminating information about the court system and preparing district budget requests. This officer also performs judicial administrative functions under the direct supervision of the administrative judge.[41]

Although the routine administration of the judicial system is carried out at the district level, statewide policies are developed and coordinated by the supreme court with the assistance of the Administrative Office of the Courts. The governor is technically authorized to reassign judges throughout the system, but in practice the administrative director handles the reassignment, which is supported by orders routinely signed by the chief justice. The director also has the authority to collect statistical and financial data from the district and to develop and administer personnel standards for judicial department employees. Despite these standards, the state has not yet established a merit system for all judicial department personnel, although one is contemplated for the near future.

In 1969, the legislature reenacted the vetoed portion of the 1967 reform package with minor changes. This time the bill was signed into law by Governor Samuelson and became effective on January 11, 1971.

The new legislation provided for a single tier trial court of general jurisdiction (the district court). It

[40] The selection, discipline and retirement reforms were revised slightly and were ultimately enacted at a later date.

[41] *1976 Annual Report, supra* note 36, p. 7.

consolidated probate, JP and municipal courts into a magistrate division within the district court. Because the district court is the only trial court, it has unlimited jurisdiction over all justiciable controversies and no problem of overlapping jurisdiction. Appellate jurisdiction is vested in the supreme court, but the district court may hear appeals from its magistrate division. Because of a statutory provision requiring transcription of all proceedings before the magistrate division, appeals to the district court are usually heard on the record. However, the district court may, in its discretion, direct that the case be tried de novo.

The legislation did not require the magistrates serving in the new court to be lawyers, but the supreme court has established certain requirements to insure the competence of the judiciary. Specifically, magistrates are required to participate in a training course supervised by the supreme court and to possess at least a high school diploma or its equivalent. The legislature has specifically authorized the supreme court to enlarge or restrict the jurisdiction of the magistrates, subject only to the limitation that the more sophisticated civil and criminal matters must be tried before magistrates who are attorneys.

The 1969 legislation also created magistrates' commissions for each judicial district and charged them with the responsibility of determining the number of magistrates needed within their respective districts (provided that the number will not be less than one magistrate per county) and of appointing qualified individuals to fill those positions.

Beginning in 1973, and every year thereafter, the supreme court, in conjunction with the administrative office of the courts, has adopted a statewide plan prescribing a general operating philosophy and specific goals for the state's courts for that year. The plans have also assessed the previous year's successes and failures in attaining the projected goals.

6. **Kansas.** Kansas experienced very little judicial reform activity until the past two decades. Although the supreme court was enlarged in 1900 and a judicial council was created in 1927, during the mid 1950's, the judicial article was substantially the same as the one which had been drafted in 1857 to serve the needs of only 100,000 inhabitants of the Kansas territory.[42]

The 1859 Constitution permitted the creation of a multitude of trial courts. Among these were 38 district courts, 105 probate courts, 93 county courts, 105 juvenile courts, eight city courts, five magistrate courts, one court of common pleas and over 400 municipal courts.[43] Many of these courts had inadequate facilities and insufficient supportive staff presenting a "degrading appearance of justice" to litigants.[44] A number of them were staffed with nonlawyer judges, many of whom also had no judicial training. The judges were often inadequately compensated and received no retirement or disability benefits. As a result, many of them held other jobs and devoted only part of their time to judicial duties.

Furthermore, some judges were burdened with extremely heavy caseloads, while others had relatively clear calendars. Yet, no central administrative authority existed to reassign judges across county lines in order to alleviate this situation. Additionally, as late as 1975, no standardized qualifications or levels of compensation had been established for the more than 2,300 support personnel employed in the state court system.[45]

Responsibility for financing the judiciary was divided among the state, counties and municipalities. Each court prepared its own budget. The fragmented nature of financing resulted in serious inequities in the allocation of court revenues throughout the state. As one source reported:

> Present court financing, however, is a fiscal maze of budgets from all levels of government through which it is very difficult indeed to reach any accurate determination of the overall costs of the judicial system of the state. Different levels of government support the different kinds of courts. In some instances the unit of government that receives the revenues from fines and fees is not the same unit of government that pays the expenses of the court. This hodgepodge system separates the responsibility for administering the courts from the power to allocate the funds required to do so.[46]

In addition, some courts, particularly at the municipal level, were accused of operating solely to generate revenues for the local treasury rather than to render justice.[47]

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[42] Paul E. Wilson, "The Kansas Court of Appeals: A Response to Judicial Need," *Kansas Law Review*, 25 (Winter, 1977), 1, 3; Beverly Blair Cook, "The Politics of Piecemeal Reform of Kansas Courts," *Judicature*, 53 (February, 1970), 274, 278.

[43] Cook, *supra* note 42; "Kansas Courts Today and Tomorrow" (unpublished manuscript, 1974 Citizens Conference on the Courts), p. 13.

[44] "Kansas Courts," *supra* note 43, p. 15.

[45] Kansas Citizens for Court Improvement, *The Steps to a Modern Court System* (Overland Park, Kansas, 1976), p. 3.

[46] *Ibid.*, p. 12.

[47] "Kansas Courts," *supra* note 43, p. 29.

Reform activity gained momentum in 1964 when the Kansas Bar Association, the Joint Committee for the Effective Administration of Justice and the American Judicature Society co-sponsored the first Citizens' Conference on the Modernization of Kansas Courts. The conferees recommended that Kansas institute a unified and administratively coherent court system.

The legislature responded to the citizens' recommendations by enacting the 1965 Judicial Department Reform Act, which gave the supreme court administrative responsibility over the state district court system. The act divided the state into six administrative departments and provided that a justice of the supreme court would be assigned to each department and would be responsible for its administration. It gave the justices the power to assign judges from one district to another within the department and to call retired judges into service to reduce case backlogs.

Although most direct supervision occurs at the department level, each judicial district has an administrative judge, who is appointed by the supreme court to supervise clerical and administrative functions within the district. This individual may transfer judges within the district, but only the supreme court may assign judges across district lines.

The Judicial Department Reform Act also created the position of judicial administrator. The administrator was authorized to analyze pending cases to determine where case congestion could best be reduced by temporarily reassigning judges and to coordinate administrative policy. Although most administrative responsibility is exercised at the district and department level, the judicial administrator insures that local operations comply with state policies.

In 1968 the legislature passed the Judicial Reapportionment Act to allow for the equalizing of caseloads. This act reduced the total number of districts from 38 to 29, increased the number of multiple judge districts from 10 to 13 and reduced the number of single judge districts from 28 to 15.[48] It also authorized the supreme court to appoint an administrative judge in multiple judge districts. This reform was followed by a statute which provided a method for increasing the number of judges in the four urban districts, based on a biennial supreme court certification of need. A decade later this statute would be extended to cover all districts.

[48] Cook, *supra* note 42. Only one district remained unaffected by the reapportionment.

The legislature also established a 12-member citizens' committee on constitutional revision in 1968. It authorized this committee to consider constitutional changes necessary to modernize the state's judicial system. The committee's report, which was submitted to the legislature the following year, recommended that a new judicial article be adopted. The legislation necessary to effect the recommendation was passed during the 1972 legislative session and was ratified by the electorate later that year.

The new judicial article reduced the number of constitutional courts to two, the supreme court and the district court. It also incorporated within the constitution, the 1965 statute which had vested administrative authority for the state's judicial system in the supreme court. Finally, it extended the supreme court's administrative authority to all courts.

Because the new article stated only broad principles and policies, the 1973 legislature authorized the supreme court to appoint a group which became known as the Judicial Study Advisory Committee (JSAC). The group was charged with the responsibility of studying the court system and recommending appropriate implementing legislation.

JSAC submitted its final report to the legislature in May, 1974. The report contained a total of 87 recommendations. Among the most significant were: restructuring the court system; creating an intermediate appellate court; strengthening administrative supervision of the courts; eliminating the elected court clerks; and state financing of the entire judiciary, except facilities.

To publicize these recommendations, a second citizens' conference, sponsored by 19 different organizations, convened in September, 1974. The consensus statement, issued at the close of the conference, indicated widespread support for the suggested reforms. The conference also prompted the formation of the Kansas Citizens for Court Improvement, an ad hoc group which promoted court reform in Kansas after the conference.

Certain of JSAC's recommendations were drafted into legislation and passed by the senate in 1975. However, provisions calling for state financing of the judiciary and abolition of the municipal courts met strong opposition in the house. As a result, the only provision adopted by the 1975 legislature was one which created an intermediate court of appeals. In 1976, a bill incorporating JSAC's recommendations, except the two controversial provisions noted above, passed both houses of the legislature and was

sent to the governor for his signature. The statute, which took effect January 10, 1977, abolished all courts of limited jurisdiction (except municipal courts) and transferred their jurisdiction to the district court. The statute created three classes of judges who had jurisdiction over different types of district court cases: district court judges; associate district court judges; and district magistrate judges. Appeals from district magistrate judges may be tried de novo before the district or associate district judges, if no record was made in the initial proceeding. In the alternative, an appeal will be determined on the record. Appeals from the district and associate district judges are heard on the record by the court of appeals unless the matter is directly appealable to the supreme court.

The 1976 implementing legislation fleshed out the 1965 statute and 1972 constitutional amendment, both of which provided for administrative supervision of the judiciary by the supreme court and the judicial administrator. In addition, it provided that all judicial districts, rather than merely multi-judge districts would have administrative judges, designated by the supreme court, to handle clerical and administrative functions for the district. The implementing legislation increased slightly the state's share of the judicial budget. In fiscal year 1974–75, the state financed 33.8 percent of the judicial department's expenses.[49] The legislation also specified that a single budget be developed and administered in each county.[50] Finally, it instituted a method for examining and certifying nonlawyer judges.

7. **Kentucky.** Kentucky's judicial system, which was established by the state's fourth constitution in 1891, remained substantially unchanged for nearly 85 years. The 1891 constitution outlined the state's court structure in detail. It expressly prohibited the creation of any courts other than the constitutional courts. The court of last resort was the court of appeals, while the highest trial court was the circuit court. Below the level of circuit court were a multiplicity of trial courts with overlapping jurisdiction: police courts, quarterly courts, county courts, and justice (magistrate) courts.

Judges were elected to office, and judicial tenure depended on their ability to secure reelection at the end of their terms. Only attorneys could serve as judges in the court of appeals and the circuit court. However, judges in the limited jurisdiction trial courts, except police courts in the most populous cities, were not required to have legal training. In 1974, 90 percent of the county judges, 78 percent of the police judges, and 99 percent of the JP's were nonlawyers.[51]

The trial courts lacked effective administrative supervision. Coupled with overlapping jurisdiction, this created enormous case backlogs in some courts, while others sat almost idle.

Financing the courts was primarily a local responsibility. In 1974 less than one-tenth of one percent of the state's entire budget was used to finance the judiciary.[52] Many court personnel were paid with fees collected from court imposed fines, leading to a form of "cash-register" justice.

In 1950, the legislature created a judicial council composed of lawyers and judges, and a judicial conference composed of the court of appeals and circuit court judges. Both groups were responsible for studying the state's judicial system and for advising the legislature on methods to improve the administration of justice in Kentucky.

The 1891 constitution did not refer specifically to the rule-making authority of the court of appeals. Therefore, in 1952, upon the recommendation of the judicial council, the legislature authorized that court to promulgate rules of pleading, practice and procedure for civil cases. A decade later, in 1962, the legislature passed a similar statute applying to criminal cases.

In 1954, the legislature created the office of Administrative Director of the Courts, which was to operate under the supervision of the chief justice. However, this office did not have extensive enough authority to aid in reducing case backlogs or to coordinate the activities of the state's six different courts.

Judicial reform activity remained in a quiescent state throughout the decade of the 1960's and the early part of the 1970's. A bill proposing to amend the judicial article was introduced in the 1972 legislature, but the controversy it engendered among the state's lawyers and judges prevented its passage during that legislative session.

Subsequent to the 1972 defeat, the proponents of court reform, including the Governor's Judicial Advisory Council, the Courts Committee of the Kentucky Crime Commission, the Steering Committee of the Kentucky Court of Appeals, the Judicial Article Committee of the Kentucky Bar

[49] Memorandum from Carl Baar to Larry Berkson and Susan Carbon, *supra* note 14.

[50] Prior to this time each individual court had administered its own budget.

[51] Kentucky Citizens for Judicial Improvement, Inc., *Final Project Report* (Frankfort, Kentucky, 1974), p. 59.

[52] *Ibid.*, p. 75.

Association and the Interim Committee on Elections and Constitutional Amendments of the Kentucky General Assembly, coalesced to coordinate their efforts to secure passage of a new judicial article. During 1973, while their representatives drafted a proposal, the sponsoring groups formed Kentucky Citizens for Judicial Improvement, Inc. (KCJI), to provide a permanent professional staff to facilitate the court reform effort.

During the remainder of 1973, KCJI worked to plan and implement the Kentucky Citizens' Conference for Judicial Improvement, which was held in late 1973 under the joint sponsorship of eight different organizations. Influential reformers from across the country were invited to the conference to speak to the Kentucky citizens about other states' experiences in enacting and implementing court reform legislation. At the conclusion of the conference the citizens issued a consensus statement which recommended that Kentucky take all steps necessary to secure the prompt modernization and improvement of the state's judicial system.

The judicial article amendment bill was submitted to and passed by the 1974 general assembly. Aided by a campaign to educate the public which was spearheaded by the Kentuckians for Modern Courts (KMC), the amendment was approved by the electorate in November, 1975. Most of the article became effective January 1, 1976, but the new district court system it established will not become effective until January 2, 1978. The court reorganization mandated by the new article also required extensive implementing legislation which was passed during the 1976 session of the legislature.

The new judicial article, coupled with the implementing legislation, thoroughly reorganized the state's court structure. The court of last resort was renamed the supreme court, and an intermediate appellate court was created to hear most appeals of right. The article retained the circuit court as the trial court of general jurisdiction, but it consolidated the limited jurisdiction and specialized trial courts into a single limited jurisdiction district court. This court will begin operating January 2, 1978.

With one exception, concurrent jurisdiction between the circuit court and district court has been eliminated.[53] The new article guarantees litigants one appeal of right to another court. Trials de novo have been abolished by the new article and therefore appeals are heard on the record. With one exception, it requires all judges to be lawyers.[54] Additionally, it prohibits them from practicing law or engaging in partisan political activity during their term of office. The article acknowledges the chief justice of the supreme court as the administrative head of the judiciary. To execute this responsibility the article authorizes him to reassign judges among the courts and to appoint such administrative assistants as are necessary to insure the efficient operation of the judicial system. In addition, the article provides for a chief judge to be selected in the court of appeals, and in each judicial district and circuit.

The 1976 implementing legislation enlarges and redefines the responsibilities of the Administrative Office of the Courts, which had been created by statute in 1954. These responsibilities are carried out by one of the three divisions of the Administrative Office of the Courts. The division of court services collects statistical information to aid in records management and facilities planning, administers the state pretrial services program and advises the chief justice on the need for temporary reassignment of judges. The division of administrative services collects statistical financial data from the courts, prepares budget estimates, reviews and audits expense vouchers, prepares requisitions to pay state funds which have been appropriated to the judiciary, and maintains fiscal controls over the court system. Finally, the division of research and planning conducts research on the operation and administration of the courts, provides education programs for the judiciary, formulates long range plans and makes recommendations on policies and procedures to improve the administration of justice in Kentucky.

To further centralized administration, the new judicial article expressly authorizes the supreme court to promulgate rules for all courts in the state. The article also authorizes all court expenditures to be assumed by the state. Full state financing is expected to be effectuated by January, 1978.[55]

8. **New York.** Between the signing of the Declaration of Independence and 1950, New York adopted

[53] The exception is felony examining trials. Staff of the Administrative Office of the Courts, "Kentucky's New Court System: An Overview," *Kentucky Bench and Bar*, 41 (April, 1971), 13, 33.

[54] In any county where no district judge resides, the constitution authorizes the chief judge of the district to appoint a trial commissioner who resides in the district. It is proposed that the trial commissioners should not preside over trials except guilty pleas. Although the constitution expresses a preference of the appointment of an attorney as trial commissioner, this officer may be a non-lawyer if there are no qualified attorneys available. *Ky. Const.*, sec. 113(5) (Supp. 1976).

[55] The four tables in Appendix B do not reflect the changes which have occurred as a result of implementing the new judicial article.

four different constitutions. Most of them effected significant changes in the structure and operation of the judicial system. During this period the judicial article was amended 28 times.[56] Despite the level of activity and concern over the judicial article, the New York judicial system remained in a state of chaos as of 1950.

The numerous constitutions had created a vast system of courts with no effective system of administration to enable them to operate efficiently. Commenting on the inadequacies of the judicial system, Fannie J. Klein has concluded:

> Thus, in the fifth decade of the twentieth century, in spite of nearly two centuries of continuous efforts by New York court reformers to consolidate and simplify the court structure, litigants in that state were forced to proceed through a maze of courts which confused and often frustrated those whom the system was supposed to serve by narrow, conflicting and overlapping jurisdictions accompanied by technical roadblocks sometimes fatal to their cause and always slowing the progression of their cases. Incredible as it may seem, twenty-one different types of independent courts existed.[57]

In 1953 at the behest of the New York State Crime Commission, numerous civic organizations and a number of the state's local bar associations, the legislature created a temporary commission to study the courts. The Tweed Commission, so named after its chairman, Harrison Tweed, undertook a comprehensive three year study of the administration, structure, personnel, procedure, cost of justice and selection of judges in the state's judiciary. It submitted a plan for judicial reform to the governor and to the 1957 session of the legislature, but the plan died in committee.[58] Although the 1957 session failed to agree on a court reform plan, it did appropriate funds to enable the Tweed Commission to operate another year. However, after the 1958 legislature was similarly unable to pass a plan for court reorganization, the Tweed Commission was abolished.

Despite the failure of the Tweed Commission's court reform package, a number of citizens' groups, including the Committee for Modern Courts Fund and the League of Women Voters, continued to lobby actively for modernization of the court system. Their continued pressure on the legislature ultimately secured the passage of a court reform amendment, which was overwhelmingly approved by the electorate in November, 1961. Following the enactment of 22 bills of implementing legislation, this amendment became fully effective in September, 1962.

The 1961 amendment is generally credited with achieving a significant reform of the state's court system while also leaving much to be accomplished. Although it consolidated the state's court structure, at least 13 different types of courts still remained.[59] New York's system has not changed since the 1961 amendment and presently it is among the most complicated in the country. At the apex of the system is the court of last resort, the court of appeals. Below it, the justices of the supreme court sit in an appellate division (or an appellate term) to hear most matters appealable by right. The state is geographically divided into four appellate departments, each of which is assigned to an appellate division of the supreme court. The appellate division hears cases appealed from the county court, the court of claims, the surrogates court, the family court, the supreme court and civil cases from the appellate term.

In a few designated judicial districts, supreme court justices sitting in an appellate term hear appeals. The appellate term hears appeals from New York City's civil and criminal court, the district

[56] Separate constitutions were adopted in 1777, 1822, 1846, and 1894. Amendments were adopted in 1826, 1845, 1872, 1873, 1879, 1880, 1882, 1888, 1892, 1905, 1909, 1910, 1911, 1913, 1919, 1921, 1922, 1925, 1929, 1931, 1937, 1943, 1947, 1949, 1951, 1953, 1955, and 1961.

[57] Fannie J. Klein, "New York State's Court System," *1973 Citizens Conference on the Courts* (unpublished conference materials, 1973), p. 4.

[58] To indicate the complexity of the New York court structure, the Tweed Commission's proposed reform would have consolidated the state's court system into a simplified six-tier structure with administrative power vested in the Judicial Conference.

[59] Various observers have arrived at different totals for the number of courts remaining in New York after the 1961 amendment. The total of thirteen courts has been determined from the courts named in Article VI of the constitution and includes the following: court of appeals; supreme court; family court; court of claims; surrogates court; county court (all of the foregoing are essentially statewide courts); New York City criminal court; New York City civil court (New York City courts); district court; town court; village court; city court (courts outside New York City) and Indian court (other courts referred to in Article VI).

The total number of courts was actually slightly higher because the supreme court, the general jurisdiction trial court, sits in appellate divisions and appellate terms as an intermediate appellate court. Furthermore JP courts, police courts and recorders courts have been retained in locales outside New York City by virtue of a provision in the constitution authorizing the continued existence of inferior civil and criminal courts in areas of upstate New York.

court, the town court, the city court and the village court. Civil appeals from the appellate term are heard by the appellate division, but criminal appeals are taken directly to the court of appeals.

The supreme court is the trial court of general jurisdiction. In addition there are approximately five courts of limited jurisdiction outside New York City (the county court, the district court, the city court, the town court, and the village court) and five specialized courts (the court of claims, the family court, the surrogates court, the New York City civil court and the New York City criminal court). Despite some instances of exclusive jurisdiction, for the most part, all of these courts are plagued with various degrees of overlapping jurisdiction.

Appeals from most of the trial courts are heard on the record by the appellate division or appellate term of the supreme court. However, appeals from the city, town and village courts can either be heard on the record in the appellate term or tried de novo in the county court.

The 1961 amendment eliminated part time judges in the major upstate courts. It also transferred administrative authority from the Judicial Conference, an advisory body of judges which had been created by statute in 1955, to an administrative board of the Conference. The administrative board was composed of the chief justice of the court of appeals, and the presiding justices of each of the four appellate divisions of the supreme court.[60] Because ultimate administrative power for each department lay with the presiding justices, the 1961 amendment "created the illusion of centralized administration, while power was actually diffused."[61]

The inadequate nature of the reform effected by the 1961 amendment is illustrated by Fannie J. Klein's comment in the materials distributed to conferees at the 1973 New York citizens' conference:

> The changes brought about by the 1961 amendment produced some benefits, but the problems remain of fragmented jurisdiction, lack of coordination and admininstration, inadequate financing, deplorable facilities and a politicized judiciary. Justice in New York City continues to groan under the weight of multiple courts and constrictive roadblocks. Upstate part-time lay judges continue to function. Local communities throughout the state are heavily burdened, unable to meet the ever-increasing minimum requirements for financing their courts and court services. The state's judicial disciplinary agency, the Court on the Judiciary, has proved to be as cumbersome and unresponsive to the need for prompt action as are the traditional impeachment procedures it was intended to improve. Judges for the most part continue to be selected by the political parties, not the voters.[62]

In 1965 a group of business and professional people in New York City formed an independent non-profit organization entitled the Economic Development Council of New York City, Inc. (EDC). The purpose of EDC was to improve the quality of life and therefore, the business climate, in New York City by providing new job opportunities, better education and housing and a sense of well-being for New York citizens. Although the primary objective of EDC was not in the area of court reform, fiscal difficulties experienced by New York City during the past decade had created many social and economic problems. This caused EDC to devote considerable energy to studying the administration of justice in New York in order to alleviate these problems. Its analysis of the city's judicial system recently has resulted in a number of recommendations which apply modern managerial principles and practical reforms to the court system. Many of these recommendations have been instituted and have been remarkably successful in clearing backlogged calendars and rationalizing New York's judicial administration, despite monetary and personnel cutbacks caused by the fiscal crisis.

The same year EDC was formed, the legislature approved a measure calling for a referendum to hold another constitutional convention. The referendum was ratified by the electorate, and the delegates were convened in 1967. The Institute for Judicial Administration of New York University, at the request of the League of Women Voters, the Committee for Modern Courts and the Citizens' Union of New York,

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[60] A judicial council had been created in 1934 to analyze and study the court system. In 1955 the legislature replaced the Judicial Council with the Judicial Conference. The Conference is composed of representative judges from the state's courts. Since it was principally an advisory body, prior to 1961 the courts were actually administratively autonomous.

The supreme court is a trial court of general jurisdiction which also sits as an intermediate appellate court. The state is divided into four judicial departments, each of which has an appellate division of the supreme court.

[61] David J. Ellis, "Court Reform in New York State: An Overview for 1975," *Hofstra Law Review*, 3 (Summer, 1975), 663, 695.

[62] Klein, *supra* note 57, p. 6.

submitted a model judicial article. However, it was eventually rejected by the convention's judiciary committee. The judicial article, which was included in the final constitutional package, was lacking in many respects. It was complex in structure, and aside from consolidating the New York City courts and the lower level upstate courts, it did not differ greatly from the 1961 amendment. The entire constitution was defeated in 1967, with some opponents claiming that the judicial article alone was enough to warrant rejection of the constitution.[63]

Court reform activity remained minimal until 1970 when the legislature established another temporary state commission to study the courts. This commission was chaired by Senator D. Clinton Dominick and has become known as the Dominick Commission. The commission's final report, which was released on January 2, 1973, found "too much that is wrong" with the state court system and offered 180 recommendations to improve it.[64] These recommendations included: consolidation of all trial courts into a new statewide superior court; institution of strong, centralized judicial administration; delegation of rule-making power to the courts; creation of a unitary budget; and institution of centralized state financing for all courts within ten years.

New York has adopted some of the recommendations of the Dominick Commission in a piecemeal fashion during the past four years. In 1974 Court of Appeals Chief Judge Charles Breitel "created" the post of state court administrator by arranging for each of the four judicial departments to designate Supreme Court Justice Richard Bartlett as administrative judge for that department. This arrangement gave Judge Bartlett administrative authority over the entire state court system, provided that the departments continued their acquiescence in this arrangement. Justice Bartlett subsequently organized the Office of Court Administration to assist him with his administrative duties. The legislature passed a special statute to confirm the legality of this arrangement and to create the new position of state administrative judge.

In 1975 a proposed constitutional amendment, which would have ensconced the office of state court administrator in the constitution, was narrowly defeated by the electorate. However, in 1977 a similar amendment was placed before the voters, and this time it was approved. Consequently, Chief Judge Breitel's administrative coup of 1974 is now constitutionally authorized.

During 1976 the legislature considered four proposed constitutional amendments, including one providing for a fully state financed judiciary. When the proposals did not pass during the regular session of the legislature, Governor Carey called the legislators into an extraordinary session to reconsider the proposed court reform package. As a result of a compromise devised among leaders of both political parties, Governor Carey and Chief Judge Breitel, state funding was secured by means of a statute requiring the state to assume the costs of all state courts except town and village courts over a four-year transition period commencing April 1, 1977.

This statute provides that the state will initially fund the costs of operating the judiciary and will charge a portion of the costs back to the counties. Although the legislature contemplated that the charge back would be 78% in the first year due to budgetary difficulties in March, 1977, Governor Carey requested that the charge back for the first year be increased to 87.5 percent (the state's share thus totaling 12.5%). Although the legislature complied with this request, it is uncertain how the reduction will affect the state's share in later years.[65]

A separate section of the financing bill made all local court personnel state employees, effective April 1, 1977, with their vacations, salaries, pensions and retirement benefits left unimpaired.

9. **Ohio.** The judicial article of the 1851 constitution governed the structure and operation of the Ohio judicial system for more than a century. The article established five constitutional courts and authorized the legislature in its discretion to establish inferior courts.[66] The legislature responded to this mandate by creating eight different courts during the ensuing century. Ultimately, three of the eight statutory courts were abolished and the JP courts were replaced by the county courts. Nevertheless, a legislative study indicated that as recently as 1960 Ohio had

[63] Betty Schack, "New York's Court Reform Fiasco" (unpublished manuscript, May 13, 1968) p. 54.

[64] Temporary Commission on the New York State Court System . . . *And Justice for All* (Dominick Commission Report, New York, 1973), p. 1.

[65] The financing table in Appendix B does not reflect changes which have occurred during implementation of the financing statute.

[66] The five constitutional courts were the supreme court, the district court, the court of common pleas, the probate court and the JP court. An 1883 amendment replaced the district court with the circuit court, and a 1912 amendment renamed the circuit court the court of appeals and made it a court of last resort for most matters appealable of right. The 1912 provision also amended the language of the constitution so that the legislature was only allowed to establish inferior courts below the level of the court of appeals, rather than below the level of the supreme court.

over 1,130 separately created courts, of which over 800 were mayors' courts.[67]

The piecemeal creation of the court structure resulted in considerable overlapping jurisdiction and an uneven distribution of judges and caseloads. As a result, some court calendars were badly clogged, while others were substantially current. Localities assumed a large share of the cost of operating the courts, particularly the municipal courts. Often fees collected from local prosecutions were used to support the courts. The net result, in many cases, was that judges profited from enforcing the law.

A number of reforms were instituted intermittently during the twentieth century: the creation of a judicial council in 1923; the enactment of a statute conferring rule-making authority on the supreme court in 1953; the establishment of the office of administrative director for the courts in 1955; the organization of a judicial conference in 1959; and numerous studies of the Ohio court system conducted by the Legislative Service Commission and various Ohio bar associations.

Evidently these reforms had little impact, because a mid 1960's study of the courts by the staff of the Ohio Legislative Service Commission found conspicuous deficiencies in the administration of justice. The report stated:

> Ohio courts appear to be lacking in both organization and management. Some courts are unable to meet the demands of judicial business, despite extraordinary efforts of individual judges to correct the situation. Judges in other courts do not have sufficient business to operate on a full-time basis. While many lawyers and litigants are aware of serious congestion and delay in certain courts, there are no systematic and definitive reports as to actual court performance and the lack of this basic management tool makes evaluation of the performance and capacity of the courts more difficult.[68]

After 1960, pressure to reform the Ohio court system intensified. In 1963 two committees of the Ohio State Bar Association, one studying judicial selection and the other studying judicial administration, combined to form the Modern Courts Committee. This committee drafted a proposal calling for consolidation of all trial courts into the common pleas court, placement of administrative and rule-making authority in the supreme court and establishment of standards relative to judicial retirement.

Similarly, in 1964 the house of representatives authorized a study of the judicial system by the Legislative Service Commission Study Committee on Judicial Administration. This committee's recommendations, which were similar in many respects to the proposals of the Modern Courts Committee, were submitted to the legislature in December, 1964.

Legislation, which incorporated the recommendations of both committees, passed the general assembly in 1968.[69] The Modern Courts Amendment, as it was entitled, was submitted to the electorate in a May special election and was approved by nearly two to one.[70] To allow time for enacting implementing legislation, the study committee originally contemplated that the amendment would not become effective until 1970. However, in a case decided June 19, 1968, the supreme court ruled that the amendment was effective upon adoption.[71]

The amendment simplified the state's court structure by eliminating probate courts as constitutional courts. Probate jurisdiction was transferred to a newly created probate division of the court of common pleas. The amendment also empowered the legislature to create additional courts inferior to the supreme court, presumably allowing the creation of additional courts on the same level as the court of appeals.[72] Finally, it imposed a mandatory retirement age of 70 upon all judges.

The amendment had a substantial impact on the administration of the judicial system. It vested the supreme court with general superintendence over all state courts and authorized the chief justice to act as the principal administrative officer of the system. To

[67] Ohio Legislative Service Commission, Staff Research Report No. 47 *The Ohio Court System: Its Organization and Capacity* (Columbus, Ohio: January, 1961), p. 10. Mayors' courts sat in cities that did not have a municipal court or a police court. They were presided over by the mayor.

[68] Quoted in William W. Milligan and James E. Pohlman, "The 1968 Modern Courts Amendment to the Ohio Constitution," *Ohio State Law Journal*, 29 (Fall, 1968), 811, 821.

[69] The Legislative Service Committee had initially included a provision calling for merit selection of judges in its proposal. However, merit selection has been a controversial issue in Ohio, and the merit selection provision was eliminated from the final bill before the legislature. In 1973 another effort was made to place a merit selection amendment before the electorate. However, this bill similarly failed to achieve passage in the general assembly.

[70] Milligan and Pohlman, *supra* note 68, at 819.

[71] Euclid v. Heaton, 15 Ohio St. 2d 65, 238 NE 2d 790 (1968).

[72] As amended in 1912, the constitution provided for legislative creation of additional courts inferior to the court of appeals. See, *supra* note 66.

aid the chief justice in this respect, the supreme court was authorized to appoint an administrative director of the courts. This provision made the office of administrative director, which had originally been created by statute in 1955, a constitutional office. Additionally, the chief justice was authorized to reassign judges to temporary service in other courts or to call retired judges into service for the purpose of equalizing caseloads in the state's courts.

One of the most significant provisions in the 1968 amendment was its specific grant of rule-making authority to the supreme court. The amendment also provided that rules promulgated by the supreme court were to supercede any prior inconsistent legislation. Nevertheless, the legislature did reserve the power to veto court-made rules prior to their effective date. Notwithstanding the legislative veto, the Ohio supreme court has vigorously exercised its rule-making authority. Indeed, it is one of the foremost leaders in this area.

In 1973 the electorate approved another amendment which allowed the common pleas court to be reorganized into other divisions in addition to the probate division. This amendment thus made constitutional the organization of the domestic relations and juvenile divisions of the common pleas court.

Additional court consolidation was effected in August, 1975, by a statute which abolished police courts and transferred their jurisdiction to municipal courts. In order to effect this transfer, new municipal courts were created in some locales.

Ohio now has a supreme court, an intermediate appellate court, a trial court of general jurisdiction, two trial courts of limited jurisdiction, and two specialized trial courts. The court of common pleas is the general jurisdiction trial court. Appeals from the common pleas court are heard on the record by the court of appeals.

The municipal and county courts are trial courts of limited jurisdiction. The county court exists in parts of counties that are not served by municipal courts, and in counties where there are no municipal courts. Both these courts have a considerable amount of concurrent jurisdiction. Furthermore, their jurisdiction overlaps, to some degree, with the jurisdiction of the common pleas court. Municipal court appeals are heard on the record by the court of appeals. However, appeals from the county court may either be heard on the record by the court of appeals or tried de novo in the court of common pleas.

Mayors' courts are established in all municipal corporations that do not have a municipal court. A recent estimate indicates that there are roughly 600 in existence.[73] The mayor's court is a specialized court with jurisdiction over municipal ordinance violations and traffic offenses. The mayor serves this court as a part time judge. Appeals from the mayor's court are heard de novo by either the municipal court or the county court.

Finally, the court of claims, which was created by statute in 1976, is a specialized trial court of record with statewide exclusive original jurisdiction of civil actions against the state. Appeals from the court of claims are heard on the record by the court of appeals.

Considerable support exists at the present for further consolidation of Ohio's court structure. Proponents desire to incorporate the municipal and county courts as divisions of the common pleas court and to eliminate the mayors' courts. Legislation to accomplish this goal has been introduced in both the 1976 and 1977 sessions of the general assembly. The pending legislation would also create a judicial department responsible for both the preparation of a single judicial budget and for channeling the state's payment of all expenses of the Ohio court system. It would extend the rule-making authority of the supreme court and allow further centralization of administrative authority in the judicial system, particularly at the trial level.

10. **South Dakota.** Between the adoption of the South Dakota constitution in 1889 and 1960, the electorate approved more than 70 amendments, most of which had little impact on the judicial article. As early as 1911, numerous deficiencies in the constitution began to engender criticism, which was not abated until recently.

A principal complaint about the judicial article was that it created a rigid and complex court structure. The constitution permitted the establishment of five separate trial courts with confusing, overlapping jurisdictional problems.[74] The constitution did not require judges in the JP courts to be lawyers or to have special judicial training. All courts experienced considerable difficulty attracting good lawyers to the bench because judicial salaries were low and terms of office were short. Consequently, a judgeship offered little job security.

The system lacked effective administration among the various courts. In fact, the supreme court did not even have a chief justice. Rather, it was headed by

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[73] Knab, *supra* note 2, p. 298.

[74] The courts included the circuit court (the court of general jurisdiction), the district county court, the JP court, the police magistrate court, and the municipal court (the limited and specialized courts).

one justice, who assumed the position of presiding justice by annual rotation. Furthermore, the boundaries of courts and numbers of judges serving in the courts could not be adjusted by court rule. To alter them required a two-thirds vote of the members of each house of the legislature. Finally, the courts were funded from a variety of state and local sources. Individual courts prepared their own budgets, and no central control governed how they expended appropriated funds.

Relatively little reform activity emerged until 1954, when a research group of seven state legislators, the Little Hoover Commission, urged a revision of the entire constitution to correct deficiencies and inconsistencies. That same year the South Dakota State Bar formed a committee to conduct a continuing study of the state court system. The annual reports of this committee expressed considerable skepticism over the viability of the state's judiciary. It was not until 1961, however, that the legislature responded to dissatisfaction with the constitution in general, and with the judicial article in particular. At that time it appointed a commission to study the state court system and to recommend ameliorative legislation.

The report of the Court Study Commission, which was submitted to the 1963 legislature, recommended extensive changes for the judiciary. It advised that all trial courts be consolidated into the circuit court and that the supreme court be authorized to create limited jurisdiction trial courts by rule. Similarly, the commission's report advocated express constitutional confirmation of the supreme court's rule-making authority and the creation of a state court administrator's office.

The commission's proposals failed to generate widespread support. The state bar rejected them in December, 1963, and the district county court judges vehemently opposed them. To allay some of the concern over the commission's proposals, the 1964 legislature established the Judicial Conference to study the state judiciary and make recommendations to improve the administration of justice in South Dakota.

The constitutional amendment, which was ultimately submitted to the electorate in 1966, represented a truncated version of the Court Study Commission's 1963 suggestions. As approved by the electorate, the amendment provided for the consolidation and redistricting of district county courts by supreme court rule. Legislative compromises had eliminated the remaining recommendations.

In 1968, further court consolidation was accomplished by statute. Previously, any city with a population of 5,000 or more and any county seat with a population of 1,500 or more could establish a municipal court. Under the new law, the district county courts absorbed municipal courts in cities with populations under 20,000 inhabitants. This law effectively eliminated all municipal courts, except those in Sioux Falls, Rapid City and Aberdeen.

The 1971 legislature effected still another modification in the court structure. By statute it provided that the supreme court would hear on the record appeals from the district county courts. Prior to that time appeals from the decisions of these courts were tried de novo in the circuit courts.

Still another reform passed the 1972 legislature. This statute extended the disability and retirement benefit program, which was already available to supreme and circuit court judges, to the judges of the district county and municipal courts.

In 1972 the Constitutional Revision Commission, which had been created in 1969, submitted its report to the legislature. The commission's suggestions encompassed proposals to revise four articles of the South Dakota constitution. Its recommendations for the judicial article derived principally from the 1963 report of the Court Study Commission, and the model state judicial article of the American Bar Association. This time the proposals received widespread support, and with relatively minor changes, the 1972 legislature approved them unanimously and placed them on the November ballot.

Less than a month before the referendum on the proposed constitutional amendments, a citizens' conference was held to generate public support for the new judicial article. At the close of the conference an ad hoc committee formed to campaign for passage.

In the November election the new judicial article was approved by a larger margin than any other amendment on the ballot that year.[75] Effective January 7, 1975, it eliminated all constitutional courts, except the supreme court and the circuit court; lengthened the judicial term of office to eight years; required judges in the constitutional courts to be attorneys; and retained a provision which prohibited judges from practicing law while in office. Another provision in the article gave the legislature discretion to create limited jurisdiction trial courts as needed. Pursuant to this authorization the legislature has created a magistrate division of the circuit court,

[75] "Election Day 1972: The Judicial Issues," *Judicature*, 56 (December, 1972), 212, 213.

with limited civil and criminal jurisdiction. Nonlawyer judges may serve in the magistrate division. However, their jurisdiction is extremely circumscribed, and they are required to attend a special training course supervised by the supreme court.

Although the jurisdiction of the magistrate court is limited, it is generally considered to be a division of the circuit court.[76] Consequently, there is no jurisdictional overlap between the two tribunals. Appeals from lawyer magistrates are heard on the record in the circuit court. However, the lay magistrate court is not a court of record, and appeals from it are tried de novo in the circuit court. Circuit court appeals are heard on the record in the supreme court.

The new article also created, for the first time, the office of chief justice of the supreme court. This individual was to serve as the administrative head of the judiciary. Subsequently, a personnel classification system adopted by the supreme court authorized the position of state court administrator. The administrator's office is divided into six departments. These are budget, finance, personnel, training, research and development. Administrative authority for the circuit courts is exercised by the presiding judge of the circuit under the supervision of the chief justice. In two of the nine circuits, a trial court administrator is delegated administrative responsibilities by the presiding judge.[77]

South Dakota also has a statewide merit system for auxiliary court personnel. Personnel qualifications, salary grades, and position duties that are not determined by statute are established and administered by the state court administrator's office.

The new article also vested the supreme court with extremely broad rule-making authority. Article V expressly authorizes the supreme court to promulgate rules of practice, procedure, administration, and superintendence for all state courts. The constitution specifies that the supreme court shall promulgate rules for terms of court, admission to the bar, attorney discipline, and implementation and enforcement of the powers of the judicial qualifications commission. Additionally, it grants the supreme court discretionary power to designate the administrative authority of the circuit court presiding justices, to determine the number of judges and circuits and to establish boundaries for circuits.

A section of the new article authorized implementation of the entire article by court rule as well as statute. Contrary to the practice in most states, this process has been achieved in large part by court rule.

The constitution also authorizes a consolidated state budget and complete state funding of the judiciary, subject to a legislatively determined chargeback to local governmental subdivisions. The state initially pays the costs of court personnel and operations. The counties reimburse the state for a percentage of its expenses and provide facilities for their local courts. The state required a 50 percent reimbursement from the counties for their share of court expenses until September, 1977 when the counties reduced their reimbursement to 37.5 percent of the pro-rated local costs. In September, 1978, the counties' share will decrease to 25 percent.[78]

The judicial department budget is prepared by the state court administrator's office under the supervision of the chief justice. Initially, the presiding judges of each circuit prepare the circuit budgets. The budgets are then consolidated with the statewide budget by the administrator's office and submitted to the executive bureau of finance and management.

11. **Washington.** Numerous constitutional and statutory reforms have been effected in the Washington judiciary since the adoption of the constitution of 1889. The present system, however, remains replete with complexity. The state's four trial courts are characterized by haphazard and overlapping jurisdiction. Of these four, the superior court is the only court of record. Consequently, appeals from the lower level trial courts must be tried de novo.

In April, 1977, it was estimated that Washington had 311 courts of limited jurisdiction served by 216 judges. Only 123 of these judges were attorneys.

[76] Actually, opinion is divided over whether the magistrate's court is a special division of the circuit court or a limited jurisdiction trial court. The constitutional authorization for this court seems to indicate it is a limited jurisdiction trial court. However, the wording of the statute creating it may imply it is a division of the circuit court. *S.D. Comp. Laws Ann.* sec. 16–12A–2 (Supp. 1976). The statute states: "Pursuant to the provisions of section 4 of article V of the South Dakota Constitution, there is hereby established *within each judicial circuit* a magistrate court" (emphasis added). Furthermore, *S.D. Comp. Laws Ann.* sec. 16–12A–4 (Supp. 1976) provides that magistrates are appointed by the presiding judge of the circuit and serve at the pleasure of the presiding judge. Additionally, the literature seems to indicate the magistrate court is a division of the circuit court, rather than a limited jurisdiction trial court. James J. Alfini and Rachel Doan, "A New Perspective of Misdemeanor Justice," *Judicature*, 60 (April, 1977), 425, 427 N. 10; *National Survey of Court Organization, supra* note 2, p. 37; *contra* Knab, *supra* note 2, p. 339.

[77] The circuits with trial court administrators are the second circuit in Sioux Falls and the seventh circuit in Rapid City.

[78] *S.D. Comp. Laws Ann.* sec. 16–2–35.1 (Supp. 1976). The tables in Appendix B do not reflect changes which have occurred as a result of implementation of state financing pursuant to this statute.

Furthermore, 155 of them were part time judges, half of whom served more than one court.[79]

Neither the chief justice nor the supreme court exercises managerial control over the judicial system. Although there is a state court administrator and a judicial council, neither the supreme court nor the court administrator nor the judicial council exercise much fiscal control over the judiciary. There is no centralized budget, except for the appellate courts, and the courts are financed from a combination of state and local sources.

Although Washington's judicial system remains relatively complex, numerous reforms have been enacted during the past century. For example, a judicial council was created by statute in 1925 with authority to receive suggestions about shortcomings in the judicial system and to make recommendations for improvements. However, during the first four decades of its existence, the council remained without a permanent staff. Consequently, for a long period of time it was relatively ineffective in promoting court reform.

As early as 1925 a statute was enacted authorizing the supreme court to promulgate rules of practice, pleading and procedure for all state courts. Two other statutes passed at the same time provided that rules promulgated by the supreme court would supercede any inconsistent statutes and that lower courts could promulgate supplementary rules provided those rules did not conflict with supreme court rules.[80] However, the supreme court has been somewhat reluctant to exercise its authority, and it has only recently become active in this regard.

Very little reform took place for the three decades following 1925. In 1951 a constitutional amendment prohibited fee justices in cities with populations over 5,000.[81] However, this amendment did not affect the many JPs in sparsely populated rural areas of the state.

A statute enacted in 1957 created the Office of Administrator for the Courts. The administrator was authorized to collect statistical information on court dockets, recommend temporary reassignment of judges to the chief justice, prepare budget estimates and recommend methods to improve the administration of justice. Although its authority was broad, the administrator's office initially concentrated its efforts on collecting and analyzing statistical data on trial dockets.[82] More recently, the supreme court has delegated its responsibility for assigning trial court judges to the administrators office. However, the assignment power is somewhat limited in that district court judges can only be assigned outside their district with their consent.

The statute which created the court administrator's office also established the Judicial Conference. It was vested with responsibility for coordinating efforts to improve the judicial system.

In 1961 the legislature attempted to further reduce the number of fee justices by enacting a statute commonly known as the Justice Court Act of 1961. This statute created a new system of courts, which were called justice courts. However, to avoid confusion with the JP courts, these new statutory courts were referred to as district courts, since the Act provides that the courts be established within a geographic area known as a district.

The Justice Court Act has probably increased, rather than decreased, the complexity of Washington's court structure, since the choice to come under the provisions of the Act was left to the discretion of the governing bodies of the counties. The statute also provided that, with two exceptions, judges of the new courts must be attorneys. Excepted from this requirement were: (1) those who had previously served as lower court judges or justices; and (2) district judges in any district having a population less than 10,000. Of course, JPs in all counties which elected not to come under the 1961 act were not required to be attorneys.

In addition, the Justice Court Act required all judges presiding in districts with a population equal to or exceeding 40,000 and receiving a salary greater than $15,000 to serve fulltime. However, other district court judges were not required to devote fulltime to their judicial duties. Similarly, in counties which did not elect to come under the 1961 act, only JPs in cities over 20,000 were required to serve fulltime. Fee justices and salaried JP's in cities with populations between 5,000 and 20,000 were allowed to serve parttime.

In addition to creating confusion about the qualifications of judges, the Justice Court Act provided two alternative methods to establish municipal courts. These provisions further complicated the court structure because they differed from those governing the creation of municipal courts in counties which did not elect to come under the Act.

[79] League of Women Voters, *Washington Courts – Judicial Reform*, (Seattle, September, 1976), p. 11; updated by memorandum from Phillip Winberry to Larry Berkson, July, 1977.

[80] *Rev. Code Wash. Ann.* sec. 2.04.190–2.04.210 (1961).

[81] *Wash. Const.*, Art. 4, sec. 10 (1961).

[82] Tom C. Clark, "The Need for Judicial Reform," *Washington Law Review*, 48 (November, 1973), 806, 807.

Nevertheless, effective July 1, 1977, only one county in the state was not governed by the 1961 Act.[83] Consequently in the sixteen years since its enactment, the Act has reduced the number of fee justices, but it probably has not simplified the Washington court structure.

Washington currently has a supreme court, an intermediate appellate court (created in 1968), a trial court of general jurisdiction (the superior court), two trial courts of limited jurisdiction (district and JP courts), and one specialized court (the municipal court). The superior court has general statewide jurisdiction of civil and criminal matters. It is a court of record and its appeals are heard on the record by the court of appeals. The jurisdiction of the district, JP, and municipal courts is haphazard and overlapping. All three courts also have concurrent jurisdiction with the superior court. Additionally, because none of the limited and specialized trial courts is a court of record, their appeals are tried de novo in the superior court.

Subsequent to the Justice Court Act, a constitutional amendment adopted in 1962 authorized temporary reassignment of judges or temporary service by retired judges to assist in the prompt and orderly administration of justice.

In November, 1966, Washington held its first statewide citizens' conference. Following the conference, the Citizens' Committee on Washington Courts organized as a permanent lobbying group to promote court reform.

At the same time, the Judicial Council received appropriations to maintain a permanent staff. One of the first projects it undertook was to research the feasibility of creating an intermediate court of appeals. A proposed constitutional amendment on this subject received the active support of the court administrator, the state bar and the Citizens' Committee for Washington Courts. Through their combined efforts the appropriate legislation passed in the 1968 session and was approved by the electorate in the November general election. The new court began hearing cases September 8, 1969.

The Judicial Council has become more active in promoting court reform since it has been provided with a permanent staff. Its staff has studied the operation of the rules of practice and procedure and has assisted the supreme court in formulating and drafting new sets of rules to insure the effectiveness of judicial administration. It has also advocated legislative changes to modernize the Washington judicial system.

In 1970 the council proposed that a new judicial article be adopted, but in 1971 a draft of the new article died in committee. The draft had included provisions for consolidation of superior and district courts into a single trial court; express authorization for the chief justice to act as administrative head of the judiciary; and state funding for all courts.

Subsequent to the 1971 failure, a second citizens' conference was organized to consolidate citizen support for a new judicial article. A consensus statement issued at the close of the conference endorsed a new article, and the conferees organized a statewide education campaign to generate additional public support. Legislation incorporating proposals for a new judicial article went through several drafts during the next few years. In February, 1975, a third citizens' conference was held to demonstrate to the legislators that substantial citizen support for the proposal existed.

The proposed revision finally passed the 1975 legislature. However, as a result of compromises necessary to enact the legislation, the provisions calling for court consolidation and state funding had been eliminated. Consequently, the proposed article, as submitted to the electorate, contained only provisions that administrative authority be vested in the supreme court; that the chief justice act as administrative head of the judicial system; that express constitutional rule-making authority be vested in the supreme court; and that the district courts be established as constitutional courts.

The amendment was vehemently opposed by trial judges and, after initial backing, lost the support of the state bar. It was narrowly defeated by 10,000 of more than 900,000 votes cast.[84]

In January, 1977, Senate Joint Resolution No. 104 was introduced in the senate. Although a compromised version passed the senate, it died in committee after it reached the house. SJR 104, had it received legislative support, would have submitted a new judicial article to the electorate at the next general election. That article would have consolidated the trial courts, vested administrative authority for the judiciary in the supreme court, and authorized regional administrative judges.

[83] League of Women Voters, *supra* note 78. Updated by memorandum from Phillip Winberry to Larry Berkson, July, 1977.

[84] Pat Chapin, "Judicial Articles Go Down in Texas and Washington," *Judicature*, 59 (January, 1976), 308. Updated by memorandum from Phillip Winberry to Larry Berkson, July, 1971.

Presently Washington court reform organizations are attempting to regroup and resume lobbying again for legislation to amend the judicial article.

C. Conclusion

As these eleven political histories indicate, states differ in the methods they use to adopt the elements of court unification. Sometimes they adopt all the elements of unification at once, as did Kentucky in 1975; other times they enact unification reforms in a piecemeal fashion during a staggered period, as has Connecticut. Sometimes they unify by statute; sometimes by rule and sometimes by constitutional amendment. Regardless of the pattern unification has assumed in these eleven states, each of them experienced a major campaign to adopt one or more of the elements of unification: the 1973 judicial article in Alabama; the 1962 constitutional amendment in Colorado; the 1974 and 1976 consolidation statutes in Connecticut; the 1972 judicial article in Florida; the 1966 implementing legislation in Idaho; the 1972 judicial article in Kansas; the 1975 judicial article in Kentucky; the 1976 financing statute in New York; the 1968 Modern Courts Amendment in Ohio; the 1972 judicial article in South Dakota; and the 1975 proposed amendment in Washington. Throughout the remainder of this text it is these campaigns which are referred to unless otherwise stated.

CHAPTER IV. OBSTACLES TO ACHIEVING COURT UNIFICATION

A. Institutional Impediments to Change

1. **The judiciary as a static institution.** The American judiciary germinated from the English system of common law. The unstated values of this heritage have been perpetuated and reinforced both psychologically and physically by law schools, bar associations and indeed, the courtroom itself. While history and tradition have their virtues, they can, and do, serve to inhibit change. Therefore, these concepts, taken together, represent the first major obstacle reformers will encounter in their endeavor to improve the judiciary.

Alfred Conard has elaborated on this idea through an ingenious analogy between economics and the judiciary.[1] Conard likens present-day state judicial systems to the pre-Keynesian economic structure that focused attention on the role and impact of the individual on society. This he calls microeconomics and effectively equates it with a system of "microjustice," which focuses on the role and impact of individual system participants on the judiciary. Microjustice, then, deals with isolated situations and interactions between judicial personnel. In contradistinction, the post-Keynesian concept of macroeconomics focuses on the aggregate impact of system participants on the economic structure. Conard notes how this concept has been fully developed, and suggests that accompanying this development has been a greater understanding of economic science by participants and the public alike. At the same time, Conard intimates that the equivalent concept, macrojustice, has not been as fully developed. Consequently, because there is a much lesser understanding of this concept, system participants have been hesitant to make the transition.

The micro perspective is evidenced by the fact that system participants have a "strong vested interest in maintaining the status quo."[2] They tend to develop comfortable, and highly functional, patterns of activity and interactions.[3] These patterns become so institutionalized that even minimally disruptive changes are likely to be opposed. Judges as a group are particularly acquiescent to the status quo. In a recent study of misdemeanor court judges, for example, the investigators found that ". . . responding judges were generally satisfied with existing court operations, . . ." This poses an interesting question: "[I]f current practices . . . receive high levels of judicial support, can their reform realistically be expected?"[4]

Judges are also inhibited by the notion that they should not become enmeshed in politics. In other words, tradition prohibits them "from cultivating their own constituencies and utilizing lobbyists."[5] Mark Cannon, Administrative Assistant to Chief Justice Burger, has pointed out that at the federal level, "the judiciary has not generally been expected to formulate programs and to translate them into congressional action."[6] This attitude is prevalent within state judicial systems as well.[7] In the study noted above, it was found that legislative dominance has contributed to an attitude of judicial impotence

[1] Alfred Conard, "The Crisis of Justice," Washburn Law Journal, II (1971), 1, 4.

[2] Larry Berkson, "Delay and Congestion in State Court Systems: An Overview," in Larry Berkson, Steven Hays and Susan Carbon, *Managing the State Courts* (St. Paul: West Publishing Co., 1977), p. 207.

[3] Joel Thompson and Robert Roper, "Determinants of Legislative Support for the Judiciary: Kentucky Reforms its Court System," Paper presented to the Midwest Political Science Association Meetings, Chicago, Illinois, April, 1977, p. 3.

[4] Karen Knab and Brent Lindberg, "Misdemeanor Justice: Is Due Process the Problem?," *Judicature*, 60 (April, 1977), 416, 421.

[5] Geoffrey Hazard, Martin McNamera and Irwin Sentilles, "Court Finance and Unitary Budgeting," in Berkson, Hays and Carbon, *supra* note 2, p. 257. In the same source see also Jerome Berg, "The Need for Change and Flexibility," p. 49; and Berkson, *supra* note 2, p. 205.

[6] Mark Cannon, "Can the Federal Judiciary Be An Innovative System?," *Public Administration Review*, 33 (January-February, 1973), 74, 75.

[7] Berg, *supra* note 5, p. 51.

which serves to negate attempts at reform. The authors note that, "This imposition of authority has readily led misdemeanor court personnel to infer that their condition is not of their own making, and that solutions are beyond the scope of the resources available to them."[8] Consequently members of the judiciary feel they must defer to other branches of government or to the public to initiate change.

Court clerks are perhaps equally concerned about sustaining amicable relations within the "courthouse crowd." As a result, they ". . . oppose radical changes which . . . affect the relationships between themselves and their colleagues."[9] Similarly, attorneys expend concerted efforts learning to "play the game" with their professional cohorts. Any change in the rules is highly disruptive of their established patterns of activity.

Although judicial personnel have much to gain by maintaining constant practices and procedures, they do not have a monopoly on satisfaction with the status quo. Often, the public is likewise unreceptive to change. As Judge Harvey Uhlenhopp has written, "If for 50 years a state has had general trial courts, and justice of the peace and municipal courts, citizens seem to find change of this court structure hard to visualize."[10]

Satisfaction of the various system participants and the public, taken in concert, produces a form of "institutional inertia"[11] that may effectively preclude attempts at change. In other words, apathy may be more of an impediment to change than any sound, concrete reason. In New York, for example, one prominent legislator surmised that ". . . resistance [to state funding] came from apathy rather than active opposition." In Washington, electoral defeat of a judicial article in 1975 similarly has been attributed to a lethargic and complacent prevailing attitude.

One may conjecture a variety of reasons why individuals resist change in state judiciaries. Perhaps the most important is related to the lack of comprehensive information about the courts, judicial structure and administration.

2. **Lack of information.** Germane to the institutional impediments to change is the dearth of court-related information available to system participants, the public, and reform advocates alike. James Gazell, for one, notes that only recently have scholars become interested in studying state judiciaries as systems, rather than examining the numerous elements individually.[12] More specifically, Alfred Conard notes that, "For about a century law has enjoyed, along with theology, the rare distinction of eschewing all forms of empirical discovery. . . . I am told," he continues, "that the theological schools have gone empirical so we stand alone in the ancient tradition of seeking answers to today's problems in the graven words of our forefathers."[13] Therefore, not only are reform advocates hampered by insufficient quantities of information, they are impeded by the quality of information as well.

There are three initial stages in the reform process where information is vital, and where in its absence, opposition may arise. The first stage involves convincing people of the need for reform. If this can be achieved, the second stage must be confronted, namely obtaining a consensus on where and how the change should occur. This relates very closely to the third stage, which involves the capacity to predict the impact of change on the system as a prerequisite to acquiring support for change.

Initially, the electorate must be made conscious of a need for change, but data that could testify to this need are generally lacking. For example, many states are unable to determine the exact number of limited or special jurisdiction courts within their own boundaries. This is largely due to the "local option" provisions contained in many state constitutions. Additionally many state record-keeping systems are neanderthal, at best. Often irrelevant data are collected, while on the other hand, statewide vital statistics about caseload, backlog and the like are not compiled, much less analyzed and disseminated. This problem partially is attributed to the resistance of system personnel to undertake new responsibilities.[14] Because system participants and the public are not provided with comparative statistics, they are not cognizant of the need for change.[15] The impetus for reform is thus inhibited at the outset.

Even if advocates succeed in demonstrating a need for change, a dearth of information at the second stage may impede reform. Because of the lack of

[8] Knab and Lindberg, *supra* note 4, at 423.

[9] Larry Berkson and Steven Hays, "The Forgotten Politicians: Court Clerks," *University of Miami Law Review*, 30 (Spring, 1976), 499, 511.

[10] Harvey Uhlenhopp, "Some Plain Talk About Courts of Special and Limited Jurisdiction," *Judicature*, 49 (April, 1966), 212, 216.

[11] Roper and Thompson, *supra* note 3.

[12] James Gazell, *State Trial Courts as Bureaucracies* (Post Washington: Kennikat Press, 1975), p. 11.

[13] Conard, *supra* note 1, at 3.

[14] Berkson and Hays, *supra* note 9, at 516. See (3) *Executive Branch, infra,* for detailed elaboration.

[15] Berg, *supra* note 5, p. 51; and Norville Sherman, "Obstacles to Implementing Court Reform," in Berkson, Hays and Carbon, *supra* note 2, p. 65.

research and consequent data about the courts as a comprehensive system, it is exceedingly difficult to determine both the locus and the type of reform needed. System participants may have conflicting viewpoints regarding change. This may be attributed in part to the fact that there is relatively poor inter- and intra-court communication among system participants, especially with respect to internal management problems. Such a situation precludes consideration (and eventually evaluation) of system-wide remedies.[16] Moreover, because there are little concrete data available, system participants may seek only those changes that at a minimum do not negatively impact upon their status quo, and at the maximum, enhance their well-being.

Additionally, system participants and the public may disagree on the focal points of a campaign for reform. In the misdemeanor court study noted earlier, it was found that "participants' and observers' [i.e., the public's] perceptions of the court system . . . varied greatly. . . . [The system participants] usually felt that their courts were well run on a day-to-day basis, and saw most 'problems' as arising from causes outside the court's control." The investigators, on the other hand, "were most likely to identify as problems . . . inadequate management techniques. . . ."[17]

The study suggests that system participants generally attribute functional deficiencies to externally caused limitations, whereas outside observers generally attribute these deficiencies to internal practices. Absent any sound and reliable data, it is difficult to achieve a consensus on the locus and nature of reform.

Perhaps more difficult than establishing the need and then determining the focal point of reform is the necessity of predicting and evaluating the ramifications of proposed reforms as a prerequisite to securing support.[18] In other words, it is of paramount importance to supply system participants and the public with information regarding the probable impact of proposed reforms. Indeed, one author suggests that, "The inability to foresee definitively the results of a program is more than just an imponderable in . . . evaluating various proposals; it is a major stumbling block to be surpassed in achieving a workable consensus."[19]

It is clear, then, that system participants and the public are genuinely concerned about the impact of a reform. Their concerns are likely to be directed toward three aspects of a proposed measure: possible disruption of their status quo; potential benefits vis-a-vis the risks involved; and the fiscal costs likely to be incurred. These concerns are rarely independent of one another. In most cases, one or more may arise when a reform is contemplated. Moreover, at times they may emerge even after a measure has been implemented. The success of change advocates may be dependent upon their capacity to supply the information adequately; otherwise, they may engender more opposition than support.

In the State of Georgia, for example, the introduction of a regional trial court administrator occasioned great fears regarding a potentially disrupted status quo, and an excessive fiscal burden.[20] The elected officials were intensely concerned that their administrative powers would be usurped, and that their relative positions vis-a-vis the judges, and their status in the community might be diminished. Proponents expended great efforts assuring these officials that the position of administrator would be subordinate to their own. However, "The most difficult group to convince was the county commissioners. . . . [T]heir concern was whether or not dollar value would be received on an initial investment that could approach $30,000 a year."[21] Indeed, it took two and one-half years to convince this group of the benefits that could be accrued from a professional court administrator.

In attempts to modernize the Kansas judiciary, proponents sought those changes that would be least disruptive of the status quo first, and then eventually those which might pose more intense opposition later.[22] For example, in 1972 the electorate approved an amendment to the judicial article that simply unified the courts for structural and administrative purposes, but required extensive statutory implementation. It was not for three more years that issues involving the elimination of municipal courts and full state funding were even approached. An exhaustive educational campaign was underway in the meantime, but nonetheless, these issues were

[16] William Stoever, "The Expendable Resource: Studies to Improve Juror Utilization," in Berkson, Hays and Carbon, *supra* note 2, pp. 240–41.

[17] Knab and Lindberg, *supra* note 4, at 420.

[18] This chapter will not attempt to establish guidelines by which the components of unification may be evaluated. Further discussion of this topic is deferred until Chapter XI.

[19] Sherman, *supra* note 15, p. 69.

[20] Frank Cheatham, "The Making of a Court Administrator," *Judicature*, 60 (October, 1976), 128–33.

[21] *Ibid.*, at 130.

[22] See Beverly Blair Cook, "The Politics of Piecemeal Reform of Kansas Courts," *Judicature*, 53 (February, 1970), 274–81.

ultimately dropped from the unification package. Municipalities feared their local operations (i.e., the status quo) would be too greatly disrupted, and also that they might be fiscally disadvantaged because of a loss of revenue. State executive and legislative officials were hesitant to adopt state funding of the judiciary. Despite studies conducted by a private consulting firm, key officials remained unconvinced of the need for extensive change. Once again, a lack of adequate information served to impede change.

The State of Idaho experienced similar obstacles in its attempts to unify the judiciary. Proponents of greater state funding submitted a bill in the 1967 legislative session that was ultimately vetoed by the governor on the grounds that too little was known regarding its impact on the state. Although initially upsetting, as one interviewee stated, proponents recognize that, "In retrospect, it was best that . . . [the bill] was vetoed at the time. It needed more preparation." To achieve their objective, the bar and legislative council undertook a study from 1967 to 1968 to examine fully its probable ramifications, and then resubmitted a bill in 1969. During this period, both the system participants and the public became aware of the potential benefits and impact of the measure, which the governor finally approved. Hence the virtues of adequate, predictive information are borne out in reality.

Opposition may materialize, not only before a measure is adopted, but while it is being implemented as well. In Kentucky, for example, the governor and certain legislators were accused of attempting to thwart implementing legislation required by the 1975 new judicial article. These persons allege that prior to its adoption, they were not sufficiently informed of the article's impact, both as to disruption of the status quo and the fiscal burden the state must now assume.

In conclusion there appear to be three obstacles inherent in the lack of information regarding state judiciaries. First, judicial personnel and the public alike are rarely cognizant of the need for change. They have traditionally viewed their courts from a "microjudicial" perspective which circumscribes their system-wide understanding. Second, even when a need is acknowledged, groups may lack consensus on the goals to be achieved, which serves to prolong the reform process. Indeed, "a reform movement will have little chance of success if there is no basis for agreement regarding what the problems are, what is meant by a goal . . ., or what measures might prove beneficial to the system."[23]

[23] Sherman, *supra* note 15, pp. 69–70.

Finally, it is difficult to predict with any degree of accuracy the impact of a reform. These obstacles surface because only minimal research has been conducted on state court systems, and few states engage in comprehensive data collection. Consequently, when the topic of judicial reform is broached, advocates are impeded in their efforts because of a lack of information to support their arguments.

3. **Constitutional constraints.** Tradition and a lack of information are only two of the potential obstacles reformers may encounter in their attempts to secure change. Another fundamental obstacle is posed by amendatory provisions within state constitutions that work to impede change. These provisions can be so restrictive in scope as to inhibit any type of comprehensive change.

In at least three states amendatory provisions had to be altered before judicial articles could be revised. In Illinois, for example, serious consideration could not be given to the possibility of adopting a new judicial article until reformers had first "labored successfully to extricate . . . [the] constitution from a legal straight-jacket in which it had reposed for almost 50 years."[24] Until the Gateway Amendment was adopted in 1950, the state's constitution was "virtually unamendable." Prior to that time, amendments had to be approved by a majority of the total electorate eligible to vote in a general election. Consequently when the no votes were combined with the non-votes, proposals were generally defeated. Subsequently, however, the requirement was loosened by allowing passage of an amendment by two-thirds voting on the constitutional question.[25]

The Kansas State Constitution also inhibited comprehensive change until 1970. Prior to that time, the document limited the number of amendments which could be placed on a ballot in any given year to three. Also, in the absence of any specific statement, there was serious question as to how much could be included in any one amendment.[26] In 1970, Article XIV was adopted. The number of amendments that could be considered by the public was raised to five. Article XIV also provides that one amendment to the constitution may revise an entire article. According

[24] Samuel Witwer, "Action Programs to Achieve Judicial Reform," *Judicature*, 43 (February, 1960), 162, 163.

[25] Ian D. Burman, *Lobbying at the Illinois Constitutional Convention* (Urbana: University of Illinois Press, 1973), p. 5.

[26] The problems the State of Washington has had with its ostensibly restrictive article on constitutional amendments is treated in Chapter VII.

to one long-time activist, this was a "necessary prelude" to the 1972 judicial revision that provided for partial unification of the courts.

South Carolina provided for amendatory flexibility, although to a much lesser extent, in 1969. That year the constitution was amended to allow voters to consider entire new articles in the two subsequent elections, 1970 and 1972 only.[27]

B. Groups Likely to Oppose Change

The earlier portion of this chapter dealt with the inherent constraints on reforming state judiciaries. These constraints impact upon all groups promoting change. They work to inhibit initiation, and mitigate against action on a broad scale.

The second half of this chapter examines the various groups which often oppose court unification specifically. Before proceeding, however, two caveats are in order. First, it must be noted that the very groups discussed here as potential opponents of change are precisely the groups who may be most supportive of reform given the appropriate situation. One cannot claim that under all circumstances judges, for example, will be a negative influence. In Washington, Judge Francis Holman vehemently opposed greater unification, whereas in South Dakota, judge and now Chief Justice Francis G. Dunn, was a trumpeter. Additionally, as cost/benefit factors change, a group's attitude toward reform may also change. In Florida, for example, the Circuit Judges Conference strongly opposed an amendment to unify the courts in 1970. By 1972, however, the Conference had reversed its position and gave support to the new judicial article.

The second caveat to keep in mind is that there has been relatively little statewide, actively-organized opposition to attempts at unification. Indeed, it has been the proponents of change who have been most vocal. Opponents have been forced into defensive, reactive positions. As such they are usually complacent unless particularly offended or threatened by a desired change.

1. **The judicial branch.** Judges as a class compose the principal group of opponents to court unification. Although they generally are expected to support reform, and indeed they do, there are several reasons why they may oppose change.

Judicial resistance to change may be attributed in large measure to their education and professional positions. Judges are born and nurtured in a stare decisis vacuum. In the first place, historical precedent is highly valued. Issues and problems are confronted on a case-by-case basis. Often judges are concerned only with the individual participants at a given time.[28] Consequently judges do not learn to consider the systemic impact of their actions. Second, innovations and creativity are discouraged. Judges are not trained to organize and cooperate with one another or experiment with new methods of handling judicial business. Third, because their professional and personal interactions are with similarly trained and equally conservative persons,[29] their predisposition toward the status quo is rarely challenged.

Furthermore, as judges become fully entrenched in their positions, they begin to suffer from what might be termed a tunnel vision syndrome. Tunnel vision refers to the notion that judges are basically interested in their own court to the exclusion of others in the state. Recently Justice Robert Hall of the Georgia Supreme Court elaborated on this problem.

> Parochialism is an evil found in practically every level of our state and federal court system from top to bottom. Why? Because we are all human. When you get a group together composed of superior or intermediate or supreme court justices and they are faced with a problem of the system as a whole, they are always going to look at it, normally, as to how it is going to affect them. I have found that every court and every judge wants to be the agent of reform and change, but no court and no judge wants to be the *object* of reform and change.[30]

Finally, judges as a group are intensely self-interested. Maintaining their status, power and authority occupies much of their primary attention. Any reform that threatens or attempts to alter their independence and individual prerogatives likely will face heated opposition.[31] In New York, for example, the pace of reform during the mid 1960's diminished

[27] See "South Carolinians Use Strategy to Effect Court Unification," *Judicature*, 56 (October, 1972), 130.

[28] H. Ted Rubin, *The Courts: Fulcrum of the Justice System* (Pacific Palisades: Goodyear Publishing Co., 1976), p. 216.

[29] Jeffrey Smith, "Interest Groups and Judicial Reform," in Berkson, Hays and Carbon, *supra* note 2, p. 91.

[30] Comments by Justice Robert H. Hall, Supreme Court of Georgia, at the panel on Court Administration: National Applications of the Georgia Experience, American Society for Public Administration, Atlanta, Georgia, April 1, 1977, emphasis added.

[31] Sherman, *supra* note 15, p. 70; and John Sherry, "The 1967 New York Constitutional Convention: An Opportunity for Further Court Structural and Jurisdictional Reform," *Syracuse Law Review*, 18 (Spring, 1967), 592, 599.

"primarily due to the opposition of those affected judges who . . . interpreted *any* change as a threat to their vested interest in the status quo."[32] Indeed, "unless . . . [a judge's] position is safeguarded and his autonomy and authority increased rather than decreased," his support, much less leadership, can hardly be expected.[33]

For a variety of reasons, different levels of judges may oppose various aspects of unification.

a. *Trial court consolidation and simplification.* Lower court consolidation affects various levels of judges in different ways, which can cause them to be opposed to this aspect of unification for disparate reasons. Thus, each group of judges will be discussed independently.

1. NON-ATTORNEY JUDGES. Lay judges occupy positions on courts of limited and special jurisdiction. Their opposition is likely to be engendered if the statutes or amendments which provide for a unified structure contain a requirement that all judges be attorneys.[34] In a few instances their opposition has been so potent that legislation effectively has been thwarted. In Kansas, non-attorney municipal court judges were successful in retaining their independence from the otherwise unified structure in the 1976 legislation. In Nevada, a new judicial article failed to be approved by the electorate in 1972, despite the two legislative approvals required before ratification. Its failure was attributed in large part to the opposition generated by JP and municipal court judges whose positions would have been eliminated had the results been otherwise.[35]

The strength of opposition by lay judges, however, has probably been overemphasized. In Kentucky, for example, although the Magistrates Association had officially registered opposition to the 1975 new judicial article which provided for their abolition, they did not undertake a campaign to oppose the amendment until the weekend preceding the Tuesday election. The County Judges Association was likewise delinquent in undertaking a campaign. Ironically, a statement by the president of that association ten months earlier, that the article had no chance of passage, has been credited for submerging what could have been more intense opposition. Proponents generally concede that had these groups been better organized, chances of the article's ratification likely would have been reduced.

In other states lay judge opposition was also minimal. In Alabama the office had already been abolished before the major unification effort took place in 1973. The JP's had opposed the change, but well-publicized incidents of outrageous activities on their part ultimately led to their defeat. In Florida the Association of Justices of the Peace also opposed abolition of the office, but as in Kentucky, they were not well organized. Moreover, they were already decreasing in numbers when unification activity got underway. Earlier a statute had allowed localities to abolish the office and many had done so. In South Dakota, the JP's were apathetic and did not even attempt to oppose abandonment of the office. Most were performing only minimal duties, and at relatively poor salaries. Furthermore, the fact that many anticipated becoming magistrates under the new unified system diffused their opposition.

2. ATTORNEY JUDGES OF LIMITED JURISDICTION COURTS. Lower court attorney judges, as well as lay judges, often claim that the consolidation or elimination of their courts will reduce accessibility to the public, and increase the expense and inconvenience of minor litigation.[36] While some judges truly may be concerned with these potential ramifications, their opposition is more likely grounded in the fact that their positions or judicial duties may be abolished or consolidated with other courts. In Kentucky, for example, the 1975 judicial article reduced and reorganized roughly 1,200 lower court positions into a unified, 150-position circuit court system. This fear was expressed by both common pleas and probate judges in Ohio. County judges in Florida were similarly opposed to consolidation because probate and guardianship jurisdiction was to be eliminated from their courts and assumed by the new circuit courts.

Lower court judges may also be opposed to what is often a concomitant requirement, that they devote full-time to their judicial duties. For many judges in sparsely populated areas, this related aspect of unification often poses the ubiquitous problem of meager salaries. Many can not afford to leave a lucrative law practice in order to become a full-time judge. On the other hand, they may not wish to forfeit the status associated with a judicial position, in order to maintain private employment. Thus,

[32] Sherry, *supra* note 31, at 592 (emphasis added).

[33] Cook, *supra* note 22, at 274.

[34] Warren Marsden, "The California Effort at Trial Court Reorganization, 1970–72," *Judicature*, 56 (December, 1972), 200, 206. See also Craig Harris, "Lobbying for Court Reform," in Berkson, Hays and Carbon, *supra* note 2, p. 82.

[35] "Election Day 1972: The Judicial Issues," *Judicature*, 56 (December, 1972), 212, 215.

[36] Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System* (Washington: Government Printing Office, 1971), p. 195.

consolidation may also be opposed for economic reasons.

3. GENERAL JURISDICTION JUDGES. This particular group of judges may express vehement opposition to consolidation, but for wholly different reasons. First, they often believe that consolidation may occur at their personal expense. As intimated above, judges typically are not a highly paid group of professionals. Thus, because the financial reward is minimal, they seek psychic benefits in terms of increased status and public recognition. Consequently, any reform that negatively impacts upon their real or perceived status is likely to be opposed. Time and again, interviewees related this sentiment, and several judges candidly admitted its veracity.

The possibility of being assigned "lesser" judicial duties is repugnant at best. Indeed, "Many superior court judges feel it would be . . . demeaning . . . to handle typical municipal court cases."[37] Other investigators have concluded that "deciding such cases is probably conducive to a sense of professional inferiority."[38] After all, as Judge Winslow Christian has observed of the California system, "The Superior Court wants to remain superior to someone."[39]

Evidence of judicial egoism was markedly apparent in Connecticut's recent statutory consolidation efforts. Superior court judges (Connecticut's general jurisdiction court) vehemently opposed consolidation. As one astute observer noted, the consensus was that they were being "downgraded" by the incorporation of inferior courts. This sentiment was attributable in part to the bar association's disparate qualifications for each level of court. Traditionally the bar has interpreted the term "superior court" literally and, therefore, required that the candidates for that bench meet more stringent standards. However, under the recent consolidation, it is now theoretically possible for all levels of judges to preside over cases once exclusively under the jurisdiction of superior court judges. As such, the latter resent the newly inaugurated co-equal status of lower court judges.

As a result of the pervasive opposition by general jurisdiction judges, academics in the field of judicial administration have noted that, "Even in those few states that have established a single-level trial court system, separate classes of judges have been designated in the general trial courts to handle *minor* matters."[40] In Idaho, for example, a unified district court system was created by statute in 1969, and provided for a magistrates division. A similar situation occurred, although by constitutional amendment, in South Dakota. Indeed, in Connecticut, there has been considerable discussion among disgruntled judges about the possibility of creating divisions within the superior court which would effectively segregate the "more important" cases from the general pool.

A more pragmatic concern of general jurisdiction judges is their antipathy toward presiding over mundane cases. Clearly, most prefer to remain in positions isolated from the myriad, pedestrian problems traditionally the domain of lower courts. In a California study for example, this aspect of consolidation was considered to be a "major disadvantage" by 74 percent of the superior court judges.[41] This belief is often at the heart of opposition to the creation of single-tier trial court systems. Even when two-tier trial court systems are proposed, judges are leary of the type of cases they may be expected to handle. In Florida, for example, several circuit judges opposed unification because juvenile jurisdiction was to be placed within their domain.

4. APPELLATE JUDGES. Although judges of the various intermediate and final appellate courts rarely oppose consolidation, there have been at least two instances where pronounced opposition has been mounted. In 1975, the Texas electorate defeated a judicial amendment which would have merged the criminal court of appeals with the supreme court, thus transferring criminal jurisdiction to the civil courts of appeal. The presiding judge of the criminal appeals court had contended that the merger would increase, rather than decrease, the time required to process appellate cases. As such, the inefficiencies of the present system would be magnified rather than mitigated.[42]

In Connecticut, the supreme court justices opposed merger of the lower courts for reasons similar to those expressed by the general jurisdiction judges. Additionally, these judges contended that the quality of their bench would be reduced, because they are

[37] Booz-Allen and Hamilton, Inc., *California Unified Trial Court Feasibility Study* (San Francisco, 1971), p. 55.

[38] Knab and Lindberg, *supra* note 4, at 423.

[39] Comments by Justice Winslow Christian at the Seminar on the Administration of Justice conducted by the National Conference of State Legislatures, Lincoln, Nebraska, May 6, 1977.

[40] James Alfini and Rachel Doan, "A New Perspective on Misdemeanor Justice," *Judicature*, 60 (April, 1977), 425, 427 (emphasis added).

[41] Booz-Allen and Hamilton, Inc., *supra* note 37, p. 56.

[42] Pat Chapin, "Judicial Articles Go Down in Texas and Washington," *Judicature*, 59 (January, 1976), 308–09.

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traditionally selected from the superior court upon which lower court judges may now sit.

b. *Centralized administration and management.* The concept of centralized administration and management is an anathema to many judges of limited and general jurisdiction courts. They fear that such a proposal represents the clarion call marking the end of historical independence of individual judges in favor of administrative efficiencies for the broader system. Judges perceive that the concepts of justice, the traditional concern for "the people," and efficiency, the newly emerged administrative goal, are inversely related. Any attempt to enhance efficiency, especially by centralized administration, is regarded as an encroachment on, and a threat to, justice.

Judges may oppose this measure from the outset, because their legal education does not provide them with an understanding of public and judicial administration. Essentially they are trained as lawyers and not as administrators. They learn how to process an individual case, but not how to manage a docket; they learn how to maneuver and manipulate the system for their client, to the exclusion of societal interests. The entire individualistic orientation of law school mitigates against a judge's willingness to accept progressive managerial procedures and techniques.[43] Judges possess a meager understanding of current, albeit largely archaic, administrative processes, much less computer operation, data processing, personnel management and contemporary budgetary techniques.[44] Because judges are steeped in status quo, they may resent being required to apply a new procedure with which they may be wholly unfamiliar.

At a more personal level, judges fear that local control and discretion over judicial operations will be thoroughly undermined and supplanted with hierarchical control and supervision.[45] They are reluctant to abdicate any degree of authority, for they have always thrived on autonomy and the ability to dominate local decision-making.

Such apprehension was emphatically brought to light in the State of Washington. There the Superior Court Judges Association voted 62–9 to oppose a set of proposals which would have further centralized that state's judicial administration. It is clear that much of the opposition was grounded in the fear that judges would lose their independence and "be dictated to by the Supreme Court." Judges in the eastern region expressed anxiety that they would have to "take on" more cases. They were also concerned about the possibility of being reassigned to other jurisdictions by the state court administrator. This fear is often expressed by rural judges, regardless of who is vested with assignment power. Not only do they dislike the travel involved, but many elected judges evidently feel that such a situation might cause them to lose contact with their constituency.[46]

New York City judges likewise fear centralization of the judicial system. Their greatest apprehension is that decision-makers in Albany will undermine their control over the City courts.

The adoption of a statutory or constitutional provision for centralized administration is generally accompanied by the employment of a state court administrator where the position has not already been created. While in the past the majority of state court administrators have been required to possess law degrees,[47] there is a growing trend toward employing professionals with business or judicial administration training.[48] As such, a number of state administrators are now not attorneys. At times, regional court administrators are also incorporated into the system. This new cadre of officials is often viewed as the bane of local judges for several reasons.

In the first place, the professional nature of judicial positions works against any form of managerial direction.[49] As professionals, judges operate on the basis of peer equality; they perceive that court administrators will thwart their collegial decision-making process. Moreover, "Judges are known to resist what they perceive as direction and control from *nonjudicial* sources."[50] Not only do judges resent control per se, but their resentment is more pronounced when the party asserting control is a "sub-equal" non-attorney.

Second, judges may be concerned about the fact that they rarely participate in choosing the state

[43] Steven Hays and Larry Berkson, "The New Managers: Court Administrators," in Berkson, Hays and Carbon, *supra* note 2, p. 195.

[44] Larry Berkson and Steven Hays, "Injecting Court Administrators Into an Old System: A Case of Conflict in Florida," *Justice System Journal*, 2 (Spring, 1976), 57, 62, 68.

[45] Hays and Berkson, *supra* note 43, pp. 191, 195.

[46] Daniel Minteer, "Trial Court Consolidation in California," *UCLA Law Review*, 21 (April, 1974), 1081, 1102.

[47] Rachel Doan and Robert Shapiro, *State Court Administrators* (Chicago: American Judicature Society, 1976), pp. 126–27.

[48] See *ibid.*, p. 3.

[49] Hays and Berkson, *supra* note 43, pp. 195–96.

[50] Ernest Friesen, Edward Gallas and Nesta Gallas, *Managing the Courts* (Indianapolis: Bobbs-Merrill, 1971), p. 151.

court administrator. More important, they may not always participate in selecting their local administrators.[51] Consequently it is perceived that they will lose control over administration within their jurisdiction. At the same time, external directives will be imposed, absent their input, and many of their traditional duties and functions will be usurped.[52]

Third, professional administrators bring with them a wealth of new procedures, innovations and recommendations that are largely alien to judges. Any change in the internal operation of their court, especially if externally imposed, not only disrupts the status quo, but may undermine their local political prestige. In other words, they are no longer the administrative decision-makers. As such, the once prominent judge may now be required to assume a subordinate position to a professional whose managerial expertise far outweighs his own.[53]

Moreover, as was noted earlier in this chapter, judges tend to assume a micro rather than macro perspective of the judiciary. Thus, if an innovation is highly useful for the state judicial system, but has minimal positive impact on their own court, judges may resist the change, particularly if it infringes on their managerial autonomy. As Ernest Friesen notes, "In defending their own independence they tend to protect the individual freedom of all judges in the system, even when such freedom is destructive of necessary administrative action."[54]

c. *Rule-Making*. At first glance one might assume that justices of the state's highest court would unanimously welcome possession of rule-making authority. After all, this authority would make them more powerful and appreciably add to their prestige. However, this is not always the case. In Ohio, for example, it is a strongly held belief that the late Chief Justice Kingsley A. Taft intensely disliked administration. Thus, he was not eager to see the court become actively involved in the rule-making area. Only after considerable pressure was exerted did he encourage the drafting of civil rules of procedure. However, it was not until his successor, C. William O'Neill, took office that the supreme court became active in drafting a wide range of rules. Thus, one obstacle to achieving change in the rule-making area may be a negative attitude on the part of the chief or associate justices.

Justices also may be obstacles to reform in this area because of their reticence. Few are as outspoken as one former chief justice who stated that the "legislature has no business writing the rules for the judiciary. It is silly." More typical is the comment from one Connecticut observer that "when the legislature adopts a rule by statute, the court invariably enacts an identical rule itself. Essentially the court handles rule-making by reaction, not action."

The desire to avoid confrontation with the legislature has two important consequences. First, during unification efforts justices are generally unwilling to campaign vigorously for placement of the rule-making authority within the court. Additionally, in states where such a provision is part of the reform package, justices are often unwilling to oppose attempts by the legislature to retain a veto. This was apparently the case in Florida and South Dakota among others.

Once again inertia and satisfaction with the present system work to inhibit greater change. In Idaho, for example, the justices did not actively promote a specific constitutional investiture of rule-making authority in the supreme court because several years earlier, this power had been statutorily enacted and later confirmed. Furthermore, relations with the legislature were highly satisfactory. The justices, therefore, perceived that such a campaign only would foster an antagonistic environment, so they chose to retain their present powers rather than attempt to secure greater authority in the face of potential legislative hostility. Justices on the Kansas Supreme Court also chose to retain "administrative" rather than "rule-making" authority in that state's recent unification effort for similar reasons.

The second important consequence is the fact that in states where the court is granted rule-making authority, it often goes unexercised. Again, Connecticut is a case in point. As one observer noted, "the Supreme Court will not provide any direction in this area, so the legislature performs all rule-making functions." Although the statement may be overly broad, it is the general consensus of several other careful observers of Connecticut's system.

Justices are not the only judicial officers who may provide opposition to reform in the rule-making area. Indeed, lower court judges may be formidable enemies as well. Generally it is to their advantage to have the rule-making authority placed in the legislature. If so, changes in rules will take place in-

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[51] Larry Berkson, "Selecting Trial Court Administrators: An Alternative Approach," *Journal of Criminal Justice*, forthcoming.

[52] Steven Hays, "Contemporary Trends in Court Unification," in Berkson, Hays and Carbon, *supra* note 2, pp. 127, 129.

[53] Gazell, *supra* note 12, p. 46.

[54] Ernest Friesen, "Constraints and Conflicts in Court Administration," in Berkson, Hays and Carbon, *supra* note 2, p. 40.

crementally, if not infrequently. Thus, their daily routines will not be interrupted. Moreover, they do not have to worry about central direction from the supreme court or state court administrator. As suggested in the previous section, superior court judges in the State of Washington were most fearful of central control because of the threat of being forced to travel to other circuits and hear additional cases.

d. *State finance and unitary budgeting.* While it might be expected that judges would welcome state assumption of the fiscal responsibility for the court system, they may oppose these provisions in certain instances. For example, judges who are satisfied with their existing system of finance and budgeting may oppose these elements of unification. They may be acquiescent for two reasons: either they are from wealthy districts where funds are sufficient to finance their court adequately; or they have established such a rapport with the court clerk and other local government officials that regardless of the district's wealth, local courts receive priority funding.[55] If either of these situations exist, judges may provide substantial opposition.

Traditionally, local courts have been financed principally by fees and fines generated in the jurisdiction. "Speed trap justice" was characteristic of these courts. Whatever monies were collected were retained by the counties or municipalities. However, state funding generally mandates that a large portion of these revenues be turned over to the state treasury, after which a portion may then be allocated to each court. Judges who have been successful in filling the local treasury and whose salaries and accoutrements have been generous because of this scheme may resent state funding. They perceive, often times correctly, that their particular court may not be as fully financed under the new system, that they may have to forfeit some fringe benefits, or that some other court may indirectly benefit from their efforts. These judges may oppose state funding, then, because of the perceived negative impact on their own court, regardless of the potential benefits to the judiciary as a whole.

These fears were expressed by the Kentucky County Judges' Association in that state's recent unification effort. Although court records were so scant that no one really knew how much money was being generated in the myriad local courts, judges still opposed state funding for fear that the state would underfinance their courts.

[55] Edward Pringle, "Fiscal Problems of a State Court System," in Berkson, Hays and Carbon, *supra* note 2, p. 253.

State funding, coupled with unitary budgeting, mandates many new procedures that disrupt the judicial status quo.[56] These provisions require advance planning, careful evaluation of needs, and specific justification of expenditures. Moreover, information and statistical data must be gathered, and detailed records kept on all court operations. As such, these provisions engender enhanced supervision and accountability that judges inherently resist.[57] Opposition is increased if their budgets may be reviewed by the executive or legislative branches, for this incorporates yet a greater degree of centralization that is repugnant to many judges.[58]

2. **The bar.** While it might be expected that bar associations would universally support provisions to modernize their state judiciaries, and indeed for the most part they do, this posture is not always assumed in reality. In the first place, of all groups affected by provisions relating to unification, the bar has the greatest number of adjustments to make if reforms are adopted.[59] Moreover, as one state court administrator has observed, "Lawyers from the beginning of their training, learn to look backward, not forward." so judicial reform is not always regarded as a positive phenomenon. By definition, any change is disruptive, not the least of which is court unification. At a minimum, unification contemplates revisions in structure and administration that impact upon lawyers' existing and generally well-entrenched routines and patterns of behavior. Because "Trial lawyers have a vested interest in the status quo, in institutions with which they are familiar, in routines which they can trace blindly, [and] in people they know in official positions,"[60] it is not surprising that unification may, at times, engender opposition among the bar.

Unification may be opposed for reasons related only to the self-interests of bar associations. In Washington County, Maine, for example, the state attorney traditionally has had the best office space in the courthouse and the county has always paid for his telephone bills. The new unified court system is presently attempting to "commandeer" his office, action which the bar "intends to fight . . . vigorously."[61]

The state bar in Washington also opposed the uni-

[56] *Ibid.*

[57] *Ibid.*

[58] *Ibid.*, p. 255.

[59] Advisory Commission on Intergovernmental Relations, *supra* note 36.

[60] Cook, *supra* note 22, at 274.

[61] D.J.F., "With the Counties . . .," *Maine Bar Bulletin*, 4 (November, 1976), 4.

fication package out of self-interest. Because it is an integrated bar association, annual dues are mandatory. Some time ago the state auditor sought to audit the bar association's financial system. The board of governors opposed on the grounds that the bar was not a state agency. The case went to trial and ultimately was appealed to the supreme court. The court held that the bar was an adjunct of the clerk's office and therefore was not subject to a state audit. However, when a bill stipulating additional unification was proposed, a provision was inserted to permit an annual audit of the bar. This partially caused the association to rescind its previous support and vote against the measure.

The internal dynamics of state and local bar associations also work against change. Frequently judges and attorneys are close friends, or in the least, attend the same local bar meetings. These associations are concerned primarily with their own well-being. They will make every attempt not to alienate their members or take any action that might create internal dissension. For example, a judge in Iowa has recognized the fact that, "Individual lawyers can hardly be expected to relish the prospect of speaking out publically against an inferior court one day, and then appearing before that very court the next day. . . ."[62] Not only might the lawyer be jeopardizing his professional well-being in the county, but such action also might impact negatively upon the local bar association.

Concern for the internal politics of the bar also was evident in Washington. As noted above, the bar originally had supported unification, but the Superior Court Judges' Association was intensely opposed to the measure. There apparently had developed some tension in the bar as a result of this division, because when the bar ultimately rescinded its support, "it let them off the hook with superior court judges."

Opposition, then, may be generated because of self-interest and internal association dynamics. Opposition may be also directed toward specific elements of unification. The Connecticut bar association, for example, was highly opposed to trial court consolidation. Trial lawyers were wholly unprepared to change familiar procedures even though they acknowledged that unification might ultimately simplify their daily routines. There, as well as in California, the bar also has opposed consolidation because of the provision that all judges, theoretically, would be permitted to preside over every type of case. Trial lawyers in both states objected to appearing before judges whom they feel are unqualified. It was noted earlier that in Connecticut, the bar traditionally has established disparate levels of qualification for the various judges. The bar feels that lower court judges are incompetent to handle cases presently heard by superior court judges, and thus have opposed granting the former any greater jurisdiction. In California the superior court judges have been successful in thwarting consolidation for this reason.

Trial court consolidation may also be opposed by the bar because its members may lose their unspoken, but omnipresent, control over local judges. In Kansas this concern prevailed during attempts to incorporate municipal courts into the unification package in 1975 and 1976. The bar was ultimately successful in opposing consolidation.

Provisions for centralized administration and the investiture of rule-making authority in the supreme court may be incompatible with the desires of the bar. For example, system-wide goals and rules that prescribe certain types of behavior and operation may interfere with an attorney's existing ability to manipulate the system. In other words, once a judge's discretion is curtailed, so is the flexibility in the attorney-judge interaction.

Antipathy toward centralized administration and rule-making principally accounted for the bar's opposition in the State of Washington. The bar contended that these provisions would substantially diminish the independence and discretion of lower court judges. But it was the rule-making provision that was considered to be "the greatest source of discontent" to the bar. The bar perceived that if the supreme court were granted this authority, numerous procedures would be altered, thus requiring a change in their routine. As a result, members of the bar spoke publicly against the measure, and issued news releases denouncing it. Moreover, the local associations in Yakima and Spokane purchased advertisements condemning unification. Still other local associations sent cards to members' clients asking them to vote against the measure. The bar's opposition clearly contributed to the defeat of the proposed judicial article.

3. **The executive branch.** As H. Ted Rubin has noted, in general members of the executive branch are more inclined to support the agencies they govern rather than support or promote change for an "independent judiciary."[63] Thus, from the outset

[62] Uhlenhopp, *supra* note 10, at 217.

[63] Rubin, *supra* note 28.

there may be inherent resistance to judicial reform, particularly if it provides enhanced autonomy for another branch of government. Opposition may arise from both the state and local levels and for a variety of reasons.

While governors, at times, support campaigns to unify their state judiciaries, this is rarely the situation. Indeed, the negative posture of certain governors has been a principal contributory factor in the defeat of unification provisions in their states. In Texas, for example, Governor Dolph Briscoe strongly urged complete rejection of a constitutional revision which included a new judicial article providing for a more unified structure.[64]

Even more strongly opposed to court unification in his state was Idaho's Governor Donald Samuelson. In 1967, only six weeks after taking office, he vetoed a controversial court reorganization bill which would have provided for, among other things, a magistrates division within the district court system, thereby abolishing the autonomous probate, justice, and police courts. Although the senate overrode his veto overwhelmingly, the house fell just short of the two-thirds requirement.

In Alabama Governor George Wallace was opposed to many of the proposed reforms. Although he did not speak publically against the measures, it is clear that he "made comments" that hurt the effort. It is well-known that many of "his people" were opposed to the measures as well. Unlike his counterparts in Texas and Idaho, however, he was unsuccessful in thwarting the efforts to unify the system.

Even after amendments providing for unified systems are adopted, governors may vocalize opposition against implementing legislation. In Kentucky, numerous interviewees have observed that both Governor Julian Carroll and Lieutenant Governor Thelma Stovall made numerous attempts to undermine this legislation. On several occasions they made "absurd" and "deleterious" statements against the measures, charging, for example, that they will "greatly increase taxes."

Generally, governors are most concerned with the fiscal ramifications of court unification, particularly if state financing of the judiciary is proposed. In at least two states, provisions for state financing were effectively held in abeyance by the governor on the grounds that insufficient attention had been paid to the potential impact on the state. Included in the 1967 bill which was vetoed by Idaho's Governor Samuelson was a provision for increased state funding. His veto was based ostensibly on the lack of information pertaining to the fiscal impact of the measure. In Kansas, there was intense opposition to a 1975 bill which provided for full state financing. A substitute bill was introduced which excluded this provision so that a financial analysis could be conducted. Following an in-depth study by the Public Administration Service, Governor Robert Bennett still recommended that the state delay full assumption of fiscal responsibilities.[65] Therefore, only a "minimal change in the financing of the judicial system" occurred.[66]

Of all local executive officials, current research indicates that court clerks are among the most powerful.[67] Exercising both executive and judicial duties, clerks operate from a solid, and well-entrenched, political power base. It is not surprising, then, that this particular group of local officials is often the principal opponent of unification. Indeed, the authors of an extensive study of court clerks in Florida observed that ". . . clerks are in large part responsible for the archaic state in which the present-day local judiciary finds itself."[68] Moreover, because of their political power they may convince other local officials to support their views with respect to unification.

Court clerks have strong reasons to resist lower court consolidation. In the first place, their positions may be abolished entirely. Second, if they are retained in the new system, they may be demoted in salary, status and responsibility. Third, their positions may become appointive rather than elective.

An example of the first reason is found in Ohio. There one official has noted that the "real fear on the part of the clerks" concerning a proposed reform to further consolidate the courts is, "What's going to happen to my job?'." These fears have been borne out in other states. For example in Florida, Kentucky and South Dakota, the adoption of new judicial articles effectively resulted in some clerks losing their jobs. A number of positions were abolished when the courts were consolidated and as a consequence, there were too many clerks to be integrated into the new system.

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[64] See Chapin, *supra* note 42.

[65] James R. James, State Judicial Administrator, Memorandum to Chief Justice Harold R. Fatzer, Kansas Supreme Court, re: History of Modern Constitutional Judicial Reform, May 12, 1976.

[66] Robert Coldsnow, "Court Unification: Judicial Reform Revisited, Part III," *Journal of the Kansas Bar Association*, 45 (Summer, 1976), 117, 123.

[67] See Berkson and Hays, *supra* note 9.

[68] *Ibid.*, at 516.

In reality, however, most clerks are integrated in some capacity. Therefore, the real thrust of their opposition to consolidation lies in the nature of their new positions. Because only a few can be retained as chief clerks, the remaining must be reclassified as deputy clerks. This may result in a reduction of salary. Perhaps more important, it requires the once independent clerk to assume a subordinate position. For example, in Florida, numerous "court clerks" existed before passage of Article V in 1972. Moreover, "Under the decentralized system that preceded Article V, the court clerks were independent functionaries subject to little or no administrative supervision."[69] Under the new system, however, all clerks except the elected clerks of the circuit courts, were reclassified as either "deputy clerks" or "court supervisors."[70] These clerks are now hired by and are directly responsible to the circuit court clerks. A similar situation occurred in Idaho. Pursuant to a statute adopted in 1969 which created a unified district court system, all probate, JP and juvenile court clerks were consolidated into one office. The majority were reclassified as "deputy clerks."

Clerks may also oppose consolidation if the measure includes a proposal to change their method of selection from election to appointment. In South Dakota, clerks were particularly opposed because of such a provision. Unsuccessful in their attempts to defeat the measure, they now are appointed by and serve at the pleasure of the presiding judge.

Centralized administration may be opposed by court clerks because it limits their flexibility. Generally under decentralized systems, clerks work autonomously with local judges. They are free to establish their own procedures and office practices. However under a centralized system, this latitude is circumscribed because of the imposition of uniform procedures and standardized operations.

Centralized administration is also opposed because it often requires that clerks assume additional responsibilities. In Kentucky clerks intensely opposed the measure, perceiving that additional record-keeping and reporting requirements would result. Perhaps they were privy to the situation which had occurred in Florida. There court clerks had become highly critical of the Uniform Case Disposition Reporting System (CDR) which had been created shortly after adoption of the new judicial article. This system requires clerks to compile and report various data to the state capital on a daily basis.[71]

Opposition of court clerks is intensified when professional court administrators enter the scene. Administrators often bring with them extensive knowledge and expertise that clerks generally lack.[72] In Kentucky, for example, one observer noted that the introduction of professional administrators posed a "definite problem. The center of opposition was the court clerks," he continued, "who felt their duties would be usurped." He further noted that because they are more competent, administrators become a "wedge between the judge and clerk." Indeed, court administrators gradually engage in numerous functions once the exclusive domain of the omnipotent clerk. Hence, clerks correctly "perceive court administrators as threats to their authority, power and control over local judicial policies."[73]

Proposals for state funding and unitary budgeting are particularly offensive to court clerks. Historically they have controlled the county budget, including the judicial budget. Because they are technically executive officials, their primary concern is with that branch and, indeed, with their constituency, the public. As a result, clerks frequently attempt to minimize judicial expenditures as a way to prevent tax increases. Moreover, in order to enhance their political power, "many in the past have taken great pride in returning large amounts of money to the county commission to be used for other [non-judicial] purposes."[74] In Florida, for example, the clerks association lobbied successfully to prevent the inclusion of proposals for complete state funding and unitary budgeting in the 1972 new judicial article. Had those proposals been included, and subsequently adopted, the clerks would have been required to relinquish much of their influence over fiscal matters.

Pronounced opposition to unification may arise from other local executive officials including county commissioners, city council members and mayors. These officials are intimately concerned with retaining their power bases and hence the political patronage system. In New Jersey, for example, "The unified court proposal [of 1947] was the bane of

[69] Berkson and Hays, *supra* note 44, at 60.

[70] Telephone interview with A. Curtis Powers, Past President, Florida Association of Court Clerks, June 28, 1977. See also Berkson and Hays, *supra* note 44, at 60.

[71] Fla. Stat. sec. 25.075 (1975).

[72] Berkson and Hays, *supra* note 44, at 66.

[73] Hays and Berkson, *supra* note 43, p. 196.

[74] Berkson and Hays, *supra* note 9, at 514.

local and county political chieftains."[75] As Herb Jaffe has written, "Without county-supported courts, the influence of political leaders and the patronage they wield would be diminished considerably."[76]

Court consolidation is particularly opposed by these officials. During the New Jersey reform movement noted above, municipal courts were excluded from the unification package because of pervasive local opposition. Presently New Jersey is wrestling with a new consolidation plan, but proponents recognize that compromises may yet be required to mollify recalcitrant political leaders whose opposition "could be so intense as to deny sufficient votes in the Legislature to even bring such a resolution for a public referendum next [1977] November."[77]

Similar opposition is evidenced elsewhere. In Alabama, the League of Municipalities strongly opposed consolidation. Specifically, they "feared the loss of political control"[78] over judges who were to be consolidated into the unified system. In Kansas, municipal groups currently oppose consolidation for this reason, and thus far have been successful in their attempts to retain independent municipal courts.

In Florida, the League of Municipalities actively opposed consolidation, but for a different reason. There, lower courts provided a form of "cash register justice," the benefits of which would be dissolved under a unified system.

Commissioners, council members and mayors may oppose centralized administration for two basic reasons: first, because of the cost; and second, because of diminished, rather than enhanced, effectiveness and efficiency.[79] For example, county commissioners in Georgia were strongly opposed to the hiring of a regional administrator. They were very skeptical of expending $30,000 on an innovation with unknown consequences.[80] Further, they perceived that hiring such an official would only enlarge the judicial bureaucracy rather than streamline the administration.

State financing and unitary budgeting are other focal points of resistance among these officials. Traditionally local governments have financed many public service functions with surplus judicial funds. Indeed, "cash register justice" has been an integral part of local government finance. When a state assumes fiscal responsibility for the entire judiciary, however, local governments are usually required to direct all fees, fines and other locally-generated revenue to the state treasury, after which they may be allocated a designated portion. Local officials typically fear that not only will their courts be underfinanced through this system, but they will have insufficient funds for other public services as well.

Such was the case in Kentucky prior to adoption of that state's new judicial article. Opposition mounted by local officials against these provisions was among the most potent in the campaign. Indeed, proponents of the article have since conjectured that had their opposition not been quelled, the chances for successful passage would have been significantly reduced.

Other states have encountered similar opposition. For example, the Association of Idaho Cities vehemently opposed a proposal for state funding in 1967, believing that the amount of revenue they would retain under a state financed system would be substantially less than the existing system. The association's opposition contributed to the defeat of the bill. While a similar proposal was passed two years later, the association was still successful in securing a bifurcated system of financing.

4. **The legislative branch.** While some contend that state legislators will, for the most part, defer to the needs and desires of the judicial branch in its attempts at reform,[81] this is rarely the case. In fact, state legislatures have traditionally dominated the courts.[82] They generally have established the priorities for the judicial branch, including everything from establishing salary scales, to determining the number of employees the judicial branch may hire, to reviewing judicial budget requests. Thus, because unification would divest legislatures of these historic responsibilities, they inherently oppose the concept.

Trial court consolidation may be opposed because the reform usually requires increased judicial expenditures. Salaries are increased because judges assume additional responsibilities. Furthermore, part-time positions are eliminated in favor of full-

[75] *The Sunday Star-Ledger* (Newark, New Jersey), April 3, 1977.

[76] *Ibid.*

[77] *Ibid.*

[78] Howell T. Heflin, "Alabama Judicial Article Passes With Ease," (an address delivered at the joint luncheon of the American Judicature Society and National Conference of Bar Presidents, Honolulu, Hawaii, August 12–14, 1974).

[79] Hays, *supra* note 52. See also Harris, *supra* note 34, p. 86.

[80] Cheatham, *supra* note 20, at 98–99.

[81] See Cook, *supra* note 22, at 274.

[82] Berg, *supra* note 5.

time positions. In Connecticut, for example, many legislators perceived lower court merger as simply a "devious attempt" to secure a pay raise.

Centralized administration may be resisted by legislators because of the accompanying transfer of authority from the legislature to the judiciary. As noted above, legislatures historically have determined the number of employees to serve the judiciary, as well as their compensation.[83] With the adoption of centralized administration, however, several state judiciaries are studying the possibility of establishing their own personnel systems, independent of legislative control, which incorporate employment conditions, and salary, merit and retirement schedules.[84] By supporting this provision, legislatures might be relinquishing certain powers they would prefer to retain.

Perhaps the tenacity of legislatures is most apparent when the subject of rule-making is broached. The power to prescribe both procedural and substantive rules, albeit a muddled distinction, traditionally has been vested in the legislature. In recent years, however, state judiciaries have attempted to gain either statutory or constitutional sanction to prescribe, at a minimum, rules of administration and procedure.

Although the terminology is ambiguous, the legislative intent is to retain authority over procedure and substantive rules. Opposition has arisen when the phraseology might, by implication, grant courts this power. In both Kansas and Kentucky, for example, original drafts of their new judicial articles (adopted in 1972 and 1975 respectively) granted the supreme courts "rule-making" authority. However, the legislatures in those states advanced opposition against what appeared to be a plenary grant of authority, arguing that it violated the separation of powers doctrine. Ultimately, the courts were delegated only administrative and procedural authority.

In various other states legislatures have been very reluctant to grant unencumbered rule-making authority to the judiciary. In Florida, for example, the subject precipitated a strong debate resulting in the retention of veto authority in the legislature over any rules which might be promulgated. This practice has been adhered to in 20 other states. A similar debate erupted during Alabama's reform effort. Certain members of the house of representatives called the attempt a "power grab" by the chief justice. Another example is provided by Connecticut where the supreme court has never been vested with constitutional authority to promulgate rules. Statutory authority was granted during the 1950's, but the court has been very hesitant to exercise it. The legislature retains a veto and has made it clear that it will not hesitate to utilize it. As a result the court has provided little leadership in this area.

State financing, coupled with unitary budgeting, are often the most difficult measures over which to secure legislative approval.[85] In general, "legislatures have . . . been reticent to expend resources to simplify and modernize their judicial systems."[86] Legislators are particularly reluctant to assume full financial responsibility for the judiciary, especially when only minimal data are available with which to predict the impact of this measure. In Kansas, the legislature opposed a proposal for full state funding in 1975 due to an incomplete analysis of its impact. Even following an extensive study, the 1976 legislature still declined to assume all but a few more expenses.

A major exception to this rule occurred recently in the State of New York. There the fiscal crisis of New York City and other metropolitan areas created a receptive climate for the reform, and thus full state funding was accomplished with relative ease. Nonetheless, it should be pointed out that there was upstate resistance to the financial bill. These legislators argued that it was designed to bail out New York City.

5. **The public.** Public participation and support are often times essential elements of a successful campaign to achieve court unification. However, public endorsement, much less active support, can hardly be taken for granted. Indeed, the body politic may be the primary obstacle which supporters of unification must encounter. Public opposition may be either indirect, or direct. In either case, it serves to impede change.

Public apathy toward politics in general hardly needs documentation. In particular, the electorate has been characterized aptly as "basically disinterested in court reform."[87] It is widely recognized that people pay scant attention to referenda or amendments,[88] two avenues by which unification

[83] Richard Gable, "Modernizing Court Administration: The Case of the Los Angeles Superior Court," in Berkson, Hays and Carbon, *supra* note 2, pp. 59–60.

[84] E.g., Alabama, Florida, Idaho, Kansas and Kentucky.

[85] Rubin, *supra* note 28.

[86] Berkson, *supra* note 2, p. 205.

[87] Harris, *supra* note 34, p. 84.

[88] *Ibid.*, p. 87. See also James Farmer, "Indiana Modernizes Its Courts," *Judicature*, 54 (March, 1971), 327, 328; Marsden, *supra* note 34; Rubin, *supra* note 28, p. 217; Sherry, *supra* note 31, at 592; and Uhlenhopp, *supra* note 10.

provisions may be adopted. There is a variety of reasons to explain this lethargic attitude toward the judiciary. One reason was alluded to earlier in the chapter. There simply may be more pressing and timely issues toward which people will devote their energies. Indeed, concern and interest in judicial reform has been a relatively recent phenomenon.

A second reason underlying public apathy has been expressed by an Iowa judge who surmises that, "while most of us like to think we are progressive and open-minded, actually we find new ideas quite disquieting."[89] Initial reactions to change are, for the most part, negative.[90] Stated simply, the public in general is as satisfied with the status quo as are specialized interest groups. For example, in the State of Washington where the electorate defeated a judicial article in 1975, the prevailing attitude was that, "Things aren't that bad." The public did not truly perceive a need for change.

Apathy is not found exclusively in unification campaigns. Proponents of constitutional amendments providing for merit selection, discipline and removal of judges in Colorado, for example, found their efforts impeded during two stages in the reform process. Because the 1966 legislature had failed to pass the amendment, proponents found it "necessary to wage *two* campaigns, the first to get enough petition signers to place it on the November ballot, and the second to get it adopted. The first . . . [was] found to be difficult because of apathy and a general unwillingness to be committed."[91] The second phase, acquiring electoral support, proved to be equally difficult, but was ultimately successful.

A third reason for public apathy is that people are isolated from the daily operations of the judiciary. Moreover, American institutions of education provide only meager information about the third branch. Indeed, its co-equal status has been terribly neglected by academicians.

Understandably, people are overwhelmed by the size and complexity of the judiciary. They are ignorant not only of structure and operations, but of the gamut of problems which plague the courts.[92] Consequently the public is unable to comprehend, much less evaluate, the array of potential remedies, of which unification is but one. In such situations the tendency is to vote against the measure resulting in its defeat.

The above examples attest to the fact that the public may inhibit change indirectly through its apathetic attitude. Yet, public opposition may be direct as well. Indeed, the electoral process is one method by which the public may inhibit change directly.

Because the public is not greatly concerned with court reform, it is unlikely that legislators will initiate or promote a unification package if no political gains can be achieved. Indeed, legislators may risk their positions by introducing controversial bills. This in part accounts for why members of the bar may be the initiators of court unification, as in Idaho, or why bills may be introduced through a judiciary committee rather than by an individual, as in Kansas.

On the other hand, the public may have pressing concerns for other proposals. Because legislators must be responsive to their constituencies, they must act in these other areas.[93] Moreover, legislators may be confronted with a variety of competing and conflicting interests which they must resolve.[94] Indeed, as one author notes, "Neither state nor local legislators march to the beat of the court drummer, and other constituencies far exceed the importance of the court system in the eyes and ears of elected lawmakers."[95] As such, legislators generally direct their attention to that which is politically advantageous. For example, in 1972 Kansas voters adopted a new judicial article which ultimately required extensive implementing legislation. Although the article provided for a unified court system, the issue of nonpartisan selection of judges was of more immediate public concern and was addressed by the legislature two years before unification.

There are a number of specific reasons why the public may oppose court unification. Extensive opposition is often generated by rural county citizens toward the concept of trial court consolidation. First, they are largely concerned with having to travel greater distances if local courts are abolished.[96] In Oklahoma, for example, opposition to the 1967 new judicial article providing for consolidation and abolition of JP courts came from voters who did not believe that small claims could be handled with convenience under a unified system.[97] Rural Ken-

[89] Harvey Uhlenhopp, "The Integrated Trial Court," *American Bar Association Journal*, 50 (November, 1964), 1061, 1062.

[90] Farmer, *supra* note 88.

[91] Alfred Heinicke, "The Colorado Amendment Story," *Judicature*, 51 (June–July, 1967), 17.

[92] Farmer, *supra* note 88; Harris, *supra* note 34; and Sherman, *supra* note 15, p. 66.

[93] Rubin, *supra* note 28.

[94] Harris, *supra* note 34, p. 87.

[95] Rubin, *supra* note 28.

[96] Minteer, *supra* note 46, at 1098.

[97] Jack Hays, "July 11, 1967 — A Beautiful Day in Oklahoma," *Judicature*, 51 (October, 1967), 78, 80–81.

tuckians expressed similar concerns prior to the adoption of their judicial article in 1975 as did South Dakotans in 1972. Second, consolidation often involves abolition of lay judge positions; consequently citizens in rural areas and municipalities fear the loss of control over their judges.

Third, consolidation may involve "upgrading" lower court judges to a general jurisdiction bench. The public may, consequently, perceive that the quality of justice has been diminished. It was noted earlier that in Connecticut, for example, "judges were for years often certified as being fit to sit only on the misdemeanor court." As Paul Nejelski, Connecticut's former Assistant Executive Secretary to the Supreme Court, further observes, "The public and lawyers understandably were opposed to appointing judges to the bench who were presumably not competent to sit on more complex cases. It reinforced the image of a second-class court and second-class justice."[98]

Centralized administration may be opposed for closely related reasons. People often fear that the judges they once felt close to will be assigned to other parts of the state. Furthermore, they may perceive that judges will be governed by centralized procedures and be made responsible to the supreme court. Such arrangements, it is believed, may undermine their internalized system of political patronage.

State funding may also be vehemently opposed by the public. This was found in Kansas. There the municipalities expressed violent opposition to the concept. They feared a tremendous loss of locally-generated revenue to the state treasury.

C. Conclusion.

The purpose of this chapter has been to demonstrate that various forces and groups in society may serve as obstacles to court unification. In the first half of the chapter, various institutional impediments to judicial improvement were examined. It was noted that history and tradition mitigate against change. System participants and the public alike are generally impregnated with a sense of satisfaction about existing structures. In part this feeling is fostered by a general lack of court-related information. Finally, state constitutions often inhibit change because of the antiquated provisions for amendatory revision.

In the second half of the chapter, it was observed that various groups and individuals, both within and without the judicial system, may oppose court unification. This is not unexpected. Indeed, as James Alfini has intimated, the "natural, but somewhat reluctant, constituency: the nation's judiciary,"[99] has been among the forerunners of opposition. Additionally, state and local officials in both the executive and legislative branches may precipitate opposition against various measures.

Each group has numerous reasons for opposing unification. But most frequently, opposition is engendered because a particular group perceives that the status quo will be disrupted, and that the change occurring will be against their self-interest. Thus, as Justice Robert Hall of the Georgia Supreme Court has suggested, "the secret of accomplishing change is to make them [system participants and the public] think that they are doing it themselves."[100]

However, opposition to unification is not a universal phenomenon. Indeed, it was noted at the outset that the groups and individuals who are most antagonistic toward change in one instance may be the vocal advocates in another. It is the purpose of the chapters in Part II to examine the factors which generate support of the various groups to insure a successful court unification campaign. Among the factors considered are the avenues chosen to attempt change, the leadership provided, the nature of the change sought, the timing, the bargains and compromises necessary to enlarge the base of support, the political strategies and tactics utilized, and the potential impact of the measures.

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[98] Paul Nejelski, "The Federal Role in Minor Dispute Resolution," (an address to the National Conference on Minor Disputes Resolution, Columbia University School of Law, New York, New York, May 26, 1977).

[99] James Alfini, "Justice System Management: A Critical Review of the Literature," *Justice System Journal*, 2 (Spring, 1977), 293.

[100] Hall, *supra* note 30.

PART 2
OVERCOMING THE OBSTACLES TO COURT UNIFICATION

CHAPTER V. SELECTING THE AVENUE FOR CHANGE

In the preceding chapters, the major parameters of court unification have been examined. The concept has been defined and its utility has been assessed. While the last chapter exposed the major impediments to establishing a unified court system, the purpose of this chapter is to review the avenues through which unification may be achieved, thus laying a substantive foundation for subsequent chapters that address strategy and tactics instrumental in achieving unification.

A. The Initial Consideration

The most fundamental criterion in selecting the appropriate avenue for change is the present wording of the state's constitution with respect to each element of unification. The provisions may be negative, neutral or positive.

1. **A negative constitutional statement.** A negative constitutional statement prevents advocates of unification from proceeding toward their goals without somehow revising the document. This is most clearly illustrated in the areas of court consolidation and judicial rule-making. Presently the Texas Constitution declares that, "The judicial power of this state shall be vested in one Supreme Court, in Courts of Appeals, in a Court of Criminal Appeals, in District Courts, in County Courts, in Commissioners Courts, in Courts of Justices of the Peace, and in such other courts as may be provided by law."[1] Thus, before a one or two tier trial court system can be established, the article must be revised either to omit reference to some of the courts, or expressly establish a unified court structure.

Louisiana recently chose the first path. The Constitution of 1921 created a wide variety of limited jurisdiction courts including family, juvenile, parish, city and magistrate courts. The new constitution adopted in 1974 retained these courts with an important caveat: "the legislature by law may abolish or merge trial courts of limited or specialized jurisdiction."[2] It further provided: "The legislature by law may establish trial courts of limited jurisdiction with parishwide territorial jurisdiction and subject matter which shall be uniform throughout the state."[3] Thus, although a unified structure is not mandated in Louisiana by the constitution, the language allows the legislature to provided for one if it so desires.

Florida presents a clear illustration of a state which took the additional step of expressly establishing a unified structure. In its 1956 constitution the judicial power was vested in the following courts:

> . . . a supreme court, district courts of appeal, circuit courts, Court of Record of Escambia County, criminal courts of record, county courts, county judges' courts, juvenile courts, courts of justices of the peace, and such other courts, including municipal courts or commissions, as the legislature may from time to time ordain and establish.[4]

A new judicial article was approved by the electorate in 1972 providing that, "The judicial power shall be vested in a supreme court, district courts of appeal, circuit courts and county courts. *No other courts* may be established by the state, any political subdivision or any municipality."[5]

As in the area of trial court consolidation, the constitutional basis for the rule-making authority may need to be changed if a unified system is to be accomplished. For example, in Tennessee the supreme court is authorized to "prescribe by general rules the forms of process, writs, pleadings and motions, and the practice and procedures in all of the courts of the state in all civil suits, actions and proceedings."[6] But a subsequent act provides that "such rules shall not take effect until they have been reported to the General Assembly . . . and until they have been approved by joint resolution of both houses of the General Assembly."[7] Thus it is clear

[1] Texas, *Constitution*, Art. V, sec. 1.
[2] Louisiana, *Constitution*, Art. V, sec. 15(A).
[3] *Ibid.*
[4] Florida, *Constitution*, (1956), Art. V, sec. 1.
[5] Florida, *Constitution*, Art. V, sec. 1 (emphasis added).
[6] Tennessee, *Code Ann.*, sec. 16-112 (Supp. 1972).
[7] Tennessee, *Code Ann.*, sec. 16-114 (Supp. 1972).

that ultimate rule-making authority in Tennessee rests with the legislature. In order to establish a unified system, the Constitutional Convention, which presently is convening for the purpose of rewriting the document, must at a minimum delete the latter section.

Thus, if a constitution specifically provides for elements or procedures which do not coincide with the postulates of a unified court system, proponents of that system initially must seek a change in the document. It it is deemed politically impracticable to obtain specific language creating a unified system, as in Florida with respect to its court structure, proponents may have to be content with the adoption of a neutral provision permitting the legislature to move in the direction of a unified system.

2. **A neutral constitutional statement.** If the constitution is silent on a particular element of unification, or if it allows the legislature or supreme court to take action toward unifying the system, the potential for achieving change is enhanced considerably. If it is politically feasible, proponents still may wish to seek a positive constitutional statement. Generally, such a statement is preferable because once it is achieved, it is very difficult to alter. For example, in the area of trial court consolidation, it is desirable to achieve a positive constitutional statement which implicitly prohibits the legislature from creating additional courts, rather than a neutral statement which might only eliminate reference to a state's myriad courts, but not prohibit the legislature from establishing additional courts at its pleasure.

Similarly, in the area of financing, it is clearly preferable to obtain a constitutional rather than statutory statement of the respective responsibilities of the state and political subdivisions. What is delegated by one legislature can be withdrawn by the next. Nowhere is this point more dramatically illustrated than in New York where in 1976, the legislature provided by statute that the entire judiciary be funded through state appropriations. A four-year transition period was established wherein during the first year, the state was to charge-back to the counties 75 percent of the cost, thereby actually supplying 25 percent of the funding during the initial period. But the governor's budget called for only 12.5 percent, thus requiring an 87.5 percent charge-back. If the legislature accepts his recommendation, the preceding legislation, for all practical purposes, will be sharply revised. If state funding requirements had been provided in the constitution, however, the legislature would have been required to follow the edict and not set it aside by statute.

Despite the desirability of obtaining a positive constitutional statement in place of a neutral one, in certain situations, the change may not be possible. In addition, to amend or revise a constitution usually is a lengthy procedure and may be perceived as inappropriate to meet an urgent need. In these situations it may be preferable, or even necessary, to work for the adoption of legislation or supreme court rules.

3. **A positive constitutional statement.** If a positive constitutional statement has already been achieved, the potential for effectuating a fully unified judiciary is greatest. On occasion the constitution actually may specify the details of unification so that certain implementing legislation will not be necessary. For example, a constitution like Kentucky's may specify the types of courts for the unified system, or it may detail the method of handling fines and forfeitures as in Florida. But, for the most part, constitutional statements tend to be general and efforts still must be directed toward implementing specific legislation or court rules to effectuate the positive mandate to unify.

The presence of a positive statement gives court reformers a clear mandate, indeed, an imperative, to proceed with implementing the wishes of the electorate. Nonetheless, even with the clearest of statements, there is room for interpretation. As a result, proponents of a strongly unified system must not lose sight of the political process and must be willing to participate in a number of bargains and compromises to achieve their objectives.

B. The Avenues of Change

Depending on the existing wording of the constitution and the element of unification involved, one or a combination of four primary avenues may be selected to achieve the desired change: constitutional revision, legislative statute, supreme court rule, or executive order.

1. **Constitutional revision.** Four principal vehicles can be utilized to alter a constitution: public initiative, revision commission, constitutional convention, or legislative proposal.

a. *Public initiative.* The initiative is a device which allows an extra-legislative amendment to be formally proposed to the citizens of a state. It is designed to allow the public to propose alterations that have substantial popular support when legislature fail to act. The initiative must be presented in the form of a petition and signed by a certain number or percentage of the voters in a state. The constitutions

of 17 states provide for this process.[8] Massachusetts is the only state in which initiative measures must be approved by the legislature before submission to the voters. In most states the proposal must be approved by a majority voting on the referendum.

Because this avenue of change is limited to less than one-third of the states, it cannot be utilized by most proponents of court unification. But even where the initiative is available, the tremendous effort in time, organization and expense may prohibit its use. Obtaining the requisite number of signatures on the petition and subsequently waging a campaign to get the measure approved can be a monumental task. Additionally, this vehicle is inappropriate for proposing extensive constitutional change. In recent years use of the public initiative has been relatively unsuccessful. Indeed, the rate of adoption is substantially lower than for legislative proposals. Throughout the nation between 1970 and 1975, 34 initiatives were submitted to the electorate, but only 12 (36 percent) were adopted. Conversely the success rate for constitutional conventions and legislative proposals was 47 percent and 67 percent respectively.[9]

Despite its difficulty, it may be worthwhile to pursue the initiative to achieve some aspects of unification. Although the field observations and research have failed to produce an example of where the initiative had been attempted in the area of court unification, it has been employed successfully in obtaining a merit procedure for selecting judges. In 1966 the Colorado legislature debated whether to adopt such a plan, but failed to submit it to the electorate. Despite the presence "of apathy and a general unwillingness to be committed" to the venture, the Committee for Non-Political Selection and Removal of Judges, Inc., successfully waged a campaign to obtain the required 47,000 signatures.[10] It sent out 3,000 petitions to the lawyer chairmen who had been appointed for each judicial district and mailed another 2,600 petitions to every member of the Colorado Bar Association. But this approach did not produce as many signatures as anticipated and thus a new strategy was developed.

The effort was concentrated in Denver, the state's largest population center. The League of Women Voters accepted the campaign as a project and effectively organized teams of women to solicit signatures. In the final days of the campaign, they were joined by employees of banks and law firms. The League collected signatures in shopping centers, building lobbies, and at busy street corners. At the time of the deadline, they had obtained 71,476 signatures, approximately 25,000 more names than required. The excess signatures were more than enough to offset those which might be ruled invalid. The proposition was submitted to the electorate and a well-organized and successful campaign was launched to gain their approval.

b. *Revision commission.* The second vehicle which may be utilized to alter a constitution is the revision commission. Such a body is created by "statutory law, legislative enactment, or executive order. The first requires the endorsement of both the legislature and the governor; the latter methods need only the sanction of one branch of government."[11]

There are two types of revision commissions. The most common is the study commission whose duties range from examining particular sections of the state constitution through drafting a completely new document. The second type is the preparatory commission whose purpose is to prepare for an upcoming constitutional convention by undertaking substantive studies of the major issues.

Lawmakers generally prefer either commission method of initiating major changes in the constitution, especially when compared to the constitutional convention. Indeed, lawmakers generally have almost total control over commissions and usually utilize them as auxiliary staff. The legislature generally is free to accept, reject or modify commission recommendations.

This manner of revising constitutions has proved to be very popular. Professor Albert Sturm reports that during the period 1939–1968, there were 62 revision commissions in 35 states. Thirty were created by statute, 16 by legislative resolution, and 15 by executive order.[12] During the period 1974–1975, commissions were operative in eight states: Alabama, New Hampshire, North Dakota, Ohio, South

[8] Arizona, Arkansas, California, Colorado, Florida, Illinois, Massachusetts, Michigan, Missouri, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, Oregon and South Dakota. For a list of specific requirements see *The Book of the States, 1976–1977* (Lexington: Council of State Governments, 1976), p. 176.

[9] Computed from *The Book of the States, 1976–77, ibid.*, p. 163.

[10] Alfred Heinicke, "The Colorado Amendment Story," *Judicature*, 51 (June-July, 1967), 17. The following account is drawn mainly from this source.

[11] Elmer Cornwell, Jay Goodman and Wayne Swanson, *State Constitutional Conventions: The Politics of the Revision Process in Seven States* (New York: Praeger Publishers, Inc., 1975), p. 10.

[12] Albert Sturm, *Thirty Years of State Constitution-Making: 1938–1968* (New York: National Municipal League, 1970), p. 34.

Dakota, Texas, Utah and Washington.[13] Six were created by statutory law, one by a house concurrent resolution (North Dakota), and one by executive order (Washington).

The main advantage of a commission is that it is small in size and thus can proceed efficiently and at a relatively low cost of operation. Further, competent, well-trained personnel may be employed to carry out the effort.[14] The commission's major weakness is that it is totally dependent upon the governmental organ by which it is created.

The success of commissions has varied. Seasoned observers have concluded that although their work "has provided the impetus for constitutional reform in some states, the overall track record for commissions is not one of uniform success."[15] In part, this may be because some legislatures have authorized commissions as a symbolic response to give the appearance of action.

c. *Constitutional convention.* The third vehicle for altering a constitution is the convention.[16] This method is unique to the United States and has been utilized approximately 221 times.[17] Forty-one states provide for it in their constitutions,[18] and in the remaining states, judicial interpretation and practice have dictated that the power to call a convention is inherent.[19]

Fifteen states require a majority vote in the legislature before the question of holding a convention may be submitted to the electorate. In 14 states a two-thirds vote is required, and in two states a three-fifths vote is mandatory. In six states the legislature may call a convention without submitting the question to the people. In Florida, the power to call a convention is reserved to the people by petition.

The popular vote required to authorize the calling of a convention varies from state to state. In 23 jurisdictions all that is required is a majority of those voting on the proposal. In seven states a majority of those voting in the election is required. Periodic submission of the convention question is mandatory in 14 states.

The work of the convention may be limited or unlimited depending on the substance of the call. Unlimited conventions may, in their discretion, consider or omit from consideration any facets of the state constitution. On the other hand, there have been two kinds of limited conventions, "those limited to one or a very few specific problems and those prohibited from dealing with a particular subject."[20] Most have been of the first variety. Some constitutions, including Alaska's, ban the limited convention.[21] Between 1938 and 1975 there were 12 limited and 18 unlimited conventions in the United States.[22]

The convention method for accomplishing constitutional change has the advantage of being highly democratic.[23] Indeed, a convention's delegates are elected directly by the people. It is perhaps this fact that accounts for their relatively high success rate. As was suggested earlier, between 1970 and 1975, 67 percent of proposals by conventions ultimately were adopted.

d. *Legislative proposal.* The fourth vehicle for altering a constitution is the legislative proposal. All states except Delaware require that two steps be completed before such an action is effective: passage by the legislature and ratification by the people.

In 17 states a simple majority vote in the legislature is required for most proposals. Nine states require a three-fifths vote, 18 states require a two-thirds vote and six states have miscellaneous requirements.[24] Several states require passage by more than one session of the legislature.

In most states ratification by the people requires only a majority of those voting on the amendment. Wyoming requires a majority of those voting in the election and South Dakota requires a majority of all citizens voting for governor.

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[13] *The Book of the States, 1976–1977, supra* note 8, pp. 166–68.

[14] See Susan A. Henderson, "Judicial Reform Through Total Revision of State Constitutions," *Judicature*, 51 (April, 1968), 347, 348.

[15] Cornwell, *et al.*, *supra* note 11, p. 11.

[16] There are a plethora of guides on how to organize and manage such conventions. See, e.g., Elmer Cornwell, Jay Goodman and Wayne Swanson, *Constitutional Conventions: The Politics of Revision* (New York: National Municipal League, 1974); and John P. Wheeler, *The Constitutional Convention: A Manual* (New York: National Municipal League, 1961). For an excellent discussion on how to influence the outcome of a constitutional convention, see Ian D. Burman, *Lobbying at the Illinois Constitutional Convention* (Chicago: University of Illinois Press, 1973). For descriptions of specific constitutional conventions, see the various publications by the National Municipal League.

[17] Cornwell, *et al.*, *supra* note 11, p. 13.

[18] The exceptions are Arkansas, Indiana, Massachusetts, Mississippi, New Jersey, North Dakota, Pennsylvania, Texas, and Vermont. See Cornwell, *et al.*, *supra* note 11, p. 177.

[19] Cornwell, *et al.*, *supra* note 11, p. 13.

[20] John P. Wheeler, *The Constitutional Convention: A Manual on Its Planning, Organization and Operation* (New York: National Municipal League, 1961), p. 5.

[21] Alaska, *Constitution*, Art. XIII, sec. 4.

[22] Cornwell, *et al.*, *supra* note 11, p. 14.

[23] See Henderson, *supra* note 14.

[24] *The Book of the States, 1976–1977, supra* note 8, p. 175.

Historically, this has been the most popular method for changing constitutions. Its popularity may be attributable, in part, to the fact that the expense is clearly less than creating a constitutional revision commission or convening a constitutional convention. Furthermore, the legislature has control over what the proposed revisions will contain. But, perhaps of prime significance, is the fact that it usually is easier to achieve piecemeal revision than to rewrite an entire constitution. Despite the popularity of this method, in recent years less than 50 percent of the proposals submitted to the public have been ratified.

2. **Legislative statute.** There are two principal vehicles which may be utilized to achieve enactment of a statute. The first, and by far the most well-known, is the passage of a bill in the legislature. Procedures vary from state to state, but generally the proposed bill is referred to a committee for initial action. Subsequently it is voted upon by the entire body and, with the exception of Nebraska which is unicameral, it is sent to the other branch of the legislature for approval. Following approval by both houses, the bill is then submitted to the governor for his signature or veto.

The second vehicle which may be utilized to achieve enactment of a statute is the initiative. Like the constitutional initiative, the statutory initiative is an extra-legislatively drafted bill formally proposed by a petition and signed by a certain number or percentage of the voters. It also may be direct or indirect. The direct type of initiative places the proposed measure on the ballot for submission to the electorate without legislative action. This procedure is found in 13 states.[25] The indirect type, which requires that the legislature act upon an initiated measure within a reasonable period of time before it is voted upon by the electorate, is found in five states.[26] In three states both the direct and indirect methods are used.[27] The remaining 29 states do not allow for the use of the statutory initiative.

The required number of signatures for the petition varies widely from state to state.[28] Massachusetts may be the easiest state in which to achieve a statutory initiative. There proponents of a measure must obtain three percent of the votes cast in the last general election for governor. At the other extreme is the State of Wyoming where the number must equal 15 percent of the voters in the last general election and residents in at least two-thirds of the counties in the state.

Because the statutory initiative is limited to less than one-half of the states, it cannot be utilized by a majority of proponents seeking court unification. Additionally, the procedure is very costly and time consuming. Thus, it appears preferable to utilize the more direct method of seeking statutory enactment by the state's legislative bodies. This may require a great deal of lobbying and hard political bargaining, but it clearly does not require the organizational effort which must be mustered in successfully achieving a statutory initiative.

3. **Supreme court rule.** The third avenue which may be utilized to achieve a unified court system is supreme court rule. As was noted in Chapter I, 32 states provide the highest court with some degree of rule-making authority. Eight states place the authority partially in the court and ten place it elsewhere.

States with express administrative and procedural rule-making authority are in a highly advantageous position to effectuate court unification. In these instances, legislatures may be reluctant to interfere with promulgation of a rule unless it appears to infringe on substantive law. But even then, the branches of government do not seek confrontation and do everything possible to avoid conflict.

In many states, however, court rules are subject to legislative scrutiny and veto. For fear of legislative criticism, the court may be overly conservative in taking action and thus refrain from promulgating all but minor rules. But of greater consequence is the fact the court in these states is circumscribed severely by the judiciary's lack of appropriations authority or enforcement power to execute its edicts. Thus, for the most part, courts tend to promulgate rules which pertain exclusively to judicial personnel, and which require no fiscal appropriation.

There are some who argue that even where the authority to promulgate rules of administration and procedure is not expressly vested in the judiciary, it may still be exercised, generally by the state's highest court. Proponents of this view rely upon the inherent powers concept which is grounded in the doctrine of separation of powers. They claim that:

> the separation of powers doctrine . . . imposes on the judicial branch not merely a *negative* duty not to interfere with the executive or legislative branches, but a *positive* responsibility to perform its own job efficiently. This *positive*

[25] Alaska, Arizona, Arkansas, California, Colorado, Idaho, Missouri, Montana, Nebraska, North Dakota, Oklahoma, Oregon, Wyoming.

[26] Maine, Massachusetts, Michigan, Nevada, South Dakota.

[27] Ohio, Utah, Washington.

[28] *The Book of the States, 1976–1977, supra* note 8, p. 218.

> aspect of separation of powers imposes on courts affirmative obligations to assert and fully exercise their powers, . . . and to fend off legislative or executive attempts to encroach upon judicial prerogatives.[29]

Colorado's Associate Justice Jim R. Carrigan has concisely summarized the case law on inherent powers, suggesting that they consist of:

> . . . all powers reasonably required to enable a court to perform efficiently its judicial functions, to protect its dignity, independence, and integrity, and to make its lawful actions effective. These powers are inherent in the sense that they exist because the courts exist; the court is, therefore it has the powers reasonably required to act as an efficient court.[30]

The extent to which the inherent powers doctrine may be exercised is unclear. Various state courts have used it to obtain funding for salaries, additional personnel, and courtroom facilities,[31] but there are clearly a number of constraints on its usage. First, there is some case law which places restrictions on it. For example, the Supreme Court of Montana has ruled that the doctrine may be employed only when established means have failed.[32] Second, and perhaps more important, if a confrontation with the legislative or executive branches erupts, the judiciary is clearly in the weakest position and may be forced to submit. After all, it does not have a state militia or the power of the purse to enforce its edicts. As a result, if the court should attempt to make such radical changes as abolishing courts and consolidating the judicial system, it may be treated in a manner similar to the way Andrew Jackson treated Chief Justice Marshall's decision in the Cherokee Nation Case.[33] It will be recalled that upon hearing the opinion, the President allegedly stated, "John Marshall has made his decision, now let him enforce it."

Despite these and other limitations, the doctrine may be invoked to help further unify a judicial system. This is particularly true in the area of administration. Perhaps the most outstanding example took place recently in Tennessee. In October, 1975, the Supreme Court of Tennessee adopted a rule "pursuant to the inherent power of . . . [the] Court . . .," declaring that it had the authority: (1) to temporarily reassign judges to other courts; (2) to take affirmative action to correct imbalances in case loads among the circuits; (3) to take affirmative action to correct any condition adversely affecting the administration of justice within the state; and (4) to take any other action that may be necessary to carry out the orderly administration of justice within the state.[34]

The rule was inspired largely by the disparity between judges' disposition rates. For example, one Tennessee judge disposed of over 2,200 cases during a one-year period, while six others disposed of only 300 each.[35] The average disposition rate for the 106 trial judges was 885 cases per year. Chief Justice William H. D. Fones has been quoted as stating that "[s]urely . . . this court would be remiss . . . if it did not take affirmative action to correct this situation."[36]

Pursuant to the declaration, the supreme court ordered that in each judicial area a presiding judge was to be selected every November. Further, the court authorized the chief justice of the supreme court to appoint such an individual if he is not designated within 15 days subsequent to a vacancy. The order provides that the presiding judge is responsible for the assignment of cases within his jurisdiction with his major objective, "to achieve an equitable distribution of the workload and an equal sharing of the bench and chamber time necessary to dispose of the total case load within acceptable limits." The order further proclaims that no case may be held under advisement for more than 60 days; that no motion or other decision of the trial judge that delays the date of trial or final disposition may be held under advisement for more than 30 days; that certificates of readiness and pre-trial conferences are to be utilized to their maximum; and that the executive secretary of the court is to make a continuing survey of case loads, docket congestion and related matters.

In issuing the order, the state supreme court exhibited great boldness, for historically the legislature has been preeminent in this area. Indeed, all rules promulgated by the supreme court had to be ap-

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[29] Jim R. Carrigan, "Inherent Powers and Finance," in Larry Berkson, Steven Hays and Susan Carbon, *Managing the State Courts* (St. Paul: West Publishing Co., 1977), pp. 74–75.

[30] *Ibid.*, p. 77.

[31] For an excellent list of cases see Jim R. Carrigan, *Inherent Powers of the Courts* (Reno: National College of the State Judiciary, 1973).

[32] State *ex rel.* Hillis v. Sullivan, 48 Mont. 320, 137 Pac. 392 (1913). For a list of other restrictions, see Carrigan, *ibid.*, p. 23.

[33] Worcester v. Georgia, 6 Pet. 515 (1832).

[34] *Tennessee Rules of Court 1976*, Rule 45.

[35] "Tennessee Supreme Court Rules Judicial Integration," *Judicature*, 59 (March, 1976), 404.

[36] *Ibid.*

proved by a joint resolution of both houses of the general assembly.[37] By invoking the inherent powers doctrine, however, the court notified the legislature that the rule it had just promulgated was effective without their approval.

Whether other courts without express rule-making authority will follow the lead of the Supreme Court of Tennessee is uncertain. Clearly the avenue is available and should be pursued where it is practical to do so, particularly if an express grant of rule-making authority is not vested in the court.

4. **Executive order.** A final avenue for achieving a unified court system is the executive order. That almost nothing has been written about this avenue with respect to judicial modernization is attributable in large measure to the fact that executive orders rarely have been utilized in the judicial arena. The most notable exceptions are the various gubernatorial orders establishing nominating commissions to select judges on the basis of merit.[38]

One way in which the executive order may assist unification efforts is when it is used to convene a constitutional revision commission. The Commission for Constitutional Alternatives created by Governor Daniel J. Evans in Washington offers a recent example.[39] The Washington commission is authorized to study the constitution and recommend needed changes. It is mandated to work with the legislature and report to the governor. To aid the commission in its work, the governor appropriated $164,000 from his budget. This and other like commissions are usually free to suggest modifications in the present judicial article or propose an entirely new document.

Another way in which the executive order might be used to aid unification efforts is in the area of budgeting. In Chapter I it was noted that in at least six states, judicial budgets are prepared outside the judiciary. Further, a vast majority of the budgets prepared within the judicial system are submitted to the executive branch. Typically they are revised, integrated into the executive budget, and then submitted to the legislature. The lower house then revises them further before passing an appropriations bill. Subsequently the budgets are returned to the governor, who may exercise an item veto in at least 39 states.[40]

Where this procedure exists, a governor who is committed to the concept of unification may issue an executive order declaring that his office will no longer participate in the drafting of a judicial budget. In addition, the governor may declare that his office will not review or revise the judicially created budget. Second, the governor might issue an order declaring that he will no longer exercise his item veto authority with respect to judicial appropriations. Both orders could be grounded in the separation of powers doctrine.

The chances of successfully utilizing the executive order for the purposes described above are somewhat unlikely. Generally governors are not prone to relinquishing authority. Nonetheless, some may find political advantage in doing so, while others might do so out of personal conviction.

C. Weighing the Alternatives

The initial consideration which must be made by advocates of unification is whether the wording of the existing state constitution is negative, neutral or positive. The various routes emanating from each are diagramed in Table 5–1. As suggested previously, it is clearly preferable to achieve a positive constitutional statement if one does not exist. Four avenues of accomplishing this objective have been examined. Data are readily available on the three avenues which lead most directly to change: public initiative, constitutional convention, and legislative proposal. Thus, a general assessment can be made about which method has the greatest chance of success. Table 5–2 illustrates that throughout the history of the United States, proposals by constitutional conventions have had the greatest success of ratification. Legislative proposals closely follow, but constitutional initiatives are a distant third. The years 1968–1975 were examined to determine if contemporary trends divert from this overall assessment. As Table 5–3 suggests, they do not.

Thus, it is clear that if a constitutional change is sought, the best chances for success are by use of the convention or a legislative proposal. If a major change or a new judicial article is sought, perhaps it is preferable to work for a constitutional convention. If, on the other hand, only small alterations are sought, the legislative proposal appears to be the preferable route. The legislative proposal also is less complex and time consuming, and certainly less expensive. In either event the chances of passage for legislative proposals relating to the judiciary are

[37] Tennessee, *Code Ann.*, sec. 16–114 (Supp. 1972).

[38] See Allan Ashman and James Alfini, *The Key to Judicial Merit Selection: The Nominating Process* (Chicago: American Judicature Society, 1974), Chap. 1.

[39] *The Book of the States, 1976–1977, supra* note 8, p. 179.

[40] Carl Baar, *Separate But Subservient: Court Budgeting in the American States* (Lexington: D. C. Heath, 1975), p. 50.

TABLE 5–1

Various Routes for Achieving Court Unification

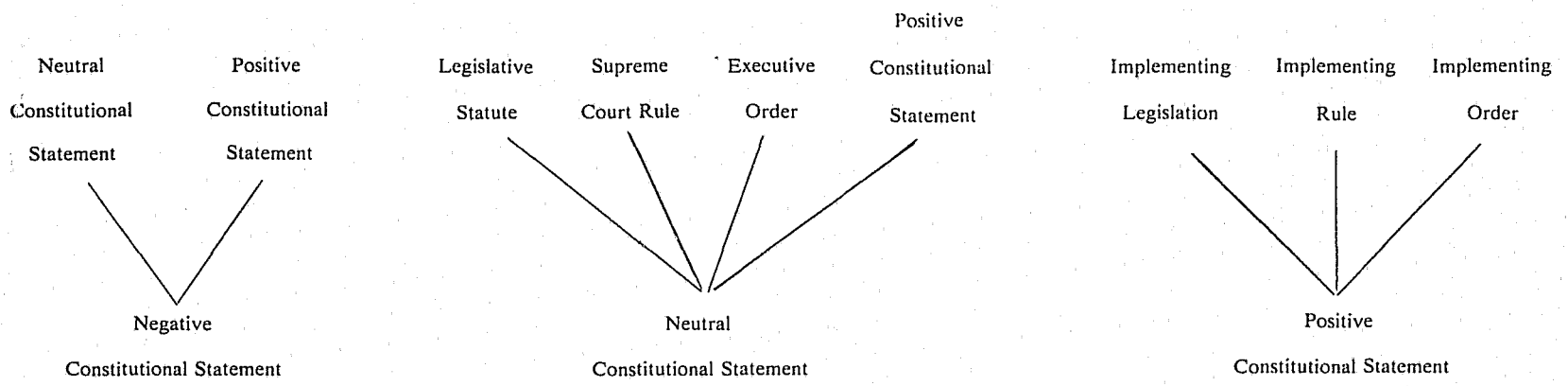

Table 5–2
*Methods of Accomplishing Constitutional Change Through 1975**

	Proposed	*Adopted*	*Percentage*
All Methods	9,536	6,104	64%
Legislative Proposal	8,544	5,666	66%
Constitutional Initiative	538	173	32%
Constitutional Convention	348	240	69%

*Data through 1968 are derived from Albert L. Sturm, *Thirty Years of State Constitutional-Making: 1938–1968* (New York: National Municipal League, 1970), p. 31. "Some of the figures may be inaccurate, but the slight inaccuracies that may exist result in no substantial distortion of the total pattern of constitutional change. . . ." p. 27. Data from 1969 through 1975 are derived from *The Book of the States, 1974–1975* (Lexington: Council of State Governments, 1974), p. 4; and the *1976–1977* edition, p. 163.

Table 5–3
*Methods of Accomplishing Constitutional Change, 1968 to 1975**

	Proposed	*Adopted*	*Percentage*
All Methods	1,775	1,221	69%
Legislative Proposals	1,671	1,163	70%
Constitutional Initiative	40	12	30%
Constitutional Convention	64	46	72%

*Data were obtained from *The Book of the States, 1974–1975* (Lexington: Council of State Governments, 1974), p. 4; and the *1976–1977* edition, p. 163.

currently very great. Indeed, 95 percent of all judicial revisions were adopted in 1974–1975.[41]

In many states constitutional change is unnecessary or politically impractical. Indeed, the political climate and historical nature of a state may militate against constitutional revision. Where such a situation exists, proponents must choose between three other avenues: legislative statute, supreme court rule, or executive order. As was suggested, the executive order has rarely been exercised and is of limited utility. Because the supreme court is relatively unsusceptible to pressures from outside the judiciary, the citizenry, if it desires, has little opportunity to encourage change by means of a rule. The legislative statute thus becomes the second most preferable avenue by which to pursue a unified court system. Generally, changes can be made in each of the areas of court unification. In nonunified systems the legislature can usually abolish a number of the trial courts and is free to provide a centralized management component for the judiciary. Typically it can grant the supreme court rule-making authority and provide for state financing and unitary budgeting. Pressure can be brought to bear upon the legislature by citizens and by interest groups at relatively low cost. The strategies and tactics to be employed in such an undertaking are the subject of the next four chapters.

[41] *The Book of the States, 1976–1977, supra* note 8, p. 166.

CHAPTER VI. CAMPAIGN STRATEGY: LEADERSHIP AND SUPPORT

In Chapter IV the obstacles to achieving court unification were discussed in detail. To overcome these vast impediments, a well-planned campaign must be organized. The general principles that should be employed to guide such an undertaking may be divided into three categories: leadership and support; organization and focus; and bargaining and compromise. The next three chapters examine each of these areas in depth. The present chapter focuses on the individuals and groups who are most likely to provide leadership and support for court unification movements. Little attempt is made to examine the characteristics requisite for leadership or the circumstances conducive to assumption of a leadership position. Rather, the purpose of this chapter is to offer by way of chronical the likely and unlikely sources of support for court unification campaigns. This approach should serve as an initial guide for individuals in other states contemplating unification.

A. Likely Proponents of Court Unification

As suggested in Chapter V, court unification is generally adopted and implemented by constitutional amendment, legislative statute or court rule. Each of these procedures requires, in varying degrees, the involvement of the state legislature, the executive branch, the judiciary and the electorate. Because unification most directly impacts upon the judiciary, it might reasonably be expected that members and related personnel of that branch, such as justices and court administrators, would provide major leadership and support to the campaign. However, in the eleven states selected for intensive on-site investigation, contrary observations were made.

Somewhat surprisingly, the majority of leadership and support for court unification campaigns was derived from individual legislators and members of the electorate. Within the electorate, two principal sources of support were found: state bar associations and citizens' groups formed specifically to promote judicial modernization. Although the role and involvement of these three sources did vary somewhat from state to state, taken collectively they are classified as likely proponents of unification.

The on-site investigations also unveiled a fourth likely, and necessary, source of support: the media. While the media's support is not legally required for adoption and implementation of unification measures, as a practical matter it is crucial. Because it generally accompanied successful campaigns, the media is included as a likely proponent.

1. **Legislators.** Most unification activity must be approved by the legislatures; therefore, it is of paramount importance to gain the support of their most influential members. In every state visited for on-site investigation, one or more state legislators helped lead the campaign. In fact at times, legislators have served as primary catalysts and strategists for the entire movement.

The efforts of Florida's Representative Sandy D'Alemberte provide a case in point. As a legislator is not only initiated the bill providing for a unified system, but he guided it through the House of Representatives, helped lobby it through the Senate and worked with civic organizations to insure ratification by the electorate. His staff director, Janet Reno, provided invaluable assistance, as did Senators Dempsey Barron and Fred Karl.

While not a catalyst of the statutory revisions, Senator J. C. Tillotson was a primary leader in the Kansas movement toward court unification. In 1973, Tillotson was chosen to serve as vice-chairman of the Judicial Study Advisory Committee (JSAC). Composed of influential leaders, JSAC was vested with the responsibility of obtaining statewide public and private substantive input for a package of statutory legislation in accordance with a constitutional amendment adopted the previous year. In 1974, Tillotson incorporated the recommendations of JSAC into statutory language, much of which was adopted in the 1975 and 1976 sessions. Representative John Hays played a complementary and highly instrumental role in the house.

In states where legislators have not been catalysts or primary leaders of the entire movement, they have, nonetheless, provided instrumental assistance which should not be underestimated. Such leadership was provided by Senators C. C. Torbert (now chief justice) and Stewart O'Cannon, and Representatives Robert Hill and Ronald Flippo in Alabama. In Colorado, Senator Carl Fulghum, who was relatively unknown outside the legislature, played a crucial role in securing passage of the 1962 amendment. Senator Fulghum was aided by Representatives Albert Tomsic and Edward Byrne, and Harry Lawson, senior research analyst of the Colorado Legislative Council. In Connecticut James Healey, James Bingham and David Neiditz, three influential legislators, strongly supported the reform legislation.

In Idaho, Senators Ray Rigby, Sam Kaufman and Edith Miller Klein, and Representative Charles McDevitt supported court unification legislation. Other members of the house and senate also gave strong support. In 1967 the senate voted 211 to 11 to override Governor Samuelson's veto of unification legislation, while the house was just a handful of votes short of the requisite two-thirds majority. These votes are noteworthy, because both the house and senate were dominated by Republicans in the governor's party.

In Kentucky, Richard Lewis, Michael Moloney and William Sullivan were responsible for the legislative support that was a prerequisite to the adoption of the constitutional amendment in 1975. In New York Senator Bernard Gordon, Chairman of the Senate Judiciary Committee, as well as Warren Anderson (the Senate's Majority Leader), Jeremiah Bloom, Stanley Steingut (Speaker of the Assembly) and George Cincotta played important roles in recent attempts at judicial reform.

In Ohio, Representative William Milligan, often referred to as the "legislative father" of that state's reform, played an instrumental role in the house. Other key legislative participants included Alan Norris, Charles Kurfess, Robert Holmes, Robert Levitt, Barry Levey, William Taft, Paul Gillmor, William Nye, James Leedy, and Max Dennis. Similarly, South Dakota's Joseph Barnett, Chairman of the House Judiciary Committee and later Speaker of the House, was an important figure in that state's effort to obtain unification.

Where the legislative *leadership* is strongly opposed to judicial change, reformers will undoubtedly be impeded in their attempts at unification. One of the most noteworthy examples is found in Ohio. There leading members of the legislature, including the chairman of the senate judiciary committee, strongly opposed reforms proposed by the Modern Courts Committee recommendations of the early 1960's. It was not until 1967 when three former members of the Legislative Service Commission Study Committee who supported the changes were promoted to the offices of speaker of the house, majority floor leader and chairman of the house judiciary committee that success was achieved.[1] This paved the way for quick passage of the Modern Courts Amendment which provided for a partially unified judiciary.

Without question, legislators play an important role in any effort to achieve court unification. Indeed, in certain situations they may serve as catalysts and major strategists for the campaigns.

2. **The state bar.** The organized bar has a vested interest in the outcome of any judicial reform movement, particularly when the judiciary moves from a relatively decentralized system to a highly unified one. Such a change generally disrupts well-established routines and working relationships. In some instances it has been suggested that a reorganization of the court structure may mean a reduction in income to certain law firms.[2] Thus, it is not unexpected that the bar is one of the most important elements in a court unification effort. Howell Heflin has suggested their importance:

> Bar associations should be the prime movers to obtain a cooperative effort on the part of all vital and essential groups and individuals at the state and local level. The battle for the modernization of our state courts cannot be won unless bar associations are willing to make an all-out effort to win it.[3]

Only in Connecticut did the bar fail to consistently play an influential role. In 1971 the bar joined Connecticut Citizens for Judicial Modernization (CCJM) to promote reform under the title, Joint Committee for Judicial Modernization (JCJM). Although both groups supported unification, they

[1] William Milligan and James Pohlman, "The 1968 Modern Courts Amendment to the Ohio Constitution," *Ohio State Law Journal*, 29 (Fall, 1968), 811, 816.

[2] David Saari, "Modern Court Management: Trends in Court Organization Concepts — 1976," *Justice System Journal*, 2 (Spring, 1976), 19, 32.

[3] Howell T. Heflin, "The Time is Now," *Judicature*, 55 (August–September, 1971), 70, 71.

differed in their objectives. The bar had long supported simply merging the common pleas court into the superior court. This merger was an expedient to reduce the number of trial courts, but it would have isolated the circuit courts and courts of limited jurisdiction. CCJM had always advocated total merger of the trial courts, a position which the bar association opposed. In 1971, however, CCJM concluded that any effort to merge the circuit court into the superior court would face overwhelming opposition. Thus, it developed a plan which would *eventually* produce that result: initially by merging the circuit and common pleas court and subsequently merging the new court into the superior court.[4]

JCJM's final report subtly indicated the differing views of the bar and CCJM: the Subcommittee on Court Structure, rather than the entire Joint Committee, presented JCJM's recommendations, which followed the CCJM model. Shortly thereafter, the bar association withdrew from JCJM, terminating that organization. But the bar's opposition to the CCJM plan mattered little to the legislature. Some observers believe that the Connecticut legislature, composed of few attorneys, was deliberately hostile to the state bar association and that the legislature viewed the bar's opposition to the planned merger as an attempt to preserve a "superior" court for lawyers and law firms, while relegating "people's courts" to second-class status.

Once the intermediate merger took effect, the bar reversed its position and eventually supported consolidating the new common pleas court with the superior court. The bar apparently realized that failing to complete the merger would be administratively unsound. In fact, in a 1976 poll a majority of the state bar favored a one tier system. Accordingly, the bar not only endorsed the 1976 merger, but also conducted informal activities to secure passage at the instigation of James Healey and Ralph Dixon, a well-known trial attorney and senior partner in a leading law firm. While support at this late date did not have a tremendous impact, at least one observer stressed that the bar helped secure legislative reconsideration of the measure after an initial defeat.

In a number of states the bar has assumed primary responsibility and leadership for court unification campaigns. In Idaho, two members of the bar, James Lynch and Thomas Miller, universally were credited for the successful enactment of various statutes providing for a unified judiciary. In 1963, immediately following electoral ratification of a constitutional statement allowing the legislature to unify the courts, Lynch and Miller initiated a campaign to secure statutory implementation of the new judicial article.

As secretary of the bar and chairman of the bar committee on court reorganization respectively, these two young attorneys dominated the court modernization scene for the next 15 years. During the early sixties, the bar, in conjunction with the legislative council, undertook a study of the judiciary's needs. Together Lynch, Miller and the council established preliminary recommendations and conducted public hearings across the state, which were financed by the bar. In 1966 a statewide citizens' conference was held. The consensus statement was highly supportive of their preliminary recommendations. At that point the bar became instrumental in preparing legislation. It also directed the efforts of Citizens' Committee for Courts, Inc. (CCCI), which emerged from the citizens' conference. The bar provided CCCI with editorials supporting unification legislation to distribute across the state.

In 1967 only a portion of the legislation was successful. Bills providing for lower court consolidation and state assumption of financial responsibility failed to pass. The more progressive senate had overridden the governor's veto, but the house sustained it by a narrow margin. The bar succeeded in extracting from the governor his specific objections and, following an interim study, new legislation was submitted in 1969. This time the governor's approval was secured.

The State of Ohio provides another illustration of visible and sustained activity by a bar association.[5] In 1963 the bar created a Modern Courts Committee which proposed sweeping reforms, including local court reorganization and rule-making authority vested in the supreme court.[6] Attorneys Kenneth Clark and Earl Morris, co-chairmen of the Committee, offered important testimony to the Legislative Service Commission Study Committee on Judicial Administration.[7] As two close observers have written, "In general, the conclusions of the Study Committee paralleled those of the Modern Courts Committee, . . ."[8]

[4] Influential Connecticut sources credit James Healey and James Bingham with "masterminding" the ingenious intermediate strategy CCJM advocated.

[5] Much of the following discussion is extracted from Milligan and Pohlman, *supra* note 1, at 811–48.

[6] See "Report of Committee for Modern Courts in Ohio," *The Ohio Bar*, 37 (April 20, 1964), 371–84.

[7] See "Report of Modern Courts Committee," *The Ohio Bar*, 37 (November 9, 1964), 1249–64.

[8] Milligan and Pohlman, *supra* note 1, at 815.

Thus, the organized bar essentially established the parameters for reform. Later its members worked in both the senate and house for passage. Following the 1965 legislative session in which testimony had been taken on the proposed reforms, the Modern Courts Committee worked further to refine the proposed joint resolution. In 1967, as noted earlier, a change in the leadership of the house of representatives allowed the measure to pass by a clear majority. Subsequently the senate passed a similar version which was later concurred in by the house. The proposal was then placed on the May, 1968 primary election ballot. During the ratification effort, the bar again played a major role by furnishing the basic financial support and by hiring a public relations firm to coordinate the publicity. The state bar also encouraged support from local bar associations. As an interviewee stated, "bar representatives in almost every county worked to achieve support from local bar associations, the press, and key voter groups."

Similar statements may be made about the activities of other state bar associations. They often establish committees which participate in drafting articles of unification. The activity of the Idaho State Bar in this respect has already been cited. Bar associations also provide the resources for citizens' conferences and stimulate the establishment or revival of court modernization organizations. For example, in Colorado the state bar association under the leadership of Executive Secretary William Miller and attorney Hardin Holmes, was the catalytic agent for the Citizens' Committee for Modern Courts. CCMC, chaired by Robert Sterns, raised $57,000 in 1962 to publicize the proposed judicial article which ultimately resulted in unification of the state judiciary.[9] As further evidence of the Colorado bar's activity in the area of judicial reform, it should be noted that it played a key role in establishing and supporting the Committee for Non-Political Selection and Removal of Judges. Over $109,000 was raised to support this effort.[10]

The activities of the Colorado bar are not unusual. Forty-eight state bar associations have participated in sponsoring citizens' conferences on court reform in conjunction with the efforts of the American Judicature Society. Generally, bar associations provide on-site staff support and assist with local arrangements such as publicity. They also help secure conferees and speakers. At times the bar underwrites a portion of the operating expenses of such conferences, or acts as a conduit through which monies are channeled from federal or state agencies.

As suggested above, bar associations frequently perform an important role in funding the campaign effort. Often they appropriate funds from their general treasury and at times they have solicited their membership for special contributions. In Colorado the state bar association solicited $100 from each major law firm in the state. Additionally the state bar requested that local bar associations make financial contributions. A procedure similar to that of Colorado's was adopted in Kentucky during the final stages of their campaign.

Members of the bar may also become intimately involved in the campaign effort itself. For example, bar associations often establish and maintain speakers' bureaus, as in Alaska, Colorado, Idaho, and Kansas. On other occasions members supply information and speakers to citizens' organizations to be used for their bureaus. This was the approach utilized in Kentucky and Nevada.[11] Members of the bar have appeared before civic organizations and on television and radio programs. They have also delivered informative speeches and participated in debates.

The examples above suggest that bar associations may assume highly visible leadership and support positions in campaigns to achieve court unification. In other states the bar may be highly active, and yet refrain from assuming key leadership positions with respect to the public. In some situations the bar may prefer to assume a low profile campaign posture. Usually this latter approach is adopted because of a belief that the public will oppose any legislation which even superficially appears to be a "lawyer's bill." Consequently, bar associations often either work quietly among their own members, as in Kentucky, or work through citizens' organizations, as in Kansas.

In late 1974, almost one year preceding electoral ratification of the judicial article, the Kentucky bar appointed a committee to work with the major citizens' organization, Kentucky Citizens for Judicial Improvement, Inc. (KCJI). The bar's efforts were directed primarily toward other attorneys and the legislature, rather than toward the public. In 1974 the bar invited the entire legislature to a dinner to promote the amendment. The Young Lawyers division was particularly active, having distributed 1600

[9] Lee A. Moe, *Report to the Executive Committee of the Citizens' Committee on Modern Courts From the Executive Director*, November 12, 1962.

[10] Committee for Non-Political Selection and Removal of Judges, *Report of the Executive Secretary*, November 22, 1966.

[11] See e.g., "State Bar Explains Legislative Package," *Nevada State Journal*, September 22, 1976, p. 2.

copies of the article to members of their group. Bar newsletters carried updates on the article every two months. One month before the November election, the bar printed an advertisement on the cover of their journal, *Kentucky Bench and Bar,* promoting the amendment. Finally, the bar printed 80,000 postcards which its members mailed throughout the state urging other attorneys to support the amendment. The bar did have some direct contact with the public through KCJI's speakers' bureau. Its members were asked to serve in this capacity because few lay persons felt qualified to address the public on what might involve technical legal issues.

In Kansas the bar association channeled much of its activity through a group entitled Concerned Citizens for the Modernization of Kansas Courts. In 1972, prior to electoral ratification of a judicial article, the bar raised $3,000 to promote the campaign. The group ran a "God, Mother and Apple Pie" campaign. The amendment was presented as a means by which to enhance justice for the people. At no time did the bar promote the amendment through use of its letterhead. Following electoral ratification, the bar continued to support implementing legislation, but again did not assume a highly visible position.

It is apparent that bar associations have strong vested interests in the outcome of court unification campaigns. Their support is crucial to successful efforts, whether it be in a visible or low profile capacity. Either way, bar associations generally have provided needed personnel, resources and fiscal support for these endeavors. On the other hand, if a state bar fails to support efforts at unification, the chances of success are diminished. Indeed, it will be recalled that the bar's failure to endorse or actively campaign for reforms in Florida and Washington was an important factor in the defeat of proposals in those states.[12]

3. **Judicial reform organizations.** Despite the importance of bar associations, they are unlikely to effect major changes in the judicial system by themselves. As a leader of the Florida effort has stated, "In my judgment bar associations alone will not be able to do the job."[13] The groups most likely to join bar associations and others in attempting to secure court unification are judicial reform organizations. Invariably these groups are voluntary citizens' organizations formed specifically to promote judicial modernization. Howell Heflin has long emphasized the importance of these citizen groups. He stresses: "Citizens' support is essential."[14] Many reformers agree with Heflin about the importance of citizen participation. For example, in a recent speech presented to the Judicial Advisory Committee in Minot, North Dakota, Charles D. Cole echoed Heflin's sentiment:

> Citizen involvement is both desirable and helpful from the standpoint of the legislative passage of the constitutional amendment and the electorate [sic] ratification of the amendment. In fact, I believe that . . . active [citizen] involvement and assistance in obtaining ratification of . . . proposed judicial article[s] is absolutely necessary. The Alabama citizen lobby certainly served to create the climate for passage of both Alabama's new judicial article in 1973 and the necessary implementation legislation in 1975.[15]

Groups established specifically to promote judicial reform exist in nearly every state.[16] The prevalence of these groups is due, in large part, to the work of the American Judicature Society. In 1959 the Society sponsored a National Conference on Judicial Selection and Court Administration. During the final deliberations, a participant suggested that similar conferences be organized in each state. Less than seven months later Nebraska held the first state citizens' conference on improving state courts. To date the Society has sponsored 117 such conferences in all but two states: Alaska and North Carolina.[17] Invariably the participants establish permanent citizens' organizations to continue the work of the conferences. In at least 35 states, non-profit citizens' groups have incorporated.[18] In other states, the

[12] See Chapter IV.

[13] Talbot D'Alemberte, "Florida Takes a Great Step Forward" (an address delivered at the joint luncheon of the American Judicature Society and the National Conference of Bar Presidents, Honolulu, Hawaii, August 12–14, 1974).

[14] Heflin, *supra* note 3, at 72.

[15] Charles D. Cole, "Judicial Reform: The Alabama Experience" (an address presented to the Judicial Planning Advisory Committee, Minot, North Dakota, February 24, 1976).

[16] Of the eleven states selected for intensive investigation, only Florida and Ohio did not use strong and effective citizens' organizations.

[17] For a description of conference preparations and content see R. Stanley Lowe, "Programs and Services: The Educational Function of the Society," *Judicature,* 54 (February, 1971), 270–77.

[18] Alabama, Arizona, Arkansas, Colorado, Connecticut, Delaware, Idaho, Illinois, Indiana, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, Oklahoma, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming.

citizens have formed organizations but have not incorporated.[19]

Many of these groups have, to some extent, remained active over the years. A number of the citizens' groups have subsequently joined with the Society or state bar associations to sponsor follow-up conferences. For example, Citizens' Conference on Alabama State Courts, Inc. was formed four months after the initial conference was held. Under the leadership of President Carl Bear, it helped sponsor statewide meetings in 1973, 1974, and 1976. The first was held one month before the legislature convened, and was designed to stimulate support for a proposed new judicial article.

The contribution of these organizations to unification efforts varies greatly from state to state. In some locales their roles have been modest. But in most, judicial reform organizations have provided substantial backbone to unification movements. Indeed, these organizations have often played the crucial role in successful attempts at reform. Connecticut is a case in point. With the assistance of Peter Costas, a Hartford attorney, Connecticut Citizens for Judicial Modernization (CCJM) was officially organized in 1971. It held a citizens' conference in the spring of that year, with the dual purpose of calling attention to reform issues and soliciting citizen leaders for the movement. The first conference was not heavily attended, but it attracted the attention of influential attorneys, businessmen, judges and legislators, and received good coverage from the local media. The seven citizens' conferences which have been held since that time have dealt with such issues of decriminalization of "victimless crimes," improvement of the juvenile justice system and merit selection of judges, as well as the major problem of trial court consolidation.

As suggested earlier, CCJM's strong ties to the state bar led to a functional merger of the two groups under the title Joint Committee on Judicial Modernization (JCJM). The purpose was to study detrimental conditions prevalent in the court system and to make recommendations for improvement. JCJM's report, issued in 1972, cited such deficiencies as overlapping jurisdiction, antiquated venue provisions, heavy reliance on "circuit riding" to conduct court terms, and lack of uniform administration. The solution proposed by the CCJM faction of JCJM [merger of the two lowest tiers of the court system], however, did not have the support of the bar faction, which preferred merger of the middle and upper trial courts, essentially isolating the old circuit courts as limited jurisdiction courts. Disagreement over this point was severe enough to cause the bar to withdraw from JCJM shortly after the report appeared, effectively dissolving the Joint Committee.

CCJM continued to advocate merger of all tiers of the court system, and was supported by James Bingham, then Chairman of the House Judiciary Committee. Bingham and CCJM had recognized that while this was not the best initial move administratively, it was the only form of merger which would eventually guarantee complete unification of the trial courts. If isolated at the beginning, the circuit courts would have remained jurisdictionally and administratively separate. But once merged with the court of common pleas, pressure to create an administratively coherent single-tier trial court system, by integrating the superior court, was thought to be inevitable. This maneuver is regarded by observers in the state as a "brilliant" strategy for achieving complete court consolidation, which was accomplished within five years of CCJM's original recommendation.

CCJM has continued as the focal point of citizen involvement in court modernization, frequently providing assistance to legislative committees charged with drafting provisions for judicial reform. One particularly effective CCJM study was a court-watchers project designed to document utilization of courtrooms and judges in order to demonstrate that "final" consolidation of the new court of common pleas and the superior court was desirable. Additionally, several members of the CCJM board serve on the newly-formed advisory council, which is to present the legislature with recommendations for smooth implementation of the new single-tier court in 1978.

Another example of where a citizens' organization played the leading role in a unification effort is Kentucky. In 1973 the Kentucky Citizens for Judicial Improvement, Inc. (KCJI) was created as a private, non-profit organization. As secretary of KCJI, attorney Morton Holbrook provided critical leadership for the organization throughout the duration of the campaign to unify Kentucky's judiciary. The impetus for its creation came from an abortive attempt to pass a revised judicial article in the 1972 general assembly. Although several groups expressed intermittent and variable interest in a new article, there was a need to fill the void in leadership and staff assistance.

The fundamental purpose of KCJI was to provide

[19] Florida, Georgia, Hawaii, Kansas, Michigan, Nebraska, North Dakota, Ohio, Oregon, and South Carolina.

the public with as much education and information as possible in order to make an informed decision regarding the proposed judicial article. As a non-profit organization without a promotional budget, KCJI was allowed to provide only objective information regarding the existing system and its needs, rather than to pose as advocates of change. However, to fund its operational activities, KCJI applied for funding through the Kentucky Crime Commission (the state planning agency) from LEAA. Ultimately two grants were awarded for a total of $133,000. Some time later the Kentucky Department of Justice awarded an additional $150,000 from a contingency fund.

Initially, KCJI sponsored the Public Conference on the Proposed Judicial Article, in September, 1973, which served as a prelude to the Kentucky Citizens' Conference for Judicial Improvement held two months later. That fall, KCJI employed a public opinion polling organization to determine "Adult Attitudes in Kentucky Toward Kentucky's Court System and Judicial Reform." The results were used to help draft the new judicial article which was submitted to the general assembly in February, 1974.

Once the general assembly began to consider the proposals, KCJI intensified its efforts. As a first step, a permanent full-time staff was recruited. Under the leadership of Executive Director James Amato and Vice President and Treasurer Judge Henry Meigs, the group sub-divided to cover three substantive areas: support, education and information. Three permanent staff assistants, Nancy Lancaster, Stephen Wheeler and Rick Bubenhofer, the former two of whom are now staff members of the newly created Administrative Office of the Courts, played crucial roles at this stage. Nancy Lancaster was primarily responsible for generating interest and maintaining support of various citizens' organizations. Twenty-two groups actively supported the amendment, and innumerable other groups and individual citizens provided their endorsement. KCJI coordinated over 200 volunteers who participated in a speakers bureau. Information booths were established at state conventions to answer questions and distribute over 190,000 brochures. Circuit judges distributed brochures to jurors. Letters regarding the amendment were mailed to more than 500 presidents of Kentucky industries, whereupon many brochures were enclosed in their employees' pay envelopes. General Electric alone enclosed over 1,000 brochures.

The second major objective involved educating the public in secondary, undergraduate and graduate institutions. At the secondary level, all 120 county superintendents were contacted by letter about the amendment in the summer preceding the election. Sample lesson plans and program materials (including an historical essay on the courts, brochures, and impact analyses of the proposed article) were prepared to assist teachers in developing lectures on the subject. At a minimum, 47 percent of the secondary students were exposed to the amendment through these efforts.

At the college and university levels, emphasis was placed on enlisting the endorsement and support of faculty, students, and campus organizations. Sample lesson plans were provided to every political science and criminal justice faculty member. In addition to the above responsibilities, Stephen Wheeler visited many campuses and maintained ongoing contact with all faculty who expressed an interest. Speeches and seminars which focused specifically on the amendment were conducted. Justices and judges from the court of appeals and circuit courts, in addition to faculty members and private attorneys, addressed various student groups. Student bar associations were particularly active. Additionally, ten regional seminars were conducted across the state during the fall to educate the general public. Their purpose was two-fold: first, to raise the level of public awareness; and second, to capitalize on the accompanying free publicity.

The third substantive objective was to generate positive media support. Initially, Rick Bubenhofer compiled an information kit which contained (among other things) brochures, essays on the existing and proposed court systems, sample speeches for different audiences, and news release formats. Approximately 900 information kits were distributed to the KCJI and Kentucky Bar Association speakers' bureaus. Over 200 special media kits were prepared for and distributed to newspapers and radio and television stations. In addition to the above information, these kits contained a number of previously published editorials. A 60-second public service announcement was distributed to every radio station. Furthermore, over 38 radio stations aired programs on the judicial article for which KCJI provided, at times, guests and information. One month before the election, KET (Kentucky Educational Television) aired a 30-minute program entitled "The Judicial Article." KCJI provided information and materials for this production. Because of its success, the program was rebroadcast one week preceding the election. While numerous other activities and materials were generated by

KCJI, the above-mentioned represent the most outstanding efforts.

Approximately one month before the election, the campaign intensified greatly. Recognizing the need to enlighten the public further, Kentuckians for Modern Courts (KMC) was created as an active bipartisan campaign organization. KMC was co-chaired by former Lieutenant Governor Wilson Wyatt, a Democrat, and Circuit Judge Henry Meigs, a Republican, who was also an officer in KCJI and therefore was unable to actively campaign for the amendment. Consequently Wyatt assumed the visible leadership position. Wyatt took a month off from his law practice to devote himself exclusively to the effort; he conducted a brief, but exceedingly effective and intense, campaign which generally is credited with "saving" the amendment.

Among KMC's initial efforts was to arrange for a second poll to determine the locus of support and opposition to better direct the final efforts, and to verify for opponents that the public desired change. Second, a public relations firm was employed to help draft advertising. Feature stories and supportive editorials consequently appeared in newspapers across the state on a continuous basis. Additional contributions were solicited from law firms and private individuals.

During this month, Wyatt coordinated the efforts of ten former bar association presidents throughout the state. Each was responsible for 12 counties (thus covering the entire 120 counties in the state) and was given a specific list of duties, with instructions to maintain regular contact with him.

One week before the election, KMC released an advertisement promoting the amendment; it was printed simultaneously by every newspaper in the state. That weekend (three days before the election), results of the second poll demonstrating wide support for the proposal were publicized. This strategy effectively precluded pronounced opposition.

In summary, the efforts of the two citizens' groups were directed primarily toward educating the public first of the need for reform; second, to determine specifically what problems and remedies the public perceived; and third, to promote the amendment on a low-key, low-budget program.

Citizens have played important, although less dominant, roles in promoting unification in other states as well. In Idaho, the Citizens' Committee for Courts, Inc. (CCCI) was formed following a citizens' conference in June, 1966. CCCI worked closely with the bar and legislative council to demonstrate to the electorate that citizens, not simply attorneys, would benefit from judicial modernization. CCCI representatives traveled throughout the state to promote unification and to solicit public suggestions for the proposals which ultimately would be submitted to the legislature. According to one of the major leaders in the Idaho movement, "Citizens are damn near invaluable."

In Kansas, citizens were likewise instrumental in securing both an amendment and statutory legislation relating to unification. One supreme court justice has attributed the success of these developments to "citizen effort."[20] Preceding these enactments, the public had been involved in two citizens' conferences. one in 1964 and the second, ten years later. Citizens had also taken an active role in the constitutional revision commission that paved the way for providing flexibility in the amendatory provision of the constitution.[21]

Two distinct citizens' groups emerged during various phases of the unification movement. The first, Concerned Citizens for Modernization of Kansas Courts, was created two months before the November, 1972 election on the constitutional amendment. Two prominent citizens were asked to serve as chairman and treasurer respectively to enhance the group's credibility and nonpartisan nature: Clyde Reed, newspaper publisher; and Georgia Neese Gray, bank president and former United States treasurer. This group disbanded after the amendment was ratified.

The second citizens' group, Kansas Citizens for Court Improvement (KCCI), was established following the 1974 citizens' conference. KCCI consolidated the efforts of prominent Kansas citizens and groups. The chairman, C. Y. Thomas, a former businessman, state senator and chairman of the Kansas Chamber of Commerce, conducted an "extremely vigorous" campaign during the 1975 and 1976 legislative sessions to secure implementing enactments.

Other citizens' organizations have been formed independent of the American Judicature Society. Three particularly strong groups are found in New York: the Economic Development Council, the Committee for Modern Courts and the Citizens' Union. EDC was founded in November, 1965 to bring business practices to bear on solving urban problems. In 1970 a task force was created to analyze the organization, structure, systems and procedures of

[20] See also "Kansas Modernizes Its Courts," *Institute for Judicial Administration Report*, 8 (Summer, 1976), 3, 4.

[21] This provision is discussed in detail in Chapter IV.

the criminal court system.[22] According to the Council's annual report, "In less than three years . . . the backlog of unfinished cases was reduced from 59,000 to 13,500 while the number of defendants in detention awaiting trial decreased from 4,200 to 1,250.[23] It was reported that this effort resulted in a savings to the city of $6.7 million per year as well as a onetime saving of $48.5 million by eliminating the cost of constructing new detention facilities. In early 1972 another EDC task force initiated a study which led to the unification of the criminal court. That court previously had dealt only with misdemeanors, while the criminal branch of the supreme court handled the disposition of felony cases after indictment. As a result of EDC's efforts, duplicative units were consolidated, a new organizational structure was created, and modern management procedures were adopted. EDC has also undertaken studies of the civil branch of the supreme court and the State Office of Court Administration. Unlike the organizations discussed below, EDC generally does not become involved in political action. It has concentrated on changes "which can be implemented by administrative action."

A second New York organization, the Committee for Modern Courts (CMC), was founded in the 1950's as a blue-ribbon citizens' group. A third group, the Citizens' Union, dates back to 1897 when it was organized to combat corruption in New York City government. Both groups actively promoted passage of a new judicial article in 1961, and major revisions of that article during the 1967 state constitutional convention. The failure of the convention to produce a judicial article acceptable to reformers and the defeat of the entire proposed constitution at the polls were blows to court reform efforts. CMC dwindled to a relatively inactive core group, while CU concentrated on other issues. Court reform activity essentially remained in abeyance until 1970, at which time the legislature evidenced a renewed interest in the judiciary by creating the Temporary Commission to Study the Courts, chaired by D. Clinton Dominick. By 1972, CMC had reactivated and, in support of the Dominick Commission, began lobbying efforts. It organized a coalition of citizens' groups (including the American Civil Liberties Union, the Institute of Judicial Administration and the State Parent Teachers Association) to advocate court reform. A citizens' conference was held in 1973, but the major topic was merit selection of judges, rather than issues more pertinent to court unification.

In 1975, constitutional amendments to reform judicial discipline and removal procedures and to provide centralized administration and budgeting for the courts were presented at the polls. Joined by the Citizens' Union and the League of Women Voters, CMC distributed leaflets, issued press releases, delivered speeches, and pursued editorial comment. The campaign, however, was only partially successful: the judicial discipline and removal provision was passed, but centralized administration and budgeting failed. Observers attribute the failure primarily to its inept title on the ballot ("Administration and Financing of the Courts") which frightened voters already wary of increased public spending.

Pressure in the legislature to settle the issues of judicial merit selection, state financing of the courts and centralized administration culminated during the summer of 1976 after the regular session had failed to act. CMC held a major press conference in July which attracted wide attention from the media because such well-known figures as Cyrus Vance and Bess Meyerson castigated the legislature for its failure to produce any court reform legislation. The conference was followed by a statewide press release which generated much positive publicity for judicial reform. At the end of July, Governor Carey announced that a special session of the legislature would be convened in August to deal specifically with judicial reform.

Acting jointly, CMC, CU and LWV collected a package of approximately fifty editorials from newspapers throughout the state supporting reform. During the special session, they distributed this package to every legislator in Albany. They also included a strong cover letter which announced, "The time for partisan politics is over. New Yorkers cannot wait any longer for an improved court system." Recognizing that the public and media favored court improvement, legislators passed a bill calling for complete state funding of the courts by 1980. The legislature also gave initial approval to a constitutional amendment providing for limited merit selection for the court of appeals, centralized court administration, and improved judicial discipline procedures, which were ultimately adopted in the fall of 1977.

[22] For a discussion of the Council's activity in the courts area, see David Rogers, "Business and the Urban Crisis: The Case of the Economic Development Council of New York City," in Willis Hawley and David Rogers (eds.), *Improving the Quality of Urban Management* (Beverly Hills: Sage Publications, 1974), pp. 454–59.

[23] Economic Development Council of New York City, *Business Lends a Hand in the Administration of Justice*, 9th Annual Report, 1974.

To summarize, the importance of groups established specifically to promote judicial reform cannot be overestimated. Such organizations exist or have existed in nearly every state. They have been very successful in achieving reform and it is clear that without these instrumental agents, much of the progress toward state court unification thus far attained would not have come to fruition.

4. **The media.** Although the leadership and support of key individuals and groups is crucial to a campaign for court unification, the media also plays a vital role. Their positive participation encourages public support, while their neutrality engenders voter ignorance or antipathy. Nearly every individual interviewed claimed that without strong support from the media, their attempts at judicial reform would have been unsuccessful.

In Alabama, for example, the press played a consistently positive role. In conjunction with the Department of Court Management, the Alabama Press Association conducted a Media Seminar on the Courts. One of the topics was the role of the media in helping modernize the courts.[24] During the unification effort, news articles and editorials appeared in almost every newspaper in the state.[25] According to Robert Martin, Information Officer of the Alabama Supreme Court, before the constitutional amendment election of December 18, 1973, "20 of the state's 25 daily newspapers, including all the major dailies, had given editorial endorsements and devoted thousands of inches of news space to articles explaining the content of the judicial amendment."[26] Moreover, "Of the state's 116 weekly papers, only a handful were opposed, while over 70 percent gave editorial approval. The official publication of the Alabama Press Association strongly endorsed passage of the amendment."[27]

The role of the press was no less important in Florida. One participant stated that much of his time was spent "feeding" the press information. "Without them," he stated, "it [the 1972 article] would not have passed. They were almost totally in favor of judicial reform." Similarly, another important actor in the Florida effort stated that "newspapers are key."

The press also played a vital role in both Kansas and Kentucky. Throughout each state's campaign to achieve constitutional amendments providing for unified judiciaries, the press responded with enthusiasm to the materials provided by citizens' organizations. The press also reported public events promoting the amendments. One member of the Kansas bar association surmised that, "The free news coverage had the single most important impact on the state. There was absolutely no problem getting coverage."

Both states employed professional public relations companies to assist in the preparation of a major advertisement which was carried by every newspaper in both states one week preceding the elections. Leaders in both states credit much of their success to these last minute media saturation campaigns.

The situation during the 1972 South Dakota effort was similar. Almost every newspaper in the state replicated an informational article, written by the constitutional revision commission, on the proposed judicial article.[28] A large number of newspapers endorsed the proposal. Additionally, many carried numerous articles on the subject thereby maintaining public attention on the reform.[29]

The press was especially instrumental in Ohio where there was no citizens' group to help stimulate interest in judicial reform. Two eminent participants summarized the campaign by claiming that the "editorial writers carried the day." All but one of the state's major newspapers, the *Columbus Dispatch*, strongly supported the 1968 amendments.

In Washington, where the electorate failed to ratify an article which would have further unified their judicial system, the newspapers in the western part of the state generally supported the reform.[30] However, their positive approach to the effort may have been confused because they were also forced to carry advertisements purchased by opponents of the article, as well as "newsworthy" articles on the vocal opposition of Judge Frances E. Holman.[31] Further, the newspapers of the eastern region, most notably in Spokane and Yakima, actively opposed the proposal.

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[24] Robert Martin, "Giving Light to the People: Public Relations for the Courts," *Judicature*, 57 (December, 1973), 190–193.

[25] *Ibid.*, at 192. See also Robert Martin, "Accomplishments in Alabama's Court System Under the Leadership of Howell T. Heflin — 1971–1976," unpublished ms.

[26] Robert Martin, "Alabama's Courts — Six Years of Change," *Alabama Lawyer*, 38 (January, 1977), 8, 17.

[27] *Ibid.*, at 18.

[28] See e.g., *Barnhart v. Herseth*, Supreme Court No. 11537, August 21, 1974, pp. 48–60.

[29] *Ibid.*, pp. 88–102.

[30] See, e.g., *Post Intelligencer* (Seattle), April 1, 1975, p. A6; *The Seattle Times*, March 31, 1975; and *Sunday Post-Intelligencer*, November 26, 1972.

[31] See Pat Chapin, "Judicial Articles Go Down in Texas and Washington," *Judicature*, 59 (January, 1976), 308, 309.

In New York, media resistance to legislative efforts on court reform probably contributed to the defeat of a constitutional amendment on administration and finance in 1975, just as it had helped assure defeat of a proposed new constitution in 1967. However, court reformers used news coverage to their advantage in 1976 after the legislature had failed to accomplish any judicial reforms during its regular session. The Committee for Modern Courts organized a major press conference in July, with Cyrus Vance, Bess Meyerson and others on hand to deliver speeches written by the Committee on the importance of judicial reform and the legislature's disgraceful behavior in failing to act. One month later, in a special session, the legislature passed a court financing bill and approved a constitutional amendment centralizing judicial administration.

To summarize, the above discussion suggests that support of an active and vigorous press is crucial to a successful unification campaign. In all of the states where reform has been successful, the press has played a positive role in supporting the effort. Conversely, in states that have failed to adopt provisions for unification, the press has been a contributory factor.

B. Less Likely Proponents of Court Unification

In the preceding section, four groups were singled out as likely proponents of unification. It should be emphasized that legislators, members of the bar, judicial reform organizations and the media are indeed only *likely* proponents. They do not universally support unification, and when they do, their support is not always instrumental or crucial to a successful campaign. Nonetheless, they do constitute the most likely sources of support.

The field observations revealed that there were five additional sources of potential leadership and support for unification campaigns; however, they are much less likely to support these efforts than those in the first groups. Contrary to what one might expect, governors, supreme court justices, state court administrators, quasi-governmental bodies and civic organizations were not often found to be catalysts, instrumental leaders nor even staunch supporters of unification. More commonly these persons and groups provide only latent endorsement. Moreover, in a number of instances, they oppose attempts at unification as was noted in Chapter IV.

1. **Governors.** Given their position in state government, it might be expected that governors will play crucial roles in determining the success or failure of court unification campaigns. Indeed, in certain instances this has been the case. For example, former Governor Wendell Ford of Kentucky had been an ardent proponent of judicial modernization. The day he resigned his gubernatorial position to become a United States senator, he committed $150,000 to KCJI. This money was part of a gubernatorial contingency fund which the state collects, but which is not expended pursuant to statute. These monies ultimately were channeled through the office of Governor Ford's successor, Julian Carroll.

In Florida, Governor Reubin Askew played an important and indeed crucial role both as a state senator and later as governor. He was consistently a strong supporter of judicial reform and during the campaign to achieve ratification of Florida's proposed judicial article, he organized a promotional tour which traveled throughout the state. The entourage included important legislators, the attorney general, bar representatives and administrative assistants. Governor Askew spoke on behalf of the proposed judicial article at a number of meetings and issued press statements supporting ratification.

Although the importance of his role during the campaign should not be underestimated, perhaps Governor Askew's most crucial function was performed during legislative consideration of the bill. According to several sources, Dempsey Barron, a leading Florida senator and a proponent of court reform, opposed a feature of the proposed amendment. Barron threatened to speak against the entire measure on the Senate floor until Governor Askew intervened. Barron subsequently dropped his opposition and Senator Fred Karl (later elected to the state supreme court), led the final floor debate. Indeed, following Askew's intervention Barron joined the governor's statewide speaking tour to urge ratification.

New York's Governor Hugh Carey played a more modest role in that state's effort to adopt state-wide financing. A long-time supporter of court reform, Governor Carey received national attention when he released his five-point reform package which included court consolidation, strong centralized administration and state funding (as well as merit selection and abolition of the Court on the Judiciary). Further, it was his executive order which convened a recent special session of the legislature to consider the reform measures.

In spite of his apparent support for court reform, Carey has not actively promoted these proposals in

the legislature. In particular, strong supporters of court unification have been displeased by his move to decrease first-year state funding levels from 25 percent to 12½ percent. This action violated the support levels set by the financing statute which Carey had signed into law in August, 1976. This had prompted a number of observers to suggest that perhaps Carey's support of the court reorganization effort was more cosmetic than real. Indeed, one prominent New Yorker referred to the governor's activities as "window dressing."

In a similar vein, Kentucky Governor Julian Carroll's public endorsement of judicial reform might also be suspect. For example, one month preceding the gubernatorial election, during which time the new judicial article was to be placed on the ballot, Governor Carroll and his Republican challenger Robert Gable signed a joint, non-partisan statement supporting the amendment. As such, both acknowledged "the importance of improving the court system in Kentucky."[32] But many persons intimately involved with the formulation and ultimate adoption of this amendment suspect that Carroll doubted it would pass and that he now regrets his support. It seems that Carroll perceives the judiciary as simply another executive department and intends to exercise tight control over its expenditures. This theory is supported in large measure by Carroll's 50 percent reduction in 1976 of the judicial appropriations request.[33]

In Alabama, observers have commented that Governor George Wallace "silently opposed legislation to unify the courts." In September, 1973 a newspaper headline reported that Wallace favored the pending legislation. Two days later an article appeared in which Judge John A. Harris, a Wallace appointee on the Criminal Court of Appeals said [the statement that Wallace favors the bill] is "completely distorted." The governor preferred that his public position be one of "non-involvement," said Harris.[34] Indeed, during the campaign for passage and ratification, Wallace refused to take a position on unification. One observer commented, "the governor wouldn't support the bill because of political cronyism." Two years later, when the implementing legislation for the new judicial article came to him for signature, Wallace signed it. However, one participant noted that Wallace still did not support unification: "Wallace didn't want a unified judiciary. He signed 1205 [the implementing legislation] because it was the popular thing to do. If he had vetoed it he would have been hurt politically."

The active roles played by Governors Askew, Ford and Carey, are extraordinary. Generally chief executives do not assume vital positions in court unification campaigns. The role assumed by Governor Richard Kneip of South Dakota is more representative of the typical gubernatorial posture. For example, during the period when a revision in the judicial article was under consideration, Governor Kneip was involved in several other important matters of state. His particular concern at the time was reorganizing the executive branch of government. In the course of traveling about the state in support of this goal, he "endorsed" the judicial revision. He later acknowledged, however, that "the executive cannot claim credit for its passage."[35]

Thus, it appears that while governors may enhance the possibilities of success or failure, their outspoken support is not crucial to court unification efforts. Usually they play passive roles not unlike that of Governor Kneip in South Dakota. This approach was adopted by a majority of the governors in those states selected for intensive site visits. The list includes Governors Love of Colorado, Meskill and Grasso of Connecticut, Rhodes of Ohio and Evans of Washington. Moreover, it appears that proponents encourage this passive role by, at times, consciously avoiding the solicitation of gubernatorial support, perhaps because of a desire to maintain the appearance, if not the reality, of a non-partisan campaign. This was the case in Kansas with Governors Docking and Bennett.

2. **Justices.** Traditionally chief justices and associate justices have been very skeptical about becoming involved in political activities.[36] Historically court unification campaigns have been construed to fall within this category. Chapter IV already has alluded to the notion that judicial independence, integrity and credibility could be compromised if justices play an open and active role in supporting unification efforts. Strong sentiment for this view still persists. For example, despite his rigorous implementation of the supreme court's rule-making authority, Ohio's Chief Justice C. William O'Neill clearly is predisposed to judicial abstention from active lobbying. He did not play a visible role during the 1968 reform effort (perhaps

[32] *The Kentucky Advocate* (Danville), September 29, 1975.

[33] He later stated that the reduction was not intended to be complete. Ultimately additional monies were authorized.

[34] *Montgomery Advertiser*, September 5, 1973.

[35] Interview with Governor Richard Kneip, March 14, 1977.

[36] As suggested in Chapter IV, lower court judges generally do not undertake positive leadership roles in unification efforts. Therefore they are excluded from the present discussion.

because he was not chief justice at the time) and has indicated that he will remain neutral in the upcoming [1977] legislative debates about further unifying Ohio's judiciary.

The State of Washington provides an illustration of how justices may be compromised if they become actively involved in judicial reform efforts. In Spring, 1975, the legislature passed and placed on the November ballot a new judicial article. Included among the vast array of changes was a provision establishing the chief justice as the chief administrative officer of the courts. As such, the responsibility for management and administration of the judiciary would be vested in the supreme court. Additionally this particular provision required the state to assume financial responsibility for the judiciary.

During the summer a controversy erupted over the constitutionality of the method by which the legislature submitted the proposal to the voters. With respect to amending the Constitution, Article XXIII states in part:

> . . . if more than one amendment . . . [is] submitted, they shall be submitted in such a manner that the people may vote for or against such . . . amendment[s] *separately*.[37]

Judge Francis E. Holman of King County Superior Court contended, along with many others, that this provision had been violated. He perceived that the legislature had submitted the proposals as a single ballot proposition. "This method of submission," he claimed, "would seem to be on its face . . . a violation of the constitutional mandate. . . ."[38] Judge Holman believed this view was supported "not only by reason but by the case authority on the subject."[39]

Supporters of this position threatened to file a lawsuit contesting the process by which the amendment was submitted to the voters if it passed in the November election. As a result of this division, a majority of the supreme court justices concluded that they could not actively support the revisions. After all, they might be called upon to determine the constitutionality of the process by which the revisions were submitted to the electorate. Further, the chief justice felt compelled to order the state court administrator to abstain from activity.

Currently substantial dissent to the view that justices should not involve themselves in court unification campaigns is emerging. An increasing number of justices appear willing to participate and even provide leadership to such efforts.[40] Support for this view is clearly found in Alabama. There the state's charismatic and popular Chief Justice Howell Heflin played a crucial role in recent reform activity. As *Time* magazine reported, "He no sooner . . . [took office] than he began sweet-talking the legislature and the electorate into reforming the state's briar patch of conflicting court jurisdictions and ludicrous rules."[41] He focused attention on the appalling congestion and delay in the trial and appellate courts and underscored the lack of uniformity in jurisdiction throughout the system.[42] Further, Heflin enlisted supporters for his cause by seizing upon citizens' complaints about lazy judges, the waste of time in juror and witness procedures, and allegations of "cash register" and "speed-trap" justice.

To remedy these problems, Heflin advocated establishing a modern judicial system to replace one that had changed very little since the Civil War. The first step, he believed, was to revise Alabama's archaic judicial article. Toward this end he advocated placing the rule-making authority in the supreme court, creating a department of court management, consolidating the court structure (including abolition of JP courts) and providing for the flexible assignment of judges. During the course of the judicial article campaign, Heflin made more than 50 speeches and television appearances in a two-month period.[43] As Charles D. Cole, director of the legislatively created Permanent Study Com-

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[37] Wash. *Constitution*, art. XXIII, sec. 1 (emphasis added).

[38] Francis E. Holman, "An Analysis and Evaluation of the Proposed Judicial Article SJR 101," unpublished ms., July 11, 1975, p. 2.

[39] *Ibid.*, p. 3

[40] Although not chief justice during Colorado's adoption and implementation of a unified system, present Chief Justice Edward Pringle has earned a national reputation for his work in judicial reform. He has been a vocal advocate of court unification as well as other judicial innovations. Pringle's seminal arguments supportive of state-wide funding have been presented to numerous forums and are widely quoted by proponents of this particular reform. See, e.g., Edward Pringle, "Fiscal Problems of a State Court System." Paper presented to the Conference of Chief Justices, Seattle, Washington, August 11, 1972. Reprinted in Larry Berkson, Steven Hays and Susan Carbon, *Managing the State Courts* (St. Paul: West Publishing Co , 1977), pp. 251–56.

[41] "Push But Not Shove," *Time*, (September 27, 1976), pp. 88–89.

[42] For a detailed analysis of the following discussion, see Martin, "Accomplishments," *supra* note 25.

[43] "Alabama Voters Approve New Judicial Article," *Judicature*, 57 (February, 1974), 318.

mission on Alabama's Judicial System, noted, there could be little doubt that Heflin served as the "catalytic agent to bring the components of the Alabama reform effort together."[44] Another observer commented more emphatically: "There is no question that we would have been unsuccessful if Heflin had not been there. This supplanted the lack of gubernatorial support."

Yet Heflin did not function in isolation. The organizational talents of W. Michael House, his administrative assistant, were invaluable. Heflin also worked closely with Robert Martin, Information Officer of the Alabama Supreme Court, Carl Bear, President of the Citizens' Conference on Alabama State Courts, Roland Nachman, an active member of the state bar association and later its president, C. C. Torbert, a legislator and his successor as chief justice, and Charles Cole, among many others.

Chief Justice Harold Fatzer of Kansas also played a vital role in his state's unification efforts, although he operated for the most part "behind the scenes." Deemed a "sparkplug for reform" and one who was "largely responsible for the changes [that have occurred]," Fatzer contributed to the efforts of various citizen and legislative groups, and delivered numerous speeches in support of unification. One speech in particular will long be remembered, not only for its content, but also for its timing. In 1972 Fatzer was asked to deliver a State of the Judiciary Address to a joint session of the legislature, the day before the house was scheduled to debate the proposed judicial article. During this speech he strongly endorsed the concepts contained in the article. Prior to the speech, there had been substantial concern that the article would not be approved by the legislature. But after his presentation the legislature adopted the article overwhelmingly and it was placed on the November general election ballot. The electorate ultimately approved the article with equal enthusiasm.

Further evidence of Fatzer's support for the court unification campaign is indicated by the fact that he refused to withhold his support despite challenges that judicial personnel should not become involved in politics. For example, in early 1975, a lobbyist for the Shawnee County Taxpayers Association asserted before the House Judiciary Committee that "we feel that the chief justice, while lobbying for this bill [to consolidate lower courts], is acting unethically because he is not a registered lobbyist and he is representing a special interest group."[45] Fatzer simply retorted that the allegations were "certainly not true," and continued in his efforts to promote the bill.

Other justices have given more moderate support to unification campaigns. For example, B. K. Roberts, Chief Justice of the Supreme Court during Florida's unification efforts, discussed the proposed judicial article with key legislators and gave a number of speeches to civic and bar groups as well as to television audiences. He utilized his executive assistant, Fred Baggett, as a liaison between the court and key committees in the legislature. Baggett also traveled throughout the state speaking to a wide variety of audiences. In his capacity as Chairman of the Florida Judicial Council, Chief Justice Roberts encouraged Executive Director Arthur Core to devote his full energies to supporting the judicial reform act.

Similarly, Chief Justice Joseph McFadden of Idaho delivered several speeches in support of court unification. His "down-home" manner and desire to work for the public has been cited as an important contributory element to that state's successful movement. Kentucky's Chief Justice Scott Reed also delivered speeches in support of the judicial article. New York's Chief Justice Charles D. Breitel took part in the political debate over Governor Carey's proposals for reform. South Dakota's current Chief Justice, Francis G. Dunn, also appears to be willing to implement and properly finance court reform, although he played no role in its adoption.

The vigorous support offered by Justice Heflin and Fatzer is clearly atypical, as are the more modest efforts of Justice Roberts, McFadden, Reed, and Breitel. An overwhelming majority of justices assume a noncommital posture. Thus, it appears that justices are not crucial to the success of court unification campaigns. There is little doubt, however, that they can be helpful and lend valuable assistance if they can be persuaded to do so. Although still unlikely, a justice may even be persuaded to assume the major leadership role in such a movement. Short of taking such a prominent position, a justice might, among other things, be enticed to participate in debates, deliver speeches, and provide administrative assistance and financial support to aid a campaign.

3. **State court administrators.** It might be assumed that state court administrators play crucial roles in

[44] Cole, *supra* note 15.

[45] *The Daily News* (Olathe, Kansas), March 25, 1975, p. 8.

unification efforts.[46] After all, they have much to gain. Generally they will accrue the power to make recommendations about budgetary matters, to temporarily shift judges from one jurisdiction to another, and to develop court rules which will aid them in efficiently managing the entire judiciary. However, their roles are difficult to assess because many state court administrators have only recently been appointed. Because of this situation, administrators played little or no role in reform activities in Alabama, Colorado, Florida, Idaho, Kentucky, and South Dakota. On the other hand, the position existed in a few states during unification efforts. The various postures assumed by court administrators may well be instructive as to the future posture of others. Three options are possible: an administrator may play an active role, a limited role, or no role at all.

In Kansas, Jim James, the state judicial administrator, was extremely active in the unification effort. He delivered speeches to undergraduate and law classes throughout the entire state. He also addressed a number of civic groups and delivered speeches on radio. He was secretary of the legislatively created body to study judicial improvements (JSAC) and assisted the legislative staff in drafting legislation. In addition, he actively participated in the 1974 citizens' conference and published supportive articles in the *Kansas Government Journal*.[47] From the perspective of one perhaps slightly overzealous observer, he "ran the whole show."

At the other extreme is the administrator who plays no role at all. For example, since 1965 a Connecticut supreme court justice has held concurrently the position of state court administrator. For the most part he was silent on the controversial court consolidation issue. Observers view his reticence as a combination of pragmatism in the face of an accomplished fact, and reluctance to engage in an open feud with the chief justice who strongly opposed the merger.

Between these extremes is the administrator who plays a limited role in unification efforts. Such was the case in Ohio where the administrator worked closely with the legislature as proposals were being drafted.[48] But once this phase was completed, he terminated his involvement and refrained from participating in the campaign for ratification.

A similar situation occurred in the State of Washington. It is clear that in the early stages of the recent unification movement, the court administrator played an important role. He served as a source of information for the supreme court justices, legislators, lower court judges, the bar and interested citizens' organizations. However, when a suit was filed challenging the constitutionality of the method by which the new judicial article was being presented to the electorate, the supreme court ordered the administrator, Philip Winberry, to refrain from making public statements regarding the proposal.[49]

To date no general pattern has emerged with respect to the type of role which court administrators might be expected to play. However, there is some evidence to indicate that the administrators will not be the vocal advocates many reformers envisioned. First, they are appointed, not elected, officials, and their positions depend in large part on their ability to maintain good working relationships with supreme court justices. At times any number of justices may be opposed to unification. For example, some justices in Washington silently opposed that state's attempt at unification. But perhaps more important is the necessity of an administrator to sustain a highly positive relationship with the chief justice. Again, a chief justice may not always support attempts at unification; such a posture may limit the extent of support his court administrator will offer. On the other hand, where a chief justice ardently supports unification, the administrator may have greater latitude to promote the reform as was the case in Kansas. Thus, the extent of activity which might be expected from a court administrator will in large measure depend upon the prevailing views of his employers, the supreme court justices.

Another inhibiting factor upon a state court administrator's activities is the pressure that can be exerted by lower court judges. Generally they question the utility of a state court administrator. Often they fear that the administrator will reassign them to distant, overly congested courts, temporarily disrupting their schedules. Many view the administrator as an "empire builder" and fear that

[46] See Larry Berkson and Steven Hays, "Injecting Court Administrators Into an Old System: A Case of Conflict in Florida," *Justice System Journal*, 2 (Spring, 1976), 57; and Jim Carrigan, "The Functions of State Court Administrator," *Journal of the American Judicature Society*, 46 (June, 1962), 30.

[47] See, e.g., James R. James, "The Proposed Judicial Amendment," *Kansas Government Journal*, 55 (November, 1972), 455; "Nonpartisan Selection of District Court Judges," *ibid.*, 60 (October, 1974), 446; "Implementing the Judicial Article," *ibid.*, 61 (December, 1975), 462; and "Modernizing the Kansas Court System," *ibid.*, 63 (January, 1977), 35–36.

[48] His initial cooperation might, in part, be attributed to the fact that he was once a member of the assembly himself.

[49] The lawsuit was held moot pending passage of the article. Since the article eventually failed at the polls, the suit was moot.

eventually he will dictate their entire existence as judicial officers. At the core of this concern is the fear that their power and authority gradually will be stripped away from them. Thus, lower court judges generally regard the state court administrator with skepticism, if not outright hostility. If an administrator compounds this situation by becoming actively involved in a unification effort which will further erode the authority and flexibility of these judges, while at the same time increase his own, the judges are likely to pressure the supreme court to replace him.

Still a third inhibiting factor is likely to be the legislature. As part of his duties, the administrator generally serves as the principal liaison between the court and key members of the legislature. To be effective in this capacity he must (1) appear to be objective about the needs of the judiciary, and (2) maintain good working relationships with all legislators. Both criteria may serve to limit an administrator's role in promoting reform. In the first place, an administrator's credibility can be compromised if he is overly zealous in supporting certain measures before legislative committees. For example, proposals to further unify the state system, which often have substantial financial ramifications, may be viewed as narrow and clearly not in the state's best economic interests. Consequently, the administrator may appear irresponsible and thus damage his and the court's position with respect to other important matters, such as appropriations bills. Second, if an administrator actively participates in a strong lobbying effort directed either at the legislature or the electorate, he may alienate key personnel in the political structure. He may even arouse the antipathy of influential legislators to the extent that they will oppose any measure he proposes. If this atmosphere develops, the administrator is no longer of utility to his employers.

It appears that a state court administrator is not crucial to a court unification effort. If he has strong support from the supreme court, particularly the chief justice, the administrator may be exceedingly helpful at certain points in the process. In fact he may play a leading role. But, because of the large number of potential political constraints, the administrator is more likely to assume a rather neutral role while silently favoring the movement.

4. **Quasi-Governmental bodies.** It was observed during the field investigations that three types of quasi-governmental bodies have participated in attempts at unification: judicial councils, legislative research councils, and constitutional revision commissions. These bodies are usually composed of a combination of lay and legally trained personnel. They have been included in the "less likely proponents" category for the principal reason that in reality, they are not found in many states, and where they do exist, they generally do not participate in promoting change. There are, however, some notable exceptions.

The first type of quasi-governmental body, judicial councils, are frequently composed of judges, lawyers and laymen. These bodies originated in the 1920's and 1930's to undertake "continuous study" of judicial business, but most of them became inactive during the 1940's.[50] By 1949 one observer and supporter of the movement reported that only "eight states have outstanding judicial councils."[51] There appear to be even fewer today. Moreover, most do not meet on a regular basis, and many are simply paper organizations.

Nevertheless, a judicial council can provide a source of support for court unification. The Idaho Judicial Council is a clear example. Between 1967 and 1969, the council, particularly its lay members, played a crucial role in securing Governor Samuelson's acceptance of a revised version of legislation he had vetoed in 1967. And in Florida, although the judicial council as a body was generally inactive in promoting unification, its chairperson, Chief Justice Roberts, and executive director, A. D. Core, did speak frequently in favor of the proposed reforms.

The second type of quasi-governmental body is the legislative research council. As with judicial councils, legislative councils cannot be relied upon regularly to lend support to court unification campaigns. Generally these organizations are established to supply information to legislative committees about pending bills and thus, by their very nature, must remain aloof from policy-formulating efforts. However, the field investigations revealed two major exceptions: Ohio and Idaho.

In 1964, the speaker of the house in Ohio appointed a Legislative Service Commission Study Committee on Judicial Administration.[52] The study committee held a series of hearings throughout the state. After all of the testimony had been gathered, a

[50] For an excellent history see Russell Wheeler and Donald Jackson, "Judicial Councils and Policy Planning: Continuous Study and Discontinuous Institutions," *Justice System Journal*, 2 (Winter, 1976), 121–40.

[51] Glenn R. Winters, "Silver Anniversary of the Judicial Council Movement," *Journal of the American Judicature Society*, 33 (August, 1949), 43, 45.

[52] Milligan and Pohlman, *supra* note 1, at 814–16.

consensus statement was developed. The propositions were unanimously approved by the committee and recommended to the legislature. Thus, this quasi-governmental body not only played a major role in drafting judicial reform legislation, but gained wide publicity for the movement by holding public meetings on those measures throughout the state.

The Idaho Legislative Council was equally instrumental in effecting judicial modernization in that state. The council was created in 1965 as an experiment to aid the legislature in establishing policy. The first project was to commence a study on the courts in order to prepare implementing legislation pursuant to a judicial article ratified in 1962. The legislature appropriated $35,000 for this project, which became a cooperative effort with the state bar. As director of the council, Myran Schlecte was able to incorporate his experience as senior research analyst of the Colorado Legislative Council under Director Harry Lawson. During the next two years, the council studied the courts and drafted legislation. These proposals were discussed and endorsed at a citizens' conference in June, 1966. That fall, council members traveled throughout the state conducting public hearings in an effort to obtain input and support. Provisions were deleted which seemed to consistently engender public opposition. Eventually, the council drafted final legislation which was submitted in 1967. Their efforts to promote unification were sustained throughout the duration of the 1967 and 1969 legislative sessions.

The final type of quasi-governmental body is the constitutional revision commission. Because these institutions were discussed in Chapter V, detailed elaboration at this juncture is not necessary. It will be remembered, however, that they are not frequently created, and when they are, their success rate is not uniformly high. As with all other groups, however, there is at least one outstanding exception: in this case, South Dakota.

Undoubtedly the constitutional revision commission was primarily responsible for the successful unification of South Dakota's judiciary. Under the chairmanship of retired army general Neil Van Sickle, the commission was created by the legislature in 1969. Its express purpose was to "enter into a comprehensive study of the Constitution of the State of South Dakota to determine ways and means to improve and simplify the Constitution." The commission conducted indepth research into the existing articles. The possibilities for updating and revising the articles were examined.[53] The commission also consulted studies of constitutional revisions undertaken in other states and subsequently held public hearings.

In 1972 the legislature approved without dissent the commission's recommendations for revision of the judicial article. At this juncture a Constitutional Revision Commission Publicity Committee, under the aegis of Executive Secretary Ronald D. Olinger, was created.[54] Five months later the committee was able to report that it had completed the following activities:

- Speech packets had been sent to all legislators.
- Press releases were being sent to all weekly newspapers through the South Dakota Press Association.
- The press releases sent to the South Dakota Press Association were being sent to all daily newspapers.
- United Press International had indicated that they would do a series of articles on the amendments as the election approached.
- Educational TV had indicated that they would do approximately four hours of coverage on the amendments.
- Dr. Stavig (Commission Chairman) had consulted with the KELO-Land Stations (TV) in regard to some programs on the network.
- The South Dakota State University (SDSU) Extension Service had prepared a series of brochures which were being disseminated.
- The SDSU Extension Service had conducted several workshops in regard to the amendments.
- The SDSU Extension Service would be carrying on a program with the 4-H.
- The SDSU Extension Service had prepared a slide presentation which would be dispersed to every county agent.
- Materials had been mailed to all high school government instructors.
- Materials had been sent to all mayors of the several cities in South Dakota.
- Materials had been sent to all local libraries.
- Both political parties had endorsed the amendments.
- Contact had been made with the following groups:
  Farm Bureau
  Farmers Union

[53] *Rapid City Journal*, November 5, 1972, p. 10.

[54] Ronald D. Olinger, *Proposed Work Plan to Publicize the Amendments Prepared for the Constitutional Revision Commission Publicity Committee*, A Report to the Constitutional Revision Commission, April 14, 1972.

County Commissioners Association
South Dakota Municipal League
South Dakota AAUW (American Association of University Women)
REA (Rural Electric Association)
Investor-Owned Electrics
VFW (Veterans of Foreign Wars)
VFW Auxiliary
SDEA (South Dakota Education Association)
ASBSD (Associated School Boards of South Dakota)
Toastmasters
Greater South Dakota Association

- The American Judicature Society would assist the State Bar in a citizens meeting in Sioux Falls during the month of October.[55]

Additionally, members of the commission spoke to a wide variety of audiences including members of the Democratic Forum, [56] Chambers of Commerce,[57] Rotary,[58] Kiwanis,[59] and the American Association of University Women,[60] among others.[61] According to a poll the commission was responsible in large part for increasing voter familiarity with the amendments by 37 percent between October 7 and November 4.

To summarize, quasi-governmental bodies generally are not likely sources of support for court unification movements. First, judicial councils and constitutional revision commissions do not frequently exist. Moreover, the membership of judicial councils rotates periodically, so new members must continually be educated. On the other hand, while legislative research councils do exist in nearly every state, they are designed to be objective information agencies rather than proponents of particular bills.

5. **Civic organizations.** The extent to which proponents of unification can expect to find leadership and support from civic organizations is limited. For the most part, civic organizations lend their names for endorsement, but do not actively promote the measure.

The State of Alabama provides a representative sample wherein some 45 organizations, over 20 of them statewide groups, endorsed the new judicial article.[62] Among them were included the Alabama Congress of Parents and Teachers, Alabama State Chamber of Commerce, Alabama Farm Bureau, Alabama Business and Professional Women, Alabama Labor Council, Alabama Safety Council, American Association of University Women, Alabama Educational Association, Advisory Commission on Judicial Administration Implementation, Alabama Association of Women Highway Safety Leaders, Alabama Conference on Humanities, Alabama Political Science Council, Alabama Federation of Women's Clubs, Alabama Women's Political Caucus, Citizens' Conference, Coordinating Committee on Criminal Justice, Cumberland Law Students, Jaycees, Kiwanis, League of Women Voters, Parent Teachers Association, Rotary, and the University of Alabama Law Students. Naturally, the supporting groups will vary from state-to-state. In rural areas for example, farm organizations may be prominent. In urban areas labor unions may be more visible.

Other civic organizations have participated in unification efforts. However, their participation is generally sporadic and situation-specific. For example, the Jaycees were somewhat active in Alabama's reorganization effort.[63] Generally, however, they were not found to have been involved in unification efforts elsewhere. In fact, the only other state where it was found that Jaycees participated was Kentucky.

In Florida a group known as the Florida Council of 100 gave money for bumper stickers to the Governor's Council for Judicial Reform. The Cooperative Extension Service played an important role in publicizing the unification effort in South Dakota. Among other things it prepared and distributed 450,000 copies of a pamphlet entitled, "The Judicial Article," which outlined the article's goals, explained the nature of a unified judicial system, and compared it with the existing organization and structure of the courts in South Dakota. In Washington the Association of University Women and the State Grange played minor roles in that state's recent reform campaign.

There is, however, one noteworthy exception to the general rule that civic organizations are not likely proponents of unification: the League of Women

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[55] Ronald D. Olinger, *Report to the Constitutional Revision Commission on Activities of the Publicity Committee*, September 14, 1972.

[56] *Sioux Falls Argus-Leader*, September 30, 1972.

[57] *The Daily Plainsmen* (Hur..., October 15, 1972.

[58] *Watertown Public Opinion*, October 13, 1972.

[59] *Watertown Public Opinion*, October 10, 1972.

[60] *Watertown Public Opinion*, October 14, 1972.

[61] For other examples and a detailed description of the commission's activities, see appellants' brief in *Barnhart v. Herseth*, Supreme Court No. 11537 dated August 21, 1974.

[62] See Martin, *supra* note 26, at 18.

[63] *Ibid.*

Voters. The strength and influence of this organization varies from state to state, but generally it is instrumental in attempts at reform. Although the League was relatively "inactive" in Idaho, and only "peripherally involved" in Connecticut and Washington, it was moderately active in Alabama, New York, and South Dakota, and very active in Colorado, Florida, Kansas, and Kentucky. Regardless of the extent to which the League becomes involved, it can generally be relied upon to endorse unification principles. Indeed, neither the literature review nor the on-site visits suggest that the League has ever taken a position in opposition to the concept.

In New York, for example, the League joined with the Committee for Modern Courts and the Citizens' Union to push for passage of a new judicial article in 1961. Since that time, the three groups have operated as a team, lobbying and educating the public, except for a period in the late 1960's after defeat of the proposed Constitution, when interest in judicial reform lapsed. During that time the League functioned primarily as a "watchdog" in the legislature on reform issues until the Committee for Modern Courts was reactivated in 1972.

The New York League has actively supported judicial reform proposals by using its existing network of newsletters, media contacts, speakers and members to generate public interest and to influence legislators. Major recent efforts have included a campaign in 1975 urging passage of constitutional amendments which would have provided centralized judicial administration and statewide financing of the judiciary, even though the League has maintained consistently that a constitutional amendment was not required for state financing.

In 1976 the League publicly denounced the legislature's failure to enact court reform legislation during its regular session. In fact, the League played a major role in encouraging Governor Carey to convene a special session of the legislature in July, 1976. This session approved the state's new court financing statute and gave first passage to the three constitutional amendments which were ultimately adopted in the November, 1977 general election.

The League of Women Voters has been very active in Florida. It worked for a revised constitution for over 25 years before the first major overhaul occurred in 1968. At that time the entire constitution, with exception of the judicial article (Article V), was rewritten by a constitutional revision committee. Article V had been omitted from consideration because it was deemed "too hot to handle." But in 1970, after an attempted revision of the article was defeated by the voters, the League established a committee to promote a new proposal which was being advanced by Representative Sandy D'Alemberte. The League invited both D'Alemberte and Chesterfield Smith, later President of the American Bar Association, to its organizational meeting. During a special session of the legislature which had been called in part to discuss the judicial article, the League promoted unification by addressing legislative committees and meeting with individual legislators. When the campaign to ratify began in earnest, the League compiled and distributed "action packets" to its chapters. These kits included information on how to stimulate support for the unification effort at the grass roots level.

In Kansas the League of Women Voters has also been a staunch supporter of court unification. In 1972, two months preceding the November election on the new judicial article, the League held a statewide meeting where over 1,200 brochures promoting the amendment were distributed. Representatives of the League appealed on the radio for voter support of the amendment. One prominent official in the state bar cited the League's support as "the most important strategy" used by the amendment's proponents, in part because they "had bodies. They were a group with intense interest and took an active role." Because of the League's numerous chapters throughout the state, they were able to reach many segments of the Kansas populace.

Once adopted, the amendment required extensive implementing legislation. Although the issue of nonpartisan judicial selection absorbed much of the League's time and energy, they rallied again to the objectives of court unification in 1974 when they participated in a citizens' conference. In 1975 the League adopted unification as its "priority" issue for that legislative term. Four full-time lobbyists devoted their energies exclusively to unification. The state League as well as its local chapters worked extensively distributing promotional flyers and providing educational information to newspapers for editorial purposes. Many local chapters established speakers' bureaus and met with a wide variety of civic and religious organizations to discuss unification. Others became involved in public service radio programs. The Lawrence chapter, for example, had and still maintains a regular program every two weeks. During the session, the programming was devoted almost exclusively to unification. Additionally the state League published a weekly newsletter during the session which contained legis-

lative developments on the subject. The newsletters were also used to issue "alerts" to local chapters asking them to undertake immediately certain activities, such as contacting their legislators. Because unification was the priority issue, members were "expected," according to one local chairperson, to respond favorably to the alerts.

Although only limited measures were adopted in 1975, the League continued its support throughout the next session. As an instrumental group in Kansas Citizens for Court Improvement, the League wrote a document entitled, "The Steps to a Modern Court System," and distributed it to every legislator and judge to promote reform legislation in the 1976 term. The League currently is involved in monitoring studies related to state funding of the judiciary to complement earlier developments in unification.

In Kentucky, the League of Women Voters also supplied abundant support to the campaign to approve a new judicial article providing for a unified court system. The League became publicly involved in late 1973 when it co-sponsored a citizens' conference relating to judicial reform. Working under the umbrella of Kentucky Citizens for Judicial Improvement, Inc. (KCJI), the League undertook a grass roots campaign to educate the public about the need for judicial modernization, which it escalated after the legislature approved the article and placed it on the November, 1975 ballot. In September, 1975, the League conducted two in-house workshops to educate its members more thoroughly about the provisions contained in the amendment. Thereafter, members delivered promotional speeches to numerous civic groups. Additionally the Louisville chapter used its weekly 30-minute public service television program as a forum to promote unification during the campaign. Finally, in a concerted effort to reach rural women in particular, the League printed a recipe card depicting a four-tier cake, each tier representing a particular layer of courts as contemplated by the new article. On the opposite side was a recipe for the "Courtin' Cake." The cards were distributed to schools, county and state fairs, homemaker groups and newspapers. Many local chapters baked these cakes and presented them to local officials to encourage their support. Approximately $2,000 was spent on this piece of advertising which was considered one of the most effective promotional measures of the campaign. It is not surprising that a principal leader in the Kentucky campaign deemed the League, "a mighty ally," in the effort to achieve unification.

In sum, most civic organizations do not participate in unification efforts but for lending their names in endorsement. The League of Women Voters, however, is a noteworthy exception. On numerous occasions the League was among the most active, and effective, proponents. Conversely, their relatively inactive stance toward the 1976 reform in Washington may be a partial reason for its defeat. After all, the proposal failed by less than 10,000 votes out of 700,000 cast.[64]

C. Conclusion

The purpose of this chapter has been to examine the individuals and groups who are likely to be active proponents of court unification, and those who, contrary to expectations, are not.

Individual legislators, state bar associations, judicial reform organizations and the media were most often found to be likely sources of leadership and support. Moreover, when these sources did lend assistance, it was almost uniformly vigorous and sustained, rather than moderate and sporadic. Thus, legislators, for example, provided critical leadership in nearly every state examined. The bar assumed primary responsibility and leadership in Idaho and Ohio. Bar associations also provided support in other states by establishing committees to draft legislation, by participating in citizens' conferences, and appropriating funds to the effort. In Connecticut, Kansas and Kentucky, judicial reform organizations were vital to the successful adoption of unification measures. They have provided valuable assistance in almost every other state that has attempted judicial modernization. The role of the media also should not be underestimated. Without its support, attempts at judicial reform will likely be impeded.

On the other hand, there were a variety of sources from which leadership and support would at first blush, be expected, but in reality was not found. These included individuals with statewide visibility, such as governors, supreme court justices and state court administrators, as well as quasi-governmental bodies and civic organizations. It is very important to note the exceptions, however, for crucial leadership and support has on occasion been derived from these sources. Perhaps the most outstanding examples are the roles assumed by Governor Askew in Florida, Chief Justice Heflin in Alabama, and Administrator James in Kansas. Were it not for their leadership roles it would be questioned whether unification would have been accomplished in these

[64] See Chapin, *supra* note 31, at 308.

three states. The Idaho Legislative Council, the Ohio Legislative Service Commission, and the South Dakota Constitutional Revision Commission played equally important roles as did the Committee for Modern Courts in New York and the League of Women Voters in Florida, Kansas, Kentucky and New York.

Thus, it is crucial for those contemplating unification elsewhere not to overlook those sources included in the "less likely proponents" category for the very reason that at times these sources will be among the most valuable supporters. However, as a starting point, the field observations suggest that the sources listed under "likely proponents" will, with greater frequency, provide requisite leadership and support; thus, it is advisable to survey those sources first.

CHAPTER VII. CAMPAIGN STRATEGY: ORGANIZATION AND FOCUS

Having examined the individuals and groups who usually support unification efforts, we now turn to the principles that can be utilized in structuring, maintaining and conducting the campaign.

A. The Structure

There are many types of organizational schemes which may be utilized to guide a campaign.[1] Some are centralized while others are extremely decentralized. One of the more common centralized forms of organization is one in which a group's leaders divide activities into specialty or functional areas by subject matter. Each sub-group is assigned a co-chairperson who is directly responsible for carrying out certain duties throughout the course of the campaign. This type of organization is common where the geographic area is large. Other forms of campaign organization are somewhat less centralized. They usually allow participants to perform a large number of overlapping tasks as the exigencies of the situation demand. This form is most prevalent in small organizations. Still other forms of organization are hybrids of the above and emphasize performing myriad functions, but within a limited geographic area.

The literature on campaign organization offers little insight as to which structure is most effective for the disparate types of unification campaigns that may be conducted.[2] The information presently available is limited primarily to large-scale, national campaigns and has only minimal application to statewide, non-partisan, issue-oriented campaigns.

The on-site investigations do provide, however, useful insight into a variety of ways in which successful court unification campaigns may be organized. In ten of the eleven states investigated, some form of centralized structure was utilized. The eleventh state, Washington, was unsuccessful in achieving the desired reform. In some states, such as Alabama, Colorado, Connecticut and Kentucky, citizens groups were the primary centralizing agent. In others, such as Idaho and Ohio, the state bar played the major role. In still other states a constitutional revision commission or the legislature took the initiative. In any event, each successful effort was accompanied by a relatively strong centralized organization whose members performed planning and coordinating functions.

Most of the centralizing agents examined chose to organize along functional-specialist lines. Perhaps the most outstanding example of such a campaign was found in Alabama. There the Citizens' Conference on Alabama State Courts, Inc., established seven committees: membership to acquire new members; finance to raise funds; grass-roots to organize local groups; legislative to lobby legislators; press and publicity to write letters to the editor and handle the media; speakers bureau to inform the electorate about the various proposals; and a groups committee to generate and coordinate the activity of civic organizations. Further, the Citizens' Conference designated coordinators to oversee the various committee activities at the county level.

Rivaling this organizational effort was that of the Citizens' Committee on Modern Courts, a statewide, non-partisan committee organized during the early 1960's to unify Colorado's judiciary.[3] It created an advisory group whose members were experienced in politics and in managing successful campaigns. These advisors aided the chairman of the executive committee in planning many important phases of the effort. The Citizens' Committee also enlisted leadership support from the judiciary committee of the Colorado Bar Association. That group helped organize the district committees. An endorsing organizations committee was created to solicit the

[1] See Robert Agranoff, *The Management of Election Campaigns* (Boston: Holbrook Press, 1976), pp. 181–216.

[2] *Ibid.*, p. 181.

[3] The following is taken from a report entitled, "Citizens' Committee on Modern Courts Trustee and Committee Chairmen Workbook," n.p., n.d.

aid of various civic, professional and occupational groups. A state finance committee was charged with raising funds to support the effort. Further, a membership committee was created to raise additional funds for the campaign. The Citizens' Committee also relied heavily on a public relations committee which was responsible for a statewide educational program. Finally, in each of the 18 judicial districts, two local committees were created, one for membership and one for public relations. In counties with a population of 10,000 or more, separate Citizens' Committee organizations were created. This organizational structure later provided the foundation for a more elaborate and equally successful effort to provide Colorado with a merit plan for selecting judges.[4]

In 1975 the Kentucky Citizens for Judicial Improvement, Inc. (KCJI) also organized in a highly centralized fashion. Almost 18 months prior to public ratification of the new article, KCJI sub-divided into three functional-specialist groups: support, to enlist the endorsement and active participation of civic and private organizations and individuals; education, to inform elementary, secondary and university students, and the public about the need for judicial improvement; and media, to solicit positive coverage of the campaign. One KCJI staff member was responsible for fulfilling the objectives of each of the three areas on a state-wide basis. It should be noted, however, that as the election approached, the need for a more localized, generalist strategy became evident. Consequently, two well-known personalities were asked to direct a new organization, Kentuckians for Modern Courts (KMC). At the behest of these two leaders, ten former state bar presidents were asked to assume responsibility for 12 of Kentucky's 120 counties. These individuals were generalists. They were asked to perform a wide variety of activities according to variations within their regions. Nonetheless, these local leaders were still directly responsible to KMC's co-chairmen.

Not all efforts were as well organized. In Florida and South Dakota, for example, little if anything resembling the highly sophisticated Alabama, Colorado, and Kentucky organizations was found. In Florida most of the activity focused around a few central leaders who addressed various groups throughout the state. Little grass-roots organization took place except by the League of Women Voters and certain local bar associations.

In South Dakota the Constitutional Revision Commission was relatively active and did publicize their efforts at the county level, through the Cooperative Extension Service. Its members also gave numerous addresses throughout the state. Nonetheless, the Constitutional Revision Commission did not develop a highly elaborate organization to support the proposed unified court system.

In conclusion, while the literature offers little insight into effective managerial structures for court unification campaigns, the on-site investigations indicate that some form of centralized structure is of paramount importance. A centralized structure allows the leadership to monitor all activity in the state throughout the course of the campaign. Decisions regarding strategy and tactics can be made by a small body and then applied where relevant throughout the state. Moreover, when the organizing group divides the labor into functional-specialist areas, staff members may concentrate on the one subject with which they are most well-suited.

However, the extent to which a campaign must be organized remains unclear. Tables 7–1 and 7–2 present a rough categorization of the states by type of organization utilized, the extent of change being sought, and the degree of opposition found. Among the relatively undeveloped organizations, there are three states where major changes occurred (Florida, Ohio, South Dakota). In each instance, there was little opposition to the proposals. Also among the relatively undeveloped organizations, there are four states where opposition was strong (Connecticut, Kansas, New York, Washington). But in each instance relatively minor changes were being sought, and in one case, Washington, the reforms were defeated. In the only states where both relatively major changes were being sought and where relatively strong opposition was present (Alabama, Colorado), well-developed organizations were utilized. This fact may suggest that a highly developed structure is a prerequisite to success where these two factors are present.

B. The Staff

In Chapter VI various individuals and groups were singled out as potential leaders of a court unification campaign, but there was no accompanying commentary regarding the type of staff needed to manage and conduct the campaign.

Unlike campaigns for public office, campaigns that seek judicial improvements through statutory or constitutional change are not conducted by professional managers. Unfortunately, funds usually

[4] Alfred Heinicke, "The Colorado Amendment Story," *Judicature*, 51 (June–July, 1967), 17–22.

Table 7–1
States Utilizing Relatively Well-Developed Organizations

Extent of Opposition	CHANGE BEING SOUGHT: Relatively Minor	CHANGE BEING SOUGHT: Relatively Major
Relatively Weak		Kentucky
Relatively Strong		Alabama Colorado

Table 7–2
States Utilizing Relatively Undeveloped Organizations

Extent of Opposition	CHANGE BEING SOUGHT: Relatively Minor	CHANGE BEING SOUGHT: Relatively Major
Relatively Weak	Idaho	Florida Ohio South Dakota
Relatively Strong	Connecticut Kansas New York Washington	

are almost never available for such efforts. As a result, those involved in most unification campaigns have found it helpful to employ some other form of paid, full-time staff to manage the endeavors. These personnel typically do not conduct campaigns for their livelihood and clearly are not "professionals" in the accepted sense of the term. In most instances, these people become involved because of "occupational circumstance." In other words, they are both professionally related to, and personally interested in, the judiciary. Others have become involved for altruistic reasons.

The situation in Idaho provides an excellent example. In the early 1960's two young attorneys who were officers of the bar association became interested in improving the Idaho judiciary. Both the organized bar and their own private law firms supported their activity. Eventually they cultivated interest in the legislative council and citizenry to promote modernization. To date they still are highly involved in legislative activity.

In Kentucky, a full-time staff was formed approximately 18 months preceding electoral ratification of the amendment. Then shortly before the election, an activist attorney took a leave of absence from his lucrative law practice for almost six weeks to devote himself exclusively to promoting the judicial article. He had long been interested in seeking change, and his firm endorsed his activity.

In Alabama, it was at the behest of the chief justice that judicial department staff members devoted their time to promoting the judicial article. Similarly in other states, such as Kansas, judicial officers (including justices of the supreme court and the state court administrator) have devoted their energies to unification campaigns. Currently the modernization effort in Tennessee is being borne in large part by two young attorneys and the graduate of a judicial administration program, all of whom are employed in the state judicial department.

Conversely, there are examples illustrating the difficulty of achieving unification measures in the absence of a full-time staff. The situation in the State of Washington is illustrative. As has been noted, the electorate defeated a proposed judicial article in 1975. In 1976, legislation did not even reach that stage because of the lack of staff to organize a campaign.

The on-site investigations indicated that for the most part, the size of the core staff can be relatively small. In several instances, staffs were composed primarily of two individuals: the executive director of the state bar and his secretary, as in South Dakota; an officer of the bar and the state judicial administrator, as in Kansas; two members of the bar, as in Idaho; and a state legislator and his administrative assistant, as in Florida. But there have been instances when larger staffs have been employed. This is usually the situation when campaigns of greater magnitude are conducted. In Alabama and Kentucky, for example, four full-time staff members

were employed to assume the aggregate campaign management responsibility.

While there may be no substitute for a competent and dedicated full-time staff, most campaigns rely to a great extent on volunteer labor,[5] and unification is no exception. Volunteers most often perform such non-managerial tasks as placing signs in windows, typing letters, running mimeograph machines, sending specialized cards and letters to interest groups, and conducting bake sales to raise funds.

For the most part, volunteers emerge under the aegis of civic organizations such as the League of Women Voters or the Jaycees. They may also be individual members of the bar. Additionally, volunteers may be members of citizens organizations which have been established for the express purpose of promoting judicial change. Usually such volunteers are from all walks of life, representing the panorama of public and private industry and the diverse nature of a state's demographic composition. Their very presence lends credence to the philosophy that judicial modernization is for the "people," not just the "attorneys."

In many states a highly cooperative nucleus of full-time staff members and volunteer organizations has emerged to manage the campaign. This enables leaders to extend their campaign activities to reach more segments of society and to obtain a broader basis of support. This form of management has the advantage of a full-time staff which can devise a coherent campaign strategy, and a number of energetic volunteers who can execute the design. Such an approach was used sucessfully in Alabama, Colorado, Idaho, Kansas, Kentucky and South Dakota.

In conclusion, the presence of a full-time staff is a major contributing factor to the success of a court unification campaign. The advantages of such a staff are many. Generally, staff members become involved at the inception of a campaign and sustain intimate participation throughout the duration of the effort. As a result, they provide a sense of permanence and continuity to the campaign. Moreover, these personnel are not distracted by the demands of another job and therefore are free to devote their full energies toward the coordination and management of the campaign. The actual size of the core staff is not critical, but it appears to be proportionately related to the magnitude of the campaign.

At the same time, volunteers are an integral part of successful campaigns. It is clear that without such personnel to perform numerous non-managerial and technical tasks, a successful campaign simply can not be conducted. Indeed, where volunteers have not been mobilized, attempts at unification have been in vain as in Florida (1970) and Washington (1975).

Finally, in many states cooperative efforts between a permanent staff and volunteer groups, while not essential, have proved beneficial. Persons in staff positions should attempt to ferret out volunteers to assist them in unification endeavors and also should enlist the support of politically powerful groups to lend credibility to the movement. Additionally, the permanent staff should make use of existing resources by seeking well-entrenched community leaders to assist the campaign at the local level. This strategy is not only politically astute, but in the long run, it conserves time. States such as Kentucky have utilized this method of campaign strategy quite effectively.

C. The Funding

While much has been written about campaign financing, practically all of it has been directed at funding campaigns for individual candidates seeking public office.[6] There are major differences between the latter and attempts to raise money for a court unification campaign. Two differences are particularly noteworthy. One has to do with the sheer volume of funds which must be generated and the other focuses on the sources from which these funds can be raised.

Obtaining even remotely reliable information about the amount of money expended on unification efforts is difficult at best. In part this can be attributed to the fact that many expenditures simply are not recorded. Volunteers usually pay for their travel to meetings and speaking engagements. Often they pay for postage, paper and related expenses. Others often absorb the costs of secretarial and clerical help into their respective businesses or professional activities. Indeed, the salaries of those actually managing the campaign may be underwritten by

[5] See Agranoff, *supra* note 1, p. 203.

[6] The most important recent studies include David Adamany, *Campaign Finance in America* (North Scituate, Mass.: Duxbury Press, 1972); David Adamany, *Financing Politics: Recent Wisconsin Elections* (Madison: University of Wisconsin Press, 1969); Herbert Alexander, *Financing the 1968 Election* (Lexington: D. C. Heath, 1971); Herbert Alexander, *Money in Politics* (Washington: Public Affairs Press, 1972); Herbert Alexander, *Political Financing* (Minneapolis: Burgess, 1972); Delmer Dunn, *Financing Presidential Campaigns* (Washington: Brookings, 1972); and Alexander Heard, *The Costs of Democracy* (Garden City: Doubleday, 1962).

private businesses or state government. In addition, many individuals and groups volunteer their professional services to unification campaigns such as accounting, publicity and computer time. The importance of these contributions cannot be overemphasized. One participant in the Connecticut movement estimated that over $100,000 worth of free services had been provided by 300 volunteers performing a multitude of technical and clerical functions.

Another problem encountered in determining the cost of a campaign is the fact that typically more than one group raises and expends funds, but no central accounting system is developed for the entire campaign. For example, the state bar often spends money on a campaign as do citizens groups and civic organizations.

Still another factor is determining the actual amount of money spent on unification campaigns is the amount of free publicity and news coverage. While these items usually are among the most costly in any campaign for public office, campaign activity in connection with unification often is construed to be in the public interest, and consequently, media time and space are provided at no expense. But the most important reason why it is difficult to obtain information on campaign expenditures is the fact that political necessity often demands that certain costs be hidden from public view.

Despite the problems encountered in assessing the amount of funds expended on promoting the adoption of court unification measures, it is absolutely clear that the cost is much smaller than that required to support individual candidates running in statewide elections. The State of Connecticut provides a useful example. Compared with the other states, Connecticut ranks in the middle quintile in population. There, the successful gubernatorial candidate in 1966 spent $242,000.[7] In 1968, the United States Senator spent $592,600. Each Republican and Democrat candidate for the United States House of Representatives spent roughly $53,500 during his or her campaigns. It should be noted that these figures represent only what was spent in the general election and do not include the costs of the primaries.

In no state did the unification campaigns even come close to the expenditures of the Connecticut candidates for the United States Senate. Only in Alabama and Colorado did the promotional expenditures reach the levels spent by Connecticut's candidates for the House of Representatives.

[7] Agranoff, *supra* note 1, pp. 220–21.

The Alabama and Colorado experiences were clearly atypical. In Alabama, one fairly detailed account of the expenses incurred by the Citizens' Conference on Alabama Courts, Inc., in 1972 sets the amount at close to $40,000. This amount is exclusive of funds expended independently by the state bar association and the salaries of several part and full-time campaigners. The 1962 Colorado situation was similar. There the Citizens' Committee on Modern Courts spent $57,000 promoting adoption of the new judicial article.[8] The public relations and advertising program developed by a private consulting firm alone was to cost slightly over $38,000.[9]

Much more typical were the campaigns in Connecticut, Idaho, Kansas, Kentucky, Ohio, and South Dakota in each of which it is estimated that the cost of promoting unification measures was between $5,000 and $15,000. For the most part, these small budgets were sufficient because of the presence of other funds for related purposes. For example, in Kentucky approximately $200,000 was spent during the process of adopting a unified system. However, the bulk of these funds was provided through state and federal grants. Technically the money was used to educate the public about the need for judicial improvement per se and was not used as a vehicle to promote the new judicial article. Among these expenditures was $15,000 for a citizens conference in 1974, and $20,000 for two public opinion polls. Only $15,000 was actually spent by proponents on the action campaign.

In Connecticut approximately $47,000 was spent during the 1970's to achieve merger of the lower trial courts. Of this sum the legislature provided almost $30,000 for two separate commissions to study the reorganization of these courts. A private foundation contributed $13,000 to cover out-of-pocket expenses for volunteer members of the first commission. Additionally, almost $4,000 provided by federal grants and private contributions was expended on two citizens conferences. As a result, only minimal funds actually were spent by citizens groups or the bar on promoting unification, although substantial services were provided at no charge.

The 1965 Idaho legislature appropriated $35,000 for the creation and support of a legislative council

[8] Lee A. Moe, *Report to the Executive Committee of the Citizens' Committee on Modern Courts from the Executive Director*, November 12, 1962.

[9] William Kostka and Associates, Inc., *Public Relations and Advertising Programs for Citizens' Committee on Modern Courts*, A Report to the Citizens' Committee on Modern Courts, n.p., n.d.

committee to draft statutes providing for a unified court system. This sum was to cover salaries and travel expenses of its members who were charged with holding hearings throughout the state to obtain public sentiment about proposed revisions. A year later the state spent roughly $3,000 on a citizens conference to discuss the proposals, but little else was spent on a promotional campaign.

In 1973, a similar situation occurred in Kansas. At the chief justice's request the legislature appropriated $75,000, part of which was matched by federal funds, to study implementing legislation.[10] Again, these monies were used to obtain public input, so that in 1975 and 1976, when the campaign to secure legislative enactment was underway, citizens spent only slightly more than $7,300. The only other major expense was $9,000 allocated for a citizens' conference held in 1974.

In Ohio the bar raised and spent roughly $15,000 on promoting the 1968 Modern Courts Amendment. In 1973 and 1975, only "negligible" sums were expended on further constitutional and statutory provisions relating to unification. It is generally conceded that small budgets were practicable because of the lack of substantial opposition.

In 1969 a Constitutional Revision Commission was convened in South Dakota to study a new judicial article. Between that year and the article's adoption in 1972, an estimated $40,000 to $50,000 was expended by the commission for this purpose. A large number of public hearings were held throughout the state. The state bar expended slightly less than $3,000 on a citizens conference and approximately $2,400 for newspaper advertisements to publicize the proposed judicial article.[11] Additionally, the Cooperative Extension Service of South Dakota State University and other organizations expended some funds to aid in the effort.

The second major difference between funding campaigns for individual candidates and court unification has to do with the potential sources of revenue. Arnold Steinberg has suggested that the office-seeker can obtain donations from a variety of individuals: the ideological giver; the single-issue giver; the party giver; the candidate giver; the favor seeker giver; the social giver; the power-seeker giver; and the three-issue giver.[12] Advocates of court unification on the other hand, are not blessed with as many sources. As defined by Steinberg, they generally are restricted to single issue or social givers. Thus, opportunities for raising funds to support unification campaigns are considerably circumscribed when comparisons are made with individual candidates.

Yet, supporters of judicial reform can, and often do, obtain revenues from sources generally not available to candidates seeking public office. It would indeed be rare for an attorney general or secretary of state to have the salary of his campaign manager, public relations expert and two or three assistants absorbed by state appropriations. But this practice is not totally uncommon in unification campaigns. Supreme court information officers, state court administrators and their assistants, trial and regional court administrators and their assistants, assistants to the chief justice, supreme court law clerks, and state court planners often devote their entire energies to promoting such efforts. In nearly every state examined, one or more of these individuals were found to be assigned full-time to campaign activity. Generally they were assisted by several part-time paid assistants who were also funded by public money.

The efficacy, if not legality, of using such personnel in this fashion may be questionable. The practice certainly is not discussed openly. Indeed, it is in large part because of these circumstances that obtaining accurate financial information on unification campaigns is so difficult.

One other major source of funds not generally available to those seeking public office is state and federal grants. It was indicated previously that at least three states received combination funds from these sources to be used in securing statutory and constitutional statements providing for unified judiciaries.

To summarize, a large amount of funds is not a prerequisite to conducting a successful campaign as long as other monies are available to focus attention on the subject. This is fortunate because the sources of funding are relatively limited. It is interesting that many leaders of unification campaigns emphasized that if they had larger budgets, they probably would have engendered more opposition through wider

[10] It is estimated that the cost of the preceding constitutional campaign was $3,600.

[11] "Secretary-Treasurer's Report," *South Dakota Bar Journal*, 42 (September, 1973), 34, 38.

[12] Arnold Steinberg, *Political Campaign Management* (Lexington: D. C. Heath, 1976), pp. 132–37. A three-issue giver is defined as an individual who is attracted to a candidate because of his position on several issues.

publicity. Because of their limited budgets, they were forced to run low-key campaigns. One campaign organizer concluded, "Why muddy the walk? Why spend lots of money to create lots of opposition? You'll only have to spend *more* money, and that we haven't got."

D. The Style and Emphasis

The style and emphasis of a court unification campaign may govern its success. Style is concerned with how a campaign is designed and conducted; it encompasses many general principles which may be applied to various locales. The on-site investigations indicate that five general factors may be important: advance planning; public education; a positive approach which includes neutralizing the opposition; non-partisan support; and personal contact. Emphasis is directed at differing environmental factors within a state which may dictate how the public will respond to the campaign. The on-site investigations indicate that one environmental factor is of particular importance: the rural versus urban populace.

1. **Style.** The first component of style is advance planning. Among others, Professors Henry Glick and Kenneth Vines have emphasized the importance of this phenomenon. They contend that, "One prominent result of . . . sporadic and unplanned growth is the political conflict which frequently erupts between advocates of court change and reform and opposing groups who favor maintaining the status quo."[13] If haphazard or belated planning characterizes the campaign, the likelihood of success may be diminished. In Washington, for example, one close observer of the unsuccessful effort noted, "The movement was too late. It didn't begin until September for a November election."

The evidence suggests that most successful campaigns have been planned in advance. The advantages are many. Time is allowed for a managerial staff to coalesce, for volunteers to be enlisted, and for the endorsements of civic and business groups to be obtained. Additionally, it allows time for specific goals to be framed, and for an assessment to be made of what is politically feasible. Finally, advance planning facilitates the development of a rational campaign strategy, well-tailored to meet environmental differences.

Just how far in advance a successful campaign must be planned is not easily determined. In many states such as Idaho, Kansas, Ohio and South Dakota, study commissions on judicial modernization cultivated a great deal of public support so that only minimal planning to promote the campaign was necessary. Generally most campaigns are planned six to twelve months in advance, but it should be emphasized that the starting date may be governed by several factors. Among them are the presence of support, extent of opposition, and magnitude of the change sought.[14]

The second component of style involves educating the public about the need for judicial modernization. It was noted in Chapter IV that the public basically is uninterested in the courts and that an uninformed public is likely to react negatively to change regardless of its merit. It is clear that the electorate is neither interested in adopting change without a reason nor in adopting any measure just because a neighboring state has done so. The people want to know the reasons underlying proposed changes. Samuel Witwer, former chairman of the Illinois Committee for Constitutional Revision, underscores the importance of public education. He contends that one of the "essential elements of any action program destined for success . . . [is the] clear demonstration of the existence of the need for an improved judiciary and court system and the wisdom of the proposed revisions. . . ."[15]

In nearly every state selected for special scrutiny, some form of public education campaign was undertaken. Some campaigns clearly were more extensive than others. The Kentucky educational campaign, which is particularly illustrative, was noted in Chapter VI and need not be repeated here. One important purpose of a public education campaign is to prevent the unification package from being perceived as a "lawyers' bill" or "judges' bill." The director of Kentucky's state bar association noted that, "the most common problem lawyers faced when defending the proposed system was that most citizens viewed the efforts as an attempt to strengthen an already effective 'closed shop.' "[16] Proponents contend that had the expansive education campaign not been undertaken, this perception might have led to defeat of the article.

A third aspect of style involves adopting a positive approach to the campaign. If proponents can demon-

[13] Henry Glick and Kenneth Vines, *State Court Systems* (Englewood Cliffs: Prentice-Hall, Inc., 1973), p. 15.

[14] These factors closely relate to the concept of timing, which is discussed in the next section.

[15] Samuel Witwer, "Action Programs to Achieve Judicial Reform," *Judicature*, 43 (February, 1960), 162, 165.

[16] Kent Westberry, "The Politics of Judicial Reform in Kentucky," (unpublished ms., 1977), p. 11.

strate adequately that the revisions sought are designed to improve the existing judiciary, and that all groups will benefit from the measures, the chances of success may be enhanced. Idaho's Chief Justice Joseph McFadden has emphatically suggested that a unification program be "sold on its strengths." For example, in the late 1960's when Idaho was contemplating trial court consolidation, probate judges were opposed to merger because their courts would be abolished. At that time the chief justice was asked to deliver an address to the state probate judges association. Chief Justice McFadden explained how the probate judges were abused under the existing system and described the benefits they would accrue under a unified system. Shortly thereafter, the probate judges association endorsed the measure.

As suggested above, adopting a positive approach contemplates neutralizing the opposition. Leaders in many states stressed the importance of confronting groups which oppose the measures and soliciting their reasons for opposition. This allows proponents to "extract the venom," as one leader stated, and still have time to confront them with countervailing arguments and secure a compromise if necessary. While their support can not always be secured, vocal opposition generally can be quelled.

The slogans and phrases adopted to publicize the campaign can help emphasize the positive nature of the measures desired and perhaps prevent opposition from arising. In several states it was found that the terms "reform" and "liberalize" have strong negative connotations. The negative implications of these terms are two-fold. First, they imply that something is "wrong" with the system, and someone or something is "at fault." Second, they imply that drastic revisions are necessary to "correct" the situation. [The general predisposition against such radical change has been discussed previously in Chapter IV.] As a result, more positive terms such as "improvement" and "modernization" have been adopted. Many of the citizens groups which have been organized to seek changes in their respective state judiciaries have woven these terms into their official titles, as illustrated by the following samples: Better Administration of Justice, Inc. (Delaware); Citizens for Court Modernization, Inc. (Tennessee); Committee for Modern Courts in Illinois, Inc.; Indiana Citizens for Modern Courts of Appeal; Montana Citizens for Court Improvement; Utah Citizens' Organization for Judicial Improvement; and West Virginians for Modern Courts. Similarly, legislators have employed such language in the titles of their bills as in the 1968 package of judicial revisions in Ohio, entitled the Modern Courts Amendment. By simply using more palatable terms, opposition and fears of radical change may be considerably reduced.

A fourth aspect of style involves obtaining non-partisan support and leadership. Proponents of court unification may acquire more support if they can demonstrate that the merits of unification transcend political parties. This is particularly important for those who accept the belief that the judiciary should in no way become enmeshed in politics. If unification can be presented as a non-partisan issue, designed to improve the judiciary and not the Democrat or Republican party, its chances of success will be enhanced. The efforts of Kansas and Kentucky proponents in this respect have already been noted. A leading advocate in the Kentucky campaign observed that its non-partisan nature was the cornerstone on which all other support was based. Similarly, in Indiana the co-chairmen of the citizens committee that worked to achieve merit selection were two former governors, one a Republican and one a Democrat.[17]

The final aspect of style which may contribute to the success of court unification campaigns is personal contact. With respect to campaigns for public office, "Some political experts claim that there are four factors in winning elections: Candidates, Issues, Finance and Organization. Of these four, organization, meaning *person-to-person contact* in the precincts, is considered nine-tenths of winning."[18] While this conclusion might be slightly overstated with respect to unification campaigns, the on-site investigations indicate that personal contact was effective in cultivating support for the measures sought.

Direct personal contact can be manifested in a variety of forms. In some states it has meant inviting legislators to dinner or baking cakes for local officials; in other states it has meant delivering speeches to civic groups and universities, distributing handbills, and organizing telephone campaigns. Nearly every campaign studied that successfully adopted unification measures evidenced some form of personal contact.

2. **Emphasis.** To a large extent, environmental factors within a state dictate the emphasis of a campaign. In some locales the citizenry may be

[17] James Farmer, "Indiana Modernizes its Courts," *Judicature*, 54 (March, 1971), 327.

[18] James Burkhart, James Eisenstein, Theodore Fleming and Frank Kendrick, *Strategies for Political Participation* (Cambridge: Winthrop Publishers, Inc., 1972), p. 69 (emphasis added).

receptive to massive campaigns utilizing bands, bumper stickers, and extensive revelry. Others may disapprove of such antics and prefer more serious presentations of the issues by way of debates, newspaper editorials and scholarly materials. In each state where unification is sought, an assessment must be made on the style and substance of the campaign and judgments made about the best approach to utilize.

The most common and readily observable environmental factor is the difference between urban and rural areas. In every state studied indepth, this dichotomy played a crucial role in determining the outcome of unification campaigns.

Generally, rural areas strongly oppose unification. Counties and municipalities fear not only the loss of their courts, but they also fear dominance by urban areas. Rural judges perceive that they will be assigned frequently to urban courts and thus be forced to do a great deal of undesired traveling. Rural judges also may resent the heavier workloads (at no additional compensation) which accrue when they are reassigned elsewhere.

Whatever the reasons, rural areas typically are less supportive of attempts at unification than urban areas.[19] For example, it is clear from the existing voting data that residents of eastern (generally rural) Washington were largely responsible for defeat of the 1975 effort. Of the 408,832 votes cast favoring the changes, a majority came from the urban counties, while a substantial portion of the 427,361 votes in opposition came from rural areas.

Because of this urban-rural phenomenon, campaigns directed at rural areas might be more successful if they have a different orientation and thrust from those directed at urban areas. For example, proponents in rural areas might choose to proceed very slowly and in a "low-key" fashion. It might also be wise for them to undertake a highly positive saturation campaign in the media just before the election. This tactic might prevent unwanted opposition from mobilizing.

This strategy was utilized successfully in Kentucky and to some extent in Kansas and Ohio. A very "low-profile" campaign strategy was employed in rural areas in Kentucky. While speeches were given to various organizations, and other non-obtrusive tactics were employed, relatively little publicity was sought, and only minimal funds were expended. Because of the isolated and self-contained nature of Kentucky counties, and little statewide publicity, few perceived that a similar "campaign" was underway in every other county. It never became apparent to the opposition that the public was being mobilized statewide. Indeed, the opposition was dormant until results of a second public opinion poll were published, in addition to editorials and advertisements, shortly before the election demonstrating widespread support throughout the state. By that time, however, it was simply too late to counter the proponents effectively.

When such a strategy has not been utilized and opposition has at least partially mobilized, unification efforts have been unsuccessful. This appears to have been the case in Florida (1970), Idaho (1970), Nevada (1972), Texas (1975), and Washington (1975). Conversely, the data suggest that strong, long-term educational efforts can be instrumental in securing passage in urban areas. These areas tend to be more liberal and progressively-oriented and generally support unification measures. Such a campaign strategy has the distinct advantage of economy of scale with respect to resources expended per voter.

Clearly, the appropriate style and emphasis of a court unification campaign are crucial elements of its ultimate success. In most states where measures were successfully adopted, some degree of advance planning was evident. Testimony to the benefits of a comprehensive public education campaign are also apparent. A positive approach, simultaneously neutralizing the opposition, is crucial to a successful endeavor. To be successful, proponents of unification must recognize that every state is different in its political history and demographic composition. Therefore, each campaign must be tailored to address the individual environmental factors that are present within any given jurisdiction.

E. The Timing

The timing of a campaign is often considered "the most significant and determinative element in the political process, . . ."[20] As with public office-seekers, proponents of court unification must carefully select the most opportune moment to launch the campaign. However, because timing is

[19] See, e.g., Glick and Vines, *supra* note 13, p. 16.

[20] John Wheeler and Melissa Kinsey, *Magnificant Failure: The Maryland Constitutional Convention of 1967–1968* (New York: National Municipal League, 1970), pp. 5–6. It should be noted that there are two aspects to the concept of timing. The first encompasses the broad question of when to initiate a campaign, while the second involves the implementation of a schedule during a campaign. It is the former which is the subject of the present section.

dependent upon "many developments [which] are fortuitous and cannot be foreseen,"[21] it is difficult for proponents to calculate the most appropriate moment to initiate a comprehensive effort to help insure victory. Indeed, if advocates of unification begin too soon, they may arouse intense opposition. On the other hand, if they wait too long, they may fail to muster requisite support.

In general, the climate which developed during the late 1960's and early 1970's provided change advocates with a fertile environment in which to initiate programs. Concurrent with the political and social turmoil of the period was an emerging concern with the criminal justice system generally and the courts specifically. Problems with regard to delay and mismanagement in the courts, coupled with archaic procedures, soon received notorious coverage in the media. As a result, a number of commissions were created to investigate the problems and suggest recommendations for improvement.[22] The movement was given additional impetus when Chief Justice Warren Burger and several state supreme court chief justices began publicizing the need for change.[23] The existence of a politically receptive climate soon cultivated an interest in judicial modernization among citizens, the bar, and other members of the judiciary. This generally receptive national climate for court improvement has allowed modern day reformers at the state level to accomplish their goals with a bit more ease than their predecessors in previous decades.

Although it is very difficult to establish precise guidelines for when to initiate a court unification campaign, the experience of states selected for more detailed observation suggest three general factors which should be examined to determine the most appropriate timing: the level of public dissatisfaction with the judiciary; the level of support for change; and the effect of other contemporary reform movements, along with general political activity, on the unification effort.

If widespread dissatisfaction with the judiciary exists, as was the case in Alabama, Colorado, Florida and Kentucky, it may be much easier to accomplish desired changes than if the public is relatively complacent. In Colorado for example, there was growing disenchantment with the judiciary throughout the 1950's. Stories of undue delays and abuses inspired the general assembly to undertake a study of the situation which eventually led to the adoption of a new judicial article.[24] Backlog was a particular problem in Florida, and "speed-trap" or "cash register" justice was the rule in Alabama and Kentucky.

Additionally, scandals of one kind or another surfaced in each of these four states.[25] In Kentucky the case of *North v. Russell*,[26] which involved the constitutionality of incarceration by a non-lawyer judge, was being litigated at the time of increased public awareness and concern about the courts. It brought public attention to bear on the incompetence of certain judicial personnel in the state. Almost concurrently with *North*, a juvenile was detained in jail for ten days without being allowed to make a phone call and was not released until he agreed to have his hair cut. News of this abuse of discretion further underscored the need for change.

Conversely, if system participants and the public are relatively satisfied with the existing status of the judiciary, changes may be more difficult to obtain. In the State of Washington there were no scandals involving the judges or the courts which might have served as an impetus to gain support for the 1975 proposals. Indeed, as one interviewee observed, "One of the big problems [in obtaining change] is that the system is not that bad in Washington." This sentiment, according to several close to the move-

[21] *Ibid.*, p. 215.

[22] See, e.g., Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System* (Washington: Government Printing Office, 1971); National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington: Government Printing Office, 1973); National Conference on the Judiciary, *Justice in the States* (St. Paul: West Publishing Company, 1971); President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* (Washington: Government Printing Office, 1967); and President's Commission on Law Enforcement and Administration of Justice, *The Challenge of Crime in a Free Society* (Washington: Government Printing Office, 1967).

[23] See, e.g., Warren Burger, "Bringing the Judicial Machinery Up to the Demands Made on It," *Pennsylvania Bar Association Quarterly*, 42 (March, 1971), 262–67; Warren Burger, "Deferred Maintenance of Judicial Machinery," *New York State Bar Journal*, 43 (October, 1971), 383–90; and "Push But Not Shove," *Time*, September 27, 1976, pp. 88–89.

[24] It is interesting to note that during the 1972 reform in Florida, the idea of selecting judges by a merit system was soundly defeated. Ironically, shortly thereafter, a major scandal involving two supreme court justices erupted. The result was passage of a constitutional amendment requiring the merit selection of supreme court justices as well as district courts of appeal judges. See Larry Berkson, "Amendment No. 2," in Larry Berkson, *et al.*, *Florida State Constitutional Amendments To be Voted On, November 2, 1976*, University of Florida Civic Information Series, No. 59 (Gainesville: Public Administration Clearing Service, 1976), pp. 8–11.

[25] *Annual Statistical Report of the Colorado Judiciary* (Denver: Office of the State Court Administrator, 1976), p. 5.

[26] 427 U.S. 328 (1976).

ment, partially accounted for defeat of the judicial article.

The second factor which helps to determine the appropriate timing of a unification campaign is the level of support for change. While this is very closely related to the extent of satisfaction with the existing system, there are additional contributing factors. For example, in Ohio there was strong positive support for change. It is clear that this support was not based on wholesale dissatisfaction with the system. As two close observers have written, "[d]issatisfaction with the present system existed, but had not yet reached the point of being a major issue."[27] Rather, "[t]he reform was primarily the result of efforts by thoughtful legislators, judges, lawyers, editors and laymen who recognized that real problems existed and cooperated to work out rational solutions before surgery became necessary."[28]

Similarly, a positive climate for change had developed in Kentucky. Prominent political figures, including both gubernatorial and United States senatorial candidates, endorsed the need for change. In fact, the governor already had committed $150,000 to the effort. The public simply perceived any judicial change as "better than what we have."

But, at the same time, it is almost axiomatic that if there is little positive support for change among either the public or participants in the system, any attempt to effect change will be made more difficult. For example, activists in Idaho pointed out that their state presently is quite resistant to change. They conceded that it would be "exceedingly difficult" to accomplish the statutory changes now that had been adopted in the late 1960's.

In Kansas proponents of further unification measures have recognized that presently there is little support for change among legislators who are satisfied that there has been enough change in the judiciary. They point to the fact that in addition to the recent constitutional amendment and statutory legislation providing for a unified system, the legislature recently appropriated $13 million for a new supreme court building. Proponents have been sensitive to the situation and therefore have declined to submit new bills during this past session.

A third factor which helps to determine appropriate timing is the effect of other contemporary reform movements and general political activity on the unification effort. Chief Justice Howell Heflin's comments about the nexus between the two are particularly appropriate. "Historically, in Alabama," he stated, "the mood of the people is a most important factor in constitutional amendment elections. Broad dissatisfaction with one amendment creates a negative approach to all proposals on the ballot." But Heflin emphasized that "if a positive attitude is prevalent in the minds of the voters, usually all proposed amendments are victorious."[29]

In several states, it was apparent that other contemporary reform movements had a positive effect on court unification activity. In Alabama, the only other important amendment accompanying the court unification measure was a very popular proposal relating to the development of a new swine research center at Auburn University. The result was passage of all eleven amendments on the ballot.

A similar situation occurred in Kentucky. At the time the judicial article was on the ballot, the only other amendment was one allowing condominiums to be included in the homestead exemption. Many have suggested that the public was very favorably disposed toward the latter provision and that it helped create a positive atmosphere for the proposed new judicial article.

Conversely, in several states contemporary reform movements have had a negative effect on court unification activity. There appear to be two primary reasons for this phenomenon. First, in a number of states, unification measures were placed on the ballot with particularly unpopular amendments. This apparently was the case in Washington where six of seven amendments were defeated. A highly negative climate had been created by the business community which vigorously opposed a proposed corporate income tax. The only amendment to pass involved a mandatory death penalty for aggravated first-degree murder. As Pat Chapin wrote, "[t]he Washington article . . . fell victim to voter negativism."[30] This sentiment was also expressed by state court administrator Philip Winberry who noted, "the timing was wrong. If the proposition were the only issue on the ballot, it would have passed. It just got lost."[31]

The defeat of a judicial article calling for a system of unified courts in Texas can also be attributed, in

[27] William Milligan and James Pohlman, "The 1968 Modern Courts Amendment to the Ohio Constitution," *Ohio State Law Journal*, 29 (Fall, 1968), 811, 812.

[28] *Ibid.*

[29] Howell Heflin, "Alabama Judicial Article Passes with Ease," an address delivered at the joint luncheon of the American Judicature Society and the National Conference of Bar Presidents, Honolulu, Hawaii, August 12–14, 1974.

[30] Pat Chapin, "Judicial Articles Go Down in Texas and Washington," *Judicature*, 59 (January, 1976), 308, 309.

[31] Quoted in *ibid.*

part, to the presence of other highly unpopular measures on the ballot.[32] In 1975 Texas voters defeated all eight proposals for constitutional revision by nearly a three to one margin in each instance, although the judicial article was defeated by fewer votes than any of the others. Not only did it receive the most positive support, but fewer individuals voted against it than voted against any of the other measures.

A second reason why contemporary reform movements may have a negative effect on court unification activity is that they divert resources from the effort. For example, it is estimated that business and industry spent one-half million dollars in Washington fighting the proposed corporate income tax which was the companion to the unification proposal on the ballot. As one close observer noted, "this dried up funds for support of the judicial article."

But having attention and resources diverted from a proposed unification measure can have a positive effect, as in South Dakota. There, the governor simultaneously was attempting to reorganize the executive branch of government. It is clear that the tremendous amount of activity surrounding his proposal diverted attention from the sweeping, indeed radical, changes contained in the judicial article. Consequently, the judicial article passed with little opposition, and by a greater margin than the executive article. Everyone involved in that effort concedes that today the same measure would have little chance of success.

Not only do other contemporary reform movements have a profound impact upon the success or failure of court unification measures, but political activity in general plays an important role. In Kentucky the presence of political activity had a positive impact, whereas in Maryland it did not. At the time of the election on Kentucky's judicial article, Louisville, the state's most populous city, was under federal court-ordered bussing. This led to intense hostility toward judges and the courts. The judicial article contained a provision for removing judges and many involved in the judicial article campaign believed that the public thought passage of the article would apply to removal of federal judges as well. One close observer surmised, "The public would have passed a constitutional amendment on anything — and they did! It was all psychological."

In Maryland, however, other political activity, such as racial unrest which occurred simultaneously, contributed to the defeat of an entire constitution in 1968. As Wheeler and Kinsey have written, "Timing . . . may have been the key to the defeat of the proposed constitution. The referendum came at a terrible moment for testing the public will, . . ."[33]

The timing of a campaign, then, is a crucial factor in determining the outcome of a court unification effort. If there is widespread dissatisfaction with the existing system, the chances of success are likely to be greater than where the electorate is relatively satisfied. Likewise, where there is a positive climate strongly supportive of modernization, the chances for success are greater than where the electorate is essentially complacent. Ultimately, it may be wise to defer a unification campaign until a later date if an intensely negative climate has been created by the presence of several controversial proposals in other areas of government.

F. The Speed and Magnitude

Little has been written about the conditions under which rapid (as opposed to slow) judicial change is most easily effectuated. Likewise, the literature offers little insight into conditions which favor comprehensive (as opposed to incremental) change.[34] It is, therefore, difficult to generalize about these factors which often are so crucial to a successful court unification campaign. The findings of a number of policy analysts, however, are suggestive.

1. **Speed.** In his summary about the conclusions drawn by innovation theorists, Professor Thomas Dye suggests that the relative speed with which states adopt new programs is linked to four environmental characteristics.[35] The first is wealth. This factor, he notes, "enables a state to afford the luxury of experimentation. In contrast, the absence of economic resources places constraints on the ability of policy makers to raise revenue to pay for new programs or policies or to begin new undertakings."[36]

A second characteristic is the degree of urbanization within a state. Dye notes that in highly urbanized states, a demand is created for new programs and policies; urbanization itself "implies a concentration of creative resources in large cosmopolitan centers." Conversely, "[r]ural societies

[32] See Chapin, *supra* note 30.

[33] Wheeler and Kinsey, *supra* note 20.

[34] Speed and magnitude are closely related, but distinct, concepts. Speed refers to the rate of change, whereas magnitude refers to the amount of change.

[35] Thomas Dye, *Policy Analysis* (University: The University of Alabama Press, 1976), pp. 41–44.

[36] *Ibid.*, p. 42.

change less rapidly and are considered less adaptive and sympathetic to innovation."[37] This view is strongly supported by Professor Jack Walker's findings that larger and more industrialized states tend to adopt new programs somewhat more rapidly than smaller, less well-developed states.[38]

A third characteristic which Dye suggests affects the relative speed with which new programs are adopted is the level of education of a state's population. Dye notes that, "[a]n educated population should be more receptive toward innovation and public policy, and perhaps even more demanding of innovation."[39] Thus, it is generally concluded that the higher the level of education, the more likely a state will be receptive to innovation.

Finally, Dye notes that the degree of professionalism among both legislators and bureaucrats is an important variable in determining the rate of speed with which new programs may be adopted. The professional, he suggests, "constantly encounters new ideas, and . . . is motivated to pursue innovation for the purpose of distinguishing himself in his chosen field."[40]

Obviously, it is beyond the scope of this undertaking to make a detailed assessment of each of these factors, but a few generalizations can be drawn. First, a number of the states examined, including Alabama, Florida, Idaho, Kansas, Kentucky, and South Dakota, are not acknowledged for their economic wealth or extensive urbanization, literacy or professionalism. Indeed, all rank relatively low in each respect and are included among the least innovative states in two recent studies.[41] Thus, the findings of innovation theorists would not appear to be directly applicable to attempts at modernizing judicial structures. However, the author of a more recent study of policy innovation has argued persuasively that no general tendency toward innovativeness really exists. States innovative in one policy area are not necessarily innovative in others.[42] This fact and the fact that no innovation study has focused on judicial reform may account for the reason that there does not appear to be a correlation between the four environmental characteristics suggested by Dye and the successful adoption of court unification measures.

Second, the information gleaned from field observations implicitly supports the general notion that urban areas will be more receptive than rural areas to reform. The data indicated that rural segments of a state consistently were more opposed to unification measures than urban centers.

Although it may still be a matter of debate whether environmental characteristics determine the rate of speed at which innovations will be adopted, there is a general consensus in the literature that all change will occur at a relatively slow pace. Chief Justice Arthur T. Vanderbilt's oft quoted statement is reflective of this view. "Manifestly judicial reform is no sport for the short-winded."[43] Professors Glick and Vines concur in this belief. They observe that ". . . victories in [judicial] contests for change often have come only after long and heated political struggles."[44]

Historically, these views appear to be fairly accurate. The basically conservative disposition of judges, lawyers and lay citizens have militated against rapid change. Judicial reforms generally have been accomplished slowly and then only after years of diligent lobbying efforts. Often this has been true in court unification. Many proposals have died in committee while others have been approved in committee only to fail on the floor of the house or senate. Still other measures have passed one chamber of the legislature but not the other. Elsewhere proposals to unify court systems have been submitted to the electorate only to be defeated at the polls, as in Florida (1970), Nevada (1972), Texas (1975), and Washington (1975).

Despite the great weight of evidence suggesting that rapid change is unlikely, nevertheless, it is possible. Indeed, in some states change has been relatively swift. A rather perceptive Ohio judge suggested one reason: "sudden changes . . . may be accomplished only as a result of a groundswell of public indignation."[45] Thus, in certain instances where the political environment is ripe, rapid change is possible. Kentucky is a case in point. Key political leaders and the public were intensely dissatisfied with the state judiciary. By capitalizing on their joint disenchantment, proponents were able to secure

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[37] *Ibid.*, pp. 42–43.

[38] Jack Walker, "The Diffusion of Innovations Among the American States," *American Political Science Review*, 63 (September, 1969), 880–99.

[39] Dye, *supra* note 35, p. 43.

[40] *Ibid.*

[41] Virginia Gray, "Innovation in the American States: A Diffusion Study," *American Political Science Review*, 67 (December, 1973), 1174, 1184; and Walker, *supra* note 38, at 883.

[42] Gray, *supra* note 41, at 1185.

[43] Arthur T. Vanderbilt, *Minimum Standards of Judicial Administration* (New York: The Law Center of New York University, 1949), p. xix.

[44] Glick and Vines, *supra* note 13, p. 16.

[45] Quoted in Milligan and Pohlman, *supra* note 27, at 812.

radical constitutional change within a two year period.

Similarly, in Alabama and South Dakota unification took place at relatively rapid rates. In Alabama most of what has been accomplished took place within three or four years, and in South Dakota, where even more radical change occurred, the entire package took approximately two years from beginning to passage. The evidence suggests that most proponents of change actually prefer a rapid pace, but will settle for a slower pace as political exigencies dictate.

2. **Magnitude.** How much change can take place at any one time is a wholly distinct subject. Proponents may attempt incremental changes (otherwise referred to as piecemeal or marginal revisions) or comprehensive changes.

A number of leading political scientists have suggested that public policy generally develops incrementally.[46] It is argued that decision-makers do not review annually the range of possible options available to them, but rather build on earlier programs and policies. As Charles Lindblom has written, "Usually — though not always — what is feasible politically is policy only incrementally, or marginally, different from existing policies. Drastically different policies fall beyond the pale."[47] This observation suggests that judicial reform generally, and court unification in particular, will be accomplished most easily in small, discrete stages rather than in vast, comprehensive leaps. Support for this approach is found among both academics and practitioners. For example, after a thorough study of judicial modernization in Kansas, Professor Beverly Blair Cook recommended that "reformers invest their resources on the least distressing changes first and on *piecemeal rather than comprehensive* plans."[48] Likewise, two attorneys commenting on the electorate's failure to ratify Maryland's comprehensive constitutional amendment have noted, "The lesson from this may be that the public is willing to absorb only so much change at a time."[49]

Yet there are practitioners and academics who urge that expansive changes must be attempted. For example, Judge Harvey Uhlenhopp of Iowa has written,

> Experience across the country demonstrates that the necessary changes *cannot be accomplished piecemeal.* Overall reorganization cannot be achieved by presently improving this particular court and leaving another one till later, or improving the city courts now and leaving the county courts till later. Somehow "later" never comes.[50]

Thus, there are two distinct perspectives about the magnitude with which judicial change can, and should, take place. Both views find support in the theoretical literature. Of the eleven states examined in-depth, it was found that, in general, judicial modernization takes place incrementally. Florida is a case in point. There a judicial council was created in 1953, district courts of appeal were created and mandatory retirement at age 70 provided in 1956, four new judicial circuits were created in 1964, a new district court of appeals was created in 1965, a judicial qualifications commission was created in 1966, non-partisan election of judges was provided in 1971, and a new judicial article was approved in 1972.

Similarly, court unification may take place incrementally. For example, in Connecticut the state historically has financed the constitutional courts. In 1953 the chief justice of the Supreme Court of Errors was designated the chief administrative officer of the courts. In 1957 legislation was passed establishing the position of chief judge in each of the courts who is to be appointed by the chief justice. That same year the legislature granted rule-making authority to the supreme court subject to the legislature's veto. In 1959 the legislature passed the Minor Court Act which consolidated seven of the trial courts into a circuit court and brought them under the umbrella of state financing. In 1965 a statute allowing an associate justice to become the chief court administrator passed and in 1974, the legislature consolidated the circuit courts with the court of common pleas. Finally, in 1976, probate, juvenile, and common pleas courts were merged into the superior

[46] See, e.g., Charles Lindblom, "The Science of Muddling Through," *Public Administration Review*, 19 (Spring, 1959), 79–88; Harrell Rodgers, Jr. and Charles Bullock, III, *Law and Social Change: Civil Rights Laws and Their Consequences* (New York: McGraw-Hill Book Co., 1972), chap. 9; Ira Sharkansky, *Spending in the American States* (Chicago: Rand McNally, 1968); and Aaron Wildavsky, *The Politics of the Budgetary Process* (Boston: Little, Brown, 1964).

[47] Charles Lindblom, *The Policy-Making Process* (Englewood Cliffs: Prentice-Hall, Inc., 1968), pp. 26–27.

[48] Beverly Blair Cook, "The Politics of Piecemeal Reform of Kansas Courts," *Judicature*, 53 (February, 1970), 274, 281 (emphasis added).

[49] Milligan and Pohlman, *supra* note 27, at 819.

[50] Harvey Uhlenhopp, "Some Plain Talk About Courts of Special and Limited Jurisdiction," *Judicature*, 49 (April, 1966), 212, 217 (emphasis added).

court. Also in that year the administrative responsibility of the judicial system was reassigned to the chief justice who was granted authority to appoint a chief court administrator from outside the court.

Of the states which are highly unified (see Appendix B), unification has also occurred somewhat incrementally in Colorado and Idaho. Presently Kansas, New York, Ohio and Washington appear to be in the process of unifying incrementally.

But four of the states examined indepth adopted provisions relating to unification in a relatively comprehensive fashion. Perhaps Kentucky is the most outstanding example. Prior to the adoption of a judicial article in 1975, the state was plagued with a multiplicity of lower trial courts. There was no effective administration of the judiciary, nor did the supreme court (at the time, the court of appeals) have rule-making authority. "Cash register justice" characterized the method of financing the judiciary. The 1975 judicial article, however, provided for enormous changes in each of these areas, so that by 1978, when it is fully implemented, Kentucky will have a highly unified judiciary.

Similarly, Alabama, Florida and South Dakota succeeded in adopting relatively comprehensive court unification plans during the 1970's. Thus in certain situations, it is possible to obtain comprehensive rather than incremental change. The difficulty lies in determining which approach should be followed.

The writings of Professor Ira Sharkansky are helpful in this respect. He suggests that most policies are established routinely.[51] A routine is defined as the process of evaluation that precedes decisions of public policy. In other words, decision-makers are guided by very limited considerations when confronted with new programs, such as unification. Sharkansky notes that routines are "conservative mechanisms" that "often lead decision-makers to ignore innovative inputs."[52] He further notes that, "When routines fail, it is a sign of significant happenings [i.e., comprehensive change] in the political system."[53]

Sharkansky contends that there are four factors which historically have led to change: major national trauma; decisions taken at one level of government which affect the routines at another level; changes in the level of economic resources within a jurisdiction; and the combination of several occurrences into a situation that is "ripe" for change.[54]

It has already been observed that the national turmoil experienced during the 1960's created a climate receptive to broad judicial improvement. Creation of the Law Enforcement Assistance Administration at the federal level had a dramatic impact upon the states. Congress provided vast sums of money to undertake research and planning throughout the entire criminal justice process. More recently with the creation of judicial planning committees, even greater emphasis has been placed on providing funds for courts.[55] All of this has enlarged the quantity of economic resources which can be invested by the states to consider judicial modernization in general, and court unification in particular. Indeed, a strong case can be made that the general climate today is receptive to comprehensive change. As Chief Justice Howell Heflin observed:

> Never before in the history of this country has the time been so ripe to win the battle for a vastly improved administration of justice. Law Enforcement Assistance Administration money is available for state court improvement projects. The hour is at hand for a decided cooperative effort on the part of all interested individuals and groups.[56]

It is the last of Sharkansky's factors which is most crucial in determining the political feasibility of comprehensive change and the pace with which change might occur. Sharkansky labels these "situational combinations" and they include "a variety of conditions that come together in order to create a situation 'ripe' for major deviations. . . ."[57] They may involve "compelling combinations of otherwise bland conditions."[58] Among the general variables which should be considered are the four suggested by Dye and those mentioned in preceding and subsequent chapters: the leadership provided, the extent of opposition, the timing, and indeed the bargains and compromises that allow any political concept to become a reality. It is this latter topic, the bargains and compromises necessary to secure change, which is the focus of the next chapter.

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[51] Ira Sharkansky, *The Routines of Politics* (New York: Van Nostrand Reinhold Co., 1970).

[52] *Ibid.*, p. 9.

[53] *Ibid.*, p. 13.

[54] *Ibid.*, p. 175. With respect to the last factor, see also Steinberg, *supra* note 12, pp. 18–22.

[55] 42 USC 3723 (c). See Howell Heflin, "Curing the Court's Funding Headache," *Judges Journal*, 34 (Spring, 1977), 34–37, 54–55.

[56] Howell Heflin, "The Time is Now," *Judicature*, 55 (August–September, 1971), 70, 71.

[57] Sharkansky, *supra* note 51, p. 184.

[58] *Ibid.*, p. 186.

CHAPTER VIII. CAMPAIGN STRATEGY: BARGAINING AND COMPROMISE

In previous chapters the leadership and organizational components of a court unification effort have been examined. The present chapter focuses on the political calculations which may be required in order to enhance the possibilities of a successful campaign.

Politics has been defined as the art of the possible. As scholars have stated, "This definition implies compromise and realism and a willingness to maneuver on all questions where strategy is more important than principle."[1] The key question involves assessing when the importance of strategy supersedes the goals desired. At times proponents may find it necessary to compromise, alter, modify, or hold in abeyance certain goals to achieve others. As noted in the previous chapter, incremental rather than comprehensive changes may be all that are possible. While proponents initially may attempt greater changes, they may find it politically expedient to eliminate certain revisions not to cause the defeat of the entire package.

On the other hand, if victory appears possible, it may be fortuitous to remain committed to certain positions. If proponents concede too many of their initial objectives, the final unification package may be defeated because it fails to offer significant change. Sandy D'Alemberte has suggested that this is one of the primary reasons why Florida voters rejected the 1970 judicial amendment. In essence he claims that the content of the amendment had been diluted by excessive compromise. "Major urban areas voted negatively," he wrote, "because the promises of reform were not fulfilled."[2] His analysis of the situation is particularly insightful and worthy of extensive quotation.

> In 1970 . . . Marshall Cassidy and I sat down one day and drafted away at a judicial article that had been mandated by legislative committee. We sat there, struggled and uttered some expletives, and were not particularly happy with what we had. We thought it was the best we could get. The legislature sure enough passed it, but the people wouldn't accept it. The newspapers wouldn't endorse it. The League of Women Voters wouldn't help push it the way they should have. We settled for too little, and we deserved the defeat we received. We refused to take on a lot of opponents. We were frightened of JP's, maybe because they had such good stories, I'm not certain. We refused to abolish them. We were scard of municipal courts. We were scared of part-time judges. All this fear apparently got reflected to the public and to the newspapers. People understood, apparently, that they should not pass that article because it was not all that they deserved to pass.[3]

As a result of this experience, Florida proponents found it advantageous to adopt a more "bullish" approach in their successful campaign two years later.[4]

Clearly the principal dilemma is determining when a compromise may be appropriate and the form it should take. A narration of the compromises involved in the ten successful court unification campaigns studied in-depth may be instructive to those contemplating unification elsewhere.

A. The Major Concession

It seems that in nearly every effort to unify state court systems, there is a concomitant attempt to obtain a merit plan for selecting judges. However,

[1] James Burkhart, *et al., Strategies for Political Participation* (Cambridge: Winthrop Publishers, Inc., 1972), p. 19.

[2] Talbot D'Alemberte, "Judicial Reform — Now or Never," *Florida Bar Journal*, 46 (February, 1972), 68. See also "Merit Selection for Indiana: Seven States Achieve Significant Reforms," *Judicature*, 54 (December, 1970), 215, 216.

[3] Talbot D'Alemberte, "Florida Takes a Great Step Forward," (an address delivered at the joint luncheon of the American Judicature Society and the National Conference of Bar Presidents, Honolulu, Hawaii, August 12–14, 1974).

[4] *Ibid.*

such proposals frequently meet with strong resistance. Indeed, the opposition generally is so intense that merit selection usually becomes the first major element associated with the unification package to be compromised or eliminated entirely. The situation in Florida is typical. Former Chief Justice B. K. Roberts put it succinctly when he stated: "Originally we were going to put the Missouri Plan in, but *it hit a stone wall* so we took it out."

The concept of merit selection is opposed by a wide variety of groups. In Alabama and Washington, organized labor vigorously resisted the idea. In Idaho and Kentucky, there was intense public opposition to it.[5] In South Dakota it met with legislative disapproval. Similarly, in Colorado the legislature refused to include such a plan in the 1962 unification package,[6] and the Ohio House of Representatives deleted merit selection provisions from its 1968 Modern Courts Amendment.[7] In other states governors have opposed such plans.

Whatever the substantive reasons for opposing merit selection, it is clear that this proposal may contribute to the defeat of a unification package if the two concepts are united. Thus, advocates of judicial modernization often are willing to separate these proposals and pursue court unification independently. As one astute Floridian observed, "Sometimes you can load the train and can't pull it all." Apparently, this was the reason Chief Justice Heflin urged that merit selection of judges not be included as part of Alabama's proposed revisions. Instead, he recommended that it "be placed on the back burner for awhile [sic]."[8]

Merit selection has also played a major role in attempts to modernize New York's judiciary. In preparation for the constitutional convention of 1967, the Institute of Judicial Administration prepared a model state judicial article.[9] The article contained a merit plan for selecting judges which represented the latest contemporary thinking on the subject. However, members of the constitutional convention refused to accept it and proposed that the judicial article remain unchanged in this respect. In 1970 the legislature authorized another study of the state court system. A report was issued in 1973, but because the members of the group, known as the Dominick Commission, were sharply divided on the question of selection, little change was called for. However, the commission did recommend that the system be unified, generally along the lines described in the American Bar Association Standards.

In April, 1973, another report on the New York judicial system was issued, this time by a coalition of citizens organizations headed by John J. McCloy. It specifically called for selection of all judges by merit. This report served as the basis for bills introduced in the 1974 session of the legislature. But these bills died in committee. That same year the Joint Legislative Committee on Court Reorganization issued its proposals for reorganizing New York's court system. Among them was a recommendation that judges on the courts of appeal be selected by a merit plan. This proposal passed the senate, but died in the assembly.

In 1976, modernizing the judiciary was again a hotly debated legislative subject. As in the past, both court unification and merit selection of judges were among the most controversial topics. To obtain passage of measures pertaining to judicial discipline and centralized administration, the advocates of a system-wide merit plan were forced to compromise. As *The New York Times* reported, "in the hard bargaining to achieve first passage of the Constitutional Amendment . . ., the reform [merit selection] was narrowed to the Court of Appeals."[10] The bills obtained second passage as statutorily required in spring, 1977, but even with the merit selection provision limited to the Court of Appeals, ratification by the electorate is uncertain. As Richard Meislin has written, "Opinion polls indicate that the provision is opposed by a large majority of the public." The question is, how strongly will it "jeopardize the other elements of the package"?[11]

If there is a lesson to be learned from this brief history, it might well be that proponents of court unification should be very cautious in pushing too strongly for merit selection. Merit plans are likely to meet strong resistance and could jeopardize the passage of unification measures. It might be wise to include the reform in the original proposal, but advocates should be willing to weaken or delete such

[5] In Kentucky a public opinion poll indicated that a vast majority of the electorate desired to retain the electoral system. See Kentucky Citizens for Judicial Improvement, Inc., *Final Project Report* (n.p., n.d.), p. 16.

[6] Alfred Heinicke, "The Colorado Amendment Story," *Judicature*, 51 (June–July, 1967), 17–22.

[7] William Milligan and James Pohlman, "The 1968 Modern Courts Amendment to the Ohio Constitution," *Ohio State Law Journal*, 29 (Fall, 1968), 811, 813, 817.

[8] Robert Martin, "Alabama's Courts — Six Years of Change," *Alabama Lawyer*, 8 (January, 1977), 8, 16.

[9] David J. Ellis, "Court Reform in New York: An Overview for 1975," *Hofstra Law Review*, 3 (Summer, 1975), 663, 670–79.

[10] *New York Times*, January 10, 1977.

[11] *New York Times*, June 23, 1977, p. 53.

plans from their proposed revisions as discussions progress. In this way merit selection can be utilized as a bargaining tool.

B. Consolidation and Simplification of Court Structure

It has been necessary to strike a number of bargains and compromises in order to obtain more simplified court structures. First, several jurisdictions have found it politically unrealistic to consolidate large numbers of courts all at one time. As a result, compromises have been arranged whereby only a few courts are integrated at a time. Connecticut presents a good example. There in 1959, JP, trial justice, borough, city, town, police and traffic courts were consolidated by statute into a single circuit court. As a result, only five trial courts remained: common pleas, circuit, juvenile, probate and superior. In 1974 the circuit court was merged by statute into the common pleas court. Finally in 1976, legislation was enacted authorizing merger of the juvenile and common pleas court into the superior court. As a result, by 1978, when this last piece of legislation becomes effective, Connecticut will have succeeded in consolidating a large number of trial courts into a relatively unified system.

A second compromise often found in the context of structural reform is that of allowing certain courts to be consolidated into the state system on an optional basis. Such an agreement was arrived at in Alabama. There strong opposition surfaced to consolidating municipal courts into the district court system. As a result, cities ultimately were granted local option to decide whether or not they wished to retain their courts or allow them to be incorporated into the new structure.

A third compromise often made to achieve a simplified court structure is that of excluding from the statutory package one or two types of courts which seem to harbor the strongest political sentiments. Such arrangements were found in a large number of states. In Alabama probate courts were omitted from the system because, generally, they were "well organized" and possessed "considerable political clout." For similar reasons Kansas proponents deleted municipal courts from their statutory package.

During Colorado's campaign to restructure the courts, it was contemplated that three Denver courts would be abolished: probate, superior and juvenile. The probate and juvenile courts were excluded from the unified system, however, because widely respected judges presided over them. It was perceived that by retaining these courts, increased support could be forthcoming for the proposal in the Denver area. The superior court was excluded from merger, in large part because during the implementation stage, Republicans assumed control of the state legislature. They were opposed to abolishing the only court in Denver which was controlled by members of their party.

A fourth compromise in attempts to simplify judicial structure has been to post-date the phasing out of certain courts. This agreement was reached with respect to city courts in Florida, where the Municipal League vigoriously had opposed abolition of these courts. As a concession, the complete elimination of city courts was delayed for four years.[12]

One of the most frequent compromises with respect to trial court consolidation and simplification is to guarantee that each county will retain at least one judge. Often initial proposals suggest consolidating rural jurisdictions. However, these ideas often are met with intense opposition. As a result, in nearly every state examined, a conscientious attempt was made to insure that a court be retained in every county. In Idaho, for example, there was a compromise in the legislature which resulted in providing each county with at least one magistrate. The original proposal would have left a number of rural counties without a court. Similar compromises took place in Alabama, Colorado, Florida, Kentucky, and Ohio.

A sixth compromise in attempting to simplify trial court structure has been to insure that judges currently holding office are not significantly "disturbed" by the change. Four options have been utilized. First, in order to insure that judges will not lose their jobs, grandfather provisions often have been adopted. Generally these arrangements provide that sitting judges be allowed to retain their positions until death or retirement. Such a New Hampshire statute provides that non-attorney municipal court judges be allowed to remain on the bench,[13] but once they leave they are to be replaced wherever possible by persons who are members of the state bar. Similarly, in Florida under the new system, judges sitting in counties with over 40,000 in population are required to be attorneys, but non-attorney judges presiding at the time of the change are allowed to remain on the bench indefinitely. To

[12] This compromise phase-out was suggested by Representative Talbot D'Alemberte. See *Tallahassee Democrat*, December 5, 1971.

[13] N.H. Rev. Stat. Ann., sec. 502-A:3 (1968).

date 12 states have provided grandfather clauses as the sole means by which non-attorney judges can exercise judicial responsibilities.[14]

Another type of grandfather clause is to allow sitting judges to become eligible for newly created courts. In Idaho, for example, all probate, JP and police courts were consolidated into the unified district court with a magistrate division. Judges holding office in these courts were excluded from the newly established requirements for the magistrate division, and therefore remained eligible for appointment to the division upon resignation or expiration of their terms.

A second type of option utilized is to allow sitting judges to retain their titles, patronage and judicial functions. Alabama's probate "judges," who as a group strongly opposed consolidation, were allowed to retain both their title and judicial functions, but in actuality, they probably have few judicial duties and act more as court clerks than judges. They also were successful in retaining their constitutional status.

In Kentucky a compromise was reached with county judges whereby they were granted a new title and position in exchange for consolidating their courts into the district court. Although stripped of all judicial responsibilities, they are now called, "County Judge/Executive," and perform exclusively executive functions. As a result, they have retained many patronage rights.

In Ohio, probate judges strongly opposed consolidation for fear that they would lose a great deal of their power. In particular, probate judges, acting simultaneously as their own clerks, exercised extensive patronage rights by being allowed to appoint their own deputies. They were afraid that these benefits would be stripped away. A compromise was struck whereby the probate judges relinquished their constitutional status and became a division of the common pleas court. In return it was provided that they could be elected specifically to that division. Moreover, they were allowed to remain, ex officio, their own clerks and therefore retained their patronage rights. A similar procedure was arranged for the juvenile court judges in Cincinnati and Cleveland.

The third option frequently exercised to pacify sitting judges is to allow non-attorney judges to assume judicial functions in certain areas of the state (usually rural) or under specific and limited circumstances. There are several reasons to support such an arrangement. First, many rural judges are not attorneys and would therefore be forced from office. Second, many states have counties without resident attorneys. Finally, many states have counties where an attorney is not available for judicial responsibilities. Fourteen states allow for lay judges under these circumstances: Alabama, Florida, Georgia, Iowa, Kentucky, Mississippi, Missouri, New Mexico, North Dakota, Oklahoma, Tennessee, Texas, Washington and Wyoming.[15]

A final option designed to provide job security for sitting judges or to placate specific interest groups with political clout allows for the utilization of part-time judges, regardless of their legal qualifications. Generally this is because some jurisdictions do not have caseloads large enough to warrant a full-time official. Lawyer magistrates in Idaho, for example, are not prohibited from practicing law.

C. Centralized Management

Although some difficulties have been encountered in centralizing administrative authority in a state's highest court, the major bargains and compromises have centered on the court administrator's office. Nearly every state has created such an office, but in the process of doing so, opponents of centralized administration have forced a number of concessions. Of great import is the omission from enabling statutes of specific references to the functions and responsibilities of the office. This may, in part, account for the fact that a number of state court administrators reportedly do not participate in long range planning (Arkansas, California, Indiana, Mississippi, Texas, Virginia); assignment of trial court judges (Delaware, Florida, Massachusetts, Montana, New Mexico, Texas); research activities (Delaware, Montana, West Virginia, Wyoming); rule-making (Florida, Georgia, North Carolina); and preparation of the judicial budget (Indiana, Texas).[16] Most have little to do with the appointment of trial court administrators, the employment and dismissal of non-judicial personnel, and the control of space and equipment, including standardization.

Other concessions have been forced by opponents of centralized administration. In Connecticut the chief court administrator has been prohibited from setting the terms of court, perhaps because of

[14] Allan Ashman and David Lee, "Non-Lawyer Judges: The Long Road North," *Chicago-Kent Law Review*, forthcoming. See especially Table B.

[15] *Ibid.*, Table C. Non-attorney judges are permitted in numerous other states under much less restrictive circumstances. *Ibid.*, Table D.

[16] Rachael Doan and Robert Shapiro, *State Court Administrators* (Chicago: American Judicature Society, 1976), pp. 18–117.

pressure from local judges. Further, it has been suggested that opponents of centralized management have in some states been responsible for circumscribing the administrator's salary, budget and staff.

The question of who should appoint the state court administrator became a major concern in New York. Proponents of strong centralization wanted the official appointed by the chief judge of the Court of Appeals. Opponents were skeptical of vesting such vast authority in this one individual and thus were able to secure legislation requiring approval of the nominee by the Administrative Board of the Judicial Conference.

The intense fear of centralized administration generally has resulted in flexible, if not decentralized, plans for administration. The arrangement in Kansas is particularly illustrative. There only four local administrators have been hired. They serve in the larger metropolitan areas and work intimately with all judges in the district to secure their cooperation and prevent alienation. Their relationship to the state judicial administrator is one of assistance and ratification. The state administrator and supreme court justices establish broad policies, guidelines and parameters under which local administrators must devise managerial plans. The plans are then submitted to the supreme court for its ratification. Advice is rendered by the court or the administrator upon request of the district officials with the clear emphasis on local determination of goals and techniques in order to retain maximum flexibility.

Idaho has opted for an even less centralized plan. There the supreme court and administrative director develop annual plans and establish broad policies for the judiciary, but provide for "regionalized implementation of operations" in the seven districts.[17] For the most part, the administrative director only "*monitors* the operations of the district courts. . . ."[18] An administrative judge is chosen by his colleagues in each district and is assisted by a trial court administrator who, with one exception, serves concomitantly as a judge of the magistrate division. Administrative judges are vested with broad authority, including direct supervision over nonjudicial tasks performed by the trial administrators.

Proponents of centralized administration have also had to compromise their desire to bring trial court clerks into the statewide administrative system. Often initial reform proposals suggest deleting the position from mention in the state constitution and making it an appointive rather than an elective position. In most instances, such plans are met with intense resistance and ultimately are omitted from the final package. This occurred in Alabama, Florida, Kentucky and Washington.

On the other hand, in Kansas, proponents of strong centralized administration were successful in abolishing the elective posts of district court clerk and magistrate court clerk and creating appointive positions in their stead. The chief clerk and all deputies and assistants are appointed by, and responsible to, the administrative judge in the district.[19] Unlike most clerks, one clerk in Wyandotte County was particularly supportive of this measure, noting among other things that it would most likely provide for a more efficient use of court clerks. He stated, "Frankly, these are administrative positions and why we even elected people to do purely administrative tasks for court judges, I don't know."[20]

It should be pointed out that proponents of appointive positions for court clerks also have been successful in other states. In South Dakota where the clerks were unorganized, proponents of strong centralized administration managed to achieve this change.

D. Centralized Rule-Making

As was noted in Chapter IV, placing the rule-making authority in the supreme court often is strongly opposed by legislators, supreme court justices, lower court judges and attorneys. Legislators and attorneys in particular have forced a major concession among those who believe that the authority should reside exclusively within the court. In many instances the legislature has retained the right of veto. In Florida, for example, Representative Talbot D'Alemberte wanted the legislature to retain rule-making authority. However, Chief Justice B. K. Roberts insisted that it be placed in the supreme court. A compromise was reached whereby the court can promulgate the rules, but the legislature can "repeal" them by a two-thirds vote in both the House and Senate.[21] It is important to note that the word "repeal" was utilized rather than "reverse" or "override."

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[17] Administrative Office of the Courts, *1976 Annual Report: The Idaho Courts*, p. 6.

[18] *Ibid.*, p. 8.

[19] Robert Coldsnow, "Court Unification: Judicial Reform Revisited, Part III," *Journal of the Kansas Bar Association*, 45 (Summer, 1976), 117, 120.

[20] *The Kansas City Star*, April 15, 1976.

[21] Florida, *Constitution*, Art. V., sec. 2.

Similar compromises have been reached in no less than 25 states.[22] In the new judicial article adopted by the citizens of Alabama in 1973, the rule-making authority is restricted by a clause which provides that "rules may be changed by a general act of statewide application."[23] Thus, those who were opposed to placing rule-making authority exclusively within the supreme court succeeded in making it relatively easy to overturn court-created rules. One embittered participant referred to the concession as an attempt to "mollify legislative pomposity."

Another compromise involves the terminology utilized to grant the supreme court "rule-making" authority. At times, initial drafts of a judicial article have vested the supreme court with "rule-making" power, thus implying a total grant of authority. However, legislatures have fought successfully to retain the distinction between substance and procedure, so that the final judicial article either includes terms such as "administrative authority," or includes a specific enumeration of powers. This type of compromise was secured in both Kansas (1972) and Kentucky (1975).

E. Centralized Budgeting and State Funding

While centralized budgeting and state funding are intimately related, most of the controversy continues to focus on the latter. This is not surprising because not only are local officials hesitant to relinquish control over their courts, but state legislators are unwilling to assume the financial burden. For example, only seven states currently provide 80 percent or more of the total judicial expenditures: Alaska, Connecticut, Hawaii, Delaware, New Mexico, Rhode Island and Vermont.[24] Consequently, substantial compromises often are required to secure passage of a state funding measure.

Often times when state funding is proposed, the issue is so controversial that it must be eliminated from the unification package entirely, as in Washington in 1975. At other times, full state funding may be desired, but proponents, cognizant of the political impracticability of the measure, opt for "partial" state financing as an accompaniment to other unification provisions. For example, when states unify their lower trial courts, the state often assumes the salaries of new judicial officers as happened in Florida, Idaho and Kansas, among others. Similarly, when the positions of trial court administrators are created, the state often assumes these costs as well. More frequently, related support personnel such as clerks or stenographers also have been covered by the state. But rarely does the state ever assume responsibility for funding physical facilities (although Alaska, Connecticut, Hawaii and Kentucky are exceptions), or title to equipment (although Alabama and Colorado are exceptions).

There appear to be three principal compromises commonly involved in adopting full state financing. The first compromise involves the use of a phase-in, or transition, method of implementation; the second involves utilizing a rebate system; and the third involves utilizing a chargeback scheme. One can only speculate as to the rationale surrounding the choice of these compromises. The decision may be dependent upon a state's previous method of financing or upon a variety of political factors that are characteristic of an individual state and that cannot instructively be generalized to apply elsewhere. Nonetheless, nearly every state that has moved toward general state financing has experienced some form of compromise.

The first major compromise involves an agreement that the state will assume this new responsibility gradually, rather than incur the burden all at once. An illustration of this type of compromise is Alabama where state financing currently is being phased in over a three-year period.[25] In fiscal year 1975–1976 the state assumed responsibility for most judicial salaries and related benefits. In fiscal 1976–1977, juror expenses and general operating and clerical expenditures were assumed. By the end of fiscal 1977–1978, the state is scheduled to have assumed equipment and other necessary expenses.

The second major compromise focuses on the disbursal of locally generated funds. Most cities and counties resist statewide financing plans because these measures generally mean that all funds (fees and fines) must be forwarded to the state treasury. To allay the fears of local government, proponents of

[22] See Jeffrey A. Parness and Chris Korbakes, *A Study of the Procedural Rule-Making Power in the United States* (Chicago: American Judicature Society, 1973), p. 65.

[23] Alabama, *Constitution*, Art. VI, sec. 150.

[24] Carl Baar, "The Limited Trend Toward Court Financing and Unitary Budgeting in the States," in Larry Berkson, Steven Hays and Susan Carbon, *Managing the State Courts* (St. Paul: West Publishing Co., 1977), p. 271; updated in Memorandum from Carl Baar to Larry Berkson and Susan Carbon, "Current Data on State vs. Local Court Financing," 15 July 1977. These figures do not account for states that have adopted, but not implemented, financing provisions.

[25] Alabama Acts No. 1205, sec. 16–103 (Session 1975) [Implementation Act].

state funding often work out compromises whereby rebates are paid to local jurisdictions.

A variety of rebate formulas have been adopted by the states. Some designate that a fixed percentage of all funds generated locally will be paid to the state, whereas others specify dollar amounts according to the type of money generated (fines, fees, etc.). Some states have chosen to allow counties to retain all collected fees, but require them to pay a portion of the fines and forfeitures to the state.

Again Alabama provides a useful example of this type of compromise. Alabama's implementation act enumerates in great detail specific dollar amounts to be paid to the county, state and other sources. The provisions vary among the types of fees and cases. Municipal ordinances, however, are handled on a fixed percentage. The municipalities retain ten percent of the docket fees and pay 90 percent to the state, but the municipalities retain 90 percent of the fines and forfeitures while paying ten percent to the state.[26]

South Dakota's provisions for remitting fees, fines and forfeitures varies slightly from Alabama's. South Dakota's statutory implementation provides for an incremental increase in the proportion of locally collected fines, penalties and forfeitures which must be paid to the state general fund. These funds are paid to the state treasurer on a quarterly basis. In 1975 counties were required to pay 25 percent; after 1979, the counties will pay 50 percent.[27] But it is of particular interest that a uniform fee schedule has been adopted,[28] and all fees are retained at the county level.[29]

Unlike South Dakota and Alabama, Florida included certain distribution schedules in the new judicial article. The implementation section provides that all fines and forfeitures received from ordinance violations or misdemeanors committed within a county, or municipal ordinances committed within a municipality within county limits shall be paid respectively to the county or municipality. Any related "costs," however, are to be paid to the state general fund.[30] The new article does not mention distribution of fees.

Kentucky provides an interesting variation to the rebate system utilized in Alabama, Florida and South Dakota. Shortly before the 1975 election, intense county opposition had been mounting because of a provision that all locally generated revenues would be paid to the state treasury. To secure passage of the article, members of Kentucky Citizens for Judicial Improvement convinced Governor Carroll one month before the election to guarantee the counties that a certain portion of their revenue would be returned to them. This particular compromise was considered to be one of the most significant strategic decisions of the campaign. As such, it requires local courts to pay all monies to the state, but that the state, in turn, remit a specified portion back to the local courts.

Often accompanying the new distribution schedule is a provision allowing for an increase in fees to help support the system. This has been especially attractive to state legislators who are concerned about the amount of additional revenue they must generate if the state is to assume financial responsibility for the entire judicial system. Such provisions were adopted in Alabama and Connecticut.

The third principal compromise with respect to state financing involves utilizing a system of chargebacks. As with rebate schedules, chargeback schemes vary among the states. South Dakota provides a fascinating example because in addition to the incremental increase in the proportion of locally generated funds being paid to the state, the statutes provide for simultaneous phased-in chargebacks to the counties. The chargeback to the counties decreases in rough proportion to the increase in the payment to the state.[31]

The South Dakota Constitution provides that the state shall assume the judiciary's "total cost," but allows for the legislature to determine the reimbursement schedule.[32] As a result the legislature established a chargeback scheme based on a percentage of the county's adjusted total cost. In 1975, 50 percent was charged to the counties; the state financed portion was also 50 percent. The chargeback will decrease on an annual basis so that by 1978, the chargeback will be reduced to 25 percent. Because the statute does not further reduce the figure and in fact provides for a 25 percent chargeback "each year thereafter," it is difficult to foresee total compliance with, and implementation of, the constitutional amendment.

In addition, the State of New York has recently adopted state financing, and in so doing, agreed to a

[26] Alabama Acts No. 1205, sec. 16–112 — 16–133 (Session 1975) [Implementation Act].

[27] South Dakota Comp. Laws Ann. sec. 16–2–34 (Supp. 1976).

[28] South Dakota Comp. Laws Ann. sec. 16–2–29 (Supp. 1976).

[29] South Dakota Comp. Laws Ann. sec. 16–2–34 (Supp. 1976).

[30] Florida, *Constitution*, Art. V, sec 20(8).

[31] South Dakota, *Constitution*, Art. V, sec. 11.

[32] South Dakota Comp. Laws Ann. secs. 16–2–35 and 16–2–35.1 (Supp. 1976).

chargeback scheme very similar to that of South Dakota. However, there were a number of compromises that preceded the chargeback arrangement which are of interest.[33]

Originally state financing in New York had been included in a constitutional amendment package. Because constitutional amendments require approval of two separately elected legislative bodies before submission to the electorate, and because it was an election year and politicians were anxious to demonstrate support for court improvement, state financing was eliminated from the package and redrafted in statutory language.[34] This was perceived as a relatively uncontroversial issue which could garner considerable electoral support for legislators who had been criticized for their inactivity during the session.

Another related compromise in New York involved the transition period for implementing state financing. Governor Hugh Carey, largely concerned with his own budget, originally had urged a six-year phase-in program beginning in 1978. But in order to obtain legislative support he agreed to accelerate the schedule. Legislators essentially had surmised that if they were going to support the bill, they wanted an immediate effective date in order to benefit their economically depressed constituency. As a result, the legislation took effect April, 1977, and full state financing is to be accomplished over a four year, rather than a six year, period.

The major compromise in New York involved the chargeback scheme. As in South Dakota, the legislature provided for a phased-in schedule. Effective April, 1977, the legislation provides for first instance payment by the state of all costs except those of town and village courts.[35] During this fiscal year, the state is authorized to chargeback 75 percent of the costs to the political subdivisions.[36] However, unlike South Dakota the statutes provide that the legislature shall determine the chargeback at the beginning of each fiscal year with the state assuming full responsibility by 1980.[37] At present, compliance with this legislation appears questionable. In 1977, Governor Carey requested that the state assume only 12.5 percent rather than 25 percent of the judicial expenditures. As such, the chargeback to political subdivisions would be 87.5 percent rather than 75 percent for fiscal year 1977–1978.

F. Conclusion

For the most part, the literature is silent on bargains and compromises necessary to secure change in judicial systems. However, Professors Henry Glick and Kenneth Vines have suggested that,

> Reform proposals are often successful, it seems, because compromises are frequently reached between the major supporters and opponents of change, so that both sides ultimately endorse a modified proposal. . . . Even compromises not directly connected to court reform may be included.[38]

The states studied in the context of this project are supportive of Glick and Vines' hypothesis. Indeed, there is almost always a compromise involved in adopting, either by statute or amendment, every element of unification. Some elements engender more opposition than others, and thus require more extensive compromise.

For example, proponents of trial court consolidation and simplification may be forced to accept a number of concessions. At times they must provide job security to sitting judges and placate specific interest groups. Additionally, they often may have to proceed slowly and exclude politically sensitive courts from the overall system. With respect to centralized administration, proponents again have been forced to participate in compromises and have not been universally successful in obtaining all of their goals. For example, while most states have created the position of state court administrator, specific duties have often not been assigned to the office. In some instances, individuals occupying the position have been prohibited from engaging in certain activities. Proponents have also had to compromise their position with respect to court clerks. Rarely have they been successful in converting these positions to appointive ones. Adopting judicial rule-making authority has also been a controversial issue, one which lends itself to substantial compromise. Legislatures generally are reluctant to relinquish any authority over matters of substance, and are willing

[33] Numerous compromises were involved relating, for example, to merit selection and employee benefits, which are not germane to this discussion. For an explanation, see, e.g., *New York Times*, August 5 and 6, 1976.

[34] This action was taken pursuant to a constitutional provision which allows financing revisions to be statutorily accomplished rather than by amendment. New York, *Constitution*, Art. VI, sec. 29.

[35] New York, *Statutes*, sec. 220 (1).

[36] New York, *Statutes*, sec. 220 (2)(a).

[37] New York, *Statutes*, sec. 220 (2)(d).

[38] Henry Glick and Kenneth Vines, *State Court Systems* (Englewood Cliffs: Prentice-Hall, Inc., 1973), p. 16.

to grant supreme courts administrative and procedural rule-making authority only when they retain ultimate veto power.

State financing, perhaps more than the other unification components, has required some form of rather extensive compromise in nearly every attempt to achieve it. Some version of a rebate or chargeback scheme has been utilized to offset the initial burden on the state. The choice of alternatives depends on a state's existing system, and also on other measures that are being contemplated.

In conclusion, and as a guiding principle, those attempting court unification should not be dogmatic in their endeavor to secure desired changes. On the one hand, proponents of change must be willing to compromise immediate desires in order to obtain a degree of change, and hold in abeyance until a more timely moment other goals. At the same time they must not become flaccid in their position or they will fail to obtain any significant change. Gauging the fulcrum is not an easy task, but an awareness of the events which have transpired in other states should provide useful guidance for future efforts.

CHAPTER IX. CAMPAIGN TACTICS: ORGANIZING FOR ACTION

While the three preceding chapters have outlined the general principles and strategies to be employed in guiding a successful court unification campaign, this chapter focuses on the specific tactics to be utilized and suggests a practical plan of action.[1] It contains proposals on how to organize, generate widespread interest, lobby legislators, educate the public, influence the media and raise funds. Naturally, the proposed tactics should be used in conjunction with the guiding principles outlined in the preceding chapters.

The present chapter is predicated on the idea that the group is seeking to effect constitutional change; consequently, both legislators and the electorate must be persuaded of the need for change. If the ultimate objective is only statutory revision, certain aspects of the plan may be unnecessary. The chapter is also predicated on the idea that a citizens group should play a leading role in court unification.[2] The literature generally supports this view. As Ralph Hoeber has written, "modernization campaigns must involve all segments in the community — not only judges and lawyers but also, and especially, laymen and organizations of laymen."[3] The idea is not new. Arthur Vanderbilt recognized that in nineteenth century England, "it was laymen — editors, educators and public spirited citizens — aided by a few far-seeing judges and barristers, who forced obviously needed improvements on a reluctant profession. . . ."[4] More recently, Justice Howell Heflin has expounded this view. According to Robert Martin:

> Heflin knew that attempted changes, . . . would not be easy and that support from all segments of the state's populace would be necessary. Citizen support would be key. The lawyers and the judges could work behind the scenes, but support from persons in labor, the professions and business would have to be in the forefront for revision . . . to be successful.[5]

The on-site investigations also support the view that a citizens group should play a leading role in promoting court unification. Indeed, in many of the states examined, specially created citizens organizations have played the primary role in achieving unification measures. Therefore, this chapter is written principally as a guide for such a group. Nonetheless, its utility should be readily apparent to other civic groups and bar associations that wish to undertake direct action.

The substance of the chapter represents an "ideal" plan in that it incorporates the "best" of all the campaigns examined.[6] Naturally it is not entirely applicable to all jurisdictions, but then no comprehensive plan can be structured so as to apply thoroughly in every state; campaigns must be tailored individually to account for particular needs and different circumstances.[7]

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[1] For a bibliography of handbooks for political action, see James Burkhart, *et al., Strategies for Political Participation* (Cambridge: Wintiirop Publishers, 1972), p. 9. See also Movement for a New Congress, *Vote Power: The Official Activists Campaigner's Handbook* (Englewood Cliffs: Prentice-Hall, Inc., 1970).

[2] For other treatises on the subject, see, e.g., *The Citizen Association: How To Organize and Run It* (New York: National Municipal League, 1958); and *The Citizen Association: How to Win Civic Campaigns* (New York: National Municipal League, 1963).

[3] Ralph C. Hoeber, "The Courts on Trial: Verdict and Remedy," *American Business Law Journal*, 1 (August, 1963), 1–24.

[4] Arthur T. Vanderbilt "Forework, Reports of the Section of Judicial Administration," *American Bar Association Report, 1938*, p. 521; quoted in *ibid.*

[5] Robert Martin, "Alabama's Courts — Six Years of Change," *Alabama Lawyer*, 38 (January, 1977), 8, 14. See also Glenn Winters, "Citizens' Conferences on Judicial Reform," *Judicature*, 50 (August–September, 1966), 58–63.

[6] For a description of actual campaigns, see the articles footnoted throughout this chapter.

[7] See Howell Heflin, "The Time is Now," *Judicature*, 55 (August–September, 1971), 70, 72. See also Alfred Heinicke, "The Colorado Amendment Story," *Judicature*, 51 (June–July, 1967), 17; and T. McN. Simpson, III, "Restyling Georgia Courts," *Judicature*, 59 (January, 1976), 282.

A. Initiating the Campaign

It is one thing to become informed about the inadequacies of a legal system, but quite another to ameliorate them. The first problem for those interested in effecting court unification is initiating the effort. Clearly the impetus for a judicial modernization campaign must come from individuals within the community itself (state or local), and not from outsiders.

1. **Sources of outside aid.** Although the initial incentive must come from within the community, activists need not rely solely upon their own skills and resources. Indeed, former Alabama Chief Justice Howell Heflin suggests that groups "Obtain the advice and assistance of experts in the very beginning."[8] A rapidly increasing number of organizations are prepared to provide consultation, aid and advice in promoting judicial modernization. Foremost among these is the American Judicature Society. Historically the Society has specialized in the development of citizens conferences.[9] The Society also provides educational information on how to conduct judicial modernization campaigns.

The National Center for State Courts provides technical assistance to states upon request. The Center regularly undertakes studies on how to improve local court systems. The Institute for Court Management also provides technical assistance to various groups and has held seminars in conjunction with the Society on how to improve citizen contribution to the administration of the courts. Other organizations which might be contacted for aid include: the Institute for Judicial Administration, the American Law Institute, the American Bar Association, the American Bar Foundation, the Columbia University Project for Effective Justice, the Conference of State Court Administrators, the National Conference of State Court Administrators, the National Conference of Judicial Councils, the National Council of State Trial Judges, the American University Criminal Courts Technical Assistance Project, and various private consulting companies such as Booz-Allen and Hamilton, the Public Administration Service, and Arthur Young and Company.

2. **The citizens conference.** One of the most effective and often utilized approaches to launching a court unification campaign has been to hold a citizens conference. This may be undertaken with the aid of an outside organization. The following briefly outlines the plan which has been employed successfully for the past two decades by the American Judicature Society.[10]

Initially a core group of approximately 12 to 15 people are brought together to plan and organize the conference. Ideally, these individuals should represent a cross-section of the various social, economic, political, and geographic segments of the state. At an early meeting the issues to be discussed at the conference are selected and various committees are assigned specific responsibilities.

A finance committee is appointed to generate funding for the conference. Frequently statewide civic groups, such as the Jaycees or League of Women Voters, and bar associations are invited to serve as co-sponsors. The actual number of sponsors varies among the states. An often neglected but important group to be considered is the state press association. This group was effectively utilized in Kansas. The committee also should contact the state planning agency or judicial planning committee to obtain possible federal funding.

An invitations committee is appointed to accumulate the names and addresses of potential conferees. Generally, 300–400 individuals are invited to obtain a positive response from approximately 100. Frequently the governor and the chief justice of the state join in extending the invitations. A publicity committee is appointed to coordinate all news releases before, during and after the conference at both state and local levels. A program committee is appointed with the responsibility of preparing a summary of the state judicial system and obtaining a keynote speaker, in-state panelists, and stenographers to record the discussions at the conference. An arrangements committee is responsible for handling hotel accommodations, planning the meals, assuring that the requisite number of meeting rooms are available, setting up the registration booth, and making other physical arrangements. Finally a hospitality committee is appointed to welcome invited guests and introduce the various speakers.

The Society usually advises each of these committees. The Society also assumes primary responsibility for compiling the conference manual which contains the program committee's description of the state's judiciary, and articles relevant to the topics which will be discussed. Additionally the So-

[8] Heflin, *supra* note 7.

[9] For comments on the Society's program see, e.g., Heflin, *supra* note 7; and Winters, *supra* note 5.

[10] For greater elaboration and further details contact, American Judicature Society, Suite 1606, 200 West Monroe, Chicago, Illinois 60606.

ciety assumes responsibility for arranging and printing the program and acquiring out-of-state speakers and personnel.

The program generally begins with a greeting from the governor or chief justice after which the keynote speaker addresses the conference about the present court system and its problem areas. Subsequently the conferees break into seminar groups and discuss the thrust of the keynote speech.

The next day, two assemblies are held concurrently. In each one, half of the conferees hear two lectures with a discussion following. The procedure is then repeated for the other half of the conferees. Team reporters take notes on the discussions to be used in drafting a consensus statement at the conclusion of the conference.

On the final day of the conference, a speaker addresses the group about possible plans of action which the conferees may adopt to improve their judiciary. Conferees again break into seminars to discuss plans and how they may be effectuated. The last general assembly is devoted to a discussion of the consensus statement prepared from the reporters' notes. After necessary revisions have been made, it is adopted by the conference.

Before adjournment those participants who are interested in forming an organization to promote the judicial revisions suggested in the consensus statement are invited to meet briefly. At that time preliminary arrangements are made for an initial organizational meeting.

3. **Developing the organization.** For those states where a citizens conference has been held, there should be little difficulty in acquiring a requisite number of individuals to form an organization whose purpose is to pursue court unification. In other states, initiators may have to seek the aid of friends, relatives and colleagues. Whatever the source, it is clearly advantageous to form a group with an organizational structure and clear lines of responsibility.

At an initial meeting it is necessary to decide whether to form the association as an educational or lobbying group. If the former, it will enjoy the benefits of tax deductibility for contributions, but if it is coalesced as an action organization with the intent of lobbying, there will be no such tax advantage. If the group chooses to form as an educational organization, such status should be sought from the United States Department of the Treasury under section 501 (c)(3) of the Internal Revenue Code.

Another basic decision which must be made is whether or not to incorporate. Most groups find it advantageous to do so. Regardless of the preferred type of organization, if the group decides to incorporate, it should organize as a non-profit corporation. Income to such an organization is not taxable under federal law regardless of whether the association is an educational or action organization. Since there are other advantages for organizing as a non-profit corporation, this is a preliminary decision which should be discussed thoroughly with local attorneys.

Once the basic decisions have been made regarding the type of organization that should be created, the next step is to decide upon the size of the board of directors to govern the group's affairs. Generally 20 to 25 members is adequate. This range allows representation on the board from all segments of a state's population (racial, ethnic, religious, occupational, geographic). For tactical reasons it is wise to include members of the press, lobbyists, well known Democrats and Republicans, and leaders of other large organizations.

After the board has been chosen and its members have accepted the responsibility of serving, officers should be selected, including, at the very least, a president, vice president, secretary and treasurer. It may also be desirable to select regional vice presidents to direct the efforts in various parts of the state.

A constitution and by-laws for the organization should be developed and adopted. Often a special committee is appointed for this purpose. Included in the constitution should be the organization's name, its purpose and objectives, membership requirements, organizational scheme, rules of procedure, officers and their respective duties, and general rules. Additionally, letterhead stationery should be obtained, a post office box acquired, and a bank account opened.

If funds are available, it is preferable to maintain an office. On occasion, citizen groups have been successful in having space and equipment donated to them. For example, during the campaign in Colorado to obtain a judicial merit selection system, the citizens organization used offices, furniture and equipment loaned by a bank.[11] As suggested in Chapter VI, it is also preferable to maintain a permanent staff. If funds are not available to pay for such positions, and interested groups cannot make full-time staff available, it may be possible to recruit retired businessmen, military officers or similarly situated individuals for the task. This approach was used in South Dakota, Kansas and Colorado.[12]

[11] See Heinicke, *supra* note 7.

[12] *Ibid.*

At this juncture seven key committees should be appointed: organization, membership, finance, study and research, liaison, education, and publicity. Chairpersons and members should be selected carefully for their expertise and personal commitment to the cause of court unification.

B. Organization Committee

The organization committee has two primary responsibilities: developing a regional structure with county and local committees; and enlisting and coordinating the aid of other civic organizations.

Generally it is useful for the committee to divide the state into natural geographic regions. In Tennessee, for example, the historically embedded three "Grand Divisions" were used as a starting point. Upon closer analysis it was deemed necessary to further divide two of the divisions to permit better handling of large population centers. Other regional divisions have been based upon the state's legislative districts, as in Colorado.

Generally, the organizational structure is further subdivided into county units. In some instances it may be advantageous to subdivide even further. For example, in Alabama, where one of the most well-organized court unification campaigns occurred, separate "grass roots" organizations were developed at the local level. Indeed, there were even attempts to organize college campuses separately.

It is the responsibility of the organization committee to acquire the names of individuals who potentially may serve at various points in the organizational hierarchy. Generally the regions are headed by vice presidents of the citizens group and are selected by the board of directors. Individuals in the lower echelon may be chosen by the board or by the membership at regional meetings. These local officers and committees should be appointed as is necessary to undertake an effective campaign. This is largely dependent upon the size and demographic complexity of the state. Perhaps most important to aid the overall effort is the establishment of local finance, membership, liaison and publicity committees to work with the state counterparts.

The second major responsibility of the organization committee is to develop a detailed list of the names and addresses of as many civic, recreational, occupational, religious, social and professional groups as can be found within the state. It may be helpful to consult *The World Almanac and Book of Facts* which lists a vast array of organizations that might operate within a state. Additionally, it may be useful to contact the secretary of state's office for a list of the names and addresses of "not for profit" organizations.

Once a comprehensive list is compiled, the organization committee should serve as the liaison to contact as many of the groups as the board of directors deems necessary in an effort to obtain additional endorsement and active support for the campaign. Subsequently, the organization committee should arrange for contact between chairpersons of the other committees and the leadership of pertinent cooperating groups. This will facilitate the efforts of other committees in executing their designated responsibilities.

Organizational support has been generated in nearly every state examined. Perhaps the most extensive effort in this respect occurred in Alabama where approximately 45 groups, including over 20 statewide organizations, endorsed the proposed judicial article.[13]

C. Membership Committee

The membership committee is responsible primarily for developing solid support for the organization and its activities. A large membership is not only valuable for the financial support that may be accrued, but also for the widespread and broad-based support and continuity provided by the membership. As a first step, the committee should contact not only all of those individuals who attended the citizens conference, but also those who were invited to attend but were unable to do so. Efforts should be made to have the leadership of various occupational, religious, social and civic organizations recommend to their members that they join the court unification group. It is important to obtain membership lists from these organizations because these lists can be used as a source of names and addresses from which to solicit new members and funds.

The committee should establish a nominal membership fee of about $5.00. It is also the committee's responsibility to have membership applications printed. The most frequently utilized technique is the one-page, two-fold pamphlet. On the cover in bold letters is the name and address of the organization which is often accompanied by an appropriate quotation about the need for judicial improvement. Inside is a brief description of the organization with a statement of principles and goals. On one fold is the membership application

[13] See Robert Martin, "Alabama Voters Approve New Judicial Article 2–1," *Judicature*, 57 (February, 1974), 318, 319.

form requesting such information as name, address, city, state, zip, and business and home telephone numbers. One of the folds should contain a list of the directors, officers and committee chairpersons.

As the campaign approaches the actual election, the membership committee, along with the organization committee, can assume the added responsibility of encouraging the public to vote, and monitoring the polls. A concerted effort was made in Alabama to form a coalition of women's organizations to undertake these tasks. The coalition organized a telephone "get-out-the-vote" drive just before the election with sample conversations provided to requesting participants. The Jaycees in Nevada undertook a similar project.[14]

D. Finance Committee

The primary task of the finance committee is to raise funds to support the organization and its efforts. Four major items include: newspaper advertising; printing of folders, pamphlets, cards, and posters; radio and television time; and postage, stationery and office supplies. Other items which the committee may be called upon to support include salary for the campaign manager, stenographic help, rent or office space, telephones, and mimeographing.[15]

Money received from membership drives will underwrite some basic expenses, but unless the membership is extraordinarily large, the committee will be required to raise additional funds. Personal contacts are always best and the committee can solicit contributions from a wide variety of individuals and groups. This job will be facilitated after the Internal Revenue Service grants the organization tax exempt status. Consequently, top priority should be given to obtaining just such a ruling.

In addition to membership fees, there are several sources from which funds can be generated. One source is the legal community. A variety of fund raising techniques have been applied successfully to this source. The first is to entice the executive board of a state bar association to send a letter to each of its members requesting donations. Such letters should be "written in a light vein calling upon the team spirit" and be "informative about the needs of the campaign."[16] This approach was taken in a number of states studied in-depth. A more dogmatic approach was taken in Colorado where the Board of Trustees of the Denver Bar Association authorized its executive secretary to bill each senior member for $15.00 and each junior member for $5.00.

The executive board of the state bar association might also be enticed to appropriate a lump sum from its general treasury. This has been done in nearly every state examined. For example, in West Virginia the Board of Governors of the State Bar "decided after serious study that they were not, as a unified bar, prohibited from expending bar funds in the amendment effort since there appeared to be substantial unanimity among their members on this issue."[17] Consequently, the bar contributed $2,500 to the campaign. In Indiana the bar association expended $18,000 to support advocacy efforts.[18] In addition, funds may be solicited from county and local bars. In West Virginia another $1,750 was donated by two of the larger county bars. City and county bar associations also made substantial contributions in Colorado.[19]

Another technique by which to generate funds from the legal community is to solicit contributions from the state's largest law firms. This approach usually is most successful when a prominent attorney personally contacts the senior partners of such firms and requests their financial support. This approach was adopted in Colorado where each large firm was asked to contribute $25 to $50. Similarly, in Alabama the president of the state bar association called a meeting of the most prominent lawyers in the state's four major cities. He spoke of the need for funds and solicited their aid in the unification project. This approach also was followed in Ohio where a prominent attorney convinced the "best" lawyer in each city to call a luncheon of local elites. A dynamic speaker was called upon to deliver a "pep talk," answer questions and request contributions.

Another method by which to generate revenue from the legal community is to solicit contributions from legal interest groups. In many states, the Young Lawyers division of the state bar and various law student groups have participated in promoting judicial modernization. The potential for financial contributions from these groups should not be underestimated. Additionally, various judicial organizations may be potential sources. In Kansas,

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[14] *Nevada Appeal* (Carson City), October 26, 1976.

[15] For an extensive list see Arnold Steinberg, *Political Campaign Management* (Lexington: D. C. Heath and Co., 1976), p. 159.

[16] Heinicke, *supra* note 7, at 21.

[17] Forest Bowman, "Constitutional Revision on a Shoestring in West Virginia," *Judicature*, 59 (June–July, 1975), 28, 30.

[18] James Farmer, "Indiana Modernizes Its Courts," *Judicature*, 54 (March, 1971), 32[illegible]29.

[19] For a further discussion of financial contributions from bar associations, refer to Chapter VI, section F.

the District Judges Association contributed $1,500 to Concerned Citizens for Modernization of Kansas Courts to promote the 1972 judicial article.

Business and industry constitute a third general source of revenue. Although often overlooked, these sources can provide a substantial portion of the funds for a campaign effort. One particularly innovative approach was used in a merit selection campaign in Colorado.

> The way it worked was this. A meeting was held with members of law firms, and lists of the business firms represented by the lawyers were examined. From these lists likely prospects were selected and assigned to the lawyers for solicitation. The chairman wrote the prospects first, following which the lawyers made their personal solicitation.[20]

Of the 350 businesses contacted, about 100 made contributions. It was estimated that 15 percent of the total budget was raised in this fashion. In Alabama, the Citizens' Conference on Alabama Courts, Inc., established committees in the larger cities to solicit contributions from banks, businesses and insurance companies.

Various interest groups constitute a fourth source of fiscal support. For example, in Alabama approximately $10,000 was appropriated by a motorists' association which had an interest in improving the quality of the lower courts. The League of Women Voters is another potential source of revenue. In nearly every state studied, the League not only made a substantial financial contribution but volunteered their time and services.

Still a fifth source of funding is grants. Generally federal grants cannot be used for action programs but they can be obtained for educational activities which serve to aid in the modernization effort. Kentucky followed this course of action.[21] Grants may also be obtained from state or private agencies. In Connecticut almost $25,000 expended during the 1970's was derived from state and private grants.[22]

E. Study and Research Committee

The study and research committee is responsible for recommending policy positions and various campaign tactics to the board of directors. Its members usually begin by synthesizing the consensus statement of the conference into three or four concise goals. Once these objectives are adopted by the board, the committee undertakes further research aimed at advancing the promotion of these concepts. If opposition to the group's objectives arise, the committee is responsible for developing counter arguments.

The committee also is responsible for writing substantive articles favoring the court unification movement. These articles should be placed in the state bar journal, law reviews, and national magazines such as the *American Bar Association Journal, Judicature,* and *Trial.* The articles then may be copied and distributed to relevant audiences. This has been accomplished very effectively in a number of campaigns. One example is Howell Heflin's article published in *Judicature* just before Alabama undertook its effort.[23] Another variety is found in the *Tennessee Bar Journal.*[24] In Tennessee efforts to modernize the state judiciary are presently underway. A similar tactic is to have a prominent member of the legal profession from outside the state write articles for local publication. For example, the late Justice Tom Clark was requested to write an article entitled "Judicial Reform in Connecticut," to aid that state's efforts to gain a modern court system.[25]

Another fundamental responsibility of the study and research committee is to undertake any polls or surveys that the organization deems necessary. If the board of directors desires input from the membership before it takes a vote on policy, it is this committee's function to poll the members to determine the consensus.[26]

Perhaps more important, the board may find it desirable to undertake a public opinion survey. If so, it is the board's responsibility to determine what type of poll to use, taking into consideration the fiscal costs, and to contact a private consulting or polling agency to manage the project. If conducted properly, public opinion polls can be of great value in a court

[20] Heinicke, *supra* note 7, at 21.

[21] Refer to Chapter VI, section G for a detailed discussion.

[22] For a further discussion of grants, see Chapter VII, sec. C.

[23] Heflin, *supra* note 7, at 70–74.

[24] Larry Berkson, "Court Unification for Tennessee?," *Tennessee Bar Journal,* 13 (May, 1977), 39–43.

[25] Tom Clark, "Judicial Reform in Connecticut," *Connecticut Law Review,* 5 (Summer, 1972), 1–10. See also his "Colorado at the Judicial Crossroads," *Judicature,* 50 (December, 1966), 118–24.

[26] In the event that the state bar association is assuming a major role in promoting court unification, rather than or in addition to a citizens organization, a bar poll may be taken for similar reasons. Such polls were conducted in Connecticut, Kansas and Ohio.

unification campaign.[27] The fundamental purpose of a poll is to ferret out the most pressing issues expressed by the electorate. As such, polls can provide strategic information to plan a well-tailored campaign. But a poll's greatest benefit is to indicate the issues which generate the most popular support. Likewise, a poll should identify the issues which are strongly opposed and if included in the judicial package might lead to its ultimate defeat.

Additionally polls can provide information about how to campaign among various groups, where to give proper geographic balance to the campaign, how to gain increased voter approval, what the media and information habits of voters are, and what sources of information are utilized by the electorate.[28]

Polling is a highly technical endeavor. To be an effective tool, professional assistance generally must be sought; otherwise a poll constitutes a substantial waste of time and economic resources. It is the responsibility of the board of directors to engage the services of a polling organization. The board should investigate the reliability and methods of the organization, including the organization's overall approach, sampling methodology, size of sample, type of analysis, data runs, cost, delivery date and presentation.[29] If each element is not evaluated carefully prior to selecting the pollster, the poll may not prove instrumental.

A public opinion poll was utilized effectively in Kentucky. In the fall of 1973, Kentucky Citizens for Judicial Improvement, Inc., employed John F. Kraft, Inc., to conduct a poll to determine "Adult Attitudes in Kentucky Toward Kentucky's Court System and Judicial Reform." The analysis derived from the poll was distributed to various public and judicial groups interested in drafting a new judicial article. The poll indicated overwhelmingly that not only did the public desire popular election of judges, but that they preferred that judges be legally trained. Additionally the poll indicated widespread support for a revised judicial system. Thus, proponents of change used the poll as additional leverage with legislators.

Two years later, just before a vote on the article, a follow-up poll was conducted. Once again the poll indicated great public support for judicial modernization and further indicated that "the judicial article . . . [was] a winner."[30] Results of this poll were publicized the weekend preceding the election; this served to generate further support from the electorate.[31]

But polling is an expensive undertaking. It is estimated that $20,000 was expended on the two Kentucky polls.[32] For this reason, some groups may prefer less costly mail or telephone polls. The results of such polls, however, are likely to be less accurate. The board should carefully weigh the advantages and disadvantages of all methods of conducting surveys prior to making a decision. If adequate fiscal resources are available, the Kentucky course of action clearly is preferable.

A final responsibility of the study and research committee is to develop "Action Packets" which can be distributed by other committees within the organization. These items were utilized in a number of states. While these packets vary in composition, basically they contain similar materials. One packet, developed by the Florida League of Women Voters, is illustrative. It contained sample letters to newspaper editors, an explanation of why the League supported the reform, sample radio and television spot announcements, sample resolutions for other groups to endorse, reprints of speeches by Chesterfield Smith a leading bar figure, and Warren Burger, a chart on two-tier and three-tier court systems, and an outline of the Florida judicial system.

F. Liaison Committee

The liaison committee is responsible for maintaining close and cooperative relationships with legislators or constitutional convention delegates, depending on the avenue being utilized to effect change. Additionally, it is this committee which is responsible for maintaining a working relationship with the state bar association.

One of the committee's most important duties is to participate to the greatest possible extent in drafting

[27] For a general discussion of public opinion polling, see, e.g., Robert Agranoff, *The Management of Election Campaigns* (Boston: Holbrook Press, Inc., 1976), pp. 125–39; and Movement for a New Congress, *supra* note 1, pp. 39–42.

[28] Agranoff, *supra* note 27, p. 131.

[29] *Ibid.*, pp. 134–35. See also Movement for a New Congress, *supra* note 1, p. 40.

[30] For a more detailed account, see Kentucky Citizens for Judicial Improvement, Inc., *Final Project Report* (n.p., n.d.), pp. 15–17.

[31] A public opinion poll was also conducted during Colorado's campaign to secure judicial merit selection in 1966. Among the noteworthy benefits afforded by the poll was vital information to guide the public relations aspect. See Heinicke, *supra* note 7, at 19.

[32] Funds for the two polls were obtained through federal and state grants; they did not have to be raised from private contributions.

statutes, amendments or new judicial articles. In the states examined in this study, the citizens organization rarely drafted its own bills. Rather they sought to have their ideas incorporated into the proposals of bar associations or individual legislators. To facilitate this process, the committee should ask the bar association to designate three to five lawyers to serve as a liaison between the bar and committee. This procedure was used successfully in drafting Alabama's judicial article.[33]

The primary duty of the liaison committee is to gain the support of constitutional convention delegates or legislators.[34] In other words, the members of the committee must function as lobbyists and employ a variety of lobbying techniques.

First, the committee may attempt to obtain the services of a regular or part-time lobbyist. In New York a number of court reform groups employ their own lobbyists on a full-time basis.[35] Although this may be too expensive for an organization, there are a number of ways to enlist this type of assistance. Often civic groups and other public and private organizations employ paid lobbyists or enlist volunteer lobbyists. This is generally true of labor unions and bar associations. The liaison committee may be able to arrange to have these lobbyists work for unification legislation. The League of Women Voters is also a potential source of persons who have had a great deal of lobbying experience. In Florida the League was used effectively and in Kansas the League made court unification its first priority and, in fact, employed four full-time lobbyists.

A second tactic is to obtain knowledgeable and well respected individuals to testify before legislative committee meetings. Law school deans, professors, judges, prominent attorneys, and members of various "good government" groups such as the League of Women Voters and Common Cause should be considered for this role. These people should be thoroughly briefed about the proposed legislation, including its strengths and weaknesses. At times it may be beneficial to bring in experts from outside the state. For example, in the midst of one reform effort in Connecticut, people from Illinois were brought to Hartford to testify about their experiences with court consolidation.

In some states, legislative committees held public hearings throughout the state. Hearings were held in Colorado, Florida, Idaho, Kansas, and Ohio. Where this is done it is the responsibility of the liaison committee to secure well informed individuals who will speak in favor of the suggested proposals. In many instances, these hearings can be used as a barometer to help determine how well the organization's proposals ultimately will be received. This information should be reported to the board of directors to help it determine which issues should be given special emphasis. For example, following hearings in Idaho, reformers decided to forego support for a merit system for selecting judges because of opposition to the plan.

A third tactic which may be employed by the committee is to encourage the organization's membership and its supporters (including members of the bar) to contact legislators directly in the state capitol. Often close friends of legislators are asked to persuade these individuals of the need for reform. An alternative is to ask individuals who are widely respected by a specific legislator to speak to the legislature about the need for change.

Invariably these tactics have been employed where successful unification efforts have occurred. For example, Philip Hoff, former governor of Vermont, credits the technique with being an important aspect in obtaining Vermont's reform measures. "Many times when the legislative package was in danger," he has written, "members [of the bar] rallied 'round with phone calls, and, most importantly, personal visits to legislators, to keep these proposals alive."[36] Legislators may also be contacted in social settings such as at lunch or dinner. In Georgia, at least two organized social gatherings were arranged by the Commission on Judicial Processes which was established by Governor Carter to effect court modernization. Professor Simpson describes the first as follows: "the Judicial Committees of both houses of the General Assembly and leaders of the State Bar [were invited] to meet with members of the Commission at Calloway Gardens. . . . In pleasant surroundings mutual education took place, both as to needed changes and as to specific prerequisites for legislative success. Also, acquaintances were established which proved

[33] See M. Roland Nachman, "Alabama's Breakthrough for Reform," *Judicature*, 56 (October, 1972), 112, 113–14.

[34] The following discussion deals with legislators, but obviously most of the same tactics may be employed to influence constitutional convention delegates.

[35] For an excellent article on the techniques of lobbying, see Craig Harris, "Lobbying for Court Reform," in Larry Berkson, Steven Hays and Susan Carbon, *Managing the State Courts* (St. Paul: West Publishing Co., 1977), pp. 81–89. See also *Manual of Legislative Techniques*, National Association of Bar Executives, 1975.

[36] Philip Hoff, "Modern Courts for Vermont," *Judicature*, 52 (March, 1969), 316, 319.

to be useful and bills were drafted and brought forward."[37]

In some cases legislators have been invited to attend meetings and conferences to obtain their support. For example, in Ohio, arrangements were made for key legislators to meet with newspaper editors who supported unification.

Fourth, a letter-writing, telephone or telegram campaign may be initiated. Again, the intent is to have supporters of the campaign contact the legislator directly either at the state capitol or at his residence. Particularly effective in this respect is obtaining the support of key contributors to a legislator's campaign, the legislator's constituents, and local newspaper editors. Such a campaign was launched in New York by the Committee for Modern Courts (CMC).

To initiate these tactics, sample letters or conversations often need to be drafted and distributed to participants. It is important to emphasize to the individuals and constituents who will be involved in writing or phoning their legislators, that the samples are intended to be used only as guides and that personal comments should be inserted to prevent duplication and enhance credibility.

All three techniques were instrumental during the special session in New York when legislators were considering passage of statewide judicial funding bills. CMC wrote letters to the leadership of 38 groups within their coalition urging them to telephone key legislators. Additionally, CMC urged the leaders to contact their members and have them write letters to their legislators. Previously CMC had organized a telegram campaign encouraging legislators, prior to adjournment of the regular session, to vote positively for the judicial reform issues.

A fifth tactic which can be employed by the liaison committee is to provide legislators with substantive information about why the proposed changes are needed. Materials for this effort should be furnished by the study and research committee. In Idaho leaders of the unification movement obtained the names and addresses of every legislator and mailed explanatory information to each one. In several states, including Kansas and Ohio, information kits were placed at the chamber seats of legislators. This prompted a great deal of spontaneous floor discussion of judicial modernization.

A similar idea involves providing legislators with concrete evidence that the public widely supports change. This can be accomplished by forwarding to legislators results of public opinion polls and surveys which support the movement. This tactic was highly successful in Kentucky. A variation of this approach is to compile and deliver to legislators newspaper editorials from throughout the state which favor unification. New York's Committee for Modern Courts successfully utilized this technique by maintaining a clipping file and carefully selecting 50 favorable editorials which they compiled and sent to every legislator. The objective was to emphasize that the proposed legislation had statewide support.

A sixth tactic, and again one used very effectively by CMC in New York, is to organize a news conference which will obtain a large amount of publicity.[38] The principal speaker at the conference was Cyrus Vance, a member of the board of directors of CMC, former chairperson of the Governor's Task Force on Court Reform, and currently Secretary of State of the United States. Other prominent personalities were selected to make brief statements. The consumers were represented by Bess Meyerson, labor by the leader of the International Ladies Garment Workers Union and the legal community by the head of the city bar association. Each speaker was prepared carefully, having already received a prepared speech about how their groups would be benefited by the proposals. Over 65 representatives of the media and supporters of court reform attended the news conference. The effort received widespread publicity and although it was undertaken to influence the governor to call a special session of the legislature, it had a far greater impact. Indeed, the new conference may have been one of the primary catalytic events toward obtaining passage of the substantive legislation.

A seventh tactic is to obtain a long list of endorsements from important statewide and local organizations, experts and well-known personalities.[39] These endorsements can be published in newspapers in the form of advertisements or mailed directly to the legislators. Variations of this approach were utilized in Alabama, Colorado, and South Dakota. In New York a list of names of many prominent businessmen and political leaders endorsing judicial reform was presented at the news conference.

An eighth tactic is to capitalize on incidental events which might arise. Committee members must

[37] Simpson, *supra* note 7, at 285.

[38] This tactic, as well as others, may be utilized by the publicity committee (to be discussed shortly) to influence the public as well.

[39] For a list of endorsing organizations in Kentucky, see Kentucky Citizens for Judicial Improvement, Inc., *supra* note 30, pp. 26–27.

be alert to the possibilities which such situations present. For example, on the day before a lower court merger bill was to be voted upon by the Connecticut legislature, the headline and lead article in the *New York Times* involved Governor Carey's plan for consolidating New York's court structure. "By some accident," according to one informed observer, every Connecticut legislator received a copy of the paper just before the vote.

A final responsibility of the liaison committee is to assess continually how each legislator will likely vote on the proposed reforms. This will help the board of directors to establish policy. For example, if in a tentative tally of votes it appears that the presence of one aspect of the package will insure its defeat, the board may decide to drop support for that particular reform. Additionally, it is the committee's responsibility to maintain constant pressure on legislators to support the measures. Therefore, it is also important to assess the votes periodically to determine whether the movement is gaining or losing support. In this manner, legislators opposed to the reform package can be identified, and more intensive lobbying efforts can be directed toward them.

In Idaho the reformers kept track of the votes in the House of Representatives nearly every week and in Ohio, the bar assigned an attorney in each district to be responsible for his legislator. In Florida, one lobbyist reported talking to legislators "one-by-one." When an individual began waivering in his position, the lobbyist would launch an all-out effort to retain him for the cause using many of the tactics just discussed. Also, a Florida legislator who had been enlisted to work for the cause ate lunch with a waivering speaker of the house on a weekly basis and kept the pressure on the speaker "back home" by having other individuals contact him regularly.

G. Education Committee

The overriding purpose of the education committee is to educate the public and the legal community about the need for judicial modernization. The most effective method of accomplishing this goal is to establish a speakers' bureau.[40] To maximize the utility of a bureau, so that speakers can be deployed for the greatest impact, it should be organized on a regional or local basis. In this way speakers will not have to incur large expenses or waste a great deal of time traveling to engagements. Additionally, local speakers might have greater credibility than speakers from more distant parts of the state.

This is not to say that prominent personalities with statewide reputations should be omitted from the bureau. Indeed, when such persons consent to travel throughout the state, they should indeed be scheduled accordingly. Chief Justice Heflin's extensive speaking engagements are widely credited with obtaining much support for Alabama's effort.[41] Robert Stearns, Chairman of the Board of Trustees of the Citizens' Committee on Modern Courts in Colorado, is also credited with obtaining a great deal of support for Colorado's campaign. Stearns made 32 addresses to over 5,000 people while traveling 2,700 miles.[42]

In certain instances it may be advisable to bring in prominent dignitaries from outside the state. For example, it seemed that the late Mr. Justice Tom Clark was always available to travel anywhere to discuss court modernization. Generally, careful consideration should be given before recruiting outside speakers. Some audiences often resent "being told what to do" by "outsiders" who are not a part of the "local" movement.

To organize a speakers' bureau, a potential list of speakers should be developed for each region. Bar associations ordinarily maintain speakers' panels which are scattered throughout the state and thus may serve as an initial source. Committee members themselves may be acquainted adequately with the court modernization program and speak on occasion. Volunteer groups, such as the League of Women Voters, should be tapped. The League was particularly active in Kansas and Kentucky.

Often local lawyers, judges, legislators and college professors can be recruited. At the state level, the governor, attorney general, justices of the state supreme court, and bar association presidents may be utilized. In nearly every state, one or more of the individuals holding these offices participated by speaking for unification. For example, Governor Reubin Askew of Florida made several speeches and Tennessee Attorney General Brooks McLemore gave the keynote address to the citizens conference. In Washington, Associate Justice Robert C. Finley gave a number of addresses, and in Alabama, state bar president M. Roland Nachman participated in the speakers' bureau.

In all instances, speakers should be chosen because of their speaking ability, general reputation and basic knowledge of the judicial system. They should represent the lay and legal community as well

[40] For a description of a particularly well-organized speakers' bureau, see Bowman, *supra* note 17, at 31.

[41] Martin, *supra* note 5, at 18.

[42] Citizens Committee on Modern Courts Trustee and Committee Chairman Workbook, (Colorado, n.d.), p. 4.

as various racial, ethnic, and religious segments within the state. A determined effort also should be made to engage women as speakers.

Once the requisite number of speakers have agreed to participate, they should be thoroughly informed about the organization's goals and the specific measures being sought. It is advisable to supply them with background information and data supporting the movement. These should be obtained from the study and research committees. Usually it is a good idea to provide the speakers with rough outlines of speeches, noting the strengths (and weaknesses) of the proposals. On several occasions it was observed that speakers' bureaus actually provided "canned" speeches that could be modified by speakers according to their particular situation and audience. In Kentucky an information kit "containing a large variety of information and materials" was developed and distributed to over 900 individuals across the state.[43]

Another method of educating potential speakers is to hold workshops or seminars designed specifically for that purpose. In Alabama, half-day seminars were conducted to brief the selected speakers and in Kentucky, the League of Women Voters held two in-house workshops to educate themselves prior to addressing other groups.

The regional speakers' bureaus should be established and coordinated in conjunction with the regional vice presidents and their committees. The education committee and its regional counterparts should actively seek speaking engagements. It is not enough simply to form a bureau and then wait for organizations to request speakers. A list of potential audiences should be obtained from the organization committee. Among the most receptive are Parent Teachers Associations, Leagues of Women Voters, Jaycees, Lions, Rotary, Kiwanis, Optimists, Chambers of Commerce, local bar associations, Council of Churches, Federation of Women's Clubs, and various college and university campuses.

The education committee may wish to carry some standard forms of resolutions or endorsements to be signed or acted upon where speaking programs are presented. The study and research committee should take the initiative in preparing these forms. When resolutions or endorsements are obtained from groups to support specific court modernization programs, the publicity committee (see *infra*) should be notified so that appropriate press coverage is obtained.

[43] Kentucky Citizens for Judicial Improvement, Inc., *supra* note 30, p. 3.

While the impact of speakers' bureaus on the public-at-large is undetermined, their value nonetheless is widely acknowledged.[44] At the very least, they serve to educate an important, if not elite, segment of the state's population about the need for reform. In nearly every state examined, either the citizens organization, a state or local bar, the League of Women Voters or some other organization had developed a speakers' bureau.

Perhaps the most well-organized bureau was developed in Colorado to create support for the "non-political selection and removal of judges." In all, 229 speakers were recruited and over 900 letters were mailed to organizations asking for opportunities to speak on the amendment. Literally hundreds of speeches were delivered throughout the state. Speakers kits including arguments for and against the amendment were made available to all speakers, including, in some cases, the transcripts of debates and speeches by prominent citizens. Kits were distributed to chapters of the League of Women Voters, committee chairmen and co-chairmen, lawyer chairmen, and all newspaper editors. Speakers were also furnished with brochures and bumper stickers for distribution to audiences.[45]

There are several advantages to utilizing speakers' bureaus. First, they are a relatively inexpensive method of educating the public, the only costs incurred being telephone calls, letters of inquiry, postage and mimeographed materials. The speakers themselves usually volunteer their time. Second, this method permits more direct, personal contact. Each audience is usually quite small, thus facilitating group discussion. Third, credibility of the movement will be enhanced because of the selection of prominent local or national figures. Fourth, this is a very low key strategy. While resultant press coverage may be favorable and extensive, it probably will be limited to the local media, and will not generate attention across the state.

There are a variety of other methods which may be employed to educate the public. If funds are available, the committee may wish to hold a follow-up citizens conference of perhaps one day in length, or hold regional conferences, seminars or workshops. If funds are limited, it may be advisable to hold meetings in conjunction with other organizations to help defray expenses. Not only do these meetings serve an educational function, but they also facilitate

[44] In Alabama over 100 speeches were given to civic clubs. See Martin, *supra* note 13.

[45] Committee for Non-Political Selection and Removal of Judges, (Colorado, n.p., n.d.), p. 12.

obtaining a broader membership base, generating additional revenue, and providing reason for free press coverage.

In Kentucky ten seminars were conducted in every region of the state approximately six months before the election. Others were conducted in urban areas during the final two months preceding the election.[46] Ten days prior to each seminar, approximately 1,000 letters of invitation were mailed to civic and service organizations, interested citizens and local officials. One thousand flyers announcing each seminar were mailed to local chairpersons for distribution along with the issuance of press releases and radio and television announcements. General response to the seminars was positive as was the resultant publicity.[47] This endeavor clearly demonstrates the need for coordination and cooperation among virtually every committee discussed in this chapter. It also indicates that if a committee falters in its responsibility, it will be to the detriment of the entire organization.

Last, but certainly not least, the education committee should not neglect to keep the organization's own membership informed about its activities. The committee should supply the membership with back-up information on why the board of directors made certain policy decisions. This can be accomplished by sending speakers to address regional meetings or by instituting a brief newsletter as was done in Kentucky.[48]

H. Publicity Committee

The publicity committee serves the important function of promoting and focusing public attention on the cause of court modernization. In conjunction with the education committee, this committee also informs the general membership of the organization's activities. Naturally it is advantageous to have members of the press, radio and television on the committee. Every activity of the organization should be reported to this committee so that appropriate publicity can be generated.

As a general rule, the committee should seek as much free publicity as possible, especially during the early phases of the campaign. Because of the expense, paid advertisements should be utilized toward the time of election. The finance committee should be of assistance in this regard.

Because of the large number of tactics which may be employed by the publicity committee, the following discussion is divided into three areas: the press; radio and television; and miscellaneous literature.[49]

1. **The press.** As was noted in Chapter VI, maximum utilization of the press is imperative if a court unification campaign is to be successful. For use throughout the campaign, the publicity committee should acquire and maintain a list of every newspaper, all editors, and, if possible, all reporters. While the list of newspapers can probably be obtained from any local library or the state press association, the organization and membership committees should work in conjunction with the publicity committee, not only to provide names, but to seek the support of key individuals.

Initially the publicity committee may wish to develop a news kit for reporters. This kit should contain information about the organization and its objectives. Supportive information should be provided for each of the organization's suggested measures. The information should be concise and should contain a summary at the end which reporters can quickly incorporate into a brief article.

Such information should be distributed throughout the state where it is deemed advisable. Similar news kits can be mailed to editors as well. This technique was used effectively in Alabama, Colorado (judicial selection and removal), Kansas, Kentucky, and Ohio.

If funding is available it may be possible to hold a conference for newspaper personnel. This was suggested by several interviewees. A conference was held in Alabama where some 100 journalists gathered together for a three-day "Media Seminar on Alabama Courts." The seminar was addressed by Chief Justice Heflin, who urged their support for the campaign. Such topics as "Reforming the Courts," "The Reporter in the Court," and "Laws and the Media" were addressed by a faculty of distinguished speakers. By all accounts, the results were phenomenal. Not only did 80 percent of the state's daily newspapers eventually endorse the article, but "thousands of inches of news space" were devoted to the article.[50] Support for such conferences can often be obtained from the state press or broadcasting associations and private foundations.

[46] Kentucky Citizens for Judicial Improvement, Inc., *supra* note 30, p. 3.

[47] *Ibid.*, pp. 20–21.

[48] *Ibid.*, pp. 4–5.

[49] For an excellent list of guidelines which should be considered in employing the media, see Steinberg, *supra* note 15, pp. 260–64.

[50] Martin, *supra* note 5, at 17.

A second technique is to utilize the "letters-to-the-editor" section of the newspaper. A cooperative editor may agree to print a letter or series of letters written by the organization. In this event, letters should be carefully constructed to gain the widest attention and most extensive support from the readership. If this arrangement cannot be made, the committee should draft several sample letters to editors and have the general membership send in personalized letters. Upon receipt of several letters on one subject, editors generally print the most representative. When individuals use the sample, they should copy it by hand or type it on their personal stationery. They also should sign the letters giving their full name and address. It should be emphasized that these letters are only guides and that writers should be encouraged to modify them as much as possible. In all cases, however, such letters should be brief. Newspapers tend not to print long letters and, if they do, people tend not to read them.

A third technique is to obtain editorial endorsement and support from as many newspapers as possible. This often requires personal contact with the editors. Additional help may be sought from local businessmen and leaders who can apply pressure to local editors. When a newspaper endorses the measure, its editor generally can be counted upon to do as much as possible to publicize the movement. The editor should be encouraged to undertake a series of editorials on the subject. In South Dakota cooperating newspapers allowed guest editorials to be published in most of the county newspapers. The editor should also be encouraged to provide coverage on as many related newsworthy events as possible. This tactic was utilized in nearly every state examined. In Idaho, for example, a conscious effort was made to contact 15–16 newspaper editors for their support. From this activity approximately six "good" editorials emerged. In other states, such as Florida and South Dakota, almost universal editorial support was obtained from newspapers.

A fourth technique is to constantly provide news items to the press. Every activity and action of the organization should be reported to state, regional and local newspapers. Press releases should be carefully drafted to gain maximum exposure. A partial list of the types of news items printed in Alabama newspapers during that state's unification campaign is suggestive of the subjects which may be addressed. It is found in Table 9–1.[51]

[51] The list was extracted from a compilation of newspaper clippings on loan from Robert Martin, Public Information Director, Alabama judicial system. To him we extend our appreciation.

A fifth technique which may be utilized is the paid advertisement. Each of the state's newspapers should be contacted. Prices for advertising vary widely, and if funds are limited, it is suggested that this type of publicity be used at the very end of the campaign so that the opposition will not have time to mobilize a similar undertaking. This tactic was used successfully in Kansas and Kentucky where large advertisements were published in every newspaper throughout the state one week before the election.

Paid advertisements may contain a wide variety of information. They often include the advantages of the measure being sought and a list of organizational or individual endorsements. Generally, they contain a catchy phrase or slogan which attracts wide attention. Several examples are listed in Table 9–2. Phrases which invoke local hostility should be carefully avoided. A sample of advertisements is found in Appendix Four.

Table 9–1
A List of News Items Published During The Alabama Reform Movement

Photo of president of Alabama Jaycees presenting a poster supporting the judicial article to Chief Justice Heflin.

Article containing questions and answers which lay out the facts about the proposed judicial article.

Photo of mayor of Tuscumbia with city commissioners stating that they endorse the new judicial article.

Article about Criminal Appeals Court judge addressing the League of Women Voters urging adoption of the judicial article.

Column by Chief Justice Heflin explaining the judicial article.

Article about Chief Justice Heflin addressing a civic club discussing the amendment.

Article about a meeting of newsmen, Department of Court Management personnel and the Alabama Bar Association to discuss the new judicial article.

Statement by Catholic Bishops of Birmingham and Mobile discussing the proposed judicial article and enthusiastically endorsing it.

Column by a private citizen urging voters to pass the judicial article.

Article announcing a television program that will explain the new judicial article.

Article announcing that the House Constitution and Elections Committee favors the new judicial article and explains the article.

Article about Chief Justice Heflin's appeal to media to help get the proposed judicial article passed.

Article about the judicial article with Chairman of the Alabama Constitutional Revision Commission urging approval by voters.

Article about a member of the Alabama Bar addressing the Young Men's Business Club of Birmingham and urging passage of the judicial article.

Article about Chief Justice Heflin speaking to the Parent Teachers Association urging adoption of the amendment.

Article announcing that the proposed new court plan has the Alabama Law Enforcement Planning Agency's approval.

Text of radio editorial about the proposed judicial article and the station's support of it.

Table 9–2
Slogans Used in Judicial Reform Campaigns

Vote Yes for Better Justice
You Be the Judge: Vote Yes on Amendment #1
Vote Yes if You Want an Impartial and Independent Judiciary
Vote Yes for the Most Effective Single Amendment in Our Judicial System Since Statehood
Vote Yes for Justice
Help Our Courts Reform Now: Vote for Amendment #1
Support Amendment #1 for Faster and Fairer Justice
Vote for the First Step Toward Judicial Reform
Safeguard Your Rights With Modern Courts
The Administration of Justice is Your Business: Vote for Amendment #1
Take Your Courts Out of Politics
Waiting for Justice is Injustice
Vote for Court Reform Amendment #1
You Be the Judge — Should the State Adopt a Modern Court Plan?
Our Present Court System — What a Way to Run a Railroad!
Court Reform — We Need It Now
End the Heavy Cost of Our Maze of Courts
Vote Yes on the New Constitution and You'll be in Good Company
Vote Politics Out of Our Courts
Give the State Prompt Justice Through a Modern Court System
The Verdict is Yours! Vote Yes on Amendment #1

Naturally, all the tactics directed toward maximum coverage of the press can be used to gain support for the movement in local magazines and newsletters. Nearly every civic and social organization publishes such items. These groups should be contacted on a regular basis. Among the most important are state and local bar journals, labor union newsletters, educational association newsletters, religious memoranda, agricultural organization newsletters, and League of Women Voters publications. In Kentucky the bar association published a cartoon (included in Appendix Four) on the cover of the October, 1975 issue of *Kentucky Bench and Bar* representing an ingenious take-off from Ripley's Believe It or Not.

2. **Radio and television.** The electronic media are another valuable source of publicity for court unification campaigns. As with newspapers, the publicity committee should seek as much free coverage as possible during the early phases of the campaign and then be willing to purchase air time, if funds are available, as the election approaches. Once again, if support can be obtained from the owners, management or editors, more extensive and more favorable coverage will be possible. A list of all stations usually can be obtained from local libraries or the state broadcasters association. The organization and membership committees can be helpful in this regard.

There are several ways to obtain free media coverage. First, most radio and television stations air editorials on a weekly, if not daily, basis. They are required by law to devote time to matters of public interest, but most do so out of their own sense of civic responsibility. In many instances it may be possible to persuade the stations' directors to support and endorse court unification.[52]

In certain instances entire programs may be devoted to a discussion of the proposals. Most stations regularly offer public service programs to their audiences with public television stations particularly receptive to this approach. The committee should make every effort to participate or develop such programs. They may be in the form of informational programs where a series of slides and speakers outline the present judicial system, point out its weaknesses and discuss how the proposed reforms will help alleviate the problems. A 30 minute program entitled, "The Judicial Article," was aired twice in Kentucky. It discussed both the existing and proposed judiciaries. Each time it was followed by a 60 minute program entitled, "Commonwealth Call-In," which enabled the audience to call in and have their questions answered. Similarly a one-half hour program was aired in Alabama with this format. If programs are recorded, they may be sent to other stations for transmission at a later date. In Alabama, videotapes and cassettes were made of Chief Justice Heflin's presentations and subsequently sent to other stations throughout the state. Tapes may also be prepared for radio, as illustrated by Kentuckians for Modern Courts who prepared a public service tape and sold it all over the state to local organizations to publicize the article and generate revenue.

Another format which may be adopted for television programming is to develop a series of films to be presented at regular intervals. This approach is currently being used in Tennessee where two films are being made by a private independent television

[52] For an outstanding example of television support, see *In the Public Interest: A Resume of WSPA Editorials and News Features Dealing with Judicial Reform to Promote Equal Justice Under the Law*, Spartanburg, S.C., December, 1972.

company under a discretionary grant from LEAA. The objective of the films is to provide the public with information on Tennessee's court system, its operations and problems. Slides and film clips also may be used by speakers' bureaus or shown at meetings of various civic organizations, as in South Dakota.

A third format which may be utilized is to involve an expert and a panel of inquisitors similar to the national television program "Meet the Press." The idea is to obtain a highly knowledgeable expert on the existing judicial system and the proposed reforms. This person is then asked questions about the plan by three or four well-known personalities.

A variation of this format is the radio "phone-in" program. Experts briefly discuss the proposals on the air and then telephone calls are accepted from the listening audience. This gives the general public an opportunity to ask the questions rather than have newspapermen act as surrogates. This tactic was used in Colorado to some extent. In Texas during a 1972 effort to unify the courts, a three-night series of four-hour phone-in radio talk shows were held.[53]

Often the League of Women Voters and other civic organizations have their own radio or television programs. This time is provided by stations at no charge because of the public interest nature of the subject matter. In Kansas, many local chapters had free radio time when they discussed the merits of unification. In Kentucky, the Louisville League has a 30 minute weekly television program, aired at 11 a.m. on Sunday to coincide with church services. During the campaign, the League devoted most of these programs to the judicial article.

Clearly the most popular format for both radio and television is the debate. The ground rules vary among locales, but the concept remains essentially the same. One or two supporters of the judicial measures are confronted by one or two opponents. The purpose is to scrutinize the major strengths and weaknesses of the proposed revisions. This format was used in several states. For example, in Alabama the president of the state bar association debated with a probate judge who vigorously opposed the change.

Serious efforts should also be devoted to insuring that as much news coverage is given the movement as possible. The electronic media should be fed constantly news items about conferences, workings, meetings, significant endorsements, addresses by members of the speakers' bureau, and commitments of support by legislators or constitutional convention delegates. Generally the materials given to newspapers should be made available to the electronic media.

One innovative method of attracting news coverage is to invite reporters to the courthouse to cover "special" events. Although not invited on this occasion, an Idaho television reporter happened to be at a courthouse the day a judge had to dismiss an entire trial for lack of courtroom space. That evening on the 6:00 p.m. news, the event was covered. Prior to that time, judges had fought unsuccessfully to obtain more space, but within a week following the broadcast the county commission allowed bids to be received for two new courtrooms.

The paid spot announcement is another technique which should be considered by the publicity committee. The costs vary greatly depending on the media, size of audience and sophistication of the advertisement. Spot announcements can be drafted by the committee with help from individuals knowledgeable about such matters, minimizing production costs. The announcement may be by a station employee. These types of advertisements are used widely in court unification campaigns. For example, in 1962 the Citizens Committee on Modern Courts (CCMC), arranged for 191 spot announcements on radio stations in metropolitan Denver, as well as other radio spots and programs throughout the state. Additionally, CCMC arranged for 51 spots on two Denver television stations as well as others in Pueblo and Colorado Springs.[54]

More elaborate announcements generally require the assistance of professionals. One of the most unusual in this respect was developed by an advertising agency for the Alabama movement. As mentioned earlier, there were only two amendments of statewide interest on the ballot. One allowed pork producers to voluntarily "check off" dues to support a swine research center at state-supported Auburn University and the other involved the judicial unification measures. A local radio personality, in "down-home" jargon, described the benefits of both with farmer Luther Appleby asking if the judicial articles would help improve judging at the county fair.

Because paid advertising on radio and television is relatively expensive, it is suggested that this activity

[53] "... erned Texans Launch Court Improvement Drive," *Judicature* ... (November, 1972), 174.

[54] Lee A. Moe, *Report to the Executive Committee of the Citizens' Committee on Modern Courts From the Executive Director*, November 12, 1962.

also be concentrated at the end of the campaign. This is the tactic generally adopted by most groups and has the advantage of allowing the opposition little time to organize counter arguments. In Alabama, the mass media advertising campaign was conducted primarily during the eight days immediately preceding the election.[55]

3. **Miscellaneous literature.** The variety of miscellaneous printed matter which may be utilized by the publicity committee is enormous. Generally, these materials have the advantage of being relatively inexpensive. They may be purchased by the organization or by affiliated groups.

Handbills, brochures and pamphlets may be disseminated in a variety of ways. Often this literature is distributed at state fairs. In Kentucky an information booth was set up in both 1974 and 1975 at the Kentucky State Fair in Louisville and the Blue Grass Fair in Lexington. Staff members of Kentucky Citizens for Judicial Improvement, Inc., were available to answer questions and respond to inquiries.[56]

Literature may also be distributed at athletic contests and public meetings. Often, civic organizations or high school or college groups are willing to distribute materials within their organizations and door-to-door. In Kentucky, the citizens organization persuaded several large industries to distribute pamphlets to their employees with their paychecks. In certain instances, groups have been hired to distribute these materials. For example, during one court reform campaign in Colorado, 200,000 brochures were distributed commercially because it was impossible to recruit and organize block workers.

Another means of distributing brochures is through the mail where bulk rates can be used to minimize cost. Such mailings may be sent to other organizations and large industries and businesses. The Kansas League of Women Voters mailed 10,000 pamphlets in this manner. If money for postage is not available, there are other means to accomplish distribution. One novel idea was employed in Florida where the Judicial Council arranged to place a flyer favoring passage of the 1972 unification measure in all utility bill mailings.

One of the most widely utilized pieces of literature is the pamphlet summarizing the proposed changes. Generally it is a single printed page folded twice. Each panel contains relevant information on the proposed measures. Perhaps the most extensive use of this type of material was found in South Dakota. There several four-page pamphlets were distributed throughout the state. One, entitled "The Judicial Article," described the parameters and goals of a unified court system, presented a diagram of the old judicial system in contrast with the proposed one, and in general presented the strongest arguments on behalf of why it should be adopted.

If funds permit, small pamphlets containing several pages of information may be utilized. While this tactic was adopted in a large number of states, a description of one pamphlet used by an early Connecticut citizens group is worthy of quotation.

> [It was] a fifteen-page hard-hitting pamphlet entitled "Justice for All Is Up To You." On the cover was a quotation from the Connecticut Constitution reading "All courts shall be open . . . and justice administered without sale, denial or delay." Following are a few typed headings from the pamphlet: "A Hodge-Podge of Courts," "Amateur Justice," "Justice at a Profit," "Justice Mixed with Politics," "Part-Time Justice," "Justice by Neglect," "Court Delay." It concluded with a statement that stagecoach vintage justice is ill-suited to the state which is now mother to the helicopter and atomic submarine.[57]

If funds are scarce a number of other approaches may be used. For example, a mimeographed handout was used effectively in Colorado. It contained information on the following topics: What is the Citizens Committee on Modern Courts?, What's it All About?, What Does the Modernization Amendment Propose?, How Did the Proposed Amendment Come About?, Who is Financing the Campaign?, and Your Opportunity to Help. Another common format is to develop a pamphlet containing questions and answers about the proposed reform. This tactic also was used in Colorado.

Another approach which may be used, especially if funds are severely limited, is to arrange for the state university to print the materials. Most major universities have some type of public information clearing house. Often they solicit manuscripts dealing with areas of public concern. In Florida, for example, the Public Administration Clearing Service at the University of Florida issued such a bulletin during the 1972 campaign.

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[55] See Martin, *supra* note 13.

[56] Kentucky Citizens for Judicial Improvement, Inc., *supra* note 30, p. 27.

[57] Charles Pettingill, "Court Reorganization: Success in Connecticut," *American Bar Association Journal*, 46 (January, 1960), 58–59.

While it is difficult to assess the exact utility of printed materials, they are widely recognized as effective sources of publicity. For example, in assessing a campaign to obtain merit selection of judges, former president of the Colorado Bar Association Alfred Heinicke stated, "Instead of spending time on activities of questionable value, like booths at bar association and medical society conventions, we might have gained more by distributing handbills at public events such as football games, conventions or even just standing on busy street corners. Brochures could have been placed in doctors' and dentists' offices, and block canvasses should have been organized for distribution of literature house to house."[58]

The quantity of materials which should be printed depends upon a state's population and the group's capacity to distribute them. In Colorado it is estimated that a total of 500,000 brochures were distributed in 1962. In Indiana 100,000 copies of a folder entitled "10 Reasons Why" were distributed in 1970.[59] During the 18 months following July 1974, Kentucky Citizens for Judicial Improvement, Inc., distributed more than 190,000 informational brochures.[60]

In addition to brochures there are a number of other miscellaneous tactics which may be employed in a unification campaign. Billboard space may be purchased by the organization or by affiliate groups. In Florida, the League of Women Voters was responsible for a number of such purchases. Another tactic which may be employed is the printing of sample ballots which indicate in bright red ink how to vote favorably for the proposed reform. The approach was followed in Kansas and Kentucky. Car-top signs, yard signs, bumper stickers and badges may be purchased and distributed by the organization or affiliated groups. All have been utilized in one state or another. Window signs may also be used. In Alabama, the Jaycees were responsible for placing over 5,000 posters in the windows of local businesses throughout the state. The signs simply stated, "Join the Jaycees and Jaycettes in Voting Yes on the Judicial Article (Amendment 2) December 18, 1973."[61]

One of the most novel approaches was developed in Kentucky where the League of Women Voters designed a recipe card to publicize the judicial article. A recipe for a four-tier cake was printed on one side of a 3" × 5" card. On the reverse side was a drawing of the cake. Each layer represented a level in the proposed judicial system: supreme court, court of appeals, circuit court, and district court. "These four layers," it was stated, "will make Kentucky's courts more responsive, more efficient, and more economical." The recipe cards were distributed at state fairs, homemaker groups and other gatherings, especially in rural areas. The major objective was to influence women to vote for the reform. They were also used to influence local politicians. Many local chapters baked these cakes and presented them to various officials. This also attracted wide publicity.

Another tactic used in Kentucky was a postcard campaign. Attorneys were asked to send cards to their clients and friends urging them to vote favorably for the proposed unified system. The cards cost about $200 for printing. Approximately 80,000 cards were mailed as a result of this effort with most lawyers absorbing postage costs. Over 50,000 cards went to Jefferson County (the Louisville area) alone.

A third tactic used in Kentucky, and subsequently in other states, was to send a cartoon to all of the state's newspapers which depicted the absurdity of the existing judicial system. The cartoon generated a great deal of publicity. Along these lines one final Kentucky tactic is worthy of mention. Following jury duty, one judge would distribute brochures to the veniremen explaining the merits of the proposed system. Likewise one clergy member distributed brochures to his parish following services each week.

4. **Summary.** As indicated previously, there are a multitude of tactics which may be utilized by the publicity committee to obtain statewide exposure. Naturally the committee should do as much as possible to encourage similarly interested organizations to use as many of these tactics as possible.[62]

The advantages and disadvantages of each tactic are difficult to weigh. Generally, economic factors play a major role in dictating which approaches are utilized most often. Thus, a large advertising campaign may be beyond the reach of some organizations. A general rule is that there should be the largest possible inverse relationship between cost and the number of individuals exposed to the publicity. In other words, funds should be expended in relation to the number of individuals or groups who

[58] Heinicke, *supra* note 7, at 22.

[59] Farmer, *supra* note 18.

[60] Kentucky Citizens for Judicial Improvement, Inc., *supra* note 30, p. 27.

[61] See Martin, *supra* note 13.

[62] Samuel Witwer, "Action Programs to Achieve Judicial Reform," *Judicature*, 43 (February, 1960), 162, 164–65.

will be affected. Second, the tactics which gain the most exposure and attention at the least cost should be employed early in the campaign. A list of the relative costs of several tactics are presented in Tables 9–3 and 9–4.

As was suggested in Chapter VII, a public relations firm can be employed to aid the committee. These organizations were employed in Ohio and to a limited extent in Alabama, Colorado and Kentucky. Because their services can be expensive, they usually are employed only during the final phases of the campaign. If they are utilized, it is suggested that the tactics they intend to employ be outlined specifically before a contract is signed.

I. Conclusion

Throughout this chapter, various duties and responsibilities have been delineated for each of seven committees. Additionally, a series of viable and innovative tactics that have been utilized successfully in court unification campaigns examined have been suggested. But clearly, the functions and tactics of one committee are not to be construed as exclusive of the others. Indeed the contrary is true. Many responsibilities and methods of effectuating organizational objectives overlap. The leadership of each committee should make a concerted attempt to coordinate their efforts. This way each committee can benefit from the expertise acquired by others and benefit the organization as a whole.

Table 9–3
*Cost of Advertising in the Media**

NEWSPAPERS

Name	*Circulation*	*Cost/Full Page*	*Cost/Column Inch*
Chicago Tribune (1 day — Sunday)	1,079,995	$ 13,670.00	$ 66.56
Chicago Sun-Times (1 day — Sunday)	667,850	3,551.00	59.22
Peoria Journal Star (1 day — Sunday)	118,157	1,637.44	9.52
Evanston Review (weekly)	18,698	399.00	Not available
Vandalia Leader (weekly)	6,900	258.00	1.50

*RADIO***

Station	*Audience*	*Cost/Minute*
WLS (Chicago)	1,632,900	$235.00
WBBM (Chicago)	961,300	225.00
WROK (Rockford)	137,000	25.00
WCVS (Springfield)	12,300	14.00

*TELEVISION****

Station	*Audience*****	*Cost*****
WMAQ (NBC — Chicago)	678,000	$2,000–$5,400 per 30 seconds
WGN (Independent — Chicago)	325,000	$120–$2,500 per minute
WCEE (Rockford)	90,000	$90–$200 per 30 seconds
WICS (Springfield)	60,000	$130–$220 per minute

*Figures are based on estimates obtained from organizations located in Illinois during July, 1977.
**Morning drive time: 5:30 a.m. — 10:00 a.m.
***Prime time: 6:30 p.m. — 10:00 p.m.
****Audience figures are averages for adults Monday through Friday. Both audience and cost vary depending upon the time, the day of the week, and the popularity of the program with which the advertisement is shown.

Table 9–4

Costs of Advertising by *Miscellaneous Means*

MISCELLANEOUS LITERATURE

	Chicago Printer	*Springfield Printer*
10,000 bumper stickers (approximately 5″ × 18″ colored background with colored ink)	$ 1,200.00	$ 1,200.00
5,000 posters (approximately 18″ × 24″, white background with two colors ink — words only, no art work)	637.50	875.00
100,000 brochures (8½″ × 11″ colored paper, 2 fold to fit #10 envelope, printed 2 sides in colored ink, 60# stock)	1,500.00	1,600.00
100,000 sample ballots (8½″ × 11″ colored paper, printed 1 side in colored ink, no folds)	760.00	1,175.00
Billboard Space (24 sheet size) per month	$1,100–$1,400	$150–$600

SPECIAL ITEMS

*100 car top signs (16″ × 48″ painted 2 sides in 2 colors paint), $18.00	$ 1,800.00
*5,000 celluloid badges (2 colors, 3″ in diameter), 22 cents each	1,100.00
**5,000 yard signs (lumber: 5,000 pieces of 1″ × 2′ × 3′), tacks estimated to cost approximately $2–$3, plus cost of posters to be tacked onto board	750.00

*These items can only be obtained from speciality companies or through speciality catalogs. Thus, the prices are nearly uniform throughout the country.

**Lumber generally is obtained from outside the state. Therefore, estimates would be approximately the same throughout Illinois.

PART 3
THE IMPLEMENTATION OF COURT UNIFICATION

CHAPTER X. IMPLEMENTING COURT UNIFICATION SYSTEMIC PROBLEMS AND REMEDIES

A. Introduction

Previous chapters have indentified the major political obstacles to achieving court unification and have suggested various strategies and tactics to surmount them. Despite the time, effort and expense required to overcome the impediments, the resulting constitutional provision, statute or rule mandating court unification represents merely a statement of policy. Standing alone, it is virtually meaningless. The policy will not be effective unless it it vigorously implemented.

Administrators, judges, legislators and others are likely to confront a number of problems in attempting to implement the elements of court unification. First they must decide what to do: what method of implementation should be used; how should it be procured; who should be responsible for executing it; when should the effort be undertaken? Second, they face the practical problems of putting their decisions into operation: how should the chosen method be structured to best achieve the intended result; what should be done if the effort miscarries; how should accomplishments be institutionalized?

The first step describes systemic problems. By definition these ubiquitous difficulties pervade every stage of the implementation process. Their impact is most dramatic, however, during the planning stage. The second step focuses on technical problems. These are the many unexpected problems which arise during the execution stage. They tend to be unique to each element of unification, and also unique to each state.

These categories are by no means discrete, but they do provide a coherent framework to analyze the numerous problems which implementation engenders. This chapter focuses on the systemic problems and, where possible, suggests solutions. Discussion of the technical problems is reserved for the following chapter.

B. Definition

Implementation, as used in this study, refers to both the methods and the process by which the unification policy decision is effectuated.[1]

In their study of the unsuccessful implementation of a late 1960's federal program to generate jobs for the chronic unemployed in Oakland, California, Jeffrey L. Pressman and Aaron B. Wildavsky define implementation as the process of interaction between the setting of goals and the actions geared to achieving them. However, they caution that implementation, by its very nature, is a dynamic process. It should not be restricted by a static definition which focuses attention on only one aspect of that process. In fact, they stress:

> Our working definition of implementation will do as a sketch of the earliest stages of the program, but the passage of time wreaks havoc with efforts to maintain tidy distinctions. As circumstances change, goals alter and initial conditions are subject to slippage. In the midst of action the distinction between the initial conditions and the subsequent chain of causality begins to erode. Once a program is underway implementers become responsible both for the initial conditions and for the objectives toward which they are supposed to lead.[2]

1. **The methods.** Court unification may be implemented by three different methods. The most important of these is enabling legislation, which specifies with precision the countless technicalities necessary to effect the policy. Other equally useful,

[1] In a broader sense, implementation has been defined as the means by which policies, plans, decisions or programs are translated into effective collective action. For further elaboration see Douglas R. Bunker, "Policy Sciences Perspectives on Implementation Processes," *Policy Sciences*, 3 (1972), 71, 72.

[2] Jeffrey L. Pressman and Aaron B. Wildavsky, *Implementation* (Berkeley: University of California Press, 1973), p. xvii.

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but less frequently used, methods of implementation include court rule and administrative order.[3]

A combination of these methods will likely provide the most effective means of implementing court unification. Legislation, for example, is visible, public and relatively permanent. Thus, statutes are an effective method of establishing the number, names, types and jurisdiction of courts, as well as qualifications for office. However, marshalling a bill through the legislature is a time consuming, cumbersome and often arduous process.

Court rules and administrative orders, on the other hand, are usually more flexible and responsive to immediate needs. As a Florida Supreme Court justice observed, "the legislature simply cannot anticipate all the problems and enact all the rules necessary." Rules and administrative orders, therefore, can be used most effectively to implement provisions which need frequent revision. Among those areas conducive to implementation by rule or administrative order are assignment of judges, designation of court boundaries and placement of auxiliary personnel.

2. **The process.**

a. *The model.* Implementation has been defined as a process which extends from policy formulation to goal attainment, or, in other words, from the adoption of "unification" to the actual restructured court system, where the supreme court exercises rule-making power, and so forth. The process of implementation involves making numerous decisions and taking action in accordance with those decisions. Different policies may generate different patterns of decision and action, and even the same policies may generate different patterns, depending on the plans developed to implement them and on how the target population receives those plans.

Douglas R. Bunker describes this process in slightly different terms. He suggests implementation is a set of "socio-political processes flowing from and anticipated by early phases of the policy process."[4] But, he states, "the process of moving toward realization of the policy content requires more than the tactical and administrative planning that is usually included as part of the policy proposal."[5] In fact, he notes, the necessary interplay between policy and implementation is emphasized by Y. Dror's statement that, "repolicymaking is needed during the execution of the policy."[6]

More concretely, this scheme suggests that once a policy decision is made, implementers must plan a course of action to effectuate the policy. Trial court consolidation, for example, may be implemented by any one of the following combinations: a court of general and a court of limited jurisdiction, with the jurisdiction of each being exclusive and nonoverlapping (Florida); a single general jurisdiction trial court with a limited jurisdiction division (Idaho and South Dakota); a single general jurisdiction trial court served by judges with general jurisdiction and by some judges with limited jurisdiction (Kansas). The policy in each case is the same, but the decisions and actions to implement the policy are radically different. By the same token, a constitutional provision or statute authorizing centralized administration requires different decisions and actions to implement it than one authorizing trial court consolidation.

If it were possible to draw a diagram of the decisions and actions needed to implement the three different alternatives to trial court consolidation, the diagrams would not resemble each other. Similarly, none of the three diagrams would resemble a diagram of the decisions and actions needed to implement centralized administration.

Furthermore, an example of the decisions and actions needed to implement centralized administration illustrates that even if hypothetical diagrams of a policy and the plan to implement it are similar, different implementers may execute the plan in different ways, thus causing the completed diagrams of the implementation process from policy formulation to goal attainment for the two policies to differ. The position of trial court administrator was used in both Idaho and Kentucky to coordinate centralized administration at the local level. In Idaho, the administrators were also district court magistrates. As a result, there was little conflict between administrators and judges. Conversely, in Kentucky, where the administrators were not judges, the position generated much antagonism, because trial judges resented the perceived encroachment on their

[3] It should also be noted that a few reforms associated with court unification are self-implementing. For example, neither a requirement that all judges devote full time to their judicial duties, nor a provision that vests rule-making power in the supreme court needs additional legislation or special rules to become operative. Self-implementing reforms are the exception rather than the rule, however. Most of the elements of court unification cannot become fully effective without implementing provisions.

[4] Bunker, *supra* note 1.

[5] *Ibid.*

[6] Y. Dror, *Public Policy Making Reexamined* (San Francisco: Chandler, 1968), quoted in *ibid.*

independence. In both these states, a similar plan to implement centralized administration had a different impact, which most likely caused the response of planners who would make the next decision to vary. Thus, even identity of policy and plans at the initial stage of the implementation process will not create identical decision and action patterns on the implementation continuum.

Although this model of implementation as a hypothetical diagram of decisions and actions illustrates, in part, the dynamics of the implementation process, it is nevertheless limited by its two-dimensional quality. Implementation decisions do not proceed in methodical fashion from plan to action and back to plan and again to action. Rather, in reality multiple decisions and actions usually occur simultaneously, each impacting on the other.

A sense of the multi-dimensional quality of the implementation process is conveyed in the systemic model developed by Thomas B. Smith.[7] Smith premises his discussion on the work of social scientists, notably Walter Buckley and Robert Chin, who believe that social change comes about as a result of a tension between a social system as it is and as it ought to be. Smith then introduces a model, developed by George K. Zollschan, which explains how tensions (Zollschan calls them "exigencies") induce societal changes. First, Zollschan defines an exigency as "a discrepancy (for a person) between a consciously or unconsciously desired or expected state of affairs and an actual situation."[8] Once this tension has been recognized, steps may be taken to eliminate it and to make the actual situation conform with the desired situation. Of course, only some of these steps will succeed on the first attempt. If they do succeed, Zollschan says, the desired changes have been institutionalized.[9]

After introducing Zollschan's model, Smith applies it to the policy implementation process with slightly altered dimensions. Smith emphasizes that efforts to change customary patterns of behavior often fail on the first attempt. He explains, "most societal tensions probably do not end in the institutionalization of new patterns and relationships, but only result in the creation of uncrystallized action patterns.[10] Smith stresses that implementation can ultimately succeed only if officials persist in their efforts to achieve desired goals, even if their initial attempts fail.

Smith's model thus realizes the multi-dimensional dynamics of the implementation process. Initially, implementers make certain planning decisions and attempt to institute them. Some of these decisions take hold and succeed; others fail completely; still others vacillate between success and failure. Decisions which are unsuccessful or partially successful must be remedied or improved upon, while initial successes must be maintained and augmented. All of these decision and action points, stretching along the continuum from policy formulation to goal attainment, comprise the implementation process.

b. *A case study.* An example from Kentucky vividly illustrates the dynamics of the implementation process at the systemic level. The new judicial article to the Kentucky Constitution, which was adopted in 1975, provides:

> The judicial power of the Commonwealth shall be vested exclusively in one Court of Justice which shall be divided into a Supreme Court, a Court of Appeals, a trial court of general jurisdiction known as the Circuit Court and a trial court of limited jurisdiction known as the District Court. The court shall constitute a unified judicial system for operation and administration.[11]

This provision authorized the transformation of the existing court structure which consisted of the court of appeals (the court of last resort), the circuit court (the general jurisdiction trial court) and a morass of limited jurisdiction trial courts with overlapping jurisdiction.[12] The legislature determined that its mandate under this provision was to convert the court of appeals into the supreme court, to create an intermediate appellate court, to create a district court and to abolish the multifarious limited jurisdiction trial courts.

Although all of these changes necessitated extensive legislation, a separate provision of the bill authorizing the new article specified that all provisions relating to the supreme court, the court of

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[7] This model appears in Thomas B. Smith, "The Policy Implementation Process," *Policy Sciences*, 4 (1973), 197–209.

[8] George K. Zollschan, "Working Papers on the Theory of Institutionalization," in George K. Zollschan and Walter Hirsch, eds., *Explorations in Social Change* (Boston: Houghton Mifflin, 1967), quoted in *ibid.*, at 201.

[9] *Ibid.* Zollschan defines institutionalization as "the change in old, stable crystallized patterns of interaction and/or the substitution of newly crystallized patterns for old patterns." *Ibid.*

[10] Smith, *supra* note 7, at 202.

[11] *Kentucky Const.*, sec. 109.

[12] The principal limited jurisdiction trial courts which were abolished by the 1975 judicial article were the county, justice, police and quarterly courts.

appeals and the circuit court would be effective January 1, 1976, less than 60 days after the passage of the article.[13] However, the Kentucky legislature is in session a mere 60 days every two years, and it was not scheduled to convene until spring.

Nevertheless, on January 1, 1976, Kentucky judiciary was governed by a constitution, which mandated a new judicial system and inconsistent statutory law, both of which related to the former structure and remained effective until properly repealed. Implementation was needed to eliminate this discrepancy.[14]

The exigencies of the situation demanded that implementation be accomplished with great dispatch.[15] Therefore, Governor Julian M. Carroll delegated primary drafting responsibility to the Office of Judicial Planning, the predecessor of the Administrative Office of the Courts. To provide drafters with desperately needed information on the status of the existing system as well as proposals for change in accord with the new article, the Governor also appointed an ad hoc committee of public officials and concerned citizens. Additionally, a number of circuit judges advised the drafters.

The drafting groups worked closely with the legislative research commission of the general assembly. Outlines and initial drafts were circulated among the drafting groups, and comments were solicited from everyone involved in the process.

To expedite legislative consideration of the proposals, the house and senate judiciary committees divided into two groups. One group considered implementation of the new article, while the other considered technical court matters.

Before the proposals ever reached the floor of the legislature, the implementating process had generated extensive gathering of data, discussion of proposals and revision of drafts. When the legislature finally addressed the package in the spring, it passed with a minimum of modification.

Another step in the process was to determine the extent of legislation required to render the new article operative. In its regular 1976 session, the legislature repealed Chapter 21 of the Kentucky Revised Statutes (KRS) which related to the former court of appeals, and replaced it with KRS Chapter 22, which converted the court of appeals into the supreme court. Although the new chapter retained a number of substantive provisions from the former law, it was necessary to change names, titles, and some functions and responsibilities.

Additionally, a number of new provisions were added to the chapter governing the supreme court. For example, one new provision required publication of all its opinions, and another granted the court discretion to specify which opinions of the court of appeals or lower courts shall be published. A third provision authorized the judiciary, upon approval of the chief justice, to request courtroom security assistance from the state police. Two final provisions authorized the payment of retired justices or judges who were recalled into temporary service and granted the state bar additional authority to collect evidence in matters of attorney discipline.

Matters relating to the jurisdiction of the supreme court, appointment of commissioners and other court personnel, rules of practice and procedure for the judiciary and admission and discipline of members of the bar were left to implementation by court rule.

To establish the court of appeals the legislature added an entirely new chapter to KRS. This chapter was modeled after the chapter creating the supreme court, although its provisions respecting titles and jurisdictions differed.

The trial court of general jurisdiction, the circuit court, remained relatively unchanged under the new judicial article, but a number of statutory provisions were required merely to coordinate the circuit court with the new district court. Consequently, the legislature repealed Chapters 23 and 24 of the KRS and replaced them with Chapters 23A and 24A. Most of the provisions establishing circuit boundaries and number of judges remained unchanged in the new statutes. However, the jurisdiction of the circuit court was altered slightly in order to eliminate all concurrent jurisdiction, except felony examining trials between the circuit and district courts. Additionally, several new provisions were required to make the circuit court a court of continuous session.

The implementation process for the district court required considerably more time, study and analysis, because the new court completely replaced a

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[13] Acts of the Kentucky General Assembly, Ch. 84 (S.B. 183), sec. 3 (1974). By the terms of a corresponding section, implementation of the district court could be temporarily deferred because this court ould not come into existence until January, 1978. See Acts of the Kentucky General Assembly, Ch. 84 (S.B. 183), sec. 2(a) (1974).

[14] This example illustrates the effectiveness of the Zollschan-Smith model in explaining the dynamics of the implementation process. See Smith, *supra* note 7.

[15] The narrative of the process of drafting implementing legislation has been condensed from Staff of the Administrative Office of the Courts, "Kentucky's New Court System: An Overview," *Kentucky Bench and Bar*, 41 (April, 1977), 13, 31–33.

complicated maze of limited jurisdiction trial courts. When drafting the new judicial article, the legislature wisely provided time to implement the district court by authorizing its effective date to be deferred for two years.

Before implementing legislation for the district courts could be drafted, a number of preliminary issues had to be resolved. For example, the legislature had to determine the jurisdiction and location of the district courts and the number, salaries and time for election of the district judges. It also had to determine the salaries and duties of auxiliary court personnel, including clerks, court reporters and trial commissioners. Other issues to be addressed included: the amount and disposition of filing fees, fines, forfeitures and costs; the availability of court facilities and courtroom security and the extension of the jury system to the district courts.[16]

To resolve these issues, the governor reconvened the ad hoc committee in July, 1976. Additionally, a number of other advisory groups volunteered their expertise. The Administrative Office of the Courts appointed an advisory committee of lower court judges, circuit clerks and attorneys. This committee subdivided into two groups; one studied budget and operations; and the other studied legislation and rules. Additionally, the attorney general's office created a special consumers committee to study the feasibility of a small claims division for the new court and to draft the necessary enabling legislation. Still another advisory group considered the impact of the new article on the juvenile justice system and drafted legislation relating to juvenile jurisdiction.

Additionally, in order to resolve the numerous problems regarding the staffing and location of the courts, the Administrative Office of the Courts engaged the consulting services of Arthur Young & Company. The Arthur Young staff conducted a weighted case load study to project a satisfactory balance between the number of personnel and amount of time required to process cases expeditiously. The administrative office, in turn, relied upon the results of this study in their legislative recommendations.

As they had done earlier in the year, all groups maintained close contact with the legislative committees during the drafting stage. Initial drafts were proposed, debated, and revised. Finally, in a special session of the legislature, convened in December, 1976, the enabling legislation was considered and passed.

[16] *Ibid.*, at 13.

Although the new supreme court and court of appeals have been in existence since January, 1976, and the district courts are slated to become operative in January, 1978, the implementation process is not yet complete. Inadequacies or inconsistencies in the enabling legislation will have to be adjusted by amendatory laws. Other transition difficulties may be remedied by rule or administrative order. However, many of the difficulties associated with the novelty of the system and public unfamiliarity with it will simply require a number of years to elapse before the implementation process transforms the Kentucky judiciary into the unified court of justice envisioned and mandated by the constitution.

C. Specific Problems and Remedies

The Kentucky example clearly demonstrates that the implementation process is neither static nor monolithic. It is a process which involves diverse political actors and which spans an extended period of time. Kentucky also illustrates that the implementation stage is critical to the accomplishment of intended results. Without implementation, it would be almost impossible to bridge the hiatus between policy formulation and policy performance.

Social and political scientists who have studied implementation agree that it is important in effecting a smooth transition between stating of goals and bringing them into being. Although it is true that programs may fail because of unnecessarily high expectations or inadequate policies, it is equally true that programs may fail because of faulty implementation.[17] Indeed, James D. Sorg asserts that our interest in implementation stems from studies which suggest that government policies may fail if they are not implemented completely or as planned.[18]

The observations of Pressman, Wildavsky and Sorg are corroborated by Richard Rose. In his study of the attempted implementation of management by objectives within the Office of Management and Budget, Rose states:

> Implementation does not guarantee a program's success; it is merely a precondition of success. In analytic terms implementation is an intervening variable in the policy process, which

[17] Pressman and Wildavsky, *supra* note 2, pp. xvi–xvii.

[18] James D. Sorg, "A Typology of Individual Behaviors in Implementation Situations," (a paper presented at the 30th National Conference on Public Administration of the American Society for Public Administration, March 30–April 2, 1977), p. 1.

> starts with the statement of policy intentions or aspirations and moves through program choice to implementation and, finally to an evaluation of the consequences of what has been done.[19]

As Rose explains, if the consequences of a program differ from the expectations of those who sponsored it, this discrepancy is a function of implementation. "The consequences immediately reflect what government has done to implement previous aspirations and expectations," he asserts.[20] Drawing upon Pressman and Wildavsky, Rose recommends that policy makers consider implementation issues as they are formulating policy. This will help to eliminate problems encountered in implementing policies. However, he adds:

> If all the difficulties could be foreseen in advance, then often a program would not be started. Implementation is not only a matter of forging "links in a causal chain so as to obtain the desired results:" it is more a matter of learning by doing — including learning what to do when the links are not closed and the chain breaks.[21]

Because the implementation stage is crucial to effecting social or political change, our ability to implement policies successfully may be improved if we understand the problems inherent in the implementation process.

The Kentucky case history alluded indirectly to a number of systemic implementation problems. At this point we will address them directly.

1. **Lack of information.** Previous chapters have indicated that a dearth of information can be a serious impediment to attaining a mandate for court unification. Even after a constitutional provision, statute or rule authorizes court unification, implementation may be seriously hampered by a lack of information.

For example, as the Kentucky situation illustrates, the 1975 judicial article authorized the creation of two entirely new courts: the intermediate court of appeals and the district court. In both cases, but particularly for the district court, implementers had to generate information to determine new court locations and facilities, numbers of judges and support staff, salaries, and duties for all judicial personnel. Very little data from the former system were available to assist them in addressing these issues. Furthermore, even where information could be located, it was usually inadequate, incomplete, or extremely parochial. Most localities collected different data by different procedures, and the information could not be compared from one county to the next.

As a result, both the legislature and the Administrative Office of the Courts were often forced to act in an information void. The unsatisfactory results which eventuated from decisions made upon little or no knowledge were expressed by one involved participant who said, "The Administrative Office did not know what they were doing. AOC was unprepared."

Implementers in Idaho also lacked crucial information. They attempted to collect data on the limited jurisdiction trial courts in order to construct an information base from which to establish the magistrate courts. Although providing data to the implementers was purely voluntary, most localities cooperated willingly. Nevertheless, as one participant bemoaned, "The statistics were totally unreliable. There were so many omitted cases that it was impossible to make comparisons."

Sources in Kansas, South Dakota, and Alabama have expressed similar frustration with the unavailability of relevant data upon which to restructure their judicial systems. However, this is hardly an insurmountable problem. To cope with the lack of badly needed information, most states have authorized consulting firms to conduct a special study of their judiciary. The results obtained by the court studies have enabled implementers to ascertain the specific measures necessary to implement unification.[22]

As noted previously, Kentucky engaged the consulting services of Arthur Young & Company to conduct a weighted case load study for the new district courts. Kentucky also used the American University Institute for Advanced Studies in Justice to provide technical assistance; Connecticut requested the National Center for State Courts to perform background research on the juvenile court

[19] Richard Rose, "Implementation and Evaporation: The Record of MBO," *Public Administration Review*, 37 (January/February, 1977), 64, 66.

[20] *Ibid.*

[21] *Ibid.*, quoting Pressman and Wildavsky, *supra* note 2.

[22] It must be cautioned that a court study can be conducted at any stage of the reform process: before any reforms are proposed; prior to implementation; or after unification. Although the discussion of court studies in the text concentrates on studies conducted to gather information needed for implementation, this discussion is equally applicable to court studies conducted at other stages in the reform process.

system; Alabama engaged Ernst & Ernst to conduct a fee projection study; Idaho employed Touche Ross & Co. to review the implementation legislation, with emphasis upon the needs of the administrative office; and South Dakota contracted with the Public Administration Service of Chicago to assist in job reclassification and budget standardization.[23]

The experiences of the states visited strongly suggest that problems arising from lack of information can be thwarted by a comprehensive court study undertaken to obtain information necessary for implementation. Of course, a court study must be properly conducted and addressed to the problems at issue to provide the information implementers require.

In a recent article Harry O. Lawson, formerly State Court Administrator of Colorado, makes several suggestions about how to design and organize a successful court study.[24] Lawson isolates four factors which contribute to the successful design of a court study: study phases; overall study responsibilities; study staffing requirements; and study scope and content. He then amplifies each of these categories with additional suggestions.

His first recommendation is that the study be conducted in three separate phases which will define and delimit its scope. The first phase should consist of a limited technical review of existing statutes and rules. This will enable implementers to determine which statutes and rules must be repealed and which ones can be amended to conform to the requirements of the new judicial system. In the second phase the study group should identify all areas of fundamental change where there is agreement on how implementation should be accomplished. For example, he suggests implementers may agree upon the court rules and legislation required to define the administrative authority of the supreme court. The final phase of the study will address areas where doubt, controversy or lack of information impede successful implementation. This phase involves an inventory and analysis of the present system, plans for future needs and development of recommendations for change and implementation.

According to Lawson's second recommendation, responsibility for conducting the study should be vested in a commission composed of representatives from the legislature, the judiciary, the executive, the press and concerned citizens. By drawing the membership of this commission from as broad a base as possible, Lawson believes that systemic antagonism to implementation can be reduced. Additionally, Lawson contemplates that this commission will become institutionalized as a semi-permanent body that continually studies the court system to recommend appropriate changes.

A third recommendation stresses the importance of using in-house staff to conduct the court study. Lawson envisages several unique advantages which can be obtained from employing a local research staff. The staff would already be aware of the needs and problems of the system. It also "would have more credibility with the study commission than outside experts, who would spend only limited time in the state, make their recommendations, and leave."[25] The sensitivity to the system's problems, which the staff would gain, would provide excellent training for future employment in the court administrator's office. Finally, the study commission would have more control over the scope and content of the study by employing an in-house staff than by engaging an outside consulting firm.

Fourth, scope and content can range across a number of different topics. Lawson outlines seven topics and recommends issues relevant to each topic. First, the commission may wish to consider the problems of the lower and special courts. For example, it could analyze their existing organization and operation, identify problem areas, such as case backlog, and make plans for improvements.

Another area of concern is budget and finance. The commission may wish to assess the cost of operating the system, determine new procedures for budgeting and accounting and establish fiscal priorities for the judiciary.

Records management is another fertile topic for commission study. The commission may inventory the types and variety of records and equipment, the record-keeping system, and the procedures for storing or destroying records. Based on this information it may recommend new, uniform procedures for records management. Additionally, the commission may monitor case flow. In turn, it may evaluate the movement of cases through the courts, as well as judge and case load ratios. Ultimately it may develop performance standards for courts to follow.

A study of the information system will provide data on case processing and financial administration.

[23] Of all the states visited, only New York expressed dissatisfaction with the consultant that was employed.

[24] Harry Lawson's suggestions have been excerpted from, Harry O. Lawson, "Commentary on the Process of Change," *Arizona State Law Journal*, 1974 (1974), 627–637.

[25] *Ibid.*, at 636.

To facilitate decision-making in this area, the commission should concentrate on determining the data needed by an information system; the feasibility and limitations of using an automated system; the merits of using such a system for case monitoring as well as fiscal administration; and the type of system which best serves the needs of the state.

Court facilities provide a sixth topic for commission study. The commission may inventory the existing facilities, determine their adequacy, assess future needs and develop long range plans.

Finally the commission may address problems relating to auxiliary court personnel. Issues relevant to this topic include: the number and qualifications of personnel; the salaries and fringe benefits to provide; and the possibility of incorporating decisions about both these issues into a statewide personnel plan.

Although it is possible that information for some of these issues may be available prior to a court study, Lawson asserts that detailed data regarding these issues, collected from a court study or otherwise, will greatly enhance a state's ability to implement court unification.

Lack of reporting or inconsistent reporting by many localities may prevent implementers from obtaining the data they require to address implementation problems. Nevertheless, conducting the type of court study suggested by Lawson will provide the data necessary to facilitate informed drafting of legislation, rules and orders. Additionally, the type of court study process Lawson recommends will help to resolve a second systemic problem that many implementers confront: coordination and cooperation.

2. **Insufficient coordination and cooperation.** Coordination and cooperation problems arise at two different levels: external and internal. The external level involves the delicate balance of power which exists among the three branches of government. Court unification generally imparts additional authority to the judiciary vis-a-vis the executive and legislative branches. The perceived or actual diminution of legislative and executive authority over the judicial branch, particularly in the area of funding, tends to make actors in both of these branches reluctant to acquiesce in implementation of court unification efforts.[26]

Internal coordination problems arise because court unification also alters lines of power and authority within the judiciary. Generally, the supreme court and the state court administrator's office acquire considerable administrative authority at the expense of trial judges and lower court personnel. The apprehension of these individuals over loss of authority and potential loss of employment makes them antagonistic to unification efforts. Implementers must make a concerted effort to elicit their cooperation and support if implementation is to succeed.[27]

Lawson's suggestion that a successful court study should involve a wide cross-section of political actors and interested citizens provides a partial response to problems of systemic coordination. This thesis is also generally accepted in the literature of implementation.[28]

Professor Neely Gardner's model of strategies for change offers insight into the need for local involvement in the process of change.[29] Gardner analyzes the court study process utilizing a typology of change strategies proposed by Robert Chin and Kenneth D. Benne. Chin and Benne suggest that change strategies can be divided into three classifications: power-coercive; empirical-rational; and normative-re-educative. Power-coercive strategies are those which involve an element of compulsion, either by fiat, suasion or manipulation. Although Gardner concedes power-coercive strategies can come from a legitimate source of power, such as the legislature or the courts, and that they need not be oppressive if the "quality" of the democratic process is preserved, he suggests that these strategies are not effective for intra-institutional change. As he states:

> Such strategies do often place a strain on the system by designating adversaries, and developing situations where some win and some

[26] Harry O. Lawson, "Administering a Unified Court System," (an address presented to the Joint Session of the Conference of Chief Justices and National Conference of Court Administrative Officers, St. Louis, Missouri, August 6, 1970). See also Chapter 4.

[27] *Ibid.*

[28] Allan Ashman, "Planning and Organizing a Court Study: Initiating the Change Process," in Harvey Solomon, *Court Study Process,* (Denver: Institute for Court Management, 1975), pp. 97–106; Neely Gardner, "Implementation: The Process of Change," in Harvey Solomon, *Court Study Process,* (Denver: Institute for Court Management, 1975), pp. 167–203; Neal Gross, Joseph B. Giaquinta, Marilyn Bernstein, *Implementing Organizational Innovations: A Sociological Analysis of Planned Educational Change* (New York, Basic Books, 1971); Pressman and Wildavsky, *supra* note 2; and Harvey Solomon, "A Guide to Conducting Court Studies," in Harvey Solomon, *Court Study Process* (Denver: Institute for Court Management, 1975), pp. 1–38.

[29] Gardner, *supra* note 28.

lose. When the losers are colleagues, friends, or neighbors, losing can be a costly process. Inevitably there is a loss of motivation, not to mention the loss of energy expended in the win-lose effort.[30]

The second type of change strategies, empirical-rational strategies, utilizes empirical research and data which are generally collected by an outside consulting firm. Although Professor Gardner acknowledges the utility of such studies, he cautions that, "Empirical-rational approaches seem to suffer most because of the passive role of the recipient, which impedes the diffusion of innovation."[31]

Gardner suggests that strategies which command institutional change by fiat or attempt to induce change solely from external sources will be considerably less effective than strategies which combine outside expertise with client involvement. He advocates the normative-re-educative approach, combined with client involvement techniques, such as action research, action training and organizational development. He believes these are the most effective means of accomplishing intra-institutional change. As he asserts:

> It is by assisting in collecting the data, defining the problem, and experimenting with possible solutions that people learn and change. Therefore, an effective change process improves the problem-solving capabilities of the system. And if the process implies changing, rather than simply one discrete and final change, each cycle of change provides for reevaluation and further change. This process releases the energy and fosters the growth of the people in the system.[32]

In operational terms, Gardner's theory suggests that during the initial stages of the process of change, most system participants are likely to be content with the *status quo* and antagonistic to innovation. The way to neutralize their opposition and even to encourage their cooperation is to involve them in the process of change and not to impose it from outside or from a higher authority.

3. **Inadequate funds.** Financial difficulties represent a third systemic problem. They permeate many levels of the implementation process. Initially, a court study, whether conducted by an outside consulting firm, a task force of state citizens or a combination of both, is costly.

Secondly, each of the elements of unification entails new and additional costs. Transcription equipment, new or remodeled facilities, computer systems and increased personnel costs all place a strain on limited state or local resources.

The cost of court unification can be reduced or minimized by any one of several means. First, implementers may apply for federal funds from the Law Enforcement Assistance Administration (LEAA) or to private funding agencies. This method was used in several of the states selected for on-site visits. Colorado and Idaho received large grants from LEAA to finance their computer systems. Shawnee County, Kansas, received an LEAA grant to purchase electronic transcription equipment. Alabama and Kentucky also used matching federal funds to finance their transition periods.

Although outside funds prove very useful in the early stages of implementation, ultimately the grants expire and alternative methods of meeting expenses must be secured. At a later date, however, expense may not be an excessively burdensome problem. The state (or county where state financing does not accompany other elements of unification) will have had a number of years to adjust its budget to the new system. Indeed, the government may have increased fees and transferred them to the state treasury to allow for increased expenditures.

Moreover, certain start-up costs represent a primary expense of unification. Once these expenditures are disposed of, maintenance costs may remain the same or even decrease. For example, although the equipment for the Kansas tape system was expensive, implementers expect maintenance to cost less than it would cost to hire additional court reporters to handle burgeoning case filings. Additionally, the elimination of *de novo* trials is expected to decrease expenses. Similarly, streamlining personnel systems and better administration may decrease costs. During the ten years from 1965 to 1975, Colorado has added only 37 percent more personnel to handle a 78 percent increase in case filings. A New York administrator expects similar results for his state.

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[30] *Ibid.*, p. 180.

[31] *Ibid.*, p. 182.

[32] *Ibid.* It should be noted that Action Research, Action Training and Organizational Development are all methods of executing the normative-re-educative change strategy. Essentially, these posit involve client training, education and experimentation as methods to "create" client understanding, acceptance and adaptation to change. The Gardner article contains a more complete exposition of these change techniques.

Nevertheless, as the New Yorker cautioned, with inflation, new programs and the creation of additional positions in the judiciary, the total cost may increase. However, as one individual in Colorado reported, "Overall it will probably cost more money. Upgrading costs are analogous to the city manager system. There are savings in some areas, but professionalism costs. The results are better, however."

4. **Negative attitude of implementer.** Implementation usually requires a special set of actors to effect the transition between policy formulation and goal attainment. Although, conceivably, this set could be co-extensive with the set of policy makers, the difference in the nature of their responsibilities generally distinguishes the two groups.

The literature of implementation suggests that a negative or even neutral attitude of the person or group bearing primary responsibility for implementing a policy represents a major obstacle to achieving policy objectives. This problem is exacerbated when the implementing agent does not participate in the decisional process and does not fully comprehend the implications of the policy he is charged with implementing.

James D. Sorg analyzes the effect that an implementer can have on policy realization.[33] First, an implementer may either intend to implement a policy or intend not to implement it. Second, the implementer's intention will result in either implementing behavior or non-implementing behavior. The former represents successful implementation; the latter applies to those situations where a policy is not effected. A policy may fail either because an implementer, who intends to implement it errs, or because the implementer does not intend to implement it in the first place. As Sorg explains:

> For lack of a more euphonious term, I call these non-implementing behaviors. These are behaviors of the intended implementer that are either incorrect attempts to carry out the intended course of action, or attempts to prevent the policy from being implemented, or refusals to carry out the policy.[34]

Sorg's typology focuses on the non-implementing behaviors. He hypothesizes that by understanding the manifestation of these behaviors, policy proponents can take proper corrective action to achieve intended goals.

[33] Sorg, *supra* note 18.

[34] *Ibid.*, p. 4.

Douglas R. Bunker's study complements that of James Sorg.[35] He suggests that effective implementation is a function of three variables: the extent to which the implementing agent supports a policy (issue agreement); the importance of the issue to the agent (issue salience); and the available resources which allow the agent to implement the policy (policy resources). Where the implementer is opposed to the policy he advises, policy proponents should make every effort to prevent him from obstructing implementation. On the other hand, where the implementer agrees with the policy but does not consider it salient, policy proponents should attempt to increase the centrality of the issue to the actor so that he will facilitate implementation. In still other circumstances, the actor may agree with the policy and consider it salient, but he may lack the resources to effect it. In this situation, policy proponents should attempt to increase the resources available to the implementer to secure effective implementation.

Of course, it is always possible to replace a reluctant implementer with one who is more enthusiastic, but if this alternative is used too frequently, it will result in inefficient use of personnel.

These typologies may prove useful to policy proponents in states where implementers are indifferent or recalcitrant. However, the field investigations suggest that with court unification, the theory may be somewhat divorced from reality, or it may apply with more force to related actors who do not have primary implementing responsibility.

The primary implementing agent in the states visited was almost uniformly the state court administrator's office.[36] Members of this office were usually involved in the initial campaign for court unification. Additionally, they often assisted in drafting the implementing legislation and were among the states' strongest proponents of court unification. Thus, they initiated implementation efforts enthusiastically.

However, in the states visited, secondary implementing agents were considerably more reluctant than the primary implementers. For example, in most states trial judges and court clerks, who had a vested interest in the status quo, were initially reluctant to comply with the implementation effort. Since the cooperation of these individuals is crucial to the success of the implementation process,

[35] See Bunker, *supra* note 1.

[36] In Florida the Judicial Council took charge of implementing until the Office of the State Courts' Administrator was created.

Bunker and Sorg's suggestions for behavior modification may assist implementation at this level. Additionally, the suggestions for decentralized assimilation of system participants, which were discussed previously, provide a means of encouraging their cooperation and support. Finally, in virtually all the states visited, system participants indicated that the negative attitude of secondary implementers posed only a temporary problem, which dissipated with the passage of time. This problem of timing represents a final systemic problem.

5. **Inadequate lead time.** Another systemic implementation problem, which accompanies the four problems previously discussed, is inadequate lead time. Insufficient time often results in hasty planning, and improvident planning leads to faulty implementation. The net result is a poorly articulated program which does not accomplish its intended purpose.

In a number of states studied, participants complained that there was not enough time to weigh alternatives. Additional problems arose because a number of measures were instituted very rapidly, before campaigns to educate system participants were planned. The resulting disorientation engendered resistance and resentment, which might have been avoided by less precipitous implementation. "The problem," as one Idaho participant commented, "was that no one was prepared."

Many of the difficulties created by insufficient lead time can be avoided by incremental implementation and preliminary planning. In the typology of the implementation process developed by Donald S. Van Meter and Carl E. Van Horn, both of these factors correlate highly with effective implementation. According to Van Meter and Van Horn, implementation is facilitated when programs require minor changes and when participants agree on objectives. They assert that, "programs that require major change frequently lead to goal conflict on the part of relevant actors, while goal consensus is usually highest where little change is involved."[37] Implementing minor changes over a period of time (incrementalism) allows for preliminary planning which enhances goal consensus. Goal consensus in turn allows implementation to proceed more smoothly. Thus, if the typology is valid, judicious use of these devices will reduce problems created by inadequate lead time and will enhance implementation efforts.

[37] Donald S. Van Meter and Carl E. Van Horn, "The Policy Implementation Process: A Conceptual Framework," *Administration and Society*, 6 (February, 1975), 445, 460.

Incrementalism functions as an implementation technique in several different capacities. One form of incrementalism permits unification to be introduced in stages. For example, Alabama and South Dakota have staggered implementation of state financing over a three year period; New York has allowed four years. Although the methods of incrementalism vary from the chargeback, utilized in South Dakota and New York, to the increased proportionate share, in Alabama, the net result is that during each year of the implementation process the state becomes responsible for a larger share of the judicial budget.

Another version of incrementalism delays institution of the reform for a period of time. In Kentucky, it will be recalled, the judicial article creating the district court was approved in 1975. The legislature enacted implementing legislation in 1976. However, the district court does not become operative until January, 1978. Similarly, in Connecticut, a 1976 statute authorized the merger of the juvenile and common pleas court into the superior court. However, this merger will not be effectuated until July, 1978.

Regardless of the form incrementalism assumes, staggered implementation allows additional time for preliminary planning. Planning is likely to enhance goal consensus, the second of the Van Meter–Van Horn factors which correlates with effective implementation.

Planning at this stage can be differentiated from the court study process. At this point implementers must use the information from the court study to develop effective implementation techiques. This planning not only allows implementation techniques to be tailored to the needs of an individual judicial system, it also enables system participants to become acclimated to the new system through education and media campaigns. Combined with incrementalism, preliminary planning minimizes the disruptive effects of unification reforms. "A lot can be avoided by pre-planning," commented an Idaho implementer. "Planning is a necessary prerequisite. Planning and an administrative office are extremely important, especially for continuity."

Although incrementalism and planning will resolve a number of the systemic problems created by temporal pressures, many remaining problems will simply dissipate with the passage of time. The adage, "Time heals all wounds," is appropriate. As time passes, novelty becomes routine, and discomfiture eases into complacency.

Colorado, which has had fifteen years of experience with a unified court system, illustrates the

process of acclimatization. Initially, court clerks opposed implementation of centralized administration and in particular, the state wide reporting system. The new system entailed more work for them. During the early stages of implementation, their resistance to filing the requisite reports was only overcome by constant administrative pressure.

Spurred by their clerks, many trial judges also resisted implementation at the outset. The defects in the newly instituted computer system and the difficulty of adjusting to new forms and procedures impelled the system's critics to point out its deficiencies.

However, the state court administrator's office labored to rectify the problems. In time, the system began to function more smoothly. From the perspective of hindsight, Colorado system participants now agree that opposition subsides over time, particularly as the initial defects are corrected and orientation programs take effect. Additionally, in time, recalcitrant employees resign or retire, and the new employees who are hired have less readjustment to make. "It takes anywhere from five to seven years to get the job done," advises Colorado's former State Court Administrator, Harry O. Lawson.

In sum, implementers may confront at least five different types of systemic problems: lack of information; insufficient coordination and cooperation; inadequate funds; negative attitudes of the implementer; and inadequate lead time. Although these problems can easily confound an implementation effort, they are not insurmountable. For example, a properly conducted court study will obtain critical information which implementers need to fashion appropriate statutes, rules or orders. Coordination and cooperation problems can be reduced by maximizing the role of system participants, even where outside expertise is also required. Funding can be obtained from federal or private sources, and additionally, costs may decrease over time. Primary implementers have usually been supportive of unification, and secondary implementers may be won over by tactful coordinating efforts. Finally, incrementalism, adequate planning and lapse of time may resolve problems created by inadequate lead time.

CHAPTER XI. IMPLEMENTING COURT UNIFICATION TECHNICAL PROBLEMS AND REMEDIES

A. Introduction

A state may apply all the correct solutions to systemic problems and still confront a number of difficulties implementing court unification. The problems arise because regardless how carefully planners study the system, how much they involve system participants, how much money is appropriated for their use, and how circumspectly they proceed, many of the problems which arise at the technical level simply cannot be foreseen. Pressman and Wildavsky's study of implementation illustrates how policies can founder as they become enmeshed in a labyrinth of technical difficulties. In their book they emphasize that despite the commitment and concern of policy makers, unforeseen "technical details" make implementation infinitely more difficult than planners anticipate. As a result, they assert:

> Promises can create hope, but unfulfilled promises can lead to disillusionment and frustration. By concentrating on the implementation of programs, as well as their initiation, we should be able to increase the probability that policy promises will be realized. Fewer promises may be made in view of a heightened awareness of the obstacles to their fulfillment, but more of them should be kept.[1]

Our study of implementation in the eleven states selected for in-depth investigation accords with Pressman and Wildavsky's thesis. Technical difficulties plagued system participants as they attempted to implement court unification. Moreover, although many of the difficulties experienced in some states were paralleled in others, invariably the states studied lacked the resources or interest to learn from comparable experiences elsewhere.

[1] Jeffrey L. Pressman and Aaron B. Wildavsky, *Implementation* (Berkeley: University of California Press, 1973), p. 6.

Certainly, as Pressman and Wildavsky suggest, an understanding of the potential for setbacks will result in less ambitious predictions about program or policy performance. Indeed, this may be the inevitable result of a study about implementation failures. Yet, if the only value of a study of implementation is to permit qualifications about subsequent performance, neither implementers nor policy makers would be highly motivated towards goal attainment. Presumably, part of the value of a study such as this is to provide implementers with information which enables them to avoid the pitfalls of those who have preceded them.

B. Trial Court Consolidation

1. **Case filing and processing.** The creation, elimination or merger of various courts, which is inherent in the concept of trial court consolidation, alters the places, methods and procedures of filing and processing cases. A major problem of implementing these changes is to effect a smooth transition between the old system and the new one.

a. *Effect on citizens.* Court consolidation, with its accompanying revampment of jurisdictional authority may impact heavily upon citizens who use the courts. Suddenly they must file cases in new courts or before new judges. Often they must travel to new locations to do so. Two Kentucky judges remarked that changes in the titles of courts was causing confusion among the citizens. At the time of the comments, the Kentucky Court of Appeals had become the Supreme Court and a new Court of Appeals had been created. It is reasonable to assume that this confusion will be aggravated in January, 1978, when the district court replaces the multiplicity of limited jurisdiction trial courts. One possible means by which this problem may be overcome is publicizing the changes in the news media.

Another problem for Kentucky citizens is the loss of local judges. As one Kentucky implementer explained, "Judges are an integral part of the political

balance of power because a judgeship is a local institution. A major political problem is the emotionalism of local people resulting from the loss of local judges."

Idaho citizens experienced similar difficulties. Before unification the judicial system consisted of 266 limited jurisdiction trial courts: probate; JP; police and municipal. Every court had two or three judges, regardless of the size or population of the county in which it was located. Trial court consolidation reduced the number of magistrates to 60.[2] An Idaho interviewee described the effect of the consolidation on the citizens: "Initially there was great dissatisfaction with the legislature because the courts were taken away from the people. Citizens feel they have lost contact with the courts."

Idaho administrators devised a solution to combat feelings of citizen alienation. Idaho magistrates are required to travel within their county so that the judiciary maintains contact with local areas.

b. *Transfer of pending cases.* When new courts are created, jurisdiction is altered and old courts are eliminated. To complete the transition, implementers must transfer pending cases and insure that new cases are filed in the proper court.

Initially implementers must determine what cases will transfer. Of course, this determination hinges to some extent on the type of consolidation that has occurred. Often, no problem will arise. In Kentucky, where the jurisdiction of the circuit court was not affected by the changes transpiring in the limited jurisdiction trial courts, no problem of transferring pending cases arose. Similarly, Colorado had few difficulties, because JP courts were non-record courts with no case files to transfer and because there was enough lead time to allow a smooth transfer of probate, juvenile, mental health and civil cases from the old county court to the district court.

However, where consolidation necessitates transfer of cases, implementers must determine which cases will transfer. This problem was particularly acute in Kentucky where the four limited and specialized jurisdiction trial courts will become part of the district court system in January, 1978. Although consolidation is due to become effective soon, it has been urged that jurisdiction of juvenile and probate matters remain in the county court. "It was only after much thought and misgiving," explained a Kentucky implementer, "that these requests were rejected." These matters will be heard in the district court rather than in any of the specialized courts.

Where it was necessary to transfer pending cases to another court, states confronted a supplemental problem: what procedure should be used to transfer the cases? States devised varied methods to cope with this problem. The Alabama Rules of Judicial Administration specify that all transferred cases shall be designated by an easily identifiable colored sticker which is attached to the file and docket sheet and which states, "Transferred from Court of County."[3]

Another method was used in Colorado. There administrators renumbered all transferred cases. Inactive cases were indexed and stored.

c. *Standardized forms and filing procedures.* Another problem implementers confront once they consolidate trial courts and transfer pending cases is creating standardized forms and procedures for the new court system. For example, Idaho standardized records, folders, stationery and forms, including some judgment forms. Implementers used forms developed in New Jersey and Colorado as prototypes, and aside from the time and expense required to change stamps, methods of filing and fee codes, they experienced little difficulty instituting the new forms and procedures. Similarly, both Alabama and South Dakota have standardized some court forms and have instituted uniform docket fees.

Idaho implementers have had difficulty establishing a system of uniform docket numbers. Idaho cases are docketed with the county clerks in a county with proper venue. The clerks are elected constitutional officers who serve as support staff for the courts, but are not under the direct control of the judiciary. Each of Idaho's 44 clerks (one per county) has a different numbering system for docketed cases within that county. This discrepancy impedes effective use of the statewide reporting system.

Although this problem has not been resolved, Idaho implementers are attempting to ameliorate it. For example, administrators have prepared a district court clerks' manual, which they hope will introduce a measure of standardization in the docket numbers. Additionally, one implementer reported, "In some counties, the sharper clerks have devised uniform numbers between the district court and the magistrate's division."

In Kansas, where implementation has been primarily a local responsibility, the administrator's

[2] At least one magistrate sits in each of Idaho's 44 counties. Magistrate commissions, sitting in each judicial district, may authorize additional magistrate positions for Idaho's more populous counties.

[3] *Alabama Rules of Judicial Administration*, R. 42 (A).

office appointed an ad hoc committee to study and recommend uniform docketing and numbering systems. Although the committee's final recommendations were not binding on the districts, most districts chose to adopt all or a substantial part of the committee's recommendations. As one interviewee stated, "We put on a dog and pony show all over the state. There were exceptions here and there, but most districts decided to go along with the committee's recommendations."

Kansas also employs uniform judgment forms which have been mandated by supreme court rule for use in the absence of a journal entry by the attorney.

d. *Courts of record.* The constitutional or statutory provisions creating a new court structure often require that all courts be courts of record. This requirement translates into another implementation problem: How will the record be made?

Traditionally, if a record of the courtroom proceeding was required, the transcription was taken by a court reporter. When unification occurs and an increase in the number of court reporters is required, two implementation problems result: insufficiency of court reporters and their expense.

In South Dakota, the court reporters were not placed in a common pool during implementation. As a result they did not easily adapt to the changes. They insisted on remaining with their former judges and refused to work for anyone else. The problem was particularly acute in Rapid City. The three new judges added to that court could not get any work done, because the two court reporters were only willing to work for their former judges. To resolve this problem, the state ultimately had to hire three new reporters for these judges.

Kentucky faced a slightly different problem. Before unification, Kentucky only employed court reporters in the circuit courts. Consequently, it does not have enough court reporters available to service the 113 new district courts, which will be courts of record. "Hiring additional court reporters is a nightmare," reported one system participant. "They are now forming a union." To resolve this problem Kentucky administrators are purchasing electronic transcription equipment.

When Idaho unified its court system in 1971, adding additional court reporters would have cost the state $12,000 for each reporter's salary. That sum was more than the state could afford. Idaho confronted other difficulties because its decision to utilize modern electronic transcription methods generated tremendous opposition from court reporters who believed their jobs were in jeopardy.

The difficulty and expense of using court reporters may be circumvented by introducing modern electronic transcription equipment into the system as implementers in Idaho and Kentucky have done. However, tape recorders and other electronic devices may generate problems of their own. The initial expense of recording equipment usually exceeds the cost of a single court reporter. Frequently, either the equipment or the courtrooms must be adapted to produce clear recordings.

One of the difficulties confronted in Idaho was determining the type of tape system to institute. Although the administrative office of the courts favored purchasing a sophisticated system, the recording equipment was the financial responsibility of the counties. The administrator's office was thus relegated to the role of offering suggestions.

Ada County, Idaho, declined a $16–$18,000 federal grant for one kind of equipment to purchase the system favored by the clerks. The system purchased was less expensive, but it malfunctioned. After a year of attempting piecemeal repairs, the county finally purchased quality equipment.

Wyandotte County, Kansas, hired additional court reporters and purchased recording equipment. Although it was cheaper to use recording equipment, reporters were hired because, as one participant explained, "there's an initial cost to buy the machines plus a cost to have the transcript made. Because of the transcription cost we try to record only those actions that most likely will not need a transcript."

The recording equipment, which was purchased with $15,000 from five federal grants, necessitated structural redesign of many courtrooms. Adding acoustical tiles and laying rugs added $7,000 to the cost of the recording equipment. However, court personnel in the county expressed considerable satisfaction with the equipment. As one interviewee remarked: "We should have done it long ago. Unification was the impetus."

e. *Case record maintenance.* Case record maintenance incorporates two separate problems: one is availability of adequate space to store records and the second is transferring records to the proper location so they can be retrieved if needed.

In some states trial court consolidation creates no unique storage problems. For example, in Alabama records are stored in the same places that they were before unification. The situation in Kansas is slightly different. In Shawnee County, cases are filed in four storage areas which correspond with the former clerks' offices. Not enough space is available in any single storage area to accommodate all the cases, but

for the present, with all four storage areas in use, space problems have been avoided.

Conversely, in Kentucky additional storage space is badly needed, or, as one individual commented, "The district court is going to be in desperate shape."

In the future, as case filings multiply, microfilming of case records, which was adopted in Idaho, may be one of few feasible solutions to the finiteness of available storage space. In the alternative a state may adopt a record retention and destruction plan that will either transfer the old cases to the state archives, destroy them or do some of both.

Closely related to the problem of adequate storage space is storing the file in the proper location so that the record can be retrieved if needed. Idaho has an ingenious solution to this problem. By statute in Idaho, certain records cannot be destroyed. Therefore, all records are microfilmed and transferred to the Idaho Historical Society by court order.

2. **Court personnel.** Trial court consolidation not only causes problems of case processing, it also requires that provision be made for the adequate staffing of the courts.

a. *Qualifications: non-lawyer judges.* It has previously been indicated that a provision requiring all judges to be attorneys is self-implementing, i.e., it needs no further statute, rule or order to be operative.[4] However, because implementation is not a static event, but a dynamic process, in certain circumstances, a non-lawyer judge provision can become an implementation staffing problem.

Florida is a case in point. Under the Florida constitution, non-lawyer judges can only serve in county courts in counties with a population of 40,000 or less.[5] All circuit judges and judges in counties with a population over 40,000 must be attorneys. In one Florida county with a population under 40,000 a non-lawyer defeated a sitting judge for a county court judgeship. The defeated judge was a lawyer who had been a member of the bar more than five years and, thus, was qualified to serve as a circuit court judge. (This fact is important because non-lawyer judges do not have jurisdiction over certain matters such as juvenile, probate and incompetency proceedings). After the defeated judge left the bench, the closest circuit judge was 65 miles away in Apalachicola. But the Apalachicola circuit judge was often transferred elsewhere and thus did not hold daily court in Apalachicola. This situation created a frustrating dilemma for litigants with pressing matters that could not be heard by a non-lawyer judge.

Florida also experienced several less traumatic difficulties because of the non-lawyer judge provision. For example, a non-lawyer judge in Duval County defeated an attorney for the county court post. In another county, a disbarred lawyer was elected to a county judgeship.

One reason for these difficulties is that not enough lawyers practice in the rural areas of some states to make a requirement that all judges be lawyers practical. Although Florida attempted to compensate for the paucity of judges in some areas by permitting non-lawyer judges in the least populated counties, as observed above, this provision generated problems of its own. Kansas and Idaho have adopted a different technique to address the qualifications problem in rural counties. Magistrates in Idaho and district magistrate judges in Kansas may be non-lawyers. However, both Kansas and Idaho require that non-lawyer judges attend special training institutes. Although these education requirements do not completely resolve the problems caused by the restricted jurisdiction of non-lawyer judges, they do insure that non-lawyer judges receive some judicial training before they sit on the bench.

b. *Retention and hiring of auxiliary personnel.* Revamping the trial court structure also necessitates staffing the rehabilitated courts. Most states prefer to retain personnel from the former system where possible. Usually, retention poses no problem, but where unification has merged or eliminated a large number of courts, implementers may discover that there are more employees than positions to fill. Both Shawnee and Wyandotte Counties in Kansas had a surfeit of auxiliary personnel after unification. Although both counties committed themselves to retain all employees from the previous system, they both experienced some difficulty finding a job for everyone.

Kentucky may have some staffing difficulties of a different variety when the district courts become operative. Presently, no authority exists in the implementing legislation for district court judges to employ secretaries. Normally, the court clerks could assume secretarial duties, but the implementing legislation also reduces the number of clerks. Consequently, unless action is taken before January, 1978, district court judges will have neither secretaries nor clerks performing secretarial duties.

c. *Status problems.* The changes occasioned by trial court consolidation often create status and role

[4] See Chapter X.

[5] Florida *Const.*, Art. V, sec. 20 (c)(11).

perception problems among system participants.

Idaho exemplifies three of these status problems. Although Idaho implementers decided to create a limited jurisdiction division of the district court, they initially did not know what the new division would be named. Apparently district court judges had some impact upon the legislature, because district court judges did not want magistrates to be called judges. As one close observer recounted, "The legislature simply set the title. There was no opportunity to challenge, but magistrates always resented the title."

Perhaps the title of magistrate has made these Idaho judges somewhat status conscious. An Idaho attorney reported that there is also tension between lay and lawyer magistrates. He added, however, that some counties have so few lawyers that the legislature could not realistically have passed a bill providing for only lawyer magistrates.

Still another problem has been experienced by magistrates who had been judges under the former system. Before unification they had been relatively autonomous within their domain. They controlled their own budget and the personnel of their court. Unification has relegated them to positions of dependence on the district court, and many of them resent the loss of their independence. However, this problem is not quite as serious as it might have been if all former judges had been retained.[6] As one judge remarked, "Most of the magistrates are new and don't present a problem."

A converse of the Idaho situation created some difficulties in Kansas. Many of the associate district judges had been magistrates under the former system. With unification, they were elevated to associate district judgeships, and their jurisdiction was expanded considerably. Except for mandamus and quo warranto matters, associate district judges were empowered to hear the same cases as district court judges. This rapid escalation of authority and prestige created some rivalry between these two classes of district judges for a period of time.

In one Kansas county, unification created a major status problem among the court clerks. When unification merged four courts in Shawnee County into one, it also eliminated the jobs of three of the four court clerks. Although the displaced clerks were given positions in the office of the single county court clerk, they felt their jobs had been usurped. Additionally, merging personalities and standardizing operations became a problem, particularly because a number of latent personality problems emerged when the clerks' offices were rearranged. This problem, however, has subsided over time.

3. **Facilities and equipment.** Finally, trial court consolidation frequently requires changes in the facilities and equipment used by the judiciary. These changes, too, represent a problem of implementation.

a. *Adapting old facilities.* Restructuring the trial courts may impact heavily upon availability and adequacy of courtroom facilities. For example, courtrooms in Kansas had originally been constructed for specialized courts, such as the probate and juvenile courts. Because hearings before these courts did not require a jury, court facilities consisted of relatively small hearing rooms and office space.

Trial court consolidation merged civil and criminal matters into one court and created a major facilities problem. Criminal matters require detention facilities. Additionally, they increase the number of jury trials, which in turn increases the need for special jury facilities. When the new judicial article took effect, Kansas courthouses were not equipped for the increase in jury trials. They were too small and did not have enough detention facilities or deliberation rooms. Moreover, often the number of judges exceeded the number of available courtrooms. In Shawnee County for example, eleven judges had to share the ten existing courtrooms. Administrators made several attempts to resolve the space problems. First they moved county offices to other buildings to provide space for the judges. They also rotated judges among the courtrooms so that court sessions were not seriously affected. Presently they are renovating a number of courtrooms, and they eventually hope to have a courtroom for every judge.

Judges in Idaho experienced similar difficulties. One Ada County judge arrived at the courthouse for a trial discovered no courtrooms were available and had to adjourn the case for a day. He explained the predicament to a member of the press who was covering the courthouse that day. As a result, the evening news carried a story criticizing the county commissioners for inadequate facilities planning. Within one week, the county commissioners received bids for two new courtrooms and shortly thereafter, plans for construction of new facilities were approved.

b. *Constructing new facilities.* New construction can often resolve problems arising from

[6] In Idaho all judges had to reapply to the magistrates commission for judgeships after their term had expired. A number of them simply did not reapply.

insufficient or outmoded court facilities, but new construction requires planning, time and money. Because Shawnee County, Kansas, did not start building until after the facilities problem reached crisis proportions, the transition caused considerable inconvenience.

Kentucky, on the other hand, has already contracted for new and expanded district court facilities. Additionally, implementers in that state plan to consolidate office space and remodel court facilities for multi-purpose use.

c. *Equipment*. Another problem implementers encounter in consolidating trial courts is furnishing all courts with suitable equipment. To accomplish this task they must transfer functional equipment to new courts, eliminate archaic equipment and purchase satisfactory replacement equipment.

A rather unusual problem in this respect occurred in Alabama. When implementers in that state inventoried the equipment in the local trial courts, which they hoped to transfer to the unified system, they discovered that most of it was either outmoded and unusable or owned personally by former court employees. The state thus had to assume the additional expense of furnishing the courts with essential equipment.

However, after the initial outlay, proper inventory techniques and economies of scale should enable administrators to equip the courts adequately at a moderate cost. For example, Shawnee County, Kansas, has instituted bulk purchasing for the entire county. An implementer in that county expects bulk purchasing will reduce overall expenditures.

Similarly, in Wyandotte County, Kansas, the presiding clerk of the county receives all requisitions for purchase and supplies. A close observer in that county remarked, "There are big advantages in quality and price. On furniture alone, bids are 20–25 percent cheaper. Office supplies are 20 percent off across the board."

C. Centralized Administration and Management

1. **Collection and use of data.** Implementation of a mandate to centralize administration and management generates a distinct set of difficulties for implementers. One of the primary challenges they confront is to devise a feasible method to collect and use data generated or needed by the courts.

a. *Collection of data: records and supplies management*. Administrators have found that one of the most effective ways to gather important data is employing a statewide case reporting system to collect data and a computer to analyze it.

Idaho obtained a federal grant to institute an extensive and sophisticated computer system. With funds from the grant, Administrative Director of the Courts, Carl Bianchi, hired a computer operator to manage the system. To feed information to the computer, the administrative office has devised a procedure for daily statewide reporting of case docketing, calendaring, filing, and disposition. However, completing the daily reports has engendered considerable resentment. As one Idaho observer commented about the case reporting requirements, "It's a little form. Judges have to complete it each day. It comes to them from district court clerks or the administrative office. The clerks should fill it out, but they are either too dumb or have no time."

Despite reporting difficulties, the computer has been extremely beneficial. It permits the administrative office to maintain a uniform record of the status of every case filed in the state. A clerk monitors the computer print-out and reports on any major events. With information gleaned from this system, Bianchi is able to formulate annual plans with realizable yearly goals and objectives and to increase administrative coordination for the judiciary.

Colorado's experience establishing a computer system is also instructive. In 1967 the state court administrator's office attempted to inaugurate an information system which collated comparable data from the state's courts. This attempt failed, partially because the system was too complicated for a first attempt and partially because the data from the various courts were not comparable. Subsequently, the court administrator's office engaged MacDonald Douglas, a private consulting firm to assist the judiciary in developing a modern, efficient information system to collect accurate data and in acquiring its own hardware and staff.

Overcoming local resistance was a secondary problem Colorado encountered in establishing the computer system. With respect to the first system, one observer commented, "Judges disapproved of the information system at first. They could not rely on the output. It was not timely or correct." Similarly, local clerks were reluctant to use the system because it involved more work for them.

However, after the second attempt remedied the most flagrant defects, support for the system began to develop. "Judges have come to recognize the need for it, at least for the state court administrator,"

a Colorado computer expert explained. Based on Colorado's experiences that individual recommends, "Start with a simple system at one level first — then expand. This reduces opposition."

Although the computer system is costly, it has benefitted Colorado significantly. It has provided comparable statistics which facilitate case processing and personnel management. The state court administrator's office uses it to monitor cases, plan for trials and reduce court congestion. It has also eliminated the need for docket books, because the computer prints case labels automatically when a case is filed, stores the information and prepares the index calendar and register of activities. With the use of the computer the state court administrator's office has also developed "personnel action forms" to monitor personnel matters such as hirings, salary raises, and reclassifications. Additionally, the computer handles the payroll, the inventory control system, and the budget reporting and projection system.

Use of the computer system has resulted in monetary and personnel savings of significant proportion. Although no employees have been fired, with employee attrition, the administrator's office has eliminated 63 positions over the past several years. In 1973–1974 each employee in the largest districts could process 750 cases; in 1976–1977 this number has been increased to 1,200. Former State Court Administrator Harry O. Lawson estimates that the computer, along with the structural and administrative reforms, helped the state save money. From 1965 to 1975 the 78 percent increase in district court filings was processed with only 37 percent more personnel. In monetary terms, over the past five years one observer estimates the savings have exceeded $1.5 million in personnel costs and elimination of service bureau charges.

b. *Use of data: assignment and transfer of court personnel.* Centralized administration and an information system, whether sophisticated or relatively simple, can achieve a rather profound impact on judicial administration by improving a system's capability to transfer or reassign judges and court personnel.

However, a number of states have experienced difficulty in effectively transferring judges. For example, although the Idaho computer system monitors case loads and the constitution permits the reassignment of judges among districts, the procedure for transfer requires the district administrative judge to apply to the supreme court for an order before a judge can be transferred. Either because the process is too cumbersome or because judges resist transfer to other districts, the transfer authority is rarely exercised. On the other hand, magistrates are transferred extensively. However, transfer of magistrates causes a separate set of problems. In Ada County, for example, lawyer magistrates resent the fact that they are rotated more than non-lawyer magistrates.

In Kansas judicial transfer powers have not been extensively exercised because judges are reluctant to be transferred. A Wyandotte County observer explained, "one reason for this is that judges do not want to pick up the workloads of lazy judges."

Connecticut's problem was slightly different. A representative of the court administrator's office believes increased transfer of judges authorized by the new statutes will complicate a situation which is already untenable. As he explained, "Connecticut already has enormous powers of transfer. Judges move two to three times a year, and it is already an administrative problem because it allows forum shopping and causes disintegration in the last few weeks of the term. Court unification will exacerbate this situation by adding functional transfer to geographic transfer." He conceded, however, "It might help in small counties where one judge could handle common pleas and superior cases."

In Colorado, on the other hand, the power to transfer court personnel has been utilized extremely effectively. Recently, a prison riot occurred in a sparsely populated, rural district. Approximately 58 cases requiring full jury trials were filed. These cases had to be terminated within 90 days. The district did not have adequate judges, support staff, or financial resources to complete these cases within the requisite time.

However, the supreme court and state court administrator's office employed the vast resources of the state to reassign judges and hire the support personnel necessary to conduct the trials. They were facilitated by the fact that because the Colorado judiciary is state financed, the limited financial resources of the district in which the incident occurred did not restrict their ability to accommodate the trials.

Retired judges were called into active service and active judges were transferred to the district. Additional reporters and clerical staff were hired and arrangements were made for special places to hold the trials. Additionally, the computerized jury selection system enabled the administrator's office to provide sufficient jurors to permit five jury trials per day. The preliminary hearings were completed

on schedule, and court reporters worked day and night to transcribe the records for the trials. The judicial system was prepared to commence the trials when the district attorney decided to dismiss the cases. Nevertheless, the incident illustrates the effectiveness of the transfer power in a state financed system to accommodate judicial emergencies.

The system was equally able to handle a number of simultaneous trials when disturbances at a July 4 youth religious festival resulted in a large number of arrests. Five judges and 20 court employees were transferred to the district to assume responsibility for the trials. Even a xerox machine was transported to the locality. The local school superintendent allowed the school house to be used for court facilities. As a result of the prompt and efficient response of the judicial system, the potential crisis never arose.

In both the case of the prison riot and the youth festival, law enforcement officers were required to take action to protect the community. It is likely these arrests would have occurred regardless of the preparedness of the judiciary to process the cases. The efficiency of the unified court system allowed each person arrested to be given fair and just consideration under the law. If the system had not been able to process the cases, some might have been hastily considered, and some might have been judged too harshly. Colorado's system protected the community without sacrificing the constitutional rights of the defendants.

2. **Coordination of administrative responsibility.** Coordination problems were introduced earlier in this study as problems which arise at the systemic level. As was noted in Chapter X, one issue raised by coordination problems is insuring adequate participation and cooperation of system participants. The goal is to avoid alienating them during the process of change. However, coordination problems also have a technical analogue. Coordinating new administrative responsibilities among members of the judiciary is a major problem engendered by centralized administration. This includes both creating administrative positions and establishing lines of authority among them. It also includes minimizing potential conflicts which may arise as responsibilities change.

a. *Coordination between state level administration and trial court administrators.* A major challenge to administrators is developing an acceptable balance of power between the state level, where administrative policies are often developed and the local level, where they are executed. Idaho illustrates one of the problems. When the position of administrative director of the courts was created, local administrators relinquished some of their autonomy. Many of them resented the diminution of their authority. One close observer explained, "The statewide interests of the administrative office clash with local concerns. The trial court administrators get along better with each other than they do with the state administrative office."

Consequently, although the administrative office of the courts has authority for statewide administration, in order to reduce friction between the state and local levels, it has not exercised this power extensively. One individual explained the situation as follows: "Because of local resentment the state court administrator moves slowly. He tries not to antagonize local judiciary and performs mostly a service function."

The Idaho administrative office thus establishes standards but does not control daily local operations. It collects statistical data and makes recommendations, but does not order or command. In short, the office has decentralized its authority in order to avoid creating tension.

Most implementers in the states visited agree that decentralization is an effective means of coordinating local and state administration. In Kentucky Chief Justice Reed, who is constitutionally the chief administrative officer in the state, has greatly decentralized administrative authority. He is reluctant to create abrasive situations, even if decentralization risks sacrificing efficiency in some areas. As he has emphasized, "I'm a believer in broad guidelines with as much flexibility as possible under the constitution and statutes."

Colorado has long espoused a decentralization philosophy. As Harry O. Lawson stressed in a 1970 speech:

> The way in which the administration of a unified system is organized also is a major factor in gaining support and cooperation. We, in Colorado, have taken the position that administration should be decentralized as much as possible, consistent with good management and in accordance with general guidelines and procedures. Certainly, some centralization is necessary, but a highly centralized structure reduces the ability and desire to participate in the decision-making process at the trial court

level and, consequently, the amount of cooperation that can be expected.[7]

Colorado thus is a prototype for decentralization. Each of the state's 22 judicial districts is treated as a separate administrative unit under the administrative control of a chief judge. Within their districts, chief judges, who are appointed by the chief justice, are delegated very substantial administrative authority. Additionally, they are authorized to appoint district administrators to aid with daily administrative tasks.

Decentralization, Lawson acknowledges, has made the system more palatable, although it imposes extra burdens on the state court administrator's office to train and work with local personnel.[8]

b. *Coordination between local judges and trial court administrators.* Some incipient tension may also prevail between local judges and trial court administrators when centralized administration is implemented. For example, in Kentucky judges resented any authority administrators had over them. The judges preferred to be independent. A similar situation has obtained in Florida where judges tended to hire their friends as administrators, treat the administrators as members of their personal staff, and resist the institution of modern managerial techniques by the administrators.[9]

Similarly, in Kansas some judges initially believed they would lose authority to the administrators. Ultimately, however, they realized this was not the case, and in time came to appreciate the assistance administrators could offer. A close observer of the transition in Wyandotte County commented, "Judges in the past spent 30 to 50 percent of their time in administrative work. Now that administrative duties have been assumed by the state judicial administrator and the trial court administrator, the burden on the judges has been relieved."

Thus, as the Kansas example illustrates, one way to coordinate administrative functions between judges and trial court administrators, is to allow time for judges to realize the benefits of being relieved from administrative duties.

In Idaho the problem was somewhat different. In that state most trial court administrators are also magistrates, thus eliminating the potential for judge/administrator antagonism. However, contrary to the situation in Kansas, this dual function increases the workload of the magistrate administrator. One concerned participant remarked, "Magistrates cannot effectively do both." Yet, as that individual continued, magistrates may be more effective administrators because they are also judges. In one Idaho county the magistrate's assistant relieves him of many administrative duties. This allows him to supervise administration but to devote the majority of his time to judicial duties.

At a slightly different level, Idaho has also succeeded in averting the potential for conflict between the administrative district judge and the magistrate administrator. As an observer in one county reported, "Initially the trial court administrator was a job without a description. The position had to develop as time passed. Conflicts could have arisen if administrative district judges had not relinquished some authority. However, conflicts did not arise because there was a general willingness in the district to give the new position some meat. Conflicts would have arisen if everyone had wanted to maintain the status quo."

c. *Coordination between court clerks and trial court administrators.* Court clerks, traditionally local elected officials, usually exercise a high degree of administrative authority over county judicial business.[10] When administrative centralization is implemented, they stand to lose considerable authority to trial court administrators. Thus, another administrative coordination problem is tempering their opposition to trial court administrators.

In Kentucky this remains a major problem. Court clerks, who sense their position will be usurped, have strongly opposed the establishment of trial court administrator positions. Ironically, however, clerks also oppose the institution of these positions because they fear the administrators will burden them with more work by imposing increased reporting and record keeping requirements.

Court clerks in Florida have also opposed trial court administrators. In their in-depth study, Berkson and Hays stress that almost half (49.1 percent) of the court clerks they surveyed do not believe the administrators perform a useful role. The administrators were frequently described by clerks as "useless," "worthless," or "incompetent."[11]

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[7] Harry O. Lawson, "Administering a Unified Court System," (an address presented to the Joint Session of the Conference of Chief Justices and National Conference of Court Administrative Officers, St. Louis, Missouri, August 6, 1970).

[8] *Ibid.*

[9] Larry Berkson and Steven W. Hays, "Injecting Court Administrators into an Old System: A Case of Conflict in Florida," *Justice System Journal*, 2 (Spring, 1976), 57, 68–70.

[10] Larry Berkson and Steven Hays, "The Forgotten Politicians: Court Clerks," *University of Miami Law Review*, 30 (Spring, 1976), 499–516.

[11] Berkson and Hays, *supra* note 9, at 70.

Just as in Kentucky, the Florida clerks not only fear usurpation of their local administrative responsibility, they also fear the potential introduction of technological innovations by the administrators. As Berkson and Hays report, a prime concern of court clerks is that trial court administrators will institute new managerial techniques which will seriously affect the clerks' independence.[12]

The attitude of the court clerks seriously impedes the effectiveness of Florida's trial court administrators. Because they have had to cope with local antagonism, condescension or mere indifference, the administrators have been unsuccessful in "consolidating their positions" or in "instituting uniform, modern administrative procedures."[13]

3. **Personnel classification system.** Another problem implementers encounter in centralizing administration is the establishment of a personnel classification system for judicial department employees.

a. *Benefits.* Neither judges nor auxiliary personnel are enthusiastic about a statewide personnel system which deprives them of benefits that accrued prior to unification. As a problem of achieving a unification mandate, this antagonism is usually overcome by promises that unification will not impair accrued benefits. However, these problems engender substantial implementation problems, because implementing legislation must integrate many disparate local benefits.

In Kentucky, for example, only judges from the supreme court, the court of appeals and the circuit courts will be included within the judicial department retirement plan. The 113 new district court judges will be part of a state retirement program which provides less comprehensive benefits for participants.

In New York administrators faced two difficulties in establishing a personnel plan. First, preserving and integrating vacation, disability, retirement and pension rights for the new state employees caused considerable difficulty. Even more troublesome, however, was the necessity of bargaining with approximately 130 unions representing over 10,000 employees. Although New York administrators hope to consolidate unions as quickly as possible, this may prove to be a problem. Additionally, upgrading benefits to reduce disparities among employees on the same level appears to offer the only feasible solution to the problem of standardizing a personnel system without depriving any employees of accrued benefits.

b. *Salaries.* Implementing centralized administration generally entails a serious effort to create equitable salary scales. In Idaho, where a state-wide personnel system for the judiciary is still in a planning stage, salary inequities remain a problem even at the county level. The state does not set magistrates' salaries. Rather, although the state pays the salaries, magistrate commissions establish salary levels for magistrates. Initially, salaries among magistrates in Ada County differed widely. This problem has only been remedied in part. Presently, the salaries of lawyer magistrates have been brought to relatively comparable levels. They vary between $1,000 and $2,000. However, much larger variations remain among the salaries of lay magistrates. Additionally, a comparison of salary levels among districts indicates large discrepancies, particularly between the salaries of lay and lawyer magistrates. One observer believed the statewide difference between lay and lawyer magistrates was as high as $4,000 to $5,000.

In order to obtain support for a statewide judicial personnel system in Alabama and New York, proponents of court unification assured auxiliary employees that their salaries would not be reduced. To effectuate this promise, implementers were required to equalize salary levels for all persons in the same job classification. The policy thus established gave some employees unexpected raises, but it avoided conflict over salary discrepancies.

Naturally, the equalization raises entailed additional expenditures, but as one New York administrator wryly commented, "Over the long term the costs should decrease because of streamlining of jobs and better administration. But with inflation, the legislature's addition of new state responsibility for financing and pressures within the system for new programs and positions, it will probably end up costing more."

c. *Titles and functions.* Implementers who are responsible for establishing a personnel system also must amalgamate titles and functions of multifarious court employees.

In both New York, which merged 10,000 employees, and South Dakota, which merged 500, administrators were hindered by the vastness of the reclassification job. "Job classifications, descriptions and duties performed by employees were very inconsistent," explained a South Dakota finance officer. To resolve the reclassification problems, South Dakota engaged the Public Administration

[12] *Ibid.*, at 71.
[13] *Ibid.*, at 72, 73.

Service (PAS), a private, non-profit consulting firm from Chicago. With the aid of a computer, PAS helped South Dakota administrators reclassify all employees and bring them within a single administrative system. Additionally, to facilitate the transition for both the employees and for the state treasurer, South Dakota assimilated the employees incrementally. During the first phase in January, 1975, circuit judges, court reporters, magistrates (both lay and lawyer), and clerks were incorporated into the system. Subsequently, in July that same year, the system added deputy clerks, bailiffs, court service workers and their operating expenses.

Conversely, in New York incorporation, technically, became effective for all employees on April 1, 1977. However, administrators do not expect to complete reclassification until fall or later.

When Colorado implemented a statewide personnel classification plan for judicial employees in the late 1960's, it approached the reclassification problem in a slightly different fashion. There the administrator's office used in house staff to conduct a desk audit (or task analysis) of all employees who would be merged.[14] About 1300 employees were involved in the transition, which had some problems but went more smoothly than had been contemplated. The plan went into effect January 1, 1970. Implementers in Alabama plan to use a similar method of reclassification.

Another problem arose in Colorado with respect to confidential and certified employees who were incorporated within the uniform system. Confidential employees, a Colorado interviewee explained, are employees such as bailiffs, division clerks, and reporters, who are hired according to state standards, are paid by the state and receive state benefits, but are outside the classification insofar as they serve at the pleasure of the judge for whom they work. They have no grievance procedure and can be fired if a new judge takes office. On the other hand, certified employees are protected by a modified civil service system: they have a grievance and review procedure if they are demoted, suspended or dismissed. Initially, each of these groups was jealous of the other's perquisites. The confidential employees, for example, could leave early if court was not in session; whereas the certified employees worked on an hourly basis. On the other hand, certified employees had more job security. Although this rivalry still exists, to some extent, it is less serious now than when the personnel classification plan was first instituted. Further, chief judges now have the authority to reassign confidential employees when they are not needed in their own division.

4. **Timing.** Where state financing accompanies the establishment of a personnel classification plan, as it often does, implementers also face a problem of coordinating pay periods and paychecks, including withholding, deductions and salaries. Although this is partially a problem inherent in state financing, it is more closely related to administration, because it is a direct result of the creation of a state judicial personnel system.

In Alabama, judges, clerks, supernumerary clerks, reporters and other court employees all have different pay periods. To mitigate confusion as these employees are added to the state payroll, the implementing legislation provides for incremental state assumption of salaries. These provisions relieve the state treasurer of the burden of coordinating the disparate pay periods of all judicial employees at the same time.

The problem in New York was similar, but the solution was different. As one New Yorker explained, "No one anticipated the problems of preparing correct paychecks for 10,000 new employees, with proper deductions and union dues. The state comptroller requires proof of all withholding, so documentation had to be established for all new employees." However, New York administrators devised an ingenious solution. In March, 1977, shortly before the statewide judicial personnel system took effect, dummy paychecks were prepared and sent to all new state employees to ascertain whether the proper deductions had been made.

When the state adds local court employees to a statewide personnel system, the discrepancy between county and state fiscal years may create a problem. For example, New York counties are on a calendar year fiscal year, whereas the state's fiscal year begins April 1. Consequently, counties had to budget additional funds to provide for judicial costs during the three month interval between the close of the county fiscal year and the commencement of the state fiscal year.[15]

In contrast to New York, Colorado purposely scheduled implementation of personnel system

[14] This information was also used to merge salaries and benefits.

[15] The impact of this discrepancy must not be overstated. Although New York has adopted "first instance financing," the state's share of the judicial budget during the first implementation year is only 12.5 percent. Therefore, counties must still provide the larger share of judicial costs during the first year, regardless of fiscal year periods.

funding to use the fiscal year discrepancy to its best advantage. In Colorado, counties report income on a calendar year fiscal basis, while the state's fiscal year ends June 30. Implementing legislation to finance the personnel system was presented and approved in the 1969 legislature. It was scheduled to become effective January 1, 1970, which corresponded with the commencement of the county fiscal year. This arrangement proved extremely advantageous to both the state and the counties. It allowed counties to prepare their budgets knowing they would be relieved of personnel costs for the next fiscal year. At the same time, it reduced the financial burden on the state because the initial appropriation only had to finance six months of personnel costs.

D. Centralized Rule-Making

1. **Determining areas for rule-making.** Implementing rule-making authority poses a slightly different conceptual problem from implementing any of the other areas of court unification. When a mandate respecting trial court consolidation, centralized administration, unitary budgeting or state financing becomes effective, that mandate generates a discrepancy between the authorized system and the existing system. The tension caused by this discrepancy must be alleviated by statutes, rules or orders which bring the existing system into compliance with the authorized system.

Contrary to the other elements of unification, a mandate which grants the supreme court authority to promulgate rules does not create a discrepancy between the authorized and the existing. It is effective immediately, regardless of whether or not the supreme court exercises its authority. Therefore, a relatively unique problem of rule-making is to define in general the areas in which the rule-making power should be exercised and to determine within those areas the precise rules to be promulgated.

In making both of these decisions, a supreme court is best advised not to operate in a vacuum. If it does, it may encounter difficulties similar to those experienced by the South Dakota Supreme Court when it attempted to draw circuit court boundaries pursuant to its constitutional authority. The court established the number of judges and location of circuits before it conducted any field research or asked lawyers for their advice regarding needs. As a result, circuit boundaries were ineptly drawn, and case loads were extremely uneven. One circuit had a total of ten contested cases a year; another had 18. To remedy its error, the court subsequently combined the two circuits and removed a judge. However, this resolution, as might be expected, caused great dissatisfaction. "It was like pulling teeth at this stage. The court should have been more careful to begin with," reported a South Dakota justice.

In contrast to South Dakota, Ohio moved relatively circumspectly. The 1968 Modern Courts Amendment authorized the supreme court to promulgate rules of superintendence for all courts of the state. This power remained relatively unexercised until Chief Justice C. William O'Neill assumed the position. O'Neill determined that the supreme court could exercise its superintendence authority most effectively by promulgating rules to reduce court delay.

However, he was not sure of the precise rules needed to effectively eliminate delay. Consequently, he selected approximately 12 of the most capable trial judges in the state and invited them to a private, off-the-record session where they would candidly dissect the reasons for court delay. "We used no consultants," O'Neill has said. "In my view that is a colossal waste of money."[16]

After identifying numerous causes of delay, O'Neill asked the judges to recommend rules for the supreme court to promulgate to eliminate those causes. He refused to consider suggestions that would increase the number of judges until he had attempted other methods of reducing court delay.[17] O'Neill also convened a separate session with judges from the eight most populous counties. With the able assistance of knowledgable trial judges, the supreme court identified ten causes of delay in the Ohio courts, and adopted 15 rules of superintendence for the court of common pleas, to eliminate the causes of delay.

O'Neill's meetings provided the Ohio supreme court with important information on trial court problems which enabled it to intelligently address its rules to the judiciary's endemic problems. The results, as O'Neill has reported, were "phenomenal." In four years case filings have increased 25 percent, but during that time only one trial judge has been added.[18]

2. **Rules as administrative tools: a case study in delay.** Our analysis of methods to implement rule-making authority would not be complete without an

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[16] Chief Justice C. William O'Neill, "Judicial Planning, Budgeting and Management," (an address presented to the National Conference of State Criminal Justice Planning Administrators, Seattle, Washington, July 19, 1976).

[17] *Ibid.*

[18] *Ibid.*

in-depth examination of the Ohio superintendence rules. Their singular success makes them worthy prototypes which other courts may wish to use as a starting point in implementing the rule-making authority.

The first cause of delay the judges identified was lack of administrative authority in multi-judge courts. To correct this problem the court promulgated rules creating an administrative judgeship. The administrative judge is responsible to the chief justice and submits an administrative report to him every 30 days.

Another cause of delay was the lack of an equitable case assignment system. As Justice O'Neill noted, this problem had two distinct disadvantages:

> This led to lawyers shopping for favorable judges and to judges shopping for easy cases from the assignment commissioner. The judges shopped for criminal cases that could be disposed of by a guilty plea or civil cases that were sure to be settled. In both instances the judge could terminate the case quickly and take the rest of the day off at the track or country club.[19]

To resolve this problem the court promulgated a rule to assign cases by lot. The rule also provides that the judge to whom a case is assigned must remain responsible for the case until the file is closed.

To resolve problems arising from unavailability of accurate case reports, a third rule was promulgated to make each judge responsible for submitting to the chief justice a monthly report of his work. As an enforcement device, this rule also makes the administrative judge responsible for the accuracy of these reports.

Another major problem was the failure of lawyers to file journal entries after a case was decided, especially in domestic relations cases. The reason behind this reprehensible practice was that it gave lawyers leverage to collect their fees. To remedy this dereliction, the court promulgated a rule requiring that the judge must make the journal entry if the attorney fails to do so within thirty days of the ruling.

The court also addressed the problem of the failure of trial judges to review cases periodically and to dismiss those which have not been prosecuted with diligence by counsel. This problem entailed a rule mandating that judges review all cases which have been on the docket over six months. If no action has been taken on a case within six months, the judge must give notice to counsel, who must in turn show good cause why he has not moved the case or suffer dismissal for want of prosecution.

Criminal trials caused delay for three reasons. First, grand jury actions were usually delayed after a bind over.[20] Under the correcting rule, if there is no grand jury action within sixty days of the bind over, the matter is dismissed, unless good cause is shown and the court grants the prosecuting attorney a continuance for a specified time. Secondly, defense lawyers often procrastinated bringing criminal matters to trial until they collected their fee from the defendant, a particularly troublesome situation in the case of some bailed defendants. The supreme court addressed this problem by a rule requiring all criminal cases to be tried within six months of the date of arraignment on indictment or information. Failure to try the case must be reported to the chief justice who may take all steps necessary to insure prompt trial of the case. The legislature supplemented this rule by a law effective January 1, 1974. That law requires that accused felons in jail must be tried within 90 days of arrest or the matter is to be dismissed.

Another problem of criminal matters is the delay in sentencing after conviction and after the judge has received the completed probation report. Again this delay can often be ascribed to the defense attorney who may be using unethical leverage to collect a fee. The response to this delay was a rule requiring a sentencing hearing within 15 days of the receipt of the probation report.

An endemic cause of delay was the unavailability of lawyers because they were in another court on a different matter. To remedy this problem the court promulgated a rule which stipulates that once an attorney agrees with opposing counsel and with a judge on a date certain for trial, the court may require him either to try the case on that date or to substitute another attorney to try the case for him. If the attorney refuses to do either of these, the rule permits the judge to remove him from the case.

Another endemic cause of delay was the inability or failure of medical experts to appear for testimony at the time they were required. This problem was solved by a rule permitting video-taped depositions to be introduced in lieu of live testimony. Finally,

[19] *Ibid.*

[20] In this situation a bind over occurs after a magistrate has determined at an initial appearance that there is probable cause to believe a crime has been committed and that the defendant has committed the crime. The defendant is either jailed or released on bail or recognizance until the grand jury convenes and determines whether or not to indict.

delay caused by the paucity of court reporters in rural areas was remedied by a rule permitting electronic transcription.

3. **Execution and compliance.**

a. *Sources and types of opposition.* As the range and diversity of Ohio rules indicates, certain problems in the judiciary are peculiarly susceptible to remedy by court rule. However, similar to the other elements of unification, implementation of rule-making may be hindered by execution and compliance problems.

For example, in states where the legislature may veto court made rules, as may be done in 27 states,[21] rules may be overturned because the legislature perceives them as judicial interference with its domain or because the legislature is susceptible to political pressure from groups adversely affected by the rules. In Florida, for example, the court has implemented its rule-making power very cautiously in order to avoid a confrontation with the legislature.

In Ohio where rules are effective unless disapproved by a concurrent resolution of the legislature, the court's first attempt at promulgating criminal procedure rules did not survive legislative scrutiny. Several Ohio political observers believe rejection of the criminal procedure rules was the result of intense political lobbying by municipal clerks and bail bondsmen. The bail bondsmen were particularly opposed because the rules would have put them out of office.

Other Ohio rules have also been challenged. For example, challenges were made to superintendence Rule 14, which restricted the granting of continuances, and Rule 15, which allowed videotaped evidence or trials (by means of extending Civil Procedure Rule 40), and electronic transcription of proceedings. A challenge to Rule 4(B) of the Rules of Appellate procedure, which provided for criminal appeals by the prosecution, resulted in the supreme court holding its own rule invalid.[22]

A related problem arose implementing the municipal court superintending rules. These rules requires judges to fill out a number of forms for data control. Initially, the judges encountered some difficulties completing the forms. Many situations which they had to report were borderline, and did not fit easily into any single category. The data lacked accuracy and comparability at first. Nevertheless, despite initial reluctance, judges did submit the data. After approximately one year of transition, the system began to function smoothly.

b. *Methods of encouraging support.* The challenges to the rules, the initial resistance, and the transition problems all suggest that to implement rule-making, a supreme court should make an extra effort to facilitate execution and encourage compliance.

For example, the Ohio supreme court published the superintendence rules July 4, 1971, and allowed judges two months to comment upon them. In September the court met with judges to interpret aspects of the rules, discuss objections and revise them where necessary. The rules became effective January 1, 1972. Prior to the effective date judges were required to inventory all cases and to file a report of the inventory with the chief justice. Additionally, to aid continuing implementation, the chief justice tours the state every summer to meet with judges and discuss the operation of the rules. This rapport minimizes opposition which may arise as a result of the extra work that increased record keeping entails.

In Alabama the 1971 legislature conferred rule-making authority on the supreme court and authorized the court to promulgate new rules of civil procedure.[23] To assist in drafting the rules, the court appointed a committee of 15 prominent judges, lawyers and law professors. After the rules were drafted, the court circulated copies to every lawyer and judge in the state for their criticism and suggestions. Additionally, the court sought a formal recommendation from the Alabama Association of Circuit Judges, the Board of Bar Commissioners of the Alabama State Bar Association, and the Alabama Law Institute. Additionally, the court sponsored a number of seminars and conferences to educate practitioners regarding the philosophy and the substantive contents of the rules. The court also allowed one day for any lawyer, judge or citizen to appear before it to offer suggestions about the rules. Finally, throughout the period for discussion, lawyers, judges and bar groups were encouraged to submit suggestions and recommendations to the court.

The court duly considered the critiques and as a result changed a number of provisions in the rules. It

[21] See Appendix B.

[22] *State v. Hughes*, 41 Ohio St. 2d 208, 324 NE2d 731 (1975). The rule was held invalid because it enlarged a substantive provision of statutory law and, thus, exceeded the procedural bounds of the court's rule-making authority. For further elaboration on this point see Chapter II.

[23] The narrative on the Alabama rule-making process is condensed from Howell T. Heflin, "Rule-Making Power," *Alabama Lawyer*, 34 (July, 1973), 263-268.

promulgated the new civil procedure rules on January 3, 1973, and established July 3, 1973, as their effective date. During the interval between the promulgation of the rules and their effective date, the court sponsored a comprehensive education program for lawyers, judges and support personnel. This program not only included course-style seminars, but a series of panel discussions on the state educational network and a series of symposiums in the state's legal publications. These programs served to allay much of the apprehension about the new rules.

Chief Justice O'Neill has employed several methods to encourage compliance with the rules. To reduce delay he isolated 75 of the oldest cases and assigned them to a judge in a videotape scene. This probably encouraged both attorneys and judges to be prepared for trial. He also carefully reviews the monthly reports that the judges submit to him and writes a personal letter to judges who are not moving their cases expeditiously. Finally, believing that "recognition is a far stronger motivation than money" he has devised an ingenious system of awards which he gives to judges who have current calendars. The awards have provided good publicity for the recipient judges, who use them in ads for their reelection campaigns.

E. Centralized Budgeting

1. **Coordinating budgets from all state counties.** A major problem of implementing unitary budgeting is consolidating disparate classifications of budget items, which frequently vary from one county to the next. In South Dakota, each county, and often each municipality, utilized a different system of classifying expenditures. The earlier discussion of inconsistent job classifications for individuals performing identical duties in different counties is only one part of this larger problem of budget item classification, but the solution, not surprisingly, was the same. Public Administration Service consultants not only helped South Dakota administrators to consolidate the personnel structure, they also assisted in the preparation of a unitary budget with standardized item classification.

Kentucky administrators not only had trouble gathering uniform information; they sometimes could obtain no data at all. In order to collect necessary information from which they could prepare a budget, they analyzed data from counties where it could be obtained and projected estimates to other counties. It may be inaccurate, admitted one Kentuckian, "but we can't justify budget requests to the legislature with no records or data." A solution to this problem may be for the administrator's office to ask local court administrators to prepare a budget covering existing expenditures.

2. **Complexity of budget preparation.** Even where states have achieved uniformity in local line item classifications, the sheer complexity of preparing a unitary budget remains an obstacle. Colorado uses two methods to facilitate preparation: decentralization and automation.[24] Each year the administrator's office provides the chief judge of each district with a computer print-out comparing the budget request and actual expenditure for the preceding year. The chief judge, trial court administrator and other personnel involved in the budgetary process review the print-out, and determine changes in allocations. They in turn must justify these changes to the state court administrator. The administrator and his staff held budget hearings in each judicial district to see first hand the problems and related budget needs. The administrator's office collects the budgets from all districts, feeds the data to the computer and prepares the entire state judicial budget. Information on expenditures is entered into the computer throughout the year, and the ensuing year the process begins anew.

Before this system could operate smoothly, a number of difficulties required attention. First of all, Colorado administrators had to teach local judges from all the courts in the district to develop budgets. They devised a detailed manual on budget preparation with standard headings and clear instructions which they distributed to all local budget officers. They also devised a two-step submission process. Local judges submit their budget requests to the district chief judge. He standardizes and consolidates the requests into a single district budget, which, in turn, is submitted to the state court administrator.

Secondly, the administrator's office had to teach local administrators and judges to spend within their budgets. This has been resolved, in part, by a personnel rule, which in turn was adopted by the supreme court and which mandates that district administrators who overspend their budgets are subject to removal.[25]

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[24] Colorado's Chief Justice Edward E. Pringle has spoken extensively on the Colorado budgetary process. The discussion in the text was derived from one of these speeches. See, Edward E. Pringle, "Fiscal Problems of a State Court System," (an address presented to the Conference of Chief Justices, Seattle, Washington, August 10, 1972).

[25] *Colorado Judicial System Personnel Rules*, Rule 26(a)(3).

Finally the administrator's office had to explain the complexity of the judicial budget to the general assembly, but more particularly, the Joint Budget Committee, and to work with state legislators to gain their cooperation in the budgetary process.

F. State Financing

Although unitary budgeting generates a number of technical difficulties, implementing unitary budgeting is also a major problem of implementing state financing. In order for a state to comprehend fully its funding responsibilities, it first must develop a means for analyzing budgetary data. A unitary budget facilitates interpretation of disparate financial data and thus serves as a partial solution to problems associated with state financing. However, a number of additional difficulties are also associated with implementing state financing.

1. **Reluctance of the legislature to spend money.** Although a constitutional provision, statute or rule may mandate state financing, if the legislature is unwilling to appropriate the necessary funds, implementation difficulties arise. The classic example of this problem has occurred recently in Alabama. In that state the legislature added to the financing legislation a provision prohibiting the judiciary from expending more money than it produced in revenues. In May, 1977, during the last stage of a three year implementation period, it became evident that court generated revenues would fall short of the $16 million that had been projected.[26] Consequently, the judiciary faced an impending crisis. On May 30, Chief Justice C. C. Torbert, Jr. halted all jury trials and permitted only essential criminal matters to proceed. Judges continued to work, although for ten days no funds were available to pay their salaries. Finally, on June 10, the legislature appropriated funds which enabled courts to expend their entire anticipated budget.[27]

In part the Alabama financial problem was one of faulty revenue estimation. Certainly the Alabama legislature had anticipated that state financing would increase costs. In fact, to generate funds to offset the increase in costs, the implementing legislation passed in 1975 not only raised costs, fines and fees, but explicitly provided for the transfer of a large share of court generated revenues to the state treasury.[28] However, the new cost, fine and fee schedule applies only to cases instituted after January 16, 1977. Cases instituted prior to that date are governed by the former cost, fine and fee schedule. Furthermore, the revenues generated from those matters are placed in the county and not the state treasury.

Chief Justice C. C. Torbert, Jr. does not see the matter as a temporary cash flow problem, however. First of all, in April, 1977, the state assumed the cost of all court supplies in Alabama's 67 counties. Secondly, in October, 1977, 800 judicial department staff and clerical employees will be assimilated into the state personnel system, many with upgraded salaries and benefits. Finally, the projected budget for fiscal year 1977–1978 has already been pared to an absolute minimum. As Colorado's Chief Justice Edward E. Pringle has said in another setting, certain judicial costs are almost impossible to determine in advance:

> There are several judicial system activities for which it is difficult to predict the amount of money needed, even with the best data and staff analysis. I'm referring to such things as jury trials, grand juries, witness fees, insanity examinations and the like. Unusual and unanticipated expenditures in these categories constitute valid grounds for a supplemental or deficiency appropriation. Obviously, a person cannot be denied a jury trial for lack of funds. Likewise, legitimate grand jury activities cannot be curtailed. The court system should not be required to reduce other necessary, funded areas of operation to meet unanticipated jury costs. That would result in robbing Peter to pay Paul. This is another reason a supplemental appropriation is justified. Failing that, I think this is one area of expenditures where inherent powers may have legitimate application.[29]

The solution to the Alabama problem is not an easy one. Presently Chief Justice Torbert is conducting another study of court costs. He also plans to cease furnishing an excessive number of forms to the practicing bar; to consolidate 10,000 different types of court forms currently in use in Alabama's courts; and to employ the court's assignment and transfer powers extensively to reduce the need to hire new judges as filings increase.[30]

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[26] C. C. Torbert, Jr., "State of the Judiciary Address," (an address presented to the Alabama State Bar, Birmingham, Alabama July 15, 1977).

[27] "Alabama Cuts Jury Trials as Court Funds Run Out," *Judicature*, 61 (August, 1977), 92, 93.

[28] Judicial Article Implementation Act, Acts of Alabama, Act No. 1205, Art. 16, (Regular Session, 1975).

[29] Pringle, *supra* note 24.

[30] Torbert, *supra* note 26.

But these are short term solutions. In a recent address to the Alabama State Bar, Chief Justice Torbert stressed the long term impropriety of requiring the judicial branch to be self supporting. As he stated:

> I do not believe that the state can ever expect to see sufficient revenues produced for the courts to adequately fund a system of justice in Alabama. Such an idea is fundamentally unsound and must be set aside irrespective of the consequences. No other agency that renders public service to this state is budgeted on such terms and the idea of a judicial system imposing fines stiff enough to pay its salaries is repugnant to any system of justice.[31]

In other states visited, observers expressed some concern that a stipulation that the courts be self supporting represents a return to "cash register justice." Indeed, in Kentucky one angry individual exclaimed, "The court's function is to administer justice, not to raise money!"

Nevertheless, similar problems confront other states. In New York, the judicial budget can be decreased by the legislature. If this power is exercised, one New Yorker believes, "the judiciary may have no recourse and may have less [recourse] when the entire system is state funded."

On the other hand, in Colorado, although costs have increased, the prevailing philosophy is that professionalism costs money but the results are better. More recently this sentiment has been echoed in Kentucky where one administrator remarked of cost pressure on the state, "You're comparing an inferior system with inferior personnel who perform other duties to a full service judicial system with professionals."

2. **County resistance.** Another problem of implementing state financing occurs when counties refuse to cooperate. This problem generally occurs in states where the counties remain responsible for providing local facilities, equipment or supplies, but where locally collected fees are channelled into the state treasury.

For example, in Colorado, although the state has appropriated locally generated court revenues, the counties have retained title to local court facilities and remain responsible for funding their maintenance and upkeep. One county rebelled and refused to provide an adequate courtroom or chambers for a newly appointed judge. As a result, in 1974 the state court administrator filed suit against the county to compel it to provide suitable facilities for the new judge. The Colorado Court of Appeals held that pursuant to sec. 13–3–3–108(1) of the Colorado Revised Statutes, the county remained obligated to provide and maintain suitable courtroom space and facilities for the judiciary.[32]

Similarly in South Dakota, the state collects a share of locally generated fees, but the counties still must provide facilities. In Parker, an extremely small South Dakota town, the county refused to renovate an antiquated courthouse with inadequate facilities. However, a high ranking official visited the town and mentioned that if the structure was not adequately maintained, the city might lose its court. The response was almost immediate; the courthouse was renovated in a few weeks.

A related problem occurred in Alabama. Although the state was slated to assume the cost of financing local forms, supplies and equipment in October, 1977, the counties resisted relinquishing their purchasing power. The state administrative office effected a tenuous compromise to resolve the problem: the state will proceed with financing, and the counties can use the funds to do their own purchasing. However, they may only purchase the items that the office of the administrative director of the courts allows.

The Kentucky administrative office effected a similar compromise with respect to court facilities. The counties must provide facilities that comply with state standards, and the state pays to the counties the fair market rental value of the physical plant.

G. Conclusion

In their study of implementation, Pressman and Wildavsky stress that the ultimate realization of policy objectives depends heavily upon the practicable resolution of the technical problems which arise during the implementation process. In their conclusion they state:

> The later steps of implementation were felt to be "technical questions" that would resolve themselves if the initial agreements were negotiated and commitments were made. But the years have shown how those seemingly routine questions of implementation were the rocks on which the program eventually foundered.[33]

[31] *Ibid.*

[32] Lawson V. Pueblo County, 37 Col. App. 370, 540 P2d 1136 (1975).

[33] Pressman and Wildavsky, *supra* note 1.

The on-site interviews conducted in this study tend confirm that not only do technical problems abound, but that inability to resolve these problems seriously impedes the effectiveness of implementation. As this chapter indicates, the sheer number and diversity of technical implementation problems that arose in the eleven states is staggering.

However, this chapter also illustrates that different problems arise in different states and sometimes even in different localities within the same state. Moreover, it is abundantly clear that no state visited experienced all the problems catalogued in this chapter. For example, Alabama, South Dakota, and Colorado had little difficulty moving or storing records; Connecticut had few problems in changing the titles of courts; and Idaho had little trouble coordinating trial court administrators and trial judges or equalizing judicial workloads.

Certainly this latter point should be comforting to implementers confronting a court unification mandate. However, this chapter also suggests that the mere fact that difficulties arise should not be unnecessarily distressing. Technical problems which seemed insurmountable in some states were easily disposed of in others. Furthermore, over a period of time every state visited was capable of resolving most of the difficulties it confronted.

In fact, this study suggests that with a great deal of patience, willingness to experiment, and practical ingenuity, implementers can resolve most technical problems and improve the effectiveness of implementation. Successful implementation, in turn facilitates the transition between policy articulation and goal attainment.

CHAPTER XII. EVALUATING COURT UNIFICATION

The four major objectives outlined in the preface have now been addressed. The concept of court unification has been defined, its strengths and weaknesses assessed, its politics studied and its administrative difficulties examined. A detailed empirical assessment of whether a unified system results in a more efficient and equitable legal system, however, has been conspicuously excluded from the analysis. Nonetheless, during the course of the investigation, the authors have developed general *impressions* about its utility, some of which were suggested in Chapter 2.

Briefly stated, it is their belief that the unified model is generally a useful and rational way of organizing and managing a state court system. One of the most attractive features of the concept is that responsibility for administering the system is placed in one location. As a result, a single official or group of officials may be held accountable for the state of the judiciary. The absence of this important feature appears to be the primary reason why many court systems have degenerated into such archaic institutions. Even the most bitter critics of unification readily admit that excessive fragmentation must be reduced, and that some form of management system to coordinate the courts must be established.

Perhaps what attracts the authors most about the system is its flexibility in operation, which is quite unlike the way critical theorists suggest it will operate. As intimated at the close of Chapter 1, an apparent conflict exists between court unification in theory and court unification in practice; critics fail to recognize the difference.

Critics contend that unification will be manifested by a highly rigid and authoritarian structure wherein decisions are imposed uniformly throughout the system.[1] But in practice, unification is quite different. The exercise of hierarchical authority in dictatorial fashion, for example, is rarely if ever utilized. Indeed, practitioners are quick to realize political practicalities and requirements necessary to operate a flexible and responsive system. Ironically, the states considered most highly unified in theory are perhaps the most practically decentralized. Therefore, a unified system is more aptly viewed as a "mandatory consultative" one in which previously autonomous professional personnel are required to interact with all members of the judiciary and to collectively set internal priorities and goals.

Despite a generally positive feeling about the concept, the authors have strong reservations about making overly broad claims for it. Certainly, unification is not a nostrum for all that plagues the courts. Nor is it the only possible solution to the problems of the judiciary. In fact, it may even be dysfunctional in some situations. For example, in geographically large and highly populous states such as California, perhaps two, three or even four, unified systems need to be established on a regional basis.

Other unresolved problems remain. For example, must administratively fragmented states become highly centralized before more sophisticated, decentralized systems can be adopted? In other words, as speculated in Chapter 1, does the Hegelian dialectic describe the evolution of court structures? These and other questions have yet to be examined.

In the above summary the reader should note that such phrases as "impression," "reservations," and "it may be," are used in describing the authors' beliefs about court unification. Nothing is stated with any degree of certainty. To make definitive claims would be a serious error, for despite the growing controversy which enshrouds the concept, no systematic study has been undertaken to evaluate its impact. Indeed, there is little if any empirical evidence to suggest that a unified system results in a more efficient and equitable legal system than a nonunified one. Thus, one of the most critical and timely studies to be undertaken is an assessment of the extent to which court unification achieves its purported goals. While it is well beyond the scope of the present study to undertake such an analysis, a

[1] Geoff Gallas has thoroughly pointed out the weaknesses of such a system. See Geoff Gallas, "The Conventional Wisdom of State Court Administration: A Critical Assessment and An Alternative Approach," *Justice System Journal*, 2 (Spring, 1976), 35–55.

few brief remarks about how such a study might be approached are offered.

Although it currently is in vogue, evaluation research is hardly a new field of endeavor.[2] This type of research focuses on "the systematic accumulation of facts for providing information about the achievement of program requisites and goals relative to efforts, effectiveness and efficiency within any stage of program development."[3] In other words, once goals are designed and effectuated, evaluation research attempts to examine objectively the impact and ramifications of a given program.

Therefore, at the outset, the evaluation design should first explicitly enumerate general and specific goals against which court unification can be measured. The most oft-cited general goals include enhanced efficiency and a higher quality of justice. Yet neither is precise nor readily susceptible to empirical testing. Thus, specific goals, which may be operationalized, must be delineated for each element of unification. The formulation of specific objectives has been overly neglected in the field of judicial administration, and not without justifiable criticism.[4] In the absence of operable, specific objectives delineated at the outset of the project, there is no standard against which the general goals may be evaluated; in short, evaluation research is impossible.

Second, subsequent to the establishment of specific goals, performance criteria must be developed to determine whether the goals have been, will be, or even can be achieved in the near future. John B. Jennings provides three broad evaluative criteria within which system performance can be evaluated: quality of justice; processing efficiency; and burden on public participants.[5] Under the rubric of quality of justice, Jennings suggests that the following indicators may be helpful: amount of individual attention given to each case, the nature of dispositions, the quality of representation, and the extent to which litigants comprehend court proceedings. Possible indicators of processing efficiency include: rate at which cases are disposed of, the speed with which cases are processed, the causes of adjournments, and the number of continuances per case. With respect to the burden on participants, one possible criterion is the number of court appearances per case.

These broad evaluative criteria are suggestive of specific ones which may be developed to assess each element of unification. One possible specific goal of trial court consolidation might be simplified litigation. Possible performance criteria might include the extent to which jurisdiction between the trial courts is exclusive, the extent to which trial de novo is allowable, and the number of dismissals for want of jurisdiction.

A specific goal of centralized administration might be enhanced coordination among the trial courts. Therefore, performance criteria might include the amount of daily contact between the state and trial court administrators, the extent of local court participation in the system-wide decision-making process, and the extent to which judges can be assigned throughout the state as needed.

Similarly, one goal of rule-making might be responsiveness to immediate needs. Therefore, performance criteria might include the speed with which rules are promulgated, the extent to which local courts participate in the rule-making process, and the extent to which the supreme court is willing to promulgate rules when needs arise.

With respect to unitary budgeting, one specific goal might be system-wide planning. Therefore, performance criteria might include the number and qualifications of planners in the state judicial budget office, the extent to which data are gathered and analyzed in order to facilitate planning, and the extent to which budget officials are capable of forecasting needs.

Finally, one specific goal of state financing might be the equitable distribution of resources. Therefore, performance criteria might include the extent to which the least adequate facilities are first to be renovated, the extent to which auxiliary personnel receive equal compensation for similar job classifications, and the extent to which local jurisdictions with excessively high caseloads can obtain additional judgeships.

Third, the evaluation design should not neglect any side effects which may accompany implemen-

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[2] See Donald Jackson, "Program Evaluation in Judicial Administration," in Larry Berkson, Steven Hays and Susan Carbon, *Managing the State Courts* (St. Paul: West Publishing Co., 1977), p. 347.

[3] Tony Tripodi, Phillip Fellin and Irwin Epstein, *Social Program Evaluation: Guidelines for Health, Education and Welfare Administrators* (Itasca, Ill.: F. E. Peacock, 1971), p. 12.

[4] Lucinda Long, for example, is highly critical of the fact that the objectives to be achieved by creating offices of court administration have not been delineated carefully. See "Some Second Thoughts About Court Administrators," (a paper presented at the American Political Science Association Meetings, Chicago, Illinois, September, 1976).

[5] These and the criteria which follow are suggested by John B. Jennings, "The Design and Evaluation of Experimental Court Reforms," unpublished ms., October, 1971, pp. 9–11.

tation of court unification. It has been argued that the consideration of side effects constitutes one of the most neglected, but crucial, aspects of public policy evaluation.[6] Indeed an analysis of the side effects relating to other agencies and system participants may govern whether or not a program should be maintained or discontinued. Moreover, the design should allow for an assessment of both immediate and long-range side effects. A policy may have negative consequences for a period of time after unification is implemented, only to dissipate within a few years. On the other hand, counterproductive effects such as unreasonable costs, greater delay, reduction of employee morale and excessive bureaucratization may linger indefinitely.

Fourth, the research design should be comparative in nature. Two approaches appear useful: comparison between jurisdictions, and comparison within a jurisdiction before and after unification has taken place. For example, the design might allow for comparison of public perceptions about their respective judicial system, the relative costs of unified and nonunified systems, the extent of court congestion, the number of jurors utilized, and the number of personnel employed.

Finally, it is suggested that a combination of research techniques be employed in executing the design. For example, correlational analysis might be utilized to determine the relationship between highly unified systems and court congestion, efficient juror usage, the expense of court financing, and the quality of physical facilities.

Another research technique which might be employed is the interview instrument. Questionnaires can be utilized to determine the attitudes of jurors, witnesses and defendants about their state's judiciary. An assessment can be made to determine if those in highly unified systems are more satisfied and supportive of the judiciary than those in relatively nonunified systems.

Initiating evaluation research, however, will not be an easy task. Granting agencies appear to be more concerned with adopting and implementing programs than measuring their impact. Additionally, the personnel employed by granting agencies appear to have accepted, essentially on blind faith, the idea that unification is a positive phenomenon. After all, they are told by the Advisory Commission on Intergovernmental Relations, the American Bar Association and the National Advisory Commission on Criminal Justice Standards and Goals that unification is "the" answer. Unfortunately, these prescriptions are based on hunches and intuition, rather than on rigorous empirical research. More important, they are the result of extant political compromises which may result in ludicrous recommendations. To cite but one example, the National Advisory Commission on Criminal Justice Standards and Goals suggests that, "Local trial court administrators and regional administrators should be appointed by the State Court Administrator."[7] Almost any academic or practitioner could list a dozen reasons why this recommendation should never be implemented.[8]

The political compromises which occur before the recommendations are adopted also result in subtle omissions. For example, the American Bar Association *Standards Relating to Court Organization* refer only vaguely to court clerks.[9] Never do they discuss the duties and responsibilities of court clerks vis-a-vis those of trial court administrators. Another omission was the Association's failure to include fees among the monies which should be transferred to the state general fund from local units of government.[10]

Even if granting agencies become cognizant of the importance of evaluating the various facets of court unification and consequently begin funding such court studies, the investigations, nonetheless, will not proceed without considerable difficulties. Rossi and Williams, for example, have noted five obstacles to any type of evaluative research.[11] These obstacles are particularly acute for those undertaking an assessment of court unification. The authors note first that there are conceptual problems. Social policy analysis is a complex task that has innumerable nuances. Second, there are methodological problems. Data may be missing so that sophisticated

[6] Larry Berkson, "Post Conversion Analysis," *Policy Studies Journal*, 2 (Summer, 1974), 316, 319.

[7] National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington: Government Printing Office, 1973), p. 183.

[8] See Larry Berkson, "Selecting Trial Court Administrators: An Alternative Approach," *Journal of Criminal Justice*, forthcoming.

[9] American Bar Association, *Standards Relating to Court Organization* (Chicago, American Bar Association, 1974), p. 94.

[10] The *Standards* specifically recommend that fines, penalties and forfeitures should be transferred to the state general fund. Notably, they exclude locally-generated fees. *Ibid.* pp. 106–07.

[11] Peter Rossi and Walter Williams (eds.), *Evaluating Social Programs: Theory, Practice and Politics* (New York: Seminar Press, 1972), pp. xiv–xv.

designs cannot effectively be carried out. Third, there are bureaucratic problems. Access may be difficult because policy makers and administrators often do not like to be evaluated. Fourth, political problems inhibit evaluation. Bias, ideological beliefs and vested interests, both on the part of the researcher and his subjects, may serve as obstacles to arriving at objective conclusions. Finally, there are organizational problems. These include acquiring skilled personnel and resources to facilitate the research.

Despite these obstacles, evaluation research in the judicial system must be undertaken. This is particularly true with respect to the concept of court unification. The need for additional prescriptions based on intuition has long since passed. The time for rigorously evaluating the recommendations already proposed and implemented is clearly upon us.

APPENDICES

APPENDIX A
A NATIONAL GUIDE TO COURT UNIFICATION

In Chapter I it was noted that there are a multitude of conflicting interpretations regarding the elements of court unification. After a thorough search of the literature, it was determined that there are five elements: consolidation and simplification of court structure; centralized management; centralized rule-making; centralized budgeting; and state financing. To develop an approximate ranking of the states, empirical indicators have been selected to represent the various components. Because unitary budgeting and state financing are intimately interrelated, they have been treated as one category for purposes of the ranking.

There are two guiding considerations in the process of developing indicators.[1] First, the number of subcomponents must be large enough and broad enough to capture the essence of each element. Second, each of the components should be of approximately the same importance if they are to be assigned equivalent numeric scores.[2] Operating from these premises, a scheme was devised whereby each of the four elements was assigned a total of 16 points. The number of points assigned to the subcomponents varies from element to element, but are of equal weight within an element.

At the outset, two caveats must be noted. Any methodology which assigns numeric weights to represent non-empirical data makes a number of normative judgments. This is unavoidable and permeates much of the classificatory scheme which follows. For example, if one is dealing with a list of states ranked by the percentage of contribution to the judicial budget, how should they be assigned points? Is it an all or nothing proposition in which only states with 100 percent state funding receive points? Or, should the states be ranked in groups according to the percentage of state contribution? If the latter, how should the groups be divided and how many points should be assigned each group? Reliable judgments about the answers to these questions can only be offered after investigators have a clear understanding of the purpose of the methodology, what is to be measured and the goals to be sought. Every attempt was made to meet these criteria in the present study.

The second caveat is that all research projects are limited by their data base. Ideally a survey instrument is devised to gather the primary information being sought. After pretesting, it is mailed and the investigator awaits the returns. Fortunately, this procedure was generally unnecessary because a number of very recent and exceptionally reliable studies are available that contain information requisite to the successful completion of the project. Still, they are not without their limitations. Some are two or three years old, thus making them somewhat dated in this rapidly changing area of investigation. In others, data are missing for some of the states. To overcome these limitations, each of the studies was minimally updated to September 1, 1976.[3] States undertaking steps toward unification since the publication of the original data were noted and adjustments were made. Missing data were obtained via telephone interviews with appropriate state officials. Information about auxiliary judicial personnel systems was obtained from a one page questionnaire mailed to each of the state court administrators or in their absence, the chief justice of the state.

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[1] Little guidance is offered in the literature. But see, James Gazell, "Lower-Court Unification in the American States," *Arizona State Law Journal*, 1974 (1974); 653, 659; Henry Glick and Kenneth Vines, *State Court Systems* (Englewood Cliffs: Prentice-Hall, Inc., 1973), pp. 28–33; and Minnesota Judicial Council, *A Survey of Uniform Court Organizations* (1974).

[2] An implicit assumption is that each of the elements themselves are of equal importance and adequately and comprehensively describe unification.

[3] It should be noted that the information recorded in the following tables is based on the system as it existed in September, 1976. Thus, reforms enacted but not yet implemented by that date are not counted. For example, legislation passed in Alabama in October 1975 substantially consolidated that state's court structure. However, it was not in effect during 1976 and thus the old rather than the prescribed new system was utilized for point assignment purposes.

A. Consolidation and Simplification of Court Structure

A fundamental problem in developing an index to establish whether or not a state system is consolidated, is how to treat intermediate courts of appeal. Researchers in two studies recently have confronted this problem and have concluded that the presence of such a court is imperative in a unified system. Thus they assigned maximum points for its presence and zero points for its absence.[4] This system, however, severely penalizes states with small populations and light dockets. Few would argue, for example, that states such as New Hampshire and South Dakota need to create such courts in order to be unified. Moreover, a review of the literature reveals that the presence or absence of intermediate courts of appeal is not necessarily an indicator of whether a state system is unified.[5] Indeed, most proponents of a unified system do not include an intermediate appellate court as part of their prescriptions. For these reasons, the presence or absence of intermediate appellate courts was omitted as an indicator of unification.

A review of the literature also suggests that there is no consensus as to the exact number of trial courts which are permitted to exist under a fully unified system. However, the discernible trend is toward advocating a single lower court structure.[6] It is clear that a state is considered less unified as the number of types of trial courts increase. Thus, the following scheme was devised: 1 trial court — 4 points; 2 trial courts — 3 points; 3 trial courts — 2 points; 4 trial courts — 1 point; and 5 or more trial courts — 0 points. This system has the additional merit of not greatly penalizing a state with a two-tier system of trial courts.[7]

Despite the lack of consensus over whether there should be one or two trial courts, there is almost total agreement that there should be only one trial court of general jurisdiction.[8] This fact provides the basis for a second indicator. Four points were assigned to states with such a system. No points were assigned to states without it. Similarly, there is uniform agreement that if trial courts of limited jurisdiction are present, there should be only one such court.[9] Thus, a third indicator was developed. Four points were assigned to states possessing zero or only one trial court of limited jurisdiction, two points for systems employing two such courts and zero points for those utilizing three or more such courts.

It is also clear that the existence of specialized courts weakens the concept of a unified system. Thus a final indicator was developed. If a system possesses no such courts, four points were assigned. Two points were assigned if there are only one or two such courts, and zero points if three or more are present.

Thus it is possible for a state to obtain 16 points if it fully complies with this element of unification. Data on each of the four indicators were obtained from the Department of Justice, Law Enforcement Assistance Administration's National Criminal Justice Information and Statistics Service, as updated through January 31, 1975,[10] and a recent report to the California Judicial Council.[11] The results are compiled in Table A–1.

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[4] Gazell, *supra* note 1, at 661; and Glick and Vines, *supra* note 1, p. 30.

[5] For conflicting statements see Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administration of Justice," *Journal of the American Judicature Society*, 20 (February, 1937), 178, 184; Roscoe Pound, "Principles and Outline of a Modern Unified Court Organization," *Journal of the American Judicature Society*, 23 (April, 1940), 225, 228; "Model Judiciary Article, *Journal of the American Judicature Society*, 3 (February, 1920), 132, 153; "The Case for a Two-Level State Court System," *Judicature*, 50 (February, 1967), 185–87; on the one hand, and Glenn Winters, "A.B.A. House of Delegates Approves Model Judicial Article for State Constitution," *Journal of the American Judicature Society*, 45 (April, 1962), 279, 281; National Municipal League, *Model State Constitution* (New York: National Municipal League, 1963), p. 14; American Bar Association, *Standards Relating to Court Organization* (Chicago: American Bar Association 1974), p. 3; and Minnesota Judicial Council, *supra* note 1, p. 6; on the other.

[6] See, e.g., Allan Ashman and Jeffrey Parness, "The Concept of a Unified Court System," *De Paul Law Review*, 24 (Fall, 1974), 1, 29–30.

[7] Some argue that it is unfair to penalize a state, such as Colorado, for the presence of one or two additional courts which are restricted to large metropolitan areas. Nonetheless, it is clear that they diverge from the collective definition and thus were not assigned additional points.

[8] See Larry Berkson, "The Emerging Ideal of Court Unification," *Judicature*, 60 (March, 1977), 372–82.

[9] See, e.g., Ashman and Parness, *supra* note 6, at 29. Trial courts of limited jurisdiction are defined as those possessing both civil and criminal jurisdictions. Courts possessing only one or the other are considered specialized courts. This dichotomy is found consistently in the literature.

[10] United States Department of Justice, Law Enforcement Assistance Administration, *National Survey of Court Organization* (Washington: Government Printing Office, 1973), and 1975 *Supplement*.

[11] Judicial Council of California, *A Report to the Judicial Council on Trial Court Unification in the United States*, September, 1976.

Table A–1
Consolidation and Simplification of Trial Court Structure

State	Courts Present	General Jurisdiction	Limited Jurisdiction	Presence of Specialized Courts	Total	State	Courts Present	General Jurisdiction	Limited Jurisdiction	Presence of Specialized Courts	Total
Alabama*	0	4	2	0	6	Montana	1	4	2	2	9
Alaska	2	4	2	4	12	Nebraska	1	4	2	2	9
Arizona	2	4	2	4	12	Nevada	2	4	4	2	12
Arkansas	0	0	0	2	2	New Hampshire	1	4	2	2	9
California	2	4	2	4	12	New Jersey	0	0	2	2	4
Colorado	0	4	4	0	8	New Mexico	0	4	4	0	8
Connecticut*	1	4	4	2	11	New York	0	0	0	0	0
Delaware	0	0	2	0	2	North Carolina	3	4	4	4	15
Florida	3	4	4	4	15	North Dakota	1	4	2	2	9
Georgia	0	4	0	0	4	Ohio	0	4	0	2	6
Hawaii	3	4	4	4	15	Oklahoma	2	4	4	2	12
Idaho	4	4	4	4	16	Oregon	0	4	2	2	8
Illinois	4	4	4	4	16	Pennsylvania	0	4	2	0	6
Indiana	0	0	0	0	0	Rhode Island	0	4	4	0	8
Iowa	4	4	4	4	16	South Carolina	0	4	0	0	4
Kansas	2	4	4	2	12	South Dakota	4	4	4	4	16
Kentucky*	0	4	0	4	8	Tennessee	0	0	2	0	2
Louisiana	0	4	2	0	6	Texas	0	4	0	2	6
Maine	2	4	4	2	12	Utah	1	4	2	2	9
Maryland	2	4	4	2	12	Vermont	1	4	4	2	11
Massachusetts	0	4	2	0	6	Virginia	3	4	4	4	15
Michigan	0	0	0	2	2	Washington	1	4	2	2	9
Minnesota	0	4	2	0	6	West Virginia	1	4	4	2	11
Mississippi	0	0	0	2	2	Wisconsin	2	4	4	2	12
Missouri	0	0	4	0	4	Wyoming	2	4	4	2	12

*In the process of revising their court structures.

B. Centralized Management

It is a taxing endeavor to determine the extent to which each state has progressed toward a centralized management system. First, the element's parameters are exceedingly broad. Second, there is a notable lack of information and data covering this aspect of unification. This has forced earlier researchers in the area to utilize overly simplistic indicators. For example, James Gazell used as one measure, the presence or absence of a state court administrator.[12] He assigned four points (the maximum) to states utilizing such an official and zero points to states that did not. This methodology is much too superficial: the mere presence or absence of a court administrator tells us little about the extent to which a state is centrally managed. For example, a state court administrator's office may be located in a dank, dreary room in the basement of the supreme court building totally removed from the on-going operations of the judiciary. The salary of the administrator may be so low that it is difficult to recruit qualified and competent individuals.[13] Likewise, the budgets may be so limited[14] and the staffs so nominal[15] as to make these offices functionally inoperable.

On a second dimension the mere presence of a competent court administrator with sizeable staff and budgetary allocations does not necessarily indicate that centralized management is taking place. An office may possess all of these prerequisites, but not have the authority to coordinate and control trial court administrators, judges and auxiliary personnel.

To overcome these methodological problems, the presence or absence of a state court administrator was not utilized as an indicator of the degree to which each state is unified. Rather, indicators were sought which measure the authority, duties and responsibilities of the chief justice, court administrator and their offices. Precedent for this approach is found in a study by the Minnesota Judicial Council. In a questionnaire sent to each state, its members asked not only about the presence of an administrator, but also whether research and planning took place at the state level, whether regional administrators were accountable to state administration and whether there existed a state-wide personnel management plan.[16]

To measure the degree of administrative supervision over lower court personnel in the present study, two indicators were selected. The first takes into account the extent to which state supreme courts have the authority to reassign lower court judges.[17] Four points were assigned to states if the court has the power to temporarily transfer judges from one jurisdiction to another and zero points if they do not.

The second indicator selected is the degree to which state court administrators supervise trial court administration. States were assigned four points if the court administrator has the authority to: (1) require trial courts to provide them with accounting and budget information; (2) establish personnel qualifications for auxiliary personnel; (3) determine compensation for staff members whose salaries are not fixed by law; and (4) approve requisitions. Three points were assigned if three elements are present, two if two are present, one if one is present, and zero points if none is present.

The third indicator chosen for measuring the degree to which states are centrally administered is whether the state court administrator is involved in four specific activities which the literature indicates he should perform: (1) research on court organization and functions; (2) dissemination of information on court operations; (3) long-range planning; and (4) research assistance for the state court system. Four points were assigned states in which the administrator performs each activity, three points when three are performed, two points when two are performed, one point when one is performed, and zero points if none is performed.

The final indicator chosen focuses on the recruitment, retention, promotion, and removal of auxiliary judicial personnel who work in the court system. The literature review indicated that in a truly unified system, a state-wide merit program should be

[12] Gazell, *supra* note 1.

[13] Ten states pay their administrators less than $25,000. In one state, Montana, the administrator receives a mere $14,000. See Rachel Doan and Robert Shapiro, *State Court Administrators* (Chicago: American Judicature Society, 1976), pp. 124-25.

[14] At least five states employing court administrators provide less than $100,000 for the office. Alabama provides $35,000; Nevada, $32,000; and Montana, a mere $30,000. *Ibid.*

[15] Six states have only one professional in the administrator's office. Four states employ only one clerical worker and the administrator in Massachusetts has no clerical staff. See *ibid.*

[16] Minnesota Judicial Council, *supra* note 1, p. 21. Unfortunately, their data are extremely incomplete due to the fact that many states did not respond to the inquiry. Thus, it was not utilizable for the current project.

[17] Data are from Gazell, *supra* note 1, at 660; updated information was taken from the Council of State Governments, *Criminal Justice Statutory Index* (Lexington: Council of State Governments, 1975), p. 25.

established and controlled by the judiciary. Four points were assigned to states employing such a system.[18] Three points were assigned to states maintaining a state-wide merit system not maintained by the judiciary. Two points were assigned to states with merit systems at selected levels of the judiciary (usually state vs. county) or in certain geographical areas (major metropolitan areas or certain counties). Zero points were assigned to states with no merit systems.

Thus, it is possible for a state to obtain a total of 16 points if it fully complies with this element of unification. Data for the first three indicators were extracted from the American Judicature Society study of state court administrators by Rachel Doan and Robert Shapiro.[19] The data for the fourth indicator were obtained from mailed questionnaires mentioned earlier. The results are compiled in Table A–2.

C. Centralized Rule-Making

The literature review indicated that in a unified system, rule-making should be legally (constitutionally or statutorily) centralized in the state's highest court.[20] Thus one indicator chosen to determine the degree to which a state is unified in terms of rule-making power is the location of that authority. Four points were assigned if it is placed in the state's highest court, two points if it is placed jointly in the court and legislature, and zero points if it is placed elsewhere.[21] The data were extracted from the seminal work on rule-making by Jeffrey Parness and Chris Korbakes.[22]

The fact that rule-making authority rests in one particular entity may or may not reflect who actually utilizes that authority. The Parness-Korbakes study instructively denotes this distinction. They found that in a number of states the actual rule-making body differed from the legally-authorized rule-making body. Thus, a second indicator was established to give credit to states where the highest court is the functional rule-maker: four points were assigned each state where the court actually promulgates rules (is relatively free from interference from the legislature), two points were assigned where both the courts and legislature are involved, and zero points when another situation exists.

Even if the highest state court promulgates rules, its authority or power may be severely restricted by the presence of legislative veto.[23] This fact led to the adoption of a third indicator. A state was assigned four points if the legislature has no veto power over rules promulgated by the court. If a two-thirds vote is

[18] This category included states where court clerks are elected but the remaining personnel are included in a merit system. "Merit system" was broadly defined to include any civil service system.

[19] Doan and Shapiro, *supra* note 13. Missing data on Arizona and Oklahoma were supplied by court administrators Marvin Linner and Marion Opala respectively. Updated information was obtained via telephone interview for Alabama and Georgia.

[20] See Arthur Vanderbilt, *Minimum Standards of Judicial Administration* (New York: The Law Center of New York University, 1949), p. 506; Pound, "Principles and Outline of a Modern Unified Court Organization," *supra* note 5; Winters, *supra* note 5, at 282; National Municipal League, *supra* note 5; President's Commission on Law Enforcement and Administration of Justice, *Task Force Report: The Courts* (Washington: Government Printing Office, 1967), p. 83; Advisory Commission on Intergovernmental Relations, *State-Local Relations in the Criminal Justice System* (Washington: Government Printing Office, 1971), p. 91; National Conference on the Judiciary, *Justice in the States* (St. Paul: West Publishing Co., 1971), p. 265; Committee for Economic Development, *Reducing Crime and Assuring Justice* (New York: Committee for Economic Development, 1972), p. 22; National Advisory Commission on Criminal Justice Standards and Goals, *Courts* (Washington: Government Printing Office, 1973), p. 164; American Bar Association, *supra* note 5, p. 72; Minnesota Judicial Council, *supra* note 1, p. 18; Gazell, *supra* note 1, at 654; and Geoffrey Gallas, "The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach," *Justice System Journal*, 2 (Spring, 1976), 35. See also Allan Ashman and Jeffrey Parness *supra* note 6, at 30.

[21] It is argued by some, especially those familiar with the California system, that states should receive points for placing the rule-making authority in judicial councils. Nonetheless, the practice does not comport with the ideal and thus points were not assigned.

[22] Jeffrey Parness and Chris Korbakes, *A Study of the Procedural Rule-Making Power in the United States* (Chicago: American Judicature Society, 1973), pp. 22–64. Data were updated by telephone interviews and by use of information from the Council of State Governments, *supra* note 17, pp. 24–25.

[23] There is considerable confusion over whether the rulemaking authority should be subject to legislative veto. As the Advisory Commission on Intergovernmental Relations noted, "The ABA [1962] model vested the power exclusively in the supreme court; the NML [1963] model vested it in that court but subject to change by a vote of two-thirds of the legislature." Advisory Commission on Intergovernmental Relations, *supra* note 20, pp. 185, 189. The National Muncipal League's Model Judiciary Article of 1942 allowed the legislature to repeal rules made by the judicial council. "Model Judiciary Article and Comment Thereon," *Journal of the American Judicature Society*, 26 (August, 1942), 58. Its previous article of 1920, however, vested in the judicial council the "exclusive power to make, alter and amend all rules relating to pleading, practice and procedure. . . ." "Model Judiciary Article," *supra* note 5, at 139. The American Bar Associations Standards of Judicial Administration adopted in 1938 provided that "the courts should be given full rule-making power," "Standards of Judicial

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Table A–2
Centralized Management

State	Assignment Power of Supreme Court	Role of S.C. Admin. in Supervision of T.C. Administration	Activities of S.C. Admin.	Type of Personnel System	Total	State	Assignment Power of Supreme Court	Role of S.C. Admin. in Supervision of T.C. Administration	Activities of S.C. Admin.	Type of Personnel System	Total
Alabama	4	3	3	2	12	Montana	4	1	2	0	7
Alaska	4	4	4	4	16	Nebraska	4	2	4	2	12
Arizona	4	0	0	2	6	Nevada	0*	0	1	2	3
Arkansas	4	0	4	0	8	New Hampshire	4	0	2	3	9
California	4	0	4	2	10	New Jersey	4	3	4	3	14
Colorado	4	4	4	4	16	New Mexico	0	3	4	4	11
Connecticut	4	0	4	4	12	New York	4	2	4	4	14
Delaware	4	1	2	4	11	North Carolina	4	2	4	4	14
Florida	4	0	4	2	10	North Dakota	4	0	4	0	8
Georgia	0	0	3	2	5	Ohio	4	0	3	0	7
Hawaii	4	4	4	3	15	Oklahoma	4	2	3	0	9
Idaho	4	2	4	0	10	Oregon	0	0	4	0	4
Illinois	4	1	4	2	11	Pennsylvania	4	2	4	2	12
Indiana	4	1	0	0	5	Rhode Island	4	3	4	0	11
Iowa	4	0	4	0	8	South Carolina	4	0	4	0	8
Kansas	0	0	4	2	6	South Dakota	0	3	4	4	11
Kentucky	4	0	4	0	8	Tennessee	4	0	3	0	7
Louisiana	0	0	3	0	3	Texas	0	0	3	0	3
Maine	0	4	4	4	12	Utah	4	0	4	2	10
Maryland	4	0	4	2	10	Vermont	4	4	4	0	12
Massachusetts	0	1	4	0	5	Virginia	4	2	3	0	9
Michigan	0	2	4	2	8	Washington	4	1	4	2	11
Minnesota	0	0	3	2	5	West Virginia	4	3	2	4	13
Mississippi	0	0	1	0	1	Wisconsin	4	0	4	2	10
Missouri	4	0	4	0	8	Wyoming	0	0	2	0	2

*Through a very complex but generally unknown and never utilized procedure, judges *may* be reassigned. See Nevada, *Revised Statutes*, 3.040.

required before a veto may be effected, a state was assigned two points. States which permit veto by one-half vote of the general assembly were assigned no points. This decision encompasses the belief that states which make it difficult to nullify court rules should receive some credit for being unified in contrast to states which allow their legislatures to overturn rules by a simple majority. Data were again obtained from the Parness-Korbakes study.

The fact that the court possesses legal rule-making power and/or actually promulgates some rules, coupled with the fact that it is free from legislative veto, however, does not elucidate the entire situation. A court may possess statutory authority to promulgate rules, but may hesitate to do so, fearing that the grant of authority may be withdrawn by the legislature if it is utilized. Thus, a fourth indicator, one measuring the actual use of the rule-making power, was devised. The data were obtained from a study by Allan Ashman and James Alfini [24] which analyzed 25 areas in which rules could be promulgated. The areas were reduced to 16 by eliminating two areas in which there was substantially incomplete information (other rules of procedure, and licensing and special practice problems); two areas in which all but three or fewer states had promulgated rules (appellate procedure and attorney discipline); and five areas in which all but three or fewer states had not promulgated rules (statutes of limitation, creation of judgeships, court boundaries, court financing, and courtroom security). For each of the 16 included areas, 0.25 (¼) point was assigned. The totals were then converted on the following basis: 3.25 to 4 — 4 points; 2.25 to 3 — 3 points; 1.25 to 2 — 2 points; 0.25 to 1 — 1 point; and 0 — 0 points. Thus, each state could obtain a total of four points for actually utilizing the rule-making authority. The rationale for the point conversion process is threefold. First, it intuitively appears too harsh to require a state to have promulgated rules in each of the areas before it can be considered fully unified. Consequently, a standard somewhat short of the perfect 4.0 should be employed to measure complete unification. Second, and again, intuitive reasoning suggests that a scale be established rather than granting the extremes of four or zero points. In this manner, *degrees* of usage may be measured and states are not drastically penalized if they do not extensively utilize their authority. Third, the method of conversion results in a fairly even distribution of states in each category of points.[25]

Thus, it is possible for a state to obtain 16 points if it fully complies with this element of unification. Table A–3 summarizes the point assignments in this area.

D. Centralized Budgeting and State Financing

To measure the extent to which a state operates under a centralized budget, three indicators were utilized. Data were derived from the seminal study of state court budgeting by Carl Baar.[26] The first indicator deals with preparation of the budget. States were assigned four points if the budget is centrally prepared (usually in the court administrator's office). States with central review and submission (the state court administrator or staff gathers materials from all courts and passes them to budget officials in the legislative or executive branches) were awarded three points. Two points were assigned those states placed by Baar in both the central review and submission, and external preparation categories. One point was assigned states with separate submission of the budget (different parts of the court system submit requests to budget officials in the

(Continued from page 211)

Administration Adopted," *Journal of the American Judicature Society*, 22 (August, 1938), 66, 67. Vanderbilt's assessment of this provision suggests that rule-making authority should not be disturbed by the legislature. "The regulation of procedures by the legislature has had deleterious effects. . . . The committee of the Section of Judicial Administration which examined these questions not only recommended the withdrawal of the legislature from the field of procedure and the authorization of rule-making by the courts, but also that the rules so made supersede previous legislative action." Arthur Vanderbilt, "Minimum Standards of Judicial Administration," *supra* note 20, pp. 91–92. Roscoe Pound's position is unclear although he too bitterly criticized state legislature for interfering with the administration of the courts. Pound, *supra* note 20, at 225. He did not list legislative veto among his checks on abuse of power by the courts. *Ibid.*, at 232. Most discussions of rule-making suggest that various groups participate in making rules but do not explicitly deal with the question of legislative veto. See e.g., American Bar Association, *supra* note 5, pp. 71–74.

[24] Allan Ashman and James Alfini, *Uses of the Judicial Rule-Making Power* (Chicago: American Judicature Society, 1974), pp. 12–84. Missing data for Alabama were obtained from Nancy Brock, Administrative Assistant, Administrative Office of the Courts, Alabama.

[25] The major exception is in the zero point category which contains only one state.

[26] Carl Baar, *Separate but Subservient: Court Budgeting in the American States* (Lexington: D. C. Heath and Co., 1976), p. 14. The data were updated by Professor Baar for this project. Missing data for Florida, Mississippi, Missouri, and Pennsylvania were gathered via telephone interviews. The recently passed New York legislation is not included.

Table A-3
Centralized Rule-Making

State	Legally Charged Rule-Maker	Actual Rule-Maker	Legislative Veto of Rule	Utilization of Rule-Making	Total	State	Legally Charged Rule-Maker	Actual Rule-Maker	Legislative Veto of Rule	Utilization of Rule-Making	Total
Alabama	4	4	2	3	13	Montana	4	4	0	3	11
Alaska	4	4	2	3	13	Nebraska	0	4	0	3	7
Arizona	4	4	4	4	16	Nevada	2	2	0	2	6
Arkansas	4	4	4	2	14	New Hampshire	4	4	4	2	14
California	0	0	0	0	0	New Jersey	4	4	4	4	16
Colorado	4	4	4	4	16	New Mexico	4	4	4	2	14
Connecticut	4	4	0	2	10	New York	0	0	0	1	1
Delaware	4	4	4	2	14	North Carolina	2	2	0	1	5
Florida	4	4	2	3	13	North Dakota	4	4	4	2	14
Georgia	0	0	0	2	2	Ohio	4	4	0	4	12
Hawaii	4	4	4	2	14	Oklahoma	4	4	4	3	15
Idaho	4	4	4	3	15	Oregon	0	0	0	2	2
Illinois	0	4	0	4	8	Pennsylvania	4	4	4	3	15
Indiana	4	4	4	2	14	Rhode Island	4	4	4	2	14
Iowa	0	4	0	3	7	South Carolina	4	4	0	1	9
Kansas	2	2	0	3	7	South Dakota	4	4	0	2	10
Kentucky	4	4	4	2	14	Tennessee	2	2	0	1	5
Louisiana	0	0	4	1	5	Texas	4	4	0	1	9
Maine	4	4	4	3	15	Utah	4	4	4	2	14
Maryland	4	4	0	3	11	Vermont	4	4	0	2	10
Massachusetts	0	4	4	3	11	Virginia	0	0	0	1	1
Michigan	4	4	4	4	16	Washington	4	4	4	2	14
Minnesota	2	2	0	2	6	West Virginia	4	4	4	2	14
Mississippi	2	2	0	1	5	Wisconsin	2	2	0	3	7
Missouri	2	2	0	3	7	Wyoming	4	4	4	3	15

executive or legislative branches). Zero points were assigned states with external preparation.

The second indicator developed to determine the degree to which budgets are centralized is the extent of executive branch participation.[27] Four points were assigned if the executive is excluded from participation, three points if the executive may review but not revise the budget, and two points if the executive may review and only revise certain judicial budget requests. Zero points were assigned to states allowing the executive to review and revise judicial budgets.

The final indicator selected to measure the degree to which each state utilizes a centralized budget is the role of the gubernatorial item veto in the budgetary process.[28] If no authority exists for such a veto, a state was assigned four points. If authority exists but is never exercised, a state received two points. The rationale underlying this decision is that the presence of item veto authority may create self-imposed restrictions on the judiciary in order to avoid its exercise; thus, a state should not be considered fully unified in these situations. Zero points were assigned if the authority has been exercised within the past five years.

The single indicator utilized to measure the extent of state financing is the percentage of which each state funds its judiciary.[29] States which assume between 80 and 100 percent of the funding were assigned four points (eight states); between 60 and 79 percent, three points (three states); between 40 and 59 percent, two points (eight states); between 20 and 39 percent, one point (23 states); and 0 to 19 percent, zero points (eight states).

In sum, as with the other elements of unification, each state is able to receive a total of 16 points. The tabulations are presented in Table A–4.

E. The Final Rankings

As stated at the outset, the four areas were assigned an equal number of points (16), making it possible for each state to receive a total of 64. By computing the arithmetic mean for each state, a unification ratio is produced. This allows a rough ranking of the states as presented in Table A–5.[30] Naturally, the ranking is subject to change as states revise their judicial systems. Indeed, Alabama, Kentucky and New York, among others have already passed reforms which when implemented will change their positions radically.

Again, it is emphasized that the rankings should be viewed with caution. Simply because Maine received one more point than North Carolina does not necessarily indicate that the former is more unified than the latter. What the ranking does suggest is that Maine and North Carolina are more unified, in the conventional sense, than New Hampshire, and much more unified than Mississippi. Perhaps it is most useful to view the rankings in terms of quartiles or quintiles.

It is anticipated that a number of objections will be made to the order or the means by which it was devised. This generally occurs whenever such lists are created. One of the basic reasons for this phenomenon is that by their nature, rankings imply something is greater than or inferior to something else: in this case, that one state is "better" or "more progressive" than another. However, the investigators intend no such value judgment. The ordering of the states tells, and *only* tells *roughly,* how far each state has moved toward the collective definition of a unified court system. This is entirely different and apart from the question of whether it is an appropriate, wise, cost-efficient and just ideal toward which states should move.

Objections may be raised regarding the choice of elements. It is for this reason that the literature was so thoroughly scrutinized. Objections also may be made to the data base. However, each source was updated as carefully as possible by utilizing both library research, mailed questionnaires, and telephone interview techniques.

Perhaps the most compelling objections may be those directed at the choice of indicators. One means by which to check their general validity is to compare the results with the findings of scholars who have utilized differing methodologies. Accordingly, the rankings were compared with two important, but

[27] See *ibid.*, p. 28.

[28] *Ibid.*, pp. 79–80, updated by Baar. Five states, Indiana, Louisiana, Maine, New Mexico and Wyoming did not respond to Professor Baar's inquiry. For those states scores were computed.

[29] *Ibid.*, pp. 6–7, updated by Baar. See Carl Baar, "The Limited Trend Toward Court Financing and Unitary Budgeting in the States," in Larry Berkson, Steven Hays and Susan Carbon, *Managing the State Courts* (St. Paul: West Publishing Co., 1977), pp. 269–80.

[30] The higher the standard deviation in relation to the mean, the less stable the mean. For example, if a state has relatively high standard deviation in relation to its mean, such as New York or California, it is clear that the state scores very high on one or more dimensions, and scores very low on one or more dimensions. Thus, for those few states with relatively high standard deviations, the reader is cautioned to inspect the composition of those state's total scores.

Table A–4
Centralized Budgeting and State Financing

State	Extent of Centralized Judicial Preparation	Extent of Executive Branch Participation	Use of Gubernatorial Item Veto Over Judicial Budget	Percentage of State Funding	Total	State	Extent of Centralized Judicial Preparation	Extent of Executive Branch Participation	Use of Gubernatorial Item Veto Over Judicial Budget	Percentage of State Funding	Total
Alabama*	1	0	2	1	4	Montana	2	0	2	1	5
Alaska	4	0	2	4	10	Nebraska	1	0	2	2	5
Arizona	3	3	2	0	8	Nevada	1	4	4	1	10
Arkansas	2	3	2	1	8	New Hampshire	0	0	4	1	5
California	2	0	0	0	2	New Jersey	4	0	0	1	5
Colorado	4	3	2	3	12	New Mexico	4	0	2	4	10
Connecticut	4	0	0	4	8	New York*	2	3	2	1	8
Delaware	3	3	2	4	12	North Carolina	4	0	4	4	12
Florida	1	0	2	1	4	North Dakota	1	4	2	1	8
Georgia	0	3	2	0	5	Ohio	3	3	2	0	8
Hawaii	4	4	2	4	14	Oklahoma	3	0	2	2	7
Idaho	3	0	2	2	7	Oregon	3	4	2	1	10
Illinois	3	2	2	1	8	Pennsylvania	1	0	2	2	5
Indiana	0	0	4	1	5	Rhode Island	4	3	4	4	15
Iowa	0	4	2	1	7	South Carolina	3	0	2	0	5
Kansas	3	3	2	1	9	South Dakota*	2	0	2	1	5
Kentucky*	2	0	2	1	5	Tennessee	4	0	2	1	7
Louisiana	2	4	2	1	9	Texas	0	0	0	0	0
Maine	1	0	4	3	8	Utah	0	0	4	2	6
Maryland	3	2	4	2	11	Vermont	4	0	4	4	12
Massachusetts	1	0	2	1	4	Virginia	4	0	2	3	9
Michigan	3	0	2	0	5	Washington	1	2	2	1	6
Minnesota	4	0	2	0	6	West Virginia	0	4	2	1	7
Mississippi	0	0	2	1	3	Wisconsin	0	4	2	2	8
Missouri	1	0	2	1	4	Wyoming	0	0	2	2	4

*In the process of implementing state funding.

Table A–5
A Ranking of the Extent to Which States are Unified

Rank	State	Unification Ratio*	Standard Deviation	Rank	State	Unification Ratio*	Standard Deviation
1	HAWAII	.91	.04	25	WISCONSIN	.58	.14
2	COLORADO	.81	.24	27	ALABAMA	.55	.27
3	ALASKA	.80	.15	27	KENTUCKY	.55	.24
4	IDAHO	.75	.26	29	KANSAS	.53	.16
4	RHODE ISLAND	.75	.20	30	VIRGINIA	.53	.36
6	MAINE	.73	.18	31	NEBRASKA	.52	.19
7	NORTH CAROLINA	.72	.28	31	OHIO	.52	.16
8	VERMONT	.70	.06	31	WYOMING	.52	.39
8	WEST VIRGINIA	.70	.19	34	ARKANSAS	.50	.31
10	MARYLAND	.69	.05	34	MONTANA	.50	.16
11	ILLINOIS	.67	.24	36	MICHIGAN	.48	.38
11	NEW MEXICO	.67	.16	36	NEVADA	.48	.25
11	OKLAHOMA	.67	.22	38	MASSACHUSETTS	.41	.20
14	ARIZONA	.66	.28	38	SOUTH CAROLINA	.41	.15
14	FLORIDA	.66	.30	40	CALIFORNIA	.38	.37
14	SOUTH DAKOTA	.66	.28	40	INDIANA	.38	.37
17	CONNECTICUT	.64	.11	40	OREGON	.38	.23
18	WASHINGTON	.63	.21	43	LOUISIANA	.36	.16
19	DELAWARE	.61	.33	43	MINNESOTA	.36	.04
19	NEW JERSEY	.61	.38	43	MISSOURI	.36	.13
19	NORTH DAKOTA	.61	.18	43	NEW YORK	.36	.41
19	UTAH	.61	.21	47	TENNESSEE	.33	.15
23	IOWA	.59	.27	48	TEXAS	.28	.24
23	PENNSYLVANIA	.59	.30	49	GEORGIA	.25	.08
25	NEW HAMPSHIRE	.58	.23	50	MISSISSIPPI	.17	.11

*The arithmetic mean of the four elements.

less detailed, studies.[31] The final listings do not radically diverge from one another.

The present ranking has several advantages over the earlier ones, however. First, there are a number of reasons to believe it is more accurate. The data base is much broader, more complete and more current. Second, because at least three years have passed since the former studies were completed, the concept of court unification is more clearly understood and, thus, is much more easily measured. Third, utilizing recently gathered data in a rigorous, scientific fashion precludes suggestion of bias in the rating process. Finally, whereas one of the earlier studies merely grouped states into categories, the present undertaking creates a ranking, thus making finer distinctions about the extent to which states are unified.

F. Conclusion

The purpose of this appendix has been to determine the extent to which each of the states is unified. Hopefully this will lay the foundation for further research. Most important, it should render aid to those scholars interested in determining the consequences of unification. Are those states which

[31] Gazell, *supra* note 1; and R. Stanley Lowe, "Unified Courts in America: The Legacy of Roscoe Pound," *Judicature*, 56 (March, 1973), 316.

rank high on the scale necessarily the most well-operated and just systems in the nation? Do those states tend to produce a system of justice which is more fair in terms of access and more efficient in terms of speed with which it disposes of cases? Conversely, are those on the bottom the least efficient and most unfair systems? Do they restrict access to the courts and increase the time required for the processing of cases? It is unlikely that either extreme is correct. For example, it is difficult to believe that the judicial system of California on the one hand, and Indiana or Mississippi on the other, are similar in terms of the quality and efficiency with which justice is dispensed. Yet, all three are very low in the rankings.

Other questions emerge. Does the fact that the most unified states are relatively small in population indicate that only rural states can accomplish unification? Should larger states unify? Conversely, should they remain decentralized? Does the fact that most of the states of the old confederacy rank on the bottom of the scale indicate that unification is unlikely to take place, or is undesirable, in certain regions of the country? Are the lower ranked states relatively non-unified because the model appears undesirable in terms of processing justice efficiently? Answers to these and similar questions should help to guide the states in selecting the most appropriate schemes for their judicial systems.

APPENDIX B
STATE SOURCES AND CONTACTS

ALABAMA

Baar, Carl. Former President, Citizens' Conference on Alabama Courts and presently a Montgomery businessman.

Cameron, Charles. Administrative Director, Department of Court Management.

Cole, Charles D. Former Director, Advisory Commission on Judicial Article Implementation and presently Director, Southeast Regional Office, National Center for State Courts.

House, W. Michael. Former Administrative Assistant to the Chief Justice, principal lobbyist for the Citizens' Conference on Alabama State Courts, Inc., and presently a Montgomery attorney.

Martin, Robert. Public Information Director, Alabama Judicial System.

Mitchell, Ned. Former assistant to the staff director, Advisory Commission on Judicial Article Implementation and presently a Research Analyst, Department of Court Management.

Nachman, M. Roland. Former President, State Bar Association, and presently a Montgomery attorney.

Torbert, C. C. Former member, Senate, and presently Chief Justice, Supreme Court.

COLORADO

Ackerman, Randy. Personnel Officer, Office of State Court Administrator.

Alter, Chester. Former Co-Chairman, Committee for Non-Political Selection and Removal of Judges, Inc., and presently Chancellor Emeritus, University of Denver.

Hoffman, Bea. Director of Research and Development, Office of State Court Administrator.

Holmes, Hardin. Former Chairman, House Judiciary Committee and presently a Denver attorney.

James, Max. Budget Officer, Office of State Court Administrator.

Lawson, Harry. Former State Court Administrator and presently Director, Masters Program in Judicial Administration, University of Denver.

Miller, William. Executive Secretary, State Bar Association.

CONNECTICUT

Burnham, Virginia Schroeder. President, Connecticut Citizens for Judicial Modernization and member, Legislative Advisory Council.

Costas, Peter. Founder of Connecticut Citizens' for Judicial Modernization and presently a Hartford attorney.

Cotter, John. Justice, Supreme Court and the State Court Administrator.

Dixon, Ralph. Legal Counsel to Connecticut Citizens for Judicial Modernization.

Greenfield, James. Former President, State Bar Association and presently Co-Chairman, Joint Committee on Judicial Modernization.

Healey, James T. Former Chairman, House Judiciary Committee.

Isler, James. Member, Connecticut Citizens for Judicial Modernization Board of Directors and member, Legislative Advisory Council.

Murtha, John. President, State Bar Association.

Neiditz, David. Former Chairman, Senate Judiciary Committee and presently a private attorney.

Nejelski, Paul. Former Assistant Executive Secretary of the Supreme Court and presently a Deputy Attorney General of the United States.

Pape, William. Former President, Connecticut Citizens for Judicial Modernization and presently Editor, *Waterbury Republican-American*.

Speziak, John. Chief Judge, Superior Court.

Wilcox, John. Executive Director, Connecticut Citizens for Judicial Modernization.

FLORIDA

Adkins, James. Justice, Supreme Court.

Baggett, Fred. Former Executive Assistant to the Chief Justice and presently a Tallahassee attorney.

Core, Arthur. Executive Director, Judicial Council.

Eaton, William. Budget Officer, State Court Administrator's Office.

Habershaw, Frank. Deputy Court Administrator, State Court Administrator's Office.

Harkness, John. Former Staff Director, House Judiciary Committee and presently State Court Administrator.

Karl, Frederick. Former member of the Senate and presently a Justice, Supreme Court.

Krombout, Ora. Former Vice President, League of Women Voters and presently Research Associate, Florida State University.

McCord, Guyte. Former Chairman, Circuit Judges' Conference and presently Judge, District Court of Appeals.

McFarland, Richard. Former Assistant Executive Director, State Bar Association and presently a Tallahassee attorney.

McMillan, Hugh. Legislative Assistant to the Governor.

Reno, Janet. Former Staff Director, House Judiciary Committee and presently a Miami attorney.

Robert, B. K. Former Chief Justice, Supreme Court and presently Chairman, Judicial Council.

Tillman, Jane. Administrative Assistant, State Court Administrator's Office.

IDAHO

Bianchi, Carl F. Administrative Director of the Courts.

Donaldson, Charles F. Vice Chief Justice, Supreme Court.

Gilmore, Warren. Administrative Magistrate, Fourth Judicial District.

Gross, Alfred. Former Chairman, Citizens' Committee on Courts, Inc., and presently a Boise businessman.

Hampton, Hazel. Chief Deputy Court Clerk, Ada County (Boise).

Lee, William. Former Administrative Assistant, Supreme Court and presently a Boise attorney.

Lynch, James. Former Executive Director, Idaho Judicial Council, and presently a Boise attorney.
McFadden, Joseph J. Former member, State Bar Committee for Unification of the Courts and presently Chief Justice, Supreme Court.
Miller, Thomas. Former Secretary, State Bar Association, former Chairman, State Bar Association Court Reorganization Commission and presently a Boise attorney.
Schlecte, Myran. Director, Legislative Council.
Schroeder, Gerald. Administrative District Court Judge, Ada County (Boise).
Wells, Robert. Deputy Court Clerk, Ada County (Boise).

KANSAS

Anderson, T. C. Former Director, Continuing Legal Education Division, State Bar Association and presently President, T. C. Anderson and Associates, Inc.
Barbara, Michael A. Judge, District Court, Shawnee County (Topeka).
Bradt, Marilyn. Member, Kansas League of Women Voters (Lawrence).
Fatzer, Harold R. Chief Justice, Supreme Court.
James, James R. State Judicial Administrator.
Klein, Kenneth. Executive Director, State Bar Association.
Lewis, Philip. Former President, State Bar Association and presently a Topeka attorney.
Miller, Harry. Administrative Judge, Wyandotte County District Court (Kansas City).
Prager, David. Member of the Planning Committee, Citizens' Conference on Modernization of Kansas Courts and Justice, Supreme Court.
Schultz, Richard. Trial Court Administrator, Shawnee County District Court (Topeka).
Shannon, Richard. District Court Administrator, Wyandotte County (Kansas City).
Schroeder, Alfred. Chairman, Kansas Judicial Council and Justice, Supreme Court.
Tillotson, J. C. Former Chairman, Senate Judiciary Committee, former Vice President, Judicial Study Advisory Committee and presently a Norton attorney.
Thomas, C. Y. Former member, Senate, former Chairman, Kansas Chamber of Commerce and presently Chairman, Kansas Citizens for Judicial Improvement.
Thomas, Leonard. Former President, State Bar Association and presently a Kansas City attorney.

KENTUCKY

Amato, James G. Former Executive Director, Kentucky Citizens for Judicial Improvement, Inc., and presently a Lexington attorney.
Chauvin, L. Stanley, Jr. A Louisville attorney.
Davis, William E. Administrative Director of the Courts.
Eblen, Amos. Former President, Kentucky Citizens for Judicial Improvement, Inc., and presently a Lexington attorney.
Lancaster, Nancy. Former Staff Assistant for Support, Kentucky Citizens for Judicial Improvement, Inc., and presently an Administrative Assistant, Administrative Office of the Courts.
Meade, N. Mitchell. Judge, Circuit Court, Fayette County (Lexington).
Meigs, Henry. Former Co-Chairman, Kentuckians for Modern Courts and presently Judge, Circuit Court, Franklin County (Frankfort).
Pennington, Henry. Former Acting Director, Office of Judicial Planning and presently Judge, 50th Judicial Circuit (Danville).
Reed, Scott. Chief Justice, Supreme Court.
Stewart, Patty. President, Kentucky League of Women Voters.
Wheeler, Stephen F. Former Staff Assistant for Education, Kentucky Citizens for Judicial Improvement, Inc., and presently Assistant Director, Pre-Trial Administrative Services, Administrative Office of the Courts.
Whitmer, Leslie G. Director, State Bar Association.

NEW YORK

Ames, Marion. Former President, League of Women Voters.
Bartlett, Richard. Administrative Judge, State of New York.
Cooperman, Arthur. Chairman, Assembly Judiciary Committee.
Coyne, Richard F. Vice President, Economic Development Council, and Chairman, Council's Task Force on the Courts.
Dominic, D. Clinton, III. Former state legislator, former Chairman, Dominic Commission and presently a private attorney.
Gordon, Bernard. Chairman, Senate Judiciary Committee.
Gray, Peter. Deputy Court Administrator, Office of Court Administration.
McKay, Kate. Librarian, Institute of Judicial Administration.
Miller, Fred. Legislative Counsel, Office of Court Administration.
Nadel, Michael. Senior Counsel to the Governor.
Schair, Fern. Executive Director, Fund for Modern Courts.
Schestakovsky, Steven. Executive Director, Citizens' Union.

OHIO

Gilbert, Coit. Administrative Director of the Courts.
King, Gene. President, Gene P. King and Associates.
Morris, Earl. Former Co-Chairman, Committee for Modern Courts, former President, American Bar Association and presently a Columbus attorney.
O'Neill, C. William. Chief Justice, Supreme Court.
Pohlman, James. Former Co-Chairman of the Modern Courts Committee, State Bar Association and presently a Columbus attorney.
Radcliffe, William. Former Administrative Assistant, Supreme Court.
Somerlot, Douglas. Assistant Administrative Director, Supreme Court.
Startzman, Thomas. Clerk, Supreme Court.

SOUTH DAKOTA

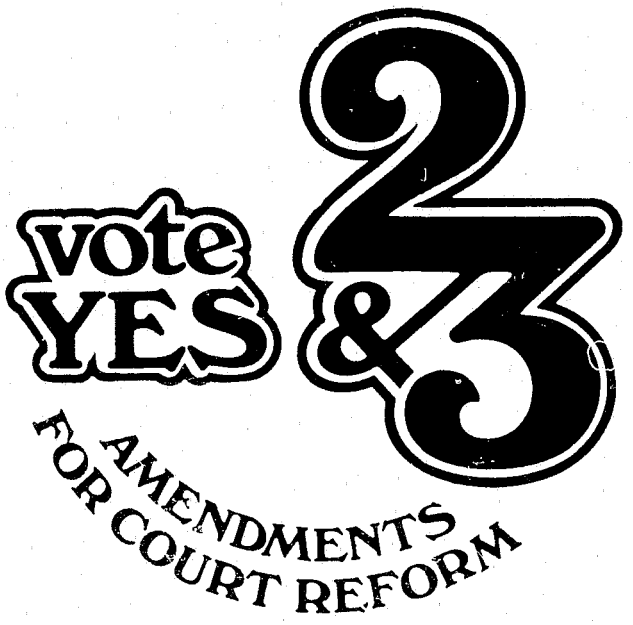
Corey, Eunice. Clerk of Courts, Hughes County (Pierre).
Dahlin, Donald. Associate Professor of Political Science, University of South Dakota (on leave) and Secretary, Department of Public Safety.
Dunn, Francis G. Chief Justice, Supreme Court.
Edelen, Mary. Member, House of Representatives.
Ellenbecker, Jack. Budget Finance Officer, Office of State Court Administrator.
Geddes, Mark. State Court Administrator.
Kneip, Richard. Governor.
McCullen, Wallace. Member, Constitutional Revision Commission.
Newberger, Jay. Director, Court Services, Office of State Court Administrator.
Sahr, William K. Executive Director, State Bar Association.
Van Sickle, Neil. Retired General and former Chairman, Constitutional Revision Commission.
Whiting, Charles. Former Chairman, State Bar Committee to Study Court Reorganization, member, Constitutional Revision Commission and presently a Rapid City attorney.

WASHINGTON

Hamilton, Orris. Justice, Supreme Court.
Mattson, George. President, State Magistrates' Association.
Mattson, Mary. Chairperson, Administration of Justice Committee and member, League of Women Voters.
Riddell, Richard. President, State Bar Association.
Stone, Charles. Former President, State Bar Association and presently a Seattle attorney.
Winberry, Philip. Administrator for the Courts.
Wright, Charles T. Chief Justice, Supreme Court.

APPENDIX C
SAMPLES OF CAMPAIGN LITERATURE

CAMPAIGN ADVERTISING



Badge - New York

Badge - Illinois

Advertising - Billboard
Nevada

Advertising - Bumper Sticker

New York

Support for Amendment No. 1 Comes from Throughout Colorado

Members of the Citizens' Committee on Modern Courts live in Grand Junction, Cortez, Trinidad, Durango, Fort Collins, Boulder, Pueblo, Lamar, Colorado Springs—everywhere in Colorado where people want faster and fairer justice.

How Did the Amendment Come About?

Only after two years of intensive study by a joint committee of the Colorado Legislature, was Amendment No. 1 approved by the General Assembly. Now it is up to the voters of Colorado to update Colorado justice to meet the needs of modern times.

Who Is Financing the Campaign?

Just about everyone in Colorado will be asked to help, because the courts affect all of us, sooner or later. People throughout Colorado are being invited to become members of the Citizens' Committee on Modern Courts. Membership fees will be used exclusively to finance the campaign for passage of Amendment No. 1.

WON'T YOU JOIN?

CITIZENS' COMMITTEE ON MODERN COURTS, INC.

I will be glad to join other Colorado Citizens as a member of the Committee on Modern Courts. In order to support this vital program I agree to pay

.....Dollars ($.....)

Payable as follows:.....

DATE..... Signature.....

PRINT NAME .....

MAIL ADDRESS.....

CITY..... COUNTY.....

VOTE YES ON AMENDMENT NO. 1

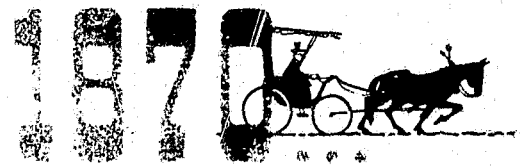
Prepared by:

CITIZENS' COMMITTEE ON MODERN COURTS, INC.

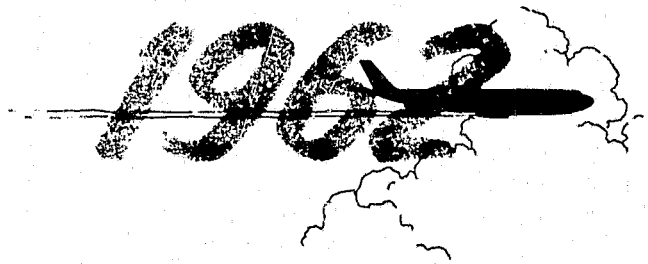
1005 Guaranty Bank Bldg. • 817 Seventeenth St. • Denver 2, Colo.
KEystone 4-2321

Robert L. Stearns, *Chairman;* Clyde O. Martz, *Secretary;*
Melvin J. Roberts, *Treasurer;* Lee A. Moe, *Executive Director*

Colorado's Present Court System Was Designed to serve the needs of



But Our Times Demand Courts for a System to Serve



SUPPORT AMENDMENT #1

FOR

FASTER AND FAIRER

JUSTICE

Citizens from every walk of life are joining together under the name of Citizens' Committee on Modern Courts to improve justice in Colorado Courts for the benefit of everyone.

The only goal of the Citizens' Committee on Modern Courts is to provide an improved brand of justice in Colorado. That can be accomplished by having a majority of the voters in the November General Election vote "Yes" on Constitutional Amendment No. 1. The amendment would provide more economical use of the tax dollars, speed justice and provide professionally qualified judges in all parts of the state.

Why Change?

- Justices of the Peace are not required to have any training, and, perhaps worse, they draw no salary, but operate instead on a fee basis. His fees depend on the number of cases brought before him. This number is directly related to his decisions.
- Many of Colorado's county judges have no formal legal training of any kind, yet rule on wills and on mental health cases.
- Today's laws are complex. Not as simple as in 1876 when the State Constitution, which set up our court system, was written. We need a different type of court system, another type of judge than was needed in 1876.

What Amendment No. 1 *Will* Do

1. Replace Colorado's archaic and ineffective four-level court system with a functional three-level structure by:
   - **Eliminating Justice of the Peace Courts.**
   - **Transferring Justice Court Jurisdiction to County Courts.**
   - **Transferring Probate, Mental Health and Juvenile Matters from County Courts to District Court.**
2. Raise the professional qualifications of judges.
3. Make the administration of justice faster and fairer.
4. Modernizes Judicial Article of the Constitution which has not been updated since 1876.
5. County Courts in every county of the state will be streamlined small claims and traffic courts located for convenience of citizens.

VOTE YES ON AMENDMENT #1

"SAFEGUARD YOUR RIGHTS WITH MODERN COURTS"

VOTE at the General Election
Tuesday, November 6, 1962

And Remember . . . to VOTE on the

	YES
	NO

BLUE BALLOT
JUDICIAL AMENDMENT

Be a Good Citizen . . .
Take an Interest in Your Courts

★ ★ ★ ★ Why the Courts are ★ ★ ★ ★
IMPORTANT TO YOU!

The Courts uphold your liberties, whether you are rich or poor. They enforce your rights . . . from birth to death . . . through guardianships, juvenile proceedings, civil litigations, criminal prosecutions, wills and estates. You have a vital stake in creating a judicial system that will enable you to sue when you are wronged . . . and to get action promptly, fairly, economically.

A new Judicial Amendment to the Illinois State Constitution will be submitted on a Blue Ballot to Illinois voters at the November 6 general election. It provides for important changes in the Illinois court system.

☆ ☆ ☆

. . . In order for a Blue Ballot amendment to pass, it must be approved by either two-thirds of the people voting on the issue or a majority of those voting in the election.

. . . To vote the Blue Ballot, you must place an "X" on the blank square opposite "YES" or "NO" to indicate your choice. If you write the word "YES" or "NO", your vote will not be counted.

Printed by the Committee for Modern Courts

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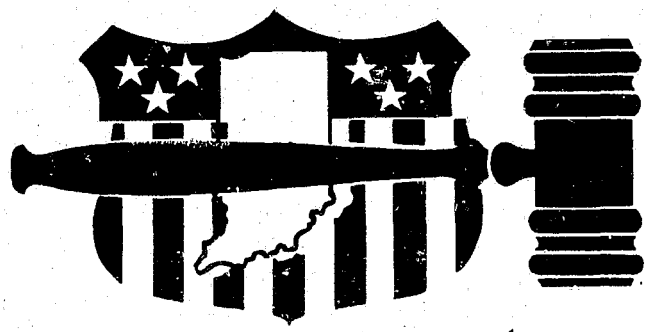


YOU be the JUDGE!

Q. Should Indiana adopt a MODERN COURT PLAN?

☒ INFORM YOURSELF!
☒ TELL OTHERS!

VOTE NOVEMBER 3

INDIANA CITIZENS FOR MODERN COURTS of APPEAL

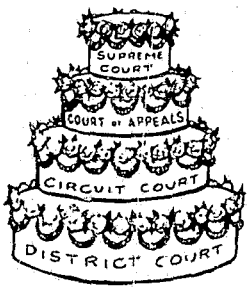
Advertising - Poster
Illinois

"COURTIN' CAKE" RECIPE

Preheat oven 325°. Ready 4-tiered cake pans. Beat together thoroughly: 5 large eggs, 1¾ c. sugar, 1⅓ c. light cream, 2-3 t. vanilla. Mix and sift into another bowl: 3⅓ c. cake flour (if regular flour, decrease by 3 T.), 5 t. baking powder, 1 t. salt. Stir in egg mixture. Bake about 30 minutes.

Frosting — Cream well: ½ c. vegetable shortening and ¼ t. salt. Beat in ¾ lb. confectioners' sugar and ¼ c. water. Add 1 t. vanilla or other flavoring. To decorate, use less water.

Compliments of The Kentucky League of Women Voters



WHAT JUDICIAL AMENDMENT IS ABOUT

The "Courtin' Cake" stands for the 4-tiered Court of Justice that voters can make on Election Day, Nov. 4. These 4 layers — Supreme Court, Appeals, Circuit, District — will make Kentucky's courts more responsive, more efficient, and more economical. ***This won't work miracles, but it will make things better.*** Bad judges can be removed more easily. We will still elect our judges, but they won't run for office on a party ticket. Overlapping courts will be done away with. All courts will become state courts, creating the opportunity for better administration and overseeing.

CAMPAIGN PAMPHLETS

Mimeographed Pamphlet

MODERN COURTS FOR MODERN JUSTICE

WHAT IS THE CITIZENS' COMMITTEE ON MODERN COURTS?

It is a statewide non-partisan committee of citizens from every walk of life who are dedicated to improving justice in the courts of Colorado ... for the benefit of every resident of our state.

Committee officers include Robert L. Stearns, chairman; Clyde O. Martz, secretary; Melvin J. Roberts, treasurer; and Lee A. Moe, executive director. General direction of the committee's efforts will be planned by a 200-member board of trustees, currently being selected, from throughout Colorado.

WHAT'S IT ALL ABOUT?

The single goal of the Citizens' Committee on Modern Courts is to provide an improved brand of justice in Colorado. That can be accomplished through securing the approval of Colorado voters in November, 1962, of proposed Constitutional Amendment No. 1. Basically, the amendment would save money and speed justice for the individual, and provide long-needed modernization of Colorado's antiquated court system.

If you have had any experience recently in Colorado courts, you have seen grievous shortcomings. And for good reason. Colorado's Constitution was adopted in 1876, nearly 100 years ago, yet the court system it provided remains virtually unchanged to this day. Both lawyers and laymen recognize that it is cumbersome, inefficient, and, sometimes, unfair.

You have every reason to be interested in the courts of your state ... first, as a citizen, and second because you may find yourself at any time in the need of speedy justice, prompt court action, or clear-cut lines of court jurisdiction to protect your own interests.

At present, the very mechanics of our court system make this kind of justice difficult if not impossible. Most judges are not required to have any legal training or experience; many win office in "popularity contests". Today's laws, however, are complex, and should be interpreted by judges who have had the training to provide just, efficient, and inexpensive remedies for the invasion of legal rights.

The present system is inflexible. It cannot be modernized without a constitutional amendment. Many courts fail to keep proper records. There are too many courts, too many poorly-paid judges. Justices of the Peace -- where the average citizen is most likely to come into contact with the courts -- are not required to have any kind of training, not even a high school education. Perhaps worse, they draw no salary, but operate instead on a fee, or commission basis.

It is equally true that many of Colorado's county judges -- men whose office calls on them to interpret extremely complex legal matters -- have no formal legal training of any kind. It is frequently evident that laws are not understood, nor interpreted consistently.

Justice in Colorado is slow and expensive. Our court system is in dire need of modernization. The indirect cost of our antiquated system of justice would be staggering if spelled out in terms of individual hardship and human suffering.

WHAT DOES THE COURT MODERNIZATION AMENDMENT PROPOSE?

Proposed Constitutional Amendment No. 1 was passed by the last Colorado legislature by more than a two-thirds majority, thus placing it on the general election ballot for November, 1962. It proposes the following changes:

1. To replace Colorado's archaic and ineffective four-level court system with a functional three-level structure by:

   A. Eliminating justice of the peace courts.

   B. Transferring justice court jurisdiction to county courts. County courts would become courts of limited jurisdiction which could provide prompt, efficient, and inexpensive relief in misdemeanor and small claims matters.

   C. Transferring probate, mental health, and juvenile matters from the county courts to district courts (except in the City and County of Denver, because of its special organization). Such a change, for the first time, would provide citizens throughout the state with full relief in a single court.

2. Raises the professional qualifications of judges.

3. Provides structural flexibility -- not possible under present law -- to accommodate the divergent requirements of counties throughout the state and to make the administration of justice more efficient.

4. Clarifies and modernizes many provisions of the Judicial Article of the Constitution which have not been updated to meet the state's changing needs since 1876.

HOW DID THE PROPOSED AMENDMENT COME ABOUT?

The proposed change is a product of two years of intensive study by a joint committee of the Colorado legislature. The committee had the support of the Legislative Council of the state legislature and the Colorado Bar Association. Its ultimate recommendations -- which take the form of a proposed revision of the Judicial Article of the Colorado Constitution -- won hearty endorsement by the General Assembly. In November, 1962, every qualified voter in Colorado will have an opportunity to help demonstrate a strong citizen demand to do away with outmoded, ineffective courts, and to replace them with modern courts where a citizen can obtain prompt and equitable reparation of wrongs.

WHO IS FINANCING THE CAMPAIGN?

Just about everybody in Colorado will be asked to help, because the courts affect all of us, sooner or later. As citizens, we have a mutual interest in putting an end to injustice, high cost, confusion, delay, and red tape.

People throughout Colorado are being invited to become members of the Citizens' Committee on Modern Courts. A widespread, working membership is essential. Membership fees will be used exclusively to finance the campaign for passage of proposed

Amendment No. 1. Industries and business firms are being asked to help. So are lawyers. The support for this campaign will come from everyone who has a conscientious interest in our courts, and in the brand of justice which they offer.

YOUR OPPORTUNITY TO HELP

One thing is certain. If the people of Colorado do not understand the proposed amendment, they'll vote against it. History of other good but little-understood proposals proves that. Statewide understanding is essential to passage.

Support and enthusiasm for the court modernization amendment is possible only through an effective educational campaign conducted the width and breadth of Colorado from now until election time. To do that job effectively, according to conservative estimates, would cost $100,000. Lots of money, yes. But only a token amount in comparison with the staggering waste, delay, confusion and human suffering which our present antiquated court system costs us each year. We're all paying that bill.

Specifically this effort -- if successful -- will require $50,000 from leading businesses and industries, and an additional $50,000 from small business and the general membership.

Without adequate support, the proposal would fail. That would mean a continuation of:

* Legal confusion and instability due to the wide use of incompetent, untrained judges at lower court levels.

* Outmoded, inflexible court structure.

* Absence of adequate small claims courts.

* Errors in law and erroneous interpretation of evidence, if determinations in business and legal affairs are left to persons who lack professional training and competence.

With adequate support, the court modernization story will be taken to every Colorado voter through a program of speakers, publicity, advertising, direct mail, and personal contacts. People have been talking about the need for court reform for a long time. Now, thanks to some hard work by hundreds of public-spirited citizens, the goal is within our grasp. To bring it to realization, we need your financial contribution, and even more important, your active support of the court modernization amendment. To wait longer is to invite failure. It's time to work together to provide a brand of justice in Colorado that serves every citizen and every business in like fashion... swiftly, fairly, and competently.

Your contribution, made payable to "Citizens' Committee on Modern Courts", will be intelligently used to help win statewide support for Constitutional Amendment No. 1. Contributions may be sent to:

Mr. Lee A. Moe
Executive Director
Citizens' Committee on Modern Courts
1005 Guaranty Bank Building
817-17th Street
Denver 2, Colorado

SUPPORT COURT MODERNIZATION -- SUPPORT CONSTITUTIONAL AMENDMENT NO. 1

Business, Labor, Farm, Professional, Civic Organizations Endorse the

BLUE BALLOT JUDICIAL AMENDMENT

Both the Republican and Democratic parties, leading newspapers, and these organizations . . . all concerned with the advancement of justice in Illinois . . . urge you to vote for the Blue Ballot Judicial Amendment:

American Association of University Women—Illinois Division
Better Government Association
Chicago Association of Commerce and Industry
Chicago Bar Association
Chicago Crime Commission
Chicago Junior Association of Commerce and Industry
Chicago Real Estate Board
Chicago Teachers Union AFL-CIO
Chicago Woman's Aid
Citizens of Greater Chicago
City Club of Chicago
Civic Federation
Committee on Illinois Government
Conference of Jewish Women's Organizations
Forge and Machine Workers Industrial Union
Illinois Agricultural Association
Illinois Bankers Association
Illinois Congress of Parents and Teachers
Illinois Council of Churches
Illinois Division of the American Civil Liberties Union
Illinois Education Association
Illinois Federation of Women's Clubs
Illinois Junior Chamber of Commerce
Illinois Manufacturers' Association
Illinois Motor Truck Operators Association
Illinois Real Estate Association
Illinois Retail Merchants Association
Illinois Society of Certified Public Accountants
Illinois State Bar Association
Illinois State Chamber of Commerce
Illinois State Conference of National Association for the Advancement of Colored People Branches
Illinois State Medical Society
Independent Voters of Illinois
International Brotherhood of Electrical Workers, Local 1031, AFL-CIO
Japanese American Citizens League
Juvenile Protective Association
League of Women Voters of Illinois
Metropolitan Housing and Planning Council
National Council of Jewish Women
Public Relations Society of America—Chicago Chapter
Taxpayers Federation of Illinois
Union League Club
United Church Women of Greater Chicago
Welfare Council of Metropolitan Chicago
Woman's Bar Association of Illinois
Woman's City Club of Chicago
Young Republicans of Cook County (Partial List)

VOTE	X	YES	BLUE BALLOT JUDICIAL AMENDMENT
		NO	November 6 General Election

COMMITTEE FOR MODERN COURTS
175 West Jackson Boulevard, Chicago, Illinois
Telephone: WEbster 9-3139

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OFFICERS

JAMES E. RUTHERFORD, Chairman — HAROLD POGUE, Co-Chairman

HONORARY CO-CHAIRMEN

OTTO KERNER, Governor of Illinois — RICHARD J. DALEY, Mayor of Chicago
CHARLES F. CARPENTIER, Secretary of State — HAYES ROBERTSON, Republican Chairman of Cook County

—The necessity of running under a party label;
—The confusion of voters by extraneous issues and candidates for other political offices.

How may judges be removed from office?

The voters at the general election can refuse to elect any judge for another term. In addition, the following methods for the removal of judges from office will be available:

—The legislature will have authority to set a fixed age for retirement irrespective of terms of office;
—A special commission made up of judges will have authority after a proper hearing to retire any judge for physical or mental disability, or to suspend or remove him for cause; and
—The legislature will retain the power to remove a judge by impeachment.

How are the Supreme and Appellate Courts affected?

A separate and independent Appellate Court will consist of judges elected by the voters especially for that court, instead of the present practice of assigning trial judges from various parts of the state to sit as Appellate Court judges, to the detriment of both courts. The Appellate Court will sit in five Judicial Districts—one in Cook County having twelve judges and four outside of Cook County, each having three judges.

A more equitable representation of the voters on the Supreme Court will result from new Supreme Court districts. At present, 59 per cent of the people of Illinois (living in Cook, Lake, DuPage, Will and Kankakee Counties) elect only one Supreme Court judge. The remaining 41 percent of the state's population elect six judges. The Judicial Amendment provides for a gradual transition by which Cook County, which now has more than 50 percent of the state's population, will eventually elect 3 judges and the four districts outside of Cook County will each elect one Supreme Court judge.

The Judicial Amendment gives the Supreme Court greater discretion as to the cases which it, rather than an Appellate Court, will consider. Each litigant will be guaranteed the right to one trial and one appeal in every case, and there will be a decrease in the number of multiple appeals and a lessening of the delay and expense caused by that procedure.

Who is supporting the Judicial Amendment?

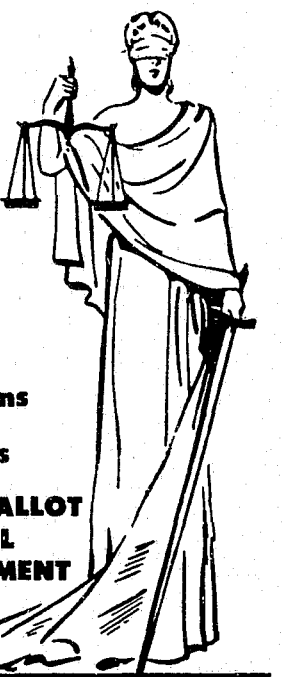
Supporters include leaders of both political parties, virtually all the newspapers and numerous civic, professional, agriculture, business and labor organizations. The Supreme Court of Illinois, the Illinois State Bar Association, the Chicago Bar Association, and associations of judges of Illinois have endorsed the amendment and recommend it to the voters. A complete list of endorsing organizations is available.

A previous judicial amendment submitted on the Blue Ballot in 1958 received more than a million and a half votes—just short of the necessary two-thirds majority. The present Judicial Amendment includes all of the good features of the 1958 draft, plus substantial improvements. The present Judicial Amendment therefore merits even greater support.

What is the Committee for Modern Courts in Illinois?

It is a citizens' committee for the Judicial Amendment which coordinates the support of scores of civic, labor, professional and business organizations vitally concerned with the urgent need for a better court system in Illinois.

James E. Rutherford of Chicago is Chairman of the Committee, and Harold A. Pogue of Decatur is Co-Chairman. Governor Otto Kerner, Secretary of State Charles F. Carpentier, Mayor Richard J. Daley, and Hayes Robertson are Honorary Co-Chairmen.



Questions and Answers about the BLUE BALLOT JUDICIAL AMENDMENT

VOTE	X	YES	BLUE BALLOT JUDICIAL AMENDMENT
		NO	

What is the Judicial Amendment?

The Judicial Amendment is a complete revision and modernization of the Judicial Article (Article VI) of the Illinois State Constitution of 1870 which governs our court system. It was approved at the regular session of the legislature in 1961 by a two-thirds vote of each House.

It will be presented to the voters on a Blue Ballot at the election on November 6, 1962.

If adopted by the voters, the Amendment will go into effect January 1, 1964.

What vote is necessary for the adoption of the Judicial Amendment?

It will be adopted only if it receives the approval either of a majority of all the voters voting at the election or of two-thirds of those voting on the question.

Why is amendment of the Constitution necessary?

There are grave defects in our system of justice that are perpetuated by our present Constitution:

—A complicated system of separate courts poorly adapted to present needs;

—Inefficient use of judicial personnel; and

—Needless delay and expense in obtaining justice (a person injured in an accident has to wait one to two years before trial in eleven downstate circuits and in Cook County five or six years).

The present court system is substantially the same as that created in 1848 when our population was about 800,000 (as compared with approximately 10,000,000 today) and social and economic conditions were entirely different ((for instance, there were no automobiles and few traffic injuries).

These defects can be remedied only by a constitutional amendment.

What are the purposes of the Amendment?

The Judicial Amendment will make possible:

—A simplified and unified court system designed to provide speedier and more economical justice;

—Business-like court administration, with the Supreme Court at the head;

—Greater security of tenure in office . . . independence for deserving judges and more effective machinery for removing unfit judges;

—A more equitable apportionment among the voters of the right to select Supreme and Appellate Court judges.

How is the court structure to be simplified?

In place of numerous trial courts, such as Circuit, Superior, Criminal, County, Probate, City, Village, Town, Municipal, Police Magistrate and Justice of the Peace courts, which often overlap and have conflicting functions, resulting in unnecessary delay and expense, there will be a single trial court, known as the Circuit Court. It will have as many branches as are needed and will be manned by judges trained in the law and magistrates selected on the basis of their qualifications for the office.

Why is a consolidated trial court needed?

The consolidation of all the trial courts into a single Circuit Court is needed because it will

—Eliminate the question as to whether a lawsuit has been filed in the proper court;

—Eliminate the waste and expense of retrials now necessary in cases appealed from certain "inferior courts";

—Eliminate duplication of clerk's offices and their functions;

—Make possible more efficient use of judicial personnel and the coordination of social services;

—Maintain in each county at least one branch of the Circuit Court continuously in session to handle all types of cases; and

—Make possible the creation of specialized branches, such as a family court handling all litigation affecting family life and children.

How is more effective administration of judicial business to be accomplished?

In order to create a modern judicial system capable of expediting the business of the courts

—Administrative authority over all the courts is to be vested in the Supreme Court, which will act through its Chief Justice;

—An administrative director and staff will assist the Chief Justice in his administrative duties;

—Subject to the authority of the Supreme Court the Chief Judge in each circuit will have general administrative authority;

—Any judge may be temporarily assigned to another court or to another branch of the same court, wherever he is most needed to expedite the disposition of cases;

—An annual judicial conference will consider and make recommendations for the improvement of the administration of justice;

—Every judge will be required to be a lawyer and to devote full time to judicial service; and

—The fee system by which Masters in Chancery are now compensated will be abolished.

How are present judicial officers affected?

All judicial personnel in office on the effective date will be absorbed into the new system for the remainder of their terms:

—Circuit, Superior, County, and Probate judges of Cook County, the Chief Justice of the Municipal Court of Chicago and Circuit judges of all other Circuit Courts will be *Circuit Judges* of the Circuit Court;

—All other municipal, city, village, town, county and probate judges will be *Associate Judges* of the Circuit Court;

—Justices of the Peace and Police Magistrates will be *Magistrates* of the Circuit Courts for the remainder of their terms. Thereafter, the circuit judges in each circuit will appoint magistrates.

There will be at least one resident associate judge elected by the voters in each county, and in Cook County, at least twelve associate judges will be elected from the area outside the City of Chicago, and at least thirty-six associate judges from the City of Chicago.

Does the Amendment change the method of initial selection of judges?

Judges will continue to be elected in popular elections by the voters as at present. This may be changed only if the General Assembly by two-thirds vote of each House proposes a different method of selecting judges to be submitted to a referendum of the voters and become law if approved by a majority of those voting on the proposal.

How is the independence of judges assured?

Every elected judge in office January 1, 1963, and thereafter, will have the right at the end of his term to have his name placed on a special judicial ballot at a general election, without party designation and without an opposing candidate, and the sole question to be voted on will be whether he shall be retained in office for another term. Thus every judge will run on his own record—free from

—The necessity of being nominated by a political party;

Business, Labor, Farm, Professional, Civic Organizations Endorse the

Both the Republican and Democratic parties, leading newspapers, and these organizations . . . all concerned with the advancement of justice in Illinois . . . urge you to vote for the Blue Ballot Judicial Amendment:

American Association of University Women—Illinois Division
American Federation of Grain Millers, Local 232
Better Government Association
Chicago Association of Commerce and Industry
Chicago Bar Association
Chicago Building Trades Council, AFL-CIO
Chicago Crime Commission
Chicago Journeymen Plumbers Union, AFL-CIO
Chicago Junior Association of Commerce and Industry
Chicago Newspaper Guild, AFL-CIO
Chicago Real Estate Board
Chicago Teachers Union AFL-CIO
Chicago Typographical Union No. 16, AFL-CIO
Chicago Woman's Aid
Citizens of Greater Chicago
City Club of Chicago
Civic Federation
Committee on Illinois Government
Conference of Jewish Women's Organizations
Forge and Machine Workers Industrial Union
Illinois Agricultural Association
Illinois Bankers Association
Illinois Congress of Parents and Teachers
Illinois Council of Churches
Illinois Division of the American Civil Liberties Union
Illinois Education Association
Illinois Federation of Women's Clubs
Illinois Junior Chamber of Commerce
Illinois Manufacturers' Association
Illinois Motor Truck Operators Association
Illinois Real Estate Association
Illinois Retail Merchants Association
Illinois Society of Certified Public Accountants
Illinois State Bar Association
Illinois State Chamber of Commerce
Illinois State Conference of National Association for the Advancement of Colored People Branches
Illinois State Medical Society
Independent Voters of Illinois
International Brotherhood of Electrical Workers, Local 1031, AFL-CIO
Japanese American Citizens League
Juvenile Protective Association
League of Women Voters of Illinois
Metropolitan Housing and Planning Council
National Council of Jewish Women
Public Relations Society of America Chicago Chapter
Taxpayers Federation of Illinois
Union League Club
United Church Women of Greater Chicago
United Steel Workers of America, District 31, AFL-CIO
Welfare Council of Metropolitan Chicago
Woman's Bar Association of Illinois
Woman's City Club of Chicago
Young Republicans of Cook County (Partial List)

X YES
NO

BLUE BALLOT
JUDICIAL AMENDMENT
November 6 General Election

COMMITTEE FOR MODERN COURTS
175 West Jackson Boulevard, Chicago, Illinois
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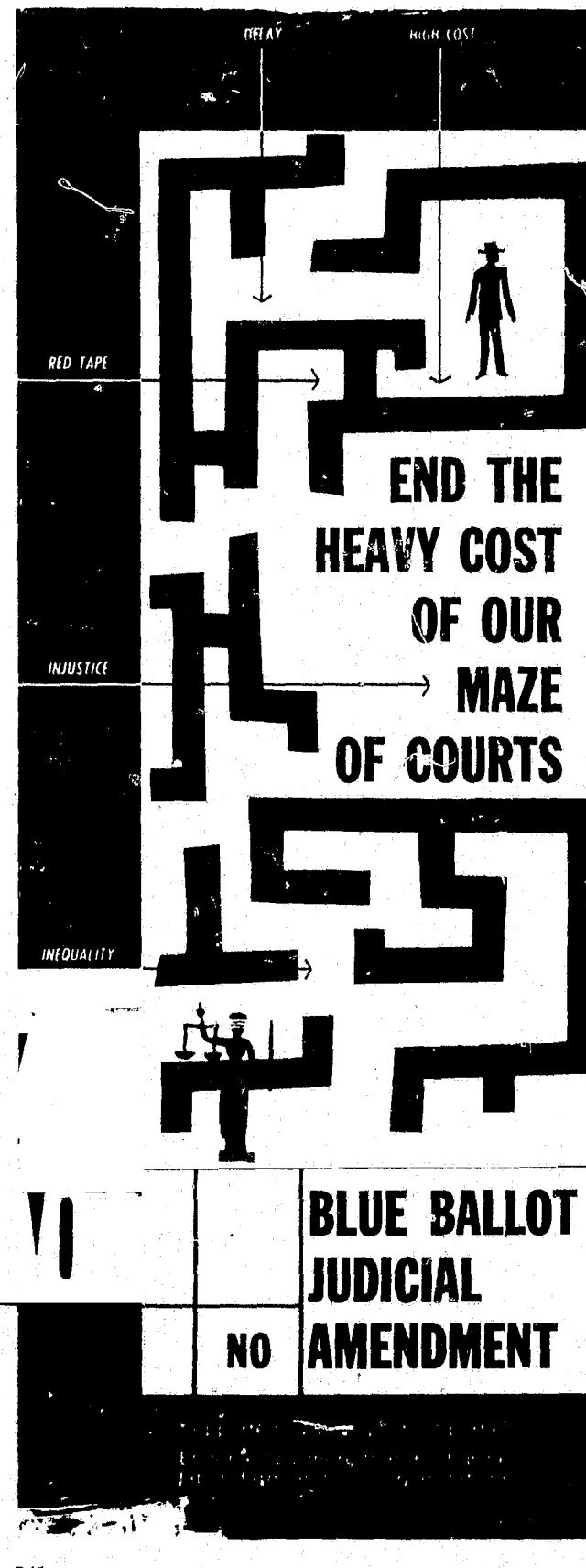


DELAY

HIGH COST

You could be snarled in the red-tape of Illinois' court system tomorrow . . . as the result of an accident or some other kind of law suit. You could be faced by costly confusion over which court should hear your case. And you could wait up to seven years for a trial, while bills and problems pile up. **The BLUE BALLOT JUDICIAL AMENDMENT will do away with needless expense, delays and confusion by setting up one trial court that can operate efficiently, speedily and economically.**

RED TAPE

CONFUSION

Innocent children are victims of Illinois' maze of courts. Kids in trouble get into more trouble. Family squabbles, divorce and domestic problems sometimes snowball in several different courts at the same time. **The BLUE BALLOT JUDICIAL AMENDMENT will combat crime and delinquency by making possible the understanding handling of all vital family problems in a special Family Division of the Circuit Court.**

INJUSTICE

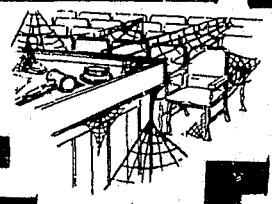
POLITICS

You want Judges who know the law . . . who have the courage and the ability to dispense equal justice —fairly, honestly, without prejudice. **The BLUE BALLOT JUDICIAL AMENDMENT will enable Illinois to have a judiciary that is independent—free of political pressures and obligations.**

INEQUALITY

INEFFICIENCY

Many Illinois judges are terribly over-worked. At the same time, "cobwebs fill some court-rooms" where other judges aren't kept busy. You wouldn't think of running a business the way our court system operates. There's no manager, no over-all supervision. **The BLUE BALLOT JUDICIAL AMENDMENT will eliminate much costly waste and will give the Illinois Supreme Court authority to see that every court is run efficiently and economically.**



BLUE BALLOT JUDICIAL AMENDMENT

GENERAL ELECTION NOVEMBER 6

NO

HERE ARE SOME WORKABLE ALTERNATIVES TO IMPROVE THE ADMINISTRATION OF JUSTICE ...

A UNIFIED SYSTEM: All courts would be consolidated into a single, statewide court system consisting of two tiers, the appellate courts (i.e., the existing State Supreme Court and Court of Appeals) and one trial court. The trial court would have as many divisions with as many judges in as many locations as necessary to meet the requirements of accessibility, caseload, and population. Existing court facilities would be used by the divisions of the single trial court. Simplified, uniform rules of procedure could be instituted by all divisions of the trial court. Using standardized record-keeping, accurate court statistics could be reported at regular intervals and computerized. Such data would permit the transfer of cases from one division to another before cases became backlogged and allow judges to be temporarily reassigned where they were needed according to their special capabilities. With the simplified structure, business and judicial administration of the court could be organized to prevent duplication, waste, and delay — at considerable savings to taypayers and litigants.

COURT MANAGEMENT: Administrative responsibility for a unified court system would be vested in the Supreme Court or its Chief Justice. Under its supervision, an office of state court administration directed by a trained court administrator would manage the business of the courts and handle all non-judicial matters. One important duty of the administrator would be preparing and submitting to the General Assembly a proposed operating budget for the court system, to be funded entirely by the state. A unitary budget would relieve the burden on local property taxes and reflect the financial needs of the court system as a whole.

MERIT SELECTION: The merit plan provides for choosing judges on the basis of their judicial qualifications and ability rather than their party ties or political popularity. It includes: initial appointment by the Governor without regard to party affiliation from a list of the three best qualified lawyers, submitted to him by a non-partisan Judicial Nominating Commission made up of laymen and lawyers; and, confirmation followed by periodic review of the judge's record by the voters. Judges would be prohibited from engaging in partisan activities and would run without competition on a "yes-no" ballot.

WHAT CAN A HOOSIER DO TO IMPROVE THE QUALITY OF JUSTICE IN INDIANA?

In nearly every session, the Indiana General Assembly considers important legislation affecting our courts. Amendments to the Judicial Article of the State Constitution must be approved by two consecutive Legislatures before voters have the opportunity to ratify or to reject them.

EXAMINE THESE MEASURES!
ACTIVELY SUPPORT
OR OPPOSE THEM!

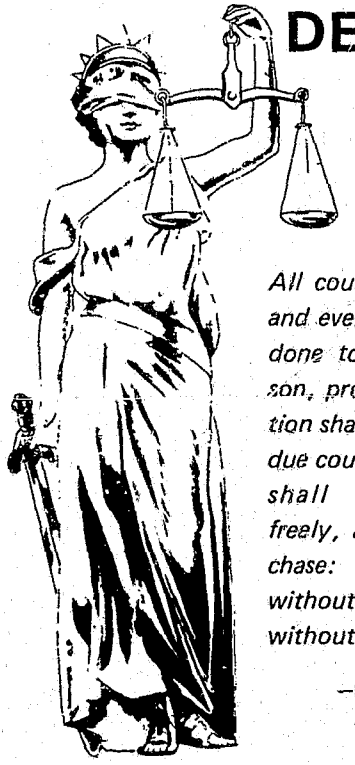
GO SEE local courts in operation.
FIND OUT which services are available.
LEARN which are needed but lacking.
BE INFORMED about proposals to revise the court system.
TALK to neighbors, friends, local opinion leaders.
CONTACT your state legislators.
and

SPEAK UP FOR
BETTER COURTS
AND
IMPROVED JUSTICE!

Published by
THE LEAGUE OF WOMEN VOTERS OF INDIANA
619 Illinois Building, Indianapolis, Indiana 46204

JUSTICE

CAN INDIANA COURTS DELIVER?



All courts shall be open: and every man, for injury done to him in his person, property, or reputation shall have remedy by due course of law. Justice shall be administered freely, and without purchase: completely, and without denial: speedily, without delay.

—Bill of Rights
Article 1, Section 12
Indiana Constitution

... **OUTDATED?** Today's Circuit Courts and township office of Justice of the Peace date back to the 1816 State Constitution. In pioneer days, frontier justice depended on quick, "common sense" settlement of minor disputes by the local J.P. and resolution of major criminal and civil cases by circuit-riding judges.

Eighty-eight autonomous, single-judge Circuit Courts serve our 92 counties as trial courts of general jurisdiction. Very few of the 419 Justices of the Peace are lawyers. Although it is no longer a constitutional office, a 1971 law provided for continuance of the J.P. courts until January 1, 1976. It will be up to the General Assembly to alter, replace, abolish, or extend them.

... **DISCONNECTED?** Since 1851, the General Assembly has been constitutionally empowered to establish more courts. Over the years, population growth and more complex laws have increased court workload, causing congestion and delayed justice. Legislators have responded by enacting separate laws creating new courts in several communities. Until the mid-1960's, little consideration was given to adding more judges to existing courts rather than new courts or to overall planning for future needs.

Each court is governed by the law that established it, in part by State and Federal laws and precedents relating to specific proceedings, in part by rules adopted by the State Supreme Court, and in part by the presiding judge's own rules and regulations for its operation. No two are identical, nor do they offer exactly the same services to citizens. Each court has its own operating budget, funded by the local government unit(s) within its jurisdictional area.

... **A COMPLICATED HODGE-PODGE?** Indiana has trial courts with 10 different names operating on different levels – circuit, county, township, city, and town. Some are full-time courts, some part-time. Besides Circuit and J.P. Courts, there are: Forty Superior Courts with 69 judges in 30 counties; two Probate Courts; one 4-division Criminal Court; one Juvenile and two County Courts; one 15-judge Municipal Court; eighty-six City Courts; and seventeen Town Courts. Even when the name is the same the jurisdiction may differ. E.g., the Marion County Probate Court handles only probate matters but the St. Joseph County Probate Court exercises probate and juvenile jurisdiction. Courts in the same locale often have overlapping jurisdiction, so it is the arresting officer or the attorney who decides which one will get the business. Some courts are swamped with cases. Others have little business. Methods of record keeping differ.

Facilities, administration, procedures, staffing, and workload vary from court to court.

... **WASTEFUL AND INEFFICIENT?** Most of the courts of limited jurisdiction, which handle the largest volume of cases, are not "courts of record." If an appeal is taken, the case must be tried all over again. This means duplicating a judge's time, use of more court facilities, recalling witnesses, and costing those involved more attorney fees and harmful delay. There is no centralized business office for all trial courts. Except in a few of the most populous counties where special laws have enabled some of the unified courts to provide for reassignment of judges and cases, there is no provision for balancing the workload among judges to relieve backlog and delay. Accurate statistics about the current condition in the courts are lacking and no uniform reports are required.

Uneven distribution of cases slows up the judicial process and does not make efficient use of judicial manpower. Most courts have one judge and separate staffs.

... **ABLE TO ATTRACT AND KEEP THE MOST HIGHLY QUALIFIED JUDGES?** Trial court judges are elected on partisan ballots at general election by voters within the jurisdiction of their courts. When a vacancy arises before expiration of the term (4 or 6 years, depending on the court), the Governor appoints someone to serve until the next general election. (Exceptions include these unified courts: Superior Court judges in Allen, Lake, St. Joseph, and Vanderburgh Counties; Circuit Court judge in Vanderburgh County; and Municipal Court judges in Marion County – where variations of the merit plan of selection and tenure have been instituted under special statutes.)

The party backing usually needed to secure the nomination, and the time, expense, and degree of political involvement in campaigning for office all tend to limit the number of highly qualified persons who are willing to seek judicial office. The short term and possibility of being defeated by a political sweep at the next election offer little inducement for leaving a lucrative law practice to run for office. Partisan elections are involved in party politics. Once elected, the judge's political obligations and party's influence do not automatically expire. A judge may be subjected to political pressures which interfere with impartial decisions in his courtroom. Time and energy that should be spent on judicial business may be devoted to keeping political fences mended in preparation for his bid for re-election.

What do you think? Should Hoosiers take their courts out of politics? Would it aid swift, efficient, fair justice to streamline the trial court structure?

Public Interest in court reform is mounting—citizens want modern courts to be honest, efficient and effective, and they demand top quality judges. The League of Women Voters believes that fair, swift justice is the right of everyone in our State, and the voters deserve the opportunity to demonstrate that they share this belief at the polls in November.

Second passage of this three-part Amendment in 1977 is vital. Defeat of the package or its break-up into separate parts would delay major court reform for at least three more years.

Urge your legislator to vote "yes" for court reform—support second passage of the court reform amendment.

League of Women Voters of New York State
817 Broadway, New York N.Y. 10003
212 677-5050

113 State Street, Albany, N.Y. 12207
518 465-4162

Price: Single Copy - .15
50 or more-.05 each
Plus tax and mailing cost

The League of Women Voters is a nonpartisan volunteer organization working to promote political responsibility through informed and active participation of citizens in government. The League does not support or oppose any political party or any candidate. It does support or oppose legislation after serious study and substantial agreement among its members. Membership is open to any citizen of voting age; associate membership is is open to others. The League is supported by membership dues and by contributions from those who believe in its purposes.

A GIANT STEP FOR COURT REFORM

SECOND PASSAGE OF THE COURT REFORM AMENDMENT IN 1977

Here's what you can do to improve the quality of justice in New York State:

1. Learn more about this crucial issue. Fill out and return the coupon below, and we will send added information.

2. Urge any groups of which you are a member to take a stand on court reform—and to make that stand known.

3. Fill out and then circulate petitions urging the Legislature to act positively on court reform *this year* (see coupon).

4. Write your own State Assemblyman and State Senator, expressing your personal concern about court reform. Ask members of your family and your friends to do the same.

5. Direct a letter to the editor of your local newspapers, as well as to officials of your local radio and TV stations.

6. If you arrange a meeting or discussion group on court reform, be sure to invite the local press.

7. Back the statewide education campaign. Contribute as much as you can—personally or through an organization—to the Committee for Modern Courts so it can inform all the people *this year.*

Start now. Mail this coupon to begin your own action program for better New York State courts.

TO: The Committee for Modern Courts, Inc.
36 West 44th Street, Room 711
New York, N.Y. 10036

☐ Please send me information on modernizing New York State courts and petitions urging court reform.

☐ You may use my name in publicizing the citizen support for court reform. .

☐ I enclose $_____ to aid the Committee for Modern Courts, Inc. in their educational work on this subject.

Name_____

_____
Affiliation if appropriate

Street & number_____

City_____ State_____

Zip_____ Phone number_____

Court Reform

We need it now!

There is something seriously wrong with New York State's court system. It is slow, inefficient, and inadequate—at great cost to you. Now there is an organization that can help you change it.

Its name is

The Committee for Modern Courts

The Committee for Modern Courts, Inc. has worked for a more efficient and effective court system since it was founded in 1955. It has achieved some important court reforms, but vital legislation and amendments to the state constitution remain to be enacted.

Your help is needed now to assure that the State Legislature will act in the following areas *this year*. (Too much time has passed already.)

1. Selection of judges

The present elective system places too much emphasis on purely political considerations. It should be replaced by a well structured appointive system in which judges would be recommended for appointment on the basis of their qualifications and character by a non-partisan commission.

2. Judicial discipline

The present procedure for dealing with judicial misconduct is cumbersome and ineffective. Result: It is rarely used. It should be replaced by a permanent Commission on Judicial Conduct with power to investigate and evaluate charges.

3. Court structure

The structure is characterized today by overlap and confusion, an administrative nightmare. What is needed is a consolidated court system with specialized parts and personnel.

4. Budget

Today local governments bear the major cost of the court system, resulting in wide divergence in financial burden, facilities and personnel. A unified, statewide budget is needed.

5. Administration

The present loose, disoriented structure can be corrected by establishment of a chief administrator responsible to the Chief Judge of the Court of Appeals, backed by a professional staff.

6. Bail reform

To assure even-handed justice, the present inequitable system of money bail must be revised.

7. Victimless crimes

At a time when crime rates are unacceptably high, we cannot afford the present investment of police and court facilities in enforcing laws that involve activities which, however morally undesirable, do not infringe on the rights of other citizens.

In countless aspects of law, New York State is the nation's leader, looked to and followed by other states. In the fair and efficient dispensing of justice, however, our state is far behind. The Legislature must take corrective action *this year.*

Coalition Members

The Committee for Modern Courts, Inc. is supported in its goals by a broad spectrum of New York State organizations. Ranging from professional groups to citizen groups to religious groups, they are unanimous on the need for a more efficient, effective court system in New York State.

Alliance for a Safer New York
Association of the Bar of the City of New York
Citizens Committee for Children of New York, Inc.
Citizens Housing & Planning Council
Citizens Union
City Club of New York
Community Action for Legal Services
Community Council of Greater New York
Community Service Society of New York
Correctional Association of New York
Council of Voluntary Child Care Agencies
Economic Development Council of New York City
Federation of Protestant Welfare Agencies
Federation of Jewish Philanthropies
Fifth Avenue Association
Fortune Society
Harlem Lawyers Association
Institute of Judicial Administration
Junior League of the City of New York
Law Students Civil Rights Research Council
League of Women Voters
Legal Aid Society
NAACP Defense and Educational Fund, Inc.
NAACP Mid-Manhattan Center
National Association of Social Workers, New York Chapter
National Council on Crime and Delinquency
New York Chamber of Commerce and Industry, Inc.
New York Civil Liberties Union
New York Urban Coalition
New York State Bar Association
New York State Congress of Parents and Teachers
Puerto Rican Association for Community Affairs
Puerto Rican Bar Association
Vera Institute of Justice
Women's City Club
YMCA of Greater New York
YWCA of the City of New York

CONTINUED

3 OF 4

It's time you got the most for your money

Vote Yes on Amendment 3

The choice will be yours. Join the many civic and voluntary groups in support of the Court Administration and Finance Amendment. Only *you* can change the system.

Printed as a public service
from voluntary contributions by:

Citizens for Court Improvement
36 West 44th Street
c/o Room 711
New York, New York 10036

Co-Chairmen:
Marion P. Ames
Whitney North Seymour, Jr.
Gary H. Sperling

Treasurer:
Arthur Newman

Remember to Vote Yes
on Amendment 3 on
November 4, 1975

Running the Courts costs you $200 million a year...

Would you run a business this way?

New York State Courts are a big business, costing more than 200 million dollars to run *inefficiently*. Over three million cases pass through them yearly and statistics indicate that one in every seven residents will be involved with court action in 1975 alone. Yet, until recently, the judicial system was a business without a head and even now the responsibility of running and paying for the courts is not clearly defined.

The way the New York Courts are run now, the system is plagued with:

- *Fragmentation and needless complexity.* The courts lack uniformity in rules, procedures and forms. Standardized modern management techniques cannot be used effectively.
- *Inadequate facilities and services.* Court facilities and services vary widely, depending upon the willingness and ability of local governments to finance them.
- *Inflexible use of personnel.* Because of irregular budgeting, judges and other employees cannot be easily assigned to meet the caseload demands of various courts.
- *Lack of information and comprehensive statistics.* Caseloads and backlogs of various courts are not reviewed, making it impossible to evaluate performance or analyze costs.
- *Inability to allocate resources rationally.* The courts are unable to meet changing needs and new priorities.

Some Background.

There is currently a lack of sound fiscal policy and control. The courts are financed through hundreds of separate state, city, county, town and village budgets based on different fiscal years which use a variety of accounting procedures. The Administrative Board, consisting of the Chief Judge of the Court of Appeals and the Presiding Justices of each of the four judicial departments, can set standards, such as the number and qualifications of personnel needed by a certain court, *but without the power of the purse, the Board cannot enforce them.*

Last year, as the crisis in the courts deepened, the newly elected Chief Judge, with the cooperation of the Legislature, moved to centralize administrative control of the courts by appointing a State Administrator to head up a new Office of Court Administration. The Presiding Justice of each of the Appellate Divisions then agreed to appoint him as the administrator of their respective departments, thus focusing authority in the new judge.

This arrangement is only voluntary. Any Presiding Justice, at any time, can withdraw his cooperation and resume operational supervision of the courts in his department. The proposed Constitutional Amendment is needed to make the new post *permanent and secure.*

What can be done?

The Court Administration and Financing Amendment on which you will be able to vote on election day offers the best chance for establishing improvements in the efficiency of the State's court system. It provides sound, modern court management and rational fiscal policy.

The responsibility for running the courts in the state must be centralized in one person or body who is accountable to the people for proper operation of the judicial system. Just as important, the courts are the state's financial responsibility and should be financed through a single judicial budget.

The new amendment provides for these important factors:

- A State Administrator of the Courts with authority and responsibility for the administration and operation of the unified court system to be appointed by, and serve at the pleasure of, the Chief Judge of the Court of Appeals for a term of not more than four years. The appointment or reappointment must be confirmed by the State Senate.
- The present administration and supervisory powers of the Appellate Division to be permanently transferred to the State Administrator.
- A single judicial budget for all the courts to be prepared by the State Administrator for submission to the Governor and Legislature. Although the State must pay the courts costs represented by this budget initially, it could collect payments back from local governments.

3. Organize your own public education campaign.

Send for a bumper strip and campaign stamps. Use them. Talk to your friends and anyone else who will listen and urge them to do the same.

Group Action

1. Plan to discuss court reform at your next meeting. Invite your State Legislators as guest speakers and ask them to explain their stand on the selection and disciplining of judges and management of the courts.

2. Adopt resolutions in support of merit appointment of judges, setting up a judicial discipline commission, and modern court management. Send your resolution to Legislative Liaison Office, New York State Bar Association, One Elk Street, Albany, N.Y. 12207, and request that it be duplicated and distributed to the members of the Legislature.

3. Organize a trip to Albany by two or three officers of the organization (more, if possible) to call on your own Legislators and Legislative Leaders listed above to express your support for court reform.

4. Organize a public education campaign: distribute folders, bumper strips and campaign stamps to your members and urge them to use them.

Additional copies of this folder may be obtained upon request. Campaign material is also available in quantity to organizations. Send your requests for campaign folders, bumper strips and sheets of campaign stamps, indicating the quantity desired, to Public Relations Office, New York State Bar Association, One Elk Street, Albany, N.Y. 12207.

Court reform bumper strips are available on request.

[Resolution adopted by the New York State Bar Association House of Delegates, March 3, 1973]

RESOLVED that the House of Delegates of the New York State Bar Association hereby adopts the following criteria for reforms in the administration of justice in New York State and urges all members of the Association and others interested in the improvement of the quality of justice to work industriously to achieve their implementation.

Judicial Selection

1. All judges in New York State should be appointed by the appropriate executive authority, with the possible exception of town and village justices.

2. Appointments by the appropriate executive authority should be guided by an independent, fully representative, well-qualified screening committee.

3. There should be provision for post-appointment public hearings and confirmation of judicial appointments by the appropriate legislative body.

Administration of the Courts

4. Responsibility for the administration of the New York State court system should be centralized at the state level. Whatever administrator is given responsibility must also be held accountable for effective administration of the court system at every level from top to bottom.

5. The chief administrator of the court system should be appointed by the Court of Appeals (or by the Chief Judge) and should be directly responsible to the Court of Appeals.

6. No court administrator should perform judicial functions.

7. Adequate authority and fiscal support must be provided for the work of the administrator of the court system and for the staff necessary to performance of that function.

8. The state should assume all costs for the administration and functioning of the entire court system of the state, with the possible exception of town and village courts.

Judicial Discipline

9. A statewide commission on judicial conduct should be created.

10. The commission should have the authority both to censure a judge for minor misconduct and to initiate proceedings before an appropriate tribunal to discipline, remove and retire a judge.

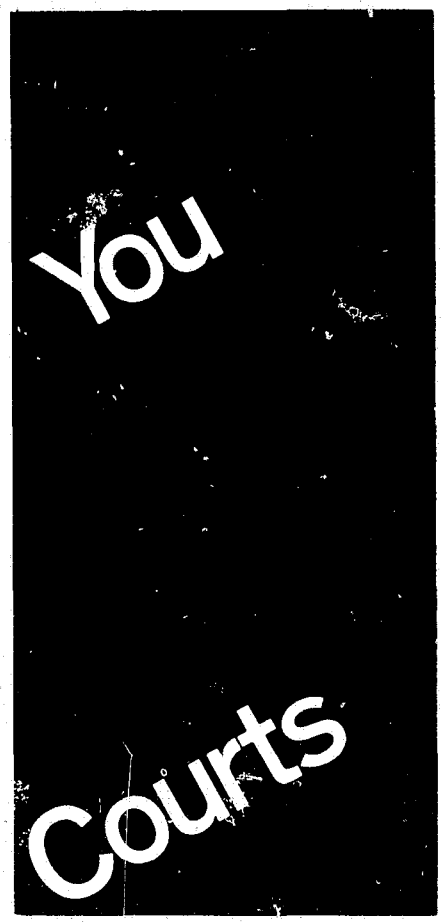
11. The rules and regulations promulgated by the Commission should retain the element of privacy in the investigative stage, so that proceedings become public only after a charge has been screened preliminarily as to its validity.

12. The Administrative Board of the Judicial Conference should promulgate the American Bar Association Code of Judicial Conduct to be made applicable to all judges in New York State.

Published and distributed as a public service by

NYSBA New York State Bar Association
One Elk Street, Albany, N.Y. 12207

Committee for Modern Courts Fund, Inc



Our courts are being criticized more intensely than at any time in recent history. To some extent the criticism is unfair, but to a large extent there is real justification for the loss of public confidence in the way the courts are run.

Citizens complain of ineffective law enforcement.

Defendants complain of unfair treatment.

Lawyers complain of delay.

And the Judges complain, too—of overcrowding, inadequate staff and poor facilities.

In New York City, serious questions have been raised about integrity in the administration of justice. Bondsmen, policemen, lawyers, assistant district attorneys, and even some judges have been indicted for illegal conduct.

It is time for a change. But the change can only come about if citizens like you, acting individually and through organizations, speak up and make themselves heard. Most changes in the way we run our courts require action by the State Legislature. Legislators are representatives of the people, and the only way they can act for reform is if they believe that the people want reform.

What Needs To Be Done

These are the changes that are essential if we are to restore our courts to a position of dignity, independence, and fair play.

1. Selection of Judges

The present political system of electing judges should be replaced by the Federal method of appointing judges to the principal courts. This should include some form of screening process with citizen participation to review the qualifications of candidates before they are appointed by the Executive, followed by public hearings and legislative confirmation after appointment.

2. Judicial Discipline

Under existing procedures no permanent body exists to look into charges of improper conduct by judges in New York State. In eighteen States there are commissions composed of judges, lawyers, and lay persons that receive and investigate complaints, hold formal hearings, and make recommendations for disciplinary action, retirement, or dismissal of the charges. A similar procedure has been recommended for our State by the Dominick Commission and should be enacted promptly to help restore public confidence in the integrity and conduct of judges.

3. Court Administration

The court system of New York State is bogged down in inefficiency. We must have a single statewide budget and businesslike administration by management experts instead of judges who are needed for judging.

What You Can Do

If you want to see action taken to improve our courts, you must take a direct part yourself. Do not leave the job to others. There are many simple things you can do as an individual and as a member of an organization to produce the necessary reform.

Individual Action

1. Write your legislator.

Send a short handwritten letter to your own Assemblyman and State Senator urging them to take quick action to vote for merit appointment of judges, a judicial discipline commission, and modern court administration. Similar handwritten letters should also be sent to:

Hon. Warren M. Anderson,
Senate Majority Leader

Hon. Perry B. Duryea, Jr.
Speaker of the Assembly

Hon. Bernard G. Gordon
Chairman, Senate Judiciary Committee

Hon. Edward F. Crawford
Chairman, Assembly Judiciary Committee

The address for all legislators is:

State Capitol
Albany, New York 12224

2. Write your local newspaper.

Urge the editor to publish an editorial supporting the appointment of judges, effective judicial disciplinary machinery, and improved court administration. Write a "Letter to the Editor" expressing your views on the need for these changes.

Court reform stamps in sheets of 50 are available on request.

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TENNESSEE CITIZENS FOR COURT MODERNIZATION
P.O. Box 15746
Nashville, Tennessee 37215

"The most striking characteristic of the administration of our court system is the fragmentation of authority and the lack of clearly defined responsibility."

Brooks McLemore
Attorney General
State of Tennessee
January, 1977

TENNESSEE CITIZENS URGE CHANGES IN COURT SYSTEM

TENNESSEE CITIZENS FOR COURT MODERNIZATION
An educational body dedicated to the improvement of the administration of justice.

P. O. BOX 15746
NASHVILLE, TENNESSEE 37215

Some 150 citizens from across the state met recently to express concern over some of the problems found in the operation of our present court system. They expressed special concern over the complexity, the overlapping jurisdiction, work load imbalances, and a general lack of uniformity in the Tennessee court system.

A Constitutional Convention will meet in August. The Convention will recommend changes in the article of the Tennessee Constitution which now governs our court system. This is our first opportunity in more than 100 years to change that article. Because of this opportunity, Citizens for Court Modernization has reactivated, after having been first founded in 1966. It is the group's desire to provide advice from citizens to the Convention delegates as they deliberate changes in the judicial system.

PROBLEMS FOR TENNESSEANS TO CONSIDER

OVERLAPPING JURISDICTIONS. For example, in one county of our state, the general sessions court has the same jurisdiction as the circuit, chancery and criminal courts. This cannot be justified. Such a system leads to uncertainty, inequity, and inefficiency. There should be a uniform, dependable system of justice for every Tennessean.

WORKLOAD IMBALANCES. Tennessee's court structure is largely a product of legislative action. The present Constitution gives to the General Assembly the right to create courts. The Assemby has done this over the years by special legislation, often creating courts with overlapping and concurrent jurisdiction. This has led to judge shopping and results in case load imbalance.

NEED FOR SOME SUPERVISORY CONTROL over the state court judges short of formal impeachment.

FRAGMENTATION OF COST of the judicial system between state and county governments. We need to consider a program of gradual state financing of our total court structure.

NEED FOR REDISTRICTING judicial circuits to reflect the changing patterns of case loads.

NEED TO REDUCE PERIOD OF DELAY in court procedure. The Supreme Court through the implementation of Rule 45 has addressed the problem. The lawyer and the trial bench must now do so.

NEED TO DEVELOP A SELECTION PROCESS similar to the Missouri Plan for the selection of Supreme Court justices in order to insure an ongoing, non-partisan bench of outstanding talent. We also need a plan for non-partisan election of all trial judges.

NEED TO CREATE A STATE COURT OF LIMITED JURISDICTION with full time lawyer judges to replace all present courts of limited jurisdiction.

NEED FOR FIRM GUIDELINES IN THE SELECTION, TENURE AND REMOVAL OF JUDGES.

NEED TO CLARIFY THE LANGUAGE OF THE LAW that it may be more easily understood by the ordinary citizen.

NEED TO CLARIFY ADMINISTRATIVE STRUCTURE of the courts and increase supervision over non-judicial personnel.

NEED FOR CITIZEN EDUCATION and involvement in a continuing effort to modernize our courts and make the administration of justice in Tennessee more efficient.

WE HAVE HAD AN EXPLOSION OF LAW IN AMERICA AND WE MUST DEVELOP THE LEGAL STRUCTURE TO DEAL WITH IT EFFICIENTLY!

Please enroll me as a member of the Tennessee Citizens for Court Modernization. I enclose dues in the amount of $5.00 which entitles me to a subscription to the TCCM Newsletter and other publications and notices as issued.

Name .
Address .
City State Zip
Telephone(s) .

I would like to become active in TCCM in the area of:

- Administrative operations (telephoning, mailing, clerical-typing records, etc.)
- Court observing
- Educational programs
- Finance/fund raising
- Legislative action programs (attending hearings, contacting legislators, etc.)
- Membership recruitment
- Newsletter
- Publicity/public relations
- Research
- Speakers bureau
- Special projects (seminars, conferences, etc.)

TENNESSEE CITIZENS FOR COURT MODERNIZATION
P.O. Box 15746
Nashville, Tennessee 37215

FACT SHEETS

CITIZENS' CONFERENCE ON ALABAMA STATE COURTS, INC.

ADDRESS COMMUNICATIONS TO:
CITIZENS' CONFERENCE ON
ALABAMA STATE COURTS, INC.
P. O. BOX 218
MONTGOMERY, ALABAMA 36101

HOW WILL THE JUDICIAL ARTICLE AFFECT YOU?

The lower courts will be upgraded thus eliminating "speed trap justice" and "cash register justice".

Congestion, backlogs, and delays will be reduced in your court system.

Your court system will operate in a less expensive manner and save you total tax dollars.

Your court system will operate efficiently and effectively in a more businesslike manner.

Criminal cases that are decided on technicalities in your court system will be reduced.

Criminal cases in your court system will be disposed of much faster.

All of your judges, except probate judges, will be required to be lawyers.

All of your judges will be subject to mandatory rules of conduct and canons of ethics.

Juveniles before your court system will receive more uniform and effective treatment and supervision.

Small claims courts divisions can be established in your court system so that cases of this type can receive inexpensive, speedy and just treatment.

Uniformity of jurisdiction, practice, and procedure in your court system will prevail in each level.

Appeals in your court system will be processed expeditiously, fairly and on the merits of the cases.

Your time in court as a juror or a witness will be better utilized.

Fact Sheet-Alabama

Here are SIX REASONS why Denver lawyers should support The Judicial Article Amendment and should pay the Enclosed statement at once:

1. Although Denver has no J.P. Court problem, outside Denver there are many J.P.s administering justice ineffectively to a vast number of citizens. The amendment will do away with J.P.s and will create a new type of "County Court". The new judge will be adequately paid, but the ultimate cost will be less from administration and procedural economies and the old system of payment on the basis of caseload will be abolished.

2. There are now forty non-lawyer county judges in Colorado. All probate, juvenile and mental matters will be transferred to the District Court with an appropriate increase in the number of District Judges, thereby making available a lawyer-judge for every matter requiring judicial determination.

3. Our Denver County Court will become exclusively a probate and mental jurisdiction court and trials de novo in our District Court on small claims will be done away with, thereby relieving the District Court from this unnecessary burden. Denver will retain a free hand to continue its municipal court system.

4. The amendment ultimately will lead to staggered elections for the District Court and will avoid the necessity of electing all judges at one time on a long ballot.

5. General civil matters involving small amounts and misdemeanors may be consolidated into a single court with streamlined procedure for expeditious disposition and avoidance of the present multi-level system for these matters.

6. Many Denver lawyers have inquired as to why this amendment does not include a change in the mode of selection and tenure of our judges:

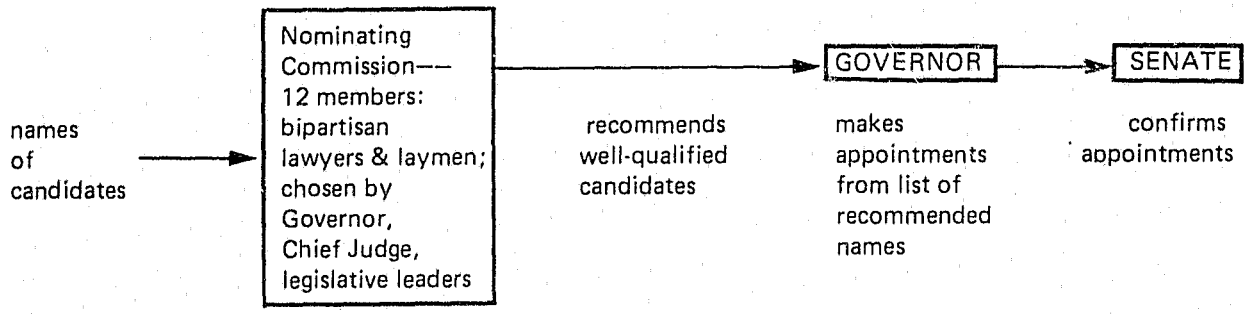
a. Experience in other states has shown that attempted revision in both court structure and judicial selection at the same time will not succeed.

b. This particular amendment is the one passed by the legislature for submittal to a popular vote next fall and as such is not now subject to any change.

THE LEGAL PROFESSION IN COLORADO BY SUPPORTING THIS AMENDMENT HAS AN OPPORTUNITY TO CLOSE RANKS AND SPEARHEAD THIS NEEDED COURT MODERNIZATION AND YOU CAN DO YOUR PROFESSIONAL PART NOW TO SUPPORT THIS PROGRAM ENDORSED BY THE ORGANIZED BAR OF OUR STATE.

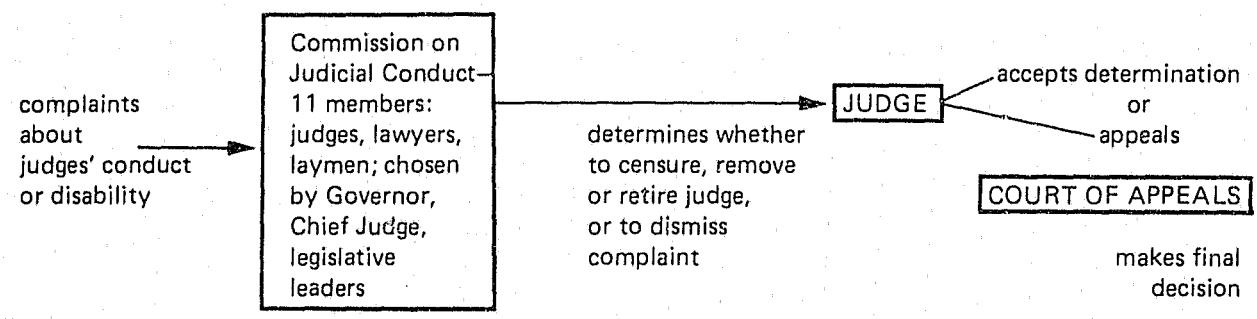
WHAT THIS AMENDMENT WILL DO

1) provides for merit selection of judges of Court of Appeals



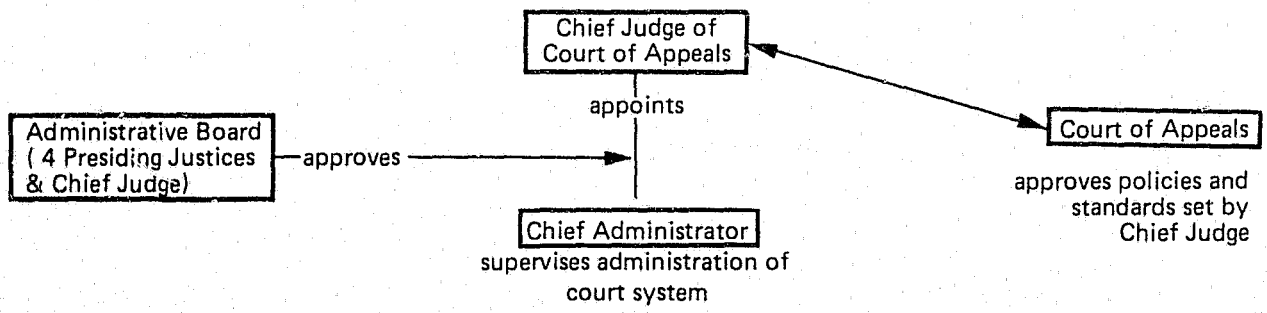
Advantages: *opens high court to all well-qualified candidates*
reduces dependency of State's highest court on the political party system
eliminates huge cost of statewide judicial elections

2) streamlines discipline process for judges



Advantages: *establishes method for disciplining judges independent of judicial system*
protects judges from baseless charges through confidential proceedings
enhances public awareness of and access to disciplining body
eliminates cumbersome ad hoc Court on the Judiciary

3) sets up central statewide court administration



Advantages: *provides modern, uniform administration of entire statewide court system*
clarifies administrative authority and responsibility
permits better use of personnel and facilities
makes long-range planning possible

SAMPLE BALLOTS

(SAMPLE BALLOT)

Amendment to the Constitution of Iowa

[Notice to voters. For an affirmative vote upon any question submitted upon this ballot make a cross (X) mark in the square after the word 'Yes'. For a negative vote make a similar mark in the square following the word 'No'.]

Shall the following amendment to the constitution be adopted?

YES	X
NO	

Article Five (V) is amended in the following manner:

1. Section four (4) is amended by striking from lines eight (8) and nine (9) of such section the words, "exercise a supervisory" and inserting in lieu thereof the words, "shall exercise a supervisory and administrative".

2. Sections three (3), five (5), nine (9) and eleven (11) are repealed.

3. The following sections are added thereto:

"SECTION 15. Vacancies in the Supreme Court and District Court shall be filled by appointment by the Governor from lists of nominees submitted by the appropriate judicial nominating commission. Three nominees shall be submitted for each Supreme Court vacancy, and two nominees shall be submitted for each District Court vacancy. If the Governor fails for thirty days to make the appointment, it shall be made from such nominees by the Chief Justice of the Supreme Court.

"SECTION 16. There shall be a State Judicial Nominating Commission. Such commission shall make nominations to fill vacancies in the Supreme Court. Until July 4, 1973, and thereafter unless otherwise provided by law, the State Judicial Nominating Commission shall be composed and selected as follows: There shall be not less than three nor more than seven appointive members, as provided by law, and an equal number of elective members of such commission, all of whom shall be electors of the state. The appointive members shall be appointed by the Governor subject to confirmation by the Senate. The elective members shall be elected by the resident members of the bar of the state. The judge of the Supreme Court who is senior in length of service on said Court, other than the Chief Justice, shall also be a member of such Commission and shall be its chairman.

"There shall be a District Judicial Nominating Commission in each judicial district of the state. Such commissions shall make nominations to fill vacancies in the District Court within their respective districts. Until July 4, 1973, and thereafter unless otherwise provided by law, District Judicial Nominating Commissions shall be composed and selected as follows: There shall be not less than three nor more than seven appointive members, as provided by law, and an equal number of elective members of such commission, all of whom shall be electors of the district. The appointive members shall be appointed by the Governor. The elective members shall be elected by the resident members of the bar of the district. The district judge of such district who is senior in length of service shall also be a member of such commission and shall be its chairman.

"Due consideration shall be given to area representation in the appointment and election of Judicial Nominating Commission members. Appointive and elective members of Judicial Nominating Commissions shall serve for six year terms, shall be ineligible for a second six year term on the same commission, shall hold no office or employment of the United States or of the state during their terms, shall be chosen without reference to political affiliation, and shall have such other qualifications as may be prescribed by law. As near as may be, the terms of one-third of such members shall expire every two years.

"SECTION 17. Members of all courts shall have such tenure in office as may be fixed by law, but terms of Supreme Court Judges shall be not less than eight years and terms of District Court Judges shall be not less than six years. Judges shall serve for one year after appointment and until the first day of January following the next judicial election after the expiration of such year. They shall at such judicial election stand for retention in office on a separate ballot which shall submit the question of whether such judge shall be retained in office for the tenure prescribed for such office and when such tenure is a term of years, on their request, they shall, at the judicial election next before the end of each term, stand again for retention on such ballot. Present Supreme Court and District Court Judges, at the expiration of their respective terms, may be retained in office in like manner for the tenure prescribed for such office. The General Assembly shall prescribe the time for holding judicial elections.

"SECTION 18. Judges of the Supreme Court and District Court shall receive salaries from the state, shall be members of the bar of the state and shall have such other qualifications as may be prescribed by law. Judges of the Supreme Court and District Court shall be ineligible to any other office of the state while serving on said court and for two years thereafter, except that District Judges shall be eligible to the office of Supreme Court Judge. Other judicial officers shall be selected in such manner and shall have such tenure, compensation and other qualification as may be fixed by law. The General Assembly shall prescribe mandatory retirement for Judges of the Supreme Court and District Court at a specified age and shall provide for adequate retirement compensation. Retired judges may be subject to special assignment to temporary judicial duties by the Supreme Court, as provided by law."

PB A-1320

JUSTICE must be swift, efficient and fair. Justice means protecting the innocent and punishing the guilty. In Illinois, this system has broken down.

We are burdened with a method of selecting judges which dictates that politicians, rather than the best qualified lawyers, sit on the bench. Under the system of political election of judges, we vote for judicial candidates whose qualifications are not known to us. Judges who are elected are dependent on a political party and further responsible to the party for advancement on the bench. A judge who is primarily loyal to political forces has a difficult time administering his court with justice.

Under the existing system, courts are slow and inefficient. The recent judicial scandals in the courts have hurt traditional respect for our system of justice.

On Dec. 15, you will vote for a modern state Constitution to meet the needs of Illinois in the 20th century. At the same time you can vote to incorporate in the Constitution perhaps its most important part, Proposition 2B, to take politics out of our courts. So when you vote *yes* on the Constitution of 1970, mark your ballot for 2B, creating the merit selection plan for Illinois judges.

The merit plan has worked in over 20 states. Leading citizens in Illinois—Republicans and Democrats—and leading organizations recognize this and urge you to

Vote yes on the new Constitution and
Vote for Proposition 2B.

Proposition 2B—The Merit Plan

2B provides for the selection of all Illinois judges in the Supreme, Appellate and Circuit Courts by Merit Selection. It provides for judges to be selected on the basis of judicial qualifications and ability rather than political activities and party loyalties.

How the Plan works

Judges holding office at the present will not be affected. When a vacancy occurs in a court, a local, non-partisan judicial nomination commission made up of laymen and lawyers will submit the names of the three best qualified lawyers in the district to the Governor, who must make the list public immediately. The Governor cannot appoint any of the three for at least 28 days. This provides an opportunity for the press and public to scrutinize the nominees to insure that the best man is named as judge. Within the next 56 days, the Governor must choose one nominee, regardless of party, to serve on the bench.

You keep your vote

After the judge has served a probationary period of at least 12 months, he must be confirmed by the voters in a general election. He will be on the ballot without party designation, and voters will decide whether to confirm him based strictly on his record. If at least 60% of the voters choose to retain him, he serves a full term. If not, the nominating process is again invoked to find a successor.

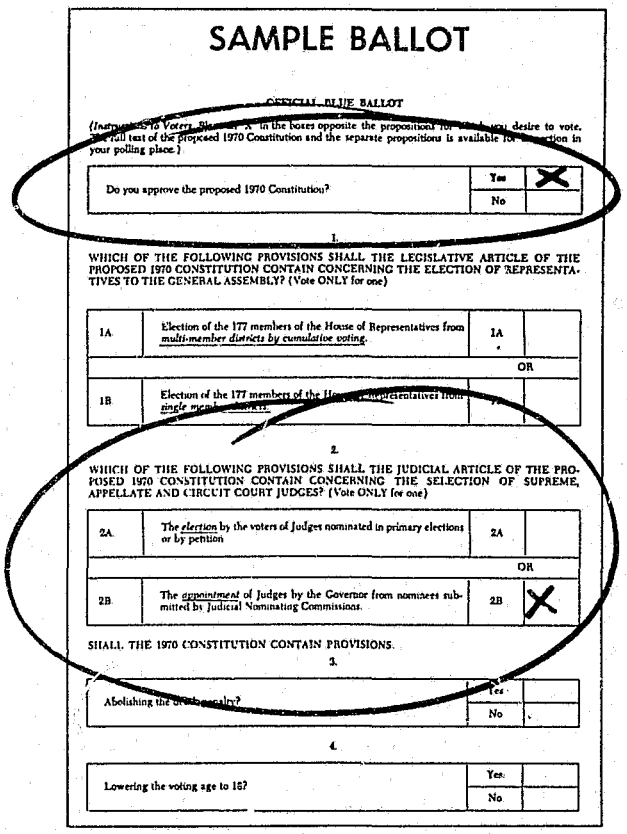
The other plan

Until now, judges have been nominated at political party conventions and elected through partisan political contests. Candidates are usually slated as a reward for loyal party services or for their vote-getting ability, not their other judicial qualifications. Proposition 2A, which is on the blue ballot as the alternative to Merit Selection, is almost identical to this process. It leaves the selection of judges in the hands of politicians.

The Merit Plan is Best

Judges will be selected by people who will know their qualifications. The plan takes the process out of the political arena.

Judges selected under the Merit Plan will not have to participate in political campaigns in order to be nominated or elected. Instead, they will be selected for their qualifications and retained on their judicial record. They will be best able to insure justice in our courts.



SAMPLE BALLOT

OFFICIAL BLUE BALLOT

(Instructions to Voters: Place an X in the boxes opposite the propositions for which you desire to vote. The full text of the proposed 1970 Constitution and the separate propositions is available for inspection in your polling place.)

Do you approve the proposed 1970 Constitution?	Yes	X
	No	

1.

WHICH OF THE FOLLOWING PROVISIONS SHALL THE LEGISLATIVE ARTICLE OF THE PROPOSED 1970 CONSTITUTION CONTAIN CONCERNING THE ELECTION OF REPRESENTATIVES TO THE GENERAL ASSEMBLY? (Vote ONLY for one)

1A	Election of the 177 members of the House of Representatives from *multi-member districts by cumulative voting.*	1A	
		OR	
1B	Election of the 177 members of the House of Representatives from *single member districts.*	1B	

2.

WHICH OF THE FOLLOWING PROVISIONS SHALL THE JUDICIAL ARTICLE OF THE PROPOSED 1970 CONSTITUTION CONTAIN CONCERNING THE SELECTION OF SUPREME, APPELLATE AND CIRCUIT COURT JUDGES? (Vote ONLY for one)

2A	The *election* by the voters of Judges nominated in primary elections or by petition	2A	
		OR	
2B	The *appointment* of Judges by the Governor from nominees submitted by Judicial Nominating Commissions.	2B	X

SHALL THE 1970 CONSTITUTION CONTAIN PROVISIONS

3.

Abolishing the death penalty?	Yes	
	No	

4.

Lowering the voting age to 18?	Yes	
	No	

VOTE YES FOR THE NEW CONSTITUTION
VOTE FOR PROPOSITION 2B

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☆ U.S. GOVERNMENT PRINTING OFFICE: 1978 O-268-516

☒ 2B Committee for Better Courts in Illinois

Chicago: 209 W. Jackson Blvd., 60606 Phone: (312) 922-7291
Springfield: 424 S. Second St., 62701 Phone: (217) 525-1760

END