UNIFICATION OF STATE COURT SYSTEMS: A STUDY OF NATIONAL DATA

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PREFACE

This report would not have been written without the support and encouragement of Dr. Carolyn Burstein of the National Institute of Law Enforcement and Criminal Justice. Dr. Larry C. Berkson of the American Judicature Society gave important advice during early stages of the research. I am grateful to both for their help.

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Whatever shortcomings this report has are my own responsibility.

Chapter One: INTRODUCTION

Organizational Variation in State Court Systems

Judicial organization varies greatly from one American state to the next. Textbook treatments of American government sometimes imply that trial courts follow the same pattern of organization in each state across the country. No one organizational pattern, however, is common to all of the states. There may be a set of organizational patterns for classifying variations in state judicial organization--a possibility that has been a major premise in some previous research on state court organization (Vines and Jacob 1971; Gazell 1974). But it is doubtful whether any typological solution to the problem of conceptualizing variation in state judicial organization could work without lumping together states actually quite different in important respects.

Between-state differences are not the only variations in judicial organization. Substantial organizational differences exist within many states, as well. For example, ten years ago Maryland had at least fourteen different types of trial courts -- i.e., fourteen different sets of procedures and jurisdictional boundaries. The trial court system at that time exhibited little uniformity from one location to another. One contemporary account stated that a "lawyer from one country venturing into another is likely to feel almost as bewildered as if he had gone into another

state with an entirely different system of courts" (Institute of Judicial Administration 1967: 11-12)

The conditions described for Maryland are not unique. Most state trial court systems are highly decentralized -- in much the same way that local government systems in the American states are. State trial court systems consist of units run by autonomous local officials. Only in the loosest sense can they be called "systems." Although daily operations of trial courts in each state are subject to many of the same statewide rules, in actual application these rules can and do give rise to quite distinctive systems of action at the local level. Students of courts have only recently begun to recognize the existence of distinctive "local subcultures of justice" (Rosett and Cressy 1976). Similarly, although trial court operations are subject to the potentially unifying influence of appelate review, the appellate process may actually serve to de-stabilize trial court operations by introducing uncertainties into decision-making (see Fleming 1974). Therefore, if we could make comparable measurements we would probably find the magnitudes of intra-state differences in court organization to be as great as those of inter-state differences.

The administration of justice in late-twentieth century America is dominated by local government. To those who design and evaluate programs of judicial reform, however, the administrative unevenness that stems from the pronounced

localism of American justice may have come to seem like the merely accidental product of so many legal anachronisms, as signs of a backwardness that is to be rooted out in favor of the clean orderliness of some modernized or unified organizational design. Legislators, government administrators, and other policy-makers are increasingly likely to think about courts of first instance as belonging to state systems and to authorize reforms requiring implementation at the state level. For this reason alone, it is important to understand why inter-state differences in judicial organization remain as great as they are today.

These differences are important for yet another reason. The responsibilities of state governments for trial court operations are much greater than in other areas of public policy such as welfare, health care, civil rights, and education. In those areas large disparities between states still remain, but considerable movement toward uniform national standards has taken place. Socioeconomic differences between states have been declining steadily since at least 1890, and a trend toward nationalization of politics and policy is clearly underway (Hofferbert and Sharkansky 1971: 463-474). There is no evidence, however, that differences in state court organization have narrowed appreciably or that any single organizational model has gained much ground over the same period. On the contrary, according to one informed judgment state courts in the

middle of the twentieth century "had about the same structure and powers they had one hundred years before" (Hurst 1950:88).

The Controversy Over Court Unification

Until the present decade, commentators on trial courts in the American states were unanimously in favor of reform measures that would promote the development of unified court systems. The concept of court unification is generally understood to refer to a model of judicial organization featuring (a) jurisdictional uniformity, (b) internal control by the highest appellate court, (c) centralized management and financing of trial court operations, and (d) employment of administrative and para-professional personnel who share in the business of deciding cases with judges. But the concept has become the focus of intense controversy, and it is no longer obvious that unification is desireable. Indeed, it may no longer be clear exactly what the term means (cf. Berkson 1977B).

The ideal of the unified court system was put before the legal profession by Roscoe Pound in a 1906 address to the American Bar Association on "The Causes of Popular Dissatisfaction with the Administration of Justice." English courts were then in their thirty-third year under provisions of the 1873 Judicature Act, which had authorized major changes in the organization of the upper tier of the judicial system.

Pound characterized the new system as being

> complete within itself, embracing all superior courts and jurisdictions.../and including/ a single court of final appeal. In the one branch, the court of first instance, all original jurisdiction at law, in equity, in bankruptcy, in probate, and in divorce was to be consolidated; in the other branch, the court of appeal, the whole reviewing jurisdiction was to be established (Henson 1960: 189-190).

Referring to recent experience in England, Pound assured his listeners that the concept of unification had already proved effective. The advantages of the unified model of judicial organization were both so abundant and so self-evident, Pound believed, as to invite immediate application in the United States.

Today unification is probably more influenctial as a model of court organization than ever. Pound's continuing legacy is reflected in current journalistic accounts which atrribute the problems of American trial courts to the fact that traditional elements of organizational design have survived into the twnetieth century (James 1971; Downie 1972). The same view informs the standards of court organization endorsed by the American Bar Association in 1974. In fact, the concept of unification has amounted to an official perspective on judicial reform in this country for the last seventy years.

Recently, an unofficial perspective has appeared in writings by students of court organization. Gallas (1976)

views the concept of the unified court system as a form of "conventional wisdom" that rests upon overly-simple ideas about judicial administration. His main concerns are that the principle of centralized managerial control of state trial courts contradicts basic premises of American governmental organization and that advocates of this principle overlook "both the high degree of interorganizational cooperation that already exists in state justice systems and the diversity and complexity of these localized interdependencies" (1976:36). The creation of a state-level management capability, he argues, is inconsistent with actual administrative requirements of court operations, which are based in county governments and dominated by independent professionals.

Another forceful critique of the concept of unification has been advanced by Saari (1976). Taking the A.B.A. standards of court organization as his point of departure, Saari claims that unification amounts to bureaucratization of trial court operations. Proposals for unification "encourage judges and court administrators to over-centralize over-formalize and rigidify management in times when exactly the opposite is highly desirable" (1976: 19). Such proposals he suggests, may actually serve the interests of elite lawyers and their clients and work to the detriment of much larger segments of the public making up the most numerous

consumers of court services. In place of the "closed system" perspective that is built into the concept of the unified court system, Saari proposes an "open system" perspective that would favor the development of decentralized court systems administered by competent, autonomous judicial officials.

The Study

This report is based on the results of research designed to shed light on the unification of state court systems. The study has three purposes: (a) to discover the components of court unification, (b) to identify the determinants of unification, and (c) to examine possible consequences of unification for judicial work. The principal source of data for this investigation is the National Survey of Court Organization, which describes judicial organization in the states as of 1972.

We take up the question of the components of court unification in Chapter Two. That chapter discusses the results of our attempt to measure the extent of unification in the fifty state court systems. For this purpose we did not try to fit organizational patterns into an a priori scheme, as in previous research. Instead we used an empirical method to identify dimensions on which differences between states with respect to trial court organization are continuous rather than discrete. The strategy adopted is appropriate

for the analytic procedures used in the next two chapters to investigate the determinants and consequences of state court organization. It is also more sensitive to the complexity of judicial organization than any typology could be.

The findings presented in Chapter Two indicate that court unification involves three main dimensions or components of organization. Structure concerns the extent to which trial courts throughout a state have similar jurisdiction. Internal control has to do with the degree to which the highest state appellate court regulates trial court operations through rule-making powers and temporary-assignment powers. Management-budgeting refers to the amount of centralized responsibility exercised in deciding and administering state judicial finances. Our analysis indicates that these are separate dimensions of organizational variation in state trial court systems; the dimensions appear to have little or no empirical connection to each other. Therefore, it cannot be said that there is any single dimension according to which state court systems vary as being more or less unified. The chapter concludes by arguing that the concept of court unification must be disaggregated into more fundamental components of state judicial organization.

The goal of the following chapter (Three) is to move toward an understanding of inter-state differences in judicial organization. This chapter attempts to explain why

state court systems occupy particular locations on each of the three dimensions of the concept of unification identified in the preceding chapter. The results strengthen and extend the case proposed there to make disaggregation the strategy of choice for research on state judicial organization.

In the first section of Chapter Three we explore the possibility that differences in the organization of state court systems may be due to differences in the environments with which these systems interact. Certain of the specific hypotheses considered have been advanced in previous work on state courts. We then turn to the results of an empirical analysis which bears on the validity of hypothesizing that judicial environments explain variations in judicial organization. It deals with relationships between key organizational features of state court systems and selcted characteristics of states as units of analysis. The results indicate that environmental conditions in the American states -- their demographic, socioeconomic, political, and legal-professional characteristics -- do not account for organizational differences between state judicial systems. In other words, between-state variations in judicial organization evidently result from other than environmental causes.

Next, we examine certain findings that point to history as the source of organizational variations in state judicial systems. It appears that historical processes have fixed the organizational structures of these systems at

different positions along the three main dimensions of variation. These findings demand that we reformulate our questions about the basis of judicial organization. Instead of searching for environmental determinants of organizational variation, we need to ask why judicial organization has failed to conform with changes in the environment. New explanatory possibilities emerge around the basic hypothesis that state court systems have been unresponsive to environmental demands for organizational change because they are products of specific eras of origin and particular sequences of development.

The last chapter (Four) deals with the consequences of unification for the work performed by trial court judges. This part of the analysis focuses on three aspects of trial court activity: (a) the distribution of judge-time across two broad categories of litigation, "public- sector" and "private-sector" litigation; (b) the extent of employment of para-judicial personnel, and (c) the decision-making tasks assigned to such personnel. (A fourth feature of court activity -- the amount of judge-time required by appellate litigation-- was dropped from the analysis because it proved to be unrelated to the extent of court unification.)

The results in Chapter Four indicate that unification narrows the range of cases heard by trial court judges. In more unified court systems trial judges concentrate heavily

on private-sector litigation; in less unified systems judge-time is divided more evenly between private-sector and public-sector litigation. This difference appears to be related to the wider employment of para-judges in unified systems, where they absorb large shares of the workload arising from public-sector litigation.

Chapter Two: THE MEASUREMENT OF COURT UNIFICATION

Introduction

A number of previous researchers have attempted to study judicial organization by employing procedures for scaling observed variations in organizational characteristics of state court systems. Their results have typically taken the form of rankings of the states according to higher and lower degrees of court unification. Investigators adopting this general strategy have not always agreed on specific matters of research design. Each has used different items as indicators of unification and different methods for combining them into overall indices. Despite their differences, these investigators all assume that state court systems can be meaningfully analyzed on a single, comprehensive dimension of judicial organization (Vines and Jacob 1971; Glick and Vines 1973; Gazell 1974; Berkson 1977A).

This chapter examines that assumption. The discussion focuses on the results of re-analyzing a set of data assembled for the most recent of the studies mentioned above (Berkson 1977A). These results seem helpful in identifying the basic components of the model of judicial organization that is advocated by proponents of unified state court systems. With these findings we have created an index that appears to offer greater precision for measuring court unification than has

been achieved in past work. But the results of the analysis throw doubt on the proposition that unification is in fact a measurable property of state judiciaries. The comprehensive concept of unification does not seem likely to lead to advances in the study of state court systems. Instead, the concept of the unified court system should be set aside in favor of an approach more suited to the realities of judicial organization in the American states. The chapter concludes by suggesting an alternative approach.

Components of Unification

To construct an index of unification, we subjected data presented in Berkson (1977A) to factor analysis. Berkson developed his data set on the basis of what he determined, after carefully reading the literature of judicial administration, to be the core meaning of the concept of unification. He then collected information about judicial organization in each of the fifty states as of 1975 and, with an equal-weighting procedure, assigned a total unification score to each state.

For our study the sixteen items in Berkson's original list (see Appendix A) were entered into various rotations of factor analysis, moving across an unrestricted number of factors to restricted numbers of factors ranging from one to five. The best interpretation of the data emerges when the analysis is restricted to three factors. Factor loadings for three factor rotations are shown in table 2-1. The

values shown reflect strengths of associations between individual items and underlying factors or components of the concept of court unification. (Factor loadings for other rotations are presented in Appendix B.)

TABLE 2-1
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As a criterion for deciding which items are significantly associated with particular factors, we adopted a minimum factor loading of .45000. This arbitrary standard allows us to isolate clusters of items that seem to be related to each of the factors. The clusters are set forth in table 2-2, which identifies the three factors according to the names we have given them. Most of the items in the clusters have factor loadings considerably higher than the criterion value. The values shown in table 2-2 are factor score coefficients. These are related to factor loadings but differ in that they measure the impact of each item on the factor with which it is associated, net of the impact of other items associated with that factor. Factor score coefficients make it possible to weight items in constructing indices so that the items contribute to index scores in proportion to the magnitude of their importance for the factors with which they are associated.

TABLE 2-2
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TABLE 2-1: FACTOR LOADINGS

Item*	Factor 1	Factor 2	Factor 3
CPRESENT	.00291	.12526	.92288
GENJUR	.03826	.08715	.63015
LIMJUR	.11905	.50018	.63512
PSPECCRT	.03438	-.00856	.80662
LEGALRM	.83210	.06544	.13340
ACTUALRM	.90363	-.00839	.07445
LEGVETO	.66935	.02760	.24120
UTILRM	.57752	-.05626	.23930
APOWERSC	.45644	.15677	.03431
SUPERTCA	.35735	.73690	.03945
ACTSCA	-.12710	.50362	.16095
TYPEPS	.11580	.56242	.06071
GENJPREP	-.03778	.68159	-.02317
EXECPART	-.16121	-.08236	.15958
VETOBGET	.26064	.08848	.06412
PERCNTSP	.24412	.80799	.07978

*See Appendix A for definitions of items.

TABLE 2-2: FACTORS AND FACTOR COEFFICIENTS

Factor 1	Internal Control	
	ACTUALRM	.34075
	LEGALRM	.30405
	LEGVETO	.24524
	UTILRM	.22521
	APOWERSC	.15650
Factor 2	Management and Budgeting	
	PERCNTSP	.32332
	CENJPREP	.30532
	SUPERTCA	.29304
	TYPEPS	.22977
	ACTSCA	.21743
Factor 3	Structure	
	CPRESENT	.37627
	PSPECCRT	.34106
	GENJUR	.25724
	LIMJUR	.21920

Two of the sixteen items -- EXECPART (extent of executive branch participation in judicial budgetary processes) and VETOBGT (use of gubernatorial item veto over judicial budgets) -- have consistently low loadings relative to the loadings of other items on each of the factors. Those items are the only ones among the original sixteen that pertain to characteristics of the executive branch of state government. The other fourteen items relate directly to the judicial branch. Judicial activities in American states are predominantly locally funded. State judicial budgets have mostly to do with the operations of appellate courts and state-level judicial agencies -- state court administrators, judicial councils, judicial conferences, etc -- and hardly at all with trial court operations (Baar 1975). Therefore, the nature of executive involvement in the making of state judicial budgets is unlikely to be related to the degree of unification of state trial courts. This helps explain why the two items do not seem to be indicators of court unification.

Any effort to understand executive-judicial relations at the state level in America must also attempt to locate them in the context of overall budgetary processes specific to individual states (Baar 1975: 25-59). Some states have strong governors' budgets; legislatures in these states tend readily to approve executive recommendations. Such

legislative deference may extend to executive recommendations concerning judicial budget requests. In strong legislative budget states, on the other hand, "executive officials may spend little time reviewing judicial budget requests because executive views on the judicial budget would receive minimal consideration by the legislature, regardless of the statutory authority of executive officials" (Baar 1975:25). Accordingly, EXECPART and VETOBGT have been eliminated from the set of unification indicators in this study.

On the whole, the results of factor analysis confirm Berkson's conclusions about the components of unified court systems. He maintains that the power of the state's highest state court to make procedural rules without legislative interference is one major component of unification. Our findings indicate the existence of a component we are calling internal control which clearly encompasses the rule-making power. This component includes four items related to the procedural rule-making power (ACTVALRM, LEGALRM, LEGVETO and VTILRM).

In addition, we regard APOWERSC (the power of the state supreme court to assign judges temporarily to trial courts other than the ones they hold) as belonging in the cluster of items associated with the component we call internal control. One reason is that its factor loading on this component reaches our criterion value (table 2-1).

Another and equally important reason is that the power to make temporary assignments of judges is directly connected with the exclusive power of the highest body in a state judicial system to set policies for internal operations. In Berkson's analysis, APOWERSC is grouped with three other items in a component he identifies as "centralized management." The four items together form what is actually a quite heterogenous category, since the second and third have to do with state court administrators and the fourth with auxiliary judicial personnel practices. The "refusal" of APOWERSC to stay where Berkson places it could well be testimony to its lack of connection with the other items in that category.

A second component we have names structure. Berkson calls this component "consolidation and simplification of trial court structure." Each of the four items originally proposed by Berkson as indicators of this component has a high loading on the same underlying dimension. The item LIMJUR, which belongs logically with structure, loads high on the factor we call management-budgeting (discussed below). This result indicates that when there are centralized management and budgeting arrangements for state trial court systems, limited jurisdiction courts are less likely to be found or, if found, more likely to be uniformly organized (e.g., a statewide system of municipal courts with the same jurisdiction). Although it is not evident which came first --

simplified trial court structure or centralized management-budgeting of trial court finances -- the historical record is that the structural aspect of state court unification arrived well before unified management-budgeting arrangements appeared (Pound 1940). As we shall see more clearly in the next chapter, the evolution of state judicial organization has material bearing on the way judicial systems are organized in the fifty states today.

The results provide little justification for distinguishing as Berkson does between "centralized management" and "centralized budgeting and state financing" as separate components of unification. Instead there is one component -- management-budgeting -- on which factor loadings are high for closely related items: SUPERTCA, ACTSCA, TYPEPS, and PERCNTSP.

Two considerations may be helpful in understanding this finding. First, it is possible that significant linkages exist between budgetary and managerial aspects of judicial administration. A key argument in favor of unitary budgeting (state funding of judicial costs through a single budget administered within and "by" the judicial branch) is that it not only "locates in one central authority the ultimate responsibility for planning, channeling, and auditing all judicial expenditures" but that it also "offers...the possibility of improved court management" (Mazard et al. 1972: 1293-1296). Second, there may be an historical

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pattern whereby state court administrative offices appear first, to be followed later by adoption of unitary budgeting practices, movement toward increased state financing of judical activities, and introduction of merit systems for auxiliary judicial personnel. Thus although these innovations may not have been adopted at the same time in state court systems where they are found, trends toward the adoption of centralized budgeting, expanded state financing and merit personnel administration -- themselves developments subsequent to and partially dependent on the emergence of centralized budgeting, expanded state financing, and merit personnel administration -- may explain the associations these five items have with the factor we call management-budgeting.

It should be noted that the associations (factor loadings) of the items making up management-budgeting with the component itself are weaker than those of the other components (see table 2-1). The reason may be that a number of states have developed relatively large judicial management staffs (see Council of State Governments 1976:36) without moving very far in the direction of unitary budgeting, state financing, or merit personnel practices. Moreover, as Baar has pointed out, the much greater absolute amounts that governments spend for trial courts than for appellate

courts means that "a small percentage increase in the expenditures of locally funded trial courts will constitute a much larger dollar amount than a large percentage increase in the expenditures of state-funded appellate courts and administrative offices" (1975: 120-121). Since future increases in trial court workloads can be expected, the total proportion of judicial activity receiving local financing can therefore be expected to increase in many states. This projection, if true, means that the association between PERCNTSP with management-budgeting will probably become weaker in the future.

Unification Index: Reliability and Validity

Our index of unification is based on three sub-indices constructed for each of the three main factors or components of unified court systems. Factor analysis allows each item's impact on the factor with which it is associated to be estimated. The resulting estimates (discussed above as factor score coefficients) are then to be used to weight each item when summing scores to form the composite index. In this measurement procedure, the item having the greatest impact on a particular factor makes the greatest contribution to the sub-index being formed to represent that factor. (A reliability measure /Cronbach's alpha/ has been calculated for each sub-index in this study. The coefficients are .7234, .7119 and .7808 for internal control, management-budgeting and

structure, respectively. These results indicate that the sub-indices are reliable, especially in view of the fact that none includes more than five items.)

Added together, the values of the sub-indices produce a total score for the degree of unification in each state trial court system. We have developed a ranking of the fifty states with this new measure of unification. Positions of states in the ranking range from higher to lower degrees of unification in table 2-3, which also gives the ranking Berkson calculated (using an equal-weighting procedure). A few major shifts in relative position are evident when the two ways of measuring unification are compared. Rhode Island, West Virginia, and North Dakota fall significantly on the factor-analytic list and South Dakota and Connecticut gain substantially. (Here we have arbitrarily chosen a difference of at least seven positions between the two lists to indicate a significant shift in rank). For the most part, Berkson's original ranking appears accurate, although slightly less refined than the ranking derived from the new index, which yields no ties.

TABLE 2-3
About Here

One test of whether our index is a valid measure of unification is the strength of its relation to Berkson's index.

The product-moment correlation (r) between the two sets of unification scores is .9592 and the rank-order correlation (r_s) is .9408. These values seem strongly indicative of the validity of the new index.

Another test of validity is the sensitivity of the new index to changes in court organization. Fortunately, the period between 1972 and 1975 is a period for which an independent assessment of certain organizational changes in state court system has been made. The data are presented in the 1975 Supplement to the National Survey of Court Organization.

Before presenting the results of the second validity test, we need to explain briefly how changes in unification have been measured in this study. Using the same factor score coefficients as in the construction of the total unification index described above, we created two other indices that allow us to make comparable measures of unification in state court systems for 1972 and 1975. The three indices are referred to as UNIFY, UNI72, and UNI75. UN172 and UN175 contain ten of the fourteen items included in UNIFY. The missing items -- TYPEPS, SUPERTCA, ACTSCA, and UTILRM -- are those for which we could not obtain necessary data for scoring the fifty state court systems in 1972. But the loss of those four items does not greatly alter the unification index, as shown by the high correlation between UNIFY (the fourteen-item index for 1975) and UN175 (the ten-item index for 1975): r = .96 and r_s = .94.

TABLE 2-3: UNIFICATION RANKINGS

Factor-Analytic Weighted Index*			Berkson Index		
RANK	STATE	SCORE	RANK	STATE	SCORE
1	Hawaii	3.8835	1	Hawaii	58
2	Alaska	3.4539	2	Colorado	52
3	Idaho	2.8362	3	Alaska	51
4	Colorado	2.5180	4	Idaho	48
5	Maine	2.3335	4	Rhcde Island	48
6	South Dakota	2.1018	6	Maine	47
7	North Carolina	2.0242	7	North Carolina	46
8	Vermont	1.9388	8	Vermont	45
9	New Mexico	1.7574	8	West Virginia	45
10	Connecticut	1.7060	10	Maryland	44
11	Illinois	1.6589	11	Illinois	43
12	Oklahoma	1.6324	11	New Mexico	43
13	Florida	1.5336	11	Oklahoma	43
14	Rhode Island	1.5074	14	Arizona	42
15	Maryland	1.2162	14	Florida	42
16	New Jersey	1.1705	14	South Dakota	42
17	West Virginia	.8500	17	Connecticut	41
18	Arizona	.8139	18	Washington	40
19	Kansas	.7697	19	Delaware	39
20	Washington	.4688	19	New Jersey	39
21	Pennsylvania	.4303	19	North Dakota	39
22	Iowa	.3105	19	Utah	39
23	Utah	.3082	23	Iowa	38
24	Delaware	.1303	23	Kansas	38
25	Virginia	.1240	23	Pennsylvania	38
26	Wyoming	.0673	26	New Hampshire	37
27	Kentucky	.0667	27	Wisconsin	37
28	North Dakota	-.0305	28	Alabama	35
29	Alabama	-.0660	28	Kentucky	35
30	Nebraska	-.0924	30	Virginia	34
31	New Hampshire	-.1969	31	Nebraska	33
32	Michigan	-.2590	31	Ohio	33
33	Wisconsin	-.2606	31	Wyoming	33
34	Montana	-.2897	34	Arkansas	32
35	Ohio	-.6646	34	Montana	32
36	Arkansas	-1.0480	36	Michigan	31
37	Massachusetts	-1.4057	36	Nevada	31
38	Nevada	-1.4804	38	Massachusetts	26
39	South Carolina	-1.6161	38	South Carolina	26
40	Minnesota	-1.9993	40	Indiana	24
41	California	-2.0827	40	Oregon	24
42	Missouri	-2.2650	42	Louisiana	23
43	Texas	-2.3190	42	Minnesota	23
44	Oregon	-2.4570	42	Missouri	23
45	Indiana	-2.5095	42	New York	23
46	Tennessee	-2.6021	46	Tennessee	21
47	New York	-2.9584	47	California	20
48	Louisiana	-3.0477	48	Texas	18
49	Georgia	-3.9656	49	Georgia	16
50	Mississippi	-3.9957	50	Mississippi	11

*0 =; fourteen items used in index

Subtracting UN172 scores from UN175 scores provides a measure of how much the degree of unification of each state's court system changed between 1972 and 1975. Unification change (UNICHG) scores are presented in table 2-4, which lists states in descending order of UN172 index values.

TABLE 2-4
About Here

Considerable activity in state court reform took place between 1972 and 1975, according to the results in table 2-4. Thirty states experienced movement toward greater unification during the three-year period. Court systems in six states had become less unified in 1975 than they were in 1972, as indicated by negative UNICHG scores. Only four states register no change in court organization for the period in question.

In which states did the greatest changes occur? Let us arbitrarily establish a UNICHG value of at least 1.5000 as a criterion for deciding where "major" changes may have taken place. We can then see that nine states qualify for that distinction: Idaho, Kansas, Wisconsin, South Dakota, West Virginia, Florida, Nebraska, Virginia, and Iowa. The last six are among the nine states for which the 1975 Supplement reports significant court reorganizations to have taken place after publication of the original Survey in 1972.

TABLE 2-4: CHANGES IN UNIFICATION, 1972-1975*

State	UN172	UN175	UNICHG
Hawaii	13.5799	13.5799	0.00
Alaska	12.1435	12.1435	0.00
Rhode Island	10.9738	10.9738	0.00
Idaho	10.9569	12.4932	1.5363
New Mexico	10.2046	10.3200	.1154
Vermont	10.0982	10.8225	.7243
Colorado	10.0762	10.4961	.4199
North Carolina	10.0495	10.7738	.7243
Arizona	10.0418	10.3462	.3044
Connecticut	10.0169	10.8225	.8056
Maine	9.7871	9.7871	0.00
Oklahoma	9.7506	10.9972	1.2466
Kentucky	9.5932	9.1155	-.4777
Illinois	9.2508	9.2508	0.00
Maryland	9.1794	9.7358	.5564
Wyoming	9.0968	8.7923	-.3045
Delaware	8.8864	8.8864	0.00
New Jersey	8.6947	8.6947	0.00
New Hampshire	8.6797	8.1627	-.5170
Utah	8.6404	8.6404	0.00
Washington	8.2020	8.6797	.4777
North Dakota	7.7428	8.6797	.9369
Pennsylvania	7.3570	8.0473	.6903
Montana	7.2800	6.6262	-.6538
Michigan	7.2800	6.6252	-.6538
Arkansas	7.2407	7.2407	0.00
Alabama	6.9389	6.9389	0.00
Ohio	6.8645	7.1690	.3045
South Carolina	6.4446	6.4446	0.00
West Virginia	5.9021	8.5826	2.6805
Nevada	5.6057	6.0256	.4199
Florida	5.5242	9.9648	4.4406
Minnesota	5.4171	5.1832	-.2339
Massachusetts	5.4126	5.4126	0.00
Oregon	4.9774	4.3236	-.6538
Indiana	4.8284	5.4822	.6538
California	4.8247	4.8247	0.00
Tennessee	4.7443	5.1642	.4199
Kansas	4.7239	8.5556	3.8317
Texas	4.7174	4.9640	.2466
Wisconsin	4.5920	6.6400	2.0480
Nebraska	4.5556	6.3928	1.8372
Virginia	4.1679	8.7515	4.5836
Louisiana	3.9237	4.3436	.4199
Iowa	3.7312	7.6996	3.9684

TABLE 2-4: CHANGES IN UNIFICATION, 1972-1975*

State	UN172	UN175	UNICHG
Missouri	3.2638	4.0330	.7692
Mississippi	2.4422	2.7467	.3045
New York	1.5118	2.1656	.6538
Georgia	1.1504	1.1504	0.00

Three other states included in the 1975 Supplement--Connecticut, Massachusetts, and Minnesota -- do not register "major" unification change scores by our measurements. But it should be noted that Connecticut was already relatively highly unified and therefore had less potential for gain than many other states in 1972. Even so, our measurements indicate that Connecticut experienced a modest increase in unification during the three-year period (UNICHG = .8056). Minnesota consolidated its limited and special jurisdiction courts (probate, municipal, and magistrate courts) into a single inferior county court structure in all except its two largest and most urbanized counties in 1973. That change may have been rather sweeping by ordinary standards, but not sweeping enough to be picked up by the scoring technique used in this study (proving that there is still room for refinement in the measurement of unification). Finally, Massachusetts added an intermediate appellate court to its judicial system in 1974, but our concern is with systems of trial court organization. We are inclined to accept Berkson's (1977a) reasoning on this matter. He argues that the presence of intermediate appellate courts in state judicial systems is probably an effect of volume in high-workload systems. Such tribunals would not necessarily be found in otherwise fully unified judicial systems doing lower volumes of work.

The new unification index seems to perform well on this second and more demanding test of validity. The index is sensitive enough to give considerable accuracy in identifying states where major reorganizations are known to have occurred between 1972 and 1975. Identification of six of eight cases (excluding Massachusetts) for which external validity data on unification changes are available from the 1975 Supplement yields an accuracy-ratio of .75. This is not as great as the association between the factor-analytic index and Berkson's original index, but it is still respectable, especially in view of the high minimum UNICHG value set to identify "major" changes. The new index points to three other states (Idaho, Kansas, and Wisconsin) where"major" changes occurred, but it cannot be faulted for "over-identifying" change since the 1975 Supplement reported only on states where structural reorganizations had taken place -- and not on states where other kinds of changes (in internal control and management-budgeting) may have occurred. The index therefore seems to be a valid measure of the concept of court-unification.

The Concept of "A Unified Court System"

We have employed procedures that are, at least by comparison with previous research on the topic, relatively sophisticated in devising a new way to measure court unification.

But while our effort at measurement has been successful in some respects, in others it has led us to question the utility of a global concept of "unification" for studying judicial organization in the American states.

Our doubts center on the consistently low inter-component and inter-item correlations found for state court systems in both 1972 and 1975. Key findings are summarized in tables 2-5 and 2-6. In these tables the component we call structure is labeled STRUC, internal control is INTCON, and management-budgeting is MGTBGT. With N = 50, a minimum product-amount correlation (r) of approximately .25 is necessary for statistical significance at the 5% level and .30 for significance at the 1% level. (Complete inter-correlation matrices for UN172 and UN175 are reported in Appendix C.)

TABLE 2-5
About Here

Table 2-5 shows clearly that the components of unification are unrelated to each other statistically. That is, the empirical associations between structure, internal control and management-budgeting in the fifty state court systems are no stronger than would be expected to occur by chance. Structurally unified state court systems are neither more nor less likely than structurally non-unified systems to have internal control or centralized management-budgeting arrangements, etc. The table also indicates that

TABLE 2-5:

PRODUCT-MOMENT CORRELATION COEFFICIENTS: UNIFICATION AND COMPONENTS 1972 and 1975

$\underline{r}$ ($\underline{r}$) = 1972 (1975)

	UNI	STRUC	INTCON	MGTBGT
UNI	1.00	.66(.61)	.74(.66)	.62(.64)
STRUC		1.00(1.0)	.18(-.02)	.24(.20)
INTCON			1.00(1.0)	.15(.17)
MGTBGT				1.00(1.0)

two of the three inter-component correlations fell between 1972 and 1975, but it is impossible to know what, if anything, this may mean about unification because none of the correlations reaches statistical significance.

TABLE 2-6
About Here

Most of the correlations presented in table 2-6 are statistically significant. The only correlations shown there, however, are those obtaining between items in the clusters of indicators that belong to each of the three components of unification. If we have selected the items comprising the components properly and measured them reliably, we should then expect every one of these correlations to be not only significant but also fairly high. In fact, however, several are quite low: GJUR has no relation to any of the other items in STRUC75, and the association of APOWERSC with LEGVETO approaches the margin of non-significance in 1972 and crosses into it in 1975. Very few of the correlations between pairs of items from different components reach statistical significance in either year, although several more do in 1972 than in 1975 (see Appendix C). Without entering the controversy over statistical significance tests and their applicability in studies where the "sample" is also the "universe" (as in this study), we can surely see that inter-item and inter-component correlations are

TABLE 2-6:

PRODUCT-MOMENT CORRELATION COEFFICIENTS: WITHIN-COMPONENT ITEMS 1972 and 1975

Component	Inter-Item Correlation		r 1972	r 1975
Structure	CPRESENT	X GJUR	.196	.409
		X LIMJUR	.694	.637
		X PSPECCRT	.642	.799
	PSPECCRT	X GJUR	.134	.323
		X LIMJUR	.285	.297
	GJUR	X LIMJUR	.134	.420
Internal Control	ACTUALRM	X LEGALRM	.747	.747
		LEGVETO	.465	.465
		APOWERSC	.381	.378
	LEGALRM	X LEGVETO	.499	.499
		APOWERSC	.480	.304
	LEGVETO	X POWERSC	.211	.121
Management-Budgeting	CENJPREP	X PERCNTSP	.421	.435

much lower than they should be if the concept of "a unified court system" were valid.

Conclusion: Beyond the Concept of Unification

Our main substantive conclusions have several parallels with those reached by Berkson, whose original study (1977A) provided data for the analysis presented in this chapter. First, we find that state court unification involves three principal dimensions or components of organization: (1) simplified court structure, (2) internal control over procedural rules and judicial assignments, and (3) centralized management-budgeting arrangements. On his reading of the literature, Berkson claims that the best estimate is four components. Our results indicate that two of the components singled out by Berkson (management-budgeting) are so closely related as to amount to a single component. The other two components he identifies turn out to be virtually the same as two we have discovered using factor analysis. Second, we find that fourteen of the sixteen items Berkson proposes as indicators of unification have high loadings on one or another of the three basic components of unification. Third, the ranking of the states according to degrees of unification reported by Berkson correlates strongly with the ranking we obtain by following factor-analytic procedures.

These similarities might be taken as encouraging

signs that the controversy surrounding the concept of court unification will soon abate. But our effort at measurement has yielded another finding that can only intensify the controversy. It concerns the extremely weak associations between the components of unification in the fifty court systems. We have found that systems with simplified court structures are not especially likely to have internal control, systems with internal control are not especially likely to have centralized management-budgeting, and systems with centralized management-budgeting are not especially likely to have simplified court structures. Moreover, we have found correlations so low as to indicate the absence of relationships between many of the individual items comprising the unification index, and in some instances even between pairs of items associated with the same component. Indeed, the likelihood of joint occurrences between the elements of court unification actually declined from 1972 to 1975: the results of our analysis indicate that inter-component and inter-item correlations were generally somewhat lower at the end of the three years than at the beginning (Appendix C).

What are we to make of these results? One interpretation would be to deny that the evidence is inconsistent with the concept of court unification as presently understood. For example, we could try to rescue the concept by invoking the view recently expressed by two

knowledgeable students of American justice (Ashman and Parness 1974:2):

> The concept of a unified court system describes neither a particular state court system nor a specific type of state court system. Rather, it characterizes a state court system wherein the courts are organized and managed in such a way as to provide, as nearly as possible, a uniform administration of justice throughout the state. It is conceivable that court systems which appear dissimilar may all be denominated as "unified."

At least that is the meaning "unification" has come to have for the American Judicature Society, the principal organizational embodiment of support for the concept of court unification since its founding in 1903.

But the results surely require a different response. Whatever ends the concept of court unification may serve in the politics of judicial reform -- as a symbol of faith in the American system of justice, as a rallying call to line up diverse groups in favor of particular reform measures, as a neutral-sounding slogan to mobilize votes in electorates or legislative assemblies, as a weapon to counter proposals for more far-reaching reforms -- the idea of the unified court system does not advance our understanding of court systems, how they are organized, the ways in which they differ, and why they are changing.

The concept of court unification is probably best understood as a reform ideology. It reflects the values and interests of particular segments of the legal

profession -- its original constituents. The perspective of a new professional segment -- judicial administrators -- has become more influential in the ideology during the past fifteen to twenty years. These are hardly adequate reasons to employ the concept of unification as the major analytical wedge for work on judicial organization.

How can we compare existing court systems as to degrees of overall unification when the principal components of this concept show no significant associations with each other in the real world? What kind of knowledge can we expect to gain by asking questions about the sources and extent of movement toward a "unified court system" in recent decades if we have no objective basis for deciding in which of three different directions progress may lie? Why continue to talk about the idea of unification when we know that the principal reason it generates confusion (even among those who believe in it and wish to see more of it) is its lack of correspondence with the diversity that is so prominent a feature of judicial organization in the American states?

The evidence presented in this chapter does not support the fundamental assumption underlying the measurement of unification -- namely, that there is a single property of "unification" among state court systems. But

strong theoretical and empirical grounds exist for disaggregating the concept into its components and examining state court systems in terms of these dimensions. The analyses that led to the findings presented in the next two chapters employed exactly such a conceptual strategy. These chapters are the best demonstration of both the validity and the utility of the strategy of disaggregation for studying judicial organization in the American states.

Chapter Three: THE DETERMINANTS OF COURT UNIFICATION

Environment and Organization in State Court Systems

What is it about the fifty American states that explains the considerable differences in judicial organization found among them? Why do state court systems vary in the degree to which they have unified structure, internal control, and management-budgeting arrangements? And how account for the fact that the components of unification are independent -- i.e., that the three main dimensions of organizational variation are empirically unrelated to each other?

One line of inquiry is suggested in the tradition of research by political scientists concerned with the impact of social, economic, and political factors on politics in the fifty states (e.g., Dawson and Robinson 1963; Dye 1966; Hofferbert 1966; Sharkansky 1971). These investigators have treated states as environments that supply the determinants (usually conceptualized as "inputs") of processes and products of politics (usually "outputs"). Most of the work in this tradition has focused on understanding how variations in governmental expenditures are related to such environmental factors as income, urbanization, industrialization, and education. In principle, the mode of explanation is also one that should extend to differences in political -- i.e., executive and legislative -- organization among the states (cf. Jacob and Lipsky 1971). However, this line of research has remained mostly within the rather narrowly bounded empirical contexts created by the availability of expenditure

data for various levels of government and made even more attractive by the ease with which such data can be aggregated to the state level. Moreover, the tradition is not one noted for either conceptual clarity or theoretical ingenuity. Guided by "general propositions" from a lukewarm "systems theory" approach, the work has contributed little to serious knowledge of organizational-environment relations in state politics.

Keeping these limitations in mind as problems to be overcome, we shall consider the hypothesis that state judicial "systems" are organized differently because the environments they occupy differ so markedly.

Judicial Environments. The particular environmental or contextual factors that might account for differences in state judicial organization are, of course, numerous and varied. This richness of explanatory possibilities is a circumstance we owe to the fact that state court systems have extremely complex environments. A recent discussion by Heydebrand (1976) highlights the complexity of the environments with which federal district courts interact. If generalized somewhat beyond their original scope, his observations may be helpful in understanding why judicial organization varies so much from one state to another in America.

In the first place, courts are heteronomous rather than autonomous organizations. This means that they are subject to powerful external constraints making it impossible for them to

generate resources and set objectives on their own. As Heydebrand puts it, their "resources (budgets, positions, and major appointments), organizational structure and boundaries as well as jurisdiction (domain) are externally defined and controlled by legislatures or by executive political bodies" (1976:7). The character and impact of such external constraints are likely for many reasons to differ markedly from state to state.

Secondly, trial court operations take place within complicated inter-organizational networks of vertical and horizontal linkages to other units of government (cf. Friesan, Gallas and Gallas 1971). The nature of these networks and their consequences for judicial organization are certain to vary across state lines. For example, the organization of correctional systems differs greatly from one state to the next. Such differences -- e.g., whether such programs are for juvenile or adult corrections, whether such programs are located in separate agencies -- may have consequences important for the organization of state judicial systems.

A third consideration mentioned by Heydebrand is that the size and composition of judicial workloads are likely to reflect demographic, socioeconomic, political, and other features of jurisdictional areas. Such contextual features determine amounts and kinds of litigation -- the "raw material" out of which "court services" are produced (cf. Gillespie 1976). Insofar as the tasks courts are called on to perform affect the way they are organized,

it is apparent that these contextual factors too (demography, etc.) may be important variables in the organizational environments of state judicial systems.

These preliminary observations suggest the ease with which one could compile a long list of specific factors that might be causally related to organizational variations across state trial court systems. For example, judicial organization may be a function of urbanism and population size. Thus the more densely populated urban states might be expected to have court systems more unified structurally, i.e., systems in which all first-instance judicial business is more likely to be conducted in a relatively small number of general jurisdiction courts than in a relatively large number of limited and special jurisdiction courts. Maybe the distribution of personal income, the level of economic development, and the fiscal capacity of states are important determinants of judicial organization. If so, then arrangements for centralized management-budgeting of judicial finances might be found more often in court systems belonging to wealthy states. Court organization may depend on the level of inter-party competition, the electoral involvement of the citizenry, and the readiness of state government to innovate. In this case states with relatively modern (competitive, participative and innovative) civic cultures might have court systems more unified in terms of both structure and management-budgeting arrangements, than states with relatively traditional political cultures (cf. Elazar 1972 on the concept of political culture). It is possible that the causes of variation in state judicial organization lie closer to the courts themselves.

Differences in the degree of internal control exercised by state supreme courts, for example, might be due to differences in the size and composition of the bar and the degree of professionalism of the judiciary. Or perhaps some constellation of factors makes sense of the differences in degrees of "unification" that exist across state trial court systems.

Obviously an investigator trying to relate organizational variations among state court systems to contextual or environmental factors could end up with a large number of quite disparate hypotheses. Each such argument, however, is no more than a special case of one of three general logics of organization-environment relatedness: (1) direct determination of organization by environment, (2) indirect environmental determination of organization, and (3) combined direct and indirect determination. Let us consider these in greater detail.

Perspectives on Environment-Organization Relations. The first of the three general approaches situates state court systems within contexts of organized group pressures for and against change in judicial organization. This approach views particular systems of courts as exposed to pressures that differ in nature and intensity depending on the environments they occupy. Judicial structure, management-budgeting arrangements, and control over internal procedures are seen as focal points of struggle between groups with conflicting interests in state courts -- in how they work, what decisions they make, whom they employ as personnel, etc.

Arguments of this kind emphasize contextual factors that work directly on state court systems to modify or reinforce existing organizational features. In this approach, the causal links between environment and organization are embodied in the attempts diverse interest groups make to shape judicial systems to their ends. The relative strength of each group, the salience of court organization in its scheme of things, and the alliances it may forge with other groups seeking to promote or impede particular court reform measures, determine the influence it enjoys. Theoretically, judicial organization at any time reflects a rough balance of forces between various groups attempting to prevail when decisions about state courts are made.

A number of assertions directly linking contextual variables to judicial organization have been put forth by Glick and Vines (1973). Their basic argument emphasizes political factors. "Questions of court organization involve various groups that have interests in the courts and seek ways to influence the structure of the judiciary to satisfy their own demands" (1973:14). In analyzing competition for influence in judicial organization, Glick and Vines catalog interest-group sources of support for and opposition to court reform. Among the strongest proponents of court reform are leading officials and activists in state and local bar associations, plus lawyers from one segment of the legal profession: "the more successful, wealthier, often predominantly Republican attorneys who practice in the cities" and who become involved in court reform campaigns partly for professional reasons -- i.e., because they perceive inefficient court operations to be

harmful to their practices -- and partly for political reasons -- i.e., because they resent what they regard as the undue influence of "partisan" politics in the administration of justice. Reform-oriented lawyers may look for help from "middle class organizations" interested in advancing professional, "non-partisan" government. Thus groups such as "the Parent-Teachers Association, League of Women Voters, American Association of University Women, the American Legion, chambers of commerce, church federations, and real estate associations" often come to side with legal elites favoring court reform (1973:16).

The most vigorous opponents of court reform are those with the strongest individual and collective stakes in preserving existing arrangements. Here Glick and Vines include such groups as incumbents of judicial office (especially trial court judges), urban Democratic politicians, minorities, labor organizations, less prominent attorneys (particularly those making up the so-called "negligence [i.e., personal injury] bar"), and lawyers and legislators from rural areas. Depending on the nature of the particular reform proposal at issue, those groups can be counted on to mobilized resources for private lobbying and public campaigns against proposed changes in judicial organization (1973:16-18). A similar analysis of the role of the legal profession in the politics of judicial reform and of the stratification of interests within the bar over changes in judicial procedure and organization can be found in Jacob (1972:56-60).

But environment-organization relationships in state court

systems would be portrayed very differently if a second general approach were taken. This approach draws attention to the way in which judicial environments affect numbers and kinds of litigants who bring cases to state trial courts. The amount and the mix (e.g., civil vs. non-civil) of litigation arising in each state are held to be determined by contextual factors such as urbanism, wealth, and education. In turn, the caseloads that state court systems must handle are seen to be responsible for the way these systems are organized. To summarize: differences in volume and diversity of judicial business, themselves products of differences in environments, are assumed to cause differences in judicial organization -- in structure, internal control, and management-budgeting.

In this second approach, environmental variables are viewed as factors that operate <u>indirectly</u> to create organizational differences between state court systems. The causal process is mediated by demands for judicial services from various classes of litigants -- police officers complaining about criminal behavior by accused persons; private individuals disputing over marital agreements, automobile accidents, property, contracts, and other matters; citizens, consumers and "wards of the state" seeking redress of grievance against public and private organizations; organizations taking actions against individual and corporate defendants. Each state court system is viewed organizationally as a more or less successful adaptation to a flow of demands from the environment, and the quantitative and qualitative features of this flow of litigation are seen to depend on particular

characteristics of the environment.

As described, this approach overlooks what some students of American law regard as an especially important aspect of organization-environment relations in trial court systems. This is the possible impact that court organization itself may have on the numbers and kinds of claims litigants decide to bring before the courts. It is widely believed that judicial organization, particularly in its most "archaic" forms, is the major cause of congestion in court workloads and delay in court proceedings. Congestion and delay, in turn, are thought to make litigation less attractive as an alternative for resolving disputes. A number of competent studies have shown that the amount of delay prospective litigants anticipate, whether correctly or not, affects the courses of action they take (Rosenberg and Sovern 1959; Zeisel, Kalven and Buchholz 1959; Rosenberg 1965; Ross 1970; Galanter 1974). However, not only is empirical justification lacking for the root conviction that congestion and delay can be traced to "deficiencies" in court organization, but the data necessary for studying this relationship at the level of state judicial organization do not exist. Therefore, the task of investigating this potential link between environment and organization in state court systems must be left for future research.

One analysis assigning the kind of indirect role to environmental factors as determinants of judicial organization that the second approach envisions is Heydebrand's (1976). As already mentioned, his discussion focuses on trial court environments in the federal system. Levels of uniformity in judicial structure

and judicial administration there are unusually high by American standards (see Fish 1973). Perhaps that is the reason why Heydebrand treats judicial organization as a constant throughout most of the empirical parts of his analysis. But the conceptual framework he employs in the study postulates a causal chain leading from aggregate characteristics of the environment (e.g., population density, number of lawyers, number of governmental agencies), to task structure (e.g., numbers of civil and criminal cases filed), to judicial organization (e.g., budgetary allotment and staff size), and finally to decisions (e.g., trials, guilty pleas, pre-trial dispositions of civil cases, etc.).

Heydebrand's logic hinges on the possibility that there are differences in court organization stemming from environmentally-linked differences in rates and types of litigation. This possibility is consistent with the well-established axiom in organization theory which holds that the number and variety of tasks performed within organizations -- organizational technologies, in short -- are directly related to the complexity of organizational structures (Perrow 1970:50-91; Azumi and Hage 1972:101-211). Thus if state court systems are seen as organizations, there are theoretical grounds for expecting court unification to be greater in states where demands for judicial services are relatively numerous and diverse than in states where litigants press fewer and less varied claims into the courts. The more unified court systems in the former states might achieve economics of scale by changing their technologies -- whether through reforms aiming at higher degrees of structural consolidation, internal control,

or centralized management-budgeting -- to handle larger and more heterogeneous workloads.

Finally, the first two approaches could be combined into a third. This approach explains differences in judicial organization as resulting from both direct and indirect effects of contextual variables. In arguments of this kind, the dynamics of interest-group competition are seen to shape the consequences which the volume and mix of litigation come to have for court organization. The causal process corresponding to this approach is somewhat more complicated, but like the other two it could be formulated for empirical testing.

An example of this kind of explanation is found in an analysis of state courts by Vines and Jacob (1971). They maintain that urban industrial life not only causes an explosion of litigation but also leads to heightened conflict over court organization between interest groups. Where courts facing heavy workloads are called upon to resolve many different kinds of cases -- crimes, juvenile matters, traffic problems, automobile accidents, domestic relations disputes, consumbers' suits, employee injury suits, and labor cases -- demands are likely to be heard for special tribunals to handle such litigation and for extra judges to staff them. Sometimes these demands come from interest groups seeking "specialized courts that will handle only one kind of cases and deal more expeditiously with them than the general courts" (1971:288). The presence of small claims courts and landlord-tenant courts can perhaps be attributed to such a chain of events. Both provide "services" especially relevant to large,

organized groups of "consumers" -- creditors and landlords. However, certain groups -- labor unions and trade associations, for example -- are unlikely to become involved in struggles over court organization. Even though they are consumers of judicial services, their concerns with the way courts are organized may not be sufficiently great to warrant their involvement.

Correlates of Court Organization: Some Findings on Environmental Determination

The three approaches outlined above are not merely plausible conceptualizations of environment-organization relationships in state court systems. They are also perspectives informing much of what has been written about environmental determinants of organizational variation in state court systems. Typically, however, previous writings have not bothered to keep the perspectives separate or to subject hypotheses deriving from them to systematic empirical test.

This section presents findings from an empirical analysis of relationships between a number of environmental factors and the three main components of unified court systems. The results allow us to evaluate in a preliminary way the general hypothesis that judicial environment determines judicial organization. In presenting the findings we make no explicit use of the three perspectives on organization-environment relations set forth briefly above. Each perspective is compatible with many different hypotheses, some involving individual variables and others involving combinations of variables that may explain particular aspects of judicial organization. Therefore it seemed wiser leaving the additional

work needed to construct more elaborate models to account for environmental effects until after the results of simple correlational analysis were in. The reader can judge whether these results justify such an exercise in model-construction.

The following analysis is only a beginning assessment of the validity of environmental explanations of judicial organization. For this purpose we examine zero-order correlations between three principal components of unification and a number of different elements of judicial environments. The main set of organizational measurements employed in the analysis are the unification indices for 1972 (UN172, STRUC72, INTCON72 and MGTBGT72).

The items chosen as independent variables include a range of demographic, socio-economic, political and legal-professional factors. Most of these are based on measurements for individual years (usually 1970, the censal year nearest the time when dependent-variable measurements were taken), but some represent change scores for certain factors (usually between 1960 and 1970).

Demographic Factors. Relationships between judicial organization and a number of demographic characteristics are shown in table 3-1. Of the seven variables examined, size of population is the only one that appears to be significantly associated with judicial organization. The moderately strong negative correlations between population and UN172 (r=-.39)

and INTCON72 (r=-.37) indicate that court systems are less unified -- specifically, that they are less characterized by internal control -- in states with larger populations. Otherwise put, higher degrees of internal control (i.e., powers vested in the highest appellate court to make procedural rules for trial court operations and to assign trial judges to temporary bench locations) are somewhat more likely to be found in court systems belonging to states with smaller populations.

What this association means is open to speculation. It is not obvious why population size should be associated with the extent of internal control but with neither the structural dimension of state judicial organization nor the presence of centralized management-budgeting arrangements. In other areas of governmental policy innovation, larger states tend to lead in the development of new programs for the simple reason that the scale of government reaches greater levels in those states (Walker 1969). Here we find an aspect of innovative governmental organization -- viz., internal control in state judicial systems -- for which the opposite appears to be true. That is, the smaller states are the leading innovators with respect to internal judicial control. Why? And why only internal control?

TABLE 3-1
about here

TABLE 3-1: DEMOGRAPHIC FACTORS AND JUDICIAL ORGANIZATION: PRODUCT-MOMENT CORRELATION COEFFICIENTS

	UN172	STRUC72	INTCON72	MGTBGT72
Population 1970	-.39	-.14	-.37	-.25
Population Density 1970	.28	.27	.10	.24
Population 1960-70 Change*	.13	.24	-.04	.12
Population Under 19 Years 1960-1970 Change	-.16	-.09	-.17	-.04
%Black 1960-70 Change	.15	.17	.14	-.03
%Native Citizen 1960-1970 Change	.09	.05	.08	.05
%Urban 1960-70 Change	-.07	-.04	-.11	.02

.00 Underlined coefficients are statistically significant at the 5% level (for 1% significance r must be .30).

* Standardized for 1960.

Source: Statistical Abstract of the United States; Census of Population

Almost reaching statistical significance is the correlation between unification and another demographic variable: population density. This relationship is positive (r=.28 for UN172) and the variable in question is unrelated to internal control (r=.10). Instead the modest association between population density and unification is evidently a product of the factor that court systems in relatively densely-populated states are somewhat more likely to be structurally simplified (r=.27) and to have provisions for centralized management and budgeting of court finances (r=.24) than in relatively sparsely-populated states. Perhaps surprisingly, none of the correlations between the various dimensions of judicial organization and our measure for urbanization even approaches significance. These findings taken together give little encouragement for any explanation of judicial organization resting on the view that the demographic environments of state court systems are related to organizational differences between these systems.

Socioeconomic Factors. Correlations describing the possible impact of socioeconomic environments on the organization of state judicial systems are presented in table 3-2. Two features of this table are noteworthy. First, socioeconomic conditions prevailing in the states evidently have no relationship with the way state trial court systems are organized. Although the correlations between median family income and several aspects of judicial organization seem to approach

statistical significance (r=.26 for UN172, r=.27 for STRUC72, and r=.28 for MGTBGT72), none of the other factors pertaining to the wealth, employment, income and education of the populations of the states has any apparent connection with court organization. Perhaps we have overlooked some important socioeconomic dimension. Also, it is possible that by using change scores as measures of independent variables, our attempt to examine relationships between judicial organization and certain of the factors considered here has obscured associations that would be apparent if we had used other measures of these variables. But the general pattern is consistent with table 3-1, which appears to indicate that basic characteristics of state populations are unrelated to the extent of unification among state court systems.

TABLE 3-2
about here

Second, the evidence in table 3-2 suggests that court unification tends to be greater in states which have higher levels of resources for governmental operations. One indication of this is found in the moderately strong positive associations between per capita state government expenditures and UN172 (r=.41), STRUC72 (r=.36) and MGTBGT72 (r=.37). Another indication is the correlation between state fiscal capacity and court organization. The relationship between 1970 fiscal capacity and court organization is statistically significant

TABLE 3-2: SOCIOECONOMIC FACTORS AND JUDICIAL ORGANIZATION: PRODUCT-MOMENT CORRELATION COEFFICIENTS

	UN172	STRUC72	INTCON72	MGTBGT72
Median Family Income 1969	.26	.27	.03	.28
Per Capita Income 1960-1971 Change	-.22	-.24	-.12	-.09
% Unemployed 1971	-.08	.21	-.25	-.06
Per Capita AFDC Payments 1970	.20	.22	-.03	.28
Per Capita Total Public Assistance Payments 1970	.17	.19	-.04	.26
Median Years of School Completed 1960-1970 Change	-.17	-.36	.04	-.08
Per Capita State Government Expenditure 1968	.41	.36	.16	.37
State Fiscal Capacity* 1970	.28	.31	.03	.31
State Fiscal Capacity 1960-1970 Change	.24	.18	.05	.30

*Measured as in Grønbjerg (1977) for whom Fiscal Capacity = Per Capita State Revenue + Per Capita State Tax.

Source: Census of Population; Census of State Government Finances; Statistical Abstract of the United States

at the .01 level for STRUC72 (r=.31) and MGTBGT72 (r-.31) and approaches significance for UN172 (r=.28). Improvement in state fiscal capacity between 1960 and 1970 may also be significantly associated with court organization (r=.24 for UN172 and r-.30 for MGTBGT72).

Thus the economic strength of state governments appears to be a factor of some importance for differences in the organization of state court systems. The better-off states are more likely to have court systems characterized by modern organizational structures and centralized management-budgeting arrangements. A theoretical argument that the wealth of policy-making units, or the relative availability of "free-floating" resources, is an important determinant of the adoption of innovative governmental programs has been advanced in Edelman (1962: chapters 2 and 9). Whether we are dealing here with the kind of causal relationship implied by Edelman's theory of political action -- that is, whether relatively abundant governmental resources are necessary before energy can be mobilized for court reform -- remains to be determined.

For now let us take note of a different matter: the fact that the relationship between governmental resources and court unification does not extend to internal control. Rather the relationship includes only simplified structure and centralized management-budgeting arrangements. Why

this should be so is not certain.

Perhaps there is a simple explanation. The likelihood that procedural rule-making and temporary assignment powers will be found vested in the highest appellate tribunal may not depend on the availability of governmental resources for innovation. That is, internal control may be a relatively inexpensive to achieve compared with structural consolidation and centralization of management and budgeting in state court systems. Neither procedural rule-making powers nor temporary assignment provisions necessarily require creation of new organizational units or elimination of old ones. Apart from any enabling legislation or constitutional changes that might be necessary, both of these organizational changes can be implemented within the framework of existing judicial systems. Each reform can be brought about through executive actions by the highest appellate court. On the other hand, structural consolidation of trial courts and centralization of management and budgeting cannot be accomplished by action of the state supreme court acting alone. Those reforms involve major alterations of the structural framework and the administrative apparatus of judicial organization -- changes, in other words, that demand the channeling of additional governmental resources into the judicial system. This means that legislation and executive approval must be won for reform of the courts.

Political Factors

In table 3-3, correlations between the dimensions of judicial organization and some political variables are presented. Three of the five independent variables shown in this table -- inter-party competition, Democratic legislative dominance, and bicameral imbalance in Democratic representation -- concern partisan political differences within the states. As a measure of inter-party competition, we have chosen to use an index Ranney (1971) created from data on party distributions of popular votes cast and elective offices won in gubernatorial and legislative contests for forty-eight states from 1956 to 1970 and from 1958 to 1970 for Alaska and Hawaii. His index has a possible range of 0 (signifying total Republican success) to 1 (signifying total Democratic success) with a value of .5 indicating perfect two-party competition.

To measure Democratic legislative dominance, we have taken the mean proportion of state legislators who were Democrats in each of the states for 1968, 1970 and 1972. This index, which can be seen as another measure of political competitiveness, is highly correlated with inter-party competition (r=.80).

Finally, we have created an index of bicameral imbalance in Democratic party representation by subtracting

the mean percent Democrats in the upper house of the state legislature from the mean percent Democrats in the lower house for 1968, 1970 and 1972. A high positive imbalance score indicates greater Democratic influence in the upper house than in the lower house, a high negative imbalance score indicates the converse, and low scores indicate similar levels of Democratic influence in both houses. This measure reflects only the difference in Democratic representation between the two houses for the period in question. It does not take account of Democratic legislative dominance and is not associated with that index (r=.11).

TABLE 3-3
About Here

According to findings in table 3-3, none of the partisan political difference variables is related to differences in state court organization. The fact that all of the correlations have negative signs probably does not point to anything important, because none even approaches statistical significance. These findings are consistent with the results of a great deal of research showing political competition to have no consequences for such governmental policy outcomes as state expenditures for welfare and education (see Jacob and Lipsky 1971).

The other two political variables -- innovation and

voter participation -- apparently are significantly related to court organization. The innovation index was developed by Walker (1969), who bases scores on the rapidity with which state governments adopted new programs. The programs in question total eighty-eight and range from occupational licensing provisions to utility regulation commissions to antidiscrimination laws. The highest scores in Walker's index are awarded to states consistently early in the process of innovation-diffusion. The innovativeness index is negatively correlated with overall court unification at the .01 level of significance and is negatively but not significantly correlated with each of the components of unification. This means that the most "innovative" states, i.e., those with records for the earliest adoptions of new governmental programs, are least likely to have unified court systems.

This seems to present a paradox. Since each dimension of unification refers to arrangements generally thought to involve innovation, why would states that have adopted these innovations score lower on Walker's composite index of innovativeness? Could judicial organization belong to an entirely different sphere of government than that occupied by the wide variety of public policy choices Walker included in his analysis? Only if that were true could we explain why innovative judicial

TABLE 3-3: POLITICAL FACTORS AND JUDICIAL ORGANIZATION: PRODUCT-MOMENT CORRELATION COEFFICIENTS

	UN172	STRUC72	INTCON72	MGTBGT72
Inter-Party Competition	-.21	-.21	-.16	-.05
Democratic Legislative Dominance	-.11	-.10	-.06	-.06
Bicameral Imbalance	-.15	-.17	-.07	-.07
Innovativeness	-.31	-.26	-.18	-.20
Voter Participation	-.45	.37	.27	.28

Source: Statistical Abstract of the United States; Walker (1969)

organization tends not to be found in states that have pioneered in the adoption of other innovative governmental programs.

On the other hand, the assumption that "innovativeness" exists as a single, undifferentiated political dimension among states may be incorrect. As Gray (1973) has shown, Walker's composite index conceals important differences in issues and in time of adoption of various programs. She has also demonstrated that rankings of the states according to the order of adoption of specific programs have inter-correlations that are generally quite low. We are inclined to accept her criticism (which employs an analytic strategy of disaggregation similar to the one used in this study). Gray's results suggest that the paradox presented in table 3-3 is apparent. The statistically significant negative association between innovation and court unification is probably a product of questionable measurement.

One remaining political variable -- voter participation -- is significantly associated with UN172 (r=.45) and with STRUC72 (r=.37). It may also be related to the two other dimensions of court unification (r=.27 for INTCON72 and r=.28 for MGTBGT72). Data on voter participation (here the percentage casting ballots of all registered for the 1968 Presidential election) reveal that voting behavior is highly patterned and consistent across time

and space. Rankings of the states according to voting turnout reveal high intercorrelations over long periods and for various kinds of elections, i.e. primaries, general elections, presidential, gubernatorial, and congressional (Milbrath 1971). The finding reported in table 3-3 that states with higher levels of voter participation are also states with more unified court systems may therefore point to a meaningful organization-environment relationship.

The association between voter participation and unification is almost certainly not a simple matter of cause and effect. Rates of voter turnout may measure differences in political culture (with high rates indicating modernity and low rates traditionalism in political culture) and, as suggested earlier, political culture may have a good deal to do with the explanation of court organization. In this connection, it is noteworthy that voter participation is strongly and positively associated with two independent variables relating to levels of governmental resources: 1970 fiscal capacity (r=.52) and 1968 per capita state government expenditure (r=.69) Both of these variables point to important aspects of political culture, for the character of states as "civil societies" is manifested in part by the abundance of

resources they generate for public business (Elazar 1972). Also, both variables are positively associated with court unification -- though in somewhat different ways.

Legal-Professional Factors

Next we shall examine correlations between judicial organization and several legal-professional variables. These factors pertain to the size and character of the work force engaged in activities around state court systems. Are differences in judicial organization related to differences in the legal work forces in the states?

According to table 3-4, a significant relationship exists between judicial organization and one key feature of the legal work force. This is the relative availability of lawyers to members of the civilian population. Specifically, the ratio of lawyers to people is inversely related to the extent of internal control likely to be found in state court systems. The higher the ratio (both for lawyers of all kinds and for lawyers in private practice), the lower the probability that powers to make temporary judicial assignments and issue procedural rules will be vested in the highest state court. But lawyer-population ratios are completely unrelated to the structural dimension of judicial organization and to the presence of centralized management-budgeting arrangements. States with many lawyers per capita

are neither more nor less likely to have courts consolidated first-instance jurisdictions, or to provide for centralized management and budgeting of trial court finances.

TABLE 3-4
About Here

The variable labeled judicial professionalism in this table is an index created by Vines and Jacob (1971). We have changed the name of this index (Jacob and Vines call it "legal professionalism") because it is based on measures of "judicial selection, court organization, judicial administration, tenure systems and salary levels" (Vines and Jacob 1971: 291). As the table shows, the index of judicial professionalism appears to be significantly associated with UN172(r=.30) largely because of the strong correlation between judicial professionalism and STRUC72 (r=.48).

The latter association is to be expected because the index of judicial professionalism includes a measure of the extent to which each state court system approximates the model of simplified structure propounded by the American Bar Association. It is somewhat surprising that judicial professionalism appears to be only slightly related to centralized management-budgeting, even though the index contains an item relating to judicial administration. Finally, judicial professionalism is not at all related to internal control. This seems truly anomalous, because the

TABLE 3-4: LEGAL-PROFESSIONAL FACTORS AND JUDICIAL ORGANIZATION: PRODUCT-MOMENT CORRELATION COEFFICIENTS

	UN172	STRUC72	INTCON72	MGTBGT72
Lawyers (All) to Population	-.15	-.05	.30	-.01
Lawyers (Private Practioners) to Population	-.20	.01	-.33	-.02
Judicial Professionalism ism	.30	.48	-.01	.22

Source: Statistical Abstract of the United States; Vines and Jacob (1971)

procedural rule-making component of internal control is synonymous with self-regulation of court affairs by the judiciary itself.

The findings in table 3-4 are difficult to understand. They show two legal work-force variables -- the relative availability of lawyers and the professionalism of the judiciary -- that seem to be closely interrelated but that also appear to be associated with completely different aspects of judicial organization. The lawyer-population ratios correlate strongly with judicial professionalism (r=.46 for all lawyers and r=.54 for private practitioners). But the ratio of lawyers to people has its strongest association with internal control and judicial professionalism has its with structure, while the lawyer-population ratio is unrelated to structure and judicial professionalism is unrelated to internal control.

These findings may not present a genuine problem in interpretation because the index of judicial professionalism itself may be invalid. It is a composite measure containing items that may not belong together. For example, we examined the zero-order correlation between judicial selection and conformity with the A.B.A. model of court structure, finding it to be very low (.126). The negative association between the lawyer-population ratio and judicial professionalism is another indication that the

index may be defective. Why would judiciaries be less professional in states where there are more lawyers, and therefore presumably more legal business, per capita? One more indication of possible invalidity has been noted above -- the lack of any relation between "judicial professionalism" and internal control.

However, even if we put aside the index of judicial professionalism and its relationship with simplified structure, we still face the problem of explaining why trial court systems should exhibit greater degrees of internal control in states where there are fewer lawyers per capita. If it were the other way around, i.e. if there were higher levels of interncal control in states with more lawyers per capita, the relationship might be easy to explain. That is, we might then argue that higher lawyer-population ratios signify higher levels of legal activity and therefore higher needs for internal control within the judicial system. In other words, where there are more lawyers per capita generating "inputs" of litigation, we might expect the highest state courts to be more likely to exercise executive leadership by promulgating rules of procedure to bring about uniform administration and by moving trial judges around between various assignments to deal with caseload problems. This account

postulates the rate of litigation as the explanatory link between the lawyer-population ratio and the extent of internal control in state judicial organization.

The trouble with this argument is not only its failure to explain the observed negative correlation between the lawyer-population ratio and the extent of internal control, but also the premise it accepts that legal activity and litigation are positively correlated with each other. That does not seem to be the case in the United States. A recent study of federal trial courts (Grossman and Sarat 1975) using lawyer-population ratios to measure rates of legal activity shows that these ratios have been negatively associated with overall rates of litigation in federal trial courts during the past seven decades. In many states where the rate of litigation has risen considerably, the rate of legal activity has actually fallen -- that is, the number of lawyers has not grown as fast as the population since the beginning of the century. Also, rates of litigation have been higher in states with fewer lawyers per population. These findings demonstrate that for the federal judicial system legal activity and litigation do not co-vary in the same direction.

Unfortunately, knowledge as to whether the same patterns obtain for state trial courts is uncertain.

With information about co-variation between legal activity and state court litigation, we could better judge whether Grossman and Sarat should have attempted to distinguish between lawyers who practice in federal courts and those who do not. Also, we might be able to explain the present finding that the lawyer-population ratio is negatively associated with the extent of internal control in state judicial systems. Such information may also be crucial for understanding the difficulty Grossman and Sarat have in trying to interpret their results.

History and Judicial Organization

The findings presented above can be quickly summarized by saying that as measured most environmental variables included in the analysis appear unrelated to inter-state differences in judicial organization. We have observed a few moderately strong associations, some involving variables of questionable validity (innovation and judicial professionalism) and others variables of established validity (population size and lawyer-population ratios). The latter associations show environment to be related to the internal control dimension of judicial organization, though not to structure or management-budgeting arrangements. But it is difficult to know exactly what those associations reveal, if anything, about the environmental basis of judicial organization.

On the basis of present findings, then, we conclude that environmental factors tell us little about how organizational differences between state court systems are to be explained. Of the associations examined, only two seem clearly to indicate that meaningful relationships exist between environment and organization in state court systems. These have to do with (1) the relative abundance or scarcity of resources for governmental activity and (2) the level of voter participation. As noted above, both factors belong to a larger set of items measuring differences in political culture between the states. We are inclined to accept these associations as evidence that political culture and judicial organization are related, though without yet having given careful attention to the precise nature of that relationship.

The tentative nature of this conclusion must be understood. Before claiming that state trial court organization has not responded to environmental demands for change, we would want to examine the results of more exhaustive empirical study of environment-organization relations in state judicial systems. A particularly important question is whether the same conclusion holds with longitudinal data on inter-state differences in political, social and economic factors as measures of the environmental variables. Results based on data, say, for the entire twentieth century would give us confidence that we were actually looking at stable dimensions of state environments, and not simply at transient variations in state environments for their effects on judicial organization (cf. Hofferbert 1968).

But let us suppose that such an extended analysis of judicial environments also fails to generate a satisfactory explanation of organizational differences between state court systems. Where, then, do we look for explanatory factors? Must we turn away from our analysis of environment-organization relations having learned nothing? Or do these findings actually bring us closer to an understanding of judicial organization?

A shift in perspective is needed to answer these questions. The twentieth century has seen enormous change in the size and scope of government in the United States. In particular, activities at the level of state government have become nationalized to an extraordinary degree. Spurred by the economic aftermath of 1929 and then by the second world war, the process of nationalization has gone far toward obliterating the boundaries that once existed

between the states as units of government. These boundaries used to be dividing lines between jurisdictions making sharply different levels and kinds of governmental services available to citizens who resided within them. State lines have become increasingly less distinctive in this respect over the years, however. In fact, for almost ninety years if not longer, the American states have been becoming more alike with respect to governmental organization and "public policy outputs" as measured by per capita state and local expenditures for programs in such diverse areas as education, highway construction and maintenance, health and hospital services, law enforcement, and welfare (Hofferbert and Sharkansky 1971: 463-474).

Social scientists do not agree how this process is to be explained. Several different ways of looking at the erosion of between-state differences in governmental organization and services now prevail. One is to see it as an innovation-diffusion process that is fueled by cooperation, imitation and competition among the states (Walker 1969; Gray 1973). Critics of this outlook note that it ignores the contributions of national policies to state policies (Rose 1973; Eyestone 1977). From a second point of view, the erosion of inter-state differences in government can be seen as an observable consequence of the rise of the "administered society." This refers to a macroscopic restructuring of social and political organization in response to the new imperatives of advanced corporate capitalism that some of its students profess to see (cf. Galbraith 1971). Still a third approach regards centralization of initiative and power

in government as a process occasioned by the expanding scope of citizenship (Shils 1975) and the growing complexity of social control in modern society (Janowitz 1976). But there is no disagreement over the fact that the business of government in the states is an enterprise now operated increasingly according to standard national patterns.

That generalization does not hold for the way trial courts are organized in the fifty states. In the judicial branch of government historic differences between the states have persisted in large measure. Growing similarity among the states is apparent in other realms of governmental activity, but judicial systems continue to manifest high degrees of inter-state variation. Evidence that distinctive traditions of state court organization survive today can be seen in both the markedly differing degrees of unification measured in the preceding chapter, as well as the apparent non-responsiveness of judicial organization to environmental pressures for change indicated in this chapter. Instead of adjusting to their environments by becoming more alike, state court systems have kept their resemblances to the organizational molds in which they were originally cast.

Thus one way to interpret the findings above concerning the environmental correlates of judicial organization is to see them as indicating simply that organizational differences between court systems are unrelated to political, economic, social, etc.

characteristic of the states. That, of course, is the judgment formulated at the end of the analysis just completed. Another and more useful interpretation is to view them as evidence that judicial organization is so deeply rooted in history as to make it particularly resistant to environmental forces pressing for change. This interpretation points the inquiry in a completely different direction -- away from contemporary environmental demands and toward historical conditions present when state court systems originated and underwent development.

Effects of Origin and Development. Our analysis includes two elements of data from the past. Both are known, through earlier work by institutional historians (Pound 1940; Hurst 1950), to be linked to organizational differences between American state court systems. One of these variables -- year of statehood -- has historical significance for many reasons. Here the most important consideration is that states were required to have formulated their own constitutions before being granted admission to the federated union of states. From the beginning the dominant current in national political culture has regarded the organization of courts as of paramount importance in the overall framework of government. Therefore the laying down of organizational designs for court systems has been seen to require extensive constitutional prescription (Hurst 1950). Apparently the matter of court organization can only be entrusted to expression in the relatively immutable language of constitutional law. Because of this attitude, American state constitutions reflect changing "fashions" in organizational design that come down to us through the evolution of American courts.

Thus judicial provisions in state constitutions are documentary traces of judicial evolution. They embody a succession of changes in authoritative images of the judiciary corresponding fairly well to the order in which decision-making bodies in various states were attracted to new models of court organization appearing in the panorama of American judicial history. These models -- e.g., the Field code of civil procedure enacted by

New York in 1848 and the sweeping judicial reform measures adopted by England in 1873 -- left their imprints on state judicial organization in a temporal pattern. State constitutions are records -- albeit imperfect ones, thanks to the haphazard operation of procedures for constitutional revision -- of various judicial imageries prevailing when different states are being admitted to the national federation. Year of statehood therefore measures the point at which each particular state entered into and began contributing to the evolution of state judicial organization in America.

It follows that judicial systems in states admitted earlier should be organized differently than those in states with later admission dates. That is, we should find cohort effects like those demonstrated in other studies of organizations and history (Stinchcombe 1965; Liebert 1976; Meyer and Brown 1977). The findings below in table 3-5 confirm this expectation. There are moderately strong positive correlations between year of statehood and UN172 (r=.35), STRUC72 (r=.43) and INTCON72 (r=.25). These correlations indicate that newer states have more unified court systems than older states.

TABLE 3-5
about here

The other variable selected for analysis is the number of counties in each state. This factor also has historical significance (although for reasons perhaps less immediately

Table 3-5: HISTORY AND JUDICIAL ORGANIZATION: PRODUCT-MOMENT CORRELATION COEFFICIENTS

	UN172	STRUC72	INTCON72	MGTBGT72
Year of Statehood	.35	.43	.25	.02
Number of Counties	-.54	-.33	-.41	-.35

obvious than for the first variable) and its importance for judicial organization is even greater than the importance of year of statehood. According to table 3-6, number of counties is strongly related to the composite measure of unification and to each of the dimensions or components of unification. The relationship is inverse: states with fewer units of county government have more unified court systems.

The second factor is a record of historical change in the structure of local government in the American states. Forty-five of the fifty states experienced growth in the number of counties from time of admission to the present. In these states, county boundaries were not permanently fixed at some moment in the past, to remain for all time as originally drawn. Instead, they were re-drawn as state populations expanded and dispersed. These population changes interacted with geography and early patterns of settlement, forcing states to make collective decisions to carve new units of county government out of pre-existing ones within their boundaries.

Changes in transportation technology -- specifically, the invention and commercial perfection of the automobile -- brought the proliferation of local governmental units to an end between 1920 and 1930, although it had already ended for some states (e.g., Delaware and Maryland) as early as 1880 (see Stephan 1971). But by the 1930s the evolution of state judicial organization had reached an advanced stage from which only moderate movement

is evident today, almost five decades later. The growth of local government is thus a key factor in the historical explanation of judicial organization. One can surely speculate that future developments in court organization will be closely tied to the future of local government in America.

The localism that Hurst (1950: 92-97) views as so prominent a feature of American state court systems is reflected strongly in these findings. What Hurst's discussion does not make as clear as might be desirable is that numbers of counties in the states are important for understanding between-state differences in judicial organization. Historically the basic unit of government, the county is still the point where legal and political organization converge in American society. The county is the level of government from which political parties collect funds, control patronage systems, and send legislators to state and federal offices. It is through agencies of county government that many state and federal programs in education, health, and welfare are administered. And it is at this level of government that citizens, lawyers and public officials -- judges, district attorneys, court clerks, sheriffs and others -- meet to carry out some (though by no means all or even most) of the legal business that gets done in this country.

Implications for Further Study. We have considered two historical factors that are correlated strongly with state scores on the overall unification index and the sub-indices of

judicial organization. State court systems tend to be more highly unified in terms of structure and internal control the earlier the year of statehood and the smaller the number of counties. There is also a strong correlation between number of counties and state scores on the sub-index or management-budgeting, indicating that this component of judicial organization too is linked to historical circumstances. However, year of statehood is unrelated to management-budgeting (which differs from the other dimensions of state judicial organization in appearing to be at least somewhat responsive to environmental factors and particularly economic conditions). These quantitative findings are consistent with historical evidence that centralized management-budgeting arrangements arrived much later than trends toward structural consolidation and internal control.

Although the two factors are not significantly associated with each other (r=-.16), the second reinforces the effects of the first. In fact, number of counties actually appears to have greater impact on the organization of state court systems than year of statehood.

The results of regression analysis are given in table 3-6. The beta weights shown in this table indicate that both year of statehood and number of counties make independent contributions to judicial organization. The relative magnitudes of their contributions to 1972 scores as measured by beta coefficients are idential with the relative magnitudes of

correlation coefficients shown in the preceding table. The effect of year of statehood exceeds that of number of counties only for structure. As in table 3-5, year of statehood is unrelated to management-budgeting.

TABLE 3-6
about here

The data presented in table 3-6 allow us to examine changes in the strength of regression effects between 1972 and 1975. It will be recalled that during that period court systems in many states experienced reorganizations of various kinds and degrees. Here there are indications that the long-range consequence of judicial reform activities may eventually be to weaken the historical foundation of judicial organization. By comparing R^2 values for the two years, we can see that the historical variables considered in this analysis explain less of the variation in judicial organization in 1975 than in 1972. Evidently with sufficient time historical effects wear off even in judicial evolution.

More searching investigation will be needed before we understand fully how interaction between year of statehood and growth in number of counties affected the evolution of state judicial organization in America. Particular effort will be needed to shed light on the specific traditionalizing forces which have been at work in the growth of local government and how they have operated to reinforce the cohort effects shown

Table 3-6: HISTORY AND JUDICIAL ORGANIZATION: MULTIPLE REGRESSION COEFFICIENTS

	UNIFICATION	STRUCTURE	INTERNAL CONTROL	MANAGEMENT-BUDGETING
	Beta for 1972 (1975)			
Year of Statehood	.269(.328)	.392(.411)	.185(.179)	-.037(.000)
Number of Counties	-.496(-.391)	-.265(-.021)	-.380(-.359)	-.355(-.381)
	R^2 for 1972 (1975)			
	.362(.303)	.258(.173)	.201(.181)	.123(.145)

here. We have attributed these effects to changes in authoritative judicial imageries circulating when constitutions were being written in different states. But the development of local government simultaneously with the evolution of judicial organization is a coincidence of history that will bear much closer examination than we have given it so far. Finally, other important historical factors may be discovered as we investigate further the long-lasting linkages within and among the various institutional domains that overlap in judicial organization. It seems clear from what we already know about the effects of two such factors that history greatly overshadows environment in explaining patterns of judicial organization in the American states today.

In turn, the results of the extended analysis outlined here will bring new issues to the forefront of inquiry. Preliminary findings indicate that organizational patterns in state judicial systems still carry the imprints of the molds history used to cast them. This becomes the focus of concern. Why have state court systems maintained their organizational distinctiveness? What has made it possible for them to resist powerful environmental demands for re-organization along common lines? How have they been affected by their resistance to change?

Chapter Four: THE CONSEQUENCES OF COURT UNIFICATION

Introduction

According to its advocates, court unification promises vast improvements for the administration of justice. They maintain that structural unification is advantageous both to those who use and to those who operate trial courts. The argument is that consolidated and simplified trial court boundaries will make it possible for the same number of judicial personnel to deal with workloads that would require much greater effort if cases were handled in traditional ways. In turn, litigants will gain from the greater efficiency promised by doing away with the conflicting and overlapping court jurisdictions that are responsible for wasting judicial resources. Smaller backlogs of cases make for readier access to court hearings and speedier resolutions of controversies.

Proponents of unification argue similarly that heightened internal control will conserve judicial resources. Court systems operate more efficiently when judges from low-volume jurisdictions can be assigned temporarily to congested jurisdictions to help clear up backlogs. When procedural rule-making is unified--i.e., securely grounded within the judiciary and vested in the body empowered to oversee compliance--trial court time is less likely to be consumed by controversy over practice. More time can then be devoted to substantive decision-making. Effective procedural rules also mean fewer re-trials, since the results of original trials are more likely to be accepted as final (Ashman and Parness 1974).

Centralized arrangements for management and budgeting of trial court activities are expected to enhance the quality of justice. Advocates of unification regard state financing of trial court costs as the key element here. A higher level of funding for judicial activity is anticipated under state financing than local government can provide (Baar 1975). Increased resources are thought to pave the way for improved managerial capability and the advantages it should bring: greater attention to judicial planning, more even distribution of court services, less political interference in personnel decisions, increased rationality in formulation of judicial policies (Hazard et al., 1972).

These assumptions are large and unproved. Although the obstensible benefits of court unification have been much discussed, there is no evidence that unified court systems actually operate in the manner outlined. Proponents of unification may have felt no need to document their claims, perhaps because these claims have come in for questioning only recently. But a more serious problem has been lack of adequate data for comparing state trial court systems in terms of such variables as pre-trial delay, speed of decisions, judicial productivity, even-handedness of justice, and other matters pertaining to trial court operations.

The data analyzed in this chapter do not permit us to determine whether resources are used more effectively or cases are more often decided justly in unified systems. But we can examine an issue that may be no less important for evaluating the concept of unification. This is the possibility that unification affects trial court operations by concentrating judicial resources on particular categories of business brought to them through litigation.

Concepts and Methods of Investigation

Although mainly concerned with judicial organization (numbers and types of courts, judges, and other personnel), some of the data from the National Survey of Court Organization describe work done by judges in the fifty state court systems. Specifically, the Survey contains information from which we can construct estimates of relative amounts of time judges spend in different fields of court business, or litigation. By combining those estimates with Survey information concerning another matter -- para-judges and the fields of litigation where they are employed -- it may be possible to measure the impact of court unification on the kinds of cases that come before judges for decision.

For the present investigation we have analyzed three elements of data from the Survey. (1) The original data on judge-time distributions are presented as the number of general jurisdiction courts in each state whose judges spend 0-10%, 11-25%, 26-50%, etc. of their time in four fields of litigation: civil law jurisdiction (including actions at law, pleadings in equity, probate, mental competence, guardianship and domestic relations proceedings), juvenile cases, traffic cases, and criminal cases (Survey table 17). (2) The data on para-judges take the form of the number of general jurisdiction courts in each state with "other judicial personnel" (table 28). Such personnel are defined as commissioners, masters, referees, and other officers who hear cases in court. (3) Data on fields of litigation in which para-judges are employed are given as the numbers of general jurisdiction courts with other judicial personnel by type of cases heard (table 30). The Survey

specifies nine separate fields of litigation (civil law, small claims, equity, probate, domestic relations, mental health, criminal, traffic, and juvenile), but does not indicate how often para-judges hear such cases.

To prepare the data for analysis, our first step was to transform the percentage-of-time figures into estimates of average amounts of time devoted by judges to work in different fields of litigation. This involved (a) re-defining percentages as mid-points of each category (i.e. 0-10% became 5%, etc.); (b) multiplying the original figures (numbers of general jurisdiction courts in which judges spend various percentages of time in different fields of litigation) by a constant equal to the ratio of general jurisdiction judges to general jurisdiction courts for each state; and (c) summing the products of (a) and (b) within each field of litigation. The resulting measures represent profiles of judicial activity at the level of general jurisdiction courts in each state.

Next, we collapsed the judge-time estimates from the original categories of litigation into two broad categories. The first -- "private-sector litigation" -- consists of all cases in civil law jurisdiction as defined above. The second category -- "public-sector litigation" -- includes all cases involving traffic, juvenile, and criminal matters. The distinction between the two categories turns on the presence or absence of government as a party to business litigated in trial courts. Ordinarily, governmental agencies have no direct interest or standing in the kinds

of cases defined here as private-sector litigation; such cases characteristically involve dealings between individuals or between individuals and non-governmental organizations (see Wanner 1974; Yngvesson and Hennessey 1975). In public-sector litigation, on the other hand, cases almost always involve disputes between individuals and governmental agencies.

It was also necessary to convert the original data on para-judges into measures that would permit comparison with the judge-time estimates developed for the analysis. This required two procedures. The first was (a) to divide the Survey figure indicating the number of general jurisdiction courts in each state employing para-judges by the total number of general jurisdiction courts and then (b) to multiply the result by a constant representing the ratio of general jurisdiction judges to general jurisdiction courts for that state. In this way we created a standardized measure for each state of the extent to which general jurisdiction judges share decision-making responsibilities with para-judges.

The second procedure involved re-categorizing data on the fields of litigation in which para-judges work. To develop this measure we divided the total number of general jurisdiction courts in each state into the number of general jurisdiction courts employing para-judges in public-sector litigation and in private-sector litigation. The distinction here was almost identical with the definition given above, except that we categorized mental health cases and domestic relations cases as belonging to

public-sector litigation. The rationale for doing so was that court dealings in such cases typically originate in or establish relations between individuals and government organizations -- mental institutions in commitment proceedings and welfare agencies in custody and support proceedings. We recognize that the analysis would be stronger if we could have employed this second definition in categorizing the activities of judges in mental health and domestic relations proceedings as work in public-sector litigation, but the form of the data presented in the Survey did not allow it.

The following analysis employs two measures as control variables. Both are closely related to the dependent variables--distribution of judge-time and use of para-judges -- included in the analysis. One factor that seemed highly desirable to control was the amount of litigation. It could be argued that judge-time distributions and para-judicial activities differ systematically between high-volume and low-volume court systems. Because there are no reliable data on trial court workloads for all fifty states, we attempted to estimate the volume of litigation for each by creating an index of litigation potential. This measure was derived by factor-analyzing a number of items believed to correlate strongly with the size of trial court workloads. (Items, factor-score coefficients, and the equation used to create litigation potential index values for each state are presented in Appendix D.)

CONTINUED

1 OF 2

The second control variable is the ratio of judges to population. The American states vary considerably in relative availability of judges. This factor could be an important determinant of the distribution of judge-time and the use of para-judges. The judge-population index employed in the analysis is based on numbers of judges in general jurisdiction courts in each state as reported in the Survey and population figures from the 1970 census.

A final methodological note concerns the statistical technique of regression analysis. Standardized regression coefficients, or beta weights, measure the relative impact of each hypothesized independent variable (here unification and its three components) and each control variable (litigation potential and judge-population ratio) on the dependent variables (distribution of judge-time and use of para-judges). With this technique it is possible to specify the effect of each hypothesized variable on the outcome variable, net of the effects of other independent and control variables.

Findings

Two questions are central to this analysis. The first is whether the scope of the judicial function, i.e., the range of cases submitted to trial court judges for decision, is related to the extent of unification. The second concerns the relative importance of the three components of unification for explaining possible differences in the scope or range of decision-making tasks performed by judges. The analysis focuses on two aspects of trial court operations: (a) the distribution of judicial work-time across different fields of litigation and (b) employment of para-judicial officials to hear cases in court. State court systems vary with respect to both features. Our results indicate that such variations are related to differences in court unification.

Before considering the results of regression analysis, it will be useful to examine the average distribution of judge-time and the use of para-judges on a national basis. Table 4-1 shows that private-sector litigation consumes more judicial resources than public-sector litigation in all general jurisdiction courts in the country. Judges in general jurisdiction courts spend approximately three-fifths of their time on private-sector, or civil litigation, matters. Judges in general jurisdiction courts devote about a fourth of their time to one major category of public-sector litigation: criminal business. The remaining time is divided equally between juvenile cases and traffic cases.

TABLE 4-1 ABOUT HERE

Table 4-1: PERCENT DISTRIBUTION OF JUDGE-TIME BY FIELD OF LITIGATION: NATIONAL AVERAGES

Field of Litigation	Courts of General Jurisdiction	Courts of Limited and Special Jurisdiction
Public-Sector	58.9	21.9
Private-Sector	42.9	79.4
(Criminal)	(27.7)	(20.9)
(Juvenile)	(7.7)	(9.4)
(Traffic)	(7.5)	(49.1)
TOTAL*	101.8	101.3

*Totals exceed 100% because of rounding error.

Source: National Survey of Court Organization

As we shall see below, the national pattern of heavy concentration on private-sector litigation is apparently more pronounced under conditions of high court unification. For now it is important to note that the national pattern for general jurisdiction judge-time is reversed in limited and special jurisdiction courts (table 4-1). There judges devote more than three-fourths of their time to public-sector litigation. The largest category of business in limited and special jurisdiction courts involves traffic cases, which consume nearly half the time of judges in those courts. Criminal cases take up about one-fifth of judges' time in limited and special jurisdiction courts and juvenile cases about one-tenth. Private-sector litigation receives only about one-fifth of the attention devoted by limited and special jurisdiction judges to all court business.

The fact that the workloads of limited and special jurisdiction courts consist so heavily of public-sector litigation is consistent with what observers have pointed out concerning the division of judicial labor in state trial court systems. Limited and special jurisdiction courts are "inferior" tribunals not only in respect to their powers but also in respect to the lesser professional importance attached to the work they typically do (Pound 1940). This fact should be kept in mind in evaluating the findings presented below concerning the possible impact of unification on the distribution of judge-time in general jurisdiction courts. It should also be incorporated into the design of future research on the effects of unified court organization on the nature of judicial work.

National figures on para-judicial employment shown in table 4-2 reveal that para-judges are involved in the operations of only a small proportion of general jurisdiction courts. Approximately one-fifth of these courts feature para-judges. They are employed overwhelmingly in public-sector litigation. Two-thirds of all para-judicial employees in general jurisdiction courts in the country work in fields that we have categorized as public-sector litigation. As with the distribution of judge-time in general jurisdiction courts, this pattern appears to be accentuated in unified court systems.

TABLE 4-2 ABOUT HERE

Table 4-2: PARA-JUDICIAL PERSONNEL BY FIELD OF LITIGATION: NATIONAL FIGURES FOR GENERAL JURISDICTION COURTS

Field of Litigation	Number of Courts with Para-Judges
Private-Sector	263
(Civil Law)	(106)
(Small Claims)	(8)
(Equity)	(139)
(Probate)	(10)
Public-Sector	534
(Domestic Relations	(183)
(Mental Health)	(53)
(Criminal)	(9)
(Juvenile)	(116)
(Traffic)	(7)
(Miscellaneous)	(166)
Total Courts with Para-Judges	797
Total Courts in U.S.	3630

Source: National Survey of Court Organization

The results presented in table 4-3 indicate that judges in unified systems concentrate more on private-sector litigation than judges in non-unified systems. For this part of the analysis we summarized the judge-time distributions of each state into four mutually exclusive categories: (a) less than 50% public-sector litigation; (b) 50% or more public-sector litigation; (c) less than 50% private-sector litigation; and (d) 50% or more private-sector litigation. Here we examine only the relationship between court unification and the last of the four summary categories of judge-time distribution. One reason for doing so is that results for the three other categories were similar, though less strong, overall. The fourth category corresponds to the national pattern for the distribution of judge-time -- another reason for employing it in this analysis.

According to the findings in table 4-3, court unification increases the likelihood that general jurisdiction judges will concentrate on private-sector litigation. Litigation potential has somewhat greater importance for the distribution of judge-time than court unification. The ratio of judges to population does not affect the distribution of judge-time. But the association between unification and the concentration of judicial resources on private-sector litigation reaches a relatively high level of statistical significance (.01). The evidence points strongly toward the conclusion that unification does affect the distribution of judge-time, accentuating the national pattern for general jurisdiction courts.

TABLE 4-3 ABOUT HERE

Table 4-3: DISTRIBUTION OF JUDGE-TIME AND COURT UNIFICATION

Court Unification and Control Variables	Distribution of General Jurisdiction Judge-Time: 50% or More Time on Private-Sector Litigation	
	BETA	SIGNIFICANCE
Unification (UNI72)	.34969	.01
Litigation Potential	.42727	.005
Judges/Population	.14157	---
	R^2=.37250	.005
Internal Control (INTCON72)	.34722	.005
Litigation Potential	.53086	.005
Judges/Population	.09872	---
	R^2=.38177	.005
Management-Budgeting (MGTBGT72)	.35786	.005
Litigation Potential	.38341	.005
Judges/Population	.08449	---
	R^2=.37520	.005
Structure (STRUC72)	-.06616	---
Litigation Potential	.52161	.005
Judges/Population	.15075	---
	R^2=.26661	.005

Table 4-3 also shows the results of separate regression analyses for the distribution of judge-time between public-sector and private-sector litigation on each component of unification. The data indicate that both internal control and centralized management-budgeting arrangements are responsible for the concentration of judicial resources in unified court systems on private-sector litigation. But structural unification is evidently unrelated to the distribution of judge-time across the two categories of litigation.

The last two tables present findings on the use of para-judges in unified and non-unified court systems. These results are less clear-cut than those concerning the impact of unification on the distribution of judge-time. We are able to explain about 37% of the variation in judge-time distributions across state court systems with the court unification variables and the control variables in table 4-3. Here we can account for only half that amount of variation in the use of para-judges.

Table 4-4 shows that unification increases the likelihood that para-judges will be employed in general jurisdiction courts. Unified internal control is evidently the factor that explains why courts in unified systems make greater use of para-judicial personnel than courts in non-unified systems. Regression coefficients describing relationships between the employment of para-judges and the two other components of unification (management-budgeting and structure) are not presented because they failed to reach the .05 level of statistical significance. Litigation potential appears to make a modest independent con-

tribution to explaining the use of para-judges. For our purposes the important finding is that general jurisdiction judges in unified court systems are significantly more likely than those in non-unified systems to share decision-making responsibilities with para-judges. Also important is the finding that the employment of para-judges depends on the same conditions that give rise to heightened internal control over trial court operations by state supreme courts.

TABLE 4-4: EMPLOYMENT OF PARA-JUDGES AND COURT UNIFICATION

Court Unification and Control Variables	Extent to Which General Jurisdiction Judges Work in Courts Employing Para-Judges	
	BETA	SIGNIFICANCE
Court Unification (UNI72)	.33169	.025
Litigation Potential	.19907	---
Judges/Population	-.17875	---
	R^2=.18429	.025
Internal Control (INTCON72)	.28699	.05
Litigation Potential	.29403	.05
Judges/Population	-.12081	---
	R^2=.16691	.05

Finally, the data in table 4-5 indicate that para-judges are more likely to be employed in public-sector litigation when they work in unified court systems than when they work in non-unified court systems. The findings in this table run exactly parallel with those in the preceding table. Litigation potential contributes somewhat to the distribution of para-judicial employment in public-sector and private-sector litigation, but neither unified management-budgeting arrangements nor unified structure is related to the field of litigation in which para-judges are employed. Instead the key component is internal control. Where trial court judges are subject to unified rule-making powers and temporary assignment powers, then para-judges are both more likely to have been introduced into trial court operations and more likely to have been given responsibilities for deciding cases brought to court by public-sector litigants.

Table 4-5: PARA-JUDGES EMPLOYED IN PUBLIC-SECTOR LITIGATION AND COURT UNIFICATION

Court Unification and Control Variables	Para-Judges Assigned to Public-Sector Litigation	
	BETA	SIGNIFICANCE
Unification (UNI72)	.30007	.05
Litigation Potential	.22900	---
Judges/Population	-.13729	---
	R^2=.17328	.05
Internal Control (INTCON72)	.27966	.05
Litigation Potential	.31674	.025
Judges/Population	-.08664	---
	R^2=.16970	.05

Discussion

This investigation provides tentative answers to two questions concerning the impact of unification on the work performed by trial judges in general jurisdiction courts. First, it appears that judges make decisions in a narrower range of cases in more highly unified court systems. The results suggest that unification is associated with organizational changes that cause the balance of judicial resources to shift toward private-sector litigation. Second, the changes responsible for such a shift appear to be related to the internal control dimension of court unification and perhaps to the management-budgeting dimension. It seems clear that unified structure plays no part in explaining the distribution of judicial resources across public-sector and private-sector litigation. Structural unification may have consequences for other aspects of trial court operations (e.g., pre-trial delay and judicial productivity), but there is no evidence from this research that judges in structurally unified systems concentrate on private-sector litigation to any greater degree than judges in structurally non-unified systems.

If it is advantageous for litigants to get their cases heard by judges, then the results of this investigation indicate that private-sector litigants may be benefiting from unification at the expense of public-sector litigants. An important consequence of unification may be that litigants face a trade-off between judges and para-judges. As judges in unified systems focus increasingly on the cases brought to court by private-sector litigants, para-judges increasingly move in to take up the work of deciding public-

sector cases.

Expanded employment of para-judicial personnel has been an important concomitant of court unification over the past decade or two. Specialized auxiliary personnel have taken over many of the responsibilities formerly exercised by judges. Their increased involvement in the work of state trial courts has been advocated both as a means of freeing judges to handle cases requiring their attention and as a means of improving the quality of justice. But a more important rationale for the use of para-judges may be that they offer a means of promoting efficient use of court resources (Kaufman 1970; Clark 1971; Parness 1973).

Some court systems have come to rely heavily on para-judges, and the basic reason appears to be economic. One recent report concludes that "abandoning the use of subordinate judicial officers and replacing them with judges, aside from the issue of quality of justice, is a luxury many jurisdictions simply cannot afford . . ." (National Center for State Courts 1976: 11). However, the issue of quality of justice stands at the center of debate over the increasingly broad role of para-judges in state trial courts. The employment of para-judicial officers may actually bring about an inferior system of justice in which litigants find themselves with fewer rights than before. In civil litigation the right to jury trial must often be forfeited since that right can be invoked only after a para-judge has decided on the facts of the case; even though a jury trial remains available it may no longer be possible or desirable for the litigant because of additional expenses (court fees, counsel fees, loss of earnings) or intensified

difficulties (disappearing witnesses, failing memories) associated with re-hearings. The use of para-judges to hear non-jury cases may similarly entail a denial of first-class justice. One commentator has observed that "a trial judge who hears a case after it has been before a para-judge will not give it the same full consideration he would have given it had there been no para-judge" (Parness 1973: 56). The result is that decisions by para-judges are almost never changed by the courts which employ them.

Other problems may arise beyond those mentioned. Para-judges face the same pressures as judges face stemming from the need for rapid decisions. Litigants may have no choice between a judge and a para-judge; concerned observers point out that "subsequent 'sandbagging' of parties may go unnoticed by the lawyers and the judges who can only praise the swiftness of the process" (Parness 1973: 57). In addition, because they handle matters generally regarded within the legal profession as less important than those handled by judges, para-judges may be subject to less supervision than their work actually requires.

The use of para-judges presents state judicial systems with serious dilemmas. Although para-judges are supposed to assist judges in handling court business, they may actually be displacing judges. As para-judges assume larger roles in trial court operations they will be expected to meet higher qualifications consistent with the greater responsibilities being delegated to them. However, the raising of standards for employment of para-judicial personnel may have the paradoxical result of weakening the position

of judges. The practical difference between the judge and the para-judge may become so narrow that it finally amounts to a formal distinction only; that is, the judge will have power to change the decision of the para-judge, but exercise of that power will become even more limited than now. In some jurisdictions para-judges are already more learned in the law than judges, and as that condition becomes more general the responsibility of the judge may be radically re-defined.

There is too much variation in the work now performed by para-judges to permit any generalization about how the quality of justice is actually affected by their expanding involvement in court business. But the results of the present study suggest that this development is related to other changes in the organization of state court systems which are leading to heightened internal control over trial court operations. The evidence we have examined also indicates that these same changes, which represent the cutting edge of court unification, may be responsible for the observed shift in the focus of judicial resources toward private-sector litigation. The unified court system of the future could turn out to be a system that provides one kind of justice for private-sector litigants and another for public-sector litigants -- in short, a divided court system.

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Appendix A: Variable Labels and Definitions of Unification Items

1. Consolidation and Simplification of Trial Court Structure

CPRESENT	Courts Present
GENJUR	General Jurisdiction
LIMJUR	Limited Jurisdiction
PSPECCRT	Presence of Specialized Courts

2. Centralized Rule-Making

LEGALRM	Legally Charged Rule-Maker
ACTUALRM	Actual Rule-Maker
LEGVETO	Legislative Veto of Rule
UTILRM	Utilization of Rule-Making

3. Centralized Management

APOWERSC	Assignment Power of Supreme Court
SUPERTCA	Role of S. C. Admin. in Supervision of T. C. Admin.
ACTSCA	Activities of S. C. Admin.
TYPEPS	Type of Personnel System

4. Centralized Budgeting and State Financing

CENJPREP	Extent of Centralized Judicial Preparation
EXECPART	Extent of Executive Branch Participation
VETOBGET	Use of Gubernatorial Item Veto over Judicial Budget
PERCENTSP	Percentage of State Funding

Source: Larry Berkson, "Court Unification in the Fifty States," (Chicago: American Judicature Society, March 1977).

Appendix B: LOADINGS FOR 1,-2,-3,- and FIVE FACTOR ROTATIONS

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4	FACTOR 5
CPRESENT	-.02202	.08820	.92946	-.01893	.04754
GENJUR	-.01036	.07119	.64075	.12048	.03392
LIMJUR	.04275	.50094	.84701	.18161	.14769
PSPECCRT	.05441	-.05369	.81812	-.22414	-.09505
LEGALRM	.76517	.11587	-.07622	.17675	-.33747
ACTUALRM	.88439	.03866	.11295	.06060	-.24829
LEGVETO	.64027	.10275	-.23796	.26634	.05045
UTILRM	.69347	-.01655	.18916	-.21928	.27956
APOWERSC	.48724	.19210	.02423	-.05004	.09358
SUPERTCA	.28296	.76025	.05441	.06560	-.10487
ACTSCA	-.04971	.46140	.15850	-.51088	-.01107
TYPEPS	.08899	.57524	.06739	.00209	.09835
CENJPREP	-.01152	.65824	-.00721	-.35430	-.05815
EXECPART	-.04672	-.03177	.02090	.07783	.92676
VETOBGT	.06628	.13733	.09872	.81368	.04657
PERCNTSP	.10838	.82970	.13419	.26944	-.08508

	FACTOR 1	FACTOR 2	FACTOR 3	FACTOR 4
CPRESENT	-.01803	.09803	.92542	.03265
GENJUR	.00535	.08239	.62633	.14572
LIMJUR	.04161	.50955	.63936	.23667
PSPECCRT	.06223	-.05338	.81878	-.21392
LEGALRM	.83301	.12214	-.11858	.01485
ACTUALRM	.91945	.00936	.09196	-.05178
LEGVETO	.63770	.09933	-.24176	.24329
UTILRM	.69031	-.03849	.25261	-.09987
APOWERSC	.45152	.18176	.04734	-.02151
SUPERTCA	.30472	.76151	-.01332	.00348
ACTSCA	-.09477	.44665	.19693	-.47790
TYPEPS	.06924	.57133	.07665	.02929
CENJPREP	-.03453	.64742	.01318	-.36202
EXECPART	-.22302	-.05724	.13300	.43041
VETOBGT	.13962	.16350	.03183	.76788
PERCNTSP	.15354	.84034	.09586	.20237

	FACTOR 1	FACTOR 2
CPRESENT	.46611	.69497
GENJUR	.34222	.45089
LIMJUR	.66619	.47255
PSPECCRT	.35005	.56605
LEGALRM	.51285	-.63501
ACTUALRM	.59562	-.54284
LEGVETO	.34068	-.61312
UTILRM	.42666	-.21544
APOWERSC	.40511	-.24891
SUPERTCA	.69255	-.13731
ACTSCA	.31677	.28851
TYPEPS	.46713	.06514
CENJPREP	.41364	.14560
EXECPART	-.08969	.20865
VETORGT	.24187	-.11158
PERCNTSP	.71709	.03686

	FACTOR 1
CPRESENT	.46611
GENJUR	.34222
LIMJUR	.66619
PSPECCRT	.35005
LEGALRM	.51285
ACTUALRM	.59562
LEGVETO	.34068
UTILRM	.42666
APOWERSC	.40511
SUPERTCA	.69255
ACTSCA	.31677
TYPEPS	.46713
CENJPREP	.41364
EXECPART	-.08969
VETOBGT	.24187
PERCNTSP	.71709

Appendix C: INTERCORRELATIONS OF ITEMS, COMPONENTS, AND UNIFICATION INDEX (UN172)

		1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	UN172	1.0	.620	.658	.741	.659	.418	.512	.502	.305	.608	.637	.652	.499	.56
2	MGTBGT72		1.0	.238	.146	.801	.881	.165	.132	.050	.430	.083	.156	.024	.27
3	STRUC72			1.0	.185	.329	.099	.857	.764	.562	.653	.214	.126	.083	.19
4	INTCON72				1.0	.285	-.004	.098	.175	.055	.223	.849	.889	.759	.59
5	PERCNTSP					1.0	.422	.258	.189	.106	.484	.240	.290	.183	.16
6	CENJPREP						1.0	.046	.050	-.008	.267	-.065	.007	-.109	.28
7	CPRESENT							1.0	.642	.196	.694	.102	.040	.033	.19
8	PSPECCRT								1.0	.134	.285	.143	.1310	.164	.10
9	GENJUR									1.0	.134	.184	.041	-.059	.00
10	LIMJUR										1.0	.182	.165	.107	.32
11	ACTULRM											1.0	.747	.465	.38
12	LEGALRM												1.0	.499	.48
13	LEGVETO													1.0	.28
14	APOWERSC														1.(

Appendix C: INTERCORRELATIONS OF ITEMS, COMPONENTS, AND UNIFICATION INDEX (UN175)

		1	2	3	4	5	6	7	8	9	10	11	12	13	14
1	UN175	1.0	.640	.609	.658	.647	.461	.502	.476	.387	.594	.619	.585	.393	.418
2	MGTBGT75		1.0	.197	.168	.809	.881	.129	.086	.070	.437	.094	.184	.053	.250
3	STRUC75			1.0	-.024	.242	.107	.926	.827	.667	.691	.107	-.037	-.147	.046
4	INTCON75				1.0	.277	.034	-.086	-.010	-.004	.054	.869	.877	.749	.476
5	PERCNTSP					1.0	.435	.169	.046	.138	.548	.203	.229	.187	.273
6	CENJPREP						1.0	.061	.095	-.004	.228	-.020	.098	-.069	.163
7	CPRESENT							1.0	.799	.409	.637	.056	-.110	-.196	.055
8	PSPECCRT								1.0	.323	.297	.085	-.004	-.139	.082
9	GENJUR									1.0	.420	.105	-.003	-.063	-.080
10	LIMJUR										1.0	.106	.024	-.021	.092
11	ACTUALRM											1.0	.747	.465	.378
12	LEGALRM												1.0	.499	.304
13	LEGVETO													1.0	.122
14	APOWERSC														1.0

Appendix D: INDEX OF LITIGATION POTENTIAL

Item	Indicator	Factor Score Coefficient
% Juvs	Age 1970/ Population 1970	.19633
Carspop	1970 Vehicle Registration/ Population 1970	-.10726
Crate	Felony Crime Rate 1971/ 100,000 Population 1970	.34222
Occh	% Owner Occupied Housing	.43825
Sales	Retail Sales Volume/ Population 1970	-.37816

Litigation Potential = (Factor Score Coefficient X /(Indicator - Mean)/ Standard Deviation/) + ... + ... + ... + ...

Litigation Potential Equation = (.19633 X /(%Juvs - .3878/.0212/) +
(-.10726 X /(Carspop - .5684)/.0802/) +
(43825 X /(Crate - 24869)/9255/) +
(-.37816 X /(Occh - 64.9440)/5.9289/) +
(.34222 X /(Sales - 2278.5)/274.4/)

END