

**JUDICIAL UNIFICATION AND ITS IMPACT ON EFFICIENCY**

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# **JUDICIAL UNIFICATION AND ITS IMPACT ON EFFICIENCY**

**William E. Raftery**

## **Abstract**

In the process of developing a court system, American states in the 1700s effectively borrowed the existing English model that had been in place for hundreds of years: highly autonomous individual trial courts with no administrative oversight exercised outside of the local level. This model held sway on both sides of the Atlantic until the late 19<sup>th</sup> century when a new formulation, called in the United States “unification”, was offered. In lieu of the existing model of a multitude of local trial courts of various types managed locally would be a unified state judiciary including 1) consolidation and reduction in the number of types of trial courts in a state to one or two 2) centralization of administrative control away from localities and into the hands of the state's chief justice, later the newly created office of state court administrator, and 3) rules of practice and procedure in the courts handled exclusively by the chief justice/judicial council and with no interference either by local courts or the state’s legislature. Underlying the premise of unification were the principles of scientific management, that courts could function mechanistically and in a measured fashion similar to an assembly line or plant.

Unification formed the basis for state court organization for nearly a century, however the definition of the term became muddled as states began to refer to themselves as “unified” court systems while demonstrating few or none of these three characteristics. Additionally others sought to add or alter the original three items, redefining them or adding to them elements such as state vs. local funding. Moreover, aside from limited efforts starting in the 1970s, no empirical research was conducted to determine whether unification was achieving a more efficient judicial system, one better able to dispose of cases in a timely fashion as compared to other states.

This study attempted to empirically explore if there is a linkage between unification and efficiency defined as case clearance rates (number of cases disposed divided by the number of cases filed). As for the measurement of unification, prior studies relied on an assessment by their authors of which states were more/less unified and by how much. Moreover, what was included in the measurement of unification in these studies often strayed from the original elements of consolidation, centralization, and rulemaking authority.

This study opted to use a different approach, one that relied on the original definition of unification and its three elements and that focused on surveying the situation in the state rather than asserting an author's opinion of the situation. The result was three sets of variables consisting of 10 items examined: 1 consolidation score + 8 centralization indices + 1 rulemaking index

1. Consolidation was measured as the number of trial court types in the state; the fewer court types the more consolidated a state was. Higher scores meant less consolidation which meant less unified.
2. Centralization of administrative control was measured using secondary data from a survey sent to all state court administrators that asked them to indicate whether they had total, shared, or no control over 31 separate aspects of trial court management. Higher scores were assigned where no control was indicated. These 31 were then combined into 8 index scores based on assessments made as early as the 1980s by the Conference of State Court Administrators and the National Center for State Courts: management activities, information services, court support, finance and budget, personnel services, education and training, public information and liaison activities, and planning and research. Higher index scores meant less centralized control which meant less unified.

3. Rule making authority was measured by examining the constitutions of the various states to determine if the state's court of last resort and/or judicial council had either explicit and exclusive power in this area, explicit but not exclusive power, or no explicit authority. Scores were then assigned based the results with higher scores assigned to those states with no explicit authority meaning a less unified state.

An ordinary least squares regression was run using data for 2013 from 24 states; the other 26 states were either unable to produce data for that time period and/or were unable to produce data that would allow for cross-state comparison. The resulting regression suggested only some, limited support for some aspects of unification as a positive force for court efficiency. Of the 10 items examined only three (court support services, finance and budget, and public information and liaison) seemed to support the unification; as their index scores decreased (indicating more centralized control) the state's case clearance rate increased. The results of the regression for the other independent variables were either inconclusive or suggested that greater levels of unification might even have a negative, rather than a positive, impact on case clearance.

Given the limited data (1 year, 24 states) it is difficult to draw broad conclusions for policy, but overall three items do seem supported by the data.

1. The assumptions of unification should be reexamined. This study defined efficiency in one particular manner (case disposition rates) and here found no strong evidence to support that more unified states are better than less unified. However, perhaps there are links to unification and other forms of efficiency,

such as economies of scale (more unified states do not dispose of cases at a higher rate, but they do dispose of them for less money).

2. The study of levels of state unification vis-à-vis state court efficiency should be further explored. The examination of system/structural reforms such as unification was effectively abandoned in the 1980s in favor of individual trial court performance standards. That decision should be reexamined.
3. The need for data collection in trial courts remains essential. Most states are still unable after 100+ years of effort in this area to provide data on the most basic measure of court activity: number of cases filed and number of cases disposed. That should be rectified.

## Introduction

Provision 40 of the Magna Carta of 1215 provides that *Nulli vendemus, nulli negabimus aut differemus rectum vel justiciam*: To none will we sell, to none will we deny, to none will we delay right or justice. Today in American law this is simplified into the concept that “justice delayed is justice denied.” But ensuring that justice was not delayed, and thereby denied, inevitably proved to be a difficult and improbable task both in the England of the 1200s and the United States of the 19<sup>th</sup> century. For every different problem there was a different court. For every different court, there were different judges and different laws to apply. Administrative oversight, centralized systems or means for tracking cases, and coordination among the various courts were unheard of, and remain foreign concepts for many states today.

As the problem came from American adoption of the English system of jurisprudence and court organization, Progressive Era lawyers and judges looked to England for a solution. Beginning in the late 1800s under the banner of efficiency advocates of judicial reform in both England and the U.S. invoked concepts from scientific management and classic organization theory. The offered solution: “unification” of the state judiciaries (Henderson et al, 1984):

**Consolidation (organization)** All existing courts in a state should be consolidated into a single court. That court should be divided into two (a trial section + an appellate section) or three parts (a trial section for minor matters + a trial section for greater ones + an appellate section).

**Centralization (administration)** All administrative authority over the single court created via consolidation should be vested in the office of the chief justice to be exercised by the chief justice or in conjunction with a judicial council.

**Empowerment (rulemaking)** All laws related to the practice and procedure used in the courts should be repealed and the power to establish such rules vested exclusively in the chief justice and/or judicial council.

Unification was to be the panacea which solved the problems of a public dissatisfied with courts and law of the time. Unification also seemed meshed with hierarchical concepts already in

place in jurisprudence (the decisions of higher court judges are binding on lower court judges), power and command (refusal to obey a court order could be punished by fines or imprisonment) and common law techniques for deciding cases, such as *stare decisis* (the importance of precedent). Yet state judges, legal communities, and legislators only slowly embraced unification and did so often in a haphazard or partial manner.

This advocacy and adoption to greater or lesser degrees were all predicated on the belief, not empirically tested, that in fact unified state courts were more efficient ones. Two states (New Hampshire and Vermont) in response to the Great Recession consolidated most of their courts and have given greater power to the state judiciary's central authority (the administrative office of the courts) in the pursuit of saving money. But unification was meant to do more than save money, it was intended to make for the better/faster processing of cases. Moreover, despite a century of pressing for unification academic researchers have only rarely tried to measure systematically the effect of various unification efforts on case clearance rates while non-academic research has focused almost exclusively on the cost savings associated with such efforts. Thus, it remains an open question whether unification makes a real difference in moving cases along in an orderly fashion. This study attempts to answer this important question.

## Literature Review

### Before Unification: “Chaotic Localism”

*The organizational.* From the colonial era into the 1900s state courts were structured in much the same manner as in England since the reign of Edward I in the late 1200s (Pound, 1940). Each different type or sort of case was to be given its own court, with its own judges, and with nebulous and often overlapping jurisdiction. Atop this disorganized organization called the judicial branch sat, effectively, a jumble. State courts of last resort were often made up of judges from the lower courts sitting collectively or with some combination of the legislature and/or executive branch. Clarity in terms of organizational structure was almost entirely lacking. England moved towards a consolidation of the system established by Edward through a series of acts from 1873 through 1899 known collectively as the Judicature Acts (Taylor, 1898). The result was the consolidation of several courts into one, with a single set of rules for pleading and procedure.

*The administrative.* The Judicature Acts also revised the administration of the English judiciary in what was described as a “revolutionary” way (Martin & Law, 2009). Under the Supreme Court of Judicature Act of 1881 powers held directly by the Crown over the administration of the courts were *transferred down* to the Lord Chief Justice of England. Additionally administrative powers over the lower courts, such as times of holding court, hiring or appointment of court staff, and direction of clerks, was *transferred up* from the lower courts to the Lord Chief Justice.

Meanwhile, state courts in the U.S. were the very definition of “chaotic localism”, (Golembiewski, 1977) a system so decentralized that the conditions on the ground at one

particular place at one particular time are the only ones that matter. In the California of the 1910s, “the result has been to produce a system of judicial administration, in which local conditions exercise the maximum of influence. Localized administration makes for localized law.” (McMurray, 1917).

### **The Progressive Era and Classical Organizational Theory**

The advent of the Progressive Era saw a focus on “centralization, order, and expertise” (Levine, 2000). Central to this were two related concepts: scientific management which focused on the management of work and workers and administrative management or classical organization theory which addressed issues concerning how overall organization should be structured (Lunenburg & Ornstein, 2007). Together scientific management and administrative management have come to be known as classical management. (Griffin, 1987)

*Scientific management/Taylorism* Taylorism, named after one of scientific management’s leading proponents Frederick Taylor, relied upon several assumptions not the least of which were inputs can be converted to outputs in a mechanistic fashion and that outputs are measurable (Chapman, 2003). It supposed that there was a one best way of operating and the all similarly situated companies should operate in exactly the same fashion. Scientific management formed the heart of court unification efforts. Pound (1940) bemoaned that “[S]cientific management is needed in a modern court no less than in a modern factory.” As late as the 1970s scientific management techniques were drawing praise from unification proponents. A systems analyst with the Minnesota Supreme Court rhetorically asked “Can scientific management techniques appropriately be applied in a court setting?... [T]he answer is yes.” (Good, 1980)

**Henri Fayol** If Taylor's focus was on the individual worker, Fayol's was on the larger picture. Starting in 1916 with *Principles of Management*, Fayol focused on unity and hierarchy of command and direction and centralization. Although not identified directly in the literature of court unification, his concepts would be replicated; unity of command and unity of direction in particular played a role in the hierarchical nature of court unification efforts (Hays & Douglas, 2007). W.F. Willoughby (1929) made unity of command and unity of direction the centerpieces of his vision of judicial administration.

**Administrative Management/Departmentalism** Administrative Management (Mosher, 1968) or Departmentalism (March & Simon, 1958) concentrated on the formal institutional structure of organizations. Both Administrative Management and Scientific Management contended there was a science and preordained general precepts to management that could be deduced and universally applied, rather than reliance on inductively derived concepts from a myriad of specific observations. (Fry & Raadscheiders, 2008)

**Weber** There are several contributions Max Weber made to "classical" organizational theory, but two stand out especially with respect to court unification and are specifically mentioned in its literature (Gallas, 1976). The first was Weber's essay on *Bureaucracy* (1915) which laid out the ideal organization's characteristics:

1. There are to be fixed and official jurisdictional areas, ordered by laws and rules
2. There is an office hierarchy and levels of graded authority based on subordination
3. All management is based on writing documents that are to be preserved and drawn from
4. Office management presupposes thorough and expert training
5. The primary or sole responsibility of the officeholder is to fulfill the functions of that office
6. The rules pertaining to the management of the office are to be stable, exhaustive, and learnable

Unification embraced many of these concepts if not outright copying them. A hierarchy starting with the state's chief justice down to the lowliest file clerk would provide structure and command. Focusing on the management of the branch/agency would give the chief justice and subordinates a dynamic on which to base their productivity and function.

The second key work by Weber in this field, per Gallas (1976) was *The Theory of Social and Economic Organization* (1947). There Weber put forth a view of three mechanisms for authority:

- charismatic authority relied on based on the sacred or some characteristic of the individual
- tradition authority relied on rote and custom
- rational legal authority relied upon code or set of rules

Each of the three had effectively been developed and tested but Weber argued it was rational legal authority that had the greatest potential to harness the modern world via bureaucracy. This in turn relied on the acceptance of the assumptions that

1. Law based on reason can be established by agreement or imposition upon on all those in the sphere of authority.
2. Law is a system of abstract rules which are applied to **particular cases**; administration looks after the interests of the organization within the limits of that law **generally**.
3. That the imposition and administration of the law or legal norm by the office holder is impersonal and relies solely on the legal obligations and authorities in question.
4. The person who obeys does so as a result of their status in the organization and not based upon their personal status.
5. Adherence to orders and directives issued under criteria 3 are based upon an obligation to adhere to the lawfulness of the order and not the order-giver's personal status or other characteristic.

Labor and administrative leadership within this construct was to be defined and divided based on specialization, a defined "sphere of competence" within which the administrator was to be deemed inviolate in the (lawful) carrying out of their duties. There was to be a consistent organization of supervision based on distinctive levels of authority. Officials in their respective

roles were to be full-time paid officials assigned only to the task at hand. Careerism was favored and promotion based on seniority and merit encouraged. There was to be a particular line between private and public life and the finances and interests of the two. Key to the bureaucratic state too was the idea of “technical knowledge”; Weber used the term or a version of it dozens of times and in particular as a wedge against office holders who were placed their due to personal obedience (the monarchial model) as well as encroachment from outside the particular “sphere of competence” by others in related fields or authorities. Corwin (1965, 1970) found later that this could be carried to the extreme that professional persons in public organizations will demand control over their sphere of influence in “a militant process” seeking “militant professionalism.” Courts would later find this distinction difficult as judges were unwilling or unable to surrender their *administrative* authority as they viewed it as part and parcel of the *adjudicative* authority.

### **Unification: Consolidation, Centralization, Empowerment**

Unification took the concepts described above and began the process of integrating them into the courts, starting in England and moving into the United States. Classical management relied heavily on notions of hierarchical control, simplicity, and creation of rules of processes. In the context of unification these would manifest as centralization, consolidation, and empowerment.

***Consolidation.*** At least as far back as 1896 the American Bar Association began advocating for an organizational solution to the problems plaguing the state court systems such as adopting the English post-Judicature Act reforms to consolidate the courts as much as possible (Report of Committee on Uniformity of Procedure and Comparative Law, 1896). A decade later Pound's “The Causes of Popular Dissatisfaction with the Administration of Justice”, inveighed

against “our American judicial organization”, warned against the multiplicity of courts with concurrent jurisdictions, and the attending waste of judicial resources. A 1909 ABA committee formed in response to Pound reported out its proposal that all courts (at least for civil matters) should be reorganized and consolidated within a state into One Court of Justice. The report concludes with rationales for the need for restructuring, several of which addressed organization directly

- States do not effectively have a judicial branch; they have a collection of courts. Collective action makes for a branch, and a strong one. (#1)
- Elimination of waste “of judicial power” caused by rigid organizational lines (#2)
- Elimination of conflicts between judges over who is supposed to be hearing a case and when, and gives parties and courts stability in handling their cases. (#7)

Though never formally adopted by the ABA, the 1909 Special Committee report was subsequently identified by the American Judicature Society (1917) as the place and time where “the conception of the unified state court system first received adequate expression.”

Where consolidation and unification in the U.S. began as an idea coming out of the ABA, it was the American Judicature Society founded in 1913 that put the concept into specific legal and constitutional language. *Bulletin VII*, released in 1914, was a draft set of constitutional language that specified consolidation; the final version published in 1917 as *Bulletin VII-A* remains the basis for all court consolidation in the U.S. to this day. Under it, the entire state’s judiciary, including every court and all judicial power and authority, were to be absorbed into a newly created “General Court of Judicature.” In lieu of a multitude of trial courts there were to be only two: a permanent lower court (County Court) to hear petty crimes and small civil cases and a permanent higher court (Superior Court) to hear all major crimes and civil matters. There would be a single appellate court (Court of Appeal) that would take over from existing state

supreme courts. The first provision, before all other activities in creating the General Court of

Figure 1. Bulletin VII-A Diagram Showing Unified State Courts (1917)

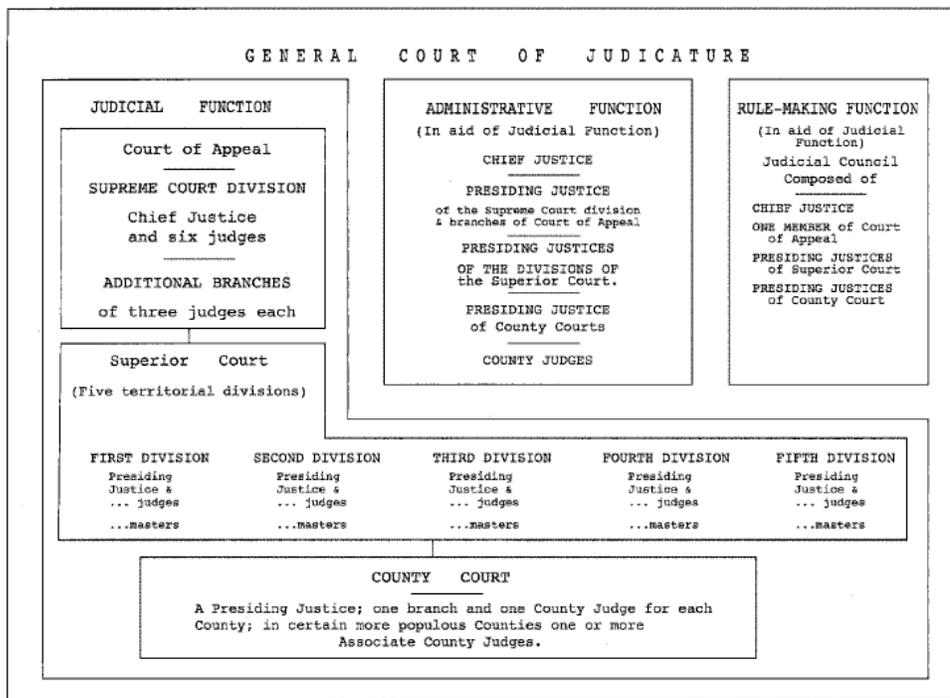


Diagram Showing Unified State Court.

Source: 7A Bulletins of the American Judicature Society page v (March 1917).

The most critical element of this, at least to start, was consolidation of trial courts down to one or two. W.F. Willoughby’s *Principles of Judicial Administration* (1929) dedicated an entire section to Judicial Organization and provided the organizational arguments for consolidation, arguing the organizational consolidation is “the most important” improvement that can be made and that this alone would help eliminate “confusion, duplication, overlapping of organization and functions, conflicts of jurisdiction, unnecessary cost, etc.” Willoughby came out for divisional specialization so as to increase technical prowess rather than creation of entirely new courts. The desire was for specialized judges, not specialized courts.

The American Bar Association, after decades of pressure, finally adopted as a formal policy court consolidation in its Standards of Judicial Administration, developed under the direction of ABA President Arthur T. Vanderbilt and released in 1938 (reprinted in Vanderbilt, 1949). States were expected to have “a unified judicial system comprising all the courts within a state.” The Standards specified either a single tier trial court or a two tier system such as the one found in *Bulletin VII-A*. Pound in his *Organization of Courts* (1940) would eventually be persuaded that having two trial courts would be preferable, with lesser matters sent to the lower courts.

**Table 1. State Court Structure Models**

| <b>AJS/Willoughby (generally)</b> | <b>Willoughby (large municipalities)</b> | <b>Pound</b>                 |
|-----------------------------------|--|------------------------------|
| Supreme Court Division            | Supreme Court Division                   | Supreme Court                |
| 3 judges panels (as needed)       | 3 judges panels (as needed)              | Court of Appeals (permanent) |
| Superior Court Division           | Metropolitan Division                    | Superior Court               |
| County Court Division             |  | County Court                 |

**Centralization.** More controversial that organizational restructuring was locally elected independent judges and clerks to be control by another entity, even if that entity was within the judicial branch. Bureaucratic, hierarchical control function advocated for by the Classical Organizational theorists was anathema to many in the judicial context. The 1909 ABA Special Committee urged for powers to be held by a “high official” of the consolidated court and these powers were to be expansive: “Supervision of the business administration of the whole court should be committed to some one high official of the court who would be responsible for failure to utilize the judicial power of the state effectively... it should be his duty to see to it that the

energies of the judicial department are employed fully and efficiently upon all business in hand.” The report also pressed for handing administrative control over not just judges, but the entirety of the clerical staff to this “high official.”

The 1909 ABA Special Committee report left it vague as to who would be the “high official of the court” to exercise this power. It might have been an attorney general or similar executive official. The U.S. Attorney General effectively operated as the chief administrator in the federal judiciary since at least 1870, including retaining funds for the courts, disbursement, and accounting (Fish, 1973). The American Judicature Society weighed against this notion and urged the chief justice to take on the role. “It is important that there shall not be a divided headship... To deprive such Chief Justice of the administrative headship and give it to one who was outside the counsels of the court in its daily work of deciding cases, would be to introduce an element of confusion and lack of co-operation.” The Society went further, arguing the Chief Justice’s “first duty” would be to see to it that the entire General Court of Judicature ran smoothly. Willoughby in 1929 similarly advocated for a strong chief justice with “large powers of general direction, supervision, and control over the entire work of the court” while taking great pains to note that these changes were to extend to “purely administrative affairs...in no way interfering with the exercise of judicial discretion.” Later both the American Bar Association in its 1938 Standards of Judicial Administration and Pound in *Organization of Courts* advocated for a strong chief justice in the style of Willoughby. Willoughby also wished for the Office of the Clerk of the Court to be revised. The clerk was to be appointed by the Chief Justice rather than elected and serve “as the center of the administrative system of the court.”

By the mid-1940s it was recognized the idea of a chief justice serving daily as the administrative head of the courts was impractical. Solutions were sought along the lines of

Willoughby's Office of the Clerk and/or the federal Administrative Office of the U.S. Courts. From this came the earliest state "court administrators" in Connecticut and New Jersey. By 1948 the National Conference of Commissioners on Uniform State Laws came out with a Model Act to Provide for an Administrator for the State Courts based on a draft that had been prepared by the ABA prior to World War II (Hartshorne, 1949; Vanderbilt, 1949). The handiwork of Vanderbilt, it was essentially adopted wholesale by the New Jersey legislature in 1949. (Woelper, 1950)

By 1959 nearly half the states had adopted a version of the act by statute or court rule (American Judicature Society, 1960) but there was not universal love or affection for the office. Today, every state has an administrative office of the courts. Moreover, 48 out of 50 states have a statutory or constitutional provision that the chief justice, ex officio, through the Supreme Court or through a Judicial Council, is the administrative head of the judicial branch in the state (Raftery, 2013). How much authority they opt to exercise or defer to the administrative office of the courts varies.

***Empowerment.*** More of a legal than administrative or organizational construct, empowerment for the "unified" judiciary meant the ability of courts to create their own rules of procedure that were consistent throughout the state. Today all states give their supreme court, judicial councils, and/or chief justices powers to set rules of practice and procedure, most through constitutional provisions but some through statute. Still other states have interpreted the constitutional granting of "general administrative authority" (Kansas) or "administration and supervision" (Idaho) over the judiciary as having implicit within it the authority to promulgate such rules. Of all three elements of unification, empowerment is the only one that has been adopted universally.

## Empirical Studies of Unification

**First measure** Ashman and Parness (1974) commended the American Bar Association's *Minimum Standards of Judicial Administration* (1949) as “paving the way toward the actual meaning of the unified court concept.” Authored by former ABA President and now Chief Justice of New Jersey Arthur Vanderbilt, *Minimum Standards of Judicial Administration* was the first ever formulaic effort at defining how “unified” state courts were by measuring how much they adopted the tenants of unification, as put forth by the American Bar Association in 1938’s *Standards of Judicial Administration*. *Minimum Standards* focused on only three areas in *Standards* and divided them on a scale from 1 (little or no control) to 4 (total):

- Unified judicial system: measures of the chief justice’s ability to assign judges to specialized dockets (e.g. small claims), move judges to other courts/areas to equalize work, assign a judge’s caseload to another judge, require records be kept by judges and in what manner, require judges to report on the status of their work, appoint all personnel, including specifically clerks, direct how personnel are to conduct their work and centralized management & control of finances for the judicial branch.
- Creation of a Judicial Council: with an emphasis on the idea of a council’s power and authority
- Judicial statistics: noting that statistics are the only way to “enable the court to check on the efficiency of its own work” this examined whether statistical reporting, preferably quarterly, was being done on a comprehensive and consistent basis.

**First studies** As of the 1970s no one had measured the extent to which states were “unified” since *Minimum Standards* in 1949 and absolutely no one had ever attempted to link unification to performance in an empirical way. What studies were conducted in this time period examined two questions: what states were “unified” and why did they move towards unification.

A Law Enforcement Assistance Administration (LEAA) 1967 Commission Task Force report that claimed unified state court systems were better at administering justice. However, the report itself reflected the loose and confused development of the word “unification” by the time.

Despite the confusion over the definition of “unified” LEAA was convinced anecdotally unified state court systems were better and were prepared to offer grants and funding to determine the “empirical consequences of state court unification” (U.S. Department of Justice, 1979; Flango, 1981). To start, they commissioned a survey to try and gauge the work of state courts and the levels of consolidation. The survey was conducted in 1971-1972 and published by the U.S. Department of Justice’s Bureau of Justice Statistics as the National Survey of Court Organization, 1971-1972. This raw data was then consolidated by the Bureau of the Census into the report National Survey of Court Organization and published a year later by the LEAA. The National Survey of Court Organization gave a listing of not only the differences in state court trial systems (single-tier, two-tier, and multi-tier) but also insights into the work of judges such as time spent on civil matters vs. criminal, etc. The National Survey of Court Organization would be supplemented in 1975 and in 1977.

The data provided an opportunity to empirically examine unification for the first time. Larry Berkson, Director of Educational Programs for the American Judicature Society, made use of the data to attempt to parse out a unification scale. Berkson’s work kept consolidation and empowerment effectively unchanged from the work going back to the 1900s, however he divided centralization into two: centralized management and a new category centralized budget and state financing (in later literature he would divide these as well, resulting in five elements). This was a departure from what was previously understood to be “unification” and made the already loose usage of the term “unification” all the more so. Berkson’s “unification” was first released in a speech he delivered to the 1977 meeting of the American Society for Public Administration and that was later published in *Justice System Journal*. (1978)

Figure 2. Principal Components of Berkson's 16 Indicators of Unification (from Flango (1981))

|   |
|---|
| <p>Consolidation and Simplification of Trial Court Structure</p> <ul style="list-style-type: none"><li>Number of trial courts (1 trial court = 4 points)</li><li>One trial court of general jurisdiction (1 trial court = 4 points)</li><li>Trial courts of limited jurisdiction (0 or 1 court = 4 points)</li><li>Separately administered specialized courts (0 courts = 4 points)</li></ul> <p>Centralized Rule Making</p> <ul style="list-style-type: none"><li>Legally charged rule maker (state's highest court = 4 points)</li><li>Actual rule maker (state's highest court = 4 points)</li><li>Legislative veto power (no veto power = 4 points)</li><li>Utilization of rule making (most use = 4 points)</li></ul> <p>Centralized Management</p> <ul style="list-style-type: none"><li>Assignment power of supreme court (power to transfer judges = 4 points)</li><li>Role of the state court administrator in supervising trial court administrators (most supervision = 4 points)</li><li>Activities of state court administrator (most activities = 4 points)</li><li>Type of merit system (state-wide merit = 4 points)</li></ul> <p>Centralized Budgeting and State Financing</p> <ul style="list-style-type: none"><li>Extent of centralized judicial preparation of the budget (central preparation = 4 points)</li><li>Extent of executive branch participation in budget (executive excluded = 4 points)</li><li>Use of gubernatorial item veto over judicial budget (no authority = 4 points)</li><li>Extent of state financing (80% to 100% = 4 points)</li></ul> |
|---|

Dill (1978) using data from the 1972 National Survey of Court Organization examined unification metrics, starting with Berkson's 1977 work and its 16 variables as a starting point. Dill used factor analysis to determine linkages between these several elements, finding for example that the governor's ability to alter the judiciary's budget request and line item veto of the budget once approved by the legislature to have little to do with unification. Dill also found reason to disagree with Berkson's assessment that centralized management and centralized budgeting and state financing are separate components from one another, instead suggesting a

merger into what he called “management budgeting.” Dill also created his own scoring for unification based on 14 out of 16 elements (i.e. removing the ones related to the governor) and found it effectively matched and replicated Berkson’s 1977 survey.

Of particular note is the relationship Dill found between states that were measured as having “unified” courts and the individual components, finding that consolidation and centralization were intertwined but not always present in the same state. He concluded that the assumptions of those seeking unification for seven decades had, by that point, been “large and unproven.”

Flango (1981) was critical of Berkson’s 1977 indices for much the same reasons, and using similar factor analysis as Dill. Flango’s focus was not so much on the ramifications of unification, only on how to measure it. Flango along with Rottman (1992) would return to this later and criticize Berkson’s measurement of consolidation as well, arguing that Berkson’s division of consolidation itself was troublesome because it effectively double counted (a state would receive one score for having more or fewer trial courts, another for the types of court they were). Flango and Rottman offered an alternative measure for consolidation, but there was no attempt to link this metric to performance or efficiency.

Subsequent use of the Berkson unification measure was mixed. Tarr (1980) used the unification scores to measure unification’s impact on “court performance”, but defined “performance” as having to do with aspects internal to the branch. Tarr tested the assumptions that unified states should see larger proportion of their judicial budgets going to capital expenditures, more in-service training, a statewide personnel system, more funding overall, and statewide information systems. Again, there was no effort to try and link unification to the

disposition of cases and the study was roundly condemned as having little if anything to do with court performance. (Harris & Dodge, 1982)

***Carbon/Berkson*** When Carbon and Berkson's *Court Reform in the Twentieth Century* (article) and *Court Unification: History, Politics & Implementation* (book) first appeared in publication in 1978, they served from a qualitative aspect what the prior statistical work offered from the quantitative efforts to gauge unification. Funded by the LEAA and the result of some 100 interviews conducted in 11 states, the paper and book held fast to Berkson's vision of unification in five elements rather than the traditional three (consolidation + rulemaking authority + central management + state funding + central budgeting). Those interviewed were very critical of the unproven assumptions of unification with opponents asserting that little statistical research has been undertaken to determine whether a highly centralized administration is more efficient than a decentralized system. "In light of all the arguments against this measure, it may not be advisable to adopt a centralized system until some countervailing benefits can be demonstrated." Carbon and Berkson found this among the "most compelling arguments offered" and cited a statement made by Russell Wheeler at a panel of the 1977 meeting of the American Society for Public Administration "You can't say that... the administration of justice is any better or worse...[in Georgia, a nonunified state, than in Colorado, a highly unified state]. That would take measuring what actually happens in the courts, measuring the output of justice. Nobody has gotten around to doing that yet." It would not be until 1984 that someone did get around to doing it.

***Significance of Judicial Structure: Constellations, Confederations, Federations & Unions*** The first effort at empirically demonstrating a linkage between unification and organizational performance was conducted in 1983. *Significance of Judicial Structure*

(Henderson, et al., 1984) selected five states and examined them based on three functional areas: core technology, administrative support structure, and institutional relations (Thompson, 1967). Using face to face interviews and annual reports from the state court systems on case clearance rates the report concluded there were four levels of unification:

- constellations: independent judges and courts bound only by the appellate review of their cases
- confederations: consolidation of trial courts into large, but independent, divisions
- federations: strong central authority controlling multiple local units
- unions: highly consolidated trial courts with strong central authority

An effort was made at analyzing data from the courts in the states for a single year (1980) to measure what they called *efficiency*, defined as dispositions divided by filings. The results found that “consolidation does appear to produce slightly higher disposition rates... consolidation reforms do provide for better use of judge time although the exact reasons remain to be discovered.”

**Table 2. Dispositions/Filings, General Jurisdiction Courts (1980) (Henderson et al. (1984) Table 10.2)**

|          | Georgia Superior | Iowa District | Colorado District | New Jersey Superior | Connecticut District |
|----------|------------------|---------------|-------------------|---------------------|----------------------|
| Criminal | 0.89             | 0.96          | 0.82              | 1.02                | 0.93                 |
| Civil    | 0.83             | 0.92          | 0.79              | 0.61                | 0.99                 |

Henderson et al. addressed that any measure of what they called *effectiveness*, which had been dispositions per judge, must be factored against the types of cases. Put another way, a judge or a court that handles traffic cases is more likely to have a high disposition rate than a judge or a court handling felonies. Thus Henderson and his team suggested that in addition to looking at over all dispositions of cases in a state to compare general jurisdiction trial courts from state to

state. These courts all handled felonies and higher level civil matters and were therefore close in similarity to one another.

**Table 3. Dispositions/Judges, General Jurisdiction Courts (1980) (Henderson et al. (1984) Table 10.3)**

|          | Georgia Superior | Iowa District | Colorado District | New Jersey Superior | Connecticut District |
|----------|------------------|---------------|-------------------|---------------------|----------------------|
| Criminal | 251              | 188.5         | 89.5              | 122.4               | 59.9                 |
| Civil    | 302              | 532.6         | 237.8             | 282.8               | 576.0                |
| Total    | 553              | 731.1         | 327.3             | 405.2               | 635.9                |

**Standards Relating to Court Organization** By 1990 criticism of unification based in part on the confusion and loose usage of the term had effectively reached the American Bar Association. In its revision to the Standards Relating to Court Organization the group officially kept the language of the ABA’s 1973 standards calling for consolidation, centralization and empowerment, but made two concessions. The first was in its commentary on unification, namely that “Unification does not mean rigidity or hierarchical decision making, as long as delegation of authority is in accordance with systemwide standards and policies.” The second was in its reference section, which now included references to Gallas (1976) as well as later work by Baar (1980) and others that were critical of the hierarchical notions of unification. Wheeler (2007) would note this as recognition that performance standards were more critical to the conversation than organizational standards. It also marked a shift in focus from state court systems as a whole to individual trial courts. (Nafisi, 2006)

### **Classic School and Unification Reexamined**

**Unification.** Despite the ABA partially backing away from unification, the decades between 1980 and 2000 saw continued movement towards unification in state judiciaries as

measured by the National Survey of Court Organization and later by the State Court Organization series (1980, 1987, 1993, 1998, and 2004). A review of the data for state trial courts finds four major movements at centralization and consolidation within this time period in Arkansas (2000), California (2000), Minnesota (1983-1987), and North Dakota (1995) in addition to smaller efforts to eliminate particular court types or centralize certain powers. For a decade after Arkansas & California's efforts unification effectively remained at a standstill until the Great Recession forced states to once again reevaluate unification as a cost savings measure, not as a way to improve performance. Two states moved in that direction: Vermont in 2010 and New Hampshire in 2011. In the case of Vermont this meant the merger of the state's Probate, Family, and District Courts into the District Court (Working Group on the Restructuring of, and Access to, the Judiciary, 2009). For New Hampshire it meant that the state's District, Probate, and Judicial Branch Family Divisions would form a new Circuit Court (New Hampshire Supreme Court, 2011). In both instances the driving force was the move for efficiency in resource usage and the sharing of judicial caseloads. (National Center for State Courts, 2009)<sup>1</sup>

Only two empirical studies of unification were conducted around this period. The first, a dissertation (Bolling Swann, 1986) examined unification in 12 states broken down into four regions. She scaled each state 1-3 (high to low) based upon her own assessment on how well each **separately** met the ABA's Standards on Court Organization. Bolling Swann then attempted to measure efficiency as case clearance rates (as she described it Effectiveness) again on a 1-3 scale (3 = "high" case clearance rate). She concluded that unification had no impact and provided her data set as an appendix. Unfortunately the data set provided cannot replicate her findings nor

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<sup>1</sup> Note: The author is an employee of the National Center for State Courts but played no role in the formulation of any reports or recommendations by the National Center to either New Hampshire or Vermont judiciaries.

did she provide a definition of what a “high” case clearance rate was (Bolling Swann, 1986, Appendix D).

The second attempt in this area was another dissertation (Rasmussen, 1998) that examined under what conditions eight selected states opted to unify their judiciaries over the course of a six year period (1990 to 1995). Rasmussen specifically looked at six elements of unification as derived from the 1990 ABA Standards on Court Organization and then **combined the scores** to create an index measure for unification in each state.

- Single tier or two-tier court structure/trial court consolidation
- State Supreme Court Justice was as administrative head of the state’s judiciary
- The existence of an administrative office of the courts
- The existence of a state court administrator appointed by the chief justice
- Rulemaking authority vested in the courts, preferably the supreme court
- State financing for the entire court system

Rasmussen tested the question of whether unification produced greater effectiveness which she defined by calculating the caseload clearance rates for the various trial and appellate courts in the eight selected states but was unable to gather sufficient data from two of her state’s trial courts (Louisiana and New Hampshire) to provide conclusions. With her limited data she did suggest that there was no difference in trial and appellate court caseload clearance between unified and non-unified states.

**Table 4. Empirical Studies Linking Unification to Efficiency Metrics**

| <b>Author (s)</b>       | <b>Unit of Analysis</b>  | <b>Metrics Used</b>   | <b>Pros</b>            | <b>Cons</b>  |
|-------------------------|--|---|------------------------|--|
| Henderson et al. (1984) | State (consolidation)<br><br>General jurisdiction courts<br>(Dispositions/Filings & Dispositions/Judges) | Dispositions/Filings, general jurisdiction courts (civil & criminal)<br>Dispositions/Judges, general jurisdiction courts (civil & criminal)                                     | Cross-state comparison | Limited to five states<br><br>Relied on expert opinion to determine more/least consolidated<br><br>Focus on general jurisdiction courts only                             |
| Bolling Swann (1986)    | State  | Unification score from the ABA's Standards on Court Organization (1-3 scale)<br><br>Dispositions/Filings trial courts (case clearance rates; 1-3 scale)                         | Cross-state comparison | Limited to 12 states<br><br>Data provided cannot replicate results<br><br>States assigned to "high" (3) to "low" (1) case clearance rates without definition of criteria |
| Rasmusen (1998)         | State  | Unification score from the ABA's Standards on Court Organization (1-3 scale)<br><br>Dispositions/Filings<br>COMBINED trial & appellate courts (case clearance rates; 1-3 scale) | Cross-state comparison | Limited to eight states<br><br>2 states no data from some years (extrapolated from other years)<br><br>COMBINED trial & appellate courts for clearance rates             |

## Organizational Performance Measurement

The discussion involving unification focused on the judiciary as an organization that was failing to meet its most basic tasks, namely, the disposition of cases in a timely manner. The call for “efficiency” in the judiciary was repeated over and over, but with no specific means of measurement. When it came to collecting data on even the most basic of metrics of “efficiency”, cases filed and cases disposed, courts were either unwilling and/or unable to gather then information. That said Henderson et al (1984) offered up two possible metrics in their discussion of “effective” and “efficient” courts in a unified (or non-unified) state:

$$\frac{\textit{Number of cases disposed in state courts}}{\textit{Number of cases filed in state courts}} = \textit{Efficiency}$$

$$\frac{\textit{Number of cases disposed in state's general jurisdiction trial court}}{\textit{Number of general jurisdiction trial court judges in state}} = \textit{Effectiveness}$$

Performance indicators such as these can help illuminate an institution’s progress toward the accomplishment of its mission, goals, and objectives. Such indicators serve a dual purpose, first to guide decisions and second as a tool of accountability so that organizational performance can be articulated. Performance indicators can be used to assess inputs, processes, outputs, and outcomes. (Behn, 2003). The relationship between these variables helps to determine organizational efficiency, effectiveness, and quality (Frackmann, 1987) or “economy, efficiency and effectiveness”. (Brown & Pyers, 1988).

The most basic model of performance evaluation is the output model: simply measure or collect data on the number of desired items that result and determine success. Behn (2003) calls this effectiveness, did the agency achieve the results it set out to produce? This measure however utterly fails to take into account the amount of effort or resources brought to bear in the production. There are several alternatives, two of which can be couched as forms of “efficiency”.

The first is court-specific and contends with clearance rates (Dakolias, 1999; Ostrom, Kauder & LaFountain, 2000): take the number of cases filed and divide by the number of cases disposed. A broader, classic model of performance is the input-output model (Pollitt & Bouckaert, 2011). What is the ratio of inputs, such as judges, to outputs (cases disposed)? (Behn, 2003). When workers are the “input” in question, this form of efficiency is called labor productivity (Hatry, 1978).

It should be noted that both case clearance rates and input-output/labor productivity do not tell us the quality of the end product and is devoid of any values judgment at all. Highsaw (1962) noted that “the input-output definition of efficiency must be reconciled with the humane and social objectives of government.” One way in which those objectives can be reconciled is through the introduction of several additional elements. Process measurement seeks to measure the mechanisms by which the inputs are converted to outputs. It answers Behn’s (2003) questions: How are the various inputs interacting to produce the outputs? What is the organizational black box actually doing to the inputs to convert them into the outputs? Outcomes measure the benefits or changes that result from the output. “Outputs are what work the organization does, outcomes are what these outputs accomplish” (Hatry, 2006) Impact measures go further and answer “What did the agency itself accomplish? What is the difference between the actual outcomes and the outcomes that would have occurred if the agency had not acted?” (Behn, 2003)

Table 5. Logic Model for Court Unification (W.K. Kellogg Foundation, 2004)

|                   | <b>Inputs</b>                    | <b>Activities/Processes</b>  | <b>Outputs</b>   | <b>Outcomes/impacts</b>  |
|-------------------|----------------------------------|--|--|--|
| Definition        | what resources go into a program | what activities the program undertakes   | what is produced through those activities                        | the changes or benefits that result from the program   |
| Examples          | e.g. money, staff, equipment     | e.g. development of materials, training programs   | e.g. number of booklets produced, workshops held, people trained | e.g. increased skills/knowledge/confidence, leading in longer-term to promotion, new job, etc. |
| Court Unification | Judges, funds, clerks            | Administration of the courts, trials, writing of opinion, filing and allocation of documents | Cases Disposed   | Fair and impartial justice delivered speedily  |

## Summary

Confronted with an increasingly large and diverse society, U.S. states in the late 1800s and early 1900s were wedded to the idea that highly decentralized courts were the answer. “Multiplication of tribunals is the first attempt of the law to meet the demand for specialization and division of labor. Yet it is at best a crude device” (Pound, 1914). Legal reform advocates at the time offered up as a solution unification to address these issues. Based upon notions of simplified organizational structure (consolidation) and top-down hierarchical control (centralization), unification was a product of the Progressive era’s desire for efficiency, science, and mechanistic thought. These notions remained locked in place over the course of the next several decades, failing utterly to take into account the changes in organizational and management theory and failing to demonstrate an empirical basis for the assertions that more

“unified” state courts were more efficient. When public administration did turn its attention to the subject of unification it found the concept lacking, but here too those who examined it assumed it was a failure or had no impact on performance. What empirical evidence that there was in the area of unification simply measured *how* unified a state was or *why* it unified, not whether that unification had any impact on the performance of the state’s judiciary as a whole. One of its harshest critics (Gallas, 1979) pined for empirical data “Research focused on ends rather than means offers promise for an escape from the present conceptual *cul de sac*.” All this leaves one unanswered question: Does unification have an impact on court performance at all and if so is it a positive one? Moreover, can we identify a mechanism of identifying causation, rather than mere correlation especially given the large number of potential variables in what makes up both “unification” (however defined) and “performance”?

## **Methodology**

The primary goal of this research is to examine whether unification has an impact on court performance at all and if so is it a positive one. If positive, it would support plans and ideas developed for a century that centralization of power at the state level and consolidation of trial courts will have a net positive effect on the court ability to dispose of cases. Secondly is the question of whether any of these elements, or the individual components they contain, have a positive impact. As such, variables that may explain a judiciary's ability to dispose of cases and that define "unification" are to be examined. This study utilized a quantitative approach within a cross-sectional research design. Secondary data derived from *State Court Organization* and *State Court Caseload Statistics* was utilized to quantify the dependent and independent variables. This chapter will focus on the research questions, hypotheses, research design, units of analysis and population, data sources and collection, measurement of variables, analytical techniques, and limitations.

### **Research Question**

This study asks whether or not unification has an impact on court performance. If this initial question is answered in the affirmative, the second question would be whether that impact a positive one. This relies on the notion of organizational performance as measurable by goal attainment and that the goal to be attained by court unification is the disposition of cases. The question has been unanswered for a century; its answer one way or the other will help those in the law and courts community determine whether or not consolidation and centralization of state court systems can help address the issue case disposition. It would also assist legislatures and potentially the public at large that would have to vote on any effort at unification in a state make their determinations as well.

## Hypotheses

### *Efficiency*

H<sub>0</sub> If a state has a more centralized judicial administration, it has NO impact on the total clearance rate

H<sub>1</sub> If a state has a more centralized judicial administration, it has an impact on the total clearance rate

H<sub>0</sub> If a state has a more consolidated trial court structure, it has NO impact on the total clearance rate

H<sub>1</sub> If a state has a more consolidated trial court structure, then it has an impact on the total clearance rate

H<sub>0</sub> If a state has rulemaking authority in its court of last resort or judicial council, it has NO impact on the total clearance rate

H<sub>1</sub> If a state rulemaking authority in its court of last resort or judicial council, then it has an impact on the total clearance rate

## Population and Sample

All 50 states were preliminarily eligible for inclusion in the study. A total of 26 were eliminated due to failure to report data for either the independent variable (Wyoming) or the dependent variables (25 states). Caseload data (cases filed and cases disposed, plus number of judges) were obtained from the states for 2013, the latest year for which comparable data is available.

## Data Sources

*State Court Organization* The State Court Organization series began in 1980 as a way to examine the structure and governance of the state judiciaries. Under the National Survey of State Court Organization from the 1970s, this new series asked more questions regarding governance and avoided court-level data. It was funded by the Bureau of Justice Statistics but relied on the cooperation of the Conference of Chief Justices and the Conference of State Court Administrators and data collection by the newly created National Center for State Courts. State

Court Organization, 1980 also relied for the first time on a standardized set of definitions (the State Court Model Statistical Dictionary) to assist in tabulation of caseload and other data that would otherwise be incomparable across states.

The 1980 data collection for State Court Organization was repeated in 1993, 1998, and 2004. As with the prior iterations, the survey questions were vetted and approved by a committee of the Conference of State Court Administrators. This latest iteration kept many of the same questions as the earlier versions and added new ones to reflect the changing needs of the state courts. Funding for implementation of the survey was from the Bureau of Justice Statistics. Starting with the 2011 data collection the survey methodology changed from a paper-and-pencil survey to an online one. Links to the online survey tool were sent via email to the State Court Administrator in each state, who was then able to answer the questions directly or delegate to staff the ability to access the survey tool and answer some or all of the questions. Data was collected and the final report was posted as an online database in March 2013 located at [www.ncsc.org/sco](http://www.ncsc.org/sco).

For purposes of this research, data from two particular aspects of the survey were used to measure the independent variables Centralized Judicial Administration and Consolidated Court Structure.

- Table 13 (Administrative Office of the Courts (AOC): Responsibilities for Trial Court Functions) asked “For each function, please select the level of the AOC’s responsibility. If the responsibility for the function is shared with any other entity (e.g. executive branch, local courts), please select shared.” 31 functions were then presented with options being “none”, “shared”, or “total”. As noted previously, in

a completely unified system, the AOC should have “total” responsibility for all 31 trial court functions (centralized administrative control). These were then coded as 1 (AOC responsibility = “total”), 2 (“shared”), and 3 (“none”). A screen capture of the survey’s first page is reproduced as Appendix A.

**Table 6. List of 31 Trial Court Functions Surveyed in SCO Table 13**

|   |                        |                                |
|---|------------------------|--------------------------------|
| Accounting                                | Facilities Management  | Liaison to Legislature         |
| Adult Probation                           | Facilities Security    | Liaison to Ombudsman           |
| Appointment of Sitting Judges             | Foster Care Review     | Liaison to Public Information  |
| Appointment of Supplemental Judges        | General Counsel        | Other Legal Services           |
| Audits                                    | Human Resources        | Performance Measurement        |
| Budget Preparation                        | Information Technology | Purchasing                     |
| Collection of Legal Financial Obligations | Judicial Education     | Records Management             |
| Court Annexed ADR                         | Judicial Performance   | Research/Planning              |
| Court Statistics                          | Juvenile Probation     | Technical Assistance to Courts |
| Data Processing                           | Law Library Staff      |                                |
| Emergency Management                      | Legal Research Staff   |                                |

Table 34 (Trial Courts) asked for a list of the types of trial courts in each state. Virginia, for example responded with two: Circuit and District. This information gave a count of the number of trial courts types in the state and is used later to determine whether a state had a consolidated trial court structure.

***State Court Caseload Statistics*** The National Survey of State Court Organization, in addition to collecting information on court structure and governance, also collected statistics on the caseloads of the various courts in the United States at the court type level. This required a collection of county and local court data and aggregation by the U.S. Census. By 1974 a decision was made to remove that portion from the National Survey of State Court Organization and

transfer it to a separate publication called State Court Caseload Statistics. Rather than proactively seeking out data at the county by county level, the National Center for State Courts in cooperation with the Conference of State Court Administrators queried the state court administrators themselves for the data. Much of it was culled from the judiciary annual reports published during the preceding year/years. While initially it was left to the states to define what category to put cases in eventually the State Court Model Statistical Dictionary (1980) and the later Guide to Statistical Reporting (2011) were developed. The Dictionary and later Guide allowed for consistent reporting across states with different legal, statutory, and constitutional definitions for the various case types.

Data collection occurs on an annual basis approximately one year after the year to be examined. 2007 data for example, was collected in 2008 by contact with the state court administrator for the particular state, the data provided in the judiciary's published annual report (where available) or both combination. The data was stored at and obtained from Court Statistics Project at [www.courtstatistics.org](http://www.courtstatistics.org).

*U.S. Census* Data from the U.S. Census' State and Metropolitan Area Data Book provided the number of counties in each state. The number of counties is relevant in that some of the literature (Gallas, 1976) suggests states with more counties will always be less unified than those with fewer.

### **State Exclusion and Comparability**

By relying on two separate secondary sources of data, this research was confronted with the problem of not having access to 50-states worth of data. This is due to three related aspects of the data itself. First, the reporting system associated with the Court Statistics Project for state

court case filings and disposition is a voluntary practice. For the entirety of the 30+ years of data collection, the Court Statistics Project (CSP) relied on the willingness of the Conference of State Court Administrators (COSCA) along with the Conference of Chief Justices (CCJ) to submit this data. The project itself was partially funded at various federal entities, first the State Justice Institute and later the Bureau of Justice Statistics. Despite an official policy that “the National Center for State Courts [NCSC] is the national repository and clearinghouse for essential reference information on the work of the state courts” cooperation with NCSC in general, and CSP in particular, was at the discretion of the individual state, as outlined in CCJ/COSCA Resolution 5 adopted in 2012.

Second, even in the instance of states that were engaged in active cooperation with the Court Statistics Project through the office of state court administrator, it did not necessary mean that the courts in a given state were obligated to provide information. Some states have statutes that compel the production of such information (for example Tennessee Code Ann. § 16-1-117) but aside from such specific mandates the data is submitted on a voluntary basis. Moreover, even within a state there may be no universally accepted means of measurement or data collection. Nevada, for example, dedicated almost a decade to creating and implementing a uniform system that applied to not just the higher courts (District) but the locally controlled ones as well (Justice and Municipal) to count cases using the same identifiers and methods (Jessup, 2014).

Third, even assuming state court administrators were a) *willing* to provide data to the CSP and b) could count *within their state* in a consistent manner, it did not necessary follow that c) the data was comparable *across states*. As previously mentioned the 1980 State Court Model Statistical Dictionary and later State Court Guide to Statistical Reporting developed in 2005 were meant to better “map” state data to allow for comparisons, but the process still relied on staff to

map state data to definitions from the Dictionary/Guide, something that remains impossible for many states to do based on the definitional challenges of each state's laws and legal environment.

The result for purposes of this data collection then was to find as follows:

- With respect to the Independent Variables (number of trial courts and administrative centralization), one state was unwilling or unable to provide information as to administrative centralization: Wyoming provided data regarding number of trial courts, but not administrative centralization.
- With respect to the Dependent Variables (number of cases filed, number of cases disposed, number of judges) 25 states were either unwilling to provide data, able to provide only incomplete data, or able to provide data that while complete *for the state as a whole* was incomparable to the other states.

That said, the 24 states ultimately selected were consistent with the other states with respect to the Independent Variables (number of trial courts and administrative centralization), even if it remains unclear if they are consistent with respect to the Dependent Variables.

## Findings

### Independent Variable 1: Consolidation

As previously noted, unification relies heavily on the notion of consolidation. The reduction of the number of trial court types was for Willoughby “the most important” reform. Pound inveighed against the “multiplicity of courts”, arguing that “Multiplication of tribunals is the first attempt of the law to meet the demand for specialization and division of labor. Yet it is at best a crude device” (Pound, 1914). The better device then was a single trial court or the division of trial courts into no more than two types: a court of general jurisdiction for grave crimes (felonies) and high dollar civil cases and a court of limited jurisdiction for lesser matters.

Today few if any states have achieved quite the sorting Pound, Willoughby and the unification advocates had promoted. Many states still retain not only a multitude of courts, but in many instances retain special jurisdiction courts that hear only certain cases types (e.g. New Jersey’s Tax Court) or that serve only certain areas (e.g. Colorado’s Denver Juvenile Court and separate Denver Probate Court). Thus even in a state that has reduced the number of court types down to two, the second court is not always of the type envisioned as a true limited jurisdiction court. Connecticut’s Probate Court, for example, is better described as a court of special jurisdiction (civil – probate) and not a limited jurisdiction court. To make matters even more confusing has been the process in the last several years to create new separate courts, to unconsolidate in states that had previously consolidated. Notable here are the creation of separate Family Courts via constitutional amendment in Kentucky (2002) and West Virginia (1999).

That said, for purposes of measuring simply the level of consolidation in a general fashion the Court Count, the total number of trial court types in a state, can be used as an interval

variable. This data was obtained from State Court Organization, Table 34 (Trial Courts).

Specifically each state administrative office of the courts was asked for a list of the types of trial courts in each state. Virginia, for example responded with two: Circuit and District. This information gave a count of the number of trial courts types in the state and is used later to determine whether a state had a consolidated trial court structure.

**Table 9 Number of Trial Court Types In Each State**

| <b>State</b>  | <b>Court Count</b> | <b>Courts</b>   |
|---------------|--------------------|---|
| Alabama       | 4                  | Circuit, District, Municipal, Probate   |
| Alaska        | 2                  | District, Superior  |
| Arizona       | 4                  | Justice of the Peace, Municipal, Superior, Tax  |
| Arkansas      | 2                  | Circuit, District   |
| California    | 1                  | Superior  |
| Colorado      | 6                  | County, Denver Juvenile, Denver Probate, District, Municipal, Water   |
| Connecticut   | 2                  | Probate, Superior   |
| Delaware      | 6                  | Alderman's, Court of Chancery, Court of Common Pleas, Family, Justice of the Peace, Superior                              |
| Florida       | 2                  | Circuit, County   |
| Georgia       | 8                  | Civil, County Recorders, Juvenile, Magistrate, Municipal, Probate, State, Superior  |
| Hawai'i       | 2                  | Circuit, District   |
| Idaho         | 2                  | District, Magistrates Division  |
| Illinois      | 1                  | Circuit   |
| Indiana       | 6                  | Circuit, City, Probate, Small Claims of Marion County, Superior, Town   |
| Iowa          | 1                  | District  |
| Kansas        | 2                  | District, Municipal   |
| Kentucky      | 3                  | Circuit, District, Family   |
| Louisiana     | 5                  | City & Parish, District, Justice of the Peace, Juvenile & Family, Mayors  |
| Maine         | 3                  | District, Probate, Superior   |
| Maryland      | 3                  | Circuit, District, Orphans  |
| Massachusetts | 7                  | Boston Municipal Court, District Court, Housing Court, Juvenile Court, Land Court, Probate & Family Court, Superior Court |
| Michigan      | 5                  | Circuit, Claims, District, Municipal, Probate   |
| Minnesota     | 1                  | District  |
| Mississippi   | 5                  | Chancery, Circuit, County, Justice, Municipal   |

| <b>State</b>   | <b>Court Count</b> | <b>Courts</b>  |
|----------------|--------------------|--|
| Missouri       | 2                  | Circuit, Municipal   |
| Montana        | 6                  | City, District, Justice's Court, Municipal, Water, Workers Compensation  |
| Nebraska       | 4                  | County, District, Separate Juvenile, Workers Compensation  |
| Nevada         | 3                  | District, Justice, Municipal   |
| New Hampshire  | 2                  | Circuit, Superior  |
| New Jersey     | 3                  | Municipal, Superior, Tax   |
| New Mexico     | 5                  | District, Magistrate, Metropolitan Court of Bernalillo County, Municipal, Probate  |
| New York       | 10                 | City, Civil Court of the City of New York, County, Court of Claims, Criminal Ct of the City of New York, District, Family, Supreme, Surrogates, Town & Village Justice |
| North Carolina | 2                  | District, Superior   |
| North Dakota   | 2                  | District, Municipal  |
| Ohio           | 5                  | County, Court of Claims, Court of Common Pleas, Mayors, Municipal  |
| Oklahoma       | 5                  | District, Municipal Court Not of Record, Municipal Criminal Court of Record, Tax Review, Workers Compensation  |
| Oregon         | 5                  | Circuit, County, Justice, Municipal, Tax   |
| Pennsylvania   | 4                  | Court of Common Pleas, Magisterial District Judge, Philadelphia Municipal, Philadelphia Traffic  |
| Rhode Island   | 7                  | District, Family, Municipal, Probate, Superior, Traffic Tribunal, Workers Compensation   |
| South Carolina | 5                  | Circuit, Family, Magistrate, Municipal, Probate  |
| South Dakota   | 2                  | Circuit, Magistrate  |
| Tennessee      | 7                  | Chancery, Circuit, Criminal, General Sessions, Juvenile, Municipal, Probate  |
| Texas          | 6                  | Constitutional County, County Courts at Law, District, Justice of the Peace, Municipal, Statutory Probate  |
| Utah           | 3                  | District, Justice, Juvenile  |
| Vermont        | 2                  | Judicial Bureau, Superior  |
| Virginia       | 2                  | Circuit, District  |
| Washington     | 3                  | District, Municipal, Superior  |
| West Virginia  | 4                  | Circuit, Family, Magistrate, Municipal   |
| Wisconsin      | 2                  | Circuit, Municipal   |
| Wyoming        | 3                  | Circuit, District, Municipal   |

### **Independent Variable 2: Centralization**

While various measures for the level of centralization have been offered (Berkson (1977), Flango (1981), Flango/Rottman (1992)) they all relied upon the research to make the assessment

and give a corresponding score. An alternative measure offered here would rely on the state's themselves to measure and identify their level of centralization. Such an alternative does exist, although it has never been used to this end. Originally formulated as a series of questions in eight areas and first published as Table 23 in the 1980 iteration of *State Court Organization*, (Functions of state-level court administrative office) this data offers a way to measure the level of centralization that does not rely on the research's opinion but on survey data.

Table 10 Functions of state-level court administrative office, 1980 (from State Court Organization, 1980)

|   |
|---|
| <p><b>MANAGEMENT ACTIVITIES</b></p> <ol style="list-style-type: none"><li>1. Appears before legislative committees dealing with court-related legislation</li><li>2. Obtains sponsors for legislation relating to work</li><li>3. Represents judiciary before agencies of the executive branch</li><li>4. Recommends to court of last resort the creation or dissolution of judgeships</li><li>5. Recommends to court of last resort the assignment of judges</li><li>6. Nominates trial court administrators for selection by trial courts</li></ol> <p><b>INFORMATION SYSTEMS ACTIVITIES</b></p> <ol style="list-style-type: none"><li>7. Responsible for records management systems</li><li>8. Responsible for managing data processing</li><li>9. Responsible for forms design</li><li>10. Responsible for managing information systems</li><li>11. Establishes records for automated administrative systems</li><li>12. Responsible for budgeting financial requirements of state information system</li><li>13. Responsible for statewide inventory control of facilities/equipment</li></ol> <p><b>COURT SUPPORT SERVICES</b></p> <ol style="list-style-type: none"><li>14. Provides secretariat services to boards and committees</li><li>15. Researches court organization and function</li><li>16. Supplies reports and documents to the legislature as required</li><li>17. Provides technical assistance to court jurisdiction</li><li>18. Manages physical facilities for courts</li><li>19. Supervises probation services</li><li>20. Supervises court reporter services</li><li>21. Responsible for managing indigent defense</li><li>22. Assists court in exercise of its rule making function</li></ol> <p><b>FINANCE AND BUDGET ACTIVITIES</b></p> <ol style="list-style-type: none"><li>23. Prepares budget for submission to the court of last resort</li><li>24. Conducts audit of judicial expenditures</li><li>25. Requires accounting and budget report from the courts</li><li>26. Approves requisitions for capital equipment/construction</li><li>27. Determines compensation for nonjudicial court personnel</li></ol> <p><b>PERSONNEL SERVICES</b></p> <ol style="list-style-type: none"><li>28. Establishes qualifications for nonjudicial court personnel</li></ol> <p><b>EDUCATION AND TRAINING ACTIVITIES</b></p> <ol style="list-style-type: none"><li>29. Responsible for judicial training programs and seminars</li><li>30. Responsible for nonjudicial training programs and seminars</li><li>31. Responsible for managing state law libraries</li></ol> <p><b>PUBLIC INFORMATION AND LIAISON ACTIVITIES</b></p> <ol style="list-style-type: none"><li>32. Disseminates information on court operations to the media and public</li><li>33. Disseminates information on court decisions to the media and public</li></ol> <p><b>PLANNING AND RESEARCH ACTIVITIES</b></p> <ol style="list-style-type: none"><li>34. Responsible for court planning and grant management</li><li>35. Collects/analyzes/publishes court caseload statistics</li><li>36. Requires caseload reports from the courts</li><li>37. Collects statistics on expenditures of state</li></ol> |
|---|

The most recent iteration of *State Court Organization* repeats many of these same questions without differentiating into eight broader categories. Specifically the survey asks “For each function, please select the level of the AOC’s responsibility. If the responsibility for the

function is shared with any other entity (e.g. executive branch, local courts), please select shared.” 31 functions were then presented with options being “none”, “shared”, or “total”. In a completely unified system, the AOC should have “total” responsibility for all 31 trial court functions (centralized administrative control). A screen capture of the survey’s first page is reproduced as Appendix A.

These 31 items can be reassembled into the original eight categories used in *State Court Organization, 1980* to create a series of indices scores with higher numbers equating to more total control in each particular area. A state with total centralization would receive a score of 31 ( $1 * 31 = 31$ ). A state with absolutely no centralized administrative control would score a 93.

**Table 3 Formulas for 8 Index Scores**

| <b>Variable</b>                                 | <b>Definition</b>   | <b>Range</b> |
|---|---|--------------|
| Management Activities Index                     | Score for Appointment of Sitting Judges + Score for Appointment of Supplemental Judges  | 2-6          |
| Information System Activities Index             | Score for Records Management + Score for Data Processing + Score for Information Technology   | 3-9          |
| Court Support Services Index                    | Score for Technical Assistance to Courts + Score for Facilities Management + Score for Facilities Security + Score for Adult Probation + Score for Juvenile Probation + Score for General Counsel + Score for Other Legal Services + Score for Legal Research Staff + Score for Court Annexed ADR + Score for Foster Care Review + Score for Emergency Management | 11-33        |
| Finance and Budget Activities Index             | Score for Accounting + Score for Audits + Score for Budget Preparation + Score for Purchasing + Score for Collection of Legal Financial Obligations   | 5-15         |
| Personnel Services Index                        | Score for Human Resources   | 1-3          |
| Education and Training Activities Index         | Score for Law Library Staff + Score for Judicial Education  | 2-6          |
| Public Information and Liaison Activities Index | Score for Liaison to Public Information + Score for Liaison to Public Information + Score for Liaison to Ombudsman  | 3-9          |
| Planning and Research Activities Index          | Score for Court Statistics + Score for Research/Planning + Score for Performance Measurement + Score for Judicial Performance   | 4-12         |
| <b>TOTAL SCORE</b>                              |   | <b>31-93</b> |

Table 7. State Index Scores (high score = less centralized control)

| State         | Management | Information System | Court Support Services | Finance and Budget Activities | Personnel Services | Education and Training Activities | Public Information and Liaison Activities | Planning and Research Activities | Total Score |
|---------------|------------|--------------------|------------------------|-------------------------------|--------------------|-----------------------------------|---|----------------------------------|-------------|
| Alabama       | 5          | 3                  | 25                     | 7                             | 1                  | 2                                 | 5   | 6                                | 54          |
| Alaska        | 6          | 5                  | 24                     | 10                            | 1                  | 2                                 | 4   | 7                                | 59          |
| Arizona       | 6          | 7                  | 23                     | 10                            | 2                  | 5                                 | 5   | 8                                | 66          |
| Arkansas      | 4          | 4                  | 20                     | 10                            | 2                  | 3                                 | 5   | 6                                | 54          |
| California    | 5          | 7                  | 26                     | 10                            | 2                  | 4                                 | 7   | 7                                | 68          |
| Colorado      | 5          | 5                  | 21                     | 6                             | 2                  | 2                                 | 6   | 6                                | 53          |
| Connecticut   | 2          | 3                  | 13                     | 6                             | 1                  | 2                                 | 4   | 4                                | 35          |
| Delaware      | 6          | 6                  | 27                     | 11                            | 2                  | 4                                 | 7   | 9                                | 72          |
| Florida       | 6          | 6                  | 28                     | 11                            | 2                  | 4                                 | 7   | 9                                | 73          |
| Georgia       | 6          | 8                  | 28                     | 10                            | 2                  | 6                                 | 7   | 9                                | 76          |
| Hawai'i       | 6          | 3                  | 22                     | 7                             | 1                  | 3                                 | 5   | 6                                | 53          |
| Idaho         | 4          | 6                  | 24                     | 9                             | 2                  | 3                                 | 5   | 5                                | 58          |
| Illinois      | 4          | 6                  | 22                     | 9                             | 2                  | 4                                 | 7   | 8                                | 62          |
| Indiana       | 4          | 4                  | 29                     | 11                            | 2                  | 6                                 | 7   | 8                                | 71          |
| Iowa          | 6          | 5                  | 26                     | 9                             | 2                  | 3                                 | 3   | 5                                | 59          |
| Kansas        | 2          | 6                  | 20                     | 9                             | 2                  | 3                                 | 5   | 8                                | 55          |
| Kentucky      | 6          | 5                  | 20                     | 9                             | 1                  | 3                                 | 4   | 6                                | 54          |
| Louisiana     | 4          | 7                  | 32                     | 13                            | 3                  | 5                                 | 7   | 6                                | 77          |
| Maine         | 6          | 3                  | 21                     | 6                             | 1                  | 3                                 | 5   | 7                                | 52          |
| Maryland      | 4          | 6                  | 24                     | 10                            | 2                  | 5                                 | 7   | 9                                | 67          |
| Massachusetts | 6          | 5                  | 18                     | 6                             | 1                  | 2                                 | 6   | 9                                | 53          |
| Michigan      | 2          | 6                  | 25                     | 11                            | 3                  | 5                                 | 7   | 8                                | 67          |
| Minnesota     | 6          | 5                  | 24                     | 9                             | 2                  | 5                                 | 6   | 8                                | 65          |
| Mississippi   | 6          | 6                  | 28                     | 11                            | 2                  | 5                                 | 7   | 9                                | 74          |
| Missouri      | 4          | 6                  | 28                     | 12                            | 2                  | 5                                 | 7   | 9                                | 73          |
| Montana       | 6          | 6                  | 29                     | 8                             | 1                  | 5                                 | 7   | 7                                | 69          |
| Nebraska      | 2          | 4                  | 23                     | 9                             | 1                  | 2                                 | 3   | 9                                | 53          |

| State          | Management | Information System | Court Support Services | Finance and Budget Activities | Personnel Services | Education and Training Activities | Public Information and Liaison Activities | Planning and Research Activities | Total Score |
|----------------|------------|--------------------|------------------------|-------------------------------|--------------------|-----------------------------------|---|----------------------------------|-------------|
| Nevada         | 3          | 6                  | 28                     | 11                            | 2                  | 4                                 | 8   | 10                               | 72          |
| New Hampshire  | 6          | 6                  | 29                     | 8                             | 1                  | 6                                 | 8   | 8                                | 72          |
| New Jersey     | 4          | 6                  | 21                     | 10                            | 2                  | 3                                 | 5   | 7                                | 58          |
| New Mexico     | 5          | 6                  | 24                     | 10                            | 2                  | 5                                 | 7   | 7                                | 66          |
| New York       | 3          | 3                  | 19                     | 8                             | 1                  | 2                                 | 5   | 4                                | 45          |
| North Carolina | 4          | 4                  | 22                     | 7                             | 1                  | 4                                 | 5   | 6                                | 53          |
| North Dakota   | 4          | 3                  | 21                     | 7                             | 1                  | 2                                 | 6   | 7                                | 51          |
| Ohio           | 2          | 6                  | 27                     | 14                            | 2                  | 4                                 | 7   | 10                               | 72          |
| Oklahoma       | 5          | 6                  | 31                     | 12                            | 2                  | 3                                 | 6   | 10                               | 75          |
| Oregon         | 5          | 6                  | 22                     | 8                             | 2                  | 3                                 | 5   | 9                                | 60          |
| Pennsylvania   | 6          | 7                  | 24                     | 12                            | 2                  | 4                                 | 6   | 10                               | 71          |
| Rhode Island   | 6          | 4                  | 19                     | 6                             | 2                  | 2                                 | 7   | 5                                | 51          |
| South Carolina | 6          | 7                  | 30                     | 15                            | 3                  | 4                                 | 7   | 9                                | 81          |
| South Dakota   | 6          | 5                  | 21                     | 5                             | 1                  | 3                                 | 6   | 4                                | 51          |
| Tennessee      | 3          | 5                  | 24                     | 9                             | 2                  | 2                                 | 4   | 7                                | 56          |
| Texas          | 6          | 8                  | 32                     | 15                            | 3                  | 6                                 | 9   | 10                               | 89          |
| Utah           | 4          | 4                  | 21                     | 9                             | 2                  | 2                                 | 4   | 6                                | 52          |
| Vermont        | 6          | 3                  | 22                     | 7                             | 1                  | 4                                 | 5   | 6                                | 54          |
| Virginia       | 5          | 7                  | 23                     | 8                             | 2                  | 2                                 | 6   | 8                                | 61          |
| Washington     | 6          | 6                  | 30                     | 12                            | 2                  | 4                                 | 7   | 8                                | 75          |
| West Virginia  | 6          | 5                  | 19                     | 8                             | 1                  | 2                                 | 5   | 7                                | 53          |
| Wisconsin      | 4          | 5                  | 25                     | 11                            | 2                  | 3                                 | 5   | 6                                | 61          |
| Wyoming        | 6          | 7                  | 32                     | 14                            | 3                  | 4                                 | 8   | 11                               | 85          |

### **Independent Variable 3: Rule Making Authority**

With respect to making rules of practice and procedure, unification theory posited two distinct elements. First, the judicial council or state's court of last resort must have explicit constitutional authority to make such rules. Second, that constitutionally based rule making authority must be exclusive to the judiciary; the legislature (and for that matter trial courts) cannot have a separate power to establish or amend such rules. An examination of the 50 state constitutions finds that there are at present three categories of states in this regard.

- 1) States that have explicit and exclusive power in this area. Arkansas most recently (2000) amended its constitution to provide that its "Supreme Court shall prescribe the rules of pleading, practice and procedure for all courts; provided these rules shall not abridge, enlarge or modify any substantive right and shall preserve the right of trial by jury as declared in this Constitution." (Amendment 80, Section 3)
- 2) States that have explicit, but not exclusive, power in this area. This takes two forms:
  - a. States in which the legislature can create or override existing rules. The threshold varies but ranges from two-thirds (e.g. Alaska Art. IV, Sec. 1: "These rules may be changed by the legislature by two-thirds vote of the members elected to each house.") to as low as a simple majority (California Art. 6, Sec 6(d): "To improve the administration of justice the [Judicial] council shall...adopt rules for court administration, practice, and procedure...The rules adopted shall not be inconsistent with statute.") Included in here are also states such as Colorado (misdemeanors in county

courts, Georgia (evidence), North Dakota (bar admission), and Pennsylvania (child victim testimony) in which the power is effectively exclusive save for an individual exception.

- b. States in which the rule making authority is explicit and exclusive, but only in certain areas. North Carolina’s constitution for example provides that in matters related to appellate rules of procedure and practice the Supreme Court “shall have exclusively authority.” At the trial level, the legislature retains the power to make rules of procedure and practice but may at its discretion “delegate this authority to the Supreme Court...If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court...” (Art IV, Sec. 13(2))
- 3) States in which there is no explicit authority. It should be noted that some states read other text in their state constitutions to the effect that they possess rule making authority, however unification proponents wanted this power to be explicit not implicit or read-in via other provisions.

For purposes of coding, states with explicit and exclusive rule making provisions were given a 1, explicit but not exclusive 2, and not explicit 3. The categorization of each state is shown below.

**Table 8. Constitutional Provisions Related to Judicial Rule Making Authority**

| <b>Explicit &amp; Exclusive</b> | <b>Explicit But Not Exclusive</b> | <b>Not Explicit</b> |
|---------------------------------|-----------------------------------|---------------------|
| Alabama                         | Alaska                            | Connecticut         |
| Arizona                         | California                        | Idaho               |
| Arkansas                        | Florida                           | Indiana             |
| Colorado                        | Louisiana                         | Iowa                |
| Delaware                        | Maryland                          | Kansas              |
| Georgia                         | Missouri                          | Maine               |
| Hawaii                          | Montana                           | Massachusetts       |
| Illinois                        | Nebraska                          | Minnesota           |
| Kentucky                        | New Jersey                        | Mississippi         |
| Michigan                        | New York                          | Nevada              |
| New Hampshire                   | North Carolina                    | New Mexico          |
| North Dakota                    | Ohio                              | Oregon              |
| Oklahoma                        | South Carolina                    | Rhode Island        |
| Pennsylvania                    | South Dakota                      | Tennessee           |
| West Virginia                   | Texas                             | Washington          |
| Wisconsin                       | Utah                              |                     |
|                                 | Vermont                           |                     |
|                                 | Virginia                          |                     |
|                                 | Wyoming                           |                     |

**Dependent Variable: Case Clearance Rate**

In order to compute the case clearance rate for each state, data was obtained from the Court Statistics Project for 2013 ([www.courtstatistics.org](http://www.courtstatistics.org)). Because of an inability for some courts to report data for both incoming and outgoing caseloads or an inability to report in a manner consistent with other states, a total of 24 states were ultimately used. The year selected for data collection was 2013 as it is the latest available. From these were computed the case clearance rates. The data is indicated below.

Table 9 Dependent Variable Data: 24 states

| State          | Statewide Total Incoming Caseload (2013) | Statewide Total Outgoing Caseload (2013) | Statewide Case Clearance Rate (2013) |
|----------------|--|--|--------------------------------------|
| Alabama        | 1387788                                  | 1335007                                  | 0.96                                 |
| Alaska         | 135094                                   | 136265                                   | 1.01                                 |
| Arizona        | 2171082                                  | 2360525                                  | 1.09                                 |
| California     | 7900336                                  | 6823371                                  | 0.86                                 |
| Florida        | 3731145                                  | 3901983                                  | 1.05                                 |
| Hawai'i        | 482876                                   | 462053                                   | 0.96                                 |
| Idaho          | 381508                                   | 420720                                   | 1.10                                 |
| Illinois       | 3229146                                  | 3164753                                  | 0.98                                 |
| Indiana        | 1547345                                  | 1527103                                  | 0.99                                 |
| Iowa           | 822442                                   | 846332                                   | 1.03                                 |
| Kentucky       | 1011963                                  | 1018637                                  | 1.01                                 |
| Maryland       | 2139962                                  | 2289044                                  | 1.07                                 |
| Michigan       | 3766430                                  | 3842350                                  | 1.02                                 |
| Missouri       | 2856058                                  | 2629068                                  | 0.92                                 |
| Nebraska       | 481582                                   | 489027                                   | 1.02                                 |
| Nevada         | 956887                                   | 945025                                   | 0.99                                 |
| New Hampshire  | 155020                                   | 155074                                   | 1.00                                 |
| New Jersey     | 7472421                                  | 7475753                                  | 1.00                                 |
| New York       | 3908547                                  | 3684220                                  | 0.94                                 |
| Ohio           | 3527329                                  | 3547851                                  | 1.01                                 |
| Texas          | 13781132                                 | 13597778                                 | 0.99                                 |
| Utah           | 778280                                   | 792671                                   | 1.02                                 |
| Vermont        | 153155                                   | 146034                                   | 0.95                                 |
| Washington     | 2499134                                  | 2379226                                  | 0.95                                 |
| <b>AVERAGE</b> | <b>2719860.92</b>                        | <b>2665411.25</b>                        | <b>1.00</b>                          |

## Regression

An ordinary least squares regression was run using the Constitutional Rulemaking Authority Scores, the eight Centralization Index Scores, and the Number of Trial Courts in the State. The resulting model had an adjusted R Square of -.054, indicating the model fits the dataset badly. Moreover, none of the variables were statistically significant at the .05 criterion (p ranging from .056 to .868). Therefore, it is not possible from this data to reject the null hypothesis that if a state has a more unified judiciary it has NO impact on the total clearance rate.

**Model Summary**

| Model | R   | R Square | Adjusted R Square | Std. Error of the Estimate |
|-------|---|----------|-------------------|----------------------------|
|       | Include in Analysis? = Include (Selected) |          |                   |                            |
| 1     | .636 <sup>a</sup>                         | .404     | -.054             | 5.398671                   |

a. Predictors: (Constant), Planning and Research Activities Index, Number of Trial Courts in State, Constitutional Rulemaking Authority, Management Activities Index, Personnel Services Index, Public Information and Liaison Activities Index, Information System Activities Index, Education and Training Activities Index, Court Support Services Index, Finance and Budget Activities Index

**Coefficients<sup>a,b</sup>**

| Model   | Unstandardized Coefficients |            | Standardized Coefficients | t      | Sig. |
|---|-----------------------------|------------|---------------------------|--------|------|
|   | B                           | Std. Error | Beta                      |        |      |
| (Constant)                                      | 95.278                      | 11.097     |                           | 8.586  | .000 |
| Constitutional Rulemaking Authority             | 1.536                       | 2.149      | .210                      | .715   | .487 |
| Number of Trial Courts in State                 | .999                        | .849       | .386                      | 1.176  | .261 |
| Management Activities Index                     | .526                        | 1.218      | .144                      | .432   | .673 |
| Information System Activities Index             | 2.094                       | 1.612      | .557                      | 1.299  | .217 |
| Court Support Services Index                    | -.116                       | .688       | -.076                     | -.169  | .868 |
| Finance and Budget Activities Index             | -2.171                      | 1.570      | -.834                     | -1.383 | .190 |
| Personnel Services Index                        | 3.836                       | 3.578      | .444                      | 1.072  | .303 |
| Education and Training Activities Index         | .830                        | 1.646      | .208                      | .504   | .622 |
| Public Information and Liaison Activities Index | -2.837                      | 1.350      | -.890                     | -2.101 | .056 |
| Planning and Research Activities Index          | 2.122                       | 1.513      | .684                      | 1.403  | .184 |

a. Dependent Variable: 2013 Statewide Total Case Clearance Rate

b. Selecting only cases for which Include in Analysis? = Include

Table 10. Regression Results Summary

| Variable  | What unification theory predicts   | What the regression shows  | Is theory supported by data? |
|---|--|----------------------------|------------------------------|
| Constitutional Rulemaking Authority             | As level of constitutional rulemaking authority index goes ↑, case clearance rate goes ↓ | Case clearance rate went ↑ | No                           |
| Number of Trial Courts in State                 | As number of courts goes ↑, case clearance rate goes ↓                                   | Case clearance rate went ↑ | No                           |
| Management Activities Index                     | As index goes ↑, case clearance rate goes ↓  | Case clearance rate went ↑ | No                           |
| Information System Activities Index             | As index goes ↑, case clearance rate goes ↓  | Case clearance rate went ↑ | No                           |
| Court Support Services Index                    | As index goes ↑, case clearance rate goes ↓  | Case clearance rate went ↓ | Yes                          |
| Finance and Budget Activities Index             | As index goes ↑, case clearance rate goes ↓  | Case clearance rate went ↓ | Yes                          |
| Personnel Services Index                        | As index goes ↑, case clearance rate goes ↓  | Case clearance rate went ↑ | No                           |
| Education and Training Activities Index         | As index goes ↑, case clearance rate goes ↓  | Case clearance rate went ↑ | No                           |
| Public Information and Liaison Activities Index | As index goes ↑, case clearance rate goes ↓  | Case clearance rate went ↓ | Yes                          |
| Planning and Research Activities Index          | As index goes ↑, case clearance rate goes ↓  | Case clearance rate went ↑ | No                           |

**Constitutional Rulemaking Authority:** The regression indicates that for the time period selected for every one unit increase in the score for a state’s rulemaking authority (1 = Explicit and Exclusive, 2= Explicit But Not Exclusive, 3 = Not Explicit) a state sees an increase in its case clearance rate of 1.54% as compared to other states. This is the opposite of what unification theory holds should occur; an increase in the rulemaking authority score (i.e. a lack of explicit,

exclusive rulemaking power for the state's court of last resort) should result in a decrease in efficiency.

**Management Activities Index:** The regression indicates that for every one unit increase in the score for a state's management activities (higher scores = higher amounts of local control = less centralized) index a state sees an increase in its case clearance rate of .53%. This is the opposite of what unification theory holds should occur; centralized management in the AOC should result in a decrease in efficiency.

**Information System Activities Index:** The regression indicates that for every one unit increase in the score for a state's information systems (higher scores = higher amounts of local control = less centralized) index a state sees an increase in its case clearance rate of 2.1 %. This is the opposite of what unification theory holds should occur; centralizing information systems in the AOC should result in a decrease in efficiency.

**Court Support Services Index:** The regression indicates that for every one unit increase in the score for a state's court support (higher scores = higher amounts of local control = less centralized) index a state sees a decrease in its case clearance rate of 0.1 %. This is what unification proponents argued should have occurred; failing to centralize support services in the AOC results in a lack of efficiency.

**Finance and Budget Activities Index:** The regression indicates that for every one unit increase in the score for a state's finance and budget activities (higher scores = higher amounts of local control = less centralized) index a state sees a decrease in its case clearance rate of 2.2 %. This is what unification proponents argued should have occurred; failing to centralize finance and budgeting systems in the AOC results in a lack of efficiency.

**Personnel Services Index:** The regression indicates that for every one unit increase in the score for a state's information systems (higher scores = higher amounts of local control = less centralized) index a state sees an increase in its case clearance rate of 3.8 %. This is the opposite of what unification theory holds should occur; centralizing human resources/personnel functions in the AOC should result in a decrease in efficiency.

**Education and Training Activities Index:** The regression indicates that for every one unit increase in the score for a state's information systems (higher scores = higher amounts of local control = less centralized) index a state sees an increase in its case clearance rate of 0.8 %. This is the opposite of what unification theory holds should occur; centralizing education and training functions in the AOC should result in a decrease in efficiency.

**Public Information and Liaison Activities Index:** The regression indicates that for every one unit increase in the score for a state's public information/liaison activities (higher scores = higher amounts of local control = less centralized) index a state sees a decrease in its case clearance rate of 2.8 %. This is what unification proponents argued should have occurred; failing to centralize public information/liaison systems in the AOC results in a lack of efficiency.

**Planning and Research Activities Index:** The regression indicates that for every one unit increase in the score for a state's information systems (higher scores = higher amounts of local control = less centralized) index a state sees an increase in its case clearance rate of 2.1 %. This is the opposite of what unification theory holds should occur; centralizing planning and research functions in the AOC should result in a decrease in efficiency.

**Number of Trial Courts in State:** The regression indicates that for every one additional type of trial court present in a state sees an increase in its case clearance rate of 1 %. This is the

opposite of what unification theory holds should occur; a simplified court structure made up of fewer and fewer types of trial courts should result in an increase in efficiency. The data with respect to states that have experience in this area differs. Most recently there have been four states (California in 2000, Arkansas starting in 2000, Vermont in 2010 and New Hampshire in 2011) that have moved to consolidate their court structures.

California: According to data provided to the Court Statistics Project in 1998 California's total clearance rate was 96%. Between 1999 and 2000 the Municipal Court was absorbed into the state's Superior Court and the state took on the burden of paying for court employees some of whom had previously been county or state employed. In the subsequent years the total clearance rate declined as did the number of cases disposed per judge.

**Table 11. California Caseload 1998-2004**

| <b>Year</b> | <b>Superior<br/>Filed</b> | <b>Superior<br/>Disposed</b> | <b>Municipal<br/>Filed</b> | <b>Municipal<br/>Disposed</b> | <b>Total<br/>Filed</b> | <b>Total<br/>Disposed</b> | <b>Total<br/>Clearance<br/>Rate</b> | <b>Judges</b> | <b>Cases<br/>Disposed<br/>per Judge</b> |
|-------------|---------------------------|------------------------------|----------------------------|-------------------------------|------------------------|---------------------------|-------------------------------------|---------------|---|
| 1998        | 1078557                   | 931604                       | 7589213                    | 7432505                       | 8667770                | 8364109                   | 96.50%                              | 1480          | 5651                                    |
| 1999        |                           |                              |                            |                               | 8617833                | 8168362                   | 94.78%                              | 1479          | 5523                                    |
| 2000        |                           |                              |                            |                               | 8514908                | 8009312                   | 94.06%                              | 1499          | 5343                                    |
| 2001        |                           |                              |                            |                               | 8099234                | 7693623                   | 94.99%                              | 1498          | 5136                                    |
| 2002        |                           |                              |                            |                               | 8092631                | 7692925                   | 95.06%                              | 1498          | 5135                                    |
| 2003        |                           |                              |                            |                               | 7994348                | 7207537                   | 90.16%                              | 1498          | 4811                                    |
| 2004        |                           |                              |                            |                               | 8789159                | 7265401                   | 82.66%                              | 1498          | 4850                                    |

Arkansas: Starting in 2000 the state consolidated several of its trial courts (Chancery, Probate, City, Justice of the peace, County, Court of Common Pleas, Municipal, and Police) into the new District Courts. Prior to this the state was unable to report caseload data for these lower courts, therefore comparisons pre- and post-consolidation are impossible.

Vermont: Starting in 2010 the state consolidated all of its courts (District, Family, Probate, Environmental and Judicial Bureau) into the state's existing District Court. The state was unable to produce data with respect to several of these courts prior to 2010. Moreover, the Court Statistics Project was dormant for several years during this time period and therefore did not collect the data separately. That said, the latest annual report from the state would indicate that while clearance rates increase for criminal cases and larger civil cases increased from FY2010-FY 2014, that did not translate in areas such as small claims, suggesting that unification may have more of an impact on certain elements of a state's caseload rather than the caseload taken as a whole. (Vermont Judiciary, 2015)

New Hampshire: Starting in 2011 the state consolidated several of its trial courts (District, Family, and Probate) into the state's new Circuit Court. The state was unable to produce data with respect to several of these courts prior to 2011. Moreover, the Court Statistics Project was dormant for several years during this time period and therefore did not collect the data separately.

## **Conclusions and Recommendations**

This study marks the first large scale attempt to directly measure empirically the level of unification of each state court system and apply that data to efficiency. The few prior studies in the area 1) subjectively defined levels of unification, 2) relied on data extrapolations 3) relied on less than 12 states and/or 4) provided results that were impossible to replicate. This study makes the case that a linkage cannot be determined for certain with the limited data available but that unification does continue to be a point of interest for state court systems.

The Findings noted above should be read as a warning and limitation on unification for its own sake. This was already somewhat borne out in practice by the near-abandonment of unification as a driving judicial reform force in the 1980s in favor of examining individual court performance. Moreover, given the limited data set (1 year), there also remains the outstanding question of which states are more or less “unified”, a more political and often time legal or constitutional question than an empirical one. That said, this study offered effectively a return to earlier measures for unification that relied on survey data to determine unification as a series of measures along multiple dimensions rather than as simply a binary function (i.e. a state is, or is not, “unified”). These multiple dimensions were measured in the independent variables, while the measures of efficiency offered the dependent variable for this study.

### **CONCLUSION 1. THE LINK, OR LACK THEREOF, BETWEEN UNIFICATION AND EFFICIENCY**

The inability to find any linkage between the level of unification in a state and the efficiency of that state's judiciary in terms of case clearance is remarkable. For a century the linkage had been assumed by court reformers. Given the limited data set caution should be

exercised in drawing too many conclusions too greatly, but the inability to make such a link has several ramifications.

- 1) Unification proponents may have to come up with new(er) arguments. Cost savings, for example, has proven in the past to be a motivator rather than caseload efficiency.
- 2) Those fighting de-unification efforts should reevaluate the premise. In the last several years legislatures in California, Kansas and elsewhere have sought to give more power to local/trial courts. In both instances the central authorities argued that it would ultimately harm the ability of the judiciary to function, echoing the assumptions of unification. However, this research would seem to suggest that at worst it would have no impact on efficiency. It should be noted that such efforts have run afoul of constitution provisions in the state, with portions of the Kansas plan calling for local judges to pick their own chief judges struck down as unconstitutional (Solomon v. State, 2015 Kan. LEXIS 1022 (Kan. Dec. 23, 2015))
- 3) The inability to find a linkage could open up researching into a more nuanced view of unification that focuses on individual elements (or individual jurisdictions) rather than a binary unified/not-unified approach. This study included a composite score/index for 31 different elements of centralized administrative control over trial court operations and reduced them down to eight separate items. Rather than conceding all such functions to state control, perhaps concession of a select few could have a benefit. Having a single centralized information technology system, for example, may prove to be beneficial in terms of efficiency, leaving control and operation of the physical plant associated with courthouses to local government and courts. Selective application of unification principles, rather than wholesale adoption, may have a positive impact.

## RECOMMENDATIONS

### **RECOMMENDATION 1: REVIEW UNIFICATION AND BRING IT BACK INTO STUDY DISCUSSION.**

Unification was, in many respects, abandoned as a study topic in the 1970s, in part because it was oversold. Unification was not, and will not be, the panacea to solve all problems for state courts. However, by parsing out the individual elements of unification, it may be possible to determine that some do empirical help in terms of efficiency. A better way to formulate the question of unification might be to examine groupings (not necessarily the eight provided for in this study) such as

- Managerial unification, for example, in states where the centralized authority can allocate or temporarily transfer judgeships.
- Technological unification in states with a single centralized IT infrastructure.
- Budgetary unification in states where the centralized authority prepares and executes the budget for every court in the state, regardless of whether the actual funds come from the state or local government
- Funding or appropriations unification where the state pays for 100% of all court operations and activities.
- Unified judicial education program where the state's central authority establishes not only the standards but administers the education and training for judges and non-judicial staff.
- Geography may play a role. Smaller states as measured in square miles may have an easier time to centralize than larger ones. Moreover Gallas (1976) suggested a larger number of counties may result in more division of power via additional

leaders/chief judges (one per county) that are less inclined to adhere to central authority.

**RECOMMENDATION 2: “COURTING IGNORANCE” AND THE NEED FOR DATA.**

A fundamental weakness of this study was the lack of data from most states (26) and ability to find comparable data only for a single year. Data is at this point in some respects no easier to come by than it was a century ago. In his book *Principles of Judicial Administration* (1929) Willoughby advocating unification and the American Judicature Society (1930) both made reference to state courts as the “dark continent” through which the light of statistics and data never passed. Stephen Yeazell (2014) described this as “courting ignorance”: “we know so little about our most important courts” simply because no one is looking beyond the local level.

As a result of these circumstances, the data from which long-term studies of the state trial judiciaries might be constructed lies moldering in the basements of three thousand county courthouses, unless it has been destroyed by floods, eaten by vermin, or discarded to make space for newer records or an air-conditioning system. While state governments might have an abstract interest in how the state courts were performing, that interest was until recent decades not sharpened by having to pick up the tab for an unusually incompetent or expensive set of judges. The costs, both financial and governmental were borne locally, and the records, if any, went no further than the local unit of government. (Yeazell, 2014)

Where data exists, it is not always collected. Moreover, where it is collected it may not always be released for institutional and other reasons. To take but one example when the Michigan’s State Court Administrative Office (SCAO) in 2012 moved towards performance measures and suggested that the information could be released to the public in the future, several judges in the state refused to comply with data reporting requirements. An SCAO spokesperson put it simply: “When you hear a number of judges say 'performance measures in courts,' they think the terms don't belong in the same breath.” (Roose-Church, 2012)

# Appendix A: SCO Table 13 Survey Instrument Example

[How To Delegate](#) | [FAQ](#) | [Glossary](#) | [Help Desk](#) | [Technical Help](#) | [Feedback](#) | OMB NO. 1121-0283 Exp 04/30/2014

Welcome, NCSC Staff Shauna Strickland of American Samoa.

## (T13) Administrative Office of the Courts: Responsibilities for Trial Court Functions

*Provides, by state, the name of and authority for the state's administrative office of the courts (AOC) and provides the level of responsibility the AOC has for trial court functions such as judicial assignments, the keeping of court records, maintaining and securing court facilities, managing human and financial resources, and conducting court-related research.*

Overall Table Notes:

|               |                      |
|---------------|----------------------|
| Delegated to: | <input type="text"/> |
| email:        | <input type="text"/> |

Shauna Strickland  
NCSC Staff  
NO RESPONSE

For each function, please select the level of the AOC's responsibility. If the responsibility for the function is shared with any other entity (e.g., executive branch, local courts), please select shared.

What is the official name of the administrative office of the courts?

q1

Year Created

q2

Please select your answer ▼

Authority

q3

- Constitution
- Statute
- Court rule/order

---

Does the Administrative Office of the Courts have responsibility for:

q4 Appointment/assignments: Sitting Judges

- None
- Shared
- Total

q5 Appointment/assignments: Supplemental Judges

- None
- Shared
- Total

Court-annexed ADR

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