



VCU

Virginia Commonwealth University
VCU Scholars Compass

Theses and Dissertations


Graduate School

2015

Efficiency Of Unified Vs. Non-unified State Judiciaries: An Examination Of Court Organizational Performance

William Raftery

Follow this and additional works at: <https://scholarscompass.vcu.edu/etd>

 Part of the [Courts Commons](#), [Other Public Affairs, Public Policy and Public Administration Commons](#), [Public Administration Commons](#), [Public Affairs Commons](#), and the [Public Policy Commons](#)

© The Author

Downloaded from

<https://scholarscompass.vcu.edu/etd/4073>

This Dissertation is brought to you for free and open access by the Graduate School at VCU Scholars Compass. It has been accepted for inclusion in Theses and Dissertations by an authorized administrator of VCU Scholars Compass. For more information, please contact libcompass@vcu.edu.

EFFICIENCY OF UNIFIED VS. NON-UNIFIED STATE JUDICIARIES: AN
EXAMINATION OF COURT ORGANIZATIONAL PERFORMANCE

A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of
Philosophy at Virginia Commonwealth University.

By:

William E. Raftery

M.P.A. (Court Administration), John Jay College of Criminal Justice, 2005

B.A. (History and Political Science), Fordham University, 1995

Director: Dr. Robyn McDougale

Associate Professor, Public Policy and Administration

L. Douglas Wilder School of Government and Public Affairs

Virginia Commonwealth University

Richmond, Virginia

December 2015

COPYRIGHT PAGE

© William E. Raftery, 2015
All Rights Reserved

Acknowledgements

The author Douglas Adams once quipped that getting a film made in Hollywood was like trying to cook a steak by having a bunch of people come into the room and breathe on it. In this, I can empathize with the late Mr. Adams. Fortunately, however, I have been blessed with a series of people who have stood in line to breathe on, and on occasion breathe life back into, this document.

I own a debt beyond measure to Dr. Robyn McDougle for her agreeing to serve as my third, and thankfully final, chair. She has been a source of stability and guidance in a process that far too often lacked either. I wish also to recall the service and mentorship of my second chair the late Dr. Bill Bosher. A man of peerless virtue and patience he was and remains an inspiration. Thanks as well go to the other members of my committee: Dr. Richard Vacca, Dr. Henry Brownstein, and Judge Mark Christie. Special note too goes out to Mr. Robert Baldwin who served on a prior iteration of my dissertation committee.

I want to acknowledge my employer the National Center for State Courts, in particular my supervisors Richard Schauffler (Research) and Carol Flango (Knowledge and Information Services). They in particular, and NCSC in general, have provided the time and encouragement to continue down this path for these many years.

Finally, I must by all accounts pay special tribute to my family: my wife Julia and my children Liam, Rory, and Anna. Whatever pressures and stresses I bore they were my strength and often my inspiration. They have put up with far too much far too often as this has moved on, but they have all done so with patience beyond measure. No person could hope for a more loving and supportive family. Whatever good can be attributed in this can be laid at their feet, not mine.

List of Tables

Table 1 State Court Structure Models.....	20
Table 2 Principal Components of Berkson's 16 Indicators of Unification (from Flango (1981))	31
Table 3 Dispositions/Filings, general jurisdiction courts (1980) (Henderson et al. (1984) Table 10.2)	35
Table 4 Dispositions/Judges, general jurisdiction courts (1980) (Henderson et al. (1984) Table 10.3)	36
Table 5 Logic Model for Court Unification (W.K. Kellogg Foundation, 2004)	43
Table 6 List of 31 Trial Court Functions Surveyed in SCO Table 13	50
Table 7 Independent Variable Data: 24 states	55
Table 8 Two-Sample T-Tests: Sampled states vs. Non-Sampled States	58
Table 9 Dependent Variable Data: 24 states.....	59
Table 10 Correlation between Number of Trial Court Types and Centralization Average	60
Table 11 Regression for Efficiency ₁ (Case Clearance Rates).....	61
Table 12 Regression for Efficiency ₂ (Case Clearance Rates Per Judge)	63

List of Figures

Figure 1 Bulletin VII-A: Diagram Showing Unified State Court (1917)	19
Figure 2 SCO Table 13 Survey Instrument Example	49

Table of Contents

Acknowledgements.....	iii
List of Tables	iv
List of Figures	v
Abstract.....	viii
Chapter 1: Introduction.....	1
Statement of the Problem	4
Research Question.....	5
Hypotheses	5
Purpose of the Study	6
Limitations	6
Chapter 2: Literature Review – The Organization and Efficiency of Courts	8
Introduction.....	8
Before unification: “chaotic localism”	8
The Progressive era & Classical Organizational Theory	10
Unification: Consolidation, Centralization, Judicial Rulemaking	16
Empirical Studies of Unification.....	28
Classic School and Unification Reexamined	36
Organizational Performance Measurement.....	40
Summary and Conclusion: Where Do We Go From Here?	43
Chapter 3: Methods.....	45
Research question.....	45
Hypotheses	46
Population and Sample.....	46
Data sources	46
State Exclusion and Comparability.....	51
Chapter 4: Analysis.....	54
Overview	54
Selection of analytical technique.....	54
Independent Variables.....	55
Dependent Variables	59

Regression	60
Chapter 5: Conclusions and Recommendations	64
Overview	64
Summary.....	64
Theoretical Framework.....	65
Efficiency.....	66
Principal Findings	66
Inability to find a link between unification and efficiency.....	67
Multifaceted unification	68
Ramifications of "bragency".....	70
Recommendations	71
Future Research.....	74
Appendix A Complete T-Test Results: 24 selected states vs. 25 not-selected states on independent variables.....	76
References.....	83
VITA.....	96

Abstract

EFFICIENCY OF UNIFIED VS. NON-UNIFIED STATE JUDICIARIES: AN EXAMINATION OF COURT ORGANIZATIONAL PERFORMANCE

A dissertation submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy at Virginia Commonwealth University.

By: William E. Raftery

Virginia Commonwealth University, December 2015

Director: Dr. Robyn McDougale, Associate Professor, Public Policy and Administration, L. Douglas Wilder School of Government and Public Affairs

State court systems function in much the same manner as any other government agency in terms of organization and management to utilize public resources in order to provide a public service. The question posed in the late 19th century was whether the courts should be organized and managed as they had been for centuries as local entities locally controlled and operated or transferred to the state level. The desired end was a more efficient use of public resources to achieve faster disposition of cases. This reorganization, called unification, was made up of three individual components: 1) consolidation required the reduction in the number of types of trial court in a state to one or two 2) centralization required the surrendering to the state's chief justice, later the newly created office of state court administrator, all managerial control over these courts, and 3) judicial rulemaking required removing from the legislature the power to create rules of practice and procedure in the courts, instead turning that power over to the courts themselves in the form of judicial councils or later state supreme courts. Unification, relying on principles of scientific management, served as the basis for state court reorganization for nearly a century, however the assumption that consolidation, centralization, and judicial rulemaking would lead to greater levels of efficiency in the courts remained effectively untested. Data for the

year 2013 was collected to measure state court efficiency in two ways: case clearance rates (number of cases disposed divided by the number of cases filed) and case clearance rates per judge (number of cases disposed divided by the number of judges). An ordinary least squares regression found no apparent relationship between a state's level of unification and its ability to clear its trial court caseloads.

Chapter 1: Introduction

Courts, like any other agencies of government, face restrictions on their resources. There are a finite number of dollars, hours, and employees to dedicate to a set number of problems or cases. Issues of logistics, organization, and administration apply to a court in many of the same ways they would any local department of government. Similar too are the same pressures to achieve efficient use of public resources. Unique to the courts, however, are two basic principles. First, courts operate in many respects like executive branch agencies, but they are not within the executive branch. They are a part of the judiciary which in the United States forms one of the three separate branches of government along with the executive and legislature. Second, where an individual department of local government can only date back decades or perhaps a century, some state courts can trace their origins to before the Revolution. Much as the executive branch would fragment into a myriad of departments a century later, state judiciaries in the 1700s were already being divided into a court for every different problem (divorce, petty crimes, felonies, probate), and for every different court, there were different judges and different laws to apply. There was little or no administrative oversight, no centralized system or means for prioritizing and tracking cases, no coordination among the various courts; indeed, no agreed upon approach for determining which courts handled which cases. Efficiency, whether defined in terms as government/public time and resources or defined as the time and resources of the individual parties to case, was an afterthought, if considered at all. The research found in the following pages attempts for the first time to systemically examine the level of efficiency related to state court systems using a particular framework, called unification, that was developed to address this lack of administrative oversight and centralization.

The adoption by early American lawyers and judges of the uncoordinated and haphazard court system taken from pre-Revolution England resulted in lengthy delays, duplication of efforts, and systemic waste. Beginning in the late 1800s, advocates of judicial reform in both England and the U.S. sought to overhaul court administration. Under the banner of efficiency, very much in vogue at the time, reformers invoked concepts from scientific management and organization theory. Monetary, administrative, and logistics concerns were thought to be causing inefficiencies in the courts, but at that time no one knew how to quantify inefficiency exactly, nor did they have so much as a theory of how to address this issue from in an administrative manner. Alternatives that focused on legal changes were considered. These included things such as speedy trial laws to mandate criminal cases be heard within a set number of days or the creation of codified laws such as New York's "Field Code" that converted obscure common law writs and the distinction between law and equity into simpler to understand and access books of laws. These legal changes were deemed neither sufficient in and of themselves to fully address the challenges of inefficiency found in state courts nor were they helpful in quantifying the administrative challenges facing the courts.

The first attempt at quantification and non-legal administrative restructuring became known as "unification" and used three separate but inter-related approaches or ideas. These were (Henderson et al, 1984):

Consolidation of Courts 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).

Administrative Centralization All administrative authority over the court(s) 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.

Judicial 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, supreme court, and/or judicial council.

These three items were operationalized under this theory as

Consolidation of Courts The number of trial court types in a state should equal 1 or 2.

Administrative Centralization 100% of all trial court administrative operations and functions should be state controlled

Judicial Rulemaking Yes or no: the power to create laws/rules related to the practice and procedure used in the courts is vested exclusively in the chief justice, supreme court, and/or judicial council

Reformers claimed that as a state moved towards total consolidation, centralization, and judicial rulemaking it would see two specific benefits.

Clearance Rate (Efficiency₁) Defined as cases disposed divided by the number filed during a given time period (Ostrom, Kauder, & LaFountain, 2000). Unification advocates held delay would be reduced or end in state courts as the number of cases disposed exceeded the number of cases filed.

$$\frac{\text{Number of cases disposed in state trial courts}}{\text{Number of cases filed in state trial courts}} = \text{Efficiency}_1$$

Labor Productivity (Efficiency₂) Hatry (1978) defined this with respect to public administration in general as the ratio of number of units of work accomplished per unit of input such as workers or labor hours. Those advocating for unification defined “worker” as “judge” and believed the lack of waste of judicial resources would mean the number of cases disposed per judge would increase.

$$\frac{\text{Number of cases disposed in state trial courts}}{\text{Number of state trial court judges}} = \text{Efficiency}_2$$

Unification seemed tailor made for judges and courts, which for centuries had applied concepts such as hierarchy (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), to achieve consistency and maintain control over their caseload. Yet state judges, legal communities, and legislators only slowly embraced unification; it would be

almost 30 years between the first official call for a unified court system (1909) and the official endorsement of the practice by the American Bar Association (1938).

Despite slow adoption, the call for “efficiency” in courts pushed forward the ideas of unification for the last century. Unification (the combination of centralization, consolidation, and judicial rulemaking) remains the recommendation of groups such as the American Bar Association and has gained favor once again as a way to control costs at a time of severe state budgetary constraints. For example amid the Great Recession New Hampshire (2011) and Vermont (2010) consolidated most of their courts and gave greater power to the state judiciary’s central authority (the administrative office of the courts) in the pursuit of saving money. Despite a century of pressing for unification, however, 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. However the original purpose and justification for unification were not as a cost savings effort, but was a focus on the disposition of cases. This leaves as an open question whether unification (and in particular the elements of consolidation and centralization) make a real difference in moving cases along in an orderly fashion. This thesis attempts to answer this important question.

Statement of the Problem

There is a problem in state courts concerning efficiency: are they using their limited resources in the best possible manner? Unification was offered as a way to achieve this efficiency. However, despite this policy being advanced as a solution to state courts for a century it is not clear whether states are more or less efficient than one another, making adoption of such

policies driven not by data or experience but on untested assumptions. Unification may or may not be impacting states, positively or negatively, but without a systematic examination of the subject there is no way of determining whether unification is an aid or hindrance for state courts. A study which investigates unification could remedy the situation, however with three limited exceptions (Dill, 1978; Bolling Swann, 1986; Rasmussen, 1998) there has been no effort to empirically demonstrate an association between efficiency and unification across states. A more structured, broader study is necessary in order to determine what if any benefits unification can offer states.

Research Question

Are unified state court systems more efficient than non-unified?

Hypotheses

Efficiency₁

H₀ If a state has a more centralized judicial administration, it has NO impact on the total clearance rate

H₁ If a state has a more centralized judicial administration, it has an impact on the total clearance rate

H₀ If a state has a more consolidated trial court structure, it has NO impact on the total clearance rate

H₁ If a state has a more consolidated trial court structure, then it has an impact on the total clearance rate

Efficiency₂

H₀ If a state has a more centralized judicial administration, then it has NO impact on the per judge clearance rate

H₁ If a state has a more centralized judicial administration, then it has an impact on the per judge clearance rate

H₀ If a state has a more consolidated trial court structure, then it has NO impact per judge clearance rate

H₁ If a state has a more consolidated trial court structure, then it has an impact per judge clearance rate

Purpose of the Study

The research question has been and is important to the fields of public administration, judicial administration, court management, and the legal profession. From the public administration perspective, the well organized and well managed judiciary can deliver services optimally and with as little cost to the taxpayer as possible. (Chaston, 2011) For judicial administration, efficient operations mean little to no loss of legal talent, time, and fiscal resources. (National Center for State Courts, 2011) It means that the courts as a whole are able to operate uniformly and consistently throughout the state. From a court management perspective this means potentially greater opportunities to share and pool local resources between and among courts and more flexibility in terms of access to other courts and their talents. For the legal profession this has been a focus of attention to one degree or another for over a century and continues to be an issue for those who practice within the courts.

Limitations

The study focused exclusively on the individual state judiciary's ability to dispose of the cases brought before it without regard for other aspects. It did not contend with issues related to the quality of justice rendered, the outcome of cases, or questions related thereto. Moreover, the data focused at the state level and did not consider the performance of individual judges or courts. Local variations down to the municipal/town level were not considered in this research. Finally, and most critically, was the lack of data from most state court systems at the state level. Despite a century of efforts to measure the work of courts, only 24 states can provide an accurate report on how many cases were filed and disposed in any given year that is consistent with how other states report such data. This is the result of state court systems that either cannot, or in some instances will not, provide information related to incoming and outgoing caseloads. The

state of Oklahoma, for example, reported such data until 1997 at which point administrative leadership in the state's judiciary refused to release any trial court filing or disposition data for over a decade. (Court Statistics Project, National Center for State Courts, 2006) Because the data collected was on a voluntary basis, response rates were not 100%.

Chapter 2: Literature Review – The Organization and Efficiency of Courts

Introduction

Much of the study of the organization and efficiency of courts has been in the area of law, with concepts borrowed from the literature of management and organization in general and public administration in particular. The authors and practitioners were more often than not law-trained, however they relied on the same precepts as their public management counterparts in the early 1900s and their reliance on classic organizational theories. Unification, the term developed in these legal communities, is effectively a reformulation of scientific management. This chapter then examines the development of the literature in this era, noting the similarities between the legal and public administrative writings. It concludes with an examination of later specific efforts to both define and to a limited degree measure unification in public administrative works.

Before unification: “chaotic localism”

The desire in the late 1800s and early 1900s for “unified” state judiciaries intertwined three elements that focused on the organization (consolidation), administration (centralization), and legal authority over rules of practice and procedures (judicial rulemaking). The first two in particular were notably intertwined because of their direct linkages to the literature of the Progressive Era and its emphasis on organizational and administrative restructuring. They were also in direct contrast with the practices that had been in place in the Anglo-American legal system for over 600 years.

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. In writing on the condition in England in 1817, Sir Edward Coke identified no fewer than 74 different courts in England with judges serving on multiple courts individually or collectively. Parliament and the Crown through the Great Council retained and exercised separate judicial authorities as well. States replicated this practice, with a multitude of court types in each state ranging from those based on case type (civil, criminal, law, equity, admiralty, probate, etc.) and geography (larger cities would have their own separate trial court systems). Legislatures and governors were also invested with judicial authority, able to issue writs, grant divorces, and sit as appellate courts. Atop this 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 H. , 1898) The result was the consolidation of seven courts into one, with a single set of rules for pleading and procedure. The House of Lords effectively abandoned its role as court of last resort. By the time the 12th and final of the Judicature Acts was adopted in 1899, the judicial system established by Edward I and in place for 600+ years effectively had been replaced. As England was moving to change radically the system it had in place, U.S. states were continuing apace, either retaining or expanding the same practices England had just abandoned. Pound (1940) notes in the time between the Civil War and 1900 “nothing striking was evolved in the state states as to these [trial courts]...” Simeon Baldwin (1905) writing contemporaneously reviewed the state court systems of the time and found their structures to be a litany of complexity in terms of their organization.

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. Where lower courts retained such powers their exercise was subject to the Lord Chief Justice who could change them at will. Under the Supreme Court of Judicature Act of 1883 most of the judiciary’s finances were transferred to a newly created Consolidated Fund under the control of the Lord Chancellor. The office of Lord Chancellor itself was revised and expanded in terms of its existing responsibilities as administrator of the courts, clerk, and nominal judge. (Andrews & Stoney, 1883) 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 & Classical Organizational Theory

Occurring at roughly the same time as the general interest in reformulating the administration and organization of U.S. state courts was the advent of the Progressive Era, with its 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 The advent of large scale manufacturing and industrial development in the late 1800s brought with it a greater differentiation between management and labor. The examination of the interplay between the two, as well as the work itself, formed the basis for scientific management. The “science” in the management was through measurement, mostly focused on inputs (number of work hours) and outputs (number of items produced). Taylorism, named after one 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) This led to the need for standardization in terms of measurement. It also led, in many cases, to productivity increases as a greater focus was made on determining what was working and what wasn’t in a much more systematic way. Good management, for Taylor, meant high wages and low unit production costs, without the burden on the worker of worry over planning, organizing, controlling, and determining methods. (George, 1972)

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 *Administration industrielle et generale* (General and Industrial Management) Fayol provided a template for organization that focused on five key managerial functions: planning, organization, commanding, coordinating, and controlling. These were further supplemented with *Principles of Management* (Fayol, [1916] 2005). The publication 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 Whereas the concern of Scientific Management was on finding the "one best way" of performing a task, Administrative Management (Mosher, 1968) or Departmentalism (March & Simon, 1958) concentrated on the formal institutional structure of organizations. Both 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) Luther Gulick and his cohorts focused on the organizational chart as the level of analysis with heavy reliance on hierarchy as the primary mechanism for control and coordination. (Fry & Raadscheiders, 2008) Finally, Max Weber's contributions with respect to the notion of bureaucracy should be noted, but with a caveat. While his work would greatly contribute to the ideas of the Classical school of organization, they likely occurred after World War II when his works began to be translated and distributed to the English speaking world. (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

Many of these elements would appear in the context of unification. Having fixed and official jurisdictional areas for courts and their judges is effectively an extension of the first in Weber’s list. 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, per Gallas (1976) was Weber’s *The Theory of Social and Economic Organization* (1947). There Weber put forth 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.

Gulick The President's Committee on Administrative Management, better known as the Brownlow Committee or Brownlow Commission was created in 1937 to recommend an overhaul of the entire executive branch of the U.S. federal government. The three member committee was chaired by Louis Brownlow and included Charles Merriam and Luther Gulick. It was Gulick's December 1936 memo and its June 1937 revision (Gulick, 1937) that advanced the case for what would later be called the managerial presidency. (Brodie, 1989) For Gulick, the ideal government is one in which the chief executive, supported by a special staff, draws the plans; the legislature accepts or rejects proposed policies; the executive carries out the adopted plan; and the public exercises general control through participation in political parties and pressure groups.

Much of Gulick's work, reduced down to the acronym POSDCORB, is effectively a recitation of Fayol's and Taylor's prior work; indeed Gulick's main collaborator and co-author Lyndall Urwick (1937) acknowledged as much. POSDCORB stood for Planning, Organization, Staffing, Directing, Coordinating, Reporting and Budgeting. Gulick placed a "particular stress on structural reform in the name of *consolidation* and integration, *centralization* to enhance executive power, professionalization to improve the quality of personnel in the public sector, and the rationalization of decision-making and management processes to assure greater effectiveness and efficiency in service delivery." (Fry and Raadschelders, 2008) These were the very same terms being used as part of court unification efforts at the time. Gulick viewed the essential problem of management as creating, controlling, and coordinating labor through a division of functions (Denhardt & Baker, 2007). Gulick (1937) required formal definitions and divisions of work, strict and structured bureaucratic relationships, professional staffs, and rational activities. Administration would be integrated under strong executives, and coordinated under a chief executive with a view of the entire process. POSDCORB would become precisely the template

those in favor of court unification would use for their vision of the office of chief justice of a unified court system (centralization).

Unification: Consolidation, Centralization, Judicial Rulemaking

As the above demonstrates the push for unification started as an effort to emulate the successes in England and combined the language of scientific management with classic organizational theory. All three 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 judicial rulemaking.

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 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 in a keynote speech to the ABA entitled “The Causes of Popular Dissatisfaction with the Administration of Justice”, Roscoe Pound inveighed against “our American judicial organization”, warned against the multiplicity of courts with concurrent jurisdictions, and the attending waste of judicial resources. In response to Pound’s 1906 speech, the ABA appointed in 1907 a Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation.

By 1909 that committee reported out its proposal that at least for civil matters all courts should be reorganized and consolidated within a state into One Court of Justice. Pound (1940) would later note the limitation for “civil matters” only was as a hedge to the possibility of there being a separate and identical court system for criminal matters. Anticipating criticism that

consolidation would mean local concerns would be trumped, the committee noted that the localities were already ill-served by current conditions. The report concludes with 9 separate 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)

The 1909 special committee report was never formally adopted by the ABA House of Delegates; while other elements of the report related to legal matters were approved, it would be another four decades before the concept of unification became their official policy. That said 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.”

Running parallel to the push for state court consolidation was a push for federal court consolidation. Since the adoption of the Judiciary Act of 1789 there had been effectively two federal trial courts (District and Circuit), however both had overlapping jurisdictions and authorities and were often presided over by the same judge. (Federal Judicial Center, 2013) By 1911 former President and then Chief Justice William Howard Taft had asked and obtained from Congress the dissolution of the Circuit Courts and the transfer of all cases into the District Courts. It was this initial success that prompted Pound and others to press for the same in the state judiciaries.

Pound moved quickly after the rejection of the 1909 report to engage the business community in the cause of unification. The *Preliminary Report on Efficiency in the*

Administration of Justice (1914) published by the National Economic League at Pound's request made a business case for consolidation, especially in urban areas where larger corporations were based. The result was the formal support for consolidation by some of the largest corporations of the time.

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 Judicature, would be the constitutional consolidation of all existing courts and judges.

Figure 1 Bulletin VII-A: Diagram Showing Unified State Court (1917)

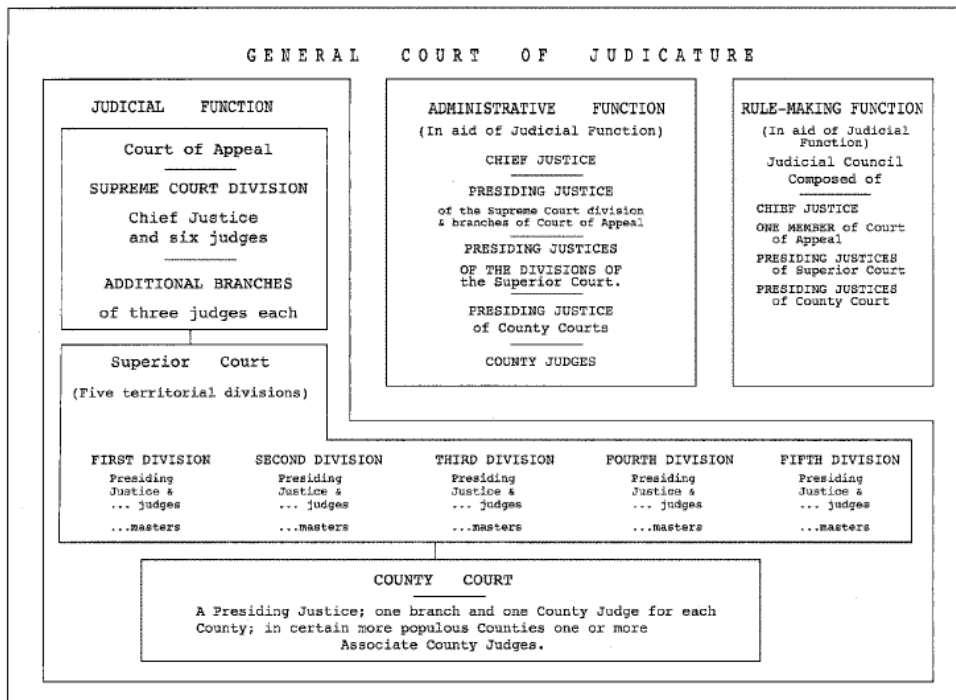


Diagram Showing Unified State Court.

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

Consolidation was by every measure and writer the prerequisite for unification; W.F. Willoughby's *Principles of Judicial Administration* (1929) dedicated an entire section to Judicial Organization and provided the organizational arguments for consolidation, as the American Judicature Society acknowledged in reviewing the book. (1930) In detailing the questions/problems challenging the state judiciaries, Willoughby acknowledged the lack of consolidation almost immediately ("Problem of organization: should there be a single court with subdivisions to handle cases?") Willoughby argued 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 forcefully for divisional specialization rather than court-type specialization so as to increase technical prowess. Where there were courts with multiple judges,

the chief justice was advised to see to it certain case types were assigned to particular judges. The desire was for specialized judges, not specialized courts.

The American Bar Association, after 3 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. The ABA Committee on Judicial Administration along with other committees each submitted its recommendations for Standards and the resulting report approved by the House of Delegates. (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. Today there are effectively 13 states with the sort of consolidation advocated for under the model of unification, two of which (New Hampshire and Vermont) consolidated within the last 3 years.

Table 1 State Court Structure Models

AJS/Willoughby (generally)	Willoughby (large municipalities)	Pound
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 than organizational restructuring was the idea of the locally elected independent judges and clerks being subject to control by another entity, even if that entity was within the judicial branch. This was the process of centralization, the bureaucratic, hierarchical control function advocated for by the Classical Organizational

theorists. The first instance of such a call was the 1909 ABA Special Committee report discussed previously. The powers to be held by the “high official” of the consolidated court were 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.” As the report noted, it was entirely common for the clerks of court, even for the state supreme courts, to be independently elected. “No one is charged with supervision of this important branch of the judicial system... Better supervision and control of the administrative officers connected with judicial administration... make[s] it possible to introduce improved and more business-like methods in the making of judicial records and the clerical work of the courts.”

The 1909 ABA Special Committee report left it vague as to who would be the “high official of the court” to exercise this power, reflecting at the time the concern that no judge would want the job and that it was perhaps best exercised by someone in the executive branch. There was precedent for this notion at the federal level. 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. The Attorney General personally or through subordinates was able to reassign judges from district to district or circuit to circuit. (Fish, 1973) In 1927 one Department of Justice spokesperson noted that standardization, administration, and professionalization of the federal courts meant the centralization of power away from local courts, that a “central authority” had to weave the threads of budget, appointment, personnel, and

standards. “Somebody has to be the spider” to weave all these threads, he said, and that spider had to be the Department of Justice. (Fish, 1973).

This was the state of things when the American Judicature Society began to examine this issue between 1914 and 1917. Several members of the Society advocated for centralization of administrative control outside the branch in a manner similar to that which was happening at the federal level. The leadership of AJS rejected such a plan. “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. To this end the Chief Justice was to be given broad administrative powers. Judges would be assigned to a particular court or district at the direction of the Chief Justice. *Bulletin VII-A* also recommended that judges should cease to be elected or appointed from outside the branch and instead appointed by the chief justice and removable on accusations of administrative failure such as failure to complete cases in a timely fashion.

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”, those powers many of which would find their way later into reports, in particular *State Court Organization*.

- classifying the several divisions of the court
- assigning to these divisions the judges attached to the court, with a view to the most effective utilization of their special attainments and the advantages resulting from specialization

- controlling assignments to the several divisions, with a view to equalizing the burden of work and making the fullest use of judicial personnel
- formulating the rules of procedure, so as to secure uniformity in respect to the manner of conducting the business of the court
- prescribing the character of records to be maintained
- requiring periodical reports on the work performed and the condition of business
- generally exercising those powers that will that will ensure a standardization of practice and efficiency in the conduct of affairs

Willoughby took pains to note that these changes were to extend to “purely administrative affairs...in no way interfering with the exercise of judicial discretion.” In the context of the judiciary with its emphasis on precedent and vertical *stare decisis* (the ruling of a higher court is binding on all lower courts) one might assume that acknowledgement of higher authority in the administrative arena would be a given. However, this was not necessarily so; Willoughby warned that it would prove hard to convince judges and clerks of court to accept interference in what they viewed as their exclusive domain.

Willoughby also anticipated criticism that centralization of *administrative* power over the branch in the hands of the chief justice would lead to centralization of the *adjudicative* power there as well, Willoughby wanted a “general manager in respect to the internal organization, and purely administrative features of the work of the court” or as he put it later the “business administration of courts.” 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. The ABA called for all “administrative power and responsibility for the system placed upon the courts themselves, either through a single administrative judge for the whole state, with power to appoint a director and staff, or through administrative judges responsible for each homogeneous locality and all responsible to a single judge.” Pound took it a step further; the

chief justice should no longer hear cases and focus solely on “superintending control over the entire system.”

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 (something Pound and the American Judicature Society had advocated as well). However where Willoughby separated himself from the Society and Pound was in his desire to have this Office “as the center of the administrative system of the court”; the other two were silent on the subject or simply assumed the Clerk would remain essentially a clerical function. For Willoughby the Office of the Clerk of the Court was in “no sense either political or judicial” and entirely administrative, therefore it should be subject to the same requirements for efficiency demanded over the other entities in executive branch and independent agencies (what he called “the administrative branch”). Thus the Clerk of the Court would be appointed and subject to removal by the Chief Justice, and lower clerks (deputy clerks) subject to Clerk of the Court in like fashion. Just as he provided a minimum checklist of chief justices Willoughby had a listing for the minimum requirements for this “wholly administrative” office. Many of these would become part of the entity called the administrative of courts and measured in *State Court Organization*.

- that the head of the office shall be appointed and subject to removal by the head of the organization of which it is a subordinate unit
- be subject to the direction, supervision, and control of such superior officer
- that means shall in fact exist whereby the latter can hold him to strict accountability for the manner in which the affairs of his office are conducted that the office itself shall be thoroughly organized so that responsibility and the line of authority are definitely located and the work so distributed that the most effective use is made of the working personnel
- that the most efficient methods of business practice and procedure for the actual handling of the work are employed

- that where there are a number of units performing the same functions, having the same duties to perform, and belonging to the same general organization, they should have the same organization, and make use of the same methods of procedure

As with organization, there was a federal precedent at the time. As previously noted centralization had occurred for those courts, but administration remained in the Department of Justice. Chief Justice William Howard Taft and other federal judges had for years requested a transfer of administrative control to the judiciary. The end result was the Administrative Office Act of 1939. The budget, personnel, and administrative control of the judiciary were to be entirely separated from the Department of Justice. Full administrative control was to be handed to the Supreme Court and shared with the Council of Senior Circuit Judges (later revised and renamed the Judicial Conference of the United States). The Supreme Court was to appoint a Director for the Administrative Office of the U.S. Courts (AOUSC) who “shall be the administrative officer of the United States courts... under the supervision and direction of [the Judicial Conference].”

By the mid-1940s it was recognized that at the state level 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. While indications are there were “court administrators” or “executive secretaries” appointed in Connecticut and New Jersey prior to 1948, these individuals were essentially personal appointments made by the chief justices to their chambers. Those appointed had no formal powers. The National Conference of Commissioners on Uniform State Laws in 1948 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 the war. (Hartshorne, 1949; Vanderbilt, 1949) The handiwork of Vanderbilt, it was essentially adopted wholesale by the New Jersey legislature

in 1949. (Woelper, 1950) The Model Act called for a state court administrator and an attendant office with assistants to examine every aspect of the judiciary, from funding requests to statistical data and business processes of the courts. The administrator was given power over “examining the state of the docket and recommending assignment of judges where courts need assistance, collect and compile statistics, prepare and submit budget estimates, obtain reports from various courts on the state of the business of the courts, and attend to any other matters assigned by the court of last resort.” The adoption of these elements in each state would later be measured in reports such as *State Court Organization*. It also placed a statutory burden on all judges, clerks, and other offices and officers of the court to cooperate and provide not only statistical data but information “relative to the expenditure of public moneys for their maintenance and operation.”

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. When the bill creating the position of state-level “judicial administrator” in Virginia was first introduced in the 1950, it failed when trial court judges objected to having anyone “administer” them. Virginia's Chief Justice Edward Hudgins noted that the term “sounded like a dictator or a snooper”. (Conference of Chief Justices, 1950) To placate concerns in Virginia, the office was renamed “executive secretary to the Virginia Supreme Court of Appeals.” Often there was a statutory or traditional requirement that this person be a judge; Massachusetts only ended the requirement that the state court administrator be a trial judge in 2012 when the position of “court administrator” was broken away from the office of chief administrative justice of the trial court. (HB 3644 of 2012)

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. Even more critically is the level to which the administrative office is actually responsible for trial court activities. In some states centralization is effectively nominal, in others expansive. The specific data of this is found in *State Court Organization*.

Judicial Rulemaking. More of a legal than administrative or organizational construct, judicial rulemaking for the “unified” judiciary meant the ability of courts to create their own rules of procedure that were consistent throughout the state. Prior to unification, a series of complex laws and statutes dictated the way in which cases were handled. For example if a person is sued, do they have 20 days to file their answer or 30 days? A litany of statutes of various complexities made this impossible for even the best trained lawyers to fathom at the time. Moreover, legislators were often ill-suited to the task, either because they had no knowledge of the law or, as was occasionally the case, they were able to enact specialized rules for favored entities. This was also used to effectively dictate in hyper-technical detail the conduct of the judiciary’s work. For example Pound (1940) noted that by 1900 there were 36 different statutes dictating where and when the state’s highest court (Supreme Judicial Court) must sit, 77 for the state’s main trial court (Superior), 142 for Probate Court, and 274 for District Court.

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, judicial rulemaking is the only one that has been adopted universally.

Empirical Studies of Unification

First measure Writing 25 years after their publication, Ashman and Parness (1974) commended *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.

For the first time there was now a general gauge of unification. It also indicated perhaps a slight self-interest in New Jersey Chief Justice Vanderbilt. There was only one state that was listed as having substantial unification, diverse judicial council with judicial rulemaking authority, and a comprehensive, regular, and comparative statistical system: New Jersey.

First studies For decades the assumption of those advocating for unification was that it would increase efficiency in the courts. In adherence to the principles of scientific management, this meant simply more outputs (disposition of cases) with the same resources (courts/judges/staff). Studies had been done at the local level, going at least as far back as 1922 when Roscoe Pound and Felix Frankfurter conducted an examination of the local Cleveland court system and how it handled criminal cases. (Cleveland Foundation, 1922) But 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 1965 federal effort to examine and improve criminal justice at the state level (President's Commission on Law Enforcement and the Administration of Justice) led to the creation of the Law Enforcement Assistance Administration (LEAA) and a marked interest in the unification of courts. This interest was based on a 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. The task force cited to the state of Michigan, which in 1961 had in fact amended its constitution to declare itself a unified court system and the judicial branch made up of “one court of justice” with the supreme court given “general superintending authority” over the trial courts. However, there was no consolidation of the state’s courts and administration control was retained at county government/municipal level or in the hands of individual courts. As late as 2001, Michigan remained in practice a very decentralized state with little consolidation aside from the abandonment of a special court in Detroit. (Baar, 2001)

Despite the confusion over the definition of “unified” LEAA was convinced anecdotally unified state court systems were better and was 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 at 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. (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. (1973) 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 from the National Survey of Court Organization 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, along with the ABA’s 1973 Standards of Court Organization which effectively repeated the call for consolidation, centralization, and judicial rulemaking, to attempt to parse out a unification scale. Berkson’s work kept consolidation and judicial rulemaking 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 5 elements). His measures included elements external to the judicial branch, such as the source of funding (state vs. local) and whether the governor could amend or alter the judicial branch’s budget request to the legislature. 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)

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

<p>Consolidation and Simplification of Trial Court Structure Number of trial courts (1 trial court = 4 points) One trial court of general jurisdiction (1 trial court = 4 points) Trial courts of limited jurisdiction (0 or 1 court = 4 points) Separately administered specialized courts (0 courts = 4 points)</p> <p>Centralized Rule Making Legally charged rule maker (state's highest court = 4 points) Actual rule maker (state's highest court = 4 points) Legislative veto power (no veto power = 4 points) Utilization of rule making (most use = 4 points)</p> <p>Centralized Management Assignment power of supreme court (power to transfer judges = 4 points) Role of the state court administrator in supervising trial court administrators (most supervision = 4 points) Activities of state court administrator. (most activities = 4 points) Type of merit system (state-wide merit = 4 points)</p> <p>Centralized Budgeting and State Financing Extent of centralized judicial preparation of the budget (central preparation = 4 points) Extent of executive branch participation in budget (executive excluded = 4 points) Use of gubernatorial item veto over judicial budget (no authority = 4 points) Extent of state financing (80% to 100% = 4 points)</p>
--

Dill (1978) using the same data as Berkson compiled as part of 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" with a focus, based on the factor analysis, on four elements:

1. does the state court administrator supervise or have control over trial court administration
2. what at the activities the state court administrator is responsible for
3. what sort of personnel system does the state use to hire court employees
4. what percent of the judiciary is state funded

These first two measures would be directly replicated in *State Court Organization* and form the basis for the measurement of centralization in a state. 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.

We have found that systems with simplified court structures are not especially likely to have internal control, systems with internal control are not especially likely to have centralized management-budgeting, and systems with centralized management-budgeting are not especially likely to have simplified court structures. Moreover, we have found correlations so low as to indicate the absence of relationships between many of the individual items comprising the unification index, and, in some instances even between pairs of items associated with the same component.

Dill found that disaggregation into component parts (e.g. the individual variables/elements) was critical, which he then demonstrated in the remainder of the piece by examining why certain elements of unification exist, for example finding a strong correlation between a smaller state size and a greater likelihood of the presence of internal controls for the

judiciary and a weaker one for population density and simplified trial court structure. In keeping with Gallas' (1976) descriptions of the localized nature of courts, Dill found that states with larger numbers of counties are less likely to have any measure of unification.

Dill concluded that the assumptions of those seeking unification for 7 decades had, by that point, been "large and unproven" and that proponents of unification may have felt no need to prove their position that unification mean increased in efficiency because until that point no one questioned the assumption. Dill admitted that the data at that time was still lacking with respect to many of these issues and were beyond his ability to answer at that time.

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. Fetter (1979) found a negative correlation between the degree of ruralness in a state and the extent to which the state has adopted the recommendations set forth in the ABA Standards of Court Organization with respect to unification. 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 and effort 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 5 elements rather than the traditional 3 (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 J. D., 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 3 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 4 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 that kept the call for consolidation, centralization and judicial rulemaking, 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 system wide 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)¹

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 4 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 did

¹ 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.

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 8 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 8 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.

Organization and management. At almost the same time that unification was making a comeback of sorts, so too were some of the underlying assumptions with the growth of research on organizational structure (Fry and Raadschelders, 2008). Glisson and Martin (1980) found a centralized, hierarchical management structure is the most important predictor for productivity and efficiency. James Q. Wilson (1989) posited that organizational structure matters by focusing on outcomes and outputs as the distinction between approaches to bureaucratic action. Wilson specifically rejected the argument that “it’s not the organization that’s important it’s the people

in it.” Structure can and does vary widely, even within the same policy area, as the federal system allows for states to design their own institutions driven by their own cultures (Fitzpatrick & Hero, 1988). Structure and organization shape decision-making, implementation, and outcomes (Frederickson and Smith, 2003). Research in organizational structure began returning to Gulick’s research design and organizational principles and finding some degree of support for them. Meier and Bohte literally wrote an “Ode to Luther Gulick” (2000) and elaborated further on their findings a few years later (Meier & Bohte, 2003) that span of control, as an aspect of centralization, significantly shape policy outcomes. Boyne (2003) was able to produce a meta-analysis of studies to demonstrate “there is consistent support for a positive relationship between centralization and service performance (whether the latter variable is measured as output quantity, efficiency or outcomes).”

Moreover calls were being made for a return to precisely the sort of hierarchical administration that had been rejected in decades past. Key to this resurgence started at the federal level with the National Performance Review in 1993 and its state counterpart, the Winter Commission Reports, both driven by the New Public Management movement. (Milakovich & Gordo, 2012) The National Commission on the State and Local Public Service, which former Mississippi Governor William F. Winter chaired, was commissioned by the Nelson A. Rockefeller Institute of Government to address the issue of governance reform at the state and local level. The first report “Hard Truths/Tough Choices” (1993) was presented to President Bill Clinton just two months before Clinton would direct the creation of the National Performance Review to conduct at the federal level the sort of review that the Winter Commission had done at the state/local. (Milakovich & Gordo, 2012) A substantial portion of the report focused on strengthening of “executive leadership” coupled with centralization of authority and operations

at the state level. The specific recommendations included reducing the number of independently elected cabinet-level officials, consolidating or elimination as many overlapping or underperforming units as possible, and making use of an “executive budget” approach where the entire budget must be approved, amended, or rejected as a single bill. While not specifically addressing state judiciaries, the Winter Commission’s message of centralized authority and the elimination of elected officials (in the case of the courts elected clerks) have similarities and parallels.

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:

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

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

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)

Assessing Organizational Performance. Addressing the area of organizational performance, Cameron (1980) identified four formulations: goal attainment, system resource, internal processes, and strategic constituencies. Goal attainment is the most widely used model (Rahim, 2010) and measures the ability of the organization to achieve its goals or objectives. This applies at the organizational level (Etzioni, 1960; Etzioni, 1964) and within the organization at the individual level. (Georgopoulos & Tannenbaum, 1957) The measures of goal attainment often take the form of productivity or efficiency. (Rahim, 2010) Specifically, this model defines productivity as the number of units produced and efficiency as the output or input units produced or delivered within a given period of time. (Miles, 1980) From this data can be determined the level of “success” or “failure” demonstrated in an organization. (Mohr, 1973; Simon, 1964) While apparently simple, the goal attainment model relies on the assumption of clearly delineated, static goals. (Etzioni, 1960) Such goals are only rarely written down and even if they are, there may be a tension between the “official” organizational objectives and the “operative” objectives that are actually being perused. (Perrow, 1961) Such operative goals may exist in strategic plans or policy statements, but not always. (Newman, 2001) Despite these problems, goal attainment remains markedly popular in the literature and development of public administration and organizational measurement; public services are expected to achieve and/or produce some good or service that is both tangible and satisfactory to key stakeholders. What remains to determine is how to quantify each of these elements (Boyne, 2003)

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

	Inputs	Activities/Processes	Outputs	Outcomes/impacts
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 and Conclusion: Where Do We Go From Here?

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?

Chapter 3: Methods

The primary goal of this research is to examine if there is a correlation between a state's level of judicial unification and the state judiciary's performance. A positive finding would buttress arguments made 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. A secondary goal is to determine which 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 seeks to address the question of whether or not unification has an impact on court performance and if so is it a positive one. This relies on the notion 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

Efficiency₁

H₀ If a state has a more centralized judicial administration, it has NO impact on the total clearance rate

H₁ If a state has a more centralized judicial administration, it has an impact on the total clearance rate

H₀ If a state has a more consolidated trial court structure, it has NO impact on the total clearance rate

H₁ If a state has a more consolidated trial court structure, then it has an impact on the total clearance rate

Efficiency₂

H₀ If a state has a more centralized judicial administration, then it has NO impact on the per judge clearance rate

H₁ If a state has a more centralized judicial administration, then it has an impact on the per judge clearance rate

H₀ If a state has a more consolidated trial court structure, then it has NO impact per judge clearance rate

Population and Sample

All 50 states are eligible for inclusion in the study. For this study 26 were excluded due to the fact that they did not report data for either the independent variable (1 state: Wyoming) or the dependent variables (25 states). Caseload data (cases filed and cases disposed, plus number of judges) were obtained from the remaining 24 states for the 2013, the latest year for which comparable data across states 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.

For purposes of this research, data from 2 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 Figure 2 below.

- 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.

Figure 2 SCO Table 13 Survey Instrument Example

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

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	

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) was developed. The Dictionary 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 the Court Statistics Project at 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 of this data collection was 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

- 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, as will be seen in Chapter 4, the 24 states ultimately selected were consist 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 consist with respect to the Dependent Variables.

Chapter 4: Analysis

Overview

Based upon the literature review and methodological considerations previously, this chapter will start by examining the specific forms of analysis used on the dataset collected, including the rationales used to exclude certain analysis techniques. Second, the chapter will examine the sample aspects of the research in which half of states were excluded for a lack of data with respect to the dependent variable. Third, the chapter will look at the two separate regression analyses run on the dataset to examine the relationships between the independent variables and the two dependent variables. Finally, the chapter concludes with the results of said analysis.

Selection of analytical technique

A preliminary analysis was conducted using Exploratory Factor Analysis (EFA) to reduce the 31 factors that make up centralized administration. Factor analysis focuses on reducing a set of measures to some smaller number of latent, unobserved variables. In the case of EFA this means data reduction; presenting X variables in terms of Y latent variables where $X > Y$. While an EFA sequence was attempted with the data from the 49 states, attempting the same with only the data elements from the 24 states available proved impossible; the lack of observations made such a reduction impossible given that the number of factors to be reduced was greater than the number of observed states ($31 > 24$).

Based on the findings of the Exploratory Factor Analysis it was determined that a more reasonable approach would be to create a composite score made of the 31 centralized administration items. Where single indicators are scored on the same scale and can be assumed to be of roughly equal relevance, it is possible to simply compute the sum or arithmetic mean of

the raw scores as a composite score. (Marcus, 2006) While the use of a composite score eliminates the possibility of measuring more nuanced differentials between and among the individual elements that make up the independent and dependent variables, this method is arguably an improvement over prior efforts by Bolling-Swann and others that relied on few observations/states and fewer measures within those states. Moreover the creation of such a ratio scale allowed for the use of an ordinary least squares regression in lieu of an EFA where all prior work had relied on t-tests or descriptive statistics alone.

Independent Variables

The composite score for each state's level of centralization was derived by adding the total values (3 – No Responsibility, 2 – Shared Responsibility, 1 – Total Responsibility) for the 31 central management elements as show in Appendix A. The resulting scores for the 24 states ultimately used are indicated in Table 7. The measurement of the level of consolidation was the number of trial court types within each state. States with higher numbers of trial court types were deemed to be less consolidated. The final variable, counties, was used as a control based on Gallas' supposition that a state with more counties would be inherently less “unified” given the number of centers of power available. (i.e. each county would have its own leader and leadership). The data is indicated in Table 7.

Table 7 Independent Variable Data: 24 states

State	Centralization Average	Number of Trial Court Types	Number of Counties or Equivalent
Alabama	1.74	4	67
Alaska	1.90	2	30
Arizona	2.13	4	15
California	2.19	1	58
Florida	2.35	2	67
Hawai'i	1.71	2	5

Idaho	1.87	2	44
Illinois	2.00	1	102
Indiana	2.29	6	92
Iowa	1.90	1	99
Kentucky	1.74	3	120
Maryland	2.16	3	24
Michigan	2.16	5	83
Missouri	2.35	2	115
Nebraska	1.71	4	93
Nevada	2.32	3	17
New Hampshire	2.32	2	10
New Jersey	1.87	3	21
New York	1.45	10	62
Ohio	2.32	5	88
Texas	2.87	6	254
Utah	1.68	3	29
Vermont	1.74	2	14
Washington	2.42	3	39
AVERAGE	2.05	3.29	64.5

In using such a limited sample a question arises as to whether or not the sample selected is representative of the population as a whole. One way to address that issue at least with respect to the independent variables (centralization and number of court types) is to examine the means of the sample selected (the 24 state sample) against the 25 states not selected due to lack of data for the dependent variable. The 50th state, Wyoming, had no data with respect to either variable.

A Two-Sample T-Test compares the means between two groups on the same dependent variable to determine if they are equal or vary from one another. The null hypothesis always assumes that the means are equal. An example of such a test would be to determine whether student exam scores differed based on gender with the dependent variable being the scores and the independent variables being gender (male and female). If the results of the test are significant ($p < 0.05$) then the null is rejected and there is a statistically significant difference between the means.

Here, the Two-Sample T-Tests were run on each of the 31 separate elements that made up centralized administration as well as the number of trial courts. In none of these 32 tests was a significant difference found between the averages of the 24 states included and the 25 states excluded ($p = .127 - .414$) whether or not equal variances were assumed or not assumed. The full results are available in Appendix A. Therefore, while it may not be possible to speak of whether the 24 states selected are comparable with respect to the dependent variables, it is possible to suggest that these states are comparable with respect to the independent variables.

Table 8 Two-Sample T-Tests: Sampled states vs. Non-Sampled States

Group Statistics

	INCLUDE	N	Mean	Std. Deviation	Std. Error Mean
AverageCount	Include	24	2.026881725	.3084810105	.0629684226
	Exclude	25	1.948387120	.3560585176	.0712117035
NumberOfTrialCourts	Include	24	3.29	2.032	.415
	Exclude	25	4.20	2.062	.412

Independent Samples Test

		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
AverageCount	Equal variances assumed	.654	.423	.823	47	.414	.0784946050	.0953412049	-.113307	.2702963696
	Equal variances not assumed			.826	46.524	.413	.0784946050	.0950585554	-.112790	.2697794170
NumberOfTrialCourts	Equal variances assumed	.910	.345	-1.553	47	.127	-.908	.585	-2.085	.269
	Equal variances not assumed			-1.553	46.965	.127	-.908	.585	-2.085	.268

Dependent Variables

The dependent variables relied on three separate data elements: statewide total incoming caseload, statewide total outgoing caseload, and the number of judges present in each state. The year select for data collection was 2013 as it is the latest available. From these were computed the case clearance rates (Efficiency₁) and case clearance rate per judge for each state (Efficiency₂). The data is indicated in Table 9.

Table 9 Dependent Variable Data: 24 states

State	Statewide Total Incoming Caseload	Statewide Total Outgoing Caseload	Statewide Case Clearance Rate	Number of Judges	Statewide Case Clearance Rate Per Judge
Alabama	1387788	1335007	0.96	633	2109.02
Alaska	135094	136265	1.01	62	2197.82
Arizona	2171082	2360525	1.09	416	5674.34
California	7900336	6823371	0.86	1695	4025.59
Florida	3731145	3901983	1.05	921	4236.68
Hawai'i	482876	462053	0.96	68	6794.90
Idaho	381508	420720	1.10	134	3139.70
Illinois	3229146	3164753	0.98	514	6157.11
Indiana	1547345	1527103	0.99	391	3905.63
Iowa	822442	846332	1.03	337	2511.37
Kentucky	1011963	1018637	1.01	261	3902.82
Maryland	2139962	2289044	1.07	325	7043.21
Michigan	3766430	3842350	1.02	572	6717.40
Missouri	2856058	2629068	0.92	719	3656.56
Nebraska	481582	489027	1.02	131	3733.03
Nevada	956887	945025	0.99	79	11962.34
New Hampshire	155020	155074	1.00	89	1742.40
New Jersey	7472421	7475753	1.00	678	11026.18
New York	3908547	3684220	0.94	3110	1184.64
Ohio	3527329	3547851	1.01	954	3718.92
Texas	13781132	13597778	0.99	3070	4429.24
Utah	778280	792671	1.02	248	3196.25
Vermont	153155	146034	0.95	45	3245.20
Washington	2499134	2379226	0.95	398	5977.95
AVERAGE	2719860.92	2665411.25	1.00	660.42	4678.68

Regression

The average Centralization Score for the 24 states selected was 2.05 on a scale from 3 (No Responsibility of AOC for Trial Court Functions) to 1 (Total Responsibility) and ranged from 1.45 (New York) to 2.87 (Texas). Despite being on opposite ends of the Centralization scale, they were 23rd (Texas tied with Indiana) and 24th in terms of consolidation scores with 6 and 10 trial court types, respectively. Several other states that had high centralization scores had low consolidation scores. As a result, there was a negative Pearson correlation coefficient between the reported level of centralization and the level of consolidation, however it was not statistically significant ($r = -0.40, p > .005$)

Table 10 Correlation between Number of Trial Court Types and Centralization Average

		Correlations	
		Number of Trial Court Types	Centralization Average
Number of Trial Court Types	Pearson Correlation	1	-.040
	Sig. (2-tailed)		.852
	N	24	24
Centralization Average	Pearson Correlation	-.040	1
	Sig. (2-tailed)	.852	
	N	24	24

An ordinary least squares (OLS) regression was run to test the relationship between case clearance rates (Efficiency₁) and the level of unification (centralization and consolidation). The results are found in Table 11. The model resulted in a negative Adjusted R Square, indicating the model fits the dataset badly. Moreover, none of the variables were statistically significant at the .05 criterion ($p = .600, .880, \text{ and } .955$). Therefore, it is not possible from this data to reject the null hypothesis that if a state has a more centralized judicial administration and/or has a more consolidated trial court structure it has NO impact on the total clearance rate. Only Centralization

Average appears to have any impact albeit one that is small ($B = .006$) and not statistically significant ($.880 > .05$).

Table 11 Regression for Efficiency₁ (Case Clearance Rates)

Model Summary				
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.124 ^a	.015	-.132	.055949591350

a. Predictors: (Constant), Centralization Average, Number of Trial Court Types, Number of Counties or Equivalents

Coefficients ^a						
Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	.991	.082		12.040	.000
	Number of Counties or Equivalents	.000	.000	-.139	-.533	.600
	Number of Trial Court Types	.000	.006	.013	.057	.955
	Centralization Average	.006	.040	.038	.153	.880

a. Dependent Variable: 2013 Statewide Case Clearance Rate

Null Hypothesis 1: If a state has a more centralized judicial administration, it has NO impact on the total clearance rate

Result 1: Higher levels of centralized judicial administration do not appear to have an impact on the total clearance rate

Null Hypothesis 2: If a state has a more consolidated trial court structure, it has NO impact on the total clearance rate

Result 2: Higher levels of consolidated trial court structure do not appear to have an impact on the total clearance rate

A second ordinary least squares (OLS) regression was run to test the relationship between case clearance rates per judge (Efficiency₂) and the level of unification (centralization and consolidation). The results are found in Table 12. The model resulted in a positive Adjusted R Square of .045, indicating the model explains 4.5% of the variance between the states when it comes to case clearance rates per judge. However, none of the individual variables were statistically significant at the .05 criterion ($p = .109, .134, \text{ and } .939$). Therefore, it is possible not

from this data to reject the null hypothesis that if a state has a more centralized judicial administration and/or has a more consolidated trial court structure it has NO impact on the total clearance rate per judge.

Of the three variables used, Centralization Average appears to have a large positive impact ($B = 3124$) that weighs against centralization. As noted previously the greater the level of average centralization score, the less centralized a state was considered (an average centralization score of 1 would indicate total centralized control). Here, for every unit increase in Centralized Average, judges in the state are predicted to process 3124 more cases, holding all other variables constant. The other main variable to be tested was consolidation in the form on the number of trial court types. It too was not statistically significant ($p = .939$) and seemed to suggest only a very minor impact on case clearance rate per judge; for every one additional trial court type judges were able to dispose of 22 fewer cases. Using the model displayed in Table 12 it appears that there is no relationship can be drawn between either the levels of centralized judicial administration or a consolidated court structure and the total clearance rate for a state's judiciary. The inability to detect a statistically significant relationship between the variables weighs against the assumptions in both the literature and the constitutional/statutory application of unification techniques in U.S. states over the last century. Admittedly it is not possible that the dataset, lacking as it does information for one-half of states with respect to clearance rates, is able to completely dismiss the possibility that there is no impact (positive or negative). The fact that the p values were so high (.109, .134, and .939) would indicate it is highly unlikely. Moreover, the use of 24 states is broader and more expansive than prior efforts that used from 6-12 states, indicating that the inability to reject the null could be relied upon with more confidence than prior efforts.

Null Hypothesis 3: If a state has a more centralized judicial administration, then it has NO impact on the per judge clearance rate

Result 3: Higher levels of centralized judicial administration do not appear to have an impact on the per judge clearance rate and if they do it appears to be a negative one.

Null Hypothesis 4: If a state has a more consolidated trial court structure, then it has NO impact per judge clearance rate

Result 4: Higher levels of consolidated trial court structure do not appear to have an impact on the per judge clearance rate.

Table 12 Regression for Efficiency₂ (Case Clearance Rates Per Judge)

Model Summary				
Model	R	R Square	Adjusted R Square	Std. Error of the Estimate
1	.412 ^a	.170	.045	2.5938584998409

Predictors: (Constant), Number of Trial Court Types, Centralization Average, Number of Counties or Equivalents

Coefficients ^a						
Model		Unstandardized Coefficients		Standardized Coefficients	t	Sig.
		B	Std. Error	Beta		
1	(Constant)	-474.570	3815.524		-.124	.902
	Centralization Average	3123.900	1863.512	.384	1.676	.109
	Number of Counties or Equivalents	-18.323	11.727	-.374	-1.562	.134
	Number of Trial Court Types	-21.954	283.245	-.017	-.078	.939

a. Dependent Variable: 2013 Statewide Case Clearance Rate Per Judge

The assumption of unification had always been that it was a net positive for the efficiency of state judiciaries. The examination of the dataset with respect to the per judge clearance rate however, is at best inconclusive on the subject with respect to consolidated trial court structure. At the other end, and in seeming contravention to the assumptions of unification, centralized judicial administration appears to have a net negative impact on the per judge clearance rate. The model shows that the independent variable for centralization itself is not statistically significant, however if the advocates of unification were correct we should expect to see both a significant impact and a positive one at that.

Chapter 5: Conclusions and Recommendations

Overview

The purpose of this study was to explore empirically the relationship between court unification and the performance of the judiciary to address the research question

Are unified state court systems more efficient than non-unified?

The results from the analysis would seem to suggest that there is no evidence to support the contention advocated for nearly a century that would answer this question in the affirmative. While the analysis itself was limited (a single-year, 24 states) it was of a larger scope than the prior research in this area, suggesting greater reliability. This concluding chapter then seeks to offer a review of current status of research in the area and make recommendations for both policy actions based on the analysis as well as future avenues for research.

Summary

This study marks the first large scale attempt to directly measure empirically the level of unification of each state court system in terms of centralized administrative authority and consolidation of court types and measure efficiency at the state. The few prior studies in the area 1) subjectively defined some states as more/less unified, 2) relied on data extrapolations for multiple years of analysis 3) relied on a handful of 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 study should also be read as a caution or warning against consolidation and centralization for its own sake, something that lead to the abandonment of unification as a

driving judicial reform force in the 1970s in favor of examining individual court performance. 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 offered the independent and control variables, while the measures of efficiency offered the dependent for this study.

Theoretical Framework

Unification formed the basis for much of the legal community’s push for judicial reform for a century. Inefficiencies in state court performance were attributed to three basic problems: 1) there were too many different trial court types with overlapping, overly specialized, and confusing jurisdictions, 2) there was a desperate need for a general administrative authority to measure, control, and direct the judicial branch as a whole rather than as a myriad of dysfunctional autonomous units and 3) that the laws and rules of practice and procedure in the courts should be handed off to this centralized administrative authority. The solution offered up was a product of the times, reflecting the interested in the early 1900s of scientific management and the belief that Weberian bureaucratic/hierarchical structures could be effectively applied to the courts in the guide of efficiency. This reduced the role of judges, clerks, and court staff to that of employees in an assembly line process where the outputs where the outputs were all effectively the same: cases closed, justice rendered. Unification sought to concentration on the organizational structure and control of that structure, rather than examinations of law and statute, as a means to that end.

Efficiency

Whether because the data was not available, or because it was and no one was interested in demonstrating its impact, the question of whether a state with a unified judicial system was “better” was left to subjective belief and opinion. By the 1970s, however, several efforts were made to measure the first part of the question, which was or was not more unified. The second portion, what state was “better”, relied on opinion of lawyers. Political scientists and public administration scholars attempted remove the process from being the exclusive domain of lawyers by applying empirical tests and settled on two measures for efficiency. The first focused on the state’s overall ability to clear cases filed in its trial courts each year while the second focused on how many such cases judges were disposing per year. These were specifically not questions of justice, equity, or equality and did not seek to venture into areas that were better contented with by legal and constitutional scholars. Instead, efficiency asked, and asks, if cases are being delayed or denied a final outcome. Today, many state courts are effectively measuring how they are doing this at the state level, but many still do not. Moreover, because of the numerous differences in the ways state courts define for legal or constitutional reasons when a case is open or closed, reliance on time measures across states is effectively impossible. There is no consistent way to measure timeliness from trial court to trial court, sometimes even within a state. The use of case filing and dispositions, however, has the benefit of a central definition established by the National Center for State Court’s Court Statistics Project in conjunction with the Conference of State Court Administrators. This data therefore allows for the first time a consistent metric across states.

Principal Findings

An ordinary least squares regression was the methodology used to determine the elements of unification which were strong predictors of efficiency. Initially all 50 states were included; 24 states were used.

Inability to find a link between unification and efficiency

In sum, a relationship between managerial performance and court performance could not be demonstrated or shown. Even taking into account the limitations of this study, 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 striking. The operating public policy assumption for a century had been that there was not only a direct linkage but that it was a positive one. As noted previously the used dataset does not support this contention and, at least with respect to cases cleared per judge, would seem to perhaps weigh *against* unification. This inability to make such a link has several ramifications.

First, opposition to repeal or roll back efforts at unification (the creation of more court types, the devolving of power back down to the local court level and away from centralized administration) should be reexamined. Legislatures in California and Kansas have in recent years moved towards removing the centralized administrative aspects of their state judiciaries. In the case of California, the state's Judicial Council was prohibited from moving funding without the consent of 2/3rds of trial courts. In Kansas, the power to name local chief judges, set salaries, make expenditures, and most human resources functions was removed from the Supreme Court and granted to the local judges. In both instances the central authorities argued that it would lead to 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.

Second, efforts to expand unification in other states will have to rely on arguments other than efficiency. Cost savings, for example, has proven in the past to be a motivator rather than caseload efficiency. Case clearance rates may remain the same, the argument goes, but the amount of money required to clear those cases can be reduced. Additional arguments in favor may also be required in order to develop the concept beyond simple faith that unification is a panacea for whatever particular ails exist in a court system.

Third, the inability to find a linkage between unification and efficiency on a larger scale could make way for more focused development on individual elements of unification. This study included a composite score/index for 31 different elements of centralized administrative control over trial court operations. 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.

Multifaceted unification

A key finding of this research is to give an understanding, or at least an alternative metric, for what states are more or less “unified.” This has been a highly contentious and even constitutional issue; state constitutions identify, and several state supreme courts have self-identified, their state as “unified” and use that as the basis for legal interpretations as to their authority. (Raftery 2013) Researchers had for decades used subjective, objective, and mixed approaches to come up with an answer of what state was more or less unified than another. Most (Vanderbilt, 1949; Dill, 1978; Berkson, 1978; Flango 1981; Flango & Rottman 1992) relied on

the reduction of an entire state to a single metric (usually made up of several measures) that created a unification matrix. One critical finding is the wide disparity between unification when it comes to the individual elements that make up centralized administration or a consolidated court system. Michigan and Missouri, two of the states with the lowest measures of Centralized Administration Authority, yet Michigan's 1964 constitution declares it is "one court of justice" and the Missouri Supreme Court has held that the state's 1976 constitutional revisions created a declared a "unified system of Missouri courts" in that state. (Raftery, 2013) Contrast this with Hawai'i, which had the third highest Centralized Administration Authority score, a consolidated court system (general jurisdiction and limited jurisdiction), but is not legally defined as "unified."

There are a myriad of ways in which unification, or at least centralized administrative control, can be divided with respect to efficiency or performance measurement. Lussier (2011) offers up four resource types: human, financial, physical, and informational. Harrsion and St. John (2009) divide these as human, physical, financial, knowledge and learning, and general organizational. Verhoest, Peters, Bouckaert, & Verschuer (2004) in their conceptual review of organizational autonomy and centralization divided these into managerial, policy, structural, financial, legal, and interventional. State Court Organization, a "joint effort of [the] Conference of State Court Administrators and [the] National Center for State Courts" since 1980 has offered the indicies approach with respect to state courts in particular. The measures themselves vary, but they all consistently demonstrate that "unification" is a far more nuanced concept, and measurement, that a single constitutional declaration would suggest. Nor does this necessarily mean an utter affirmation in favor of the 31 items selected for the purposes of this study, however this method has the marked benefit over others to rely on a variety of measures and

thereby (assuming no intercollinarity) to give a better understanding of where state court systems stand in comparison to one another.

Ramifications of "bragency"

A broader question arises in what Raftery (2013) described as bragency: a state's judiciary stands alone in being expected to function simultaneously as a single branch and a single agency throughout a state and having the authority to achieve neither. No state adopted the entirety of "unification" as originally envisioned with the establishment of a single court made up of divisions with interchangeable judges and a quasi-governor sitting atop. None went to far as to create a system of judge-employees who would be hired and fired by the chief justice; in terms of clerical staff some states moved closer to this ideal than others. Judiciaries at the state level are on occasion seen and organized as branches; they often have their own IT systems, separate support services and agencies, separate appropriations line items. But looking closer one finds individual districts, counties, even courts in states that are constitutionally defined as "unified" effectively outside the control of the centralized state authority (chief justice/supreme court/judicial council). In dealing with the prospect of a "unified" Europe in the 1970s Henry Kissinger reportedly quipped "Who do I call if I want to call Europe?" Kissinger has in recent years denied making the exact comment (Gera, 2012), but the underlying premise remains that courts in many states remain a multitude of individual actors and entities often in direct contravention to the "unified" language in law.

From a policy perspective this often means that local courts are not fully acknowledged as being a separate branch of government, but are instead looked upon as mere agencies of local government under the command and control of the other two branches. At worst this results in pressures for courts to operate like other agencies, particularly in terms of generation of revenue.

The Conference of State Court Administrators (2012) warned that courts are not revenue centers. The US. Department of Justice in its report on the situation in Ferguson, Missouri noted that the local municipal court was housed in and staffed by the local police; even the court's clerk was part-time police employee. (United States Department of Justice, Civil Rights Division, 2015) The state of Missouri itself was unable to give a specific number of municipal courts in the state; there was no obligation on the part of localities to report the existence of a municipal court to the state's supreme court or state court administrators office. A new law adopted in 2015 now requires all courts report their existence to the Clerk of the Supreme Court (Mo. Rev. Stat. §. 479.155).

Recommendations

Recommendation 1: The need to re-examine unification

An important conclusion to be drawn from this study is that unification may matter in terms of efficiency and that the effective abandonment of looking at overall state court organization and structure in favor of focusing on individual court performance in this regard was an error. There was some logic to its abandonment in the 1970s. There was no data to support what had to the point been a tenant of faith in some corners of the legal reform community that unified meant better and faster disposition. The concept had lain too long in law journals, judges, and lawyers and had never been empirically challenged. The offered solution to drop it as a focus of research, or to instead focus on the fiscal/financial benefits of unification, was misplaced.

Just as misplaced was the notion by legal reformers that unification was a panacea for all woes affecting the courts. As with any endeavor there are tradeoffs. There appear to be benefits

to overall clearances rates in placing in the hands of a centralized state-level authority the decision to where to put judges (temporarily or permanently), but these are potentially outweighed by other elements of unification, or factors not even included within the confines of this particular study. Judges are not merely employees and cases cannot simply be disposed of in an assembly line fashion within a legal and social context that values judges as arbiters and law and courts are the mechanism by which society seeks to right wrongs in a peaceful context.

Perhaps then there is a better way to formulate the question of unification and that is abandon the term outside of some limiter.

- 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.

Recommendation 2: Stop "Courting Ignorance"- the need for data

A second more basic question is the need for data in the area of courts. As noted for over a century a basic tenant for unification has been for the collection of comparable data regarding

the processing of cases in a state. Since the 1970s the National Center for State Courts has been the “de facto national archive of state court caseload information” using first the *State Court Model Statistical Dictionary* from 1980 to 2003 and more recently the *State Court Guide to Statistical Reporting* to allow for cross-state comparisons. However, there are challenges starting at the basic court level itself. As noted above, 26 states were unable to identify the total number of cases filed and disposed in all their courts in the period selected. In many cases the reason was that the lower, smaller, locally controlled courts did not, could not, or would not report that information *at all* to the centralized state authority (state court administrators office). In many instances the reason was that the court itself simply did not collect that information to even be able to send to the central authority in the first place. In others the data was available for some counties or some lower court types, but not others. Early advocates for court reform such as W.F. Willoughby in his book *Principles of Judicial Administration* (1929) 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.

Today is no different in many respects that conditions in 1929/1930. Stephen Yeazell (2014) notes that as far as research is concerned, “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.

More advanced concepts, such as computing average time to disposition rates for judges, courts, or states, are effectively impossible as a result. Where it is collected, it is rarely released to the public at the aggregate level, much less at the judge level. Moreover, there is an insituational aversion to such efforts from the judiciary. When the Michigan's State Court Administrative Office (SCAO) in 2012 moved towards such performance measures and suggested that the information could possible be released to the public in the futurte, 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)

Future Research

There are a number of areas suggested by this study for future research using the data set collected or with supplemental data points:

- Case type differentials: Henderson, et al. (1984) suggested that unification could be more beneficial to the efficient disposition of certain case types over others. They divided the caseload into civil and criminal; the data used in this research and collected by the National Center for State Courts divides this into five areas: civil, criminal, domestic relations, juvenile, and traffic/infraction/ordinance.
- Disaggregation and case type: A combination of the above, but with an added focus on how individual elements relate. For example, centralized control over probation (criminal) should theoretically have no impact on efficiency in civil cases, but could impact efficiency in criminal dispositions.
- Single Group Pretest/Posttest (Jackson, 2014): Four states have made major advances towards unification in the last 15 years: California (2000), Arkansas

(2000 with implementation over the last decade), Vermont (2010), and New Hampshire (2011). Although it would lack external validity, examining the level of efficiency before unification and after in each would provide some degree of information on impact.

- Nonequivalent Control Group Pretest/Posttest (Jackson, 2014): Similar to the above, but with “control” states used that did not undergo unification before, during, or after the time periods in question. Because they would be purposefully selected and nonrandom, they would not be precise equivalents

Appendix A Complete T-Test Results: 24 selected states vs. 25 not-selected states on independent variables

Independent Samples Test

		Levene's Test for Equality of Variances		t-test for Equality of Means						
		F	Sig.	t	df	Sig. (2-tailed)	Mean Difference	Std. Error Difference	95% Confidence Interval of the Difference	
									Lower	Upper
NumberOfTrialCourts	Equal variances assumed	.965	.331	-.860	47	.394	-.508	.591	-1.697	.680
	Equal variances not assumed			-.861	46.997	.394	-.508	.591	-1.696	.680
Appointment of Sitting Judges	Equal variances assumed	.042	.839	-.289	47	.774	-.062	.213	-.491	.368
	Equal variances not assumed			-.289	46.972	.774	-.062	.213	-.490	.367
Appointment of Supplemental Judges	Equal variances assumed	.049	.826	-.315	47	.754	-.075	.238	-.554	.404
	Equal variances not assumed			-.315	46.686	.754	-.075	.238	-.554	.404
Court Annexed ADR	Equal variances assumed	.005	.944	.212	47	.833	.047	.220	-.397	.490
	Equal variances not assumed			.212	46.988	.833	.047	.220	-.397	.490
Collection of Legal Financial Obligations	Equal variances assumed	.001	.972	.501	47	.618	.095	.189	-.286	.476
	Equal variances not assumed			.502	46.999	.618	.095	.189	-.286	.476
Data Processing	Equal variances assumed	.386	.538	-.883	47	.382	-.168	.191	-.552	.215
	Equal variances not assumed			-.887	45.554	.380	-.168	.190	-.550	.214
Records Management	Equal variances assumed	.087	.769	.550	47	.585	.077	.139	-.204	.357
	Equal variances not assumed			.549	46.486	.586	.077	.140	-.204	.358
Emergency Management	Equal variances assumed	4.601	.037	-.205	47	.839	-.037	.179	-.397	.324

	Equal variances not assumed			-206	42.863	.838	-.037	.178	-.395	.322
Facilities Management	Equal variances assumed	.229	.634	1.281	47	.206	.210	.164	-.120	.540
	Equal variances not assumed			1.285	46.562	.205	.210	.163	-.119	.539
Facilities Security	Equal variances assumed	.017	.896	.960	47	.342	.167	.174	-.182	.516
	Equal variances not assumed			.963	46.609	.341	.167	.173	-.182	.515
Accounting	Equal variances assumed	3.692	.061	1.479	47	.146	.232	.157	-.083	.547
	Equal variances not assumed			1.483	46.590	.145	.232	.156	-.083	.546
Audits	Equal variances assumed	.847	.362	-.630	47	.531	-.125	.198	-.524	.274
	Equal variances not assumed			-.633	45.578	.530	-.125	.197	-.522	.272
Budget Preparation	Equal variances assumed	.279	.600	1.349	47	.184	.230	.171	-.113	.573
	Equal variances not assumed			1.348	46.712	.184	.230	.171	-.113	.573
Purchasing	Equal variances assumed	6.238	.016	1.315	47	.195	.235	.179	-.125	.595
	Equal variances not assumed			1.322	44.845	.193	.235	.178	-.123	.593
Human Resources	Equal variances assumed	.040	.842	.172	47	.864	.030	.175	-.321	.381
	Equal variances not assumed			.172	46.951	.864	.030	.175	-.321	.381
Information Technology	Equal variances assumed	.463	.500	.649	47	.519	.102	.157	-.213	.417
	Equal variances not assumed			.651	46.590	.518	.102	.156	-.213	.416
Judicial Education	Equal variances assumed	1.784	.188	.531	47	.598	.098	.185	-.274	.471

	Equal variances not assumed			.529	43.725	.600	.098	.186	-.277	.473
Judicial Performance	Equal variances assumed	.078	.781	-.095	47	.925	-.022	.229	-.482	.439
	Equal variances not assumed			-.095	46.992	.925	-.022	.229	-.482	.439
General Counsel	Equal variances assumed	.043	.837	.693	47	.492	.167	.241	-.317	.651
	Equal variances not assumed			.693	46.986	.491	.167	.240	-.317	.650
Other Legal Services	Equal variances assumed	1.603	.212	1.240	47	.221	.290	.234	-.180	.760
	Equal variances not assumed			1.245	46.047	.219	.290	.233	-.179	.759
Law Library Staff	Equal variances assumed	.000	.985	1.385	47	.173	.333	.241	-.151	.817
	Equal variances not assumed			1.387	46.986	.172	.333	.240	-.150	.817
Legal Research Staff	Equal variances assumed	.316	.577	1.242	47	.220	.255	.205	-.158	.668
	Equal variances not assumed			1.242	46.979	.220	.255	.205	-.158	.668
Liaison to Legislature	Equal variances assumed	1.423	.239	1.183	47	.243	.183	.155	-.129	.495
	Equal variances not assumed			1.179	45.286	.245	.183	.156	-.130	.497
Liaison to Ombudsman	Equal variances assumed	10.996	.002	-1.551	47	.128	-.258	.167	-.593	.077
	Equal variances not assumed			-1.535	36.061	.134	-.258	.168	-.600	.083
Liaison to Public Information	Equal variances assumed	4.451	.040	-.340	47	.735	-.055	.162	-.380	.270
	Equal variances not assumed			-.338	42.203	.737	-.055	.163	-.383	.273
Foster Care Review	Equal variances assumed	2.167	.148	-.761	47	.451	-.142	.186	-.516	.233

	Equal variances not assumed			-.757	44.038	.453	-.142	.187	-.519	.235
Adult Probation	Equal variances assumed	2.762	.103	.918	47	.363	.152	.165	-.181	.484
	Equal variances not assumed			.922	45.509	.361	.152	.165	-.180	.483
Juvenile Probation	Equal variances assumed	1.473	.231	.702	47	.486	.143	.204	-.267	.554
	Equal variances not assumed			.704	46.350	.485	.143	.204	-.266	.553
Performance Measurement	Equal variances assumed	.818	.370	-.427	47	.671	-.088	.207	-.504	.328
	Equal variances not assumed			-.429	46.235	.670	-.088	.206	-.503	.326
Court Statistics	Equal variances assumed	.240	.627	1.183	47	.243	.183	.155	-.129	.495
	Equal variances not assumed			1.186	46.584	.242	.183	.155	-.128	.494
Research/Planning	Equal variances assumed	.959	.332	.693	47	.492	.100	.144	-.190	.390
	Equal variances not assumed			.692	46.814	.492	.100	.144	-.191	.391
Technical Assistance to Courts	Equal variances assumed	.788	.379	.914	47	.365	.137	.150	-.164	.438
	Equal variances not assumed			.915	46.955	.365	.137	.149	-.164	.437

Group Statistics

	INCLUDE	N	Mean	Std. Deviation	Std. Error Mean
NumberOfTrialCourts	Included States	24	3.29	2.032	.415
	Excluded States	25	3.80	2.102	.420
Appointment of Sitting Judges	Included States	24	2.46	.721	.147
	Excluded States	25	2.52	.770	.154
Appointment of Supplemental Judges	Included States	24	2.13	.850	.174
	Excluded States	25	2.20	.816	.163
Court Annexed ADR	Included States	24	2.17	.761	.155
	Excluded States	25	2.12	.781	.156
Collection of Legal Financial Obligations	Included States	24	2.38	.647	.132
	Excluded States	25	2.28	.678	.136
Data Processing	Included States	24	1.79	.588	.120
	Excluded States	25	1.96	.735	.147
Records Management	Included States	24	1.92	.504	.103
	Excluded States	25	1.84	.473	.095
Emergency Management	Included States	24	2.08	.504	.103
	Excluded States	25	2.12	.726	.145
Facilities Management	Included States	24	2.25	.532	.109
	Excluded States	25	2.04	.611	.122
Facilities Security	Included States	24	2.17	.565	.115
	Excluded States	25	2.00	.645	.129
Accounting	Included States	24	1.79	.509	.104
	Excluded States	25	1.56	.583	.117
Audits	Included States	24	1.88	.612	.125
	Excluded States	25	2.00	.764	.153
Budget Preparation	Included States	24	1.75	.608	.124
	Excluded States	25	1.52	.586	.117
Purchasing	Included States	24	1.88	.537	.110
	Excluded States	25	1.64	.700	.140
Human Resources	Included States	24	1.75	.608	.124
	Excluded States	25	1.72	.614	.123
Information Technology	Included States	24	1.54	.509	.104
	Excluded States	25	1.44	.583	.117
Judicial Education	Included States	24	1.46	.721	.147
	Excluded States	25	1.36	.569	.114
Judicial Performance	Included States	24	2.46	.779	.159
	Excluded States	25	2.48	.823	.165
General Counsel	Included States	24	2.17	.816	.167
	Excluded States	25	2.00	.866	.173
Other Legal Services	Included States	24	2.25	.737	.150
	Excluded States	25	1.96	.889	.178
Law Library Staff	Included States	24	2.33	.816	.167
	Excluded States	25	2.00	.866	.173
Legal Research Staff	Included States	24	2.38	.711	.145
	Excluded States	25	2.12	.726	.145
Liaison to Legislature	Included States	24	1.58	.584	.119
	Excluded States	25	1.40	.500	.100
Liaison to Ombudsman	Included States	24	2.54	.721	.147
	Excluded States	25	2.80	.408	.082
	Included States	24	1.63	.647	.132

Liaison to Public Information	Excluded States	25	1.68	.476	.095
Foster Care Review	Included States	24	2.46	.721	.147
	Excluded States	25	2.60	.577	.115
Adult Probation	Included States	24	2.79	.509	.104
	Excluded States	25	2.64	.638	.128
Juvenile Probation	Included States	24	2.58	.654	.133
	Excluded States	25	2.44	.768	.154
Performance Measurement	Included States	24	1.79	.658	.134
	Excluded States	25	1.88	.781	.156
Court Statistics	Included States	24	1.58	.504	.103
	Excluded States	25	1.40	.577	.115
Research/Planning	Included States	24	1.50	.511	.104
	Excluded States	25	1.40	.500	.100
Technical Assistance to Courts	Included States	24	1.42	.504	.103
	Excluded States	25	1.28	.542	.108

References

- W.K. Kellogg Foundation. (2004). *Logic Model Development Guide*. Battle Creek, MI: W.K. Kellogg Foundation.
- Allison, P. D. (2005). *Fixed Effects Regression Methods for Longitudinal Data: Using SAS*. Cary, NC: SAS Institute.
- American Bar Association. (1896). Report of Committee on Uniformity of Procedure and Comparative Law. *Annual Report of the American Bar Association*, 411-432.
- American Bar Association. (1973). *Standards Relating to Court Organization*. Chicago, IL: American Bar Association.
- American Judicature Society. (1917). Procedure through Rules of Court . *The Journal of the American Judicature Society*, 17-22.
- American Judicature Society. (1917). The State-Wide Judicature Act. *Journal of the American Judicature Society*, 101.
- American Judicature Society. (1917). The Unified State Court. *Journal of the American Judicature Society*, 1.
- American Judicature Society. (1917). Two Model Judiciary Articles. *Journal of the American Judicature Society*, 3-15.
- American Judicature Society. (1930). First Book on Judicial Administration. *Journal of the American Judicature Society*, 59-60.
- American Judicature Society. (1930). Need for Judicial Statistics Realized. *Journal of the American Judicature Society*, 12.
- American Judicature Society. (1960). Commissioners on Uniform State Laws Approve Court Administrator and Unauthorized Practice Acts . *American Judicature Society*, 104.
- American Judicature Society. (1972). State Court Progress at a Glance. *Judicature*, 427-430.
- Andrews, R. W., & Stoney, A. B. (1883). *The Supreme Court of Judicature Acts*. London: Reeves & Turner.
- Archdeacon, T. J. (1997). *Correlation and Regression Analysis*. Madison, WI: University of Wisconsin Press.
- Ashman, A., & Parness, J. (1974). The concept of an unified court system. *DePaul Law Review*, 1-41.

- Baar, C. (1975). *Separate but Subservient: Court Budgeting in the American States*. Lexington, MA: D.C. Heath.
- Baar, C. (1980). The Scope and Limits of Court Reform. *Justice System Journal*, 274-290.
- Baar, C. (1992). Trial Court Unification in Practice. *Judicature*, 179-185.
- Baar, C. (2001). Trial Court Consolidation - Michigan in Context. *Judicature*, 134-139.
- Baker, J. G. (1997). The History of the Indiana Trial Court System and Attempts at Renovation. *Indiana Law Review*, 232-262.
- Baldwin, S. E. (1905). *The American Judiciary*. New York, NY: The Century Co.
- Behn, R. D. (2003). Why Measure Performance? Different Purposes Require Different Measures. *Public Administration Review*, 586-606.
- Berkson, L. (1978). Unified Court Systems: A ranking of the states. *Justice System Journal*, 264-280.
- Berkson, L., & Hays, S. (1976). Injecting Court Administrators into an Old System: A Case of Conflict in Florida. *Justice System Journal*, 57-77.
- Bernard, H. R. (2000). *Social Research Methods: Qualitative and Quantitative Approaches*. Thousand Oaks, CA: Sage.
- Bohlman, B. (1990). Court Unification for North Dakota - Shibolet or Reality. *North Dakota Law Review*, 1-34.
- Bolling Swann, M. (1986). *Organization and Administration of State Courts*. Oxford, MS: University of Mississippi.
- Boyne, G. A. (2003). Sources of public service improvement: A critical review and research agenda. *Journal of Public Administration Research and Theory*, 367-394.
- Boyne, G. A. (2003). What is public service improvement? *Public Administration*, 211-227.
- Brodie, J. (1989). Luther H. Gulick, The Integrated Executive. In B. R. Fry, & J. C. Raadschelders, *Mastering public administration: From Max Weber to Dwight Waldo* (pp. 73-97). Chatham, NJ: Chatham House.
- Brown, R. E., & Pyers, J. B. (1988). Putting Teeth into the Efficiency and Effectiveness of Public Services. *Public Administration Review*, 735-742.
- Bureau Of Justice Statistics. (2000). *State Court Organization 1998*. Washington, D.C.: Government Printing Office.

- Cameron, K. (1980). Critical Questions in Assessing Organizational Effectiveness. *Organizational Dynamics*, 66-80.
- Cameron, S. (2005). *Econometrics*. New York, NY: Mcgraw Hill Professional.
- Chapman, J. (2003). Thinking Outside the Machine. In T. Bentley, & . Wilsdon, *The Adaptive State: Strategies for Personalising the Public Realm* (pp. 50-58). London: Demos.
- Chaston, I. (2011). *Public Sector Management: Mission Impossible?* New York, NY: Palgrave Macmillan.
- Chiulli, R. M. (1999). *Quantitative Analysis: An Introduction*. Amsterdam, Netherlands: CRC Press.
- Cleophas, T. J., Zwinderman, . H., & Cleophas, . F. (2008). *Statistics Applied to Clinical Trials*. Dordrech, Netherlands: Springer.
- Cleveland Foundation. (1922). *Criminal Justice in Cleveland*. Cleveland, OH: Cleveland Foundation.
- Combs, W. L., & Davis, B. M. (2010). *Demystifying Technical Training: Partnership, Strategy, and Execution*. San Francisco, CA: Pfeiffer.
- Conference of Chief Justices. (1950). *Minutes of the Conference of Chief Justices, September 15-17, 1950*. Richmond, VA: National Center for State Courts.
- Conference of State Court Administrators. (1980). *State court model statistical dictionary*. Washington, D.C.: U.S. Dept. of Justice, Bureau of Justice Statistics.
- Conference of State Court Administrators. (1982). *State Court Organization, 1980*. Williamsburg, VA: National Center for State Courts.
- Conference of State Court Administrators. (1984). *Supplement to the State court model statistical dictionary*. Williamsburg, VA: National Center for State Courts.
- Conference of State Court Administrators. (1989). *State court model statistical dictionary 1989*. Williamsburg, VA: National Center for State Courts.
- Conference of State Court Administrators and Conference of Chief Justices. (2012). *Resolution 5 In Support of the Court Statistics Project*. Conference of State Court Administrators and Conference of Chief Justices.
- Conrad, K. (2013). Quantitative Research. In T. Delicath, *Dissertation and Research Success* (pp. 104-142). Xlibris Corporation.

- Cooper, T. (1984). Public Administration in an Age of Scarcity. In J. R. Bowman, *Politics and Administration: Woodrow Wilson and American Public Administration* (pp. 297-314). New York, NY: Marcel Dekker.
- Corwin, R. G. (1965). Professional Persons in Public Organizations. *Educational Administration Quarterly* , 1-22.
- Corwin, R. G. (1969). Patterns of Organizational Conflict. *Administrative Science Quarterly*, 507-520.
- Corwin, R. G. (1970). *Militant Professionalism: A Study of Organizational Conflict in High Schools*. New York, NY: Meredith.
- Court Statistics Project, National Center for State Courts. (2006). *State Court Caseload Statistics, 2005*. Williamsburg, VA: National Center for State Courts.
- Cunningham, J. B. (1978). A Systems-Resource Approach for Evaluating Organizational Effectiveness. *Human Relations*, 631-656 .
- Dakolias, M. (1999). *Court Performance Around the World: A Comparative Perspective*. Washington, D.C.: World Bank Publications.
- Denhardt, R. B., & Baker, D. L. (2007). Five Great Issues in Organization Theory. In J. Rabin, W. B. Hildreth, & G. J. Miller, *Handbook of Public Administration* (pp. 121-149). Boca Raton, FL: Taylor & Francis Group.
- Dill, F. (1978). *Unification of State Court Systems: A Study of National Data*. Stony Brook, NY: State University of New York - Stony Brook.
- Dimock, M. (1975). W. F. Willoughby and the Administrative Universal. *Public Administration Review*, 483-485.
- Dinzeo, M. (2011, September 17). Trial Judges Question Direction of Courts. *Courthouse News Service*.
- Dougherty, C. (2011). *Introduction to Econometrics*. New York, NY: Oxford University Press.
- Eliot, C. W., Brandeis, L. D., Storey, M., Rodenback, A. J., & Pound, R. (1914). *Preliminary Report on Efficiency in the Administration of Justice*. Boston, MA: National Economic League.
- Estes, L. (1919). Managing for Maximum Production. *Factory and Industrial Management*, 169-175.
- Etzioni, A. (1960). Two Approaches to Organizational Analysis. *Administrative Science Quarterly*, 257-278.

- Etzioni, A. (1964). *Modern Organizations*. Englewood Cliffs, NJ: Prentice-Hall.
- Fayol, H. (2005). General Principles of Management (1916). In J. M. Shafritz, J. S. Ott, & Y. S. Jang, *Classics of Organizational Theory* (pp. 48-60). Belmont, CA: Thomson Wadsworth.
- Federal Judicial Center. (2013). *History of the Federal Judiciary*. Retrieved November 4, 2013, from Landmark Judicial Legislation:
http://www.fjc.gov/history/home.nsf/page/landmark_13.html
- Federal Judicial Center. (n.d.). *History of the Federal Judiciary*. Retrieved November 4, 2013, from Landmark Judicial Legislation :
http://www.fjc.gov/history/home.nsf/page/landmark_13.html
- Fetter, T. (1979). Improving Court Operations in Rural Areas. *Improving Court Operations in Rural Areas. American University Law Review*, 255-271.
- Field, A. (2009). *Discovering Statistics Using SPSS*. Thousand Oaks, CA: Sage.
- Fish, P. G. (1973). *The Politics of Federal Judicial Administration*. Princeton, NJ: Princeton University Press.
- Fitzpatrick, J. L., & Hero, R. E. (1988). Political Culture and Political Characteristics of the American States: A Consideration of Some Old and New Questions. *The Western Political Quarterly*, 145-153.
- Flango, V. E. (1981). Is Court Unification a Unidimensional Construct? *Justice System Journal*, 254-261.
- Flango, V. E. (2010). Which Disputes Belong in Court? In C. Flango, A. McDowell, C. Campbell, & N. Kauder, *Future Trends in State Courts 2010* (pp. 11-18). Williamsburg, VA: National Center for State Courts.
- Flango, V. E., & Rottman, D. B. (1992). Measuring Trial Court Consolidation. *Justice System Journal*, 65-75.
- Frackmann, E. (1987). Lessons to be Learnt from a Decade of Discussions on Performance Indicators. *International Journal of Institutional Management in Higher Education*, 149-162.
- Frederickson, H. G., & Smith, K. B. (2003). *The Public Administration Theory Primer*. Cambridge, MA: Westview Press.
- Fry, B., & Raadscheiders, J. (2008). *Mastering Public Administration: From Max Weber to Dwight Waldo*. Washington, D.C.: Congressional Quarterly, Inc.

- Gallas, G. (1976). The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach. *Justice System Journal*, 35-55.
- Gallas, G. (1979). Court Reform: Has It Been Built on an Adequate Foundation. *Judicature*, 28-38.
- George, C. S. (1972). *The History of Management Thought*. Englewood Cliffs, NJ: Prentice-Hall.
- Georgopoulos, B., & Tannenbaum, A. (1957). A study of organisational effectiveness. *American Sociological Review*, 534-540.
- Gera, V. (2012, June 27). Kissinger says calling Europe quote not likely his. *Associated Press*.
- Glisson, C. A., & Martin, P. Y. (1980). Productivity and Efficiency in Human Service Organizations as Related to Structure, Size, and Age. *The Academy of Management Journal*, 21-37.
- Golembiewski, R. (1977). *Public Administration as a Developing Discipline*. New York: Marcel Dekker.
- Good, D. W. (1980). Court Reform: Do Critics Understand the Issues. *Judicature*, 365-276.
- Goodsell, C. T. (2006). A New Vision for Public Administration. *Public Administration Review*, 623-635.
- Grady, E., & Wang, L. (2007). Multivariate Regression Analysis in Public Policy and Administration. In G. J. Whicker, *Handbook of Research Methods in Public Administration* (pp. 457-489). New York: Marcel Dekker.
- Greenwood, R., Hinnings, C., & Ranson, S. (1975). Contingency theory and the organization of local authorities. *Public Administration*, 1-23.
- Griffin, R. (1987). *Management*. Boston: Houghton Mifflin.
- Gulick, L. (1937). Notes on the Theory of Organization. In L. Gulick, & L. Urwick, *Papers on the Science of Administration* (pp. 1-47). New York: Columbia University.
- Hall, R. (1972). *Organizations*. Englewood Cliffs, NJ: Prentice Hall.
- Hanson, R. A. (1996). *Time on Appeal*. Williamsburg, VA: National Center for State Courts.
- Harris, D., & Dodge, D. (1982). An unfair test of unification. *Judicature*, 337, 381-283.
- Harrison, J., & John, C. S. (2009). *Foundations in Strategic Management*. Mason, OH: Cengage Learning.

- Hartshorne, R. (1949). Progress in Judicial Administration. *The Rocky Mountain Law Review*, 235-239.
- Hatry, H. P. (2006). *Performance Measurement: Getting Results*. Washington, D.C.: The Urban Institute.
- Hays, S. (1979). The Logic of Court Reform: Is Frederick Taylor Gloating? *Criminal Justice Review*, 7-16.
- Hays, S., & Douglas, J. (2007). Judicial Administration: Modernizing the Third Branch. In R. J. Miller G. J., *Handbook of Public Administration, Third Edition* (pp. 983-1028). Boca Raton, FL: CRC Press.
- Henderson, T. A., Kerwin, C. M., Miller, N., Guynes, R., Saizow, H., Grieser, R. C., & Baar, C. (1984). *Significance of Judicial Structure - The Effect of Unification on Trial Court Operations*. Washington, D.C: National Institute of Justice.
- Highsaw, R. (1962). The Executive and Organization. In R. Highsaw, W. Kaempfer, & C. Ransone, *Essays on public administration* (pp. 22-30). Tuscaloosa, AL: University of Alabama.
- Hsiao, C. (2003). *Analysis of Panel Data*. New York, NY: Cambridge University Press.
- Jackson, S. (2014). *Research Methods: A Modular Approach*. Stamford, CT: Cengage Learning.
- Jessup, H. (2014, May). *The Development and Completion of a Uniform System of Judicial Records in Nevada*. Retrieved from Trends in State Courts: <http://www.ncsc.org/sitecore/content/microsites/trends/home/Monthly-Trends-Articles/2014/The-Development-and-Completion-of-a-Uniform-System-of-Judicial-Records-in-Nevada.aspx>
- Johnson, T., & Wilkinson, N. (2008). Homeland Security: A "One-Stop Shop" Approach. In J. Pinkowski, *Homeland Security Handbook* (pp. 39-58). Boca Raton, FL: CRC Press.
- Kendall, H. (1914). Unsystematized, Systematized, and Scientific Management. *Harvard Business Studies*, 103-132.
- Kleinbaum, D., Kupper, L., Nizam, A., & Rosenberg, E. (2013). *Applied Regression Analysis and Other Multivariable Methods*. Stamford, CT: Cengage Learning.
- Kossler, B. (2014, February 28). *Legislation Would Consolidate Supreme, Superior Courts*. Retrieved from <http://stthomassource.com/content/news/local-news/2014/02/28/legislation-would-consolidate-supreme-superior-courts>

- LaFountain, R., Schauffler, R., Strickland, S., & Holt, K. (2012). *Examining the Work of State Courts: An Analysis of 2010 State Court Caseloads*. Williamsburg, VA: National Center for State Courts.
- Lemak, D. (1986). *The multiple constituency power differential model of effectiveness*. Ann Arbor, MI: University Microfilms International.
- Levine, P. (2000). *The New Progressive Era: Toward a Fair and Deliberative Democracy*. Boulder, CO: Rowman & Littlefield.
- Likert, R. (1967). *The Human Organization*. New York: McGraw-Hill.
- Lunenburg, F., & Ornstein, A. (2007). *Educational Administration: Concepts and Practices*. Belmont, CA: Thomson Higher Education.
- Lussier, R. (2011). *Management Fundamentals: Concepts, Applications, Skill Development*. Mason, OH: Cengage Learning.
- Lynn, D., & Klinger, D. (2010). Beyond Civil Service. In S. E. Condrey, *Handbook of Human Resource Management in Government* (pp. 45-72). San Francisco: Wiley.
- Mankiw, G. (2003). *Macroeconomics*. Mason, OH: Worth Publishers.
- Maranto, R. (2002). Praising Civil Service but Not Bureaucracy . *Review of Public Personnel Administration*, 175-192.
- March, J. C., & Simon, H. A. (1958). *Organizations*. New York: Wiley.
- March, J. G., & Olson, J. P. (1983). Organizing Political Life: What Administrative Reorganization Tells Us about Government. *The American Political Science Review* , 281-296.
- Markus, G. B. (1979). *Analyzing Panel Data*. Thousand Oaks, CA: Sage.
- Martin, E. A., & Law, J. (2009). *A Dictionary of Law*. New York, NY: Oxford University Press, USA.
- McKinney, J. B., & Howard, L. C. (1998). *Public Administration: Balancing Power and Accountability*. Westport, CT: Praeger.
- McMurray, O. K. (1917). Unified Courts. *The Journal of the American Judicature Society*, 119-125.
- Meier, K. J., & Bohte, J. (2000). Ode to Luther Gulick: Span of Control and Organizational Performance. *Administration & Society*, 115-137.

- Meier, K. J., & Bohte, J. (2003). Span of Control and Public Organizations: Implementing Luther Gulick's Research Design. *Public Administration Review*, 61-70.
- Meier, K., Polinard, J., & Wrinkle, R. D. (2000). Bureaucracy and Organizational Performance: Causality Arguments about Public Schools. *American Journal of Political Science*, 590-602.
- Milakovich, M. E., & Gordo, G. J. (2012). *Public Administration in America*. Boston, MA: Cengage Learning.
- Miles, R. (1980). *Macro organizational behavior*. Santa Monica, CA: Goodyear Publishing.
- Mohr, L. B. (1973). The Concept of Organizational Goal. *The American Political Science Review*, 470-481.
- Molnar, J., & Rogers, D. (1976). Organizational effectiveness: An empirical comparison of the goal and system resource approaches. *The Sociological Quarterly*, 401-413.
- Mosher, F. C. (1968). *Democracy and the Public Service*. New York: Oxford University Press.
- Mundell, B. R., & Jefferson, W. B. (2012). *Hearding Lions: Shared Leadership of State Trial Courts*. Williamsburg, VA: National Center for State Courts,.
- Nafisi, T. (2006). One Hundred Years since Pound: Has Court Reform Mattered. *Justice System Journal*, 223-236.
- Nagel, S., & Neef, M. (1978). Time-Oriented Models and the Legal Process. *Washington University Law Review*, 467-527.
- National Center for State Courts. (2009). *Vermont weighted caseload study of judicial officers and court staff*. Denver, CO: National Center for State Courts.
- National Center for State Courts. (2011). *Principles for Judicial Administration*. Williamsburg, VA: National Center for State Courts.
- National Municipal League. (1921). *A model state constitution*. New York, NY: National Municipal League.
- New Hampshire Senate. (n.d.). S.B. 354 of 2012. *AN ACT relative to the escrow fund for court facility improvements, the circuit court, and funding of the E-Court initiative for the judicial branch*.
- New Hampshire Supreme Court. (2011). *Report of the Judicial Branch Innovation Commission*. Concord, NH: New Hampshire Supreme Court.

- Newman, J. (2001). What counts is what works? Constructing evaluations of market mechanisms. *Public Administration*, 89-103.
- Nuss, L. (2014, February 17). *Letter to the Senate Judiciary Committee Re: Senate Bill 364*.
- Nuss, L. (2014, March 17). *Kansas Legislature threatens judges' independence*. Retrieved from Kansas Star: <http://www.kansascity.com/2014/03/17/4896714/lawton-r-nuss-kansas-legislature.html>
- Ostrom, B., Kauder, N. B., & LaFountain, R. (2000). *Examining the Work of State Courts, 1999–2000*. Williamsburg, VA: nation.
- Ostrom, V. (1974). *The Intellectual Crisis in American Public Administration*. Tuscaloosa: University of Alabama Press,.
- Ostrom, V. (2008). *The Intellectual Crisis in American Public Administration*. Tuscaloosa, AL: University of Alabama Press.
- Pelham, B. W. (2012). *Intermediate Statistics: A Conceptual Course*. Thousand Oaks, CA: Sage.
- Perrow, C. (1961). The analysis of goals in complex organizations. *American Sociological Review*, 854-866 .
- Pollitt, C., & Bouckaert, G. (2011). *Public Management Reform: A Comparative Analysis*. London: Oxford University Press.
- Pound, R. (1914). Organization of Courts. *Bulletins of the American Judicature Society*, 1-28.
- Pound, R. (1940). *Organizaton of Courts*. Boston, MA: Little, Brown and Company.
- President's Commission on Law Enforcement and the Administration of Justice. (1967). *Task force report: The Courts*. 1967: Government Printing Office.
- Price, J. (1968). *Organizational Effectiveness: An Inventory of Propositions*. Homewood, IL: Richard D. Irwin.
- Racek, F. L. (1990). The Present Ad Hoc Commission Unification Plan: More Money for Less Service. *North Dakota Law Review*, 35-75.
- Raftery, W. (2013). Unification and "Bragency" a Century of Court Organization and Reorganization. *Judicature*, 337-346.
- Rahim, M. A. (2010). *Managing Conflict in Organizations*. Brunswick, NJ: Transaction Publishers.

- Rasmussen, K. A. (1998). *An analysis of state court unified judicial systems: The effectiveness of the implementation of selected court unification reform tenets in selected states in the 1990s*. Auburn, AL: Auburn University.
- Roose-Church, L. (2012, November 18). Judicial performance measure has critics . *Livingston County Press (Michigan)*.
- Saari, D. (1976). Modern Court Management: Trends in Court Organization Concepts - 1976. *Justice System Journal*, 19-33.
- Sayles, L. (1964). *Managerial Behavior*. New York, NY: Mcgraw-Hill.
- Shepard, A. C. (2008, February 27). *Should NPR have apologized for 'dark continent'?* Retrieved from NPR Ombudsman:
http://www.npr.org/blogs/ombudsman/2008/02/should_npr_have_apologized_for.html
- Simon, H. A. (1964). On the Concept of Organizational Goal. *Administrative Science Quarterly*, 1-22.
- Smirnova, O. V. (2008). *Does Government Structure Really Matter?* Charlotte, N.C.: University of North Carolina at Charlotte.
- Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation. (1909). *Report of the Special Committee to Suggest Remedies and Formulate Proposed Laws to Prevent Delay and Unnecessary Cost in Litigation*. Chicago, IL: American Bar Association.
- Spray, S. L. (1976). *Organizational effectiveness: theory--research--utilization*. Kent, Ohio: Kent State University Press.
- Taggart, W. A., & Mays, G. L. (1987). Organizational centralization in court administration: An empirical assessment. *American Journal of Criminal Justice*, 189-198.
- Tamhane, A. C. (2009). *Statistical Analysis of Designed Experiments: Theory and Applications*. Hoboken, N.J.: Wiley.
- Tarr, G. A. (1980). Court Unification and Court Performance: A Preliminary Assessment. *Judicature*, 356-369.
- Taylor, F. W. (1911). *The Principles of Scientific Management*. New York: Harper & Brothers.
- Taylor, H. (1898). *The Origin and Growth of the English Constitution*. New York: Houghton Mifflin.
- Texas Center for the Judiciary. (2014, March 15). *TCJ Programs*. Retrieved from <https://www.yourhonor.com/tcj-programs/Conferences>

- The National Commission on the State and Local Public Service. (1993). *Hard Truths/Tough Choices: An Agenda for State and Local Reform*. Albany, NY: Rockefeller Institute of Government.
- Thompson, F. (2006). The Political economy of Public Administration. In J. Rabin, W. B. Hildreth, & G. J., *Handbook of Public Administration* (pp. 1063–1100). Boca Raton, FL: CRC Press.
- Thompson, J. D. (1967). *Organizations in Action*. New York, NY: McGraw-Hill.
- Thompson, V. (1961). *Modern Organizations*. New York, NY: Aldred A. Knopf.
- U.S. Department of Justice. (1979). *Criminal Justice Solicitation: Comparative Research on Organization of State Court Systems*. Washington, D.C.: National Institute of Law Enforcement and Criminal Justice.
- United States Department of Justice. Office of Justice Programs. Bureau of Justice Statistics. (1972). *National Survey of Court Organization, 1971-1972*. Washington, DC: United States Department of Justice. Office of Justice Programs. Bureau of Justice Statistics.
- United States. Bureau of the Census. Prepared for the Law Enforcement Assistance Administration. (1973). *National Survey of Court Organization*. Washington, D.C.: U.S. National Criminal Justice Information and Statistics Service.
- Vanderbilt, A. T. (1938). Campaign to Modernize Judicial Administration. *Journal of the American Judicature Society*, 5.
- Vanderbilt, A. T. (1949). *Minimum Standards of Judicial Administration*. New York, NY: The Law Center of New York University and the National Conference of Judicial Councils.
- Verhoest, K., Peters, B. G., Bouckaert, G., & Verschuere, B. (2004). Koen Verhoest;B. Guy Peters; Geert Bouckaert; Bram Verschuere. *Public Administration and Development*, 101-118.
- Waldo, D. (1948). *The Administrative State: A Study of the Political Theory of American Public Administration*. New York, NY: Ronald Press.
- Weber, M. (1946). Bureacracy. In H. Gerth, & C. W. Mills, *From Max Weber: Essays in sociology* (pp. 196-244). New York, NY: Oxford University Press.
- Weber, M. (1947). *The Theory of Social and Economic Organization*. New York: The Free Press.
- Weinberg, S. L., & Abramowitz, S. K. (2002). *Data Analysis for the Behavioral Sciences Using SPSS*. New York, NY: Cambridge University Press.

- Wheeler, R. R. (2007). Roscoe Pound and the Evolution of Judicial Administration . *Texas Law Review*, 943-968.
- Willoughby, W. (1929). *Principles Of Judicial Administration*. Washington, D.C.: The Brookings Institution.
- Wilson, J. Q. (1989). *Bureaucracy: What Government*. New York: Basic Books.
- Winters, G. R. (1964). The National Movement to Improve the Administration of Justice. *Journal of the American Judicature Society*,, 17-22.
- Woelper, W. G. (1950). The Administrative Office of the Courts in New Jersey. *New York University Law Review*, 56-66.
- Woodhouse, D. (2001). *The Office of Lord Chancellor*. Portland, OR: Hart Publishing.
- Working Group on the Restructuring of, and Access to, the Judiciary. (2009, September 11). *Report to the Vermont Commission on Judicial Operations*. Retrieved November 1, 2013, from Vermont Judiciary:
<https://www.vermontjudiciary.org/CommissionLibrary/Report%20-%20Restructuring%20of%20and%20Access%20to%20the%20Judiciary.pdf>
- Yuchtman, E., & Seashore, S. E. (1967). A System Resource Approach to Organizational Effectiveness. *American Sociological Review*, 891-903.
- Zammuto, R. F. (1984). A comparison of multiple constituency models of organizational effectiveness. *Academy of Management*, 606-616.

VITA

William Edward Raftery was born on July 4, 1974 in Rochester, New York and is an American citizen. He graduated from Archbishop Molloy High School in Queens, New York in 1992. He received Bachelors of Arts in both Political Science and History from Fordham University in 1997. In 2005, he graduated with a Masters in Public Administration from John Jay College of Criminal Justice, New York, NY.

Since 2005 Mr. Raftery has been employed at the National Center for State Courts in the Research Division (2005-2010) and later in the Knowledge and Information Services Division (2010-2015). His work has included research on legislative-judicial relations, judicial selection, judicial conduct, and court security.

Mr. Raftery edits *Gavel to Gavel*, a weekly review of legislation in all fifty states affecting the courts, and operates its blog and social media. *Gavel to Gavel* received the National Center's 2006 Robert W. Tobin Achievement Award and its blog was named one of the ABA Journals' top 100 law blogs of 2012, 2013, 2014, and 2015. He was listed in the 2015 Fastcase 50 as an innovator in legal services and technology.

Mr. Raftery has served on the editorial board of *The Justice System Journal*, the advisory board of *Judicature*, and has had his work published in both publications as well as *Drake University Law Review*, *The Journal of Appellate Practice and Process*, *Court Review*, and *The Judges' Journal*.