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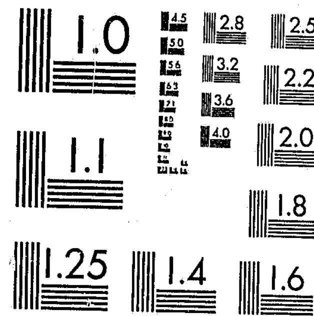

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Implementing Court Unification: A Map for Reform*

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I. Introduction

In ancient Greece, story tellers often told of the Minotaur, a half-bull, half-human monster born to the wife of King Minos of Crete. King Minos caged his monster in a labyrinth, a prison of endlessly twisting trails from which escape was almost impossible. To avenge a wrong committed by the King of Athens, King Minos sacrificed fourteen Athenian youths to the Minotaur every nine years. During one of these periodic sacrifices, Ariadne, King Minos's daughter, fell in love with one of the Athenian victims — Theseus, son of the King of Athens who had come to kill the Minotaur. Ariadne told Theseus to fasten a spool of thread at the entrance of the labyrinth and unwind it as he proceeded so he could retrace his steps. Theseus killed the Minotaur and, with the aid of Ariadne's strategem, escaped.

Implementing court unification is like trying to escape from King Minos's labyrinth without the aid of Ariadne's string. The bewildered prisoner will encounter junction after junction where he must either turn or go straight. Most decisions will lead him down a circuitous route to a dead end, forcing him to retrace his steps to find where he went wrong. Even as he retraces his steps he may err again, once more stumbling into an impasse. Only rarely will good fortune and persistence suffice to lead him to an exit.

This article examines the plight of decision-makers as they at-

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tempt to implement five elements of court unification. It suggests that even without the aid of Ariadne's string, escape from the labyrinth may be possible. What is required, instead, is a map of the maze.

The literature on implementation does not provide the needed map. Some studies postulate theories of implementation with little or no reference to specific situations.[1] Some detail the perplexing minutiae required to implement specific programs or policies in specific places with little regard to theory or to problems encountered elsewhere.[2] Most of the literature discusses the implementation of executive and legislative reform of federal and state programs, but ignores judicial reforms such as state court unification. That which has been written about implementing court unification neither analyzes nor compares the experiences of different states. This article attempts to fill that gap. It outlines some of the problems which can be expected in implementing court unification and recommends some solutions to solve these problems. To accomplish these objectives the authors reviewed the literature on court unification and visited eleven carefully selected states to conduct in-depth interviews.[3]

Multiple courts and excessive local autonomy have plagued state judiciaries throughout their histories. So many different trial courts existed that at times states lost track of their number, types and locations. Cases were often aborted on jurisdictional technicalities; procedures varied from court to court; and political considerations sometimes affected the decisions of local judges.

1. *See* Bunker, *Policy Sciences Perspectives on Implementation Processes,* 3 POL'Y SCI. 71 (1972); Gardner, *Implementation: The Process of Change,* in COURT STUDY PROCESS 167 (Solomon ed. 1975); Sorg, *A Typology of Individual Behaviors* in IMPLEMENTATION SITUATIONS (March 30 - April 2, 1977) (unpublished paper presented at the 30th National Conference on Public Administration of the American Society for Public Administration); Smith, *The Policy Implementation Process,* 4 POL'Y SCI. 197 (1973); Van Meter & Van Horn, *The Policy Implementation Process: A Conceptual Framework,* 6 ADM. AND SOC'Y 445 (1975).

2. *See* GROSS, GIAQUINTA & BERNSTEIN, IMPLEMENTING ORGANIZATIONAL INNOVATIONS: A SOCIOLOGICAL ANALYSIS OF PLANNED EDUCATIONAL CHANGE (1971); PRESSMAN & WILDAVSKY, IMPLEMENTATION (1973).

3. The eleven states included Alabama, Colorado, Connecticut, Florida, Idaho, Kansas, Kentucky, New York, Ohio, South Dakota and Washington. They were carefully selected to represent states in various stages of unification. Interviews were conducted with over 100 supreme court justices, lower court judges, court administrators, legislators, court clerks and knowledgeable citizens. One interviewer spent four days in each state between January and April, 1977. Generally the interviews were conducted at the respondents' place of business and lasted one hour. Since all interviewees were promised anonymity, this article sometimes includes quotations without citation or attribution.

Many problems resulted from state legislatures' refusing to fund the courts adequately. Legislatures often required local courts to be self supporting and sometimes even required courts to fund other public expenditures. For example, courts used fines, costs and fees collected from local litigation to pay their operating expenses, and local speed traps often paid for road construction. As a result, the cost of litigation and the price of punishment differed across a state. Even worse, some courts became rich while others remained poor.

In the early years of this century, Dean Roscoe Pound attacked the inadequacies of the American judicial system and suggested a number of reforms based on the English Judicature Act of 1873.[4] The English Act had consolidated five appellate courts and eight trial courts into a two-tier system with one court of final appeal and one court of first instance. "This idea of unification," said Pound, "has proved most effective. Indeed, its advantages are self-evident." Pound advised that the plan "deserved the careful study of American lawyers as a model modern judicial organization."[5]

Since Pound's 1906 address, an increasing number of authorities have recommended that states unify their courts, and several states have done so. Despite the trend toward court unification, scholars continue to argue over what the concept comprises. This argument has even reached the point of states proudly claiming they have unified their courts and scholars hotly denying their claims.[6] We cannot entirely avoid the problem caused by scholarly disagreement over the definition, because to understand the problems of implementation it is first necessary to know what court unification is. For the purposes of this article a unified court system comprises the following five elements: (1) consolidated and simplified court structure; (2) centralized administration; (3) centralized rule-making; (4) centralized budgeting; and (5) state financing.[7]

4. *The Causes of Popular Dissatisfaction with the Administration of Justice,* address by Roscoe Pound, Annual Meeting of the American Bar Association, St. Paul, Minnesota (August 29, 1906) *reprinted in* 20 J. AM. JUD. SOC'Y 178 (1937).

5. *Id.* at 184.

6. *See, e.g.,* Ashman & Parness, *The Concept of a Unified Court System,* 24 DE PAUL L. REV. 1, 19-21 (1974); Berkson, *Court Unification for Tennessee?,* 13 TENN. B.J. 39 (1977).

7. *See* Berkson, *The Emerging Ideal of Court Unification,* 60 JUDICATURE 372 (1977).

II. The Elements of Court Unification

A. *Consolidated and Simplified Court Structure*

Simplifying the court structure is central to the concept of unification. Although most authorities agree that the number of courts should be reduced, they disagree on the optimum number that should be retained.[8] The proposals advanced advocate one or two appellate courts and one or two trial courts — this leads to four variations.

The simplest proposal calls for only two courts: a supreme court and a trial court.[9] In practice, only the judiciaries of Idaho, Iowa and South Dakota resemble this model.[10]

A slightly more complex model proposes that state judiciaries contain three separate courts: a supreme court; a trial court of general jurisdiction; and a trial court of limited jurisdiction.[11] This

8. Actually some authorities have changed their position about the number of trial courts which should exist. *Compare* Pound, *supra* note 4 *with* Pound, *Principles and Outline of a Modern Unified Court System*, 23 J. Am. Jud. Soc'y 225 (1940); Winters, *A.B.A. House of Delegates Approves Model Judicial Article for State Constitutions*, 45 J. Am. Jud. Soc'y 279 (1962) [hereinafter cited as Winters] *with* A.B.A. Committee on Standards of Judicial Administration, Standards Relating to Court Organization (Final Draft 1974) [hereinafter cited as A.B.A. Standards]; *and Draft Judiciary Article*, 3 J. Am. Jud. Soc'y 135 (1920) (prepared by the American Judicature Society for the National Municipal League) *with* National Municipal League, Model State Constitution § 6.01, at 12 (1963). One organization, which clearly favors a single trial court, has not taken a position on an intermediate appellate court. *See* Report of the National Advisory Commission on Criminal Justice Standards and Goals, Courts 164-165 (1973) [hereinafter cited as National Advisory Commission on Standards]. One organization has recommended that local conditions should govern the precise form unification should take. *See* The Task Force on Administration of Justice, President's Commission on Law Enforcement and the Administration of Justice, Task Force Report: The Courts 33 (1967), [hereinafter cited as Task Force on Administration of Justice].

9. This model was proposed by Roscoe Pound in his 1906 address to the American Bar Association. *See* Pound, *supra* note 4, at 184. It has also received some support among reformers. *See* National Advisory Commission on Standards, *supra* note 8 and *The Case for a Two-Level State Court System*, 50 Judicature 185 (1967).

10. *See* Law Enforcement Assistance Administration, U.S. Dep't of Justice, A National Survey of Court Organization (1973 & Supp. 1975 and 1977) [hereinafter cited as Law Enforcement Assistance Administration].

11. One of the earliest statements of this proposal was a model judicial article drafted in 1902 by the American Judicature Society at the request of the National Municipal league. *See Draft Judiciary Article*, *supra* note 8. Earlier versions of this article appeared in print in October, 1914 and March, 1917. Allan Ashman and Jeffrey A. Parness have observed that the Society's position was influenced by an A.B.A. committee report which discussed unification and was cited in 34 *A.B.A. Rep.* 578, 589-95 (1909). As Ashman and Parness state, "The Society recognized the 1909 A.B.A. report as the work where 'the conception of the unified state court system first received adequate expression.'" *The State-Wide Judicature Act*, 1 J. Am. Jud. Soc'y 101 (1917) *quoted in* Ashman & Parness, *supra* note 6, at 5 n.9. This model has received the support of numerous scholars, including Roscoe Pound in his 1940 *Principles and Outline of a Modern Unified Court System*. *See* Pound, *supra* note 8. *See also Model Judiciary Article and Comment Thereon*, 26 J. Am. Jud. Soc'y 51 (1942). Although the Parker-Vanderbilt Standards of 1938 only implied that states should adopt a unified judicial system and did not discuss court structure explicitly, the A.B.A. committee which adopted the standards implicitly approved of the two-tier trial court. Vanderbilt, Minimum Standards of Judicial Administration 263 (1949) [hereinafter cited as Vanderbilt]. *See also Standards of Judicial Administration Adopted*, 22 J. Am. Jud. Soc'y 66 (1938).

model exists in only Hawaii, Rhode Island and Virginia.[12]

The third model varies from the second in the type, but not in the number of courts. This model envisions a supreme court, an intermediate appellate court and a single trial court.[13] Only Illinois conforms to this model.[14]

The final model of court organization proposes four different courts: a supreme court; an intermediate appellate court; a general jurisdiction trial court; and a limited jurisdiction trial court.[15] In

12. Law Enforcement Assistance Administration, *supra* note 10. A number of states do not fit this model because they have intermediate appellate courts. These include Alabama, Arizona, California, Colorado, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Massachusetts, Michigan, Missouri, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, and Washington. *Id.* Others do not correspond with this model because they have more than two trial courts. These include: Alaska, Connecticut, Kansas, Kentucky, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, North Dakota, South Carolina, Utah, Vermont, West Virginia, Wisconsin, and Wyoming. *Id.*

13. Several authorities also support this model. *See* Winters, *supra* note 8 (discussing the A.B.A. Model Judicial Article of 1962); A.B.A. Standards, *supra* note 8; National Conference on the Judiciary, *Consensus Statement of the National Conference on the Judiciary*, in Justice in the States 265-66 (1971). Although reformers in the early part of the twentieth century did not consider intermediate appellate courts essential to a unified system, support for them has grown as states have become increasingly burdened by heavy caseloads. Indeed, the two most recent models supported by the American Bar Association both favor an intermediate appellate court but differ in the number of trial courts they support. *Compare* Winters, *supra* note 8 *with* A.B.A. Standards, *supra* note 8. The growing need for intermediate appellate courts has been firmly endorsed by the National Conference on the Judiciary. "If the appellate caseload is too great for a single court to adequately perform its tasks of correcting errors, developing law and supervising the courts below, serious consideration should be given to creating an intermediate appellate court." National Conference on the Judiciary, *supra* note 13, at 266.

14. Law Enforcement Assistance Administration, *supra* note 10. Most states do not fit this model because they have too many trial courts. Alabama, New York, Pennsylvania and Texas do not conform because they have more than one intermediate appellate court. *Id.*

15. This model also has numerous proponents. *See, e.g.*, Advisory Commission on Intergovernmental Relations, State-Local Relations in the Criminal Justice System 34 (1971); Winters, *supra* note 8, at 280 (discussing the A.B.A. Model Judicial Article of 1962); Minnesota Judicial Council, A Survey of Unified Court Organizations 6 (1974); National Municipal League, *supra* note 8.

practice, this model exists only in Florida and North Carolina, but the California and Maryland judiciaries resemble it closely.[16]

B. *Centralized Administration*

The benefits offered by a consolidated court structure can best be realized through centralized judicial administration. Like court consolidation, proponents of unification have suggested several different models for states to follow. All of the models suggest that the judiciary should manage itself,[17] but they differ over which agency of the courts should bear primary responsibility.

One model suggests that the chief justice and judicial council share administrative authority.[18] Another proposes that the chief justice be solely responsible for judicial administration.[19] A third model would vest administrative authority to implement policies in the chief justice, but would vest the power to adopt administrative policy in a judicial council.[20] A fourth proposal gives the chief justice ultimate administrative authority, but specifies that he should appoint an administrator and various assistants to aid him.[21]

16. LAW ENFORCEMENT ASSISTANCE ADMINISTRATION, *supra* note 10.

17. Generally, authorities agree that the judiciary, usually through the supreme court, should control the following functions: assignment of judges; qualifications, hiring and firing of auxiliary personnel; use of courthouse space; purchase of equipment; maintaining centralized records and gathering statistics; planning and research for the judicial system; continuing education for judges; and financial administration of the judiciary. *See, e.g.*, VANDERBILT, *supra* note 11, at 34-35.

18. This model was proposed by the American Judicature Society in the 1914 and 1917 drafts of the State-Wide Judicature Act. *First Draft of a State-Wide Judicature Act*, Bulletin VII of the Am. Jud. Soc'y 168 (October, 1914); *Second Draft of a State-Wide Judicature Act*, Bulletin VIII-A of the Am. Jud. Soc'y 75-82 (March, 1917). In 1920 the National Municipal League endorsed a similar model. *Editorial*, 3 J. AM. JUD. SOC'Y 131 (1920). *See also Draft Judiciary Article, supra* note 8.

19. The first statement of this proposal appeared in the Parker-Vanderbilt Standards of 1938. *Standards of Judicial Administration Adopted, supra* note 11, at 67.

20. A.B.A. STANDARDS, *supra* note 8, at 76-86.

21. This proposal may have originated with Roscoe Pound. In 1940 he suggested:

> Supervision of the judicial-business administration of the whole court should be committed to the chief justice . . . . He should have authority to make reassignments or temporary assignments of judges to particular branches or divisions or localities according to the amount of work to be done, and the judges at hand to to it. Disqualification, disability or illness of particular judges, or vacancies in office could be speedily provided for in this way. He should have authority also . . . to assign or transfer cases from one locality or court or division to another for hearing and disposition, as circumstances may require, so that judicial work may be equalized so far as may be [*sic*] and clogging up of particular dockets and accumulation of arrears prevented at the outset.

Most states have adopted the latter model. Indeed, every state but Mississippi employs a state court administrator.[22] Generally, the administrator is appointed by the chief justice or the supreme court.[23]

C. *Centralized Rule-Making*

A unified system allows the judiciary to promulgate rules of pleading, practice, procedure and administration for all courts in the state. Models of this element of unification also vary. One model vests rule-making authority in a judicial council.[24] A second model grants rule-making authority to a judicial council but allows the legislature to "repeal, alter or supplement any rule of procedure by a law limited to that specific purpose."[25] A third recommends that the state's highest court have exclusive rule-making authority.[26] This model, probably the most popular among authorities on unification, is followed in twenty one different states.[27] According to a fourth model, the supreme court should be allowed to promulgate

Pound, *supra* note 8, at 229. Pound also recognized that the chief justice might require administrative assistance and proposed that, "competent business direction should be provided and put under the control and supervision of a responsible director. There very likely may have to be a like officer in each branch and major division, or, if regional organization becomes necessary, each region." *Id.* at 230. The American Bar Association, in its 1962 Model Judicial Article, strongly endorsed this proposal. *See* Winters, *supra* note 8, at 282.

22. *See* DOAN & SHAPIRO, STATE COURT ADMINISTRATORS 17-117 (1976). Although the authors indicate that three states do not have administrators, both New Hampshire and Nevada have hired one since the time the book was published.

23. In California, Georgia and Texas a judicial council appoints the administrator.

24. This model was proposed by the American Judicature Society in the 1914 and 1917 drafts of the State-Wide Judicature Act. *See First Draft of a State-Wide Judicature Act, supra* note 18 and *Second Draft of a State-Wide Judicature Act, supra* note 18. In 1920 the National Municipal League also endorsed this proposal. *See Editorial, supra* note 18 and *Draft Judiciary Article, supra* note 8, at 139.

25. *Model Judiciary Article and Comment Thereon, supra* note 11, at 58. This model was proposed in the National Municipal League's Model State Constitution of 1942.

26. In 1938 the ABA recommended that full "rule-making power be vested in the courts." *See* VANDERBILT, *supra* note 11, at 506. Roscoe Pound argued in 1940 that rule-making power should be "restored" to the judiciary. Pound, *supra* note 8. The ABA included a proposal vesting rule-making authority exclusively in the supreme court in its 1962 Model Judicial Article. *See* Winters, *supra* note 8, at 282. For other proponents of this model *see* TASK FORCE ON ADMINISTRATION OF JUSTICE, *supra* note 8, at 83; National Conference on the Judiciary, *supra* note 13, at 265; NATIONAL ADVISORY COMMISSION ON STANDARDS, *supra* note 8; MINNESOTA JUDICIAL COUNCIL, *supra* note 15, at 18.

27. *See* PARNESS & KORBAKES, A STUDY OF THE PROCEDURAL RULE-MAKING POWER IN THE UNITED STATES (1973), *updated in* BERKSON, CARBON & ROSENBAUM, COURT UNIFICATION: ITS HISTORY, POLITICS AND IMPLEMENTATION (App. A 1978).

rules, but the legislature may veto them.[28] Eleven states conform to this model.[29]

D. *Centralized Budgeting*

A single budget for the entire judiciary is a major goal of court unification. Not only does a unitary budget require less time and money to prepare, but it also helps states analyze their present needs and plan for future programs and funds. Unlike the three elements of unification already discussed, there is only one model for this element. A centralized budget should be prepared by the state court administrator. The legislature and the executive should not help prepare the budget, and the governor should not have the authority to veto it.[30] Only twelve states approach this model.[31]

28. In 1963 the National Municipal League proposed that "The Supreme Court shall make and promulgate rules governing the administration of all courts. It shall make and promulgate rules governing practice and procedure in civil and criminal cases in all courts." But it added that the rules could be changed by a two-thirds vote of the legislature's entire membership. *See* NATIONAL MUNICIPAL LEAGUE, *supra* note 8, § 6.07 at 14. The Advisory Commission on Intergovernmental Relations supported a proposal which allowed the legislature to veto court-made rules. *See* ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 15, at 34.

29. PARNESS & KORBAKES, *supra* note 27, *updated in* BERKSON, CARBON & ROSENBAUM, *supra* note 27, at app. A.

30. In its 1962 Model Judicial Article, the American Bar Association first called for a unitary judicial budget, prepared and submitted by a court administrator under the direction of the chief justice. *See* Winters, *supra* note 8, at 282. In 1963 the National Municipal League endorsed the concept. Section 6.06 of its Model State Constitution stated: "The chief justice shall submit an annual consolidated budget for the entire unified judicial system." NATIONAL MUNICIPAL LEAGUE, *supra* note 8, § 6.06, at 14. In 1973 the National Advisory Commission on Criminal Justice Standards and Goals recommended that "[a] budget for the operation of the entire court system of the State should be prepared by the state court administrator and submitted to the appropriate legislative body." NATIONAL ADVISORY COMMISSION ON STANDARDS, *supra* note 8, at 176. The American Bar Association affirmed its *support in 1974. See* A.B.A. STANDARDS, *supra* note 8, at 3, 98-104.

31. Alaska, Colorado, Connecticut, Hawaii, Minnesota, New Jersey, New Mexico, North Carolina, Rhode Island, Tennessee, Vermont, and Virginia. *See* BAAR, SEPARATE BUT SUBSERVIENT: COURT BUDGETING IN THE AMERICAN STATES 13 (1975). Baar not only identifies the states that conform to the model, but he also derives three additional models to explain court budgeting in the remaining states. In the least unified model, the court budget is prepared by a source outside the judiciary, usually a state financial officer. Georgia, Texas, Utah, West Virginia and Wisconsin are clearly in this category. *Id.* In other states, budgets are prepared by each local court, subject to review by a central staff. They are then submitted to the appropriate legislative or executive officials. Arizona, Delaware, Idaho, Illinois, Michigan, Ohio, and South Carolina are clearly in this category. *Id.* Finally, in some states, different parts of the state court system prepare and submit separate requests to officials in the legislative and executive branches. Alabama, Maine, Maryland, Massachusetts, Missouri, Nebraska and Washington are clearly in this category. *Id.* The rest of the states overlap several categories. *Id.*

E. *State Financing*

Like unitary budgeting, there is only one model for state financing: all judicial costs should be paid by the state.[32] In practice, seven states fund 80% or more of the judicial budget; three states fund 60-80%; seven states fund 40-60%; twenty two states fund 20-44%; and eleven states fund less than 20%.[33]

III. SYSTEMIC PROBLEMS AND REMEDIES

Court unification, as the first section of this article observes, is a five-point program for modernizing state judiciaries. A state can opt for any one or all of these five elements by amending its constitution, and sometimes by passing a statute or promulgating a rule. The amendment, statute or rule, standing alone, is but an empty statement of policy; a state court system will not become unified with respect to any of the five elements unless the policy is implemented.

Most people confront problems of implementation in their daily lives without even recognizing them. They may decide to quit smoking or to lose weight, for example, only to find out that it is easier to establish the goal than to follow the regimen necessary to reach it.[34] Similarly administrators, judges, legislators and others confront a number of problems when they attempt to implement court unifi-

32. In 1929 and 1942 the National Municipal League advocated that the state pay the salaries of court personnel. *See Draft Judiciary Article, supra* note 8, at 141; *Model Judiciary Article and Comment Thereon, supra* note 11, at 59-60. In 1963 the League fully backed state financing, saying, "the total cost of the [court] system shall be paid by the state." NATIONAL MUNICIPAL LEAGUE, § 6.06 *supra* note 8, at 14. *See also* TASK FORCE ON ADMINISTRATION OF JUSTICE, *supra* note 8, at 83; National Conference on the Judiciary, *supra* note 13; COMMITTEE FOR ECONOMIC DEVELOPMENT, REDUCING CRIME AND ASSURING JUSTICE 21 (1972); NATIONAL ADVISORY COMMISSION ON STANDARDS, *supra* note 8; A.B.A. STANDARDS, *supra* note 8, at 97; Ashman & Parness, *supra* note 6, at 31; Gazell, *Lower Court Unification in the American States*, 1974 ARIZ. L.J. 653, 660; Gallas, *The Conventional Wisdom of State Court Administration: A Critical Assessment and an Alternative Approach*, 2 JUST. SYS. J. 35 (1976). *But see* Hazard, McNamara & Sentilles, *Court Finance and Unitary Budgeting*, 81 YALE L.J. 1286 (1972).

33. Baar, *The Limited Trend Toward Court Financing and Unitary Budgeting in the States*, in MANAGING THE STATE COURTS 271 (Berkson, Hays & Carbon eds. 1977) *updated in* Memorandum from Carl Baar to Larry Berkson and Susan Carbon (July 15, 1977). These data are from the fiscal year ending 1974-1975 and may be slightly different now.

34. Williams, *Special Issue on Implementation: Editor's Comments* 1 POL'Y ANALYSIS 452 (1975).

cation. First, they must pick their strategy: what method of implementation should they use; who should be responsible for executing it; when should they begin; and how long should it take? Second, they face the practical problems of putting their decisions into operation: how should the chosen method be structured to achieve the intended result; what should be done if the effort miscarries; how should accomplishments be institutionalized?

We have called the first step the systemic problem stage, because it includes issues every state faces in deciding procedures and priorities. The second step focuses on the technical problems, the many unexpected difficulties which arise when the plans are executed. These categories are by no means discrete, but they do provide a framework in which to analyze the problems of implementing court unification. This section discusses the systemic problems; the next section focuses on the technical difficulties.

A. *Definition*

1. *The Methods*

Our definition of implementation is composed of two distinct parts: methods and process. Legislation, rules, and orders are the three methods used to create a unified court system out of the rudimentary policy expressed in a state's constitution, statutes or rules.[35] The most important of these is enabling legislation, which specifies with precision the countless technicalities necessary to effect the policy. Court rules and administrative orders are equally useful but less frequently used.[36]

Court unification can be implemented most effectively through a combination of these methods. Legislation, for example, is visible, public and relatively permanent. Thus, statutes can establish the number, names, types and jurisdiction of courts, as well as qualifications for office. But marshalling a bill through the legislature is a

35. In a broader sense, implementation has been defined as the means by which policies, plans, decisions or programs are translated into effective collective action. *See* Bunker, *supra* note 1, at 72.

36. It should be noted that a few reforms associated with court unification are self-implementing. For example, neither a requirement that all judges devote full time to their judicial duties, nor a provision that all judges be lawyers, needs additional legislation or special rules to become operative. Self-implementing reforms are the exception rather than the rule, however. Most of the elements of court unification cannot become fully effective without implementing provisions.

time consuming, cumbersome and often arduous task.

Court rules and administrative orders, on the other hand, are usually more flexible and responsive to immediate needs. As a Florida Supreme Court justice observed, "the legislature simply cannot anticipate all the problems and enact all the rules necessary." Rules and administrative orders, therefore, can be used most effectively to implement provisions which need frequent revision. Among those areas conducive to implementation by rule or administrative order are assignment of judges, designation of court boundaries and placement of auxiliary personnel.

2. *The Process*

Implementation is more than methods; it is also the process which transforms a policy into a realized goal. In other words, through implementation, "unification" becomes the restructured court system. An implementer must decide which path to follow as often as a prisoner in King Minos's labyrinth, and, like the prisoner, he may choose the wrong path as often as he chooses the right one. Indeed, successful implementation, like escape from the labyrinth, requires planning and foresight as much as good fortune and persistence.

In their study of the unsuccessful implementation of a late 1960's federal program to generate jobs for the chronic unemployed in Oakland, California, Jeffrey L. Pressman and Aaron B. Wildavsky define implementation as the process of interaction between the setting of goals and the actions geared to achieving them. But they caution, implementation, by its very nature, is a dynamic process. It should not be restricted by a static definition which focuses attention on only one aspect of that process. In fact, they stress:

> Our working definition of implementation will do as a sketch of the earliest stages of the program, but the passage of time wreaks havoc with efforts to maintain tidy distinctions. As circumstances change, goals alter and initial conditions are subject to slippage. In the midst of action the distinction between the initial conditions and the subsequent chain of causality begins to erode. Once a program is underway implementers become responsible both for the initial conditions and for the objectives toward which they are supposed to lead.[37]

37. *Preface* to PRESSMAN & WILDAVSKY, *supra* note 2, at xvii. Douglas R. Bunker describes

Once a state decides to unify its courts, implementers must plan a course of action to effect the policy. First, they must make certain decisions and attempt to institute them. Some of these decisions may take hold and succeed; others may fail completely; still others may vacillate between success and failure. Decisions which are unsuccessful or partially successful must be remedied or improved upon, while initial successes must be maintained and augmented. Implementation, as a process, is composed of all of these decisions, and the actions taken to carry them out, whether they succeed or not.[38]

B. *A Case Study*

An example from Kentucky illustrates the dynamics of the implementation process. The new judicial article to the Kentucky Constitution, which was adopted in 1975, provides:

> The judicial power of the Commonwealth shall be vested exclusively in one Court of Justice which shall be divided into a Supreme Court, a Court of Appeals, a trial court of general jurisdiction known as the Circuit Court and a trial court of limited jurisdiction known as the District Court. The court shall constitute a unified judicial system for operation and administration.[39]

This provision authorized the transformation of the existing court structure, which then consisted of the court of appeals (the court of last resort), the circuit court (the general jurisdiction trial court) and a morass of limited jurisdiction trial courts with overlapping jurisdiction.[40] The legislature decided that to implement this provision it should convert the court of appeals into a supreme court, create an intermediate appellate court, retain the circuit court, and create a single district court by abolishing the many limited jurisdiction trial courts.

Although all of these changes required extensive legislation, a separate provision of the bill authorizing the new article specified that all provisions relating to the supreme court, the court of appeals and the circuit court would be effective January 1, 1976, less than 60 days after passage of the article.[41] But, the Kentucky legislature is in session a mere 60 days every two years, and it was not scheduled to convene until spring of 1976.

Nevertheless, on January 1, 1976, Kentucky's judiciary was governed by a constitution establishing a new judicial system and inconsistent statutory law, which related to the former structure and remained effective until properly repealed. Speedy implementation was needed to eliminate this discrepancy.[42]

Governor Julian M. Carroll delegated primary drafting responsibility to the Office of Judicial Planning, the predecessor of the Administrative Office of the Courts.[43] To provide drafters with desperately needed information on the status of the existing system as well as proposals for change in accord with the new article, the governor also appointed an ad hoc committee of public officials and concerned citizens. A number of circuit judges also advised the drafters.

The drafting groups worked closely with the legislative research commission of the general assembly. They circulated outlines and initial drafts among themselves and solicited comments from everyone involved in the process.

To expedite legislative consideration of the proposals, the house and senate judiciary committees divided into two groups. One group considered implementation of the new article, while the other considered technical court matters.

Before the proposals ever reached the floor of the legislature, the drafters had gathered extensive data, discussed innumerable proposals and revised countless drafts. When the legislature finally addressed the package in the spring, it passed with ease.

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this process in slightly different terms. He suggests implementation is a set of "socio-political processes flowing from and anticipated by early phases of the policy process." Bunker, *supra* note 1, at 72. But, he states, "the process of moving toward realization of the policy content requires more than the tactical and administrative planning that is usually included as part of the policy proposal." *Id.* In fact, he notes, the necessary interplay between policy and implementation is emphasized by Y. Dror's statement that, "repolicymaking is needed during the execution of the policy." DROR, PUBLIC POLICY MAKING REEXAMINED (1968), *quoted in* Bunker, *supra* note 1.

38. A sense of this multi-dimensional quality in the implementation process is conveyed through the model developed by Thomas B. Smith. *See generally* Smith, *supra* note 1.

39. KY. CONST. § 109.

40. The principal limited jurisdiction trial courts abolished by the 1975 judicial article were the county, justice, police and quarterly courts.

41. 1974 Ky. Acts. ch. 84 § 3 (S. B. 183). By the terms of a corresponding section, implementation of the district court could be temporarily deferred because this court would not come into existence until January, 1978. *See* 1974 Ky. Acts, ch. 84, § 2(a) (S. B. 183).

42. This example illustrates the effectiveness of the Zollschan-Smith model in explaining the dynamics of the implementation process. *See* Smith, *supra* note 1.

43. The narrative of the process of drafting implementing legislation has been condensed from Staff of the Administrative Office of the Courts, *Kentucky's New Court System: An Overview* 41 KY. BENCH AND B. 13, 31-33 (1977).

Another step was to determine how much implementing legislation was needed. In its regular 1976 session, the legislature repealed Chapter 21 of the Kentucky Revised Statutes (KRS), which related to the former court of appeals, and replaced it with KRS Chapter 22, which converted the court of appeals into the supreme court. The new chapter retained a number of substantive provisions from the former law, but it was still necessary to change names, titles, and some functions and responsibilities. Section 116 of the Constitution left matters relating to the jurisdiction of the supreme court, appointment of commissioners and other court personnel, rules of practice and procedure for the judiciary, and admission and discipline of members of the bar to implement by supreme court rule.

To establish the court of appeals the legislature added an entirely new chapter to KRS. This chapter was modeled after the chapter creating the supreme court, although their provisions respecting titles and jurisdictions differed.

The trial court of general jurisdiction, the circuit court, remained relatively unchanged under the new judicial article, but a number of statutes were required merely to coordinate the circuit court with the new district court. Consequently, the legislature repealed Chapters 23 and 24 of the KRS and replaced them with Chapters 23A and 24A. Most of the provisions establishing circuit boundaries and numbers of judges remained unchanged in the new statutes. However, the jurisdiction of the circuit court was altered slightly in order to eliminate all concurrent jurisdiction, except felony examining trials between the circuit and district courts. Additionally, several new provisions were required to make the circuit court a court of continuous session.

Implementing the new district court required considerably more time, study and analysis, because the new court completely replaced a maze of limited jurisdiction trial courts. When drafting the new judicial article, the legislature wisely authorized additional time to implement the district court by deferring its effective date for two years.

Before implementing legislation for the district courts could be drafted, a number of preliminary issues had to be resolved. For example, the legislature had to determine the jurisdiction and location of the district courts and the number, salaries and time for election of the district judges. It also had to determine the salaries and duties of auxiliary court personnel, including clerks, court reporters and trial commissioners. Other issues to be addressed included: the amount and disposition of filing fees, fines, forfeitures and costs; the availability of court facilities and courtroom security; and the extension of the jury system to the district courts.

To resolve these issues, the governor reconvened the ad hoc committee in July, 1976. A number of other advisory groups volunteered their expertise. The Administrative Office of the Courts, which had been created by statute in 1976, appointed an advisory committee of lower court judges, circuit clerks and attorneys. This committee subdivided into two groups: one studied budget and operations; the other studied legislation and rules. The attorney general's office created a special consumer's committee to study the feasibility of a small claims division for the new court and to draft the necessary enabling legislation. Still another advisory group considered the impact of the new article on the juvenile justice system and drafted legislation relating to juvenile jurisdiction.

To resolve problems about the staffing and location of the courts, the Administrative Office of the Courts engaged the services of a consulting firm. The firm's staff conducted a weighted case load study to project a satisfactory balance between the number of people and amount of time needed to process cases effectively. The Administrative Office, in turn, relied upon the results of this study in their recommendations to the legislature.

As they had done earlier in the year, all groups maintained close contact with the legislative committees while they drafted the bills. Initial drafts were proposed, debated, and revised. Finally, a special session of the legislature, convened in December, 1976, considered and passed the enabling legislation.

Although the new supreme court and court of appeals have existed since January, 1976, and the district courts began to hear cases in January, 1978, the process of implementation is not yet complete. Inadequacies or inconsistencies in the enabling legislation will have to be adjusted by new laws. Other difficulties encountered during the transition may be remedied by rule or administrative order. Many of the difficulties associated with the novelty of the system and public unfamiliarity with it will simply require a number of years to elapse before the implementation process transforms the Kentucky judiciary into the unified court of justice envisioned and mandated by the constitution.

C. *Systemic Problems and Remedies*

The Kentucky example illustrates how much the success of a policy depends on adequate implementation. Certainly, programs may fail because of artificially high expectations or inadequate policies, but they may also fail from faulty implementation.[44] Because the implementation process is so crucial to effecting social or political change, a map of potential pitfalls to avoid may guide implementers in making decisions.

1. *Lack of Information*

Even after a constitutional provision, statute or rule authorizes court unification, implementation may be seriously hampered by a lack of information. For example, as Kentucky illustrates, the 1975 judicial article authorized the creation of two entirely new courts: the intermediate court of appeals and the district court. In both cases, but particularly for the district court, implementers needed to determine new court locations and facilities, numbers of judges and support staff, and salaries, and duties for all court personnel. Very little information from the former system was available to assist them in addressing these issues. Even where information

44. *Preface* to PRESSMAN & WILDAVSKY, *supra* note 2, at xvi-xvii. *See also* Sorg, *supra* note 1. Sorg asserts that our interest in implementation stems from studies which suggest that government policies may fail if they are not implemented completely or as planned. *Id.* at 1. The observations of Pressman, Wildavsky & Sorg are corroborated by Richard Rose, who stated in his study of attempted implementation of management by objectives within the Office of Management and Budget:

> Implementation does not guarantee a program's success; it is merely a precondition of success. In analytic terms implementation is an intervening variable in the policy process, which starts with the statement of policy intentions or aspirations and moves through program choice to implementation and, finally to an evaluation of the consequences of what has been done.

Rose, *Implementation and Evaporation: The Record of MBO*, 37 PUB. ADM. REV. 64, 66 (1977). As Rose explains, if the consequences of a program differ from the expectations of those who sponsored it, this discrepancy is a function of implementation. "The consequences immediately reflect what government has done to implement previous aspirations and expectations," he asserts. *Id.* Drawing upon Pressman & Wildavsky, Rose recommends that policy makers consider implementation issues as they develop policy. This could help to eliminate problems encountered in implementing policies. But he adds:

> If all the difficulties could be foreseen in advance, then often a program would not be started. Implementation is not only a matter of forging "links in a causal chain so as to obtain the desired results:" it is more a matter of learning by doing—including learning what to do when the links are not closed and the chain breaks.

Id., quoting PRESSMAN & WILDAVSKY, *supra* note 2.

could be located, it was usually inadequate, incomplete, or extremely parochial. Most localities collected different data by different procedures, and the information could not be compared from one county to the next.

As a result, both the legislature and the Administrative Office of the Courts were often forced to act without adequate information. The unsatisfactory results which followed decisions made upon little or no knowledge were summarized by one involved participant who stated, "The Administrative Office did not know what they were doing. AOC was unprepared."

Implementers in Idaho attempted to collect data on the limited jurisdiction trial courts so that they could consolidate them into the magistrate courts. Although providing data to the implementers was purely voluntary, most localities cooperated willingly. Nevertheless, as one participant bemoaned, "The statistics were totally unreliable. There were so many omitted cases that it was impossible to make comparisons." Sources in Kansas, South Dakota and Alabama expressed similar frustration with the unavailability of relevant data upon which to restructure their judicial systems.

Lack of information is hardly an insurmountable problem. To cope with the need for information, most states have authorized consulting firms to conduct special studies of their judiciaries. The results obtained have enabled reformers to ascertain the specific measures necessary to implement unification.[45] The experiences of the states visited strongly suggest that problems arising from lack of information can be considerably diminished by a comprehensive court study. Of course, the study must be properly conducted and addressed to the problems at issue to provide the information implementers require.

In a recent article, Harry O. Lawson, former Colorado State Court Administrator, suggests how to design and organize a successful court study.[46] Lawson isolates four items which are important for a successful undertaking: timing; overall responsibilities; staffing; and scope and content. He then expounds upon each of these categories.

45. It must be cautioned that a court study can be conducted at any stage of the reform process: before any reforms are proposed; prior to implementation; or after unification is adopted. Although the discussion of court studies in the text concentrates on studies conducted to gather information needed for implementation, this discussion is equally applicable to court studies conducted at other stages in the reform process.

46. Lawson's suggestions have been excerpted from Lawson, *Commentary on the Process of Change*, 1974 ARIZ. ST. L.J. 627 (1974).

With respect to timing, Lawson recommends that the study be conducted in three separate phases. The first phase should consist of a limited technical review of existing statutes and rules. This will enable implementers to determine which statutes and rules must be repealed and which ones can be amended to conform to new requirements. In the second phase, the study group should identify all areas of fundamental change where reformers agree on methods of implementation. For example, he suggests implementers may agree upon the court rules and legislation required to define the administrative authority of the supreme court. These agreed changes can be implemented while the overall study is being conducted. The final phase of the study should address areas enshrouded by doubt, controversy or lack of information. In this phase the study group should address long range plans for future needs and development.

Second, Lawson recommends that responsibility for conducting the study be vested in a commission composed of representatives from the legislature, judiciary, executive, press and concerned citizens. If this commission is a fair cross-section of the population, Lawson contemplates that the commission will become a semi-permanent body that continually studies the court system.

A third recommendation stresses the importance of using in-house staff to conduct the court study. Lawson sees several unique advantages in employing a local research staff. The staff would already be somewhat aware of the needs and problems of the system. It also "would have more credibility with the study commission than outside experts, who would spend only limited time in the state, make their recommendations, and leave."[47] The sensitivity to the system's problems, which the staff would gain, would provide excellent training for future employment in the court administrator's office. Finally, the study commission would have more control over the scope and content of the study by employing an in-house staff than by engaging an outside consulting firm.

Fourth, the scope and content of the study can cover a variety of different topics. Lawson outlines seven topics and recommends issues pertinent to each topic. (1) The commission may wish to consider the problems of the lower and special courts. It could analyze their organization and operation, identify problems such as case backlog, and plan for improvements. (2) Another area of concern is budget and finance. The commission may wish to assess the cost of operating the system, determine new procedures for budgeting and accounting, and establish fiscal priorities for the judiciary. (3) Records management is another fertile topic for the commission to study. It may inventory the types and variety of records and equipment, the record-keeping system, and the procedures for storing and destroying records. Based on this information it may recommend new, uniform procedures for maintaining records. (4) The commission may also monitor case flow, evaluating the movement of cases through the courts, as well as judge and case load ratios to develop standards of performance for courts to follow. (5) A study of the information system will provide data on case processing and financial administration. To aid decision-making in this area, the commission should concentrate on determining the data needed by an information system; the feasibility and limitations of using an automated system; the merits of using such a system for case monitoring as well as fiscal administration; and the type of system which best serves the needs of the state. (6) Court facilities provide a sixth topic for commission study. The commission may inventory the existing facilities, determine their adequacy, assess future needs and develop long range plans. (7) Finally, the commission may address problems relating to auxiliary court personnel. It may analyze the number and qualifications of such personnel; their salaries and fringe benefits and the possibility of incorporating decisions about these issues into a statewide personnel plan. Although it is possible that information for some of these issues may be available prior to a court study, Lawson asserts that detailed facts about these issues, collected from a court study or otherwise, will greatly enhance a state's ability to implement court unification.

47. *Id.* at 636.

Lack of reporting or inconsistent reporting by many localities may prevent implementers from obtaining all the data they require to address every problem. Nevertheless, conducting the type of court study suggested by Lawson will provide enough data to allow informed drafting of legislation, rules and orders. Additionally, the type of court study Lawson recommends will help to resolve a second systemic problem that many implementers confront: coordination and cooperation.

2. *Insufficient Coordination and Cooperation*

Coordination and cooperation problems arise at two different levels: external and internal. The external problems derive from the

delicate balance of power which exists among the three branches of government. Court unification generally gives the judiciary additional authority vis-a-vis the executive and legislative branches. The perceived or actual diminution of legislative and executive authority over the courts often makes actors in these branches reluctant to help with implementation.[48]

Two types of internal coordination and cooperation problems can hamper implementation. First, sometimes the people in charge of implementing court unification are indifferent or opposed to it. They fear unification will undermine their prestige or reduce their autonomy. Second, trial judges and lower court personnel often resist implementation, because they fear they will lose authority and possibly even their jobs when unification is fully implemented.[49]

One solution to these problems, which is generally accepted in the literature on implementation, assumes that people are content with the status quo and antagonistic to change. The way to neutralize their opposition and even to encourge their support is to involve them in the process of change and not to impose it from outside or from a higher authority.[50] Professor Neely Gardner supports this theory, stating:

> It is by assisting in collecting the data, defining the problem, and experimenting with possible solutions that people learn and change. Therefore, an effective change process improves the problem-solving capabilities of the system. And if the process implies changing, rather than simply one discrete and final change, each cycle of change provides for reevaluation and further change. This process releases the energy and fosters the growth of the people in the system.[51]

48. Administering a Unified Court System, address by Harry O. Lawson, Joint Session of the Conference of Chief Justices and National Conference of Court Administrative Officers, St. Louis, Missouri (August 6, 1970).

49. *Id.*

50. Ashman, *Planning and Organizing a Court Study: Initiating the Change Process*, in COURT STUDY PROCESS 97 (Solomon ed. 1975); Gardner, *supra* note 1; Gross *et. al.*, *supra* note 2; PRESSMAN & WILDAVSKY, *supra* note 2; Solomon, *A Guide to Conducting Court Studies*, in COURT STUDY PROCESS 1 (Solomon ed. 1975).

51. Gardner, *supra* note 1, at 182. Gardner emphasizes that institutional change can best be accomplished if the people who are affected by the change work together with outside experts, who can help them adjust. He cautions against commanding change by fiat, even from a legitimate authority, such as the legislature or the courts. He recognizes the advantages that can be gained by using an outside consulting firm to study the system and recommend changes. But, he stresses, even expert recommendations will not make the change

Many of the states visited appointed blue ribbon committees, which had representatives of the legislature or which worked with the legislature, to prepare implementing legislation. These teams, often with advice from outside consulting firms, were able to draft bills which could bring about the goals of a unified court system without engendering substantial legislative opposition. Even in Alabama, where objections that the legislation would be too costly delayed passage until the last day of the legislative session, the bill had enough proponents in the legislature to forestall attempts to defeat it.[52] The importance of allowing those affected by the change to become involved in bringing it about can be illustrated by the contrasting role of the primary and secondary implementers. Usually the primary implementer in the states visited was the state court administrator's office.[53] Members of this office had often been involved in the initial campaign for court unification. They frequently assisted with drafting the implementing legislation and helped smooth difficulties throughout the implementation process.

Secondary implementers, on the other hand, were usually trial judges and court clerks, with a vested interest in the status quo. Often they had perceived criticism of the nonunified system as assertions that their performance was inadequate. Thus, when they were charged with implementing some aspects of the unified system, they were often reluctant to comply. Although the people interviewed in the eleven states visited indicated that the intransigence of lower court personnel was only a temporary problem, states could mitigate this problem, in whole or in part, by involving their lower court personnel from the beginning in the work of implementation.

easier unless the people affected by the change become involved in institutionalizing the advice. *See generally id.* at 97-106.

52. *See* Martin, *Bill to Implement Reform Signed by Alabama's Wallace*, 59 JUDICATURE 255 (1975). Indeed, the implementing legislation passed the senate by a 30-0 vote. *Id.* The Alabama Advisory Commission on Judicial Article Implementation, appointed by Chief Justice Howell Heflin, exemplifies a broadly representative commission. It was composed of prominent citizens from all parts of the state and included representatives of all aspects of the state judicial system: judges, clerks, registers, district attorneys, and lawyers. It also included members of the state legislature and officials from local governments. *See* ADVISORY COMMISSION ON JUDICIAL ARTICLE IMPLEMENTATION, REPORT OF THE ADVISORY COMMISSION ON JUDICIAL ARTICLE IMPLEMENTATION (1975).

53. In Florida, the Judicial Council took charge of implementing until the Office of State Courts' Administrator was created.

3. *Inadequate Funds*

Financial difficulties represent a third systemic problem. First, a court study, whether conducted by an outside consulting firm, a task force of state citizens or a combination of both, is costly. Second, each of the elements of unification costs money. Transcription equipment, new or remodeled facilities, computer systems and increased personnel costs all place a strain on limited state or local resources.

The cost of court unification can be reduced or minimized by several means. First, implementers may apply for federal funds to the Law Enforcement Assistance Administration (LEAA) or for state or private funds. Several of the states selected for on-site visits used these methods. Although outside funds prove very useful at the beginning, ultimately the grants expire and states must secure other methods of meeting expenses. By that time, cost may not be a major problem. The state (or political subdivision where state financing does not accompany other elements of unification) will have had a number of years to adjust its budget to the new system. Indeed, the government may have increased fees and transferred them to the state treasury to allow for increased expenditures.

Moreover, start-up costs are often the most expensive part of unification. Once initial monies are spent, increases may be controlled, and maintenance costs may remain stable or even decrease. For example, although the equipment for the Kansas tape system was expensive, implementers expect maintenance to cost less than hiring additional court reporters.

Implementers believe the elimination of *de novo* trials will decrease expenses and streamlined personnel systems and better administration will decrease other costs. During the ten years from 1965 to 1975, Colorado added only 37 percent more personnel to handle a 78 percent increase in case filings. A New York administrator expects similar results for his state.

However, as the New Yorker cautioned, with inflation, new programs and the creation of additional positions in the judiciary, the total cost may increase. But one individual in Colorado reported, "Overall it will probably cost more money. Upgrading costs are analogous to the city manager system. There are savings in some areas, but professionalism costs. The results are better, however."

4. *Inadequate Lead Time*

The fourth systemic implementation problem is inadequate lead time. Insufficient time often causes hasty planning, which in turn leads to faulty implementation.

In a number of the states studied, participants complained that they did not have enough time to weigh alternatives. Additional problems arose when measures were instituted very rapidly, before campaigns to educate members of the judiciary were planned. Much resentment could have been avoided if implementers had moved more slowly. "The problem," as one Idaho participant commented, "was that no one was prepared."

Many of the difficulties created by insufficient lead time can be avoided by planning and by implementing court unification one step at a time.[54] There are several ways to implement court unification gradually. In some states the elements of unification have been introduced in stages. Alabama and South Dakota have staggered implementation of state financing over a three year period; New York has allowed four years. Although the methods vary from the chargeback used in South Dakota and New York, to the increased proportionate share in Alabama, the net result is that during each year of implementation, the state becomes responsible for a larger share of the judicial budget.[55]

Another way states can implement court unification gradually is by delaying the effective date of the reform for a period of time. In Connecticut, a 1976 statute authorized the merger of the juvenile and common pleas courts into the superior court. The effective date of this merger, however, was July, 1978. Similarly, in Kentucky the judicial article creating the district court was approved in 1975. The

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54. *See* Van Meter & Van Horn, *supra* note 1. Van Meter and Van Horn assert that both these factors correlate highly with effective implementation. They note, "[p]rograms that require major change frequently lead to goal conflict on the part of relevant actors, while goal consensus is usually highest where little change is involved." *Id.* at 460. Implementing minor changes over a period of time (incrementalism) enhances goal consensus. Goal consensus, in turn, allows implementation to proceed more smoothly.

55. The chargeback works as follows. The state pays the entire judicial budget and charges back a share of its expense to the counties. In a system that is completely funded by the county, the state would charge back 100% of the cost; in a system that is completely funded by the state, it would not have to charge back anything. When state financing is implemented gradually, the state decreases periodically the amount charged to the county. The increased proportionate share can be implemented two ways: the state may increase expenditures for the courts by a fixed percentage at periodic intervals or it can pay for more line items in the budget over a period of time.

legislature enacted implementing legislation in 1976, but the district court did not begin hearing cases until January, 1978. The bad weather that winter gave Kentucky an additional bonus. One implementer explained, "the courts were slow at first because of the bad weather. It was a good time to get our procedures adjusted before the onslaught of humanity began to parade through the courts in the spring."

Regardless of the method states use, staggered implementation allows time for planning. In turn, planning improves coordination and cooperation. Planning at this stage should not be equated with conducting a court study to obtain information. At this point implementers must use the information from the court study to develop effective implementation techniques. This not only allows the techniques to be tailored to the needs of an individual judicial system, it also enables members of the judiciary to grow accustomed to the new system through educational campaigns. Combined with gradual implementation, planning minimizes the disruptive effects of unification. "A lot can be avoided by pre-planning," commented an Idaho implementer. "Planning is a necessary prerequisite. Planning and an administrative office are extremely important, especially for continuity." Often, the problems that cannot be addressed by gradual implementation or planning will simply dissipate over time. The adage, "Time heals all wounds," is appropriate. As time passes, novelty becomes routine.

In sum, implementers may confront at least four different types of systemic problems: lack of information; insufficient coordination and cooperation; inadequate funds; and inadequate lead time. Although these problems can easily confound implementation, they are not insurmountable. For example, a properly conducted court study will obtain critical information which implementers need to fashion appropriate statutes, rules or orders. Coordination and cooperation can be enhanced by involving the people affected, even where outside expertise is also required. Funding can be obtained from federal or private sources, and costs may decrease over time. Finally, gradual implementation and adequate planning may resolve problems created by insufficient lead time.

IV. Technical Problems and Remedies of Implementation

A state may apply all the correct solutions to systemic problems and still confront a number of difficulties implementing court unification. Pressman and Wildavsky's study of implementation illus-

trates how policies can founder as they become enmeshed in a labyrinth of technical difficulties. In their book they emphasize that despite the commitment and concern of policy makers, unforeseen "technical details" make implementation infinitely more difficult than planners anticipate. As a result, they assert:

> Promises can create hope, but unfulfilled promises can lead to disillusionment and frustration. By concentrating on the implementation of programs, as well as their initiation, we should be able to increase the probability that policy promises will be realized. Fewer promises may be made in view of a heightened awareness of the obstacles to their fulfillment, but more of them should be kept.[56]

In the eleven states selected for in-depth investigation, technical difficulties plagued implementers. But, as a rule, the states studied were not able to learn from comparable experiences elsewhere.

Certainly, as Pressman and Wildavsky suggest, understanding the potential for setbacks may cause less ambitious predictions about performance. Indeed, this may be the inevitable result of a study about implementation failures. Yet, if the only value of studying implementation is to discover excuses for failing, the study has not helped implementers or policy makers reach their goals. Presumably, one value of a study such as this is to provide implementers with information which enables them to avoid the pitfalls of those who have preceded them.

A. *Trial Court Consolidation*

1. *Case Filing and Processing*

The creation, elimination or merger of various courts alters the places, methods and procedures of filing and processing cases. A major problem of implementing these changes is to effect a smooth transition between the old system and the new one.

a. *Effect on Citizens*

Court consolidation affects citizens who use the courts. Suddenly they must file cases in new courts or before new judges. Frequently they must travel to new locations to do so. In fact, two Kentucky

56. Pressman & Wildavsky, *supra* note 2, at 6.

judges remarked that changes in the titles of courts caused confusion among the citizens. At the time of the comments, the Kentucky Court of Appeals had become the Supreme Court and a new Court of Appeals had been created.[57] Although the problem might be solved by publicizing changes through the media, most states have used the media more during the political campaign than during implementation.

The loss of local judges also caused a problem for Kentucky citizens. As one Kentucky implementer explained, "Judges are an integral part of the political balance of power because a judgeship is a local institution. A major political problem is the emotionalism of local people resulting from the loss of local judges."

After the circuit and district court systems were in effect for several months, the resentment about losing local courts subsided. Indeed, Kentucky judges and citizens now point proudly to their new courts, where litigants may receive just and fair treatment. As one person commented, "There are more people in court and more people paying fines. The word is out, you can't fix cases in Kentucky any more. The 'good old buddy' system is gone."

Idaho citizens experienced similar difficulties. Before unification the judicial system contained 266 limited jurisdiction trial courts. Every court had two or three judges, regardless of the size or the population of the county where it was located. Trial court consolidation reduced the number of magistrates to 60.[58] An Idaho interviewee described the effect of the consolidation on the citizens: "Initially there was great dissatisfaction with the legislature because the courts were taken from the people. Citizens felt they have lost contact with the courts." But Idaho administrators devised a solution to combat this alienation. Idaho magistrates are required to travel within their county so that the judiciary maintains close contact with local areas.

b. *Transfer of Pending Cases*

When new courts are created, jurisdiction is altered and old courts are eliminated. To complete the transition, implementers must

57. It is reasonable to assume this confusion was aggravated in January, 1978 when the district court replaced four limited jurisdiction trial courts.

58. At least one magistrate sits in each of Idaho's 44 counties. Magistrate commissions, sitting in each judicial district, may authorize additional magistrate positions for Idaho's more populous counties.

transfer pending cases and insure that new cases are filed in the proper court.

First they must determine if cases will transfer. This determination depends in part on which model of consolidation the state has followed. Often, no problem will arise. In Kentucky, where the jurisdiction of the circuit court was not affected by the changes in the limited jurisdiction trial courts, no problem of transferring cases pending in the circuit courts arose. Similarly, Colorado had few difficulties because JP courts were non-record courts with no case files to transfer and because there was enough lead time to allow a smooth transfer of probate, juvenile, mental health and civil cases from the old county court to the district court.

If it is necessary to transfer cases, implementers must determine which ones will transfer. Kentucky, which had no trouble with cases pending in its circuit court, found this problem particularly acute for the district courts, where four courts were incorporated into one. Even after the legislature decided to establish only one limited jurisdiction trial court, some people urged that jurisdiction of juvenile and probate matters remain in the county court. "It was only after much thought and misgiving," explained a Kentucky implementer, "that these requests were rejected."

Where it was necessary to transfer pending cases to another court, states confronted a related problem: what procedure should be used to transfer the cases? They solved this problem several ways. The Alabama Rules of Judicial Administration specify that all transferred cases shall be designated by an easily identified colored sticker which is attached to the file and docket sheet and which states, "Transfered from ____ Court ____ County."[59] Another method was used in Colorado, where administrators renumbered all transferred cases and indexed and stored inactive ones.

c. *Standardized Forms and Filing Procedures*

Another problem implementers confront once they consolidate trial courts and transfer pending cases is creating standardized forms and procedures for the new system. For example, Idaho standardized records, folders, stationery and forms, including some judgment forms.[60] Implementers used forms developed in New Jersey

59. ALABAMA RULES OF JUDICIAL ADMINISTRATION, R. 42(A).

60. Idaho implementers have had difficulty establishing a system of uniform docket numbers. Each of Idaho's 44 clerks (one per county) has a different numbering system for docketed

and Colorado as prototypes, and aside from the time and expense required to change stamps, methods of filing and fee codes, they experienced little difficulty instituting the new forms and procedures. Both Alabama and South Dakota have standardized some court forms and have instituted uniform docket fees.

d. Courts of Record

The constitutional or statutory provisions creating a new court structure often require that all courts be of record. This requirement creates another problem for implementers: How will the record be made?

Traditionally, if a record of the courtroom proceeding was required, the transcription was taken by a court reporter. When a unified system requires more court reporters, two problems may result: there may be a shortage of court reporters or they may be too expensive. States may avoid the problems and expense of hiring extra court reporters by introducing modern electronic transcription equipment into the system as implementers in Idaho and Kentucky have done. In fact the tape recorders for Kentucky's district courts have worked so well that six circuit judges have decided to replace their court reporters with tape recorders. But, tape recorders and other electronic devices may cause problems of their own. The initial outlay for recording equipment usually exceeds the cost of a single court reporter. Frequently, either the equipment or the courtrooms must be adapted to produce clear recordings.

In order to use recording equipment, which was purchased with $15,000 from five federal grants, Wyandotte County had to redesign many of its courtrooms. Installing accoustical tile and laying rugs added $7,000 to the cost of the recording equipment. After the system was completed, court personnel in the county liked the equipment. One interviewee remarked: "We should have done it long ago. Unification was the impetus.

e. Case Record Maintenance

Maintaining records of cases involves two separate problems: one is finding enough space to store records and the second is transferring records to the right place so they can be retrieved if needed.

cases within that county. In an attempt to resolve this problem, some administrators have prepared a district court clerk's manual to standardize docket numbers.

In some states trial court consolidation creates no unique storage problems. For example, in Alabama, records are stored in the same places that they were before unification. The situation in Kansas is slightly different. Shawnee County files cases in four storage areas which correspond with the former clerks' offices. Although none of the storage areas alone is adequate to hold all the cases, for now, with all four storage areas in use, the county has enough space. In the future, as case filings multiply, microfilming of case records, a concept which was adopted in Idaho, may be one of few feasible solutions to the problem of limited storage space. In the alternative a state may adopt a record retention and destruction plan that will either transfer the old cases to the state archives, destroy them or do some of both.

Closely related to the problem of adequate storage space is storing the file in the proper location so that the record can be retrieved if needed. Idaho has an ingenious solution to this problem. By statute certain records cannot be destroyed. Therefore, all records are microfilmed and transferred to the Idaho Historical Society by court order.

2. *Court personnel*

Trial court consolidation not only causes problems with processing cases, but it also causes staffing problems.

a. Qualifications: Non-Lawyer Judges

Often constitutional amendments which consolidate courts include a provision requiring judges in the new system to be lawyers. These provisions can create serious staffing problems.

Under the Florida constitution, for example, non-lawyer judges may only serve in county courts in counties with a population of 40,000 or less.[61] All circuit judges and county court judges in counties with a population over 40,000 must be attorneys. In one Florida county with a population under 40,000 a non-lawyer defeated a sitting judge for a county court judgeship. The defeated judge was a lawyer who had been a member of the bar more than five years and, thus, was qualified to serve as a circuit court judge. (This fact is important because non-lawyer judges do not have jurisdiction

61. Fla. Const. art. V. § 20(c)(1).

over certain matters such as juvenile, probate and incompetency proceedings.) After the defeated judge left the bench, the closest circuit judge was 65 miles away in Apalachicola. But the Apalachicola circuit judge was often transfered elsewhere and thus did not hold daily court in Apalachicola. This presented a frustrating dilemma for litigants with pressing matters that could not be heard by a non-lawyer judge.

One reason for difficulties such as this is that not enough lawyers practice in the rural areas of some states to make practical a requirement that all judges be lawyers. Florida tried to compensate for the lack of lawyers in some areas by permitting non-lawyer judges in the least populated counties. Kansas and Idaho tried a different approach. Although magistrates in Idaho and district magistrate judges in Kansas may be non-lawyers, both of these states require that non-lawyer judges attend special training institutes. Educational requirements do not completely solve problems caused by limiting the jurisdiction of non-lawyer judges, but they do insure that non-lawyer judges receive some judicial training before they serve on the bench.

b. Retention and Hiring of Auxiliary Personnel

A unified court must be staffed by an adequate number of secretaries, clerks, bailiffs and other auxiliary personnel.

States prefer to retain employees from the former system where possible. Usually this poses no problem, but where unification has merged or eliminated many courts, implementers may discover that there are more employees than positions to fill. Both Shawnee and Wyandotte Counties in Kansas had too many auxiliary personnel after unification. Although both counties promised to retain all employees from the previous system, it was not easy to find a job for everyone.

The Kentucky implementing legislation passed in the 1976 special session permitted district court judges to hire secretaries upon a showing of need but appropriated no funds to pay them. This problem was not resolved in the 1978 session of the legislature, which adjourned March 18. Normally the clerks' offices could supply secretaries or assume secretarial duties, but the legislature also reduced the number of clerks. One administrator said, "we have invented a hodgepodge of solutions to solve the problems, but the solutions have only worked in about 70% of the cases." In larger counties, which had a greater need for secretaries, the clerks often

assigned a deputy to the district judges. In the smaller counties, the local governments often advanced funds to pay for secretaries or the courts hired them with CETA (Comprehensive Employment and Training Act) funds.

c. Status Problems

Trial court consolidation often causes court employees to feel uncomfortable about their new role vis-a-vis other court personnel. Three typical problems occurred in Idaho.

First, although Idaho implementers decided to create a limited jurisdiction division of the district court, they initially did not know what to call the new division. Apparently the legislature listened to district court judges who did not want these other judicial officers to be called judges. Thus, they were named magistrates. As one close observer said, "The legislature simply set the title. There was no opportunity to challenge, but magistrates have always resented the title." Perhaps these judicial officers feel they have less status because they are called magistrates.

A second problem, reported by an Idaho attorney, is tension between lay and lawyer magistrates. He noted, however, that some counties have so few lawyers that the legislature could not realistically have passed a bill providing for only lawyer magistrates.

Still a third problem has been experienced by magistrates who had been judges under the former system. Before unification they had been relatively autonomous within their assigned jurisdiction. They controlled not only their own budget, but also the personnel of their court. Now they depend on the district court for line items in the budget and for staff, and many of them resent the loss of their independence. The problem is less serious than it might have been if all former judges had been retained.[62] As one judge remarked, "most of the magistrates are new and don't present a problem."

Kansas experienced the opposite problem. Many of the associate district judges had been magistrates under the former system. With unification, they were elevated to associate district judgeships, and their jurisdiction was expanded considerably. Except for mandamus and quo warranto matters, associate district judges may hear the same cases as district court judges. This rapid escalation of author-

62. In Idaho, all judges had to reapply to the magistrates' commission for judgeships after their term had expired. A number of them simply did not reapply.

ity and prestige caused some rivalry between these two classes of district judges for a period of time.

In one Kansas county, unification created a major status problem among the court clerks. When unification merged four courts in Shawnee County into one, it also eliminated the jobs of three of the four court clerks. Although the displaced clerks were given positions in the office of the single county court clerk, their status had been diminished and they felt their responsibilities had been usurped. It was also difficult to merge personalities and standardize operations, particularly because a number of latent personality conflicts emerged when the clerks' offices were rearranged. This problem, however, has subsided over time.

3. *Facilities and Equipment*

Trial court consolidation frequently requires changes in the facilities and equipment used by the judiciary. These changes, too, represent a problem of implementation.

a. *Adapting Old Facilities*

A state may not have enough properly equipped courtrooms for the unified system. In Kansas, after unification merged civil and criminal matters into one court, courtrooms were too small and courthouses did not have enough detention blocks for defendants, deliberation rooms for juries, or courtrooms for judges. Now the State is renovating inadequate courtrooms to relieve the problem. Judges in Idaho experienced similar difficulties. One Ada County judge arrived at the courthouse for a trial; discovered no courtrooms were available; and had to adjourn the case for a day. He explained the predicament to a member of the press, who was covering the courthouse that day. As a result, a story in the evening news criticized the county commissioners for inadequate planning. Within one week, the commissioners received bids for two new courtrooms, and, shortly thereafter, they approved plans to construct new facilities.

b. *Constructing New Facilities*

New construction can often improve insufficient or outmoded courthouses. But new construction requires planning, time and money. Because Shawnee County, Kansas, did not start building until after they had a crisis, the transition inconvenienced many judges and their staffs.

Kentucky, on the other hand, contracted early for new and expanded district court buildings. Additionally, implementers in that state are consolidating office space and remodeling courthouses for multi-purpose use.

c. *Equipment*

Another problem implementers encounter when they consolidate trial courts is furnishing all courts with suitable equipment. To accomplish this task they must transfer working equipment to new courts, eliminate archaic equipment and purchase new equipment where necessary. Alabama had a rather unusual problem with equipment. When implementers in that state inventoried the equipment in the local trial courts, which they hoped to transfer to the unified system, they discovered that most of it was either outmoded and unusable or personally owned by former court employees. The state thus had to furnish the courts with essential equipment.

After an initial outlay, economies of scale and proper techniques for inventorying equipment should enable administrators to equip the courts adequately at a moderate cost.

C. *Centralized Administration and Management*

1. *Collection and Use of Data*

Implementing a mandate to centralize administration causes different problems. One of the primary challenges implementers confront is devising a method to collect and use data generated or needed by the courts, particularly to keep track of case filings and dispositions.

a. Collection of Data: Records and Supplies Management

Administrators have found that a statewide case reporting system helps them collect important data and a computer helps them analyze it. Idaho obtained a federal grant to establish a sophisticated computer system. With funds from the grant, the Administrative Director of the Courts hired a computer operator. To feed information to the computer, the administrative office devised a procedure for daily statewide reporting of the docketing, calendaring, filing, and disposition of cases. At first court personnel did not like to

complete the daily reports. As one Idaho observer commented, "It's a little form. Judges have to complete it each day. It comes to them from district court clerks or the administrative office. The clerks should fill it out, but they are either too dumb or have no time."

Despite reporting difficulties, the computer has helped. It permits the administrative office to maintain a uniform record of the status of every case filed in the state. A clerk monitors the computer printout and reports on any major events. With this information, the administrative director can make annual plans with goals the courts can meet.

Implementers may learn a lesson from Colorado's experience with computers. In 1967 the state court administrator's office tried to use a computer to collate comparable data from the state's courts. This attempt failed, partially because the system was too complicated for a first attempt and partially because the date from the various courts were not comparable. Ultimately, the court administrator's office engaged a private consulting firm to assist in developing a modern, efficient system with its own hardware and staff.

Colorado also had problems overcoming local resistance to the computer. With respect to the initial system, one observer commented, "Judges disapproved of the information system at first. They could not rely on the output. It was not timely or correct." Local clerks resisted the system because it involved more work for them.

After the second attempt remedied the most flagrant defects, attitudes began to change. "Judges have come to recognize the need for it, at least for the state court administrator," a Colorado computer expert explained. Based on Colorado's experiences that individual recommends, "Start with a simple system at one level first — then expand. This reduces opposition."

Although the computer system is costly, it has benefitted Colorado significantly. It has provided comparable statistics which facilitate case processing and personnel management. The state court administrator's office uses it to monitor cases, plan for trials and reduce court congestion. The computer has also eliminated the need for docket books, because the computer prints case labels automatically when a case is filed, prepares the index calendar and register of activites, and stores the information. With the use of the computer the state court administrator's office has also developed "personnel action forms" to monitor matters such as hirings, salary raises, and reclassifications. The computer also handles the payroll,

the inventory control system, and the budget reporting and projection system.

Use of the computer system has saved money. It frees staff time for other responsibilities. Although no employees have been fired, with employee attrition, the administrator's office has eliminated 63 positions over the past several years. In 1973-1974 each employee in the largest districts could process 750 cases; in 1976-1977 this number increased to 1,200. Former State Court Administrator Harry O. Lawson estimates that the computer, along with the structural and administrative reforms, helped the state save money. From 1965 to 1975 the judiciary processed 78 percent more district court filings with only 37 percent more personnel. Over the past five years one observer estimates the savings have exceeded $1.5 million in personnel costs and elimination of service bureau charges.

b. Use of Data: Assignment and Transfer of Court Personnel

Centralized administration and an information system, whether sophisticated or relatively simple, can improve a state's ability to transfer or reassign judges and court personnel. Charles Cameron, Alabama's Administrative Director of Courts, agrees, saying:

> The availability of this information [from the state reporting system] will permit the effective utilization of judges under the horizontal and vertical assignment power of the Chief Justice and the authority of the presiding circuit judges. We have a fine group of trial judges — and they are willing to travel, in most cases. The Administrative Office of Courts must provide information which will permit the effective utilization of this resource across the State,[63]

Several courts have had trouble implementing their authority to transfer personnel. Although the Idaho computer monitors caseloads and the constitution permits judges to be temporarily reassigned among districts, the district administrative judge still must receive an order from the supreme court before a judge can be transferred. Either because the process is too cumbersome or because

63. Administration of the Unified Judicial System, address by Charles Y. Cameron, Alabama State Bar, Birmingham, Alabama (July 14, 1977) *reprinted in* 38 ALA. LAW. 296, 299 (1977).

judges resist transfer to other districts, the transfer authority is rarely exercised. Magistrates, on the other hand, are transferred frequently, causing a different set of problems. In Ada County, for example, lawyer magistrates resent being rotated more than non-lawyer magistrates.[64]

2. Coordination of Administrative Responsibility

Other problems implementers face are establishing lines of authority between new and old administrative positions and minimizing conflicts which arise as responsibilities change.

a. Coordination Between State Level Administrators and Trial Court Administrators

Administrators must find an acceptable balance of power between the state level, where administrative policies are often developed, and the local level, where they are executed. In Idaho, when the position of administrative director of the courts was created, local administrators relinquished some of their autonomy. Many of them resented losing authority. One close observer explained, "The statewide interests of the administrative office clash with local concerns. The trial court administrators get along better with each other than they do with the state administrative office."

Although the administrative office of the courts has authority for statewide administration, it has not used its power extensively in order to preclude friction between the state and local levels. One individual explained the situation as follows: "Because of local resentment the state court administrator moves slowly. He tries not to antagonize the local judiciary and performs mostly a service function." The Idaho office establishes standards but does not generally control daily operations. It collects statistics and recommends but

64. The Kansas Supreme Court has not transferred many judges, because the judges do not want to be transferred. Connecticut, already having powers of transfer, fears that forum shopping and other problems caused by transfer will be increased by court unification. Colorado, on the other hand, has effectively transferred court personnel. The Colorado judiciary was able to handle a number of simultaneous trials where numerous youths were arrested after disturbances at a July 4th religious festival. Five judges, twenty court employees and even a xerox machine were transferred to the district for the trials. The local school superintendent opened the schoolhouse as a courthouse. Because the judiciary responded promptly and efficiently, the potential crisis (from the need to hold many trials in a short time) never developed.

does not order or command. In short, a decentralized system helps to avoid tension.

Most implementers in the states visited agree that decentralization is one way to coordinate local and state administration. In Kentucky, Chief Justice Scott Reed, who is the chief administrative officer in the state, has decentralized administrative responsibilities. He is reluctant to create abrasive situations, even if decentralization risks sacrificing efficiency in some areas. As he has emphasized, "I'm a believer in broad guidelines with as much flexibility as possible under the constitution and statutes."

Colorado has long espoused a similar philosophy. As Harry O. Lawson stressed in a 1970 speech:

> The way in which the administration of a unified system is organized also is a major factor in gaining support and cooperation. We, in Colorado, have taken the position that administration should be decentralized as much as possible, consistent with good management and in accordance with general guidelines and procedures. Certainly, some centralization is necessary, but a highly centralized structure reduces the ability and desire to participate in the decision-making process at the trial court level and, consequently, the amount of cooperation that can be expected.[65]

Colorado is a prototype. The state court administrator treats each of the state's 22 judicial districts as a separate administrative unit under the control of a chief judge. Within their districts, chief judges, who are appointed by the chief justice, are delegated very substantial administrative responsibility. They in turn are authorized to appoint district administrators to aid with daily tasks. Decentralization, Lawson acknowledges, has made the system more palatable, although it imposes extra burdens on the state court administrator's office to work with and train local personnel.[66]

b. Coordination Between Local Judges and Trial Court Administrators

Unification often highlights petty jealousies between trial judges and court administrators. Kentucky judges preferred to be indepen-

65. Administering a Unified Court System, *supra* note 48.
66. *Id.*

dent and resented any authority administrators gained. Florida judges hired their friends as administrators, treated the administrators as members of their personal staff, and resisted modern managerial techniques.[67]

In Kansas some judges initially believed they would lose authority to the administrators. Once they realized this was not the case, they came to appreciate the assistance administrators offered. A close observer of the transition in Wyandotte County commented, "Judges in the past spent 30-50 percent of their time in administrative work. Now that administrative duties have been assumed by the state judicial administrator and the trial court administrator, the burden on the judges has been relieved."

Indeed, one way to coordinate administrative functions between judges and trial court administrators is to allow time for judges to enjoy relief from administrative duties.

In Idaho, where magistrates are administrators, the Kansas problem did not arise. Although wearing two hats reduces antagonism, it increases work loads. One concerned participant remarked, "Magistrates cannot effectively do both jobs." Yet, that individual continued, magistrates may be more effective administrators because they are also judges. In one Idaho county the magistrate's assistant relieves him of many administrative duties. This allows him to supervise administration but to devote most of his time to judicial duties.

Idaho has also avoided a potential conflict between the administrative district judge and the magistrate administrator. As an observer in one county reported:

> Initially the trial court administrator was a job without a description. The position had to develop as time passed. Conflicts could have arisen if administrative district judges had not relinquished some authority. However, conflicts did not arise because there was a general willingness in the district to give the new position some meat. Conflicts would have arisen if everyone had wanted to maintain the status quo.

67. Berkson & Hays, *Injecting Court Administrators into an Old System: A Case of Conflict in Florida*, 2 JUST. SYS. J. 57, 68-70 (1976).

c. Coordination Between Court Clerks and Trial Court Administrators

Court clerks, traditionally local elected officials, exercise much authority over county judicial business.[68] When court administration is centralized, they may lose authority to trial court administrators. Tempering the opposition of court clerks to trial court administrators remains a major problem in Kentucky. Clerks not only fear they will lose their jobs, but, ironically, they also fear the administrators will burden them with increased reporting and record keeping requirements.

Professors Larry Berkson and Steven Hays studied the jobs of court clerks in Florida, sending questionnaires to each of the 67 clerks. They found that almost half (49.1 percent) of the 55 court clerks that responded did not believe the administrators perform a useful role. The administrators were frequently described by clerks as "useless," "worthless," or "incompetent."[69] Like those in Kentucky, the Florida clerks not only worry about losing administrative responsibility, they also fear the administrative and technological innovations.[70] This attitude hinders Florida's trial court administrators. Because they have had to cope with local antagonism, condescension or mere indifference, the administrators have been unsuccessful in "consolidating their positions" or in "instituting uniform, modern administrative procedures."[71] Over time, this antagonism may diminish. States may also relieve this antagonism by providing for appointment rather than election of court clerks. First, the judiciary can appoint people who will work well with local administrators. Second, a clerk who is appointed by the judiciary is subject to the administrative authority of the courts. The appointed clerk thus lacks the ability of the elected clerk to create a personal fiefdom.

3. *Personnel Classification System*

Implementers also encounter problems establishing a personnel classification system for the courts.

68. Berkson & Hays, *The Forgotten Politicians: Court Clerks*, 30 UNIV. MIAMI L. REV. 499, 506-09 (1976).
69. Berkson & Hays, *supra* note 67, at 70.
70. Berkson & Hays report that the court clerks fear trial court administrators will introduce new managerial techniques which undermine the clerks' independence. *Id.* at 71.
71. *Id.* at 72-73.

a. Benfits

Neither judges nor auxiliary personnel favor a statewide personnel system which deprives them of benefits that were gained prior to unification. During campaigns, proponents usually promise that unification will not impair accrued benefits. Later, problems arise, usually because implementing legislation must integrate many disparate local benefits. In Kentucky, for example, only judges from the supreme court, the court of appeals and the circuit courts were included within the judicial department retirement plan. The 113 district court judges became part of a state retirement program which provides less comprehensive benefits for participants.

In New York administrators faced two difficulties with their personnel plan: (1) preserving and integrating vacation, disability, retirement and pension rights for the new state employees; and (2) bargaining with approximately 130 unions representing over 10,000 employees. Although New York administrators hope to consolidate unions as quickly as possible, this problem may rankle them for a long time. In fact, upgrading benefits to reduce disparities among employees on the same level appears to offer the only feasible solution to the problem of standardizing a personnel system without depriving any employees of accrued benefits.

b. Salaries

Implementers also must establish fair salaries. In Idaho, where administrators are still planning a statewide personnel system for the judiciary, salary inequities remain a problem even at the county level. The state does not set magistrates' salaries. Rather, even though the state pays the salaries, magistrate commissions determine salaries for magistrates. Initially, salaries among magistrates in Ada County differed widely. This problem has only been remedied in part: the salaries of lawyer magistrates are comparable, varying only between $1,000 and $2,000, but large variations remain among the salaries of lay magistrates. A comparison of salaries among districts indicates large discrepancies, particularly between the salaries of lay and lawyer magistrates. One observer believed the statewide difference between them was as high as $4,000 to $5,000.

During the campaign in Alabama and New York, proponents of court unification assured auxiliary employees that their salaries would not be reduced. To keep this promise, they raised salaries so that all persons in the same job classification received the same pay.

The policy gave some employees unexpected raises, but it avoided conflict over differences.

c. Titles and Functions

Implementers, who are responsible for establishing a personnel system, also must amalgamate titles and functions of numerous court employees. Reclassifying employees created problems in both New York, which merged 10,000 employees, and South Dakota, which merged 5,000. "Job classifications, descriptions and duties performed by employees were very inconsistent," explained a South Dakota finance officer. To solve the problems, South Dakota engaged the Public Administration Service (PAS), a private, nonprofit consulting firm from Chicago. With the aid of a computer, PAS helped South Dakota administrators reclassify all employees and bring them within a single system. South Dakota implemented its new plan gradually. During the first phase in January, 1975, circuit judges, court reporters, magistrates (both lay and lawyer), and clerks were incorporated into the system. Subsequently, in July of that same year, the system added deputy clerks, bailiffs, and court service workers, and their operating expenses. Conversely, in New York all employees technically became state employees on April 1, 1977. Nevertheless, administrators did not expect to reclassify them until fall or later.

When Colorado implemented a statewide personnel plan for judicial employees in the late 1960's, it used a different approach to the problem. The administrator's office used in-house staff to conduct a desk audit (or task analysis) of all employees who would be merged.[72] About 1,300 employees were involved in the transition, which had some problems but went more smoothly than had been contemplated. The plan went into effect January 1, 1970.

4. Timing

Where state financing and a personnel classification plan are implemented at the same time, implementers also face a problem of coordinating pay periods and paychecks, including withholding, deductions and salaries. Although this is partially a problem of state financing, it is more closely related to administration, because it is

72. This information was also used to merge salaries and benefits.

usually a result of a state personnel system for the judiciary.

In Alabama, judges, clerks, supernumerary clerks, reporters and other court employees all had different pay periods. The implementing legislation provided for the state to pay the salaries of a few groups at a time so that the state treasurer did not have to coordinate the disparate pay periods of all judicial employees at once.

The problem in New York was similar, but the solution was different. As one New Yorker explained, "No one anticipated the problems of preparing correct paychecks for 10,000 new employees, with proper deductions and union dues. The state comptroller requires proof of all withholding, so documentation had to be established for all new employees." New York administrators devised an ingenious solution. In March, 1977, shortly before the statewide judicial personnel system took effect, dummy paychecks were prepared and sent to all new state employees to see if the proper deductions had been made.

When the state adds local court employees to a statewide personnel system, the discrepancy between county and state fiscal years may create a problem. For example, New York counties are on a calendar year fiscal year, whereas the state's fiscal year begins April 1. Consequently, counties had to budget additional funds to provide for judicial costs during the three month interval between the close of the county fiscal year and the commencement of the state fiscal year.[73]

In contrast to New York, Colorado purposely implemented the personnel system using the fiscal year discrepancy to its best advantage. The end of the Colorado counties' fiscal year is December 31, while the state's fiscal year ends June 30. Implementing legislation to finance the personnel system was presented and approved in the 1969 legislature. It was scheduled to become effective January 1, 1970, which corresponded with the beginning of the county fiscal year. This arrangement allowed counties to prepare their budgets knowing they would be relieved of personnel costs for the next fiscal year and, at the same time, reduced the burden on the state because the initial appropriation only had to finance six months of personnel costs.

73. The impact of this discrepancy must not be overstated. Although New York has adopted "first instance financing," the state's share of the judicial budget during the first implementation year is only 12.5 percent. Therefore, counties must still provide the larger share of judicial costs during the first year, regardless of fiscal year periods.

C. *Centralized Rule-Making*

1. *Determining Areas for Rule-Making*

Unlike the other elements of unification, a mandate granting the supreme court authority to promulgate rules does not create a discrepancy between the authorized and the existing systems. The rule-making authority is effective immediately, regardless of whether or not the supreme court exercises it. Therefore, a relatively unique problem of rule-making is to define the general areas where the rule-making power should be exercised and to determine which rules should be promulgated.

A supreme court should make informed decisions about these issues. If it does not, it may encounter difficulties similar to those experienced by the South Dakota Supreme Court when it drew court boundaries establishing the number of judges and location of circuits before it conducted any field research or asked lawyers for their advice. As a result, circuit boundaries were ineptly drawn, and case loads were unevenly distributed. One circuit had a total of ten contested cases a year; another had eighteen. Eventually, the court combined the two circuits and removed a judge. But this resolution caused great dissatisfaction. "It was like pulling teeth at this stage. The Court should have been more careful to begin with," reported a South Dakota justice.

In contrast to South Dakota, Ohio moved cautiously. The 1968 Modern Courts Amendment authorized the supreme court to promulgate rules of superintendence for all courts of the state, but the court scarcely exercised its power until C. William O'Neill became Chief Justice. O'Neill wanted the court to promulgate rules to reduce court delay, but he was not sure what rules were needed. He selected approximately twelve of the most capable trial judges in the state and invited them individually to a private, off-the-record session before the Ohio Supreme Court where they would candidly discuss the reasons for court delay. "We used no consultants," O'Neill has said. "In my view that is a colossal waste of money."[74]

After identifying several causes of delay, O'Neill asked the judges to recommend rules by which the supreme court could eliminate those causes. He refused to consider suggestions that would increase

74. Judicial Planning, Budgeting and Management, address by Chief Justice C. William O'Neill, National Conference of State Criminal Justice Planning Administrators, Seattle, Washington (July 19, 1976).

the number of judges until he had tried other methods to reduce delay.[75] O'Neill also convened a separate session with judges from the eight most populous counties. Assisted by knowledgeable trial judges, the supreme court identified ten causes of delay in the Ohio courts and adopted 15 rules of superintendence to eliminate them.

O'Neill's meetings gave the Ohio Supreme Court valuable information on problems in the trial courts and enabled it to draft rules to solve them. The results, as O'Neill has reported, were "phenomenal." In four years case filings have increased 25 percent, but during that time only one trial judge has been added.[76]

2. Rules as Administrative Tools: A Case Study in Delay

Our analysis of methods to implement rule-making authority would not be complete without an in-depth examination of the Ohio superintendence rules. Their success makes them prototypes which other courts may wish to use to begin implementing the rule-making authority.

The first cause of delay identified by the judges was a lack of administrative authority in multi-judge courts. To correct this problem the court used its rule-making authority to create an administrative judgeship. The administrative judge is responsible to the chief justice and submits a report to him every 30 days.

The lack of a plan for assigning cases fairly also caused delay. Chief Justice O'Neill noted this problem had two distinct disadvantages:

> This led to lawyers shopping for favorable judges and to judges shopping for easy cases from the assignment commissioner. The judges shopped for criminal cases that could be disposed of by a guilty plea or civil cases that were sure to be settled. In both instances the judge could terminate the case quickly and take the rest of the day off at the track or country club.[77]

To resolve this problem the court promulgated a rule to assign cases by lot. The rule also provided that the judge to whom a case is assigned must remain responsible for the case until the file is closed.

Because accurate case reports were rarely made, a third rule was

75. *Id.*
76. *Id.*
77. *Id.*

promulgated to make each judge responsible for submitting to the chief justice a monthly report of his work. This rule also made the administrative judge responsible for the accuracy of these reports.

Lawyers often caused delay by failing to file journal entries after a case was decided. Many Ohio judges believed the reason for this reprehensible practice was that it gave lawyers leverage to collect their fees, especially in domestic relations cases. The court rule promulgated in response requires the judge to make the journal entry if the attorney fails to do so within 30 days of the order.

The court also addressed the failure of trial judges to review cases periodically and to dismiss those which have not been prosecuted with diligence by counsel. Its rule requires judges to review all cases which have been on the docket over six months. If no action has been taken on a case within six months, the judge must give notice to counsel, who must in turn show good cause why he has not moved the case or suffer dismissal for want of prosecution.

Criminal trials caused delay for three reasons. First, grand jury actions were usually delayed after a bind over.[78] The rule promulgated to address the problem says if there is no grand jury action within 60 days of the bind over, the matter is dismissed, unless good cause is shown and the court grants the prosecuting attorney a continuance for a specified time. Second, defense lawyers often delayed bringing criminal matters to trial until they collected their fee from the defendant. The supreme court promulgated a rule requiring all criminal cases to be tried within six months of the date of arraignment on indictment or information. Failure to try the case must be reported to the chief justice who may take all steps necessary to insure a prompt trial. The legislature supplemented this rule by a statute effective January 1, 1974, which states that jailed felons must be tried within 90 days of their arrest or the matter will be dismissed. Third, courts often delay sentencing a convicted defendant even after the judge has received the completed probation report. Again this delay is often the fault of the defense attorney who may be using unethical leverage to collect a fee. The court responded with a rule requiring a sentencing hearing within fifteen days of the receipt of the probation report.

78. A bind over occurs after a magistrate has determined at an initial appearance that there is probable cause to believe a crime has been committed and that the defendant has committed the crime. The defendant is either jailed or released on bail or recognizance until the grand jury convenes and determines whether or not to indict.

Lawyers caused problems when they had to be in different courts on different matters at the same time. For this problem the court promulgated a rule stipulating that once an attorney agrees with opposing counsel and with a judge upon a date certain for trial, the court may require him either to try the case himself or to substitute an attorney who will. If the attorney refuses to do either of these, the rule permits the judge to remove him from the case.

3. *Execution and Compliance*

a. *Sources and Types of Opposition*

As the range and diversity of Ohio rules indicate, many problems can be solved by court rule. Similar to the other elements of unification, implementers may have trouble carrying out their plans and getting people to obey. The legislature in some states may veto court made rules, if it believes they interfere with its right to adopt substantive laws. Sometimes the legislature may respond to political pressure from groups adversely affected by the rules by vetoing them. In Florida, the court has implemented its rule-making power very cautiously to avoid a confrontation with the legislature.

In Ohio, where rules are effective unless disapproved by a concurrent resolution of the legislature, the court's first attempt to promulgate rules of criminal procedure did not pass legislative scrutiny. Several Ohio political observers believe the rules were rejected because of intense political lobbying by municipal clerks and bail bondsmen. The bail bondsmen were particularly opposed because the rules would have put them out of office.

Other Ohio rules have been challenged. Both Rule 14, which restricted the granting of continuances, and Rule 15, which allowed videotaped evidence of trials (by means of extending Ohio Civil Procedure Rule 40) and electronic transcription of proceedings, were attacked. A challenge to Rule 4(B) of the Rules of Appellate Procedure, which provided for criminal appeals by the prosecution, resulted in the supreme court holding its own rule invalid.[79]

A related problem arose implementing the superintendence rules for the municipal court. These rules require judges to complete a number of forms about case loads. The judges did not like to fill out

79. State v. Hughes, 41 Ohio St. 2d 208, 324 N.E.2d 731 (1975). The rule was held invalid because it enlarged a substantive provision of statutory law and, thus, exceeded the procedural bounds of the court's rule-making authority.

the forms since many situations which they had to report did not fit easily into any single category required by the form. At first, the data were inaccurate and could not be compared from court to court. Despite their reluctance, judges submitted the data and, after approximately one year of transition, the system began to function smoothly.

b. *Methods of Encouraging Support*

The challenges to the rules, the initial resistance, and the transition problems all suggest that to implement rule-making, a supreme court should make an extra effort to aid execution and encourage compliance.

For example, the Ohio Supreme Court published the superintendence rules July 4, 1971, and allowed judges two months to comment upon them. In September the court met with judges to interpret the rules, discuss objections and revise them where necessary. Prior to the effective date of January 1, 1972, judges were required to inventory all cases and to file a report of the inventory with the chief justice. Chief Justice O'Neill has commented that the media's knowledge and support of his efforts were crucial to the success of implementation. To aid continuing implementation, the chief justice toured the state every summer to meet with judges and discuss the operation of the rules. His rapport minimized opposition which might otherwise have arisen from the extra work the rules required of the judges.

Chief Justice O'Neill devised several other techniques to encourage compliance in Ohio. He isolated 75 of the oldest cases and assigned them to a judge in a videotape scene to encourage both attorneys and judges to be prepared for trial. He reviewed the monthly reports that the judges submitted to him and wrote a personal letter to judges who were not moving their cases fast enough. Finally, believing that "recognition is a far stronger motivation than money," he devised an ingenious system of awards which he gave to judges with current calendars. The awards provided good publicity for the judges, who used them in advertisements for their reelection campaigns.

E. *Centralized Budgeting*

1. *Coordinating Budgets from all State Counties*

Frequently, before unification, line items in a budget vary from one county to the next. In South Dakota, each county, and often each municipality, classified expenses differently. To coordinate the budget the Public Administration Service consultants in South Dakota also helped prepare a single budget with standard classifications.

Kentucky administrators not only had trouble gathering uniform information; they sometimes could obtain no data at all. In order to collect necessary information from which they could prepare a budget, they analyzed data from counties where it could be obtained and projected estimates to other counties. It may be inaccurate, admitted one Kentuckian, "but we can't justify budget requests to the legislature with no records or data." Kentucky administrators have developed a very successful accounting system to solve this problem. As one administrator proudly claimed, "The clerks screamed and squealed, but it's as tight as a drum. The state auditors say it's the easiest system to audit in the state."

2. *Complexity of Budget Preparation*

Even where states have achieved uniform classifications, the sheer complexity of preparing a unitary budget remains an obstacle. Colorado uses two methods to facilitate preparation: decentralization and automation.[80] Each year the administrator's office gives the chief judge of each district a computer print-out comparing the budget request and actual amount spent the preceding year. The chief judge, trial court administrator and other staff review the print-out and determine changes in allocations. They in turn must justify these changes to the state court administrator. The administrator and his staff hold budget hearings in each judicial district to see first hand the problems and related budget needs. The administrator's office collects the budgets from all districts, feeds the data to the computer and prepares the entire state judicial budget. Information on expenditures is entered into the computer throughout the year, and each ensuing year the process begins anew.

80. Colorado's Chief Justice Edward E. Pringle has spoken extensively on Colorado's budget. The discussion was derived from one of his speeches. *See* Fiscal Problems of a State Court System, address by Edward E. Pringle, Conference of Chief Justices, Seattle, Washington (August 10, 1972) *reprinted in* MANAGING THE STATE COURTS 251 (Berkson, Hays & Carbon, eds. 1977).

Before this system could operate smoothly, a number of difficulties required attention. Colorado administrators had to teach local judges from all the courts in the districts to develop budgets. They devised a detailed manual with standard headings and clear instructions and distributed it to all local budget officers. They also devised a two-step submission. Local judges submit their budget requests to the district chief judge. He standardizes and consolidates the requests into a single district budget, which, in turn, is submitted to the state court administrator.

Second, the administrator's office had to teach local administrators and judges to spend within their budgets. This has been resolved, in part, by a personnel rule, adopted by the supreme court, which mandates that district administrators who overspend their budgets can be removed.[81] Finally the administrator's office had to explain the complex judicial budget to the general assembly, especially to the joint budget committee, and to convince them to accept the judiciary's recommendations.

F. *State Financing*

Although centralized budgets cause some problems, implementing centralized budgeting is a major problem which arises when states implement financing. In order for a state to understand fully its funding responsibilities, it first must develop a means for analyzing budgets. A centralized budget helps administrators interpret disparate financial data and thus helps implement state financing. But other difficulties are also associated with implementing state financing.

1. *Reluctance of the Legislature to Spend Money*

A constitutional provision, statute or rule mandating state financing means nothing if the legislature is unwilling to appropriate funds. The classic example of this problem occurred recently in Alabama, where the legislature added to the financing legislation a provision prohibiting the judiciary from spending more money than it made. In May, 1977, during the last stage of a three-year imple-

81. COLORADO JUDICIAL SYSTEM PERSONNEL RULES, R.26(a)(3).

mentation period, it became evident that revenues generated by the courts would fall short of the projected $16 million.[82] The judiciary faced a crisis. On May 30, Chief Justice C.C. Torbert, Jr. halted all jury trials and permitted only essential criminal matters to proceed. Judges continued to work, although for ten days the state had no funds to pay their salaries. Finally, on June 10, the legislature appropriated funds which enabled courts to spend their entire anticipated budget.[83]

In part, the Alabama financial problem was caused by poor estimates of income. Certainly the Alabama legislature expected that state financing would increase costs. In fact, to offset the increase in costs, the implementing legislation passed in 1975 not only raised costs, fines and fees, but explicitly provided for the transfer of many court-generated revenues to the state treasury.[84] But, the new cost, fine and fee schedule applies only to cases filed after January 16, 1977. Cases filed before then are governed by the former cost, fine and fee schedule, and the revenues from those matters are placed in the county and not the state treasury.

Chief Justice Torbert does not see the matter as a temporary cash flow problem. First, in April, 1977, the state assumed the cost of all court supplies in Alabama's 67 counties. Second, in October, 1977, 800 judicial department staff and clerical employees were assimilated into the state personnel system, many with upgraded salaries and benefits. Finally, the projected budget for fiscal year 1977-1978 was pared to an absolute minimum. As Colorado's Chief Justice Edward E. Pringle has said in another setting, certain judicial costs are almost impossible to determine in advance:

> There are several judicial system activities for which it is difficult to predict the amount of money needed, even with the best data and staff analysis. I'm referring to such things as jury trials, grand juries, witness fees, insanity examinations and the like. Unusual and unanticipated expenditures in these categories constitute valid grounds for a supplemental or deficiency appropriation. Obviously, a person cannot be denied a jury trial for lack of funds. Likewise, legitimate grand jury activities cannot be curtailed. The court system should not be required to reduce other necessary, funded areas of operation to meet unanticipated jury costs. That would result in robbing Peter to pay Paul. This is another reason a supplemental appropriation is justified. Failing that, I think this is one area of expenditures where inherent powers may have legitimate application.[85]

82. State of the Judiciary Address, address by C.C. Torbert, Jr., Alabama State Bar, Birmingham, Alabama (July 15, 1977).
83. *Alabama Cuts Jury Trials as Funds Run Out*, 61 JUDICATURE 92 (1977).
84. 1975 Ala. Acts, Art. 16.

The solution to the Alabama problem is not an easy one. Chief Justice Torbert is conducting another study of court costs. He is also refusing to provide legal forms to the practicing bar. He plans to consolidate 10,000 different types of court forms currently in use in Alabama's courts, and to employ the court's assignment and transfer powers extensively to reduce the need to hire new judges as filings increase.[86]

But these are short term solutions. In a recent address to the Alabama State Bar, Chief Justice Torbert stressed the long term impropriety of requiring the judicial branch to be self-supporting. As he stated:

> I do not believe that the state can ever expect to see sufficient revenues produced for the courts to adequately fund a system of justice in Alabama. Such an idea is fundamentally unsound and must be set aside irrespective of the consequences. No other agency that renders public service to this state is budgeted on such terms and the idea of a judicial system imposing fines stiff enough to pay its salaries is repugnant to any system of justice.[87]

2. *County Resistance*

Another problem of implementing state financing occurs when counties refuse to cooperate. This problem generally occurs in states where the counties remain responsible for providing local facilities, equipment or supplies, but where locally collected fees are channelled into the state treasury.

For example, in Colorado, although the state has appropriated locally generated court revenues, the counties have retained title to local courthouses and remain responsible for funding their maintenance and upkeep. One county rebelled and refused to provide an

85. Fiscal Problems of a State Court System, *supra* note 80.
86. State of the Judiciary Address, *supra* note 82.
87. *Id.*

adequate courtroom or chambers for a newly appointed judge. As a result, in 1974 the state court administrator filed suit against the county to compel it to provide space for the new judge. The Colorado Court of Appeals held that pursuant to section 13-3-108(1) of the Colorado Revised Statutes, the county remained obligated to provide and maintain suitable courtroom and office space for the judiciary.[88]

Similarly in South Dakota, the state collects a share of locally generated fees, but the counties still must provide facilities. In Parker, an extremely small South Dakota town, the county refused to renovate an antiquated courthouse with inadequate facilities. When a high ranking official visited the town, he mentioned that if the structure was not adequately maintained, the city might lose its court. The response was almost immediate; the courthouse was renovated within a few weeks.

The Kentucky administrative office devised an ingenious compromise to solve this difficult problem. It believes that the local communities should take pride in owning their own courts and that the state should not own local facilities. By statute the state is obligated to pay the counties four percent of the cost of constructing or renovating facilities. The state decided on the figure of four percent by taking the two percent figure, which the federal government uses to reimburse localities for post offices, and adding an additional two percent. Administrators believe that this scheme requires the state to contribute its share of the burden of providing judicial facilities, while enabling localities to retain an equity in the buildings.

V. Conclusion

In their study of implementation, Pressman and Wildavsky stress that policies will succeed only if implementation succeeds:

> The later steps of implementation were felt to be "technical questions" that would resolve themselves if the initial agreements were negotiated and commitments were made. But the years have shown how those seemingly routine questions of implementation were the rocks on which the program eventually foundered.[89]

88. Lawson v. Pueblo County, 37 Colo. App. 370, 540 P.2d 1136 (1975).
89. *Preface* to Pressman & Wildavsky, *supra* note 2, at xvii.

The interviews conducted for this study confirm that implementation can indeed resemble a maze, with an exit hidden at the end of sinuous paths. This article also illustrates, however, that different problems arise in different states and sometimes even in different localities within the same state. In fact, no state visited experienced all the problems catalogued in this article. For example, Alabama, South Dakota, and Colorado had little difficulty moving or storing records; Connecticut had few problems in changing the titles of courts; and Idaho had little trouble coordinating trial court administrators and trial judges or equalizing judicial workloads.

Certainly this latter point should comfort implementers. This article also suggests that the mere fact that difficulties arise should not distress them unnecessarily. Problems which seemed insurmountable in some states were easily disposed of in others. Furthermore, over a period of time every state visited was capable of resolving most of the difficulties it confronted.

In fact, this article suggests that with a great deal of patience, willingness to experiment, and practical ingenuity, implementers can plot a map to the exit of the labyrinth. This article thus begins the much-needed map; it remains the task of others to chart a more complete course.

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