

FROM THE BENCHES AND TRENCHES COURT REFORM: THE NORTH DAKOTA EXPERIENCE

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The North Dakota Court System is an often overlooked example of a unified court system. Yet, as an early adopter of the ABA Standards Relating to Court Organization, it provides a good case study of how the perceived benefits and drawbacks of unification have unfolded in practice. This article traces the North Dakota Court System's path to unification through consolidation of trial courts, centralized administrative authority, centralized rulemaking, centralized budgeting, and state financing. The ability to achieve unification on all five levels can be attributed to geography, legal culture of the state, and the continuity in leadership of the court. Although many of the anticipated benefits of unification have been achieved, the reform has raised new challenges for the court system.

Because every court system has a unique structure, it is necessary to begin any discussion of court reform with a general summary of the court as it currently exists. The North Dakota court system is a unified state court system of the “union” model, as described by Henderson et al. (1984:46), which “is characterized by a fully consolidated, highly centralized system of courts with a single, coherent source of authority. No subordinate court or administrative subunit has independent powers or discretion in matters of basic policy.”

The system, whose administrative head is the chief justice of the supreme court, consists of one supreme court of five justices, one intermediate appellate court, and fifty-three district courts with original and general jurisdiction in all cases except as otherwise provided by law. The district courts also serve as the juvenile courts in the state and have exclusive and original jurisdiction over any minor who is alleged to be unruly, delinquent, or deprived as defined under Chapter 27 of the North Dakota Century Code.

There are forty-two district judges in the state elected every six years in a non-partisan election held in the district in which the judge will serve. In addition, the supreme court has supervisory authority over seventy-five municipal courts.

Under the authority granted to the supreme court in Article VI, Section 3 of the Constitution of North Dakota, the court has organized the district courts into seven judicial districts operating within four administrative units. In each district there is a presiding judge who oversees the courts' judicial services in the district's geographical area. The duties of the presiding judge, as established by the supreme court, include convening regular meetings of the judges within the judicial district to discuss issues of common concern, assigning cases among the judges of the district, and assigning judges within the judicial district in cases of demand for change of judge. The administrative unit structure consolidates the managerial and administrative functions of the

courts within the districts under one trial court administrator for every two districts, except for the Northwest Judicial District, which remains as a single district served by a trial court administrator. More detail about the court structure and jurisdiction can be found in the court's annual report at: <http://www.ndcourts.com/court/news/ndcourts2006.pdf>.

A Very Brief History of Court Reform. Court-reform methods have been vigorously proposed, debated, adopted, abandoned, and adapted ever since Roscoe Pound's seminal paper "The Causes of Popular Dissatisfaction with the Administration of Justice" was presented to the American Bar Association in 1906. Pound set forth three areas in which he deemed courts to be archaic: 1) the multiplicity of courts, (2) the preservation of concurrent jurisdictions, and 3) the waste of judicial power deriving from these. As a remedy, he advocated a single court in which the inferior courts, the courts of general jurisdiction, and a single court of final appeal were all branches or departments of a single court system. In later years, he expanded these structural concerns to include general principles of reform intended to achieve "unification, flexibility, conservation of judicial power, and responsibility" (Pound, 1940:275).

Although widely discussed, the reform movement moved in fits and starts, with only limited implementation in the state courts, until the American Bar Association (ABA) endorsed the model of the unified court structure in their 1974 *Standards Relating to Court Organization*. This model, unchanged in later versions, is characterized as having uniform jurisdiction; simple jurisdictional divisions; uniform standards of justice; clearly vested policy-making authority; and clearly established administrative authority. The rationale for a unified court structure includes the following (Rottman and Hewitt, 1996:12):

- Simplification makes the courts easier for citizens to understand and use, as well as for collateral organizations to service;
- Flexibility in assigning judges to dockets makes it easier to meet case-load pressures, while also affording judges more diverse dockets;
- Administrative efficiency is achieved by eliminating duplication of facilities and support services and by creating streamlined management hierarchies; and
- Communication among those involved in processing different types of cases is enhanced.

The history of recent court reform has been summed up as having "the goal of a unified court system," which "would be able to function with requisite independence, but also be capable of effective internal and external cooperation" (Lipscher and Conti, 1991:667). However, "The unified court model is an evolving one with proponents debating among themselves the best way to build specific portions of the overall model" (Dahlin, 1993:56).

Definitions. Over the years, the terms “court unification” and “court consolidation” have been used interchangeably, but the definition used here will be “court consolidation” as “courts with a single bench and self-contained administrative arrangements” (Rottman and Hewitt, 1996:9). The term “court unification” will refer to the vertical links between the state’s supreme court and its lower courts and to the horizontal link between court divisions across the states.

Reforms related to judicial selection will not be discussed. The focus here will be on the characteristics of a unified court system chosen by Berkson and Carbon (1978:4-14): consolidation and simplification of court structure; centralized management; centralized court rulemaking; centralized budgeting; and state financing. We will trace how the North Dakota court system has adopted these five characteristics as it moved from a multitiered, decentralized court system into its current unified court system.

ELEMENTS OF UNIFICATION

Consolidation and Simplification. The first recommendation for a unified court structure was made by Chief Justice Ralph Erikstad in a speech to the state legislature in 1975; however, it would take another twenty years for the consolidation to be completed (Meschke and Smith, 2000:285). When Chief Justice Erikstad made his speech, the court system consisted of three levels—a county court, a general-jurisdiction district court, and the state supreme court. The legislature had already shown a willingness to simplify court structure by abolishing the justice of the peace courts a decade earlier, but it would take a constitutional amendment in 1976 before the legislature merged the multitiered county courts into a single level of county court and required all judges of the county court to be law trained. In 1991 the legislature merged the county courts with the district courts and abolished all county courts, with a delayed effective date of January 1, 1995. This brought the court structure to its present form of one general-jurisdiction district court and one state supreme court, with the authority to seat a temporary court of appeals as needed. Although municipal courts have remained outside the efforts to consolidate the court system, the supreme court has elected to exercise its supervisory authority over them through a court rule mandating continuing education of municipal-court judges and setting standards related to compensation and courtroom settings.

Centralization of Administrative Authority. Both the authority of the chief justice as the administrative head of the unified judicial system and the term “unified judicial system” are the result of a 1976 constitutional amendment, which was part of a general movement to amend the state’s constitution. The constitutional convention’s first proposal for a full revision of the state constitution, which included the proposed amendment to the judicial article, was defeated in a 1972 special election. However, at the urging of Chief Justice Erikstad, the judicial article was put to a separate vote in 1976, and it passed handily. Passage of the amendment “vested the judicial power of

the state in a unified judicial system headed by a five-member Supreme Court with an administrative Chief Justice selected 'in the manner provided by law' . . . and the court was given complete power over procedure, 'to be followed by all the courts'" (Meschke and Smith, 2000:289-90).

Before 1967, the chief justice position was rotated between the justices at two-year intervals, but since 1967, the chief justice, whose term is for five years or until that justice's regular term expires, whichever comes first, has been selected by majority vote of the supreme-court justices and the district-court trial judges. Meschke and Smith (2000:287) explain that the longer term and method of selection that the legislature eventually adopted came from a legislative research committee's recommendation. The committee explained, "When the position revolves every two years, there is a lack of experience and the possibility exists that the duties of such office are not carried out or performed in the most skillful manner. The Committee believes that if the position is made more permanent a more effective administration will occur." There is no term limit for the chief justice position, and historically, the turnover rate is very low.

Since 1971, the chief justice has been assisted by a state court administrator, a constitutional officer since 1976, who oversees all nonjudicial functions including budget preparation and financial controls, information technology, training and education, public information, technical assistance, and administration of the judicial branch personnel system. Since the mid-1970s, trial court administrators have been a part of the judicial branch management system, but until 2004, whether to use a trial court administrator or an administrative assistant, appointed by and reporting to the presiding judge, was an option the district exercised. Three districts hired administrators, while four chose to retain the administrative-assistant position. The administrator or administrative assistant was appointed by and reported to the presiding judge of the district.

In 2004 the supreme court reorganized the judicial districts into four administrative units, each headed by a trial court administrator, a classified position under the judicial branch personnel system. Trial court administrators are appointed by the state court administrator in consultation with the presiding judges within the unit and are supervised by the state court administrator. Another significant part of the reorganization was the transfer of supervisory authority of the district office, clerk of court, and juvenile-court personnel from the presiding judge to the trial court administrator, which creates a direct line of authority from the trial courts to the state court administrator.

Centralized Rulemaking. In 1926 the State Bar Association of North Dakota (SBAND) became the driving force behind the movement to move authority to make rules for the courts from the legislature to the courts themselves. However, the supreme court "seemed deterred from making its own rules by the constitutional restraint on the Court's control over other courts" (Meschke and Smith, 2000:269), and it was not until 1941 that the legislature specifically authorized the court to alter or amend procedural

statutes. Even so, the court did not adopt its first comprehensive set of procedural rules until 1957, with the delay largely because of continued internal debate among the judges over whether the grant of rulemaking was an unconstitutional delegation of legislative power (Meschke and Smith, 2000:269-77). North Dakota was only the thirteenth state to adopt the federal pattern of rulemaking (Meschke and Smith, 2000:273), and as late as 1978 North Dakota's rulemaking procedures were still being hailed as "unique and innovative" by court-reform scholars (Korbakes, Alfini, and Grau, 1978:149).

The rulemaking authority used in North Dakota most closely models the 1962 ABA model judicial article, which calls for the supreme court to prescribe rules governing appellate jurisdiction, as well as rules of practice and procedures and rules of evidence for the entire judicial system. It also calls for the supreme court to govern admission to the bar and the discipline of members of the bar. Unlike later revisions to the model judicial article, the 1962 model does not urge the inclusion of legislators as members of the rulemaking body, nor does it seek acceptance of legislative authority to override rules of court (Parness and Korbakes, 1973:7-11), and the North Dakota legislature does not have veto power over court rules. Although proposed rules are widely circulated for public comment, the court does not specifically solicit legislative input nor require legislative approval before adoption. Without court consolidation, it is likely that the use of the court's rulemaking authority would be minimal. It was not until the court was granted clear constitutional authority over the entire court system that it was able to exercise its rulemaking authority aggressively to establish comprehensive procedural rules and to introduce uniform practices across all courts.

Centralized Budgeting. As the funding of functions related to the courts has been shifted from local to state funding, centralized budgeting has developed. The trial courts first develop district budget requests using guidelines promulgated by the state court administrator, to whom they are then forwarded to for preparation of a trial court budget recommendation for the administrative council. The administrative council is an advisory board, which may recommend changes to the budget before it is presented to the chief justice, who has complete and final authority over the entire court system budget. The court budget is submitted to the governor, who must forward it to the legislature without alteration. The supreme court is the fiscal agent for the entire court system and is the only entity authorized to receive revenue or allocate monies appropriated to the judicial branch.

State Funding. In his 1975 annual State of the Judiciary speech to the legislature, Chief Justice Erikstad proposed a plan to transfer full funding of court operations to the state in five phases, beginning with statewide trial courts (with an anticipated merger of county and district courts before the transfer), and then continuing with juvenile courts and juvenile-court personnel; clerks of court; jury fees and expenses; indigent-defense costs; and incentives to improve trial court facilities. As of 2007, all of these phases have occurred, although not in the order Erikstad proposed. Jury and

indigent-defense costs were transferred to the state in 1981; the juvenile courts and juvenile court personnel in 1982. Transfer of the expense of clerk-of-court operations occurred in 2001, although not all clerks or their staff transferred to state employment. In 2003 the final phase of Chief Justice Erikstad's proposal was implemented with the creation of the Courts Facility Improvement Grant, funded through new mandatory minimum fines and a mandatory court administration fee on all criminal convictions. Indigent-defense costs have since been removed from the court's budget and placed under the responsibility of a new executive branch agency, the Commission on Legal Counsel for Indigents.

Features of Court Reform Unique to North Dakota. North Dakota has implemented the reforms recommended to achieve a unified court system, but there are some parts of the reform that remain unique to North Dakota, which must be understood to obtain a full understanding of how the reform has unfolded and the issues that have arisen around it. One aspect of the final consolidation of county and district courts was the legislative mandate that the court reduce the number of judgeships from the fifty-three that existed in 1995 to forty-two by 2001. This mandate was tied to another that requires the court to keep at least 30 percent of chambers in cities with a population under 5,000. Although the majority of the reductions occurred through attrition, the last one resulted from a forced election between two seated judges. The legacy of the reduction of judgeships is the transfer of judgeships from sparsely populated areas of the state to more urban areas and the location of some judges' chambers in areas distant from the bulk of the work assigned to the judge.

The transfer of funding of the clerk-of-court operations was accomplished with conditions meant to assuage both the largest counties who wished to shed responsibility for court functions and the smallest counties who wished to retain some local control over court functions. When first proposed by the court, the North Dakota Association of Counties took a vigorous stance against a full transfer, which resulted in a legislative defeat of the proposal. In a later legislative session, with the prompting of the largest counties, and over the objection of the smaller counties, and without consulting the court, the association began to advocate vigorously for the transfer of the clerk-of-court operation; this resulted in the hybrid transfer of clerk operations still in existence today. Clerks themselves were divided as to their support for the transfer and the concurrent change from election to appointment, and this caused a rift between them that is slow to heal.

While the court assumed all responsibility for the expenses of operating the clerk's offices statewide, only six of the largest offices were mandated to transfer to state employment, with the clerk becoming a classified state employee, rather than an elected county official. A distinction was made based on the number of staff necessary to provide clerk-of-court services in each office, as determined by the supreme court, with offices of five or more required to become state employees. For offices requiring at least one clerk and up to three staff, the county retains the option to transfer the

Chart 1
The Clerk of Court in North Dakota

Clerk Position	Total
Classified State Employee	12
Separate Office—Appointed by County Commission	11
Separate Office—Elected as Clerk of Court	5
Combined Position—Appointed by County Commission	1
Combined Position—Elected as Clerk of Court	1
Combined Position—Elected as County Recorder or other position	18
Combined Position—Elected as Combined Position of Clerk of Court/Other Position	5
Total	53

clerk and deputies to state employment. At the present time, six counties have exercised this option, while eleven counties remain eligible to transfer clerk-of-court operations to the state but have chosen to retain the function and provide clerk services under contract to the state. Finally, the smallest counties, with only a clerk and no staff, are ineligible to transfer the clerk position to state employment.

Those counties that chose to retain clerks and staff as county employees, and those that are ineligible to transfer them, can continue to choose whether the clerk must run for election or whether the office will be appointed. Complicating this issue further is the individual county decision to combine other elected or appointed county offices with those of the clerk of court. Thirty-eight counties have combined the clerk of court with another office, usually county recorder or county treasurer, and may require the incumbent to stand for election for the combined office, or in some cases, for the non-clerk-of-court office (see Chart 1). This gives the court little control or predictability over who will become clerk of court or the level of skill they bring to the position.

The multiple ways in which clerks are chosen and supervised has forced the state to promulgate separate financial controls for state-employed and county-contract clerks and has contributed to frequent clashes over how clerks carry out their duties and how issues related to unsatisfactory work are handled.

Also at issue for those forty-one counties who provide clerk-of-court services under contract to the state is the number of FTE positions required to fulfill the contract. The court determines the number based on a two-year average weighted case-load. This number is often lower than the current number of employees, and some counties have used this as a mandate to cut staff hours or positions. Some clerks of court have also used the reimbursement rate in the contracts to negotiate pay increases since the state is required to reimburse the county at whatever hourly rate the county sets.

Chart 2
Change in North Dakota Berkson Score, 1978-2007

Year	Score	Ratio
1978	9	.61
1987	12	.75
2007	60	.94

Berkson Index Scores. As just demonstrated, the evolution of the North Dakota court system from a traditional, multitiered, decentralized court to a unified judicial system has been slow and deliberate, extending over a period of more than thirty years. One indication of the extent of change is the change in the score and ratio attributed to North Dakota under Berkson's Index of Trial Court Consolidation (see Chart 2).

Under this index, North Dakota was assigned a score of 9, equating to a unification ratio of .61 (Berkson and Carbon, 1978:212-17). The score had risen to 12 when it was remeasured by Flango and Rottman (1992:68), which results in a unification ratio of .75. At the present time, the Berkson score and ratio calculated by the author are 60 and .94 (see Chart 3).

The Berkson Score is not a perfect measure of degree of unification, nor does it provide a perfect measure for comparison between states because it weights all elements of unification as if there were only one dimension to court unification and all elements contribute equally to it; whereas factor analysis indicates that unification is multidimensional and should be measured as three separate and independent factors to create a truly useful index that gauges the extent to which each factor contributes to a unified system (Flango, 1981). The multidimensions of unification measured by the attributes of judicial structure are reforms 1) that are designed to reorganize the horizontal relationships among judicial actors at the local level, for example, court consolidation, assigning managerial authority to a presiding judge and a court administrator; 2) that affect the vertical links between trial courts and a central state office, for example, state court administrator, centralized rulemaking, and judicial assignment powers of the supreme court; and 3) that are designed to protect the judiciary against external influences by clarifying boundary lines between judicial and nonjudicial functions, for example, reforms to the judicial selection process and exclusion of other branches from rulemaking and budgeting process (Henderson, Kerwin, and Saizow, 1984:4-5). Despite the importance of these points, no one has developed a measurement tool to capture them, and the Berkson Index remains the only recognized index of trial-court consolidation.

Chart 3
Calculation of North Dakota Berkson Index Score

Elements	Indicators	Points Assigned
I.	Consolidation and Simplification of Court Structure	
	Number of trial courts	4
	Number of trial courts of general jurisdiction	4
	Number of trial courts of limited jurisdiction	4
	Number of separately administered specialized courts	4
	Total Points this Element	16
II.	Centralized Rulemaking	
	Legally charged rulemaker (state's highest court)	4
	Actual rulemaker (state's highest court)	4
	Legislative veto power (no veto power)	4
	Utilization of rulemaking (most use)	3
	Total Points this Element	15
III.	Centralized Management	
	Assignment power of supreme court (power to transfer judges)	4
	Role of the state court administrator in supervising trial court administrators (most supervision)	4
	Activities of state court administrator (most activities)	4
	Type of merit system (state-wide merit)	2
	Total Points this Element	14
IV.	Centralized Budgeting and State Financing	
	Extent of centralized judicial preparation of the budget (central preparation)	4
	Extent of executive branch participation in budget (executive excluded)	3
	Use of gubernatorial item veto on judicial budget (no authority)	4
	Extent of state financing (80% to 100%)	4
	Total Points this Element	15
	North Dakota 2007 Index Score	60
	North Dakota 2007 Unification Ratio	.94

The ratio is calculated as the arithmetic mean of the unification score divided by 16 (the maximum number of points available under each element).

THE COURT REFORM DEBATE

Having described the basics of North Dakota's court unification, we now review the well-established major arguments put forth by both the proponents and the opponents of court unification and demonstrate how they relate to the North Dakota experience. **Basic Arguments.** The arguments for court consolidation are best summed up in the claims first put forward by Dean Roscoe Pound and carried forward by the ABA. They are that court consolidation allows a judicial system to function as a single entity, simplifies jurisdictional authority, reduces the need for trial de novo, and provides for the flexibility of judicial assignment. These elements make court unification the "conver-

sion of the judiciary from a loose collection of independent judges and administrators to a coherent organization capable of making and implementing operational policies for the courts" (Henderson, Kerwin, and Saizow, 1984:94), with court consolidation as a way to reduce costs, and adoption of a single court of general jurisdiction providing administrative and economic savings to all parties involved (Berkson and Carbon, 1978:22).

The arguments against court consolidation rest principally on the idea that local courts should be governed locally and should reflect the norms of the community in which the court is located. Differences in skills and experience are said to make flexibility in judge utilization impractical, with consolidation of courts actually raising costs because of the need to even out salary levels. Just as important, Gallas says that "the primary error is a belief that simple structural and process reforms will solve complex behavioral problems" and that structural reform is not the means to address the types of problems courts are required to handle (Gallas, 1976:44). Baar argues that there is no evidence to suggest that court consolidation is necessary to achieve the goals of reform, and efficiency and fairness are best achieved through structural variations that work within existing local court cultures (Baar, 1980:277), and he has also suggested that court reform does not give the concept of fairness the same consideration as other, more measurable goals (Baar, 1993). Finally, others argue that court consolidation has not succeeded because of the judges' tendency to hand off "lesser" cases to less experienced or nonelected subordinate officers, which creates a de facto two-tiered court system (Aikman, 2007:64; Tobin, 1999:138).

Dubois and Boyum (1993:29) have stated,

The most persistent, intense and hard-fought political battles have been waged over proposals affecting the infrastructure of the judicial branch . . . which includes the organization, structure, and administration of court systems, the number and jurisdictions of courts, and the judges assigned to them, and the selection, oversight and removal of judges.

This has been the experience in North Dakota, where both the consolidation effort and the move to reorganize districts into administrative units were met with fierce internal resistance. In North Dakota, the proponents and opponents of consolidation efforts, as in most states that have consolidated courts, divided along the district-court/county-court lines, with district judges resisting the change and county judges pressing for it. Once adopted, however, the actual consolidation seems to have taken place without serious dispute over how it was to be implemented. With the passage of time and the gradual departure of judges and clerks of court who were a part of the prior court system, the distinctions between what was "district-court" work and what was "county-court" work have largely disappeared.

In the larger political arena, rural counties and cities were especially opposed to court consolidation, correctly perceiving that consolidation would result in a loss of judgeships in the most rural areas. This reduction in judgeships continues to fuel the

perception that the courts are moving toward regional trial centers that would completely remove court proceedings from the smallest counties and, along with that, hasten the exodus of judges and attorneys from small-town North Dakota.

In consolidating courts, North Dakota chose to retain subordinate judicial officers—judicial referees who are appointed by the presiding judges and assigned to the “lesser” cases involving traffic appeals, small claims, child-support enforcement, juvenile matters, and domestic-violence petitions. Unlike some state court systems, the North Dakota court system has held the line on adding more referee positions despite a documented judge shortage that continues to grow every year,¹ but the courts may be forced, as a cost-saving measure imposed by the legislature, to accept more referees in lieu of adding judgeships.

Without consolidation of the court system, North Dakota would not have the flexibility to reassign judges as needed. As things now stand, judges may be assigned to any court and any case type within the district, and the chief justice may appoint them to any court and any case type within the state. Since consolidation, all judges are general-jurisdiction judges, and all district rotation schedules require judges to regularly take case assignments in all areas of law. The supreme court regularly assigns judges out-of-district to hear conflict cases and to assist colleagues during temporary judge shortages due to extended absences for illness or other reasons. This greatly reduces the need for use of surrogate judges and allows case-aging concerns to be addressed promptly.

State Funding and Centralized Budgeting. Arguments for state funding and centralized budgeting begin with the premise that there are inequities in resources when courts are locally funded. Where some funding is provided by the state, local courts may end up in competition for available funding, with “neither the Chief Justice nor a single court administrator . . . able to speak for the entire system” (Garcia, 1998:12). Proponents of state funding and centralized budgeting argue that it provides the accountability that the other branches of government and the public demand from the courts. A single funding source allows for flexibility in personnel and other resources. Moreover, “when trial courts become state-financed, vertical lines of administrative authority running from the supreme court to the trial courts are normally strengthened, or at least clarified, in order for a court system to function as a state-wide administrative entity” (Tobin, 1982:72).

The objections to a centralized budget function have been said to be that trial courts lose the flexibility to respond to local conditions; the state court system may develop unneeded or undesirable programs; and the state court system may wield its budgetary authority to punish court officials with whom it disagrees (Gallas, 1976:45;

¹ North Dakota has a ratio of 7 judges per 100,000 residents, which is below the national average ratio of 9 judges per 100,000 residents (Langdon and Cohen, 2007:2). The latest weighted caseload study conducted by the North Dakota Office of the State Court Administrator was completed in 2006, and indicates a statewide shortage of five judges.

Saari, 1976:30). Opponents of state funding also question the advisability of relying on a single source of funding. Robert Tobin has documented several undesirable outcomes of state financing, including a leveling effect on personnel and other resources, which tends to curb affluent jurisdictions; a backlash against courts when loss of court-generated revenue is greater than the cost of providing a local court (Tobin, 1982:73, 84); and possible local government inability or unwillingness to maintain facilities or to provide adequate space for court needs if required to provide court facilities without reimbursement (Tobin, 1996:75).

North Dakota's gradual shift to state financing has protected the court system from the enormous shock that a one-time shifting of all programs and personnel sends through a court system. At each step, the court has had an opportunity to learn from experience and to adjust accordingly in preparation for moving to the next phase of state financing. That is not to say that every move has been without controversy. The transfer of the clerk-of-court operations was particularly difficult.

Tobin's assertion that a leveling of personnel and resources, resulting from comparison studies, accompanies state funding has occurred in North Dakota. Staffing studies of both the juvenile courts and the clerk-of-court operations are regularly conducted, and some counties have been found to have been overstaffed when county-funded, so they have had positions transferred to other divisions of their court or to other district courts. Employees whose salaries exceeded those in the state compensation plan found their salaries frozen until the state compensation plan caught up to them. In addition, because the legislature is resistant to requests for new positions, the largest courts find themselves with staffing levels below those recommended by the studies. In some cases, coupled with the court's commitment to moving staff to where it is most needed, this can lead to competition between courts, or even between divisions of the same court, for the transfer of vacant positions. In addition to effects on staffing, management reviews affect operating practices. Such reviews, regularly conducted on juvenile courts and clerk-of-court operations, are used to implement the most efficient methods of case management and the most effective assignment of personnel and may lead to mandated changes in local practices. This often puts the local court in a position of having to negotiate changes with their local justice system agencies. Sometimes the changes are welcomed by the local court, which is able to use the leverage of a mandate from a higher level to force changes they might not otherwise get. At other times, the changes are not as welcomed by either the local court or the local justice system, and the court is slow to implement them. When this occurs, the local court may be held at current staffing or resource levels until it takes the necessary steps to implement the required change.

A positive aspect of state funding in relation to relative resources is that it has given the court unprecedented opportunity to share resources. Court staff are frequently deployed, regardless of district boundaries, to assist where needed. This is especially prevalent in the juvenile court operation where staff from four districts

especially prevalent in the juvenile-court operation where staff from four districts routinely work in counties that are outside their own district. Technology has increased the ability to share staff; the court now contracts with one clerk to monitor statewide fine-collection efforts and another to create and upload forms to the state's Web site. Twice during the budget cycle, the overall court budget is reviewed, and funds are shifted to cover unexpected expenses in a district or to fund new services or initiatives. Contracts for services or supplies can be negotiated through the state office, allowing for lower costs and greater availability of services. Shared funding also gives the court the flexibility to establish pilot projects and to ensure that they are implemented and evaluated in a manner that makes the findings applicable to the whole state and the programs easily replicable in other areas of the state.

Generally, "the major reason for legislative interest in state funding of all or a significant portion of the judicial system is to provide financial relief for local government" (Lawson, 1981:281), and that was the driving factor for many of the changes in funding in North Dakota. Court data shows that since 1982, the state has absorbed an increase of costs for court operations of \$16 million that the counties would have borne if not for state funding. Notwithstanding those figures, the counties continue to press the state to take on more financial obligations, for example, requiring the courts to pay rent, provide funding for new facilities, and absorb other costs that have traditionally been county responsibilities, including such things as custody investigations, guardian ad litem fees, and counsel for respondents in mental-health cases. Moreover, as Tobin predicted, court facilities needs are often downplayed or ignored outright because of the conflict over who should pay for them. In North Dakota, some counties have refused to provide on-site record storage for courts, taken away parking privileges for courts, and refused to apply for facility-improvement grants on behalf of the court.

County officials often cite the loss of fine revenue as the reason for denying court requests for additional space or facility improvements. Although fine revenue was shifted from the counties to the state, this was not a part of court unification. The change in revenue stream was the result of a statutory change initiated by the Office of Management and Budget, based upon an attorney general's opinion that bonds (which include traffic fines) were improperly being forfeited to the counties rather than paid into the state's Common Schools Trust Fund as required by Article IX of the Constitution of the State of North Dakota. Unfortunately, the change in revenue stream occurred in the same legislative session as the transfer of the clerk-of-court operation and for many county officials has become inextricably linked to the courts, to the point that it is not uncommon to hear county officials incorrectly stating that "the courts took fine money from the counties" and fine money is used to "fund the courts."

Centralized Administrative Authority and Management. The arguments for centralized authority have been said to be that it creates efficiency; increases intrajudicial and interbranch coordination and cooperation; provides uniformity and consistency; and

provides other miscellaneous benefits, such as relieving judges of administrative duties, attracting better candidates as managers, providing more-uniform statistics (which, in turn, facilitates better long- and short-term planning), positions courts better to attract funding from the legislature, and provides improved training programs for judges and administrative personnel (Berkson and Carbon, 1978:24-27).

Principal arguments against centralized authority are that it is impractical given the complex nature of the judiciary and that it creates a rigid and nonresponsive bureaucracy, which is an encroachment upon professional norms. There are also other miscellaneous objections: that no empirical study shows centralized administration leads to increased effectiveness, so it is not worth disrupting the status quo; creation of a uniform personnel system does not take into account local needs, local court structure, or employees' abilities, so it would reduce employees' sense of commitment to the organization and create a high rate of turnover; and the cost of a central personnel system hiring professional administrators would be prohibitive (Berkson and Carbon, 1978:27-28). It has been said that the unified court model rests on "old, outmoded organizational theory," assumes a "false certainty about what is and can be known about court operations," and fails to "adequately consider the philosophical underpinnings for court action" (Dahlin, 1993:62).

Current opponents of the unified model propose a model of decentralized/consultative design in which trial courts retain administrative independence and the state is reduced to providing funds, technical assistance, and research, with statewide policies adopted in consultation with the trial courts (Dahlin, 1993:61-63). In addition to questioning the role of the state supreme court administrative structure and staff "as a controller of operations versus a planning, research and development function," Gallas (1976:39) argues that because of the number of agencies and individuals involved in the justice system whose authority is outside the reach of the court, "negotiation, consensus and compromise, rather than power, are the essential instruments of management in (the local court) environment," and he asks, "As a matter of practicality, can central headquarters effectively or even adequately control operations in local, county-based justice systems?"

From the start of its court reform, North Dakota has followed many of the practices touted by Lipscher and Conti (1991:669) as hallmarks of "coordinated decentralization." These include assuring trial-court leaders a voice in the development of plans and programs; ensuring that group products are exposed to some statewide review and consultation process; and having regularly scheduled meetings between the chief justice, the state court administrator, and the chief judges of the trial courts. According to Berkson and Carbon (1978:201), "the states considered most highly unified in theory are perhaps the most practically decentralized. Therefore, a unified system is more aptly viewed as a mandatory consultative one in which previously autonomous professional personnel are required to interact with all members of the judiciary and to collectively set internal priorities and goals." This very aptly describes the path North Dakota has chosen to take in implementing court reform.

With respect to the three categories of functions confronting judicial organizations—adjudicatory process, administrative services, and external relations—the focus at the local level is mostly on the logistics and processing of cases (Henderson, Kerwin, and Saizow, 1984:49). Centralized management in North Dakota has addressed the adjudicative function through its rulemaking authority, and the administrative services function through its authority to establish uniform policies and procedures. Both the rulemaking and the judicial branch policymaking procedures involve extensive consultation with the local courts and the state bar association, and there is, as well, an opportunity for all court employees to submit comments before adoption. Whereas the chief justice represents the court on the state level and coordinates the formulation of court positions on areas of statewide interest, at the local level, the presiding judge formulates court positions on areas of local interest, with each district retaining the authority to establish internal case assignment and judge rotations. Although no court has sought local rules of court in recent times, they are possible, and go through the same rulemaking process as other rules of court and are subject to final approval by the supreme court. Despite the absence of such requests, there has been periodic resistance from judges and members of the bar to uniform rules of court or court policies and procedures.

Comments received in response to the 2004 administrative reorganization proposal make it clear that there was confusion over “administrative duties” as compared to “court-support activities” handled by the clerks of court. As Henderson, Kerwin, and Saizow (1984:7-8) have noted, the attempt to unify court systems challenges an approach to decision making that places the individual judge at the center of all decisions and makes no distinction between “questions of justice and the problems of directing the day-to-day activities of a court.” As a result of reforms, “although the judge’s decisions on the law or facts of a case are not subject to managerial control, the context within which the hearing of a trial takes place are very much part of the management process.”

In those districts that chose not to utilize a trial court administrator before 2004, there have been instances where individual judges and the local bar association actively resisted the part of the reorganization effort that increased the court administrator’s role. However, as the new organizational structure has settled into place and the distinction between administrative functions and the adjudicative function have become clearer, most judges have come to rely on court administrators to be troubleshooters and problem solvers, and these clashes have become less frequent.

Remaining Issues. Court reform has not addressed all issues and, indeed, has created some issues that have yet to be resolved. One relates to the place of municipal courts within the overall context of the court system. The supreme court has chosen not to exercise its supervisory role actively over these courts and does not require them to submit data on case filings, collections, or other internal functions. Consequently, there is no clear picture of how many citizens are interacting with these courts. The supreme court is often the last to know if a municipal-court judge has been replaced

or if there are issues surrounding the operation of the court. This causes confusion over who has the authority to act to resolve issues when conflicts arise, such as a recent occurrence when a city commission refused to cooperate with a newly elected municipal-court judge, or when a municipal-court judge is viewed as unduly harsh in sentencing and causing a flood of transfers and appeals to the district court. The shrinking population of many cities in North Dakota has led many municipalities to contract with the district court to provide judicial services, and this may lead to more voluntary dismantling of the municipal-court system without resolving the relationship questions. However, this is not likely to occur in the largest municipalities, and the issue will persist.

Another issue is whether to facilitate court specialization, a movement with strong support as courts “now find themselves struggling against powerful interest groups dedicated to subdividing the trial court system into specialized courts” (Tobin, 1999:247). This has been an issue in North Dakota in regard to adult drug courts, which are under the authority of the executive branch. In the past, the governor and the Department of Corrections, in conjunction with the Department of Human Services, have received legislative appropriations to implement and later to expand the number of drug courts; in both instances, the executive branch neither consulted with the court nor took into consideration the impact additional specialized courts would have on judicial resources.

The previously noted issue of court facilities remains volatile and leads to frequent disagreements with county funding authorities over such matters as on-site storage of records, court security, additional office space to accommodate growing staff levels, and, in one county, objections to a new judgeship because it would require additional courthouse space. The counties are divided as to whether courts should pay for the space they use, and the most populous counties have pressed for a legislative mandate to require the court to pay rent, although without any mandate for the county to meet the courts’ facilities needs. The less populous counties, fearing court closures and regional trial centers, do not support measures mandating the courts to pay rent.

The current judge shortage, combined with the statutory mandate of retaining a minimum of 30 percent of chambers in cities of less than 5,000, also continues to put pressure on the court system. The need to have some judges based as far as fifty miles from where their caseload is centered creates a loss of work time that exacerbates the judge shortage. The court’s need to transfer some chambers between cities strains the relationship between local communities and the court system. Likewise, the decision of some judges to establish a second chambers in a courthouse outside the county in which they are chambered may lead to local resentment against the court system, this in turn can exacerbate relationships between adjoining counties, where one has “lost” its judge and the other feels it is being forced to “adopt” a judge with all the attendant expenses and space needs.

CONCLUSIONS

Court reform in North Dakota has worked well. Levels of public trust and confidence have increased significantly over time, and recent measures of access and fairness resulted in ratings of good to excellent across all elements (Holewa, 2007:31, 42, 47-50). The reasons why court reform has been largely a positive and successful experience for North Dakota can be explained by geography, the legal culture in North Dakota, and the leadership of the chief justice.

That North Dakota is primarily a rural state, with a continuously decreasing population on the western side of the state, helps explain the successes of court reform there. Henderson et al. (1984:176) concluded that “centralization is the organizational device most likely to assist rural courts. Since their problems are frequently related to the availability of resources and the effective management of those which they have, state funding and technical assistance from the central office can help.” Because they lack both capital and human resources, several of the smallest counties have had to enter into cooperative agreements with other counties to provide such things as social services, prosecution services, and emergency services. Without consolidation of the courts and state assumption of costs, it is doubtful if some of the most sparsely populated counties would have been able to maintain local courts.

Metropolitan courts are likely to develop their own way of doing business and can be resistant to court consolidation if they perceive it to be an intrusion into their local practice (Tobin, 1999:61), and courts that are satisfied with the financial resources provided by local government are likely to resist a transfer to state funding (Berkson and Carbon, 1978:80). The largest courts in North Dakota are several times larger than the smallest ones, but they lack the larger, more diversified tax base that other states’ largest metropolitan areas are likely to have. Because of this, none of the larger courts in North Dakota were able to bring to bear resources and political support strong enough to oppose reform. Indeed, the largest courts did not appear to be motivated to do so, partly because these courts had not been sufficiently isolated to develop procedural or management practices significantly different from the other courts in the state and partly because they did not have a much greater abundance of resources than the smaller courts.

The legal culture in the state has inclined lawyers and judges to assist in the reform movement once their initial opposition has been overcome. North Dakota has a small population, a history of little inward migration from other states, and only one law school. There is a high degree of sociability in the court system (Ostrom et al., 2007:29), and court reform has introduced a higher degree of solidarity in purpose and goal between the members of the court system. People know each other on a very personal level, often through family and school ties that predate working relationships. While strong disagreements regarding methods or desired outcomes can take place, they are generally handled in a manner designed to preserve the relationship.

Finally, the degree to which the method of selection of the chief justice and the continuity in both leadership and vision has played a part in the reform movement cannot be overlooked. North Dakota is unique in giving trial-court judges a role in selecting the chief justice. Because trial-court judges have a direct hand in electing their chief justice they elect the person whose leadership they trust. They have confidence in their chief justice and would not reelect him if they thought the changes that were being pursued were not in the best interest of the trial courts or if they felt harmed by changes that had occurred. The fact that there have been only two chief justices over the past thirty-four years speaks to that confidence, as well as to the personal qualities of those chosen to lead the court.

The court was under the leadership of Chief Justice Ralph Erikstad from 1973 to 1993. Before being appointed to the bench, he was a three-term state senator. This experience in the legislature served him well, and throughout his tenure as chief justice he was able to use his political skills to benefit the court system. He defined the vision of its future as a unified system and worked tirelessly to institute every element of reform necessary to achieve that vision. Since 1993, Chief Justice Gerald VandeWalle has remained committed to that vision. Chief Justice VandeWalle was a career public servant in the executive branch before his appointment to the bench. He has served as president of the Conference of Chief Justices and has been active in the ABA and with the National Center for State Courts. It is under his watch that the actual work of implementing most of the reform measures has occurred. His work with court reform on a national level has aided in his ability to craft successful implementation strategies for North Dakota. While remaining steadfast in his determination to make court reform move forward, he has also demonstrated commitment to being both inclusive of and responsive to the concerns of trial-court judges and members of the bar. This approach may have slowed reform, but it has also fostered a sense of trust that continues to fuel the reform movement and ensures a cooperative effort to implement changes as they have been adopted.



In retrospect, it is amazing that so much heat has been generated by a reform as mundane as unification. People rail against unification as if it were some anti-Jeffersonian conspiracy to crush out any trace of local autonomy and initiative, or they simply say it hasn't worked. Proponents tend to equate it with good government and enlightenment. . . . The truth is that unification has never been as pernicious or as beneficial as the combatants would have us believe and has been applied quite pragmatically (Tobin, 1999:195).

This sentiment echoes the North Dakota experience. Court reform has not resolved all issues it set out to solve, and it has raised some issues that have yet to be

resolved, but it has also proven to be a viable system that retains the flexibility to adapt to the changing needs of the local courts and of the citizens of the state.

Now that the court has basically completed all five phases of structural court reform, it is time to shift its focus somewhat. The North Dakota court system has begun to turn its attention outward to address “whether system processes, outputs and outcomes are fair and equitable, or are unjustly partial toward certain types of plaintiffs or defendants” (Baar,1980:289). There is a new interest in improving access to the courts through better public information and providing more efficient means of reaching the court, including the expanded use of interactive video, electronic filing, and simplified court procedures. The court has undertaken new programs to address the amount of acrimony introduced into dissolution cases through the adversarial process and to provide greater assistance to self-represented litigants and is in the process of establishing the groundwork for a major study on diversity issues. With structural issues largely behind it, the court system can now turn as a whole to address service issues. **jsj**

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