THE IOWA UNIFIED COURT SYSTEM

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May 1, 1974

I was pleased to read the interesting analysis of Iowa's unified trial court system by Professors Ross, Schmidhauser, Beatty, and Green. While the findings are admittedly preliminary, the analyses and conclusions deserve serious reflection.

The study begins with an enlightening discussion of the history of judicial reform in Iowa, narrows to an examination of trial court unification, and concludes with a comparative analysis of the social background characteristics and beliefs of justices of the peace and judicial magistrates based upon survey data derived from mailed questionnaires. Also reviewed were the number and type of cases heard by justices of the peace and magistrates. (For a more detailed description of the number and type of cases handled by magistrates and the methods of disposition see the Court Administrator's 1973 Annual Report, forthcoming.) The professors should be commended for their efforts in analyzing the progress of judicial reform and the performance of the unified trial courts.

Like most innovations, a consolidated judicial system is not achieved overnight. Progress generally accrues only after the initial statutory provisions and administrative practices have been modified or corrected by a series of painstaking refinements. Fortunately, we can be proud that Iowa is one of a handful of states which complies with the Model Standards in three essential areas: judicial structure, court administration, and judicial selection. While we are grateful for the progress made to date, we are mindful that judicial reform is a never-ending task - an endeavor requiring the enthusiastic support of every public-spirited citizen.

With careful scrutiny and more in-depth analyses of the merits and shortcomings of the judicial system, we hope to continue developing new ways to improve the quality, efficiency, and effectiveness of the judicial process in Iowa.

I think you will find this study informative.

Sincerely,

Wm J. O'Brien

William J. O'Brien
Court Administrator

WJO:psc

If we could first know where we are, and whither we are tending,

we could better judge what to do, and how to do it --- Abraham Lincoln

Part I

THE INSTITUTIONALIZATION OF THE IOWA JUDICIAL SYSTEM, 1838-1969

The institutionalization of judicial systems has been characterized, in the American states, by greater specialization of functions and a preference for professional rather than lay officials. The variations in the requirements for the office of Justice of the Peace represent the fundamental and continuing conflict between advocates of lay vs. professional management of one level of the judiciary. Other measures of institutionalization are (1) the establishment and maintenance of boundaries which differentiate a particular institution from others, (2) the specialization of functions within the institution, and (3) the evolution of standardized institutional procedures and ethical norms.[1]

The original organization of the territorial judicial system of Iowa was derivative, patterned after the systems utilized in the area which became Iowa while it was under the jurisdiction of the territories of Michigan and Wisconsin, 1834-1838. The adoption of Iowa's own territorial judicial system was not marked by serious division. The Justice of the Peace system, originally an appointive plan embodied in H.F. 58, was passed on January 7, 1839, by a vote of twenty to one in the House of Representatives.[2] There is no record of a division in the Council or upper house. One year later, a different method of selection was adopted without roll call division when on January 14, 1840, the territorial legislature provided for the popular election of two Justices of the Peace in each county.[3] This system was continued with the adoption of the first constitution of the newly organized

state of Iowa. By 1847, the General Assembly had begun the practice of bestowing upon Mayors, by special charter, the powers and jurisdiction of Justices of the Peace. The transition from the looser, relatively unprofessional, relationships of the earlier frontier era to more predictable institutional obligations was facilitated by adoption of legislation requiring District Court clerks and prosecuting attorneys be bonded to the Board of County Commissioners, an action which provoked a roll call division of 13 to 6 in the Iowa Senate.[4] In 1853 a bill was enacted calling for the election of the state Attorney General and the definition of the duties of the office. The House division on the bill was 34 yeas to 23 nays while the margin in the Senate was wider, 22 to 8.[5] One major principle considered essential to the maintenance of the boundaries of judicial institutions is the prohibition of the private practice of law by judges. An attempt to incorporate such a prohibition in a bill requiring the bonding of district judges was resoundingly defeated in the Senate, 7 to 23 in 1853.[6] On January 28, 1857, provision was made for appeal by all criminal defendants from Justice of the Peace or Mayors Courts to the pertinent District Court.[7] A year later the Iowa General Assembly expanded the jurisdiction of Justices of the Peace to trials of all public offenses involving punishments not exceeding $100 in fines or 30 days imprisonment.[8]

By 1858, a rather complete legal system was in operation consisting of a Supreme Court, the members of which were elected state wide for six year terms, judges of District Courts and district attorneys elected for four year terms, and county judges and clerks elected for two year terms.[9]

In the 1860's the efforts toward professionalization and specialization which are considered essential to the maturation and institutionalization of particular judicial systems were rejected in part. For example, the clerk

and the reporter of the Iowa Supreme Court were both made elective offices with four year terms.[10] This change was marked by significant roll call divisions in each house. Conversely, in 1868, an effort was made to establish an intermediate appellate court system by creating a tier of circuit courts between the district courts and the Supreme Court, to consist of judges elected for four year terms. Again the voting divisions in each chamber were fairly narrow. The Senate vote on final passage was 30 to 19; the House division was 52 to 38.[11] In 1872 another statute designated the term of circuit judges as four years and granted the circuit courts concurrent jurisdiction on all civil actions but no criminal jurisdiction. House support for this change was strong, 54 to 12, but the action was marked by significant absences, 34. Senate action was stronger and more clearcut, 36 yeas, 5 nays, and 9 absent.[12] In 1876 general statutory provision for the establishment of a Superior Court to replace the police courts of cities over 5,000 in population was made.[13]

1884 and 1886 were years of fundamental change. In the first, the office of district attorney was abolished and elective county attorneys were reestablished. In 1886 the circuit courts were abolished and the district court system reconstituted. This stimulated sharp roll call divisions. The House approved the change 63 to 31 with 6 abstentions while the Senate approved 30 to 15 with 5 absent.[14] Controversy also arose over elimination of the Council Bluffs, Davenport and Dubuque terms of the Supreme Court which, by an enactment of 1886, was established solely as holding its terms in the state capitol of Des Moines. The Senate divided 26 to 12 and 28 to 18 on the issue and House passage was assured only after a committee referral (to kill) motion was defeated 37 to 58.[15] This was followed by a long period of relative stability in the judicial system.

The impetus toward greater specialization and professionalism in the police courts came quite late, in 1933, when H.F. 210, introduced by Representative Mercer, made the election of police judge optional.[16] In 1937, an unsuccessful effort was made to eliminate the partisan mode of selecting judges by substituting a non-partisan nomination and election of Supreme, district, or Superior Courts.[17] In 1945 a House effort was made to authorize a study of the efficiency of the Justice of the Peace program, but it was not acted upon in the Senate. During the late 1940's a variety of efforts were made to increase the compensation of judges and Justices of the Peace, and in the case of District Judges and Supreme Court justices, to create a retirement pension and annuity system.[18] In 1953 an abortive effort was made to replace the elective Justices of the Peace with a single Justice of the Peace in each county, to be appointed by the District Court.[19]

The major modern developments relating to the institutionalization of the judicial system of Iowa began with the adoption of H.F. 349 in 1955, a bill to establish the position of judicial statistician in the office of the Clerk of the Supreme Court.[20] In 1957 an effort was made to encourage earlier retirement of judges but the bill was not acted upon in the House.[21] In 1959 another modification of the judicial retirement system was enacted, removing the requirement that Social Security be deducted from judicial retirement annuities.[22] An attempt to include Municipal Judges under the state retirement system was approved in the same year, as was a bill making the salaries of judges, clerks and bailiffs of municipal courts uniform.[23] An attempt to place elective judgeships on a non-partisan basis died in the House in 1959 as did an attempt to raise judicial salaries to a level more closely related to those of top professionals.[24]

However, 1961 proved to be a very significant turning point in the institutionalization of both the lower and upper divisions of the Iowa

Judiciary. First, a bill (H.F. 440) was passed requiring Justices of the Peace to attend periodic instructional conferences.[25] Secondly, the salaries of judges, clerks, and bailiffs of municipal courts were fixed at 80% of the maximum salaries of district court judges.[26] Thirdly, an increase in retirement annuities was enacted.[27] And finally, the terms of Supreme Court justices and district judges were extended.[28] The remainder of the 1960's brought an acceleration of institutionalization efforts. In 1963 modifications in judicial nominating commissions, elections and other judicial requirements were adopted.[29] In 1965, H.F. 449 provided for a unified trial court system and the abolition of Justice of the Peace and Municipal Courts. While it was defeated, the bill became the harbinger of future efforts with success achieved in 1971.[30] An unsuccessful effort was made to establish a public defender system in the same year.[31] In 1967, a legislative program to redefine the jurisdiction and duties of the District Judges was passed.[32] The program for a unified trial court system was given substantial support in the same year but was not acted upon in the House.[33] Another basic change accomplished in 1967 was embodied in a bill (Senate File 283) establishing district lines and reallocations of the number of District Judges to more adequately reflect the population and judicial case load realities of the mid-twentieth century.[34]

These developments set the stage for the final series of actions which resulted in the adoption and implementation of the Judicial Magistrate system. The advocates of these changes rather consistently described them as manifestations of greater complexity, specialization and professionalism. The events between 1967 and completion of the change in the early 1970's thus represented the fulfillment of a variety of expressed goals during the period of nearly 140 years of judicial activity since the territory of Iowa was created as a governmental entity. In chapter 2, some of the major purposes and rationals

for these changes are discussed. In chapter 3, the major steps in the successful development of a unified trial court system in Iowa in the late 1960's and early 1970's are analyzed. In the concluding chapter, the immediate consequences of the adoption of these changes are evaluated. Of all the state legislative conflicts involving the institutionalization of the state judiciary some of the most intense involved the very threshold institutions and personnel in the total system -- the Justice of the Peace and Mayors and/or Police Court systems. Indeed change related to increased professionalization and specialization was generally most difficult of attainment at these levels of the judiciary. The major arguments concerning the performance of the old system and the asserted advantages of adopting a more professional and more specialized system are discussed in Chapter II.

FOOTNOTES - Part I

[1]For a full discussion of the institutionalization of another political subdivision, the U.S. House of Representatives, see Nelson Polsby, "The Institutionalization of the U.S. House of Representatives," 62 American Political Science Review (March, 1968), p. 145.

[2]Journal of Iowa Territorial House of Representatives (January 7, 1839), p. 191.

[3]Laws of Iowa (1840), pp. 59-61.

[4]Senate Journal (1847), pp. 90, 105; House Journal (1847), p. 160.

[5]Laws of Iowa (1853), pp. 186-187; House Journal (1853), p. 272; and Senate Journal (1853), p. 260.

[6]Senate Journal (1853), p. 64.

[7]Laws of Iowa (1856-1857), pp. 303-304.

[8]Laws of Iowa (1858), pp. 55-56, 405, and 478-479.

[9]Laws of Iowa (1858), pp. 402-410, 557-558, 633.

[10]Laws of Iowa (1866), pp. 81-82; Senate Journal of Iowa (1866), pp. 491-492; House Journal of Iowa (1866), pp. 587-589.

[11]Laws of Iowa (1868), pp. 113-120; Senate Journal of Iowa (1866), p. 244; House Journal of Iowa (1868), pp. 496-497.

[12]Laws of Iowa (1872), pp. 24-25; House Journal (1972), pp. 506-507; Senate Journal (1872), p. 402.

[13]Laws of Iowa (1876), pp. 135-138; Senate Journal of Iowa (1876), p. 409; House Journal of Iowa (1876), pp. 544-545.

[14]Laws of Iowa (1884), pp. 234-235; Senate Journal (1884), p. 339.

[15]Laws of Iowa (1886), pp. 67-68; Senate Journal (1886), pp. 44; House Journal (1886), pp. 500, 512-513.

[16]House Journal (1933), pp. 740-41, 757.

[17]Senate Journal (1937), p. 524; House Journal (1937), p. 437.

[18]House Journal (1947), pp. 1292, 1308, 1407, 1429-1431, and 1624; House Journal (1949), pp. 355-356, 957-958, 1335-1336.

[19]House Journal (1953), pp. 572, 624, 631.

[20]House Journal (1955), pp. 507, 686-687, 733, 735-737, 769-771.

[21]Senate Journal (1957), pp. 84, 96.

[22]Senate Journal (1959), pp. 353 and 496.

[23]House Journal (1959), pp. 499, 501, 885-886, 946-947 and 1209 and pp. 994-995 and 1113.

[24]House Journal (1959), pp. 634, 665, and 684.

[25]House Journal (1961), pp. 934-935, 945-946.

[26]Senate Journal (1961), pp. 636, 929-930, 730, and 971-972.

[27]Senate Journal (1961), pp. 789, 827, and 1181.

[28]Senate Journal (1961), pp. 695, 1377-1378.

[29]Senate Journal (1963), pp. 604, 613-615, 620, 622-624, 1116-1117, and 1135.

[30]House Journal (1965), p. 489.

[31]House Journal (1965), pp. 130, 399, and 1362.

[32]Senate Journal (1967), pp. 466, 1990-1991, 2044, 2303-2306, and 2408.

[33]Senate Journal (1967), pp. 716, 761, 783, 792-793.

[34]Senate Journal (1967), pp. 400, 418, 760-761, 797-798, 891-896, 910, and 2409.

Part II

THE PRO'S AND CON'S OF THE IOWA INFERIOR COURTS, 1838 - 1973

The Justice of the Peace

The office of Justice of the Peace as it still exists in many states of the United States can be traced to origins developing in medieval England when transportation was slow, difficult, and expensive. It was also a part of the system of government by landed families. When the office was introduced in America, the positions were usually filled by appointment, but in the Middle Period, as a result of the spread of the Jacksonian ideas of democracy, the elective system was extended. As the centralization of power developed in England, the justices were taken over as part of the national system for the administration of justice.[1] These courts had then several useful purposes. They made justice more easily accessible and cheap for the common man. They made it unnecessary for him to travel to a distant city, with the expense and the loss of time involved--which would, in fact, have denied him an opportunity for the judicial settlement of his difficulties. Many minor disputes between neighbors for the settlement of which intelligence, human sympathy, and common sense were regarded as more essential than a detailed knowledge of the intricacies of the law. Upon this basis, it was possible to make use of leading citizens in each community; these persons, who came to be known as Justices of the Peace, were vested with the necessary authority for the adjudication of minor disputes. For many years the system worked well. The men who held the offices were usually highly respected in their communities, and the

office itself was regarded as a distinction. Proudly did these men sign their names "John Jones, J.P."--Justice of the Peace.

Like so many elements in American government, this system was lifted bodily from its English setting and transplanted in America. Here it has remained through a period of approximately three centuries without any substantial modification; few serious attempts having been made at any time in any of the states to make such adjustments as changed conditions might have made desirable.[2] The major defects in the system are the lack of qualifications of the justices, the fee system of compensation, the practice of preying upon strangers, and the tendency to find judgment for the plaintiff. In the average American community the prestige of the office has all but vanished. The individuals who occupy it have, for the most part, few qualifications for the performance of judicial duties. They are sometimes men of the "small" caliber; in a day of specialization, many of them are learned neither in the law nor in anything else. They are usually local politicians who either have no business or have never been able to succeed in the ordinary pursuits of life.

The majority are far more interested in the fees obtainable than in the attainment of justice. The fact that most justices are compensated on a fee basis rather than by salary constitutes one of the most serious defects in the system. So much is this true that the initials "J.P." have often been jocularly translated as "judgment for the plaintiff"--since only through finding judgment for the plaintiff can the justice be sure of his fees. Large numbers of them allegedly entered into dishonest arrangements with constables and other local functionaries, establishing "speed traps" for the purpose of harassing motorists. Those who are strangers in the community are their particular targets, for these people are without

political influence, and are usually willing to pay their fines in order to avoid further delay. There are, of course, a few who honestly and conscientiously seek to perform the duties of their office, but the percentage of the total number who do this is pitifully small.[3]

While these comments constitute a serious indictment of the whole system, they represent the deliberate judgment of practically every person who has investigated the functioning of this type of local officer. A number of studies of the Justice of the Peace from various states have been published. Several of these are cited as they have general applicability to the Iowa Justice of the Peace courts. As regards the occupational background of justices, there is no necessary conflict with the judicial function, although Bruce Smith has observed, "in the majority of cases, the occupations of incumbents provide no guaranty, nor even expectation, that their experience prior to ascending the local bench would offer any degree of special qualification." In a study made by the Pennsylvania Bar Association in 1942, the following report was made:

> Occupations of the 3,225 justices in sixty-four counties were taken from county registration records. These occupations vary with the county, depending on the dominant occupational pattern of the county; in rural counties most of the justices were farmers, and in the urban counties most of the justices were skilled and unskilled workers. Many justices listed their occupations as "justice of the peace," indicating that their judicial duties were their only gainful occupations. A very few were lawyers, and only a small number had any experience that would be of value in judicial work.
>
> Nearly every occupation was represented: there were doctors, blacksmiths, reporters, bartenders, students, morticians, W.P.A. workers, and many others. The most numerous occupation listed was justice of the peace--669 or 21 per cent of the justices and aldermen surveyed were in these four occupations.[4]

A survey made in Hamilton County, Ohio, reveals some interesting facts with regard to both the income of justices and their dockets. In this county

"the average annual income of justices (from all fees of whatever nature) was $415.75...with yearly income ranging from $4.30 to $2,557.06. Twenty-six per cent of them earned less than $200 and sixty-eight per cent less than $300. Only eight per cent of the justices earned more than $1,000.... The correct concept to form of the squire is that of a judge, poorly paid and subsidized, to whom the state farms out its work in the administration of justice in the counties and townships upon the consideration that he shall collect occasionally some civil fees. If the desire for economy in local government led to the development of the present system, arithmetic proves that the desire apparently has been realized."[5] In a few cases found in Erie County, New York, salaries ranging from $2,500 to $5,000 were paid, but this is unusual; in Pennsylvania, out of 1,194 justices interrogated in an earlier survey, only five were on an exclusively salaried basis.

Under such circumstances, it is small wonder that the work is usually done badly. To refer again to the report on Hamilton County, Ohio: "The docket entries are made whenever the squire or his family have a few spare minutes. Wives and children do a considerable amount of clerical work." The report continues:

> ...A few magistrates permit their cases to accumulate until something happens to force them to bring their records up to date. On one occasion a justice sat up all night to make his entries and have them ready for the perusal of an interested party the next morning. The call of the state examiner for the records stimulates a few judges to feverish clerical activity. As a consequence of the dilatory manner of keeping official records, the dockets frequently have cases following in such sequence as March 21, 1929, December 3, 1928, January 3, 1929, October 7, 1928. One squire delighted in finding blank pages in old dockets and entering his cases. He achieved such serial order as June 10, 1925; December 6, 1930; June 12, 1925. [Although some of the justices employed systematic filing methods] one squire filed the papers of each case in the docket book. Three kept the papers in desk drawers, being sometimes able to locate the proper documents and sometimes not. In three cases the papers could not be located. In two cases papers transferred from squires to their successors were completely lost.... A few dockets were either lost or could not be located for examination.[6]

In 1932, the Michigan Commission of Inquiry undertook an exhaustive study of local government in that state; and in connection with this study a careful analysis was made of the justices' courts in six typical counties. The state constitution provides that there shall be elected in each organized township not more than four Justices of the Peace.[7] These six counties had an aggregate of 290 Justices of the Peace, but all the judicial business in the counties, outside of the cities, was handled by twenty-one justices, the other 269 having no judicial business whatever. A study of the work of these twenty-one justices was then made. The situation in the individual counties was interesting. In Kent County, for instance, where there were ninety-six Justices of the Peace, nine handled all the cases, five of these did 88 per cent of the business, and eighty-seven had no cases whatever. In Cass County, where there were sixty justices, five handled all the cases, one did 70 per cent of the business, and fifty-five had no cases whatever. In Luce County, the smallest of the six studies, there were sixteen justices, of whom two handled all the cases; one did 81 per cent of the business, and fourteen had no cases whatever. The situation in the other three counties was similar. The report points out that the maintenance of a magistrate's court in each township is unnecessary, that the people do not want them and do not use them. "By bringing all the judicial business in the county before one or two or half dozen justices, the people have for practical purposes eliminated all the rest and have made them superfluous institutions."[8]

In its general conclusions, the report condemns both the township and the smaller municipalities as units for the administration of justice; the contention being that this is a state function. With regard to the township, the report says:

> The township is not a suitable unit to be charged with the performance of any judicial duties whatever, and the Justice of the Peace, as a township officer, is wholly out of place in a modern judicial system. A county court, properly organized and housed, having a trained judge, a competent clerk, office equipment sufficient for the keeping of proper records, and sitting at such times and places as the needs of the community should indicate, ought to replace the obsolete Justice of the Peace courts.[9]

Thus, in summary, the first criticism of Justices of the Peace is their lack of qualifications, namely their lack of legal training and their ignorance of judicial procedure. They are confronted with technical evidentiary questions which the untrained person will not even recognize, let alone make accurate and just rulings based upon the case law of the state and federal governments.[10]

It is possible that the lack of qualifications might lead to constitutional objections.[11] The objection is that it is a fundamental principle of due process that a justice, having the power to deprive a person of his liberty or property, must have a working knowledge of the law since the guarantee of due process of law requires that every man have his day in court and the benefits of general law.

Justices of the Peace issue search warrants and they must be issued "not only in compliance with the directives of the fourth and fourteenth amendments to the Federal Constitution as interpreted by the courts."[12]

A 1956 study in North Carolina revealed facts that are probably typical of the qualifications possessed by a "normal" justice of the peace...of the Justices of the Peace that held office in that state at that date, not one had a law degree, 75 per cent had not attended college, and 40 per cent had not completed high school.[13]

One Justice of the Peace with eight years in the office tries some 200 cases a year on the strength of a seventh grade education and a 1947 edition

of his state's statutes. Asked to comment on the defendants brought before him, the Justice of the Peace observed, "I don't ever remember having one brought before me who wasn't guilty. If the sheriff picks up a man for violating the law, he's guilty or he wouldn't bring him in here. And anyway I don't get anything out of it if they aren't guilty."[14]

Of 61 Minnesota justices (of the peace) replying to a questionnaire in the late 1940's, 30 reported that they had access, in the way of law books, to the statutes only or to nothing at all.[15]

The present weaknesses of the Justice of the Peace System are not recent innovations although the lack of training in law is a problem of increasing magnitude. After examining the system in 1927, Chester H. Smith wrote:

> The justices of the peace as a class are wholly unqualified for the positions they occupy. The pernicious fee system and local politics break down their integrity and lead to corruption. They are often ignorant and wholly uncontrolled by statute or constitution. Their decisions are purely personal. The administration of justice by these lay magistrates is uncertain, unequal and unstable, and in truth, the system as such is a denial of justice according to our highest concept of that term."[16]

When ignorant of the law, to whom should he (the Justice of the Peace) look for guidance--the legal representative elected by the people, like himself, or the defense lawyer whose job is to win at any cost? Having your adversary act as a legal advisor to the trier of the fact should suggest some impediments to the concept of due process of law and a fair and impartial trial. Supporters of the system defend compensation in fees, contending that there is no incentive to find against the defendant in either civil or criminal action since the Justice of the Peace is paid his costs by whichever side loses. In practice, however, the Justice of the Peace who decides for the defendant thereafter finds cases filed before more obliging Justices of the Peace.[17]

However, in spite of the evidence of a lack of expertise in the law of the "typical" Justice of the Peace, a point of "common sense" should be raised. While it may be conceded that the law trained magistrate is more expert in the knowledge of legal principles, it by no means follows that the layman Justice of the Peace, in the great majority of cases, does not or can not administer actual applied justice, which is after all the object and purpose of the law. Dr. McVicker went on to say--"can social justice in the long run be any better administered by some other agency?"[18]

The second general charge against the Justice of the Peace court is its lack of judicial decorum due to make-shift judicial quarters which do not tend to the dignity of the law, as they are often found in barber shops, the J.P.'s homes or in his place of business such as an insurance or real estate office.

The lack of control over the conduct of Justice of the Peace courts is another serious charge. "There is no supervision over the work of the individual justice, and that his records are often unsatisfactory."[19] The Nebraska system admits of control over the justices only on the county level. This control can and does vary somewhat from county to county.... This leaves the state in a position of total ignorance as to the conditions of its justice system--an unhealthy state of affairs.[20]

The next complaint is that the Justice of the Peace court is truly the "Plaintiff's Court." What percentage of the cases went to the plaintiff by default? In Nebraska it ranged from less than one per cent to as much as 100%--about half of the courts reporting gave a figure of 75%.[21] A study of Michigan courts revealed that while in the justice courts plaintiffs <u>won</u> in about ninety-nine per cent of the cases, in the superior courts plaintiffs won in only sixty-five per cent of the cases.[22] ...The percentage of convictions in criminal cases in justice courts is extremely high. Insofar as it is

possible to determine from official records and local investigations, it appears that on the average some 98 per cent of all traffic violation cases tried before Justices of the Peace results in convictions.[23]

The compensation of most Justices of the Peace is tied to the fee system. Compensation of the justice by fees, whatever the arrangement for payment, usually raises serious questions concerning the fairness of the trials:

a) To curry favor with law enforcement officials, the justice could frequently be tempted to find violators brought in by them guilty;

b) the testimony of the arresting officer may be given more finality than might otherwise be the case;

c) the officer will want to bring his case before a justice who will tend to convict.

The system permits a very unhealthy reciprocity.[24]

A study of Justice of the Peace courts in six Michigan counties revealed that of 933 civil cases disposed of, 926, or 99.2 per cent of the total, resulted in judgments for the plaintiff.[25] According to a survey in Tennessee, of 25,088 civil cases tried by 67 justices, judgment was given for the plaintiff in 24,663 cases, or 98.3 per cent of the total.[26]

Fee-splitting, though it is impossible to ascertain the extent of this pernicious and illegal practice, has certainly existed in numerous instances, and there is reason to believe that it is relatively widespread.[27]

In 1916, the Iowa State Bar Association, after consideration and discussion in regular annual session, adopted a resolution endorsing the abolition of the office of Justice of the Peace and favoring the establishment of a new ambulatory county court to be presided over by a lawyer known as the "county magistrate." The proposed court would have original jurisdiction over all civil cases involving less than five hundred dollars and the same criminal jurisdiction as that now exercised by the Justice of the Peace.[28]

The proposal was in keeping with the policy resulting in the establishment of the superior and municipal courts at the option of the electorate of the respective districts effected.

The proposed court would largely absorb the small cause litigation which tends to congest the dockets of the district court, and thus enable the district court to give its untrammeled attention to the trial and adjudication of the weightier cases. It would afford to the people of the county a competent law tribunal for prompt recourse and expeditious service at all times; as the municipal and superior courts have done in the districts wherein they have been established.[29]

In general it may be said that the mayor as a judicial officer has met with no greater success than has the justice of the peace. In fact, there are some considerations which would tend to make his administration of judicial matters less successful than that of the ordinary Justice of the Peace.

For one reason, his administrative work has been largely increasing. This does not give him the time to devote to his judicial duties that he should. In this respect he is at greater disadvantage than is the ordinary Justice of the Peace who has more time to familiarize himself with his duties than has the mayor. The typical Justice of the Peace also has the advantage of a longer tenure of office than has the average mayor. This added experience is certainly an aid to the Justice of the Peace in carrying on his work successfully.[30]

The specific criticisms of the mayor's court are summarized below:

1. It was Earby's contention that the mayor being both an executive and judicial officer was unconstitutional but the court held the constitutional provision referred to departments of the State of Iowa and not to municipalities.[31]

2. However, a change of venue is allowed automatically only in cases <u>not</u> involving ordinances.

3. The Code of Iowa confers on the mayor of a city exclusive jurisdiction of all actions or prosecutions for violations of city ordinances, a suit cannot be prosecuted in the district court to recover license fees imposed by ordinances on transient traders.[32]

4. Mayors of cities and towns where no salary is provided by ordinance in lieu of fees shall receive for holding a mayor's or police court or discharging the duties of a justice of the peace the same compensation as is allowed by law for similar services to Justices of the Peace.[33]

5. In general it may be said that the mayor as a judicial officer has met with no greater success than has the justice of the peace.[34] "...his administrative work has been largely an increasing affair. This does not give him the time to devote to his judicial duties that he should have." "The ordinary Justice of the Peace also has the advantage of a longer tenure of office than has the mayor."

While it is true that Iowa's Judge M. J. Wade is quoted as asserting:

> Stand in the police courts of the large city any morning in the year and see the unfortunates brought up for what is called a "trial." The scores of victims are driven through without opportunity for investigation or explanation--driven through like cattle through a branding pen, hearing, with scarcely any opportunity for denial, the judgment and the penalty.[35]

The criticisms of the Police Courts and the Municipal Courts in Iowa are not and never have been of the nature launched against the Mayor's Court and the Justice of the Peace. Few of the many charges made against the latter courts will be sustained against the Municipal Courts and Police Courts. (The Superior Courts have not existed in Iowa since Keokuk abandoned their Superior Court in the late 1960's.)

In contrast with the J.P. and Mayor's Courts, the police judges usually were appointed by the city council and almost always were qualified lawyers. The municipal court judges were elected on a non-partisan ballot and were also attorneys.

Neither the police judge nor the municipal judges were paid on the fee basis. Both were normally salaried. However, the police judges were usually

only devoting part-time to the bench. The municipal judges were full-time members of the judiciary. The salaries were not as high as they should have been but were sufficient to attract relatively capable judges.

The Municipal Courts were courts of record and had the full services of bailiffs, reporters and other judicial officials. The police courts apparently varied with the different cities with some virtually courts of record and well staffed; others lacked the facilities to be true courts of record.

Both Police Courts and Municipal Courts were usually given adequate quarters by the city in which to perform their judicial functions. Certainly they were much more adequately housed than most J.P. courts and many of the Mayor's courts.

Neither the Police nor the Municipal Courts were ever truly integrated with the state court system. Their prime responsibility was to the city in which they were established. Therefore it might be anticipated that at times a lack of coordination existed between the State District Courts and the Municipal and Police Courts. However, in some areas, i.e. Cedar Rapids, the coordination appears to have been usually very close and the Municipal Courts served the District Court as an adjunct, particularly in juvenile matters.

In cities where the Municipal Court had been created the sentiment for moving to a unified state court system was often times very slight as the "average man on the street" seemed to be content with the Municipal Court's functioning.

In conclusion, the advantages claimed for the old system should not be overlooked:

1. It keeps justice closer to the people and more flexible to local influence and need.

2. Continued use of the fee system to cover court costs means that violators and not the taxpayers bear most of the financial burden of the court system at the lower levels.

3. Face-to-face justice and more personalized judgment are lost as in the new system fines often are handled by an out of court traffic violation office.

4. It continues the ease of contact with local courts.

5. The system retains democracy as it allows for election of lower court officials.

Likewise, the "new" magistrate system of reform has certain obvious shortcomings according to its critics:

1. The public expense for the court.

2. In point of convenience--county ambulatory courts would have very practical limits on the ability of the judge to convey his court around the county on demand.

3. The problem for consideration is the relative value of the more expert knowledge of the law possessed by the trained magistrate weighed with the knowledge of local conditions possessed by the average justice of the peace.

These and other similar questions are explored in the following section of this publication.

4. The relatively limited number of hours each week that the magistrates were available to hear charges against over-weight trucks. (In the first six months some 2,500 truckers have neither appeared or mailed in their fines by the specified time.)

Iowa Courts (June 1971-)

Municipal Courts (Any city over 5,000 may establish)

1. Ames
2. Burlington
3. Cedar Falls
4. Cedar Rapids
5. Clinton
6. Council Bluffs
7. Davenport
8. Des Moines
9. Dubuque
10. Marshalltown
11. Muscatine
12. Ottumwa
13. Sioux City
14. Waterloo

Police Courts (Required in all cities over 15,000 with no municipal court)

1. Bettendorf
2. Fort Dodge
3. Iowa City
4. Marion
5. Mason City
6. Newton
7. West Des Moines

(In cities of less than 15,000 with no municipal court, the city council may by ordinance provide for Police Court)

27 cities with less than 15,000 population

Total = 34 Police Courts

FOOTNOTES - Part II

[1]Sidney Webb and Beatrice Webb, in their English Local Government from the Revolution to the Municipal Corporation Act, Vol. I (Longmans, Green, London, 1908), comment at length upon the development of the early English judicial institutions. For instance (p. 18), they say: "When it was held that the Court Baron was of private, not public nature, those words were used in a sense very different from that nowadays given to them. All that the lawyers meant was that the Court Baron was not a Court of the King, to be held only by his authority or subject to his will...." In course of time, as noted, these private courts were taken over as a part of the judicial system of the realm.

[2]John A. Fairlie and Charles M. Kneier, report in County Government and Administration, pp. 156-158 (Appleton-Century, New York, 1930): "...the office is at least recognized in all the state constitutions except that of California, and is definitely required in most of them. Six state constitutions authorize or permit the abolition of the office; and thirteen others provide that a competent number of justices shall be appointed or elected. Half of the state constitutions (mostly in the South and West) define or limit the jurisdiction of justices of the peace; elsewhere this may be defined by the legislature."

[3]These four major defects are discussed at some length in Gail M. Morris, Justice of the Peace Courts in Indiana (Indiana University, Bureau of Government Research, 1942); see also Judicial Council of Indiana, Fourth Annual Report (1939), pp. 11-137 (Indianapolis, 1940).

[4]William W. Litke, Survey of the Minor Judiciary in Pennsylvania, p. 27 (Pennsylvania Municipal Publications Service, State College, 1942). See also: Bruce Smith, Rural Crime Control, pp. 247-248 (Institute of Public Administration, Columbia University, 1933). Similar results were obtained from occupational studies of justices in New Jersey and New York (p. 248). Chapter 7 of this volume contains a very able discussion of the office of the justice; see also Calendar, op. cit., chapter 4.

[5]Paul F. Douglass, The Justice of the Peace Courts of Hamilton County, Ohio, p. 70, and quoted by Smith, op. cit., p. 241.

[6]Ibid., pp. 61 and 66.

[7]Article 7, Section 15 (Michigan State Constitution).

[8]This comment is based entirely upon Edson R. Sunderland, "The Efficiency of Justices' Courts in Michigan," published as Appendix D, Report on Organization and Cost of County and Township Government by the Michigan Commission of Inquiry, 1933; reprinted in Fourth Report of the Judicial Council of Michigan, (May, 1934), Appendix, pp. 169-172.

[9]Ibid., p. 166.

[10]"The Justice of the Peace in Florida," Florida Law Review, (1965), pp. 109 and 118.

[11]"The Justice of the Peace: Constitutional Questions," 70 West Virginia Law Review (1967).

[12]Ronald J. Doban and William Fenton, "The Justice of the Peace in Nebraska," Nebraska Law Review, Vol. 48, No. 2 (1969), pp. 462-463.

[13]Isham Newton, The Minor Judiciary in North Carolina, an unpublished Ph.D. dissertation, (University of Pennsylvania, 1956); cited in Henry J. Abraham, The Judicial Process, p. 130.

[14]Louis Banks, "The Crisis in the Courts," Fortune 64 December 1961, p. 93.

[15]Forrest Talbott, Intergovernmental Relations and the Courts, (University of Minnesota Press, Minneapolis, 1950), p. 67.

[16]Chester H. Smith, "The Justice of the Peace System in the United States," California Law Review, (January 15, 1927), p. 140.

[17]Tom Riley, "Justice of the Peace Courts Should Be Abolished," The Judges' Journal, XII, (January, 1973), p. 15.

[18]James R. McVicker, "The Administration of Justice in the County," Iowa Applied History Series, Vol. IV, (State Historical Society of Iowa, Iowa City, Iowa, 1925), pp. 329-330.

[19]Vincent Harper, "Justices of the Peace in Oklahoma," 23 Oklahoma ST., (1952), B. J. 539.

[20]Ronald J. Dolan and William B. Fenton, "The Justice of the Peace in Nebraska," Nebraska Law Review, Vol. 48, No. 2, (1969).

[21]Ibid., pp. 466-467.

[22]Edson R. Sunderland, A Study of the Justices of the Peace and Other Minor Courts, 21 Connecticut B. J. 300, 332-33, (1947).

[23]George Warren, Traffic Courts (Little Brown, Boston, 1942), pp. 217-219.

[24]Robert H. Reynolds, The Fee System Courts: Denial of Due Process, 17 Oklahoma Law Review, 373, 377-78 (1964).

[25]Edison R. Sunderland, "The Efficiency of Justices' Courts," in Arthur Bromage and Thomas H. Reed, Organization and Cost of County and Township Government, (Detroit, Michigan Commission of Inquiry into County, Township and School District Government, 1933), pp. 142-146.

[26]T. L. Howard, "The Justice of the Peace System in Tennessee," Tennessee Law Review, Vol. XIII, (December, 1934), pp. 19-38.

[27]J. W. Manning, "In-justices of the Peace," National Municipal Review, Vol. XVIII, (April, 1929), pp. 225-227.

[28]Proceedings of the Iowa State Bar Association, Vol. XXII, (1916), pp. 216-226.

[29]James R. McVicker, "The Administration of Justice in the County," Iowa Applied History Series, Vol. IV, (Iowa State Historical Society, Iowa City, Iowa, 1925), p. 328.

[30]Francis R. Aumann, "Administration of Justice," Iowa Applied History Series, Vol. VI, (State Historical Society of Iowa, Iowa City, Iowa, 1930), p. 177.

[31]Santor. Iowa, 2 Iowa, 165.

[32]378 Lansing v. Chicago, Milwaukee and St. Paul Railway Company, 85 Iowa 215; Scranton v. Hensen, 144 N. IV 1024.

[33]Code of Iowa, 1971.

[34]Francis Aumann, "Administration of Justice," Iowa Applied History Series, Vol. VI, (State Historical Society of Iowa, Iowa City, Iowa, 1930), p. 177.

[35]Address of Judge M. J. Wade before the Iowa State Bar Association in the Proceedings of the Iowa State Bar Association, Vol. IV, (1898), pp. 175-176.

Part III

THE PURPOSES OF THE UNIFIED COURT SYSTEM IN IOWA

The central objective of this part is to evaluate the conditions and circumstances surrounding the creation of the "unified" trial court system in Iowa.[1] What factors contributed to the legislative decision to replace justices of the peace, police courts, mayors' courts, and municipal courts with judicial magistrates and associate district court judges? Why substitute uniform traffic violation penalties for the more flexible justice under the old system?

This section demonstrates the fact that judicial reform is a continuing, never-ending process. As noted by one eminent judicial scholar, "Judicial reform is no sport for the short-winded."[2]

Highlights of State Judicial Reforms

A trial court structure similar to that used in England emerged in colonial and post-Revolution America. What had existed in England since the year 1300 seemed good enough for the States. However, as judicial reformers later remarked, the English model was not at that time in its best form for a changing world. As Dean Roscoe Pound commented:

> ...the model was English at a time when English judicial organization was at its worst, and the circumstances of the time in which our judicial system was wrought did not make against the primitive policy of multiplying courts. Hence, in a time when unification is sorely needed, we go on making new courts.[3]

Fortunately for England, major judicial reform and unification occurred in 1873 and 1875 and the magistrate courts which evolved soon became the envy of many judicial scholars.[4] Consequently, while the American Justice of the Peace declined in power and esteem in the face of growing criticism during the 20th

Century, judicial innovation in England increased the responsibilities and prestige of parajudges in magistrate courts. Today, most of England's 16,000 magistrates are neither law-trained nor compensated for their work. The magistrates are appointed by the Queen and decide cases in panels of between two and seven. Ninety-seven per cent of the criminal cases are actually tried in the magistrate courts.[5]

On the American scene, judicial reform came much slower. Again, it was Professor Roscoe Pound who first recognized the conditions for change necessitating judicial innovations.[6] The rapid rise of industrialization, urbanization, mobility, and technology in the late 1800's called into question the judicial structures and procedures established for the simple agrarian society. Moreover, by the turn of the century, many people were beginning to have reservations about the wisdom of popularly electing judges; a tenet of Jacksonian democracy. It was during this era of transition that Professor Pound delivered his landmark address to the American Bar Association in 1906 and urged explicitly or implicitly the following reforms (which 34 years later he delineated in more detail):[7]

1. Non-political selection of judges, reasonably secure tenure, adequate compensation and retirement for them.
2. Unified state-wide court organization.
3. Simple and speedy judicial procedures established and administered under judicial rule-making power.
4. Efficient and businesslike court administration.
5. A unified legal profession with high standards of admission, ethics and self-discipline.
6. Simple, speedy and low-cost adjudication of small claims and minor offenses.
7. Legal services and equal justice for all.

Nearly 70 years have passed since Pound's historic speech, but the reforms suggested in 1906 have as much importance now as they did then. In many cases, states still have a long way to go to reach Pound's ideal. The purpose of this section is to review the progress made by the states in reorganizing their judicial systems to meet the constant and inevitable demands for change.

Very gradually, several states began experimenting with various methods of improving their lower courts and consolidating the administration of their court systems. In 1934 Virginia became the first state to inaugurate comprehensive reform in the traditional Justice of the Peace system by providing for a "unified" trial justice system on a state-wide basis.[8] The trial justice was appointed and supervised by the judge of a higher court; the trial justice originally was not required to be a lawyer. Today, as the Virginia trial court system has evolved, the county court judge is appointed for a salaried four-year term and must have a law degree.

Three years after the Virginia innovation, Tennessee permitted its largest county (Davidson) to abolish the Justice of the Peace system and institute a general session court. By 1960, this reform had spread to all but six counties in the State.[9]

Maryland established a minor court similar to Virginia's in 1939. Since that year, Indiana has had a few counties with salaried, law-trained magistrates appointed and supervised by the circuit court judge. In 1945, Missouri and New Jersey abolished their JP's. Five years later, California followed suit. Upon achieving statehood, Alaska (1958) and Hawaii (1959) created magistrate courts comprised of salaried attorneys appointed by the court. In 1959, Wisconsin enacted legislation limiting the jurisdiction of Justices of the Peace to cases involving battery and disorderly conduct. That same year, North Dakota passed legislation to replace the Justice of the Peace with a salaried, elective, lawyer

under a county court system. In 1961, New York authorized its counties to abolish the office of Justice of the Peace. After 1962, Justices of the Peace elected in New York were required to be attorneys or take a course of instruction approved by the State Judicial Council. The year 1962, also found Illinois, Idaho, Colorado, and North Carolina adopting judicial amendments to reorganize their minor courts. Michigan's new state constitution, effective January, 1964, provided for the elimination of the office of Justice of the Peace within five years. By legislation, the jurisdiction of the Kansas Justice of the Peace was severely limited in 1963. State legislation and court decisions had similar consequences for the Justice of the Peace in Kentucky. By 1964, the office of Justice of the Peace had been supersceded by municipal courts through much of Arkansas and in the metropolitan areas of Nebraska and Minnesota. Justices of the Peace had no jurisdiction to try misdemeanor cases in either Louisiana or Georgia.[10] In 1971, the Texas legislature passed a law requiring non-lawyer Justices of the Peace to complete a 40-hour course on their duties within one year of assuming office or the effective date of the law.

Today, only a few states still retain the office of Justice of the Peace in every county.[11] What began in the 1930's, spread to the 40's and 50's, and peaked in the 1960's. In the 1970's the traditional services of justices of the peace were viable judicial entities only in the more rural Western states.

Reform of the trial courts, however, was only part of the battle. For Professor Pound and other judicial scholars, effective and efficient administration of justice required professional management in a structurally consolidated state court system. The first state to approximate this ideal was New Jersey in 1947.[12] Under the vigorous leadership of Chief Justice

Arthur Vanderbilt, New Jersey unified its court system and simplified its procedures. Since that date, only a dozen other states have instituted a truly "unified" or "consolidated" state court system.[13] Several other states, however, have incorporated key elements of a unified court plan into the structure and operations of their courts or have made considerable progress in that direction. Only a half-dozen states have been relatively indifferent to the reforms around them.[14]

According to Professor Pound, the most important principles of a unified court organization were: unification, flexibility, conservation of judicial power, and responsibility. In an article written with prophetic insight in 1940, Pound explained the essential advantages of a unified court system.

> ...Unification would result in a real judicial department as a department of government....Again, unification of the judicial system would do away with the waste of judicial power involved in the organization of separate courts with constitutionally or legislatively defined jurisdictions and fixed personnel. Moreover, it would make it the business of a responsible official to see to it that such waste did not recur and that judges were at hand whenever and wherever work was at hand to be done. It would greatly simplify appeals to the great saving not only of the time and energy of appellate courts, but to the saving of time and money of litigants as well....It would obviate conflicts between judges and courts of coordinate jurisdiction such as unhappily have too often taken place in many localities under a completely decentralized system which depends upon the good taste and sense of propriety of individual judges, or appeal after some final order, when as like as not the mischief has been done, to prevent such occurrences. It would allow judges to become specialists in the disposition of particular classes of litigation without requiring the setting up for them of special courts.[16]

Pound recommended the establishment of a consolidated court system divided into three levels: the supreme court, a superior court as the trial court of general jurisdiction, and a lower trial court of limited jurisdiction designated as the county court. There would be no appeals from county court to the superior court by trial de novo; cases from both trial courts involving new and complex issues could go to the supreme court by certiorari where they would be heard

by the justices usually sitting in panels of three. Panels of three judges would also hear and rule on cases originating in the two lower courts.[16]

Although most unified courts are organized along the three-level concept, some states, seeking a tighter system, have divided their courts into just two levels: appellate and trial. The trial division is divided by administrative rule into as many individual trial units as convenience and efficiency dictate, having due regard for geography, specialization, and other factors. The trial courts deal with cases of both limited and general jurisdiction. The appellate division is generally divided into as many three-judge panels as the volume of appellate work requires, and the panels sit at such times and places as convenience and efficiency dictate. Illinois and Idaho are leading examples of the two-tiered structure which is gaining popularity among judicial reformers.[17]

Regardless of the number of levels within a state judicial system, the significant ingredient in maximizing the quality and quantity of output is leadership. Most judicial experts agree that the chief justice, as the head of the entire system should bear the ultimate responsibility of supervising the judiciary. In performing his administrative duties, the chief justice should have the assistance of the chief judges in each trial court district or division. The chief justice also needs a competent administrative staff to solicit reports from the courts, compile statistical data, prepare budgets, formulate recommendations on the structure, organization, and functions of the court system, investigate complaints, and do any other tasks the chief justice may direct. (As of May 1973, there were still 11 states which did not have a State Court Administrator).[18] Moreover, the chief justice should have the authority under rules of court, to assign judges within the system to relieve over loaded courts and transfer cases from one court to another to

remove the strain of crowded dockets. The clerks should be under the supervision and control of the chief justice and his administrative staff.

To insure against the proliferation of specialized courts, Professor Pound and other judicial reformers have advocated specialized judges. Within a well-organized judicial system founded upon the principle of specialized judges, cases involving juvenile, domestic relations, probate, criminal, equity, and other issues are handled by the regular district court; to whatever extent specialized handling of them may be necessary or desirable, it is accomplished by assigning them to specialized judges within the single court. Under this system judges are able to "deal with their special subjects when the work of the courts is such as to permit, but available for other work when the exigencies of the work of the courts require it."[19]

Pound's suggestions that states simplify appellate procedure and establish judicial councils, however, have been largely neglected by the reform movement. Although the first judicial councils were created in 1923 (Massachusetts and Ohio) and spread rapidly for three decades, in recent years the councils have fallen into disuse.[20] As envisioned by judicial reformers, judicial councils comprised of bench, bar, and lay citizenry would study state courts and make recommendations to improve them. The demise of the judicial councils may be attributed to a significant degree, to inadequate staff funding and the inability of the busy council members to meet frequently and devote the necessary time and energy to the improvement of the judicial system.

Nor have most states responded to Judge Cardozo's 1921 appeal to establish government agencies directly concerned with legal reform. Cardozo suggested the creation of a "ministry of justice" which would be charged with the duty "to watch the law in action, observe the manner of its function, and report

the changes needed when function is deranged."[21] Only New York and California have properly staffed and financed law revision commissions.[22]

Many states have also been lax in simplifying appellate procedure. As litigation continues to dramatically increase, it is likely that less formalized procedures for disposing of uncomplicated appeals must be developed. Although many courts have attempted to solve the critical problem of congestion and delay by revising their rules of practice and procedure, adopting more efficient administrative techniques, and adding judges, many judicial scholars are now convinced that only by removing various segments of the law from the domain of the courts can the courts curtail the increasing backlog in litigation.[23] It has been suggested that automobile accident cases be handled through no-fault insurance; divorce litigation could be eliminated or drastically limited by permitting no-contest suits; traffic laws could be decriminalized and relegated to administrative disposition. The Chief Justice of the Oregon Supreme Court has suggested that extremely complex statutory scheme such as mechanics' lien laws, mortgage foreclosures, bonding laws on public works, statutes of limitations, probate, and others could be simplified so as to remove sources of ambiguity and conflict and thus reduce unnecessary decision points.[24]

Other scholars have proposed sweeping changes in the structure of the judicial system to streamline the appellate process.[25] In California, Judge Shirley Hufstedler and her husband have suggested that immediately after the trial court judgement, two judges from the intermediate appellate court would meet with the trial judge and review the alleged error at the trial. The three judge panel would make post-trial rulings designed to correct error. Moreover, under the Hufstedler Plan, a new court would be created and inserted between the intermediate and supreme court to hear only cases having precedential value. A party dissatisfied with the judgment of the Court of Review could petition the State Supreme Court for a review of the judgment.

Whatever schemes states may adopt, it is apparent that the problem of state court congestion and delay is multi-faceted and requires an intricate and imaginative set of approaches to be successfully confronted. Undoubtedly, for many judicial systems, greater use of para-judicial personnel and continuing educational seminars for appellate judges may prove most beneficial; for other judicial systems, drastic restructuring may be necessary.

Another important characteristic of an innovative judicial system is the method of judicial selection. Again, it was Professor Pound who urged that states should select their judges in a non-partisan manner. For several decades the American Judicature Society and the American Bar Association campaigned against the partisan election of trial and appellate judges. In 1937, the ABA adopted a resolution endorsing the "Merit Plan" for judicial selection which was originally proposed by the American Judicature Society. Three years later, the state of Missouri adopted the plan for some of its courts and the "Merit Plan" became known as the "Missouri Plan."[26] Under the Missouri Plan, a judge is selected by the governor from a list of two or three higher qualified persons nominated by a special judicial commission comprised of lawyers and laymen. The newly appointed judge must stand for a reaffirming vote at the next general election and every 6 to 10 years thereafter. The judge has no opponent and is not identified with a political party on the ballot. As might be expected, tenure is relatively secure.

The Missouri Plan, however, was slow to catch-on. It was not until the 1960's that significant progress in merit selection was achieved. Starting in 1962, the Merit Plan was adopted in Iowa, Nebraska, Colorado, Vermont, Oklahoma, and Utah.[27] Today, only 12 states have enacted laws or constitutional provisions providing for a merit selection for some or all state judges.[28] As of 1972, 12 states still elected their appellate judges on a partisan basis; 15 states had

a non-partisan election system; in 7 states the chief executive had the responsibility of filling judicial vacancies and in four states the legislature selected the Supreme Court judges.[29]

No state requires judges to retire prior to their 70th birthday, and 16 states have no laws regarding mandatory retirement age of state judges.[30] Moreover, all but ten states permit some or all of their judges to render service in some capacity after their retirement. Only 15 states have judicial compensation commissions to support judicial salaries high enough to attract competent personnel.[31] Although compensation and pension plans for judges have lagged far behind, during the 1960's substantial progress was made. Beginning in November, 1961, the American Judicature Society launched a nationwide campaign to increase judicial salaries and retirement benefits. During the next two years 24 states increased the salaries of some or all of their judges and 35 states improved their pension plans for judges. By 1972, the median salary for state trial and appellate court judges was $25,000 and $30,000 respectively.[32] Even so, ten states still paid their high court judges less than $25,000 a year.

The discipline or removal of judges for physical, mental, or misconduct reasons is another area which received very little attention prior to 1960. Although Alabama, Louisiana, and Texas permitted judicial removal by the courts, New Jersey, Michigan, and New York provided for judicial hearings, and Ohio and Wisconsin empowered grievance committees to consider complaints about judicial misconduct, it was not until California established a confidential investigation commission in 1961 that states began to respond to the problem.[33] Several states have recently created administrative offices or commissions to investigate complaints dealing with judicial misconduct.

The most recent innovation in state courts came in June, 1971, when the National Center for State Courts was officially incorporated. Endorsed by President Nixon and the Chief Justice of the United States Supreme Court as well as a number of prominent judicial reformers, the NCSC was established to aid state courts in studying problems of procedure, court administration, and the training of judicial personnel. The five major goals of the Center are:[34]

1. To help state courts set and observe satisfactory standards of judicial administration.
2. To support and coordinate, but not supplant, the efforts of all organizations active in the field of court improvement.
3. To act as a clearing house for information concerning state courts.
4. To initiate and support research into the problems of courts and to help states consider and implement recommended solution.
5. To work with the Federal Judicial Center to coordinate research into problems common to both Federal and State Courts.

Some of the principal research projects funded by the Center in 1973 included: (1) a study to explore the application of video recording to cut court congestions and improve the quality of justice; (2) an examination of alternative methods by which states can provide counsel to indigents in misdemeanor cases; and (3) the testing of a new voice writing technique for training court reporters. The Center is also involved with the coordination of judicial training programs for state trial and appellate judges.

The National Center for State Courts is governed by a Board of Directors composed of twelve members who must be active judges from state appellate courts and trial courts of general and special jurisdiction. During the first year, the Center's work was supported by grants from the Law Enforcement Assistance Administration and several private foundations. The Center is now seeking funding from state governments on a population basis.

As a further step in the march toward administrative innovation in the judiciary, Chief Justice Warren Burger has proposed the creation of a National Institute of Justice which would coordinate the research activities and information systems within and between the dual judiciary.[35]

Judicial Reform in Iowa

In Iowa, as in other states, judicial reform has not been an easy process. The principle of an independent judiciary operating to insulate the courts and judges from accountability to the electorate or to the legislative and executive branches of government has tended to isolate the judiciary from innovative political reforms. Moreover, the widespread deference to the value of an independent court system has encouraged an image of the judiciary as a non-political branch, and that image has been reinforced by the autonomy of the judiciary, an autonomy unparalleled among other government agencies. Under such circumstances, the judicial environment inhibits reform because the existing situation is so attractive to the established judicial personnel. In addition, the relatively low visibility of the courts in the scheme of government has resulted in a gross unawareness of the organization, operation, administration, and decision-making of the third branch of government. Indeed, the very nature of the judiciary's work, which in the great mass of cases affects individual litigants rather than broad constituencies capable of organizing and pressing for reform has attributed to the difficulty of getting public support or concern for judicial innovation. Finally, since the judiciary is viewed as a nonpolitical institution, judicial reformers must somehow eschew those strategies that appear to politicize the bench. Thus reform is advanced as a nonpartisan endeavor achieved through a selfless variety of nonpolitics.[33]

Although the number of the judges on the Iowa Supreme Court changed six times during the period 1857-1931, increasing from three to nine; the administration and jurisdiction of the State court of last resort did not change appreciably.[37] From 1930, through 1943, the Iowa Supreme Court sat in division with two panels handling the increasing caseloads.[38] In September, 1972, the high Court reestablished the divisional method of hearing and deciding all but the most controversial cases in two rotating panels of five, each including the chief justice. Again, the rationale for discarding en banc decision-making was to expedite the disposition of a growing caseload.[39]

The only limit on the Court's jurisdiction, which is self-imposed, is that in a case not involving real estate in which the amount in controversy is less than $1,000, an appeal may be taken only if the trial judge certifies the cause is one in which an appeal should be taken. While most of its jurisdiction is appellate, in cases involving reapportionment, bar discipline, and temporary injunctions, the Supreme Court has original jurisdiction.[40]

Until 1963, the District and Supreme Court justices in Iowa ran in partisan elections following their nominations by special judicial conventions. Supreme Court justices were elected for staggered six-year terms; the lower court members stood for election every four years. The position of chief justice rotated every six months.

Although the jurisdiction of the Iowa District Courts has been primarily original, prior to July 1, 1973, the District Courts also heard cases from courts of limited jurisdiction (e.g., Justices of the Peace Courts, Police Courts, Mayor's Courts, Municipal Courts). Since July 1, 1973, de novo appeals may arise from magistrate courts. Originally, the state was divided into 11 judicial districts; by 1925 this number had increased to 25. In an effort to consolidate the judicial districts into more manageable administrative units,

the 1970 Legislature reduced the number of judicial districts to eight. General supervision of the district courts is provided by the Iowa Supreme Court together with the eight Chief district court judges who are appointed for a two-year term by the Court.

The Iowa Supreme Court, by and through the Chief Justice, is charged with exercising supervisory and administrative control over all trial courts in the state and over the judges and other personnel thereof. The chief district court judges are empowered to: (1) set the times and places of holding court and designate the respective presiding judges; (2) supervise and direct the performance of all administrative business of their district courts and the magistrate courts within their districts; (3) conduct judicial conferences of their district judges to consider, study, and plan for improvement of the administration of justice; and (4) make such administrative orders as necessary.[41]

Moreover, with the adoption of Rule of Civil Procedure 380 in 1969, the Supreme Court, with the consent of the state legislature, created a judicial council composed of all chief judges and the chief justices of the Supreme Court or his designee. The Council is required to meet at least twice a year to consider all court administrative rules, directives, and regulations necessary to provide for the administration of justice in an orderly, efficient, and effective manner, in accordance with the highest standards of justice and judicial service.

The first important recent improvement in the organization of the Iowa judicial system occurred in 1955 with the creation of the Office of Court Statistician. At this time only twelve states had established an agency chiefly concerned with the collection and analysis of statistical data related to the disposition of litigation in the state judicial system. Under the 1955 law, the Court Statistician was appointed by the Supreme Court and served at its pleasure.

The Statistician was obligated to:[42]

1. Collect and compile statistical and other data and make reports relating to the business transacted by the courts;

2. Collect statistical and other data and make reports relating to the expenditure of moneys for the maintenance and operation of the judicial system and the offices connected therewith;

3. Obtain reports from clerks of court, judges, justices of the peace, mayors, and magistrates, in accordance with law, or rules prescribed by the supreme court as to cases and other judicial business in which action has been delayed beyond periods of time specified by law or such rules, and make reports thereof;

4. Examine the state of the dockets of the courts and determine the need for assistance by any courts;

5. Make reports concerning the overloading and underloading of particular courts;

6. Make recommendations relating to the assignment of judges where courts are in need of assistance;

7. Examine the administrative methods employed in the offices of clerks of courts, probation officers, and sheriffs, and make recommendations regarding the improvement of same;

8. Formulate recommendations for the improvement of the judicial system with reference to the structure of the system of courts, their organization, their methods of operation, the functions which should be performed by various courts, the selection, compensation, number, and tenure of judges and court officials, and as to such other matters as the chief justice and the supreme court may direct; and

9. Attend to such matters as may be assigned by the chief justice and the supreme court.

Although the Statistician was given significant administrative powers, perhaps because of the title and lack of funding, the office remained almost exclusively a clearinghouse for statistical data. In January, 1971, the Institute of Judicial Administration recommended that the title of Court Statistician be changed to "Trial Court Administrator" and that the administrator should be given a more important role in the operation of the trial courts.[43] On June 18, 1971, the General Assembly unified the administrative structure of the Iowa judiciary by passing a law establishing the Office of Supreme Court

Administrator.[44] The Office of Judicial Statistician was placed within the Administrator's Office and, interestingly, the latter office was granted the same duties and responsibilities as previously assigned to the Statistician. Today, the Court Administrator's Office is primarily concerned with screening Supreme Court cases (writing bench memoranda, recommending cases for divisional or en banc oral arugment, etc.) collecting and analyzing statistical data from all the courts in the state, and overseeing the administration of the magistrate courts under the new Unified Trial Court Act. The Supreme Court Administrator's Office is responsible for recommending the apportionment of new District Court judges and magistrates with the change in the caseload or population of a particular area. Educational seminars for District Court judges and training programs for judicial magistrates are also the responsibility of the Court Administrator.

With the platform endorsement of both political parties, the Iowa General Assembly moved to reform the courts of limited jurisdiction by enacting the Unified Trial Court Act of 1972 (S.F. 428). A year later, 46 pages of amendments were added (H.F. 585), with the effective date, July 1, 1973. Briefly, the Unified Trial Court Act replaced the active 515 Justice of the Peace Courts, 899 Mayors' Courts, 34 Police Courts, and 14 Municipal Courts with 191 part-time judicial magistrates, 6 full-time magistrates and 24 associate district court judges. In the 39 counties allotted only one judicial magistrate, the county judicial magistrate appointing commission may, by majority vote, decide to appoint one additional judicial magistrate and divided the $4,800 salary between the two part-time magistrates.

On July 1, 1973, the current Municipal Judges automatically became District Associate Judges. Like their District Court colleagues, the District Associate Judges must stand for a retention election within the county of his or her

residence in 1974 and, periodically, thereafter. (District Associate judges have four-year terms while District Court judges have six-year terms). The judicial magistrates, on the other hand, are appointed by special County Judicial Magistrate Appointing Commissions comprised of three members appointed by the board of supervisors, two attorneys elected by the county bar, and a district court judge designated by the chief judge of the district. After an initial appointment of one year, the part-time magistrates taking office on July 1, 1974 are subject to reappointment every two years. Full-time judicial magistrates have four-year terms. The only statutory requirement for a judicial magistrate is that the person be an elector of the county of appointment and less than 72 years of age. Salaries for District Associate Judges, full-time magistrates, and part-time magistrates were set at $19,500, $17,200, and $4,800, respectively. A magistrate may be removed from office by a majority vote of the district court judges of that district sitting en banc following the submission of a petition signed by at least two percent of the county electors voting for governor in the last general election.

The jurisdiction of the judicial magistrates is similar to that granted to the Justices of the Peace under the old system. Magistrates have jurisdiction of nonindictable misdemeanors, including: traffic and ordinance violations, preliminary hearings, search warrant proceedings, forcible entry and detainer actions, and small claims (up to $1,000).[44] They are also empowered to hear complaints, or preliminary informations, order arrests, require security to keep the peace, and take bail. In addition, district associate judges and judicial magistrates serving on full-time basis have jurisdiction in indictable misdemeanor cases. The former also have jurisdiction in civil actions for money judgments where the amount in controversy does not exceed $3,000.[46] For administrative purposes, the district associate judges are placed under the juris-

diction of the chief judge of the judicial district. The chief judge is empowered to allocate the workload of the district associate judges as deemed necessary.

The Unified Trial Court Act also provided a system of uniform minimum fines for minor offenses such as: illegal parking ($2), registration card or plate violation ($5), improper lights, improper muffler or other defective equipment ($10), running a motor vehicle unattended or failure to dim lights ($10), speeding up to ten miles per hour over the legal limit, violation of restricted license, or stopping on traveled portion of a highway ($20), and violation of height, length, or width laws ($25). Except for overtime parking punishable by a fine not exceeding $10, the defendant must also pay a $5 court cost. In other misdemeanor cases, judicial magistrates are limited to imposing a fine not exceeding $100 or imprisonment in the county jail for not more than 30 days. Under the uniform minimum fine schedule, a defendant may be saved the inconvenience of appearing in court if upon arrest, and in the presence of the officer, the defendant mails the citation, admission, minimum fine, and court costs to the clerk of court. The Iowa Code directs that three-fifths of the revenue from fines and court costs on state statute violations be sent to the state treasury and put in the general fund. The remaining two-fifths is placed in the county's general fund. Fines and court costs resulting from municipal ordinance violations are split 90-10 between the city and county with the county retaining only 10 percent of the total.

The Unified Trial Court Act was approved by the Iowa General Assembly in 1972 after several years of discussion and debate concerning the structure and administration of justice in Iowa. As chairman of the Committee on Judicial Administration of the Iowa State Bar Association, District Judge Harvey Uhlenhopp (now Supreme Court Justice) in 1958 recommended full-scale

judicial reorganization in Iowa including the creation of a unified court system.[47] Fifteen years later after more than a decade of unprecedented judicial reform Judge Uhlenhopp praised Iowa as the only state in the Union which embraced all three essential principles of modern judicial reorganization: unified structure, firm internal management and administration, and a merit system for judicial selection.[48] Although some may take issue as to the degree of consolidation which has occurred under the Unified Trial Court Act, (the Associate Director of the American Judicature Society has recently as March, 1973 excluded Iowa from the list of a dozen states having administrative and structural unification[49]) the fact remains that Iowa has made tremendous progress in reforming its judicial system.[50]

But, more specifically, what were the purposes behind the Unified Trial Court Act of 1972? Why did judicial reformers believe the enactment of this law was so necessary? Undoubtedly, there were several important factors which contributed to the passage of this legislation. Perhaps the most crucial element was the growing criticism of local justice rendered by elected officials paid by fees. Throughout the country, there was a strong movement to abolish J.P.'s and mayor's courts in the 1950's and 1960's. Like J.P.'s in other states, the lay judges in Iowa were accused of bias, favoritism, legal incompetency, and degrading the prestige and decorum of the State judiciary. As noted in the previous chapter, J.P.'s were often considered anti-defendant in criminal cases and pro-plaintiff in civil cases. Since the J.P.'s income was dependent upon the number of criminal and civil cases tried in his or her court, there was a natural propensity to favor the party (police and plaintiff) responsible for the business. It was no secret that law enforcement officers had their favorite J.P.'s. For a variety of reasons, some J.P.'s were very busy while many others had few if any cases. A survey of the 1971 county audits

indicates that of the 576 Justices of the Peace, only 155 collected over $1,000--a modest income supplement. Conversely, while 166 J.P.'s earned less than $100, one couple retained over $15,000 in fees. (Twenty-four J.P.'s returned all their fees to the County.) Of the 899 mayors eligible to try minor civil and criminal cases, only 189 or 21% reported handling any cases during the first half of 1971.

Yet, regardless of their shortcomings, the Justices of the Peace and mayors' courts had strong defenders. Probably the most persuasive arguments in keeping the inferior courts were those emphasizing: (1) the expedient manner of trying cases; (2) the availability to render justice of the lay judges around the clock in rural counties; and (3) the burdensome caseload removed from busy District Court judges consumed in cases of greater magnitude. Moreover, some claimed that justice swift and sure was more likely to deter traffic offenses and misdemeanors than professional justice.

Recognizing both the advantages and disadvantages of the inferior court system in Iowa, the proponents of the Unified Trial Court Act sought to create a new judicial system which would rectify the abuses of the old system without destroying the merits of local justice. Instead of abolishing courts of limited jurisdiction as many judicial reformers have advised,[51] the Iowa lawmakers retained the three-tier system: trial court of limited jurisdiction, trial court of general jurisdiction, and appellate court. Moreover, the principle of lay justice was continued. Although the Act sought to encourage lawyers to seek magistrate positions (especially the reasonably well-paid, full-time magistrate), the modest salary granted to the part-time magistrates was not likely to attract law school graduates. However, unlike the inferior court judges under the old system, the new judicial magistrates were required to attend an annual training session directed by the Supreme Court Administrator. Moreover, the uniform schedule for traffic fines was advanced to

minimize the disparities in judicial sentencing throughout the state. The opportunity to admit guilt and pay the minimum fine via mail offered an expeditious means of disposing routine cases. Judicial reformers believed the fixed salaries for judicial magistrates would eliminate the judge's pecuniary interest in cases tried before their court. Moreover, instead of being elected directly by the people of a partisan ticket, as J.P.'s were, judicial magistrates were initially appointed by (theoretically, on the basis of merit) by special County Magistrate Appointing Commissions. Since three of the six members of these Commissions were selected by partisan elected Boards of Supervisors, some legislators concluded after the 1973 selection process that partisan politics still played an unwarranted role in the selection of judicial magistrates in some counties.[52]

The Unified Trial Court Act was also designed to strengthen administrative coordination and supervision of the courts of limited jurisdiction. Judicial magistrates are ultimately responsible to the chief district court judge of their respective districts. In addition, for purposes of comparative statistical analysis and administrative overview, judicial magistrates must report (monthly) to the Clerk of Court following:

1. The number of small claims tried to the court and those pending.
2. The number of state misdemeanor cases tried to the court (and to the jury) and those pending.
3. The number of city ordinance violations tried to the court (and to the jury) and those pending.
4. The number of preliminary hearings held and pending.
5. The number of forcible entry and detainer actions filed.
6. The number of search warrants applied for.

With cooperation and diligent administrative oversight by the chief district court judges and the Supreme Court (and Trial Court) Administrator's Office, the Unified Trial Court system offers a unique opportunity for centralization of management. This, in turn, should enhance administrative offices and

leadership asserted by the chief district court judges and the judicial and administrative personnel at the Iowa Supreme Court.

Undoubtedly, there are still a number of bugs in the Unified Trial Court Act which must be ironed out before administrative effectiveness and efficiency will become a reality. Less than two-months after the new law went into effect, District Associate Judge Thomas Renda of Polk County contended that the new system "is bogging down big-city courts with unnecessary bookkeeping and paper work...and things are likely to get worse before they get better."[53] Among the problems Judge Renda cited were:

(1) The abolition of 14 Justices of the Peace, police and mayor's courts in Polk County which were replaced by six magistrates;

(2) A tripled case load in criminal and small-claims sections of Municipal District Court;

(3) A large increase of paperwork and bookkeeping for both judges and personnel in the court clerk's office;

(4) An increasing number of jury trials in criminal court.

Some judges claim that the $5 court cost for each case has prompted more persons in traffic court to plead not guilty and to demand a trial. Others say that small claims are increasing because the law raised the previous $100 limit on small claims to $1,000. Only a $2 fee is required to file a small claim. Both District Associate Judges Renda and Luther T. Glanton believe that the civil jurisdiction of non-law-trained magistrates should be restricted to small claims not over $300 or $400.

A variety of factors have increased the paperwork and bookkeeping of the lower trial courts. Although some small claims have no merit, they still must be heard. The clerk's office does the necessary filing of legal papers and also notifies defendants when they are to appear in court on small claims cases. In addition, the clerk's office now must keep separate docket books and separate banking accounts on bonds and fines for each of the district

associate judges. Rather than having one central docket as before, the four district associate judges in Polk County must now make entries in four books. Consequently, the clerk's office now has four accounts to balance rather than one for the monthly financial reports required to be given to the county. Judge Renda recommended a return to centralized docketing of judges' cases in one docket book and one combined monthly report of fines collected by all four district associate judges. Noting the increased number of criminal cases due in part to the requirement that defendants be advised of their right to a jury trial even for misdemeanors, Judge Renda remarked:

> We have 100 jury trials scheduled for September (1973) before the two judges, and we'll have no one to hear small claims. This system might be fine for small counties that handle four cases a day, but it doesn't work here where we get 50 to 75 cases daily.[54]

Other judicial personnel, prosecutors, defense attorneys, and law enforcement officers have been highly pleased with the transition to a unified trial court system. But before getting into a debate as to the merits and deficiencies of the new system which will be included in the next chapter, let us briefly review how the Unified Trial Court Act fits into the proposals advanced by the judicial reform advocates. First, following the advice of Professor Roscoe Pound and others, Iowa maintained a three-level state court system without creating specialized courts. The Model Judicial Article approved by the American Bar Association in 1962 recommended that juvenile, domestic relations, probate, criminal, equity and other types of cases heretofore handled in special courts should go to the district court and to whatever extent specialized handling of them may be necessary or desirable, this should be accomplished by assigning them to specialized judges within the single court. Yet while providing for a trial court of limited as well as general jurisdiction, the Trial Court Act consolidated the administration of the trial courts by placing the judicial magistrates and district associate

judges under the direction of the chief district court judge, and, ultimately, the supreme court administrator's office. Further unification was provided by replacing the numerous independently elected J.P.'s and mayors with judicial magistrates appointed theoretically on the basis of merit by a special Commission. Thus for purposes of administration and coordination, Iowa has a two-level judicial system.

There are, however, at least two factors which tend to reduce the degree of administrative centralization and control. First, judicial magistrates are initially appointed by a commission of six members, half of whom are selected by a partisanly elected county executive board. Instead of owing their selection to District Court judges under whom they work, judicial magistrates are most beholding to the Commission which appointed them. (Although judicial magistrates can be removed from office by a vote of the District Court judges, this can occur only after the presentation of a removal petition signed by two percent of the voters.) Secondly, the county clerks who perform an important clerical role for the magistrates, district associate judges, and district judges continue to be elected on a partisan ballot. Many judicial reformers suggest that clerks of courts should be appointed by the judges. As Iowa Supreme Court Justice Harvey Uhlenhopp put it: "Can you imagine a business in which the accounting or clerical staff was elected on its own and was not answerable to management?"[55]

Finally, by removing partisan elective politics and abolishing the fee system, the new Unified Trial Court Act appeased judicial reformers who contended that better qualified persons would seek and accept judicial office if they could do this outside the partisan political arena. A regularized and respectable salary was also thought to encourage more competent citizens to serving as inferior court magistrates. (Under the old system, only three

J.P.'s earned as much in fees as the $4,800 part-time magistrates are paid.) The prestige of the lower trial courts was also expected to enhance as judicial credentials improved, business was conducted in a judicial atmosphere (rather than on the front lawn or in a local judge's home), and arbitrary, capricious, discriminating sentencing was curtailed by use of uniform minimum fines schedules.[56] Under the new system, judicial magistrates also escape from the stigma of personally profiting by the number of cases disposed by his or her court. Moreover, for purposes of judicial management and statistical analysis, uniform record-keeping was likely to improve under the magistrate system.

In summary, the Iowa judicial system has undergone enormous change during the last decade or so. While it is perhaps too early to know all the consequences of these reforms, if precedent in other states has any meaning, we can expect remarkable improvements in the efficiency and administration of our courts as well as an increase in the caliber and prestige of our lower trial court judges. While applauding the unprecedented progress in judicial innovation, we must continue to remind ourselves that court reform is a "never-ending task." Hopefully, we will continue to discover new ways to make the courts better.

FOOTNOTES - Part III

[1]Vanderbilt, Minimum Standards of Judicial Administration, 54 (1949).

[2]See, I. Holdworth, History of English Law (1931); Pound, Organization of Courts, chs. III, IV (1940); Uhlenhopp, "The Integrated Trial Court," 50 A.B.A.J. 1061 (1964).

[3]Pound, supra note 31, at 75.

[4]36 & 37 Vict. c.66 (1873) and 39 & 40 Vict. c.77 (1975). See description in Note, 8 Am. L. Rev. 256 (1873); Lowe, "Unified Courts in America: The Legacy of Roscoe Pound," 56 Judicature 316 (1973).

[5]Clark, supra note 25, at 1173.

[6]Lowe, supra note 33, at 316.

[7]48 J. Am. Jud. Soc'y. 51 (1964).

[8]Vanlandingham, "The Decline of the Justice of the Peace," 12 Kan. L. Rev. 397 (1964).

[9]Ibid.

[10]Ibid., at 390, 398-403.

[11]Book of the States.

[12]Winters, "The National Movement to Improve the Administration of Justice," 48 J. Am. Jud. Soc'y. 18 (1964).

[13]Lowe, supra note 33, at 322. A less rigorous definition of "unification" puts the total number of unified state court systems at 22. See, "State Court Progress at a Glance," 56 Judicature 428-429 (1973).

[14]In 1972, Montana became the first state in a decade to reject a constitutional amendment providing for state court unification. Lowe, supra note 33 at 323.

[15]Pound, "Principles and Outline of a Modern Unified Court Organization," 23 Judicature 230-231 (1940). Emphasis Added.

[16]Most appeals would be heard as motions for new trials, for judgments notwithstanding verdicts, or for modification or setting aside of decrees and orders.

[17]Lowe, supra note 33, at 320.

[18]"State Court Progress at a Glance," supra note 42, at 428-429.

[19]Pound, supra note 44, at 225.

[20]Winters, supra note 41, at 18.

[21]Cardozo, "A Ministry of Justice," 35 Harv.L.Rev. 113, 114 (1921).

[22]O'Connell, "Streamlining Appellate Procedures," 56 Judicature 238 (1973). Judge Kenneth J. O'Connell is the Chief Justice of the Oregon Supreme Court.

[23]Frank, American Law--The Case for Radical Reform at 135 (1968).

[24]O'Connell, "Streamlining Appellate Procedures," 56 Judicature 237 (1973).

[25]Ibid., at 235. Also see, Hufstedler and Hufstedler, "Improving the California Appellate Pyramid," 46 Los Angeles B. Bull.

[26]For an excellent analysis of the adoption and use of the "Merit Plan" in Missouri see, Watson & Downing, The Politics of the Bench and the Bar: Judicial Selection Under the Missouri Nonpartisan Court Plan, (1969).

[27]Glen Winters, Executive Director of the American Judicature Society has labeled November 6, 1962 as "easily the greatest day in history for judicial reform." Winters, supra note 41, at 20.

[28]Ten other states, however, permit a "voluntary" merit plan based upon executive initiative and approval by a state bar association or similar agency. California, New Jersey, and Massachusetts are among the states classified as having a "voluntary" but not a genuine "Merit Plan." See, "State Court Progress at a Glance," supra note 42.

[29]Book of the States, 1972-1973 130-132 (1972).

[30]"State Court Progress at a Glance," supra note 42.

[31]Ibid.

[32]Johnson, "Iowa Judges' Pay Is Below U.S. Median," Des Moines Register December 31, 1972 at 1-B+.

[33]Winters, supra note 41, at 21.

[34]Christian National Center for State Courts, Annual Report: 1971-1973, (1973).

[35]Burger, supra note 30, at 1051.

[36]Fish, "Crises, Politics, and Federal Judicial Reform: The Administrative Office Act of 1939," 32 J. of Politics, 599-600 (1970).

[37]Ross, The Government and Administration of Iowa, 138-139 (1957).

[38]During this 14-year period, the caseload declined from a high of 509 cases (1930) to a low of 209 (1943). The average number of cases disposed was 379. See, supra note 21, at 20-21.

[39]Between 1959 and 1969, the number of cases decided by the Iowa Supreme Court climbed from 167 to 242. Similarly, the average page-length of opinions increased from 4.3 to 9.2 pages from 1959-61 to 1967-68. Parenthetically, the number of written dissents increased from 13 in 1962 to 43 in 1968. During the most recent year in which the Supreme Court has sat in division (September, 1972 through August, 1973) the Court rendered 320 decisions--an increase of 39 percent over the 1971-72 output. The significant increase in case disposition, however, is not solely the consequence of sitting in division. Perhaps, more important, is the screening process performed by the summarizing and scheduling cases and recommending cases to be decided without oral argument, en banc or by per curian decision. The use of short per curian opinions has permitted judges the time to write a few more opinions each month. Yet, even with all of these innovations, the backlog of cases ready to be disposed did not subside. With the rapidly rising number of civil and criminal appeals the backlog stood at over 170, in October, 1973. Chief Justice C. Edwin Moore has called for legislation establishing an intermediate court between the Iowa District courts and the Iowa Supreme Court. This would allow the High Courts to concentrate on more fundamental constitutional issues. See "Henry Load 'Hurts' Iowa High Court," Des Moines Register (May 7, 1972) see C, 1. For more information on case disposition, dissents, and length of decisions, see, Beatty, An Institutional and Behavioral Analysis of the Iowa Supreme Court-1965-1969 (Unpublished Dissertation, University of Iowa, 1969) ch. 4; Beatty, "Decision-Making on the Iowa Supreme Court--1965-1969 19 Drake L. Rev. 342 (1970); Stuart, "Iowa Supreme Court Congestion: Can We Avert a Crisis?" 55 Iowa L. Rev. 594 (1970).

[40]Code of Iowa, 1973 R.C.P. 376 (Report 1969).

[41]Code of Iowa, 1973, R.C.P. 374 and 377 (Report 1969).

[42]Code of Iowa, 1971, ch. 685.8.

[43]Ibid., ch. 685.8.

[44]Supra n. 21, at 78.

[45]Code of Iowa, 1973, ch. 685.6. Unfortunately, as of October, 1973, the Iowa Court Administration had the lowest statutory compensation ($15,000) in the nation.

[46]On the other hand, J.P.'s were limited to civil cases with amounts in controversy of less than $100 and cases of $300 or less with the consent of both parties.

[47]Under the original Unified Trial Court Act of 1972 (S.F. 428), law trained district associate judges were limited in civil cases to controversies not exceeding $1,000.

[48]Uhlenhopp, "Judicial Reorganization in Iowa," 44 Iowa L. Rev. 11-39 (1958). In addition to the unified trial court, Judge Uhlenhopp proposed: (1) the administrative judge, (2) the use of current caseload data, and (3) the return to a nonpolitical judiciary.

[49]Uhlenhopp, "Court Reform, a Never-Ending Task," Des Moines Register (May 6, 1973).

[50]Lowe, supra note 33, at 322-323.

[51]However, in the May, 1973 issue of Judicature (two-months after Iowa was excluded from the "unification honor-roll" (only 12 states met the requirements), a special Society Report included Iowa among the 22 states having a unified state court system. See, "State Court Progress at a Glance," supra note 42, at 428.

[52]See, Pound, supra note 44, at 225; Uhlenhopp, supra note 31, at 1065; Winters, "The Case for a Two-Level State Court System," 50 Judicature 186 (1967). For a defense of courts of limited jurisdiction see, Crowe, "A Plea for the Trial Court of Limited Jurisdiction," 53 Judicature 157 (1969); Litke, "The Modernization of the Minor Courts," 50 Judicature 67 (1967); Uhlman, "Justifying Justice Courts," 52 Judicature 22 (1968).

[53]State Senators Tom Riley and Earl Willits were particularly troubled by reports that the Polk County Appointing Commission solicited the Republican and Democratic County Chairmen for names of persons who might be interested in becoming magistrates. Senator Riley also opposed letting county boards of supervisors--"partisan bodies"--appoint some of the members on the Commissions. He suggested that all magistrates be licensed attorneys with salaries of $6,000. See, Johnson, "Few Iowa Counties Have Named New Magistrates," Des Moines Register 4 (April 10, 1973).

[54]Caringer, "Renda: Unified Court Law Bogs Down Judges," Des Moines Register 6C (August 26, 1973).

[55]Ibid.

[56]Supra note 77.

Part IV

THE IMPACT OF REFORM*

The Iowa court unification plan incorporated most of the major changes advocated by Roscoe Pound and other judicial reformers. In terms of systemic analysis of judicial systems, these changes were directly related to the development conception of institutionalization and were designed to affirmatively promote such goals as professionalization and specialization. Specifically, as already pointed out in some detail, the new Iowa court system has eliminated many courts of limited and special jurisdiction, brought the new magistrates under a coordinated court management program, and implemented judicial selection methods generally designed to improve the prestige and status of the inferior courts. It is the purpose of this concluding chapter to examine the impact of this legislation. One way of doing this is to find out just how Magistrates chosen under the new system differ from the Justices of the Peace chosen under the old system. Since the study was undertaken only a few months after the old system was replaced, the immediate opportunity for a comparison of personnel during the crucial period of transition between selection systems is a great one.

Questionnaires were sent to 485 individuals reported as holding office as a Justice of the Peace as of the end of June, 1973. The list that was made available to the project turned out to be partially inaccurate, primarily because it listed a number of Justices of the Peace who had been deceased for periods of time ranging up to 12 months. Based upon the return of undelivered questionnaires, approximately 450 forms actually found their way into the hands

*This portion of the project profited greatly from the work of Otilia Sergeant in coding the questionnaires and Claudia Lewis in doing the necessary data processing. Their contributions are much appreciated.

of former Justices of the Peace. Using this latter figure as a base then, 26.7% of the Justices of the Peace returned questionnaires completed in whole or in substantial part. These 122 Justices of the Peace appeared to be well distributed over the state, with no apparent biases in favor of or against any particular geographical area or type of community. Similar questionnaires were sent to the 201 people who assumed office as Judicial Magistrates on July 1, 1973. About one-half of these questionnaires were returned, 99 in all, and again, the response rate appeared to be fairly uniform over the various sections of the state. It should also be pointed out that 35 Justices of the Peace were appointed to Judicial Magistrate positions. This means that less than 10% of the former Justices of the Peace now hold 17.5% of the Magistrate appointments. Questionnaires from these respondents are included in the Magistrate data, but not in the Justice of the Peace analysis. In sum then, we have available for comparison responses from representative samples of officeholders under both systems.

Five dimensions present themselves for use in the assessment of legislative impact, and data on all were collected on the questionnaires. Specifically, the data permit us to answer the following questions about both sets of judges, and then to compare the two groups: (1) what kinds of people were chosen to sit on the bench; (2) how were these people selected, that is, what factors influenced their recruitment to this form of public service; (3) what were/are the principal components of their job, and how often was/is each performed; (4) in their own view, what decisional patterns emerged from their deliberations; and (5) what is their evaluation of both systems of administering justice below the District Court level.

Who are the Judges?

On nearly all components of a general background characteristics dimension there are differences between Justices of the Peace and Judicial Magistrates. Both groups are predominantly native Iowans by birth and upbringing, but in terms of the "place in which raised," Magistrates appear to be slightly less parochial. Of this group, 81.6% were raised in Iowa compared to 87.4% of the Justices of the Peace. In both cases however the proportion is so high as to lend support to the allegation that the Iowa inferior judiciary was basically a closed system with only minimal chance of an outsider being chosen to hold office, and that revising the structure of the inferior courts has done little to change the situation.

According to the biographical material completed by the Justices of the Peace who returned the questionnaire the mean age of the Justices of the Peace at the end of the system (1973) was 60 years. On the other hand the mean age of the magistrates appointed to the unified court system was fifteen years younger (45). Thus the typical magistrate represented at least a newer generation than did the typical Justice of the Peace.

By far however the most substantial differences between the two groups are in educational level and occupation. JP's for the most part were very poorly educated, 20.3% having less than a full high school education and only 16.9% having a college degree or better. By way of contrast, 69.1% of the M's have at least a college degree and only 1.0% have not completed high school. The thread of parochialism returns however, for 72.9% of the undergraduate degrees were awarded by Iowa colleges and universities. The improvement of educational level of inferior court judges is one of the major salutary effects of the changes in the structure of the court and in the appointment process. The generally educated, Justice of the Peace was the

cause of much of the mockery of the judicial system. It cannot be guaranteed of course that college educated people will render better or fairer decisions, but certainly the probabilities of this are improved and, if nothing else, the prestige of the office has been substantially enhanced.

The difference in educational level is reflected in the occupational structure of the two groups. Only two of the Justices of the Peace returning the questionnaire indicated that their principal occupation was the practice of law. The distribution of occupations was rather wide, nearly equal numbers claiming farming, skilled labor and professional livelihoods. But 47.2% of the Magistrates are lawyers, an effect that was certainly expected by the legislators and others who researched the statute while it was in preliminary stages, even if the extent of the change is surprising. It was argued that part of the organized bar's motivation in supporting court reform had to do with the supply of positions for recently graduated lawyers. In fact, further analysis reveals that herein may be another potential problem with the system. Nearly one-half, 42.3%, of the lawyers have been practicing for two or fewer years. They are predominantly sole practitioners, (43.2%), and if they are part of a firm, they have usually chosen a small one. Only two of the 42 lawyers claimed that their firm consisted of five or more lawyers. What is most intriguing however, and perhaps gives a key to understanding the attraction of the position for struggling young members of the bar, is the relationship between their judicial position and their private practice. All but one of the Magistrates indicated that they were continuing to practice while sitting on the bench; that sole respondent being also a full time magistrate. In light of recent developments and the ruling from the Eighth District Court on the propriety of this practice, it might well be anticipated that a rule against private practice would preclude all but a few lawyers from seeking the magistrate positions. When asked if their judicial office helped or hurt their

private practice, the lawyers gave very interesting responses. The plurality, 47.6% said that their private practice had been hurt, primarily because of the time that they had to spend performing their judicial duties. Another 42.8% weren't sure of the effect on their private practice, and only 4 of the 42 lawyers, 9.6%, perceived their position as an aid to their private practice. In these cases the benefits flowed primarily from the "advertising" value of a public position. With this pattern of responses, it might be expected that the end of the road is at hand for lawyers who both maintain a private practice and serve as Judicial Magistrates, that one or the other would have to go. Such is not the case however, because only 19 lawyer Judicial Magistrates are considering the prospect of resigning. Although this is 45.2% of the total number of lawyer Magistrates, the figure is certainly lower than one might have expected, given the responses to the previous questions. It would seem then that the Judicial Magistrate position is very attractive to a young lawyer, recently graduated from an Iowa law school, who has organized his own practice, perhaps with one or two associates. The bench appointment was accepted because of the salary attached and because of its potential for developing a clientele. Now, six months into the job, he/she has discovered that being a Magistrate has taken so much time that the practice is suffering. But resignation is not a serious possibility because of the influence on personal finances. The loss of the Magistrate salary will not be immediately balanced by an increase in remuneration from the private practice, hence financial necessity dictates remaining on the bench. Thus, it's a rather curious situation, and one not at all unlike that anticipated by court reform cynics. True the position has attracted lawyers to public service, but certainly not those members of the bar who enjoy status in their community. In short, the Magistrate system has become at least in part a subsidy to the legal profession, keeping a number of young attorneys in the practice of law at the

risk of serious conflicts in ethical obligations.

The other major point of interest insofar as background characteristics are concerned is political activity. The change to the Magistrate system has resulted in the selection of substantially fewer Republicans and more Democrats to the bench than under the previous system. Of the Justices of the Peace responding, 68.1% were Republicans, compared to 57.4% of the Magistrates. Similarly, when respondents were asked to characterize their political ideology, a definite pattern emerged. The Justices of the Peace claimed to be Conservative (45.7%), with only 11.4% describing themselves as Liberal. Magistrates by contrast were more Liberal (23.2%), though Conservatives still predominated (38.9%). In recent years Iowa has become much more a two party state, and it would seem that the removal of inferior court judges from the electoral process has resulted in a weakening of Republican control of this aspect of the political system.

It is also informative to note that the change in systems has brought more political activists into public office. Only 6.7% of the Justices of the Peace had held a prior political office, although 16.7% had sought election to other than Justice of the Peace positions. Magistrates were much more politically active, 38.4% having held office prior to their selection, and 25.3% having sought public office unsuccessfully. In all cases, the offices sought were local, city council and board of supervisor positions being the most often mentioned.

The court reform law has caused some major changes in the personnel rendering decisions in the inferior courts. In many aspects the reform has accomplished the aims of its advocates in that by several measures the quality of incumbents has improved. No longer is it true that an inferior court position falls to those perhaps least qualified to interpret and apply the law. Under the Judicial Magistrate system judges are more educated and are

more likely to have some expertise in the resolution of legal difficulties. In that sense then, the reform has had an impact in accord with expectations The system has also become more politicized however, something which judicial reformers generally oppose. This tendency is reflected in the increased numbers of magistrates with prior political experience and a record that includes unsuccessful attempts to gain public office. Even the balance of political party representation has undergone substantial change, reflecting the much discussed relationship between the political system and the judiciary. On balance, one would have to view the changes in the law as beneficial. It certainly is true that the replacement of the fee system by a salary and the increase in status accruing to the position has attracted a substantially more educated class of citizens to public service.

The Recruitment Process

One of the major criticisms of the Justice of the Peace system centered on the way in which judges were chosen. The allegations were basically of two types. First, it was argued that, in some cases, public interest in the position was so low that a Justice of the Peace could be elected with only minimal electoral participation. This of course implies that very small blocs, families or neighbors for example, possessed something of a stranglehold on justice in the township. Alternatively, it was pointed out that Justice of the Peace positions do not usually require incumbents to be very active and yet they are remunerated, though not at a very high rate. This situation is ideal for a political party organization that wished to reward some of the faithful with public positions of some status in a small community and that carry with them a small stipend for minimum work. Thus, the argument ran, political parties would dominate the selection of Justices of the Peace thus making justice very much a part of local politics.

The data do not fully support either description of the recruitment process, though it more closely resembles the former. Responses to the questionnaires indicate that the majority of the Justices of the Peace did not initially obtain their office by winning an election. Rather, 54.2% were first appointed to their office under provisions of the Iowa Code that permit the Board of Supervisors to fill vacancies that occur in a township office. Even if the Justice of the Peace was first elected to the position, in only a few cases was there any question as to the outcome of the contest. In 68.1% of the occasions in which a Justice of the Peace was newly elected, there was no opponent. When the election was contested, although one Justice of the Peace was faced by as many as eight opponents, typically (51.4%) there were only one or two (27.0%) challengers. In virtually no cases were the elections close; only eight of the Justices of the Peace indicated that the winning margin had been small. When asked to indicate the proportion of the vote received, the average Justice of the Peace indicated that 76% of the electorate had supported his or her candidacy. So far, these figures support a relatively cynical view of the recruitment process. The office was clearly not attractive to a large number of people, as indicated by the lack of opponents when an election was held. Although some deaths and other physical factors leading to resignations are expected, the fact that over half of the Justices of the Peace were appointed to their office is illustrative of the problems that the political system encountered when it sought judges to sit on these courts. The only anomaly in this picture is the voter turnout. The cynical view of the Justice of the Peace system holds that voters do not cast ballots in these contests, causing the selection to be made by a very small proportion of the population. This was distinctly not the case. The Justices of the Peace indicated that for the

most part turnout in the election after which they first assumed office was normal or higher than usual. When 72.7% of the Justices of the Peace so responded, one is at somewhat of a loss to explain the situation. The most likely explanation is that the Justices of the Peace interpreted the question as pertaining to a comparison with Justice of the Peace elections in other years in nearby localities. In this case it could be concluded that turnout for these elections was at the "expected" level, but not knowing whether this is more or less than the proportion of voters casting ballots for other offices. The idea that the electorate chooses Justices of the Peace with the same degree of attention that it attaches to other offices is not consistent with the conclusions drawn by any student of the inferior courts in any state.

The relatively high turnout for Justice of the Peace contests could also be rationalized by a showing of political party activity which leads to a test of the second theory of Justice of the Peace selection. If a party were to recruit candidates and then campaign vigorously for them, in effect a stimulus to voting was created. But the Justices of the Peace by their answers to other questions indicated that these elections were of low public interest. For example, 95.5% said that they did not campaign at all for the office. Consequently there were only a few responses to a questionnaire item dealing with campaign expenditures. When answered at all, the question revealed that the average cost of a campaign for a Justice of the Peace was $23.91. In the majority of cases, (55.9%) there were no issues in the campaign. When one was present, it most often had to do with the quality of justice in the township, the most elementary of all possible issues. Clearly then, there were no attempts to contest the election at a political level. In fact, the data indicate a very dull, almost invisible

campaign, probably most often conducted in places of business and social activities where candidates could meet the voters unobtrusively and consisting more of informing friends of their presence on the ballot than of campaigning in the usually understood sense.

Political parties and bar associations were nearly totally absent from these elections. Fewer than ten of the responding Justices of the Peace said that any of these organizations had taken an active part in the campaign. Only four cited these influences as being decisive in the outcome. For the most part, the Justices of the Peace thought that they won either because they had no opponent or because of their favorable image in the community. Thus, these elections in no way resembled the typical political contest. The evidence of organized activity is so scanty as to cause the rejection of the "party reward" theory of Justice of the Peace recruitment. Were it not for the reporting of a high turnout rate, then the "family influence" model of how Justices of the Peace were chosen could be accepted. The temptation to interpret the turnout rate as simply reporting that about the same number of people vote on the Justice of the Peace office in each election thereby removing the only controverting evidence for this position is very strong.

The contrast between Justice of the Peace recruitment and Magistrate selection in other than mechanical aspects is not all that stark. The typical Justice of the Peace is best described as a self starter, as opposed to a recruited candidate, who obtained the position more or less by default. The major point of difference for the Magistrates is that contests for the job were more common, not a single Magistrate reported an absence of opponents. Notable in the Magistrate selection process is the relative rarity of organized recruiting activity. Of the 99 Magistrates responding to the survey,

22 indicated that their candidacy had been solicited, far less than expected compared to the Iowa legislature for example. Most often, this contact was by a government official, the identify varying so much as to prohibit generalizing. Political parties were nearly inactive, only one magistrate reporting that his party had solicited his candidacy. More active was the organized bar, but even these groups did not have a significant impact on the recruitment process substantially influencing five Magistrates in all. Even when the scope of the question was expanded from activity in "your" recruitment to the selection process generally, political parties did notshow up as active participants. The organized bar's activity was seen as more substantial in that 12% of the Magistrates reported that the bar had recruited candidates, including the reporting that the bar had asked them to apply. In the case of both the Justice of the Peace and the Magistrate it is normal to expect that there were in fact outside influences on the decision to seek office. With respect to Justices of the Peace, the origin of such pressure was most often the family, friends or neighbors of the candidate. To properly analyze this aspect of Judicial Magistrate recruitment, it is necessary to divide the Magistrates into two groups, lawyers and nonlawyers. The latter group was apparently recruited in a manner very much like the Justices of the Peace, family and primary groups having the greatest influence on the decision to apply. The lawyer Judicial Magistrates were more likely to have been contacted by the bar and/or government leaders, but the informal pressure was most often generated by the person's office colleagues. Thus, controlling for the occupation of the Magistrates, it can be said that the court unification reform had virtually no effect on the factors which led successful candidates to seek positions on the inferior courts.

What the Job Requires

Although the Iowa Uniform Court Act made a number of changes in the statutes defining the jurisdiction of the inferior courts, the import of these changes was not significant. Basically, both Justice of the Peace and Magistrate Courts were empowered to hear four kinds of actions: (1) pleas on traffic violations and specified misdemeanors, (2) requests for search and arrest warrants, (3) preliminary hearings for defendants accused of serious offenses, (4) small civil suits. Only in the last named category did the law make a substantial change, raising the ceiling for small claims from $300 to $1,000. The questionnaire asked the two groups of judges to estimate the frequency, both absolute and relative, with which they heard each kind of action. It must be remembered that the data to be presented below are not statistical summaries; they are recall data in the case of the Justices of the Peace and in both cases are simply the participant's perception of the extent to which he engaged in each activity. Table 1 summarizes the distribution of first responses of Justices of the Peace and Magistrates to the question: "Which parts of your job do you perform most often?"

Table 1

Most Frequently Performed Duty (By Percentage)

	JP	M
Hear criminal non-traffic cases	5.7	1.1
Hear traffic cases	55.2	46.7
Hear requests for warrants	1.1	1.1
Hold preliminary hearings	0.0	1.1
Hear small claims suits	3.4	7.8
Paperwork, hold court	24.1	14.4
Other	10.3	27.8
Total	99.8%	100.0%

It seems clear that the responsibilities of an inferior court judge have not been much changed by the court reform legislation. According to Table 1, both Justices of the Peace and Magistrates engage in fundamentally the same kind of activities. The only point of interest is the decline in frequency with which pleas are taken in non-traffic misdemeanor cases under the unified court structure. Simultaneously, the Magistrate courts seem to have experienced an increase in the frequency with which civil actions were heard. This may be in part a function of the higher limit for such cases under the new system, or may result from the increased publicity given such proceedings in the state's newspapers.

In order to get a more specific answer to the question of what these judges do, the questionnaire asked the respondents to estimate the number of times they heard each kind of action in a month. Averages were then computed for each group, and are displayed in Table 2.

Table 2

Average Number of Cases Heard Per Month By Category

	Justice of the Peace	Magistrate
Hear criminal non-traffic cases	5.8	10.6
Hear traffic cases	21.7	40.9
Hear requests for warrants	5.1	7.1
Hold preliminary hearings	3.4	5.1
Hear small claims actions	4.7	4.6
Total	40.7	68.3

Again the data show few differences between Justices of the Peace and Magistrates in terms of their activities. The typical Magistrate hears about 55% more cases than the average Justice of the Peace did, but the changes by

category are almost minimal. The largest increase has been in traffic cases. This might be expected, and in fact was one of the motives of the reform's framers. Under the old system, law enforcement officials could, and often did, choose the court to which the offender would be brought on grounds other than geographical location. The officer's discretion under the new arrangement has been substantially reduced, thus a levelling of the caseloads might be expected. Of interest also is the fact that small claims actions showed no increase, in fact remaining virtually stationary. Since Table 1 showed that a larger number of Magistrates indicated this proceeding to be the major object of their activity it can be concluded that the number of cases had not varied substantially but the distribution over courts appears to have undergone some shifts. In short, the data show a higher caseload for the average Magistrate, but no clearly defined changes in the type of cases heard compared with the Justices of the Peace. The court reform legislation has therefore had only minimal impact on judicial activities.

Having then said that Justices of the Peace and Magistrates decide approximately the same kinds of cases, the question that remains is whether the two groups of judges decided them differently. Table 3 displays the answers given to a series of questions asking how often each group named was victorious in litigation before the judge. It must again be borne in mind that Table 3 does not represent statistics on case outcomes, only the judges' impressions as to the patterns which their decisions have formed.

Neither the misdemeanor nor the traffic defendant fares differently under the unified court system than in the old Justice of the Peace courts. The odds on victory are slight in all circumstances, and, within type of offense, change hardly at all. If anything, the traffic violator is at a

TABLE 3

Frequency of Victory by Type of Litigant and Court System (In Percentages)

	Criminal Defendant		Traffic Defendant		Small Claims Plaintiff	
	JP	M	JP	M	JP	M
More than Half	7.6	6.0	8.4	4.8	57.5	63.3
About Half	25.0	25.0	11.9	18.1	21.4	30.9
Less than Half	67.4	69.0	79.7	77.1	21.3	5.8
Totals	100.0	100.0	100.0	100.0	100.0	100.0

slightly greater disadvantage in the Magistrate courts. So again, the data show no real differences between the two court systems.

Interpretation of the third column of Table 3 is facilitated with the knowledge of several additional facts. The questionnaire asked the judges to describe generally the prime characteristics of civil litigants. A large number of categories resulted, but one fact stands out: the change to the Magistrate system has brought about a near total dominance of the court's civil jurisdiction by business and debt collection interests. Business and allied interests were cited by 67.9% of the Justices of the Peace as the typical civil plaintiff. Magistrates gave a response in this category 89.1% of the time. It should be pointed out parenthetically that a significantly large minority of Justices of the Peace replied that they had not heard civil actions and thus had no basis upon which to answer the question, a situation reflected in Table 2 as well. The latter table showed that Justices of the Peace and Magistrates hear small claims actions with approximately equal frequency, but it would appear that such actions are now being filed in more courts than was the case previously. Table 3 indicates that the plaintiff is more likely to win in Magistrate's court than before a Justice of the Peace, inasmuch as the proportion of judges reporting that civil plaintiffs win less than half of their suits dropped from 21.8% of the Justices of the Peace to 5.8% of the Magistrates. Most of these changes were to the advantage of the "about half" category since the topmost description shows a differential of but 5.8% between the two systems. The theory supporting court reform argues for the opening up of the judicial system to the people through informal, readily accessed small claims courts. Critics claim that, though established in good faith, such a structure inevitably becomes a formal, official extension of the business community's bill collection process and in many respects is

indistinguishable from the District Court. Iowa appears to be a textbook example of the critics' argument. Business interests now so dominate the court that only about one case in ten is brought by a private citizen. More importantly the odds in favor of the plaintiff have changed significantly. It cannot of course be argued that one phenomenon caused the other, but the data are certainly consistent with an elitist view of the courts. The basic reason for the capture of small claims courts by business and other collection interests is often alleged to be the change in the role perspectives of the judges. Justices of the Peace are far less likely to be legally educated than Magistrates. It might therefore be hypothesized that Justices of the Peace are more likely to base their decisions upon a sense of justice or equity than upon the letter of the law, hence extenuating circumstances and similar factors are thought to be more salient to "citizen judges." Conversely, a judge trained in the law, as nearly half of the responding Magistrates are, might be thought to be more disposed towards enforcing the letter of the law; a role orientation that is certainly conducive to decisions in favor of this kind of plaintiff. Reinforcing this proposition are the judges' responses to questionnaire items about the role of counsel in their courts. The survey item was, "How often was each of the following represented by counsel?" The answers were then recoded into two categories, more than half and less than half of the group being so represented. Of the Justices of the Peace, 71.7% said that civil plaintiffs were represented less than half the time. But the Magistrates appear to run a much more formal court, inasmuch as 58.2% reported that plaintiffs had counsel in less than one half of the cases they heard. Interestingly, the proportions for defendants changed hardly at all. Of the Justices of the Peace, 75.9% said that defendants had counsel in less than one half the cases. The corresponding figure for Magistrates was 72.2%.

In sum then, Magistrates courts appear to be much more formal, thereby becoming more attractive to organized financial and business litigants. This in turn is reflected in a decisional pattern that is substantially less to the advantage of the defendant than was the case under the Justice of the Peace system. Whether this result is a sign of progress depends of course upon one's perspective. If the supporting idea behind reform of the inferior courts was to insure evenhanded justice and emphasis upon a rule of law rather than of men, then the unified court structure is certainly a success. But if the small claims courts are to be viewed as a readily accessible forum in which citizens can seek redress of grievances, then the Magistrate system leaves much to be desired. This situation is not at all uncommon. In virtually every jurisdiction that has reformed its courts in such a way as to increase the influence of the organized and unorganized bar, the result has been the transformation of small claims courts into debt collection agencies. In the long run it is simply a question of priorities. By taking steps to eliminate formalistic decision making, insofar as possible e.g., by forbidding lawyers to appear as counsel for small claim litigants, the legislature could accomplish the upgrading of the inferior courts while simultaneously reducing the potency of corporate and bar interests.

Evaluations

The final topic to which attention might be turned is the view of the system taken by the participants themselves. To accomplish this, a series of three items was asked. First, the survey inquired as to whether the respondent approved of the court reform. The results are quite interesting, for only 15.5% of the Justices of the Peace thought change was a good idea. As might be expected, approval was much stronger among the Magistrates, 80.9% favoring the reform legislation. Accepting for the moment that these are

altogether expected responses, i.e., Justices of the Peace will disapprove of the dissolution of their offices and Magistrates will favor the creation of their positions, it is of some value to inquire into the motivation supporting the responses. The Justices of the Peace who rejected the change did so primarily because it "took justice away from the people," or words to that effect. Over one fourth of the Justices of the Peace, 27.2% gave this response. It seems highly unlikely that the courts' civil jurisdiction played a prominent role in this evaluation, since the average caseload in this area was so small under the Justice of the Peace system. It must therefore be concluded that the Justices of the Peace based their answers upon a philosophical reason relating either to the kinds of people selected for service or to the mode of recruitment, i.e., appointment rather than popular election. This seems clear when responses to another item are examined. The judges were asked why, in their opinion, the legislature had reformed the court structure. Surprisingly, 52.4% of the Justices of the Peace indicated that the prime reason was that the assembly had yielded to bar association pressure. Another 26.7% gave responses relating to the general improvement of the judicial system. The Justices of the Peace seem remarkably cynical about the reform, and much of the data heretofor presented corroborates their negative attitude. In terms of the formal selection process, the types of people chosen to hold office, representation in the courtroom, and the general outcome of the decisions, the Justices of the Peace are well grounded in maintaining that the basic reason for the reform was to support the professional interests of the bar. Conversely, the Magistrates favor the new system by an overwhelming margin, 80.9%. Their reasons are as one might expect but tend to reflect some of the Justices of the Peace negativism. For example, the Magistrates favor the change because of the increased level of

professionalism to be found in the inferior courts (35.1%) and because it will result in a higher quality of justice (45.7%). This latter factor was ascribed the major role in the legislature's action, 88.9% saying that the assembly merely wanted to improve justice in Iowa. Most also feel optimistic about the chances of the reform proving adequate to the goal, 80.9% indicated that they anticipated a generally elevated judicial system to result from the legislation.

The advantages of testing the validity of alternative recruitment assumptions during the immediate period of transition are underscored by the contrasts summarized in the empirical findings of this investigation. Replication in time series for a longer period will, of course, be necessary before assessment of the long term effects of such systemic changes can be made.

On the basis of the initial survey, several tentative conclusions may be drawn about the actual effects of contemporary judicial reform. Effects which may differ markedly from those anticipated by the protagonists of such reforms. This preliminary evidence supports the assumption which predicted that the systemic change would increase the number and percentage of lawyers. But it did not support the concomitant assumption that professionalization ipso facto would result in a quantum leap in the quality of the new personnel. If this difference is substantiated on the basis of long term assessment of the impact of the new magistrates system, it may further clarify several important issues relating to the social role of legal professionals. Such a finding would be particularly relevant to the question whether lawyers in politics may represent a deviant behavioral segment of a profession, a segment characterized by lower professional standards and attainments than those lawyers totally committed to the goals of the profession itself.

Appendix I

SMALL CLAIMS DOCKET MAINTAINED BY THE CLERK AFTER JUNE 30, 1974

DISTRICT	DOCKETED	DISPOSED OF BY CLERK AND JUCIAIAL OFFICERS	PENDING 12/31/73
1	6,396	2,845	3,551
2	5,185	2,685	2,500
3	3,976	2,922	1,054
4	2,471	1,241	1,230
5	5,163	2,730	2,433
6	3,362	2,379	983
7	2,776	2,194	582
8	2,988	2,125	863
STATEWIDE	32,317	19,121	13,196

APPENDIX II

(e) SMALL CLAIMS

ACTIVITY OF ASSOCIATE JUDGES AFTER JUNE 30, 1973

DISTRICT	JUDGES	ASSIGNED BY CLERK	DISPOSED OF BY		ASSIGNED BUT NOT DISPOSED OF 12/31/73
			TRIAL TO COURT	WITHOUT TRIAL	
1	5	3,276	356	719	2,201
2	2	592	21	379	192
3	2	1,196	14	878	304
4	2	61	-	61	-
5	4	3,425	630	1,004	1,791
6	3	1,860	160	968	732
7	5	1,215	441	309	465
8	2	190	21	169	4
STATEWIDE	25	11,815	1,643	4,487	5,685