



Kentucky

**Implementation of Court Reform
in Kentucky**

by William E. Davis

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IMPLEMENTATION OF COURT REFORM IN KENTUCKY

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Laws and Institutions must change to keep pace with the progress of the human mind.

—Thomas Jefferson

Court reform has been the largest change in Kentucky's governmental history. The abolition of all lay judges and the introduction of state funding of all court operations have been accomplished in three years. Thus, much has been done in a short time, yet much remains to be done. This written report can summarize the efforts, but in no way can it truly reflect the dedication and hard work of many hundreds of people.

Omitted from this discussion is another significant reform in Kentucky—that of pretrial release. Since June 1976, commercial bail bondsmen have been outlawed and a state-operated pretrial-release system has been instituted. Purging the criminal justice system of the dross of bondsmen broke the ice for future court reform. This program, operated within the Administrative Office of the Courts (AOC), has been discussed in other literature.

This article discusses the historical background of court reform, the strategies of reform, and major aspects of reform (personnel, records, facilities, accounting). An additional section is added for evaluation of the implementation.

The author wishes to acknowledge gratefully the contributions to this article of Nancy Lancaster and Don Cetrulo. The author also wishes to dedicate this article to Leland S. King, a former employee of the Ad-

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ministrative Office of the Courts who died recently from leukemia. Mr. King was responsible for court facilities, equipment, and office space—and also for office morale. To all those who knew him, his vitality, his good humor, and his concern for others have been graphic examples of the attributes many seek to acquire. His example stirred us in the office to aspire to the best in every endeavor.

Historical Background

When Kentucky became a state in 1792, its constitution was patterned after that of Virginia. The judicial power was vested “in one supreme court, which shall be styled the Court of Appeals, and in such inferior courts as the legislature may, from time to time, ordain and establish.” In addition, “a competent number of justices of the peace” were to be appointed in each county.

By the time Kentucky’s fourth constitution was adopted in 1891, constitutional status had been given to a variety of courts. In addition to circuit courts (courts of general jurisdiction), recognition was given to police courts, county courts, quarterly courts, justice of the peace courts, and fiscal courts. Under the enabling legislation, the fiscal court was, and is, essentially the governing body for the county. The other courts were given overlapping inferior jurisdiction in both civil and criminal cases. There were no qualifications, other than residence, for the judges of these courts.

In a 1923 “Report on the Judiciary of Kentucky” by the Efficiency Commission studying state government, the foremost change advocated was the unification of the trial courts under the direction of the chief justice. The commission pointed out that the courts are created to administer a unified body of law and should therefore be unified in operational procedures.

Attempts to Revise the 1891 Judicial Article

Stopgap legislation was attempted through the years in an effort to cure the ills of the system, but it was finally agreed by those interested in court reform that constitutional revision was the only answer. Kentuckians had historically refused to alter their 1891 constitution; although a few minor amendments had passed, no substantial changes had been made. There was discussion of a Constitutional Convention in the early 1950’s, but local officials, especially county judges, were threatened by the possibility of such a change and uniformly opposed any efforts to alter the courts.

The next notable attempt to revise the 1891 judicial article was embraced in a proposal by the 1966 Constitutional Revision Assembly. At

the regular session of the 1964 General Assembly, the Constitutional Revision Assembly had been created to draft a new constitution that would be placed on the ballot as an "amendment." This process was an alternative to calling a Constitutional Convention, since the Kentucky electorate historically had opposed the convention call procedure.

The judicial article drafted by the Constitutional Revision Assembly closely resembled the Model Article advocated by the American Judicature Society and the American Bar Association. It provided for a supreme court, a court of appeals, circuit courts, and district courts, and stated that the courts should constitute a unified judicial system for purposes of operation and administration. The article further provided for merit selection of judges, with some exceptions. All district judges were to be elected, as were circuit judges in districts with a population of less than 50,000, unless otherwise mandated by referendum in a district. All other judges were to be appointed by the governor on nomination by judicial nominating commissions. Also included in the proposed judicial article were provisions for state funding of the court system and for a retirement and removal commission. Under the article, the General Assembly was granted the authority to set jurisdiction and to approve supreme court rules governing practice and procedure.

The entire Constitutional Revision Assembly proposal became an issue in the political arena, but the judicial article was the most abused. For the first time in more than 20 years, there was a Republican primary battle for the gubernatorial nomination, while the Democratic administration was trying to maintain itself in office. The struggle to control the county power bases centered on the proposed judicial article because its approval would strip county judges, justices of the peace, and police judges of their judicial authority. Support of the article was tantamount to political suicide. The voters rejected the new constitution on election day by a four-to-one margin.

In 1968, following the defeat at the polls, the Kentucky Bar Association took the lead in yet another movement to revise the state's court system by sponsoring, in conjunction with the American Judicature Society, a statewide Citizens' Conference on Kentucky State Courts. Response to the conference was encouraging, and the resulting consensus statement was disseminated in a concerted effort to inform the public of the need to improve the courts.

When the general assembly convened in January 1972, the Kentucky Bar Association had a draft judicial article prepared for submission as a constitutional amendment. The proposal included a supreme court (court of last resort), a court of appeals (an intermediate appellate court), and circuit courts (courts of general trial jurisdiction). The proposal called for administrative unification of these courts under the chief justice. The draft contained no provisions for district courts or for

selection of judges. The drafters left these matters up to the discretion of the General Assembly. There was apparent division of opinion among the bench and bar as to the wisdom of including the lower courts in the revision. Many felt this would lessen the chances of passing an amendment that would ensure an intermediate appellate court. Lacking the accord that would have been necessary to ensure its adoption, the bill died in committee.

Need for Judicial Improvement

Immediately after the regular session of the 1972 General Assembly, the growing need for judicial improvement resulted in the formation of several committees charged with the task of drafting a new judicial article. Governor Wendell Ford established the Governor's Judicial Advisory Commission by executive order. Other active drafting committees were the Steering Committee of the Kentucky Court of Appeals, the Judicial Article Committee of the Kentucky Bar Association, the Courts Committee of the Kentucky Crime Commission, and the Interim Committee on Elections and Constitutional Amendments of the Kentucky General Assembly.

The first full draft of the judicial article relied upon previous experience. This draft, completed by the ad hoc committee in May 1973, provided for a four-tiered system unified for the purposes of administration under the chief justice. Judges at all levels were to be lawyers appointed under a merit selection process, and the question of retention in office was to be submitted for approval or rejection by the local electorate. The proposal also included sections relating to commonwealth's attorneys, providing that they should be full-time prosecutors paid by the Commonwealth and prohibited from engaging in the private practice of law. A provision for indictment by information was also included in the first major draft, as were sections creating the judicial nominating commissions and the Judicial Retirement and Removal Commission. Other features of the proposal were the funding of the courts by the Commonwealth, the jurisdiction of trial courts to be fixed by supreme court rule, and the inclusion of a district judge in each county.

The ad hoc committee sought funding from the local crime commission for full-time support staff. An initial award of \$118,511 was made in 1973, and an additional \$15,000 was added in early 1974. By January 1, 1975, another \$150,000 was awarded, bringing the total to \$283,511.

The staff was to research, compile, and disseminate information regarding the operations and needs of the court system at that time. The

staff performed services for all the diverse committees working on court reform.

The work of the drafting committee continued with staff assistance provided by the Kentucky Citizens for Judicial Improvement, Inc. The committee also enlisted the support and advice of the knowledgeable legal minds in the Commonwealth to refine the draft. Every clause was closely examined by the committee. The sections on commonwealth's attorneys and indictment by information were removed from the judicial article because they violated other sections of the existing constitution.

With funds now available through Kentucky Citizens for Judicial Improvement, Inc., it was possible for the drafting committee to obtain an accurate picture of the thoughts of the people about the needs of the judicial system. Through the Criminal Courts Technical Assistance Project at the American University, five experts in the area of judicial improvement were appointed to lend guidance to the Kentucky project. It was determined that the expertise of these individuals could best be utilized by holding a conference during which those Kentuckians already committed to the movement could avail themselves of the particular insight, experience, and expert opinion of these consultants through panel discussions in which both the panel and invited participants were equally involved.

A public conference on the proposed Kentucky Judicial Article was held in September 1973. About 100 participants from throughout the state attended and discussed with the panel of experts the substance of the proposed judicial article and strategies for achieving executive, legislative, judicial, public, and organizational support for the proposal. The judicial article was discussed, criticized, and evaluated section by section by the participants. Comments by the out-of-state experts paved the way for Kentucky to devise a judicial article that would conform realistically to the wishes of its citizens and yet provide an improved system of justice.

A Kentucky Citizens' Conference

On November 29, 30, and December 1, 1973, a Kentucky Citizens' Conference for Judicial Improvements was held. The Citizens' Conference was sponsored jointly by the Kentucky Citizens for Judicial Improvement, Inc., the American Judicature Society, the Kentucky Bar Association, the Kentucky Circuit Judges Association, the Kentucky Judicial Conference, and the Kentucky League of Women Voters. At the invitation of Governor Wendell H. Ford and Chief Justice John S. Palmore, approximately 140 citizens convened for three days of intensive study of the Kentucky court system. At the conclusion of the conference,

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a consensus statement was issued that contained recommendations to the drafting committee. The statement declared that "Kentucky needs a unified, centralized, court system under the administrative control of the highest appellate court with appropriate rule-making authority."

An ad hoc committee of the Kentucky Citizens' Conference for Judicial Improvement was formed. The membership was composed of conference participants who later became members of the Board of Kentucky Citizens for Judicial Improvement, Inc. Its responsibility was to "take steps necessary for the establishment of a permanent organization which would examine the recommendations of the Conference and adopt a plan of procedure for action and fulfillment." Inherent in that charge was a distressed feeling that the present movement might not succeed in its attempt to secure passage of a new judicial article.

One of the most valuable tools utilized by the drafting committee to complete its work was a public opinion poll. Under the auspices of the grant awarded to the Kentucky Citizens for Judicial Improvement, Inc., an agreement was entered into with John F. Kraft, Inc., a public opinion polling organization, to conduct a survey of "Adult Attitudes in Kentucky toward Kentucky's Court System and Judicial Reform." The results of the Kraft survey, completed in December 1973, indicated that 73 percent of Kentuckians preferred to have their judges trained in the law. The poll also indicated, however, that the citizens of the Commonwealth insisted on the popular election of their judges, and rejected the concept of appointment by a judicial nominating commission. Respondents to the poll favored changing the system to provide for more equitable, economical, and efficient administration of justice but were lukewarm to state funding of the system. A close study of the survey revealed a strong desire for change but some reluctance to relinquish what respondents understood to be local control of the trial courts.

Some drastic changes in the proposed judicial article were made as a result of the survey. In order to increase the chances of passage of the judicial amendment by the General Assembly and by the electorate, a decision was made by the drafting committee to provide for election of judges on a nonpartisan basis and to remove the merit selection process from the article. Some elements of merit selection were retained, however, in the provision for filling vacancies through judicial nominating commissions. The concession was not as significant as it may have appeared, because experience had shown that nearly 50 percent of Kentucky judges initially reached the bench as the result of a vacancy.

Another major change in the draft was made for logistical reasons. Provision for a district judge in each county had been included in order to preserve the tradition of local courts and also to ensure the delivery of justice by judges trained in the law. Realizing that attorneys would not be

available to stand for election in many of Kentucky's 120 counties, the drafters provided an alternative. They made the judicial districts contiguous with judicial circuits, and in multicounty districts provided for the appointment of trial commissioners in any county where no district judge resided. It was provided additionally that a trial commissioner should be an attorney if one were qualified and available.

Submission of Judicial Article

After having been disseminated by the drafting committee to all the various committees involved, the members of the bar, and interested citizens, the proposed judicial article was drafted into bill form and submitted to the Kentucky General Assembly on February 4, 1974.

The bill was reported favorably out of the Senate committee and was passed by a slim margin. It was sent to the House of Representatives and referred to the Elections and Constitutional Amendments Committee for similar action.

During this same legislative session, attempts were being made to rescind the Equal Rights Amendment (ERA), which had been ratified during the previous session. Opponents of the Equal Rights Amendment were using any method available to secure a vote for rescision, and efforts were made in committee to withhold the judicial article from the floor of the House until committee approval was obtained to rescind the ERA. Supporters of the judicial article who were members of the committee agreed to report the ERA measure out of committee in return for a favorable return on the judicial amendment. The article was approved by the General Assembly for a vote by the people in November 1975.

One of the first projects undertaken by the Kentucky Citizens for Judicial Improvement was the establishment of a speaker's bureau, composed primarily of judges and members of the Kentucky Bar Association. Speaking engagements were actively solicited from every civic and service organization in the state. The speakers were provided with copies of the judicial article to distribute and also with information kits that included sample speeches for use when addressing any type of audience.

The Kentucky Bar Association appointed a Judicial Article Committee in late 1974 to work closely with the staff of the Kentucky Citizens for Judicial Improvement. Staff members were invited to participate in nine regional meetings of the bar association. The Judicial Article Committee was later expanded to provide for judicial article chairmen in each county in the Commonwealth.

Kentucky Citizens for Judicial Improvement, with joint sponsorship by the Kentucky Bar Association, conducted a series of regional seminars

in key locations across the state. Response to the seminars was positive, although attendance in some cases was very low. Serving as panelists were judges, lawyers, law professors, and members of the League of Women Voters. The publicity generated by the seminars was excellent, and the participants left with the knowledge necessary to return to their communities and to educate their neighbors.

In addition to the regional seminars, the Kentucky Citizens for Judicial Improvement provided assistance in planning and arranging similar public meetings for the League of Women Voters, the Council of Jewish Women, Kentucky Federated Women's Clubs, and local bar associations. Over 500 industries and manufacturers were contacted; this effort resulted in the dissemination of more than 25,000 brochures in paycheck envelopes to their employees.

Organizational support was supplemented by focusing on formal education programs at the secondary and undergraduate levels. Lesson plans and program materials designed to help the individual teacher prepare a comprehensive lecture on the subject of judicial reform were developed for both levels. Some type of exposure to the judicial article was achieved on every campus throughout the Commonwealth.

Voting on the Constitutional Amendment

The total vote cast on the constitutional amendment was 395,543, with 215,419 for passage and 180,124 against. The favorable votes represented 54.46 percent of the total vote on the question, landslide proportions in any election.

Of the seven congressional districts into which Kentucky is divided, the amendment carried three and lost four. The four districts in which the judicial article was defeated were the first, second, fifth, and seventh, all rural districts in the far western and far eastern sections of the state. The amendment lost by 21,959 out of 199,205 votes cast in those four districts. In contrast, the amendment carried the third, fourth, and fifth congressional districts; which contain the state's largest metropolitan areas, by a combined majority of 57,666 out of 196,338 votes cast in the three districts.

The largest majorities against the judicial article were in the fifth and seventh districts, both of which are the mountain regions in the eastern part of the state. The area is highly conservative, having an Anglo-Saxon tradition of embracing the old magisterial system of justice. Even so, there are several counties in these two districts that voted in favor of the judicial amendment because of concerted efforts by several circuit judges and by dedicated citizens who felt strongly about the necessity for improvement of the judicial system.

Only 35 of Kentucky's 120 counties approved the amendment. The urban vote was the deciding factor. In many rural counties, however, the tally was as close as 20 to 30 votes difference, a factor that had a definite bearing on the final outcome. If the amendment had been soundly defeated in the rural areas, as many expected, the margin of majority in the urban areas would not have been sufficient to effect passage.

There were isolated counties across the state that approved the judicial amendment, surrounded by counties that failed to do so. Records of the Kentucky Citizens for Judicial Improvement indicated that most of these isolated counties were ones in which regional seminars had been held or in which there had been extensive educational programs conducted for civic organizations and in the schools.

Of all the factors contributing to the success of the judicial amendment at the polls, two joint endorsements stand out as having had a major influence on the voters of Kentucky. The candidates for governor, Julian M. Carroll and Robert E. Gable, issued a joint statement several weeks before the election in which they pledged their support of the amendment and necessary implementing legislation. The United States Senators, Walter "Dee" Huddleston and Wendell Ford, also issued a joint statement of endorsement.

During September and October 1975, the John F. Kraft Company conducted a follow-up survey to determine the major issues that had developed during the two-year period of activity engendered by the Kentucky Citizens for Judicial Improvement. The poll indicated that the electorate felt as strongly about modernizing the courts as they had in 1973, and predicted that "the judicial article is a winner."

Early in October, one month prior to the election, a new committee was formed with the sole purpose of raising money to buy advertising. This was necessary, because federal guidelines prohibit the use of federal funds to lobby for the passage of a judicial amendment. This organization, Kentuckians for Court Modernization, was composed of prominent attorneys and lay persons, whose responsibility was to solicit money for the placement of advertisements urging a "Yes" vote in newspapers and on radio and television. The media blitz began during the last two weeks before the election and concentrated on the urban areas of the state.

An analysis of the success of the judicial amendment does not produce any clearcut answers as to why the referendum was approved by the voters. Local officials across the state, who were for the most part in opposition to the change, claim that the judicial amendment would not have passed without the urban vote. Some claim that the final burst of media advertising before the November election substantially affected the outcome. An examination of the statewide survey completed in

September 1975, however, reveals that the judicial article was already a winner.

Assistance of the Press

The single most effective aid in passage of the judicial reform was the press. Numerous articles were written discussing the problems of the old system and comparing them to the proposed system. Editorial support was widespread, and statewide media coverage was given to the educational campaign. The press, more clearly than any other institution, had seen the need for substantial improvement.

The most realistic assessment of the success appears to be that education of the public to the need for judicial improvement, one-on-one contact with people, involvement of community leaders and civic organizations, and the existing chaotic situation in the court system were the most important factors in achieving change. Further, it cannot be denied that the post-Watergate era produced a desire to make changes in government that would mitigate some of the distrust generated during and after the incident.

Implementation of Reform: Strategies, Theories, and Practice

Central Staff Personnel Issues

Most court reform literature neglects the role of the staff members who prepare drafts of proposed policies and procedures for modification and approval by appropriate officials and advisory groups. This oversight is serious, because competent staff work is instrumental in the detailed articulation and implementation of court reform.

In Kentucky, the nucleus of a staff had been assembled several months before the vote on the constitutional amendment. The staff consisted mainly of lawyers and others who had diverse court-related experience. Originally funded by a discretionary grant from LEAA for planning, the staff became state funded in 1976.

Assembling an experienced group with knowledge of the problems and peculiarities of the state is critical in the development of plans and the timing of changes. A conscious effort was made to locate employees who knew the state procedures but who also had diverse experience. A former budget director for the state, a former state commissioner of personnel, a distinguished law professor, an outstanding lawyer who was the city law director in the second largest city, several young attorneys, a former statute reviser from the Legislative Research Commission, and numerous experienced state employees were assembled for the effort. Especially significant was the mix of older, seasoned employees and eager young people.

The number of staff required to carry out the responsibilities in a major reform effort is another area where there are no guidelines. The judicial article mandated abolition of all lower courts and incorporation into the court of justice of all clerks, court reporters, judges' secretaries, and court administrators within two years. Assessment of the tasks to be accomplished and the period in which action had to be taken was essential in determining the number of staff required. Since it was not possible to predict fully the workload and the time needed to conduct research and make recommendations, we reserved funds from the outset to be able to meet the unknown problems as they arose. Much reliance was placed on LEAA funds because they were tied to specific projects such as records management, court facilities, and accounting.

Recommendations were made by visiting administrative directors of the courts for North Carolina and Oklahoma, the regional director of the Southern Regional Office of the National Center for State Courts, and The American University technical assistance consultants. These recommendations proved to be quite valuable in developing the office to manage the new system.

The legislative program to implement the new article covered more than 20,000 separate statutes, which also affected each aspect of county government. The courts most affected were totally locally funded and operated. Using computer word search, the scope of the legislative program was revealed. By inquiring about the words "judge," "court," and "clerk," over 12,000 statutory references were identified. Staff were assigned by subject area and required to produce an outline of areas affected by the judicial article. The staff then reviewed the outlines and developed issue statements, with recommendations for changes on each topic.

Background references such as the ABA Standards, The American University technical assistance reports, National Center for State Courts reports, and reports by the American Judicature Society were relied upon in developing specific recommendations. Law review articles and management reports from other states provided additional guidance. These reports were presented to advisory committees for final recommendations.

A key element in this period was the dynamic relationships among the staff and the client groups (advisory committees). The intense pressure from those opposed to court reform had the effect of solidifying the staff. The identifiable outside opposition was coupled with opposition within the court system. Many judges were not pleased with the change, because historically they had enjoyed complete autonomy in managing their courts. We were constantly confronting rumors generated by certain influential judges and clerks, attempting to discredit proposals being considered. These cross-currents were ultimately quite damaging to

the opponents' best interests as will be seen in other sections dealing with personnel.

Planning

Most periodicals advocate clearly defined goals and objectives in planning. This author adopted the exactly opposite view, because the opponents clearly outweighed the proponents in volume, if not in influence. One way to balance the situation was to work regularly with the advisory committees without making major pronouncements. This approach has its problems but may be useful in a highly emotional atmosphere. Further, each staff member was involved in planning. This kind of involvement is instrumental to accomplishing goals. No special planning unit was created, because it was our intention to make those responsible for planning the change also responsible for managing that area of concern upon implementation.

The planning methodology used was to develop program goals and objectives, to link them with a specific time frame for accomplishment, and to specify the staff people responsible for each step. This plan advised the whole staff of the work anticipated and who was involved.

Weekly meetings of all staff, clerks, and secretaries were used to review progress. This review gave each staff member the benefit of each other's effort and a view of the overall progress. The nucleus of the planning staff remained in the administrative office of the courts. The continuity of experience has proven to be very valuable in the ongoing management of the courts.

Decision Making

Over 200 people reviewed the staff work in the planning stages. The final decisions were made by the advisory committees, the supreme court, or the General Assembly.

The method of presenting materials was designed to enhance the advisory committee meetings and to offer specific recommendations. Analysis of each issue was followed by a specific recommendation, allowing the committees to keep track of decision making and to maintain an active role in the process.

Much time was spent on the decision-making process. Knowing when to precipitate a major decision or a minor one required much reflection and strategy. Close coordination with the governor's chief of staff allowed for close monitoring of the progress and the problems. Differentiating the significant and minor problems became a major task as opposition intensified before the special legislative session.

Task forces working in the office met regularly to discuss problems and develop recommendations. The primary emphasis was on the legal structure of the courts. A mistake in judgment was made at this point,

because there was not a sufficient appreciation of the administrative dimension of the change. Most attention was paid to general structure but not enough to detail. Specifically, the staff did not anticipate the magnitude of the tasks of providing for items such as supplies, forms, and equipment. Problems that later became apparent could have been anticipated had the administrative staff been more involved in this area.

Number and Location of Judges

The publicity preceding the adoption of the judicial article centered on having a judge in every county. This publicity was directed at satisfying the perceived need for each county to have its own judge. The possessory nature of this interest reflected the intent of local officials to control their own judge. Local control is a meaningful issue, particularly with courts. The old maxim that most people want justice for everyone else and mercy for themselves was precisely the point in this debate. The threat of a judge from an adjoining county coming to do justice created a sense of unwelcome impartiality. Adding to this controversy was the introduction of the theme of government being taken from the people. Correcting excesses or an improvement in the quality of service emerged as less important than the emotional issue of local control.

Historically, judicial positions in Kentucky had been authorized for political reasons. Rarely was any consideration given to comparisons of workload, an oversight that resulted in too many general jurisdiction judges and a maldistribution of the work. These problems, magnified by the 56 different districts, were particularly perplexing because there had been a similar allocation of support staff throughout the court system without regard to relative need.

The advent of the district court system provided a singular opportunity to allocate judges on the basis of comparative workloads. It was also quickly apparent that the politicians had many ideas about how this distribution of judicial resources should be accomplished. The alternatives ranged from a judge or judges in each of the 120 counties to approximately 90 judges for the state.

In contemplation of the problem of determining the number of judges, the secretary for the Department of Finance was persuaded by the author to fund a weighted caseload study for judicial and nonjudicial personnel. The purpose of the study was to provide an objective analysis of the personnel needs for the whole state, in order to produce an unbiased recommendation on personnel needs and to provide a comparative base for the future.

The experience in California courts had indicated that the weighted caseload approach provided a systematic method for addressing this perplexing problem. Although total agreement with this approach was

not expected, the needs outweighed the risks. There was disagreement within the judiciary, the administrative office of the courts staff, and the clerks' ranks about the study and its usefulness, which later diminished its credibility. Most of the opposition came from people who were unfamiliar with this approach.

The major obstacle to a successful study was the availability of the caseload information necessary to make projections. Field surveys were undertaken to gather statistics from which to make predictions. It was difficult to rely on these data, since there had never been any organized effort to collect lower court caseload information. Since many aspects of the fee system were tied to numbers of cases, the case figures reported tended to be inflated. Specifically, prosecutors and clerks were remunerated on the basis of the number of indictments. These figures were translated into the number of cases, contrary to the method of counting by defendant.

Ten counties were selected for in-depth analysis on which the projection for the rest of the state would be based. An index of typical factors found in all counties was used to determine which counties would be selected for the study. The selection of the study counties was also premised upon the existence of information systems and the degree of cooperation available from the local officials. Generally, everyone, except in Jefferson County, was quite cooperative. In Jefferson County (Louisville), the probate commissioners, who had a highly lucrative business on a part-time basis, did not provide information as required. Some commissioners made more than \$30,000 a year for part-time jobs.

For a period of one month the lower courts reported the time they spent on each matter before them. These reports were tabulated and then weights by case type were developed. The planning staff was cognizant of the problems with the accuracy of the statistics and evaluated each district's results independently. Where it appeared that districts of similar population had widely disparate results, adjustments were made based on personal knowledge, field visits, or consultation with local officials.

The results of the study were released to the public, the advisory committee of judges, and the legislature. Considerable debate resulted. Some people approved the results as sound, while others criticized their every aspect. Again, some judges disputed the approach and therefore attempted to discredit the results.

The total number of judges recommended by the study was 123. The supreme court evaluated the study and made a few minor adjustments but finally submitted the request for 123 judges. The governor advocated 92 positions. A legislative proposal called for 176 positions. Heated legislative hearings ensued, but the legislature finally enacted a com-

promise by creating 113 positions to initiate the district court system in 1978.

It was closer than Kentucky had ever been to having a reasonable balance between the number of judges and the work of the courts. Since that date, one position has been added, and it appears that in 1980 more positions will be created. Additional judgeships will probably be created in those districts where two or more judges were originally recommended but were not authorized. The number of judges remains controversial in many areas. Some people continue to demand "their own" judge for each county.

A similar approach to the same problem still provides the best basis for a decision in what otherwise becomes a political donnybrook. Emotion and community pride rather than detachment and analysis tend to dominate discussion in this area. Although there is room for these factors, each must be weighed before adopting a position.

Trial Commissioners

The judicial article provided that in any county in which no district judge resided there would be a trial commissioner, whose duties would be prescribed by the supreme court. These commissioners were required to be attorneys, unless there were none qualified and available in the county. The debate centered on whether the commissioners should have the adjudicatory powers of a judge.

Some advocated that the commissioners should have full judicial powers, since that would be much cheaper than having full-time judges. It also was contended that the trial commissioners should be allowed to practice law. The supreme court thought the trial commissioners should have limited duties and not be permitted to adjudicate cases.

A unique meeting in the supreme court conference room between the members of a joint judiciary committee and the court provided the forum for the final resolution of the debate. The result was that the trial commissioners were left with limited duties and the supreme court committed itself to working closely with the General Assembly in meeting any special needs of any county. To date, there are 79 trial commissioners spread throughout the state. Trial commissioners have been allotted to counties where there is too much work for one judge or where there are unique geographical characteristics in the county. Commissioners have also been approved to provide judicial services to communities far from the county seat where requiring the public and the police to journey that distance is too burdensome.

Clerical Personnel

The weighted caseload approach was taken in determining the number of needed clerical personnel. The clerks had been fee officers and they

paid their deputies out of the fees. No personnel system existed for the clerks' offices. In fact, no one could determine precisely how many deputy clerks were working in the clerks' offices. Many surveys, field visits, and ambiguous figures provided the background for a continuing debate among the clerks, the planning staff, and the legislature. Clerks were an independent political body that was integrally involved in the local power-brokerage and patronage system.

The rationale for study in this area was the same as for judges. A factor that existed here and did not exist with district judges was resistance to change. Many clerks resented the new duties and any involvement with the state. In fact, many of the clerks tried to discredit the study by indicating they did not need so many people as the study recommended. This position was taken partly out of ignorance: the clerks did not understand the study nor did they fully appreciate the duties that would be placed upon them, and without their support a poor result was inevitable. The legislature authorized only 200 additional positions to run a system replacing one that had employed more than 1,200 people.

During the budget hearings on the number of personnel, the chairman of the Appropriations and Revenue Committee reported that the committee had consulted with a leading judicial reformer, who said this kind of study was not reliable. Since no other state had taken this approach to determine personnel needs, that would seem a reasonable position. Many other states that had undergone judicial reform, however, had "grandfathered in" many of the existing personnel; this was not being done in Kentucky. In addition, more sophisticated states had established personnel systems, which Kentucky lacked.

Seven additional sources of personnel information were relied upon in developing the statement of personnel needs. Those pieces of information: social security report of wages; state retirement system report of wages; monthly financial reports from the circuit clerks to the AOC; caseload reports; current and future circuit clerk duties; detailed job descriptions provided by circuit clerks; and the 1977 salary survey done by Associated Industries of Kentucky (which provides accurate and extensive salary comparisons by Kentucky employers). In addition, field visits to each clerk's office provided information about such matters as the location of offices and adequacy of space.

This point is worth elaborating, because personnel costs constitute almost 75 percent of the cost of the court system. Judgments made regarding these costs are crucial, for they will obviously affect how well a system can perform. Legislative knowledge on this subject was very limited, because the legislature had not been required previously to pass on this part of the court's budget. A substantial educational effort was required to acquaint the members with the operations of the court.

When the General Assembly acted upon this erroneous advice and appropriated sufficient funds for only 200 additional jobs, it was obvious to the staff of the administrative office of the courts that this conservative funding would be clearly inadequate. Meetings with state officials, including the governor, were held to apprise them of the effects of the funding level on the operation of the courts. The governor agreed to permit the expenditure during the first three months of the new budget of all monies appropriated for the first six months. This agreement provided the minimum adequate staffing level for clerks. He further agreed to support a supplemental budget request to provide the additional necessary funding. The statutes granted the elected clerk the authority to hire and fire and gave the administrative office of the courts the authority to determine the personnel numbers and qualifications. Thus a joint effort was required to arrive at the number of personnel for each clerk's office. Since that time, the central staff have travelled frequently to each locality to discuss personnel needs with the clerks and to arrive at a joint statement of need.

Court Reporters and Recording

Court reporters historically had been independent contractors who received funds from the county. Reporters in the principal cities received higher salaries than their counterparts in the rest of the state. No examination or certification process existed for anyone taking these positions. Reporters also had substantial amounts of time to engage in private work.

The state would not authorize full-time pay for a job that required four to eight hours a week in a courtroom. Requirements that the court reporters report to the judges or court administrators were opposed by members of both parties. Further, little information was known about the reporters' work demands. Communications were inhibited by the dearth of reliable information.

Reporters were classified by the administrative office of the courts personnel and compensated according to the state pay scale. They were paid for transcripts for indigents. Inadequate funding at the outset plagued the effort. Decisions to raise or lower salaries were made on the basis of funding and correcting inequities between and among all personnel. Negotiations to create a contractual arrangement with reporters, who would then maintain their private businesses, were not successful. Planners contemplating change might well find this one of the most difficult areas to manage.

Alternatives to court reporters have successfully been explored and instituted. Several circuit courts are now using tape recorders. Judges' secretaries operate the recorders and transcribe the tapes.

In district court the decision was made early to utilize tape recorders

because the accuracy of the record could be assured with a tape recorder. This was clearly the wisest fiscal choice. The availability of competent court reporters could not be assured; therefore, plans were developed to install tape-recording devices. Competitive bidding and testing of all makes of four-channel recording devices were carried out by the administrative office of the courts. After a committee of judges and clerks selected the firm of Gyrr Odetics to provide the machinery, each machine was used by six courts for several weeks.

There was a 9 percent mechanical failure rate for the machines during the first year of operation. Most of the problems were caused by the operators; the field visit log demonstrated that more training of personnel was required.

The untranscribed tape from the district court is taken to the circuit court as the record on appeal. The circuit judge listens to those sections of the tape on which the appeal is based. Copies of the tape can be made for all parties at a nominal cost. There is no excessive delay in the process, and it is a very economical way to process appeals.

Kentucky has the largest installation of tape machines in the United States. Even with the problems noted above, the machines have performed up to expectations. The number of appeals from district court, 671 out of 600,000 cases, clearly demonstrates that this decision was the proper one from the standpoint both of cost and of accuracy.

District Court Jurisdiction

The constitutional amendment provided that the General Assembly would determine the jurisdiction of each court. The former lower courts had jurisdiction over juvenile cases, misdemeanor, traffic, probate, and civil issues up to \$500.

The consensus was that the district court jurisdiction should be identical with that of the former lower courts. Some observers, however, wanted to increase the civil jurisdiction from \$1,000 to \$5,000. This dramatic increase would have had a significant impact on the case filings in circuit court and possibly would have overloaded the district court.

In order to provide accurate information to advisory committees and legislative bodies, the staff visited 10 sample counties and surveyed their case filings for a six-month period. After reviewing the information, the General Assembly decided to adopt the limited proposal and move the jurisdiction to \$1,500. The result has been the shifting of 25 to 30 percent of the civil cases from circuit court to district court, as predicted in the survey.

Another proposal was made that would have consolidated the treatment of family issues in one court. Many conflicts had arisen because the former lower courts had jurisdiction over divorce, child

custody, adoption, and termination of parental rights. This split in jurisdiction often found members of the same family with two entirely separate support orders for different children. This legal red tape caused unnecessary perplexity, anxiety, and stress to many families.

The staff recommended that juvenile matters be placed in the circuit court, thereby consolidating all family issues into one court and eliminating the potential for conflicting orders. As a result of vociferous objections from the circuit judges, who simply did not want these cases, this proposal failed and the district court retained juvenile jurisdiction. Despite the decision, the issue remains a challenge for future reformers.

Since criminal misdemeanor and traffic jurisdiction had been conceded to be properly in the district court, there was no serious discussion on those subjects. Parking violations, however, were removed from the court and became the responsibility of the city government. If a violator does not pay, the city has the right to file a complaint and prosecute in district court.

There was some discussion on whether probate jurisdiction should be included in the court system. Many county judges wanted to retain these matters. Again it was argued that these cases properly belonged in the court indicated in the constitution, and they were therefore placed within the district court's jurisdiction.

A small claims division of district court was created for the consumer. This court has proven to be very popular with the general public in dealing with "minor" cases. A limit of 25 filings per year was placed in the statute, however, to prevent abuses by business interests. In summary, the General Assembly created the following jurisdictional limits in the district courts: small claims up to \$500, traffic, misdemeanors, probate, juvenile, and civil cases up to \$1,500.

Court Operations

Immediately before the implementation of the new court system, there was an opportunity to evaluate other major dimensions of court operations. The areas of concern included filing fees, juries, and traffic laws.

Filing Fees. The courts in Kentucky had relied upon fees for their financial support. This factor led to the development of numerous practices among attorneys, lawyers, clerks, and judges that needed close examination. The cost or fee system was tied to each item of work; pieces of routine work were often characterized as significant, thereby commanding a separate fee.

This system also fostered differences among counties. It was often said no two clerks would charge the same amount for the same work. In fact, the filing fees in the 120 counties varied from \$20 to \$70. Complicating the picture was the fact that the prosecutor also derived fees from each

criminal case. This archaic method of funding government services presented a picture of cumbersome, unaccountable, and confusing financing understood by only a few. Abuses were so commonplace that they were an accepted way of doing things.

The constitutional change, however, required that the courts be uniform in administration and operation. Bringing about uniformity was complicated by the demand for fiscal-impact determinations of each recommended change. Specifically, at times the executive and legislative branches were more concerned with the costs of the new system than they were with determining and resolving the differences in practices among counties or with providing improved services. This overriding concern forced the staff to analyze the change to generate funds for the state treasury. Repeated statements to the effect that courts should not be required to pay for themselves fell on a deaf audience. This problem was particularly acute because most people viewed the previous system as financially self-supporting.

A survey of other states' legislation in the area of filing fees revealed a wide disparity of approaches. The North Carolina example was useful in its simplicity and was used as an initial model. In Kentucky a flat filing fee intended to cover all expenses for civil litigation was fixed at \$70 for the circuit court; additional fees for jury trials were instituted. This figure was developed after a study of average costs per case was presented to the General Assembly. In fact, the results of the study indicated the average costs in the metropolitan counties to be more than \$100.

The abolition of the step costs and fee system further provided an opportunity to reevaluate the accounting system used by the clerks of court. The transition from a fee system to a simplified accounting system was a major goal of the reform.

Court reform literature often neglects the clerks of court and their problems. The AOC staff spent more time developing the administrative procedures for the clerks than for the judges, because the clerks constituted the most significant obstacle to change. Their functions increased from being only the clerk for the general jurisdiction court to being the clerk for all the municipal and county court operations. Further, they had not run for office anticipating these expanded duties that were thrust upon them. Gaining their support and cooperation was essential to successful implementation of new records-management procedures and new accounting and personnel procedures.

The local officials had developed guidelines for local fees but they were next to useless for accounting purposes. The Commonwealth of Virginia had recently completed an accounting study for its clerks. The similarity between Kentucky and Virginia was of real value in assessing

examples to be considered. Communications with officials in Virginia disclosed their satisfaction with the system.

A grant of \$90,000 was secured from LEAA. After competitive bidding, the Arthur Young Company was selected to devise a uniform accounting system. An advisory committee composed of clerks, judges, and legislators was created to guide the study. The Auditor of Public Accounts and members of the State Finance Department also served on the advisory committee. Considerable coordination with the state treasurer was required.

Upon completion of the study and field testing in October 1977, regional meetings to train clerks in the new procedures were conducted by AOC staff using problem-solving approaches as a teaching tool. Regional field auditors from the state auditor actively participated in each program and followed up the training with field visits.

A follow-up grant was approved for purchase of the necessary equipment to implement the accounting system. A considerable debate with LEAA ensued over whether automated cash registers constituted EDP equipment under LEAA guidelines. This debate delayed payment for the equipment for five months; it was finally approved only after state funding had been secured.

The accounting system has been an unquestioned success. The clerks who most opposed the change are now its principal proponents. The fiscal integrity now gives them the security to manage their affairs with more certainty. This system also has enabled the local courts to provide public information on court operations that previously was not available. Many local newspapers publish quarterly reports on the courts' fiscal operations.

Most of the impatience with the legislative process came from the absence of sound financial information. Taking a cue from this interest, the staff placed special emphasis on developing an accounting system that would immediately demonstrate the system's improvement to the public and legislature.

The legislature convened during the new system's first month of operation. The production by the staff of documented information marked the first time firm data had been presented to the public and General Assembly. Achieving dramatic results early aided in setting the stage for developing an appreciation of the new court system.

Juries. The jury legislation had not been reevaluated in many years before 1978. Under the new system the clerk served both circuit and district courts. This fact required an analysis of the jury. Historically, each judge had called his own jury; cooperation among judges was uncommon. In fact, many judges were chagrined that this analysis was done, because they relied upon the jury for reelection purposes.

Surveys of all other states' legislation were made to identify common

practices and successful ideas that have improved jury management. These surveys revealed few common patterns. The legislation was drafted with jury pooling as the central purpose. Legislative committees drafted a different version of the jury legislation, based on distrust of clerks and judges. The committees' proposal embodied a highly complicated method for jury selection, but provided no funds for implementation. This bill would have complicated the selection process with bingo-type machines.

The Judicial Council developed for the supreme court some administrative rules of jury management that explicitly contradicted the legislation. The supreme court concluded that certain aspects of jury management are matters of procedure subject to the rule-making authority of the court; therefore, rules were necessary for the orderly management of the court.

Jefferson County (which includes Louisville) initiated a jury pooling system one year before the effective date of the new bill. This system saved an average of \$3,000 a month for each month of operation. It has received acclaim from public and press. Similar programs now instituted in Fayette County report an annual saving of \$60,000.

Traffic Laws. In development of the internal procedures for the clerks' offices, it was quite apparent that there had to be a uniform approach to managing traffic citations. When each locality had its own police court, this was not a problem. The portent of different sizes of paper, and different methods of organizing the information coupled with the obvious need for uniformity, required the development of a uniform traffic citation.

An even more significant factor in this area was the absence of accountability in the previous system. The system could not report the number of cases, nor the amounts of money collected. "Fixing" tickets was an integral part of the local and state political process. High-ranking state officials could always arrange for a "filed away" citation. State legislators could count on this method of enhancing their political leverage.

Local judicial officers who catered to this approach similarly relied upon it in bestowing favors. In fact, when one died and his replacement appeared in the office, he would find drawers stuffed with old citations. In a few counties a local practice developed that "foreigners" (persons from outside the county) were the only ones who ever had to pay.

Legislation to bring order where none existed was introduced by the chairman of the Implementation of Judicial Reform Committee, Senator William Sullivan. In his opening remarks he characterized the legislation as a cornerstone to the reform effort, since removal of this practice would accomplish one goal of the reform—more accountability.

The legislative debate on the bill openly revealed the extent of the

legislators' involvement in ticket-fixing. Press coverage of this fact aided the bill's passage.

Another benefit of this system is the establishment of a series of prepayable offenses that considerably lessens the burden of the court and the public. By addressing this dimension of the court's business in an administrative manner, the court is not required to consume so many resources to process these cases.

Case Filing and Processing

The old lower court system had poor recordkeeping. In fact, the absence of standard recordkeeping procedures limited the ability of the staff to prepare, organize, and present to the legislative committees materials on the status of the lower courts. The effects of this record-keeping system on the citizenry have been most recently demonstrated by the indictment and conviction of several former local court officials for concealing the dispositions of lower court cases and for misappropriating fine monies.

The large order and judgment books were abolished under the new recordkeeping procedures. The whole case record is stored in a file with a disposition card reflecting each step in the process. This system was designed both to improve the quality and to reduce the quantity of records. A committee of judges, lawyers, and clerks reviewed staff recommendations in each area. Much reliance was placed upon the federal and Colorado procedures.

Transition Rules

Rules entitled "Administrative Procedures of the Court of Justice" established transitional procedures as follows:

Rule 1 required that the circuit clerk be notified of the title and nature of each pending case that was docketed before January 2, 1978, at which point the circuit clerk gave it a new case number and assigned the case to the district court. Further, all other causes or proceedings pending in the courts of limited jurisdiction were deemed to be pending in the district or circuit court; the related papers were to be transmitted to the clerk for numbering and docketing, preference being given to those cases in which a party was held in detention on January 2, 1978.

The second rule provided in essence that the causes and proceedings pending in courts of limited jurisdiction should include only the following:

1. Civil actions in which no judgment had been entered and in which some pretrial step had been taken within six months before January 1978.

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2. Probate actions in which application for the probate of a will, appointment of an executor, or appointment of an administrator had been filed but no final settlement had been accepted.
3. Juvenile actions in which a petition concerning a child had been filed but no final disposition had been made.
4. Criminal actions in which a complaint, citation, summons, or warrant had been issued but no judgment had been entered. In no case pending longer than one year on January 1978, however, were the papers to be transferred to the district court until a warrant had been served.
5. Finally, all other cases not disposed of and filed in expired courts of limited jurisdiction could be transferred to the district court by motion of any party.

Apart from the physical transfer of cases, other loose ends were treated by the transitional provisions. One such rule provided that where an expired court of limited jurisdiction had disposed of a case up to a factual determination, the district court judge could complete the disposition of the case. If the judge was not satisfied that he could perform those duties because he did not preside at the trial, he could in his discretion grant a new trial. If the judge did not grant a new trial, appeals from the judgments entered would be docketed in the circuit court and tried anew, protecting the right of the individual by granting him a trial before a judge trained in the law. (Such trials *de novo* had existed under the old system.)

Another rule related to the judgments of expired courts. This rule was necessary for motions for relief from judgments, and cases in which the convicted defendant defaulted on the payment of a fine according to the payment schedule. The moving party was required to file a certified copy of the relevant judgment, along with appropriate motion for action by the court, to bring that case within the jurisdiction of the court.

The General Assembly, in allotting civil jurisdiction to the district court, diminished the jurisdiction of the circuit court. At the advent of the district court, thousands of cases now within district court jurisdiction were pending in the circuit court. The supreme court determined by rule that cases currently pending in a court should be decided by the same court, thereby preventing the inundation of the district court.

A rule relating to the accounting and management of the money respecting cases in transition also was adopted. This rule provided that when a case is transferred to the district court, the portion of any cash deposit that exceeded the cost of services already rendered was to be transferred to the clerk for deposit in the state treasury. The uniform fees and costs in force on January 2 would then apply to all cases transferred

to the district court and all cases pending in circuit court on that date, and in no case would step costs continue to be assessed. In all cases filed before January 2, 1978, the difference between the amount of the cash deposit by litigants and the uniform filing fee, and the amount of step costs owed but unpaid, would be assessed and collected by the clerk.

The effect of these rules was to provide an orderly, systematic transition. They gave much useful guidance because they were widely distributed to the bar and the clerks in regional meetings and other meetings of the judiciary. Although many questions arose during this period, no serious or significant problems were encountered; the cases pending have now been disposed of and judgments entered.

As the date of January 2, 1978, neared, the lower court judges who were going out of business dismissed thousands of cases around the state as their parting gesture to the local citizenry. This act, not entirely based on goodwill for the new system, had the effect of providing the new judges with a relatively clean slate and a clean docket. It also provided them with the opportunity to initiate the new system with few carry-over cases.

Before 1978, there were no standard forms of filing procedures in the lower court or the general trial courts. The fee system, which provided an inducement for local clerks and prosecutors to multiply steps and inflate the case count in order to generate more money, meant that each jurisdiction had its own approach to these matters. There were over 500 forms in use throughout the state for all kinds of matters. Many of the forms were clearly contrary to the current law, but they continued to be used. The filing procedures had developed over a period of time with much local autonomy and relatively little uniformity.

The problems with the forms were identified primarily by a committee of judges, clerks, and lawyers; they were presented and discussed, and a series of standard forms was developed. The 500 forms were reduced to 75, including a battery of accounting forms that previously had not been used.

Much controversy arose regarding the issue of uniform forms, as the judges previously had much autonomy in this area, and pride of authorship inhibited the willingness of many courts to adopt new forms. Some of the judges felt the proposed forms were legally deficient.

Although these problems have been met and resolved, there still remains in many areas a degree of resentment of the state's intervention. This resentment is inevitable in a period of change. One year after the change this sentiment had been reduced as people had become accustomed to the new procedures.

Court Facilities

In the early months after the passage of the judicial amendment, local

courthouses throughout the state had four attributes:

1. There was no relationship between local government and the state government, except that a circuit court was located in the courthouse. Thus, there was no mechanism for change, improvement, or management, beyond often-scarce local resources.
2. There were no design criteria or standards for court facilities. This was due in part to the lack of experience with the whole new district court level. There was also no mechanism for adopting national court design principles, except through occasional contact with the architect.
3. The physical plant in most counties was unable to accommodate a district court system in addition to the existing circuit court system.
4. Further complicating most of the early interactions between the state and local governments was the constant resistance to change and the concern over the changing role of local government created by the new amendment.

Over the next two years, the relations between state and local governments improved. The major improvements came as a result of developing mechanisms for directing resources into local court facilities.

Several philosophies and role models were examined before the Special Session of the General Assembly in 1976. The General Assembly was unable to set a clear policy with regard to court facilities. A mixed approach toward putting state resources into county property was the result of the legislation and budget document. One million dollars was provided to compensate for court space. The existing total court space was barely over one million square feet. Since it was impossible to rent that much square footage, a fair market value rent was offered only for space that had not been used for court purposes before.

The administrative problems and inequities of this approach soon became apparent. Those who had in the past provided poor facilities often got more than those who had recently constructed a new building. Further, there was little stability in such an arrangement, because of the whims of negotiations and disparities among local real estate markets. When one county found what the neighboring county had received, the demands of the former in the negotiations were related to that knowledge. Moreover, this method required a state lease, which in turn mandated that the state fire marshal inspect and approve the use of the facility. Most court facilities could not pass a fire inspection, and this failure was a major deterrent to arranging the facilities.

During the 11 months before implementation of the judicial article, the staff negotiated and arranged for space in 150 localities, fostering the construction of several new court facilities to house an entire district court.

The chief justice recognized the problems with this technique and requested the staff of the administrative office of the courts to develop alternatives. A review of the method that the federal government uses to finance local post offices provided the idea for the present legislation. The federal Office of Management and Budget aided staff in its development.

In the General Assembly Session of 1978, the relationship between the state and local governments was changed; the state began to pay its fair share of both operating and capital costs. The state kept the right of prior approval over additional capital expenditures, but all control, management, and ownership would remain with local (county or city) government. The exceptions to this pattern occurred when leasing of privately owned space was the only option available.

With the essential question answered of who was responsible for what, the legislature also approved the necessary financial means by providing about eight million dollars for facility reimbursements during the ensuing two years.

The new approach to court facilities narrowed the remaining problems to a single major issue: new construction. Although over the 47-year life expectancy of a new facility, the state's share of the cost would be returned to the county, the typical cashflow requirement of the county was usually a 20-year mortgage. This meant that new construction had to be underwritten primarily with local funds; such funds often could not be obtained in the poorer counties.

Although motivation for new construction still remains a problem, the current system appeals to most legislators and local officials as equitable and realistic. The approach of sharing the burden of costs has been a major positive step in improving state and local affairs.

The new legislation also created a Court Facilities Standards Committee, which, besides developing standards, is also empowered with review of any new capital improvement costs in which the state will be asked to participate. As this committee develops and defines its role of improving court facilities, another mechanism for change will begin to affect positively the court facilities in Kentucky.

Another problem area is the ownership of equipment being used by the courts. Several attempts to find an equitable method to compensate courts for their equipment were unsuccessful. If, however, they purchased the equipment in the three years immediately preceding the passage of the judicial article, the net court revenue act assured them they would receive credit for those purchases. The state court system is now gradually replacing all county-owned equipment and returning it to the county. This process will take several years.

Returning Monies to Local Government

A commitment by the gubernatorial candidates in 1975 to return money to local governments elicited the support of the Municipal League and the cities for passage of the judicial article. To fulfill that promise the General Assembly enacted the Net Court Revenue Bill, guaranteeing that each local unit of government will continue to receive its net court revenue from the state.

Arriving at a figure representing net court revenue was a difficult problem. The state Department of Finance had to ascertain the level of revenue from the courts for the three years before passage of the judicial article and had to deduct the operating costs from that figure. The average of the net figures for those three years is the amount that would be returned to the local unit of government.

In the process of implementing this legislation, it soon became apparent that the cities had a low-overhead, high-rate-of-return operation: they made money on the traffic courts, which processed cases quickly and cheaply. The counties, on the other hand, had jurisdiction over matters that did not have a comparable rate of return: juvenile, probate, felony preliminary hearings, and civil disputes are time-consuming and do not generate revenues comparable to those of traffic cases.

The result of the legislation was to return approximately \$5.6 million annually to local units of government, with only 15 out of 120 counties receiving funds. The remaining counties were losing money on their courts. This fair approach to cost sharing has generally been well received.

Organizing Development: Retirement and Removal Commission, Nominating Commissions, and Judicial Council

Retirement and Removal Commission. The judicial article authorized the creation of a disciplinary commission for the judiciary. The administrative office of the courts drafted the statute in constitutional language. Before deciding on the final rules and procedures, experts were invited from California, the American Judicature Society, and Alabama to meet with the commission. The results of the two-day meeting were embodied in rule proposals to the supreme court.

The chief justice requested that the judges consider adopting or making recommendations on a code of judicial conduct, which has been discussed for several years. The decision being imminent, the judges finally acted and made several recommendations. The supreme court considered the recommendations and formally approved the ABA Code of Judicial Conduct with a few changes. The court also enacted the procedural rules.

Staffing for the disciplinary commission was provided originally by the administrative office of the courts, but the potential conflict of interest required that the commission acquire its own staff. A director was recruited, and retired FBI agents were hired as field investigators.

No judges have been removed from office, but the commission has undertaken its duties in a cautious and quiet manner. Attempting to institutionalize a sense of accountability within the judiciary has been difficult, but the commission's perseverance and the support of the supreme court have been essential to success.

Judicial Nominating Commissions. A vacancy within the judiciary activates the Judicial Nominating Commission. The commission publicizes the vacancy in local media and receives applications. The commission may interview the applicants. Generally it meets on a date certain to discuss three nominees, whose names are sent to the governor for appointment.

The staff of the administrative office of the courts surveyed another state with similar provisions, to recommend to the supreme court procedures for the commissions. The initial approach was not to try to write numerous detailed rules but rather to explore a variety of procedures before arriving at the specifics. This approach has worked smoothly; after two and one-half years' experience the supreme court recently published the first rules.

Judicial Council. The Judicial Council existed before the judicial article, but its activities have been quite limited in scope and quantity. A new statute was enacted in 1976 to create an advisory body to the supreme court.

The council was envisioned as a sounding board for ideas and recommendations for improvements. It is both a study group and a consultant on anticipated changes. It is composed of the chairmen of the judiciary committees in the legislature, four circuit and four district judges, the chief judge of the court of appeals, three members of the bar, the president of the circuit clerks association, and the chief justice as chairman.

The council has met every two months for the last two years. During that time it has been instrumental in developing regional court administration projects, reviewing the court recordkeeping and accounting systems, recommending rule changes, and reviewing selected statutes in order to improve the courts. It provides a forum before which members of the judiciary may express their concerns about the courts. The agenda is sent to all judges two weeks before the meetings, and minutes after the meetings. There is much consultation among the judiciary on activities of the council.

Stages of Implementation

This section discusses how the foregoing changes were instituted, and with what degree of success. Education is a very significant aspect of translating the reform from paper to reality. The required changes of behavior have not occurred within certain levels of the judiciary, but have occurred in the offices of clerks and with the new judges. Realizing that the simplest, most direct method of conveying large amounts of information was to develop manuals of procedure, the staff set out early in 1977 to produce these for judges and clerks. Through this method, uniformity of practice also could be achieved.

Staff assigned to records, forms, and internal operations were responsible for working with a committee of clerks and judges in developing the circuit clerks' manual. The manual was the first effort to bring administrative uniformity to clerks' offices. Field visits a year after it was developed have demonstrated that those offices utilizing the manual are the best organized; conversely, offices not utilizing the manual are functioning poorly. The supreme court incorporated the clerks' manual by reference in the rules, thus making its use mandatory among the clerks. Enforcement of compliance with the manual has been cautious.

The accounting manual was initiated with a similar purpose. The supreme court also incorporated the accounting manual by reference in the rules of court. Compliance with accounting procedures is more closely monitored by the administrative office of the courts staff than is the circuit clerks' manual, because of the concern for fiscal integrity.

When the manuals were completed, regional seminars were conducted for all clerical personnel. These seminars used an Ardenhouse approach, with actual problems being discussed and with the manuals used as references in solving the problems.

Since there were no incumbent district judges, the materials for them were developed with the advice of some existing lower court judges, several unopposed candidates, and general jurisdiction judges who had served in the lower courts. A bench manual describing the procedures and statutes was developed by the Department of Justice's Bureau for Training at the request of the administrative office of the courts. The manual was designed with a series of checklists for the judge to use from the bench. It was intended to be particularly useful to new judges unfamiliar with their position.

In addition, one full week was devoted to a special training program for the newly elected judges before they took office. It was designed to provide a review of the law on all subject matter within their jurisdiction, court administration, judicial ethics, pretrial release, misdemeanor diversion, and juvenile services. It also provided an opportunity to develop a closer unity among the new judges than had existed in the

circuit courts, because the district court judges were all taking office simultaneously.

Evaluation Criteria

Court reform literature is littered with articles and notions about evaluations. Current articles center on the absence of comparative information about the situation before and after court reform. Unfortunately, most of the information that the social scientists wish to have is not readily available in a lower court system that keeps no formal records. In the recently published *Court Unification History: Politics and Implementation*, Larry Berkson and Susan Carbon discuss and recommend several criteria as applicable in evaluating the success of a court-reform effort. This section discusses each of their suggested criteria and their applicability to Kentucky. Although some of the suggestions cannot be readily answered owing to the absence of sound data, an attempt will be made to apply their criteria to the Kentucky reform. The following criteria are suggested.

Accountability

One of the foremost dimensions of Kentucky's court reform and court unification has been the creation of accountability in the whole system. Before the judicial article, no one person or group was responsible for the operation of the judicial branch. The passage of the judicial article and the clear vesting of responsibility in the supreme court and the chief justice have brought accountability for the operation of all the courts. This accomplishment has provided a forum for the assertion of leadership and direction by the chief justice in managing the entire judicial branch of government, consisting of more than 1,800 employees, judges, and clerks. The supreme court, in assuming its supervisory role over the entire system, further identifies itself as the agency responsible for the operation of all the trial courts. This transformation from a fragmented, locally autonomous system to a responsible and accountable statewide system has had far-ranging effects. The effects range from concern for how and where money is spent to the rate of disposition of cases and to personnel and budgetary matters. Thus, the legislature and public have made one body a point where they can make inquiries or register complaints when they feel impropriety exists.

Another significant dimension of accountability is the establishment of the Judicial Retirement and Removal Commission. This commission in the first year has disciplined judges whose behavior was not consistent with the Code of Judicial Conduct, or who did not comply with the law of the state. Its existence, although sometimes criticized by the judges, has brought accountability into the system in areas where none had

existed. Before creation of the commission, impeachment was the only means of addressing improper or illegal judicial behavior. Impeachment had only occurred once in the history of the Commonwealth, and so it was an inept tool for dealing with judges whose behavior was unacceptable.

The last areas of accountability are those of money and of case information. Uniform accounting and recordkeeping systems are major steps to resolve those issues. For the first time the courts can report to the public, the legislature, and the governor on how and what they are doing with the business that comes before them. Absence of this accountability in the past brought many of the court's actions into disrepute. In many local newspapers, the dispositions in all cases before the courts are now printed on a daily or weekly basis. This reminds the public that the courts, as public agencies, are accountable for each case that comes before them.

Flexibility

The second recommended criterion is flexibility. Under a county-funded and -operated court system, the number of judges and cases did not concern the judiciary at large; the concern was limited to one jurisdiction. The judicial article now gives the supreme court and the administrative office of the courts the flexibility to match resources with needs. This flexibility has been exercised in an unusual way in Kentucky, through the creation of administrative regions.

The regions are governed by judges elected by their peers. They are not run by court administrators but are, in fact, run by the judges. This regional concept is a highly fluid arrangement, intended to provide the flexible response required in a highly complex organization. Further, it is expected that these regions will develop into the core of an organizational structure, on which decentralization of authority and responsibility can be founded. They also increase the opportunity for the local judges to work on shared problems to benefit an area of the state.

Empirical Evidence

The third area recommended as an evaluation criterion is the use of empirical evidence to show, to justify, or to otherwise quantify the success of the reform. An example of such evidence is the number of appeals from the new district courts to the circuit court, which are taken as indicating dissatisfaction with the lower court judgment. In the new judicial system every litigant has a constitutional right to at least one appeal in every criminal or civil case. Under the old system the trial *de novo* method was relied upon for correcting error in the lower courts. This costly method of correcting errors has been eradicated.

In the first year of operation of the district court, there were more than 600,000 cases filed in the district courts. In only 671 cases were appeals taken to the circuit court. That only such a small number of the district court cases was appealed should be clear evidence of public satisfaction with the disposition of cases at the lower court level. This figure provides a direct contrast to the last year of the old lower courts, when there were 1,500 appeals from the lower courts to the circuit court. Although this figure may have been artificially high because of the trial *de novo*, the change has resulted in a savings of money to the litigants by cutting the number of appeals in half. Further, the court time of the police, the prosecutor, the witnesses, and the judge has been reduced a greater amount than that suggested by the lower number of appeals, since the appeals are on the record and not *de novo* trials.

The use of tape recording to make the record at the district court and of the cassette as the official record of the lower court proceedings has further expedited the appellate process and reduced the cost to the litigant as well as to the public. This appellate procedure is not common in the United States; it further distinguishes the effort that the Kentucky courts have made to reduce the cost of litigation while expediting the appellate process.

Higher Quality of Justice

Berkson and Carbon recommend, as a measure of the achievement of success, the presence of an enhanced system effectiveness and a higher quality of justice. This is a very broad category, and the author is unfamiliar with any recommended guidelines for its measurement. If the press reaction can be taken as a surrogate measurement of this criterion, local and state newspapers surveyed during the last year indicate that the response has been nearly 100 percent positive. News articles from all over the state have repeatedly praised the substantial achievements of the new court system, citing the higher quality of justice provided and the greater concern of the judges for the constitutional rights of the people appearing before them. In addition, the League of Women Voters surveyed all their local chapters and did an in-depth analysis of each of the local courts. Their preliminary report indicates that the League of Women Voters, as an impartial body, believes that the new system has greatly improved the quality of justice at the local level, and has brought dignity and decorum where none existed. If the reactions of observers are any indicator, one would have to conclude that the Kentucky court system has, to a degree, achieved the success anticipated by the reform.

Burden on Public Participants

Another recommended area for evaluation is the amount of burden

placed on the public participants. This requires a substantial amount of information that is not available. It may have been that the mere existence of countless magistrates and city police judges throughout the state presented less of a burden on the citizenry by virtue of their sheer numbers. This point may have to be conceded; but it has to be weighed (as must all others) along with the other dimensions the court system brings to bear in each case. For example, one suggested criterion is the amount of individual attention given to each case. In the old system there was no information on this amount. In fact, many of the county judges report that they gave great attention and spent lengthy periods of time attempting to consult—to mediate disputes and serve as confessors and social workers/advisors to the public. This practice may have resulted in more attention to certain cases; it is something that is hard to weigh and compare. The district judges report, however, that they too are spending lengthy periods of time with litigants in potential family disputes and other situations, attempting to resolve these problems.

This conciliation practice is peculiar to certain areas of our state, particularly eastern Kentucky where family ties and extended family relationships are a significant part of the social scene. Resolving family disputes or working with families is an integral part of every public official's life. The press of business may at times prevent the new judge from taking the time to resolve the dispute, and he is unable to bring to bear the legislative or executive functions and resources that the former county judge had available. A recent effort by the administrative office of the courts staff to measure times for disposing of cases in the district court did find they were approximately the same under the old and the new systems, with the district court taking more time in misdemeanors and civil matters.

One satisfactory measure of the burden on the public may possibly be the amount of money spent on juries. Jury pooling began in 1977 and the result of the first year was a reduction throughout the state of \$100,000 in jury costs. This was achieved even while the right to a jury trial was being extended to district court, where it did not previously exist. Specifically, \$2,700,000 was spent on circuit court juries in 1977 and \$2,600,000 was spent on both district and circuit court juries in 1978.

Nature of Dispositions

The nature of the disposition of cases is another suggested criterion. Again, comparing the old and the present systems is virtually impossible, because we do not have adequate data on dispositions under the old system. The only comparative data available are those on uniform traffic citations kept by the state police. The nature of the traffic dispositions has changed dramatically. The state police data indicate that under the

old system approximately 64 percent of the individuals issued traffic citations were found guilty and fined for violations. In the first 12 months under the district court, approximately 85 percent of the people were found guilty and paid fines.

A fair disposition system, treating each case on its merits, clearly has been established by the district court. Some politicians have expressed chagrin and dismay at the impartiality with which the judges are disposing of cases. Dispensing favors instead of justice was an integral part of the local politician's leverage. How this issue is evaluated, therefore, depends on how it is perceived. Clearly, from a judicial perspective far more integrity has been brought to the bench. From the public view, the enforcement of the law is much more effective. If one is interested in response to individual self-interest, however, then the politicians' use of the courts for their own ends might be more popular.

Legal Representation

The quality of legal representation at the local level is another issue suggested as an evaluation criterion. The public defender's office has been under great strain since the inception of the district court system. The *Argersinger* decision has never been fully implemented at the lower court level. The people appearing before the magistrates and county judges rarely had attorneys, since the right to counsel commonly was not extended to them by the county or the county judge. Thousands of people went through the system never knowing they had the right to an attorney, never knowing they had a right to contest the charges, and only rarely receiving jury trials.

Since the inception of the district court the demand for public representation has increased fourfold. For example, in Fayette County, the second largest county in Kentucky, the Legal Aid system has had four times the number of requests to provide representation to individuals before the courts. This in itself is a manifestation of the judiciary's greater concern for the constitutional rights of the individual. Further, it suggests that the system has met the public expectation of being more fair and equal in protecting the rights of the citizens.

Comprehension of Proceedings

The extent to which litigants comprehend proceedings is also suggested as a criterion. This is a nationwide issue; it is not found only in Kentucky, nor does it relate particularly to court reform. Since the schools stopped educating children about the legal process, this problem is becoming more acute throughout the United States. Many citizens do not understand court proceedings, the judicial system, or the relationship of the judiciary to the executive branch of government. Although measurement of this criterion is very difficult, it can be suggested that

because a record is made in every case and a copy provided the litigant at nominal cost (\$2.00), he has been extended this right, or at least access to comprehension of the proceedings. The judges have been asked to make every effort to explain the proceedings.

Efficient Processing of Cases

An additional suggested area of evaluation is the efficient processing of cases. The rate at which cases are disposed of can be another measurement of the system's success. One way to evaluate this is the pressure put on prosecutors to dispose of cases expeditiously. Most prosecutors in Kentucky are part-time. Since the new court system's inception, the prosecutors have been complaining repeatedly about the time and work required to prosecute cases in district court. Further, they are complaining that the district judges, who are not permitted to practice law on the side, are demanding too much of them. The judges are requiring that they be in court to prosecute on a daily basis, which is much more often than the prosecutors have been accustomed to. This infringes upon their ability to handle their private law practice, which is still permitted in Kentucky.

It may be suggested that examining the rate at which cases are being disposed of contradicts the suggested criterion about the amount of individual attention given each case. Reconciliation between these two criteria is not easy. The absence of comparative information makes this analysis impossible. Two other criteria suggested are causes of adjournment and number of continuances. Neither of these pieces of information is collected by the administrative office of the courts, nor are they collected on a routine basis by the trial courts. They were not collected under the old system either.

Simplified Litigation

Another suggested criterion is simplified litigation. Under our old system we had multiple lower courts; under the new system we have a single lower court of limited jurisdiction and a general jurisdiction court, with exclusive jurisdiction in each. The clear delineation of jurisdiction and appeals has satisfied this criterion.

Central Administration

Central administration has been labelled as a major problem in court reform by authors Gallas and Saari. It has been a significant issue in all governmental reform since the 1930's. It is an issue about which there are many opinions, pro and con. Though it does not lend itself to quantifiable measures, there are several significant factors that can be used to avoid the pitfalls of central administration. One of the approaches is enhanced coordination among trial courts. Coordination is ac-

complished in Kentucky by regional meetings each spring and by regular meetings in the fall at the judicial colleges. This increased local cooperation among the trial courts has already shown benefits, in that successful ideas and implementation strategies at the local level have been transferred to adjoining counties.

One of the major problems at this time is inadequate local court participation in the decision-making process. This problem has arisen in part because of very tight time frames specified in setting up the system.

The supreme court, however, has authorized a change in a part of that process which is now being implemented. The court has adopted unit budgeting, the principal purpose of which is to establish an equitable, simple, and rational method of supporting requests for additional staff and equipment at the local level. This method will change the budgeting process from the previous approach, under which the budget was prepared by central staff. It should be noted that because of time constraints in the past, the budget has really been prepared centrally of necessity; the clerks and judges in the field were either not in elective office at that point or were in the process of attempting to adapt to and institute the new system. With that transition completed, an opportunity now exists for the court actively to involve more people in establishing priorities and requests for funds. While historically there may not have been much participation in this process, the trend has certainly changed toward much more open and active involvement of all concerned.

Rule-Making Practice

Another dimension suggested by Berkson and Carbon is how rule making relates to the trial courts and the extent to which it has been responsive to local needs. The major complaint from the bar is that the supreme court is too quickly promulgating rules in response to problems, rather than too slowly. In fact, many attorneys are quite distressed that the court is changing rules every two or three months. Nevertheless, it was clearly understood by the court that many things required by the judicial article should be approached by making as few rule changes as possible, by seeing how problems developed and then making necessary rule changes.

The rule-making process must also permit the local courts to initiate and develop their own local rules. This process is governed by the state only insofar as the local rules are reviewed for conformity with state rules. Thus, the local rules embody local policy and practices and establish local court procedures. Disagreements occasionally arise between the administrative office of the courts and the trial courts regarding their rules, but this process has worked smoothly. This is a further indication that successful implementation has included both local and statewide rule making.

Equitable Distribution of Resources

Equitable distribution of resources is always a problem when managing an entire system. This point is made constantly, not only in courts but in all areas of public service. It is one of the areas in which there has been notable success in Kentucky. The smallest counties, for the first time, have received from the state adequate staffing, supplies, and technical assistance. For example, the personnel of the clerk's office are compensated on a standard pay scale based on the individual's experience and qualifications. This means that those in the smallest counties are compensated for their ability, as are those in the larger counties.

The higher-caseload counties require more resources. Jefferson County (Louisville) accounts for about 21 percent of the workload of the state and receives about 22 percent of all the monies available to the system. If this example indicates that the higher-caseload counties receive adequate support, then we have also satisfied that criterion. (In fact, Jefferson County receives an even larger percentage, because at least 30 percent of the administrative office of the courts resources are allocated to that county.)

Effects on Other Agencies

Another criterion that has been suggested and should be considered is the side effects on other agencies in the implementation of the new court system. The greatest effect has been noted above; that is, the public defender's office has had an enormous increase in the demand for services as compared with that under the old system. This has led the administrative office of the courts to work with the public defender on applying for an LEAA grant to provide 25 new public defender positions in certain areas of the state. This joint effort has enhanced the cooperation between the two agencies and improved the ability of the state to respond to local needs.

The prosecutors, as noted earlier, have experienced a similar effect in the district court. They have been requested to perform more services in court than they had performed previously, and that trend is expected to continue. As long as there are part-time prosecutors and full-time judges there is an inevitable potential for conflict.

Before and After

One other recommended criterion calls for a comparison between the former and the reformed systems. This comparison, like others, is most difficult. Kentucky does have the advantage over most other jurisdictions because there were public opinion surveys prior to the judicial article. These are a readily accessible, documented source of information about public attitudes concerning the courts. Two previous public

opinion surveys (1973 and 1975) provided valuable information with regard to the public's views and expectations about courts and also identified areas for reform.

Attitude toward the change depends upon whose ox was gored. County officials who lost considerable political leverage are not pleased, although they are more tolerant toward the court reform than they were 12 months ago. The bar is pleased in some areas and not in others. Some lawyers do not like the new recordkeeping system, nor are they fond of rule making by the supreme court.

Law enforcement officials have expressed considerable praise for the reform. In their judgment the system has more integrity and has substantially reduced the political brokerage business. Also, the new system is tougher on convicted criminals and has resulted in greater use of incarceration.

The news media have been very favorably impressed, as shown by their editorials. No major newspapers have advocated a return to the old system; in fact, they have uniformly expressed affirmative support for the system.

Not everyone is pleased. The legislature drastically escalated traffic fines in 1978, as a result of the termination of an LEAA grant to support law enforcement training. The higher fines were blamed on the cost of the district court. This misrepresentation to the public no doubt left many people dissatisfied with the new system.

Conclusion

Implementation of reform has more to do with attitudes than most people realize. In the past, court reform literature has not discussed how to manage change. It was assumed that the alteration of structure by rule of statute would be adequate to produce change.

It has been learned that court reform implementation must include a substantial effort directed toward changing the attitude of system participants if one is to gain their compliance with the reform. Reform is and should be recognized as a never-ending process. Changes in the system should be continuous to maintain a flexible, dynamic judicial system. Judicial leadership must continually be seeking improvement.