



1974

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Recommended Citation

Gazell, James A. (1974) "State Judicial Financing: Preliminaries, Progress, Provisions, and Prognosis," *Kentucky Law Journal*: Vol. 63 : Iss. 1 , Article 4.

Available at: <https://uknowledge.uky.edu/klj/vol63/iss1/4>

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STATE JUDICIAL FINANCING: PRELIMINARIES, PROGRESS, PROVISIONS, AND PROGNOSIS

BY JAMES A. GAZELL*

I. INTRODUCTION

. . . the [Supreme] Court once again earnestly urges immediate action by the legislature to finance the court system [of Michigan] on the only practical, sensible basis—statewide, to do away once and for all with the fragmented, unfair system which has made a mockery of Michigan's 'one court of justice,' as intended in the Constitution [and] to provide [the] means for management reorganization of the entire system¹

Thomas M. Kavanagh, Chief Justice of the Michigan Supreme Court, recently made this comment in delivering a state-of-the-judiciary speech to a joint session of the Michigan Legislature. His statement exemplifies a growing sentiment among judicial administrators and scholars for the state assumption of all judicial costs, regardless of court level or type of expense. This development represents an attempt by state supreme courts to improve their supervision of the entire judicial system through budgetary control, and to join their legislative and executive counterparts as genuine departments of state governments. Furthermore, this trend is a segment of a far larger movement—the unification of the numerous trial courts in the several states under the direction of their highest tribunal, its chief justice, or a judicial council.² Such consolidation embraces at

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¹ State of the Judiciary Message by Chief Justice Thomas M. Kavanagh, Joint Session of the Michigan Legislature, Feb. 26, 1973, on file in office of the Court Administrator, Michigan Supreme Court.

² ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM 207 (1971).

least four areas: the right of the state supreme court to make rules for the entire judicial system; the authority of this body or its head to assign judges and court-related employees temporarily from one tribunal to another; the right to establish a classification system for judicial personnel at all levels; and the power of the states highest tribunal to formulate a single budget for the entire judiciary.

Since each of these components is broad enough to warrant separate exploration, this article centers only on the last segment, analyzing salient aspects of state court financing. More specifically, it consists of four subdivisions: (1) a discussion of preliminary matters (such as a definition of state court financing, the significance of this widely proposed change, and the methods of centralized financing available to state courts); (2) an analysis of the progress toward such a cost takeover; (3) an examination of the main provisions for state judicial financing; and (4) a prognosis. This study, which covers the period from 1959 to August 1974, rests on data collected from a variety of sources, including the Institute of Judicial Administration, the American Judicature Society, and the court administrators of thirty-seven states (74%). (See Appendix 1 and the italicized states in Appendix 2.) The research underlying the following discussion was originally funded by the Law Enforcement Assistance Administration; the nationally prominent consulting firm of Ernst and Ernst also directly financed and further aided in its completion. The results may, and hopefully will, be helpful to lawyers, judges, court executives and political scientists alike.

Let us now turn to the facets of this subject.

II. PRELIMINARIES

A. *A Definition*

The phrase *state court financing* denotes the right of the state judicial department to pay for its operating and capital costs at all levels (trial and appellate) through a single annual budget prepared by the supreme court (or one of its agents, such as the chief justice or the state court administrator and his aides), submitted directly to the legislature for its consideration (without review by the executive branch), passed with or

without alterations, and enacted by gubernatorial signature or a legislative override. All money raised by the courts of the state would be deposited in the state treasury (or general fund). Three notable limitations on this broad definition have evolved. First, state court financing is considered to prevail when 90% or more of the yearly judicial costs are paid by the state. Second, revenues derived from traffic fines and local ordinance violations may be kept by the municipalities in which the offenses were found to have taken place. Third, sometimes the state will initially pay for the costs of judicial facilities but later charge the local governmental units (mainly cities or counties) for such expenditures.³

B. *Significance*

Proposals for state court financing are significant because they are a feature of the court unification movement. Under such plans the annual (or biennial) preparation of a budget for the entire state judiciary is a central task facing the chief justice of the state supreme court along with his other principal managerial responsibilities: the formation and promulgation of rules for uniform practices and procedures, the assignment of judges and other employees from one court to another, and the establishment and maintenance of a personnel classification system. He oversees the performance of these duties in regular consultation with his colleagues on the supreme court and with the advice of the judicial council, which is made up of trial and intermediate appellate judges, lawyers, and laymen. He delegates the execution of these responsibilities to the state judicial administrator and his staff, who are expected to work closely with trial-court executives. Although the duties of the latter encompass calendar management and office and housekeeping operations, as well as the supervision of auxiliary personnel (such as bailiffs, clerks, reporters, probation officers, and secretaries), the initiation of the judicial budgetary process belongs to the trial-court managers.⁴ Recently the Institute of Judicial Administration summarized this procedure as follows:

³ *Id.* at 206; CALIFORNIA UNIFIED TRIAL COURT FEASIBILITY STUDY 107 (1971); NATIONAL MUNICIPAL LEAGUE, MODEL STATE CONSTITUTION 14 (6th ed. 1963).

⁴ See AMERICAN BAR ASSOCIATION COMMISSION ON STANDARDS OF JUDICIAL ADMINISTRATION, COURT ORGANIZATION 68-78 (1973); INSTITUTE OF JUDICIAL ADMINISTRATION, A

The process of developing an overall, comprehensive budget for the courts should begin with the most basic operating unit and proceed upward. Each unit, then each court, should project its resource needs. Each forecast should be reviewed by the [state] Judicial Administrator working under the Chief Justice's auspices and a coordinated plan achieved that can be expressed in program terms. After the total judicial program has been developed in this manner, an integrated judicial budget should be presented directly to the legislature for review and funding.⁵

C. *Methods of Centralized Financing*

Three methods of state court financing merit at least brief attention because of their widespread use: a single annual (or biennial) judicial department budget, the resort to writ of mandamus on the state treasury by the supreme court and other tribunals as an exercise of their claims to inherent powers, and a constitutionally dedicated fund. The first mode is gaining currency and probably will become dominant in the states. The second means has been occasionally employed as state courts at all levels have claimed an inherent right to obtain the funds reasonable and necessary for them to perform the functions required by the state constitution or by legislation. This contention, a variation of the separation-of-powers doctrine, has been couched in the rhetoric of judicial independence from the other branches of state government (the executive and the legislature), although the enduring reality has been their *interdependence* in practice. When this argument occasionally has been raised, it has usually centered on monetary disputes between parts of the state judicial system and local governmental units.⁶ Indeed it most often has been employed in downward vertical disputes rather than in horizontal disagreements among the three constitutionally equal sectors of government

STUDY OF THE LOUISIANA COURT SYSTEM 28-31 (1972); McConnell, *Court Administration*, in *THE IMPROVEMENT OF THE ADMINISTRATION OF JUSTICE* 13 (5th ed. 1971); McConnell, *The Role of the State Administrator*, in *JUSTICE IN THE STATES* 88-97, especially at 94-95 (1971); E. Pringle, *The Role of the State Chief Justice*, in *JUSTICE IN THE STATES* 80-88, especially at 82-85 (1971).

⁵ See INSTITUTE OF JUDICIAL ADMINISTRATION, *supra* note 4, at 337.

⁶ Hazard, McNamara, and Sentilles, *Court Finance and Unitary Budgeting*, 81 *YALE L.J.* 1286, 1287-89 (1972).

and has persisted mainly because the other branches do not deem worthwhile a protracted struggle with the state judiciary over small amounts of money and, in the few cases wherein state courts have been pitted against the other two branches of the state government, the issues, according to legal scholar Geoffrey Hazard and his colleagues, have "always been specific, narrow, and relatively minor."⁷ In any event, most judicial attempts to secure operating funds are pursued by negotiation and compromise rather than by the assertion of inherent powers through writs of mandamus.

The third major method of centralized judicial funding is a constitutionally dedicated fund whereby a specified portion (perhaps three or four percent) of the state budget would be earmarked for judicial use. Presumably the state judicial system would receive additional funds, if any, only as a result of bargaining with the governor and the legislature.⁸ So far, this idea has been proposed only in one state: Michigan.⁹ If enacted, this proposal would greatly improve the availability of judicial funds in that state as in most others where the typical judicial portion of the state budget amounts to less than one or two percent.¹⁰

In addition to the foregoing approaches, there exist at least eight other judicial devices for obtaining funds: declaratory judgements, which often accompany writs of mandamus; contempt proceedings against state budgetary officials who fail to comply with court financial orders; debt actions by unpaid judicial employees against the state or counties; debt actions by court suppliers; suits by sheriffs' offices for reimbursement of funds spent under court order for judicial purposes; taxpayer suits to forbid or require public expenditures for specific court purposes; direct *ex parte* orders to proscribe any interference with court operations; *quo warranto* to bar changes in judicial-budget estimates; and eviction orders for needed court facili-

⁷ *Id.* at 1288.

⁸ *Id.* at 1289; Brennan, *Judicial Fiscal Independence*, 23 U. FLA. L. REV. 277, 287 (1971); Ferguson, *Judicial Financial Autonomy and Inherent Power*, 57 CORNELL L. REV. 975, 989-90 (1972).

⁹ See State of the Judiciary Message, *supra* note 1, at 4.

¹⁰ INSTITUTE OF JUDICIAL ADMINISTRATION, *STATE AND LOCAL FINANCING OF THE COURTS (TENTATIVE REPORT)* 8 (1969). See also *Indiana Budgets 0.2% for Judiciary*, 57 JUDICATURE 123 (1973).

ties. These methods, however, have been rarely used because judicial financial requests are normally fulfilled and because courts, as agencies virtually devoid of coercive powers, fear the issuance of orders that may be defied by the executive or legislative branches.¹¹

III. STATE COURT FINANCING: ITS PROGRESS

A consideration of state court financing from the perspective of definition, significance, and alternatives is a prelude to an examination of its progress, which has been fueled by numerous sources. The National Municipal League (1963),¹² the President's Commission on Law Enforcement and the Administration of Justice (1967),¹³ the National Conference on the Judiciary (1971),¹⁴ the Advisory Commission on Intergovernmental Relations (1971),¹⁵ the Institute for Court Management in Denver (1971),¹⁶ the Committee on Economic Development (1972),¹⁷ the National Commission on Criminal Justice Standards and Goals (1973),¹⁸ the American Judicature Society,¹⁹ and the Institute for Judicial Administration²⁰ have been

¹¹ See INSTITUTE OF JUDICIAL ADMINISTRATION, *supra* note 10, at 7, 8, appendix C. See also *The Judges for the Third Judicial Circuit of Michigan v. County of Wayne*, 167 N.W.2d 337 (*Mich. Ct. App.* 1969), *aff'd*, 172 N.W.2d 436 (1970), *modified on rehearing*, (190 N.W.2d 228 (1971)), *cert. denied*, 405 U.S. 923 (1972); *Smith v. Miller*, 384 P.2d 738 (Colo. 1963); and Burke, *The Inherent Powers of the Courts*, 57 JUDICATURE 247 (1974).

¹² See NATIONAL MUNICIPAL LEAGUE, *supra* note 3.

¹³ PRESIDENT'S COMMISSION ON LAW ENFORCEMENT AND THE ADMINISTRATION OF JUSTICE, *THE CHALLENGE OF CRIME IN A FREE SOCIETY* 322 (1968).

¹⁴ *Consensus Statement of the National Conference on the Judiciary*, in *JUSTICE IN THE STATES* 265, 266 (1971).

¹⁵ See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 2, at 45; ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *FOR A MORE PERFECT UNION—COURT REFORM* 20 (1971).

¹⁶ E. FRIESEN, M. GEIGER, G. KERSHAW, and P. LOPEZ, *REPORT ON THE MANAGEMENT OF THE VENTURA COUNTY COURTS* 55, 60, 65-66 (1972).

¹⁷ COMMITTEE FOR ECONOMIC DEVELOPMENT, *REDUCING CRIME AND ASSURING JUSTICE* 21 (1972).

¹⁸ NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS, *COURTS* 164-65 (1973).

¹⁹ AMERICAN JUDICATURE SOCIETY, *MODERNIZING LOUISIANA'S COURT OF LIMITED JURISDICTION* 113 (1973); Editorial, *Unitary Budgeting: A Financial Platform for Court Improvement*, 56 JUDICATURE 313, 314 (1973); Holt, *Text of the Model State Judicial Article*, 47 JUDICATURE 8, 12 (1963).

²⁰ For the latest example see NATIONAL MUNICIPAL LEAGUE, *supra* note 3, at 339.

among the long-standing proponents of such financing.²¹

The ultimate rationale for urging this change is that it contributes to the attainment of a state judicial system which is competent, fair, consistent, and effective in its disposition of civil and criminal cases.²² Beyond this broad justification numerous other reasons for adopting state court financing are often advanced. These may be classified into four groups: (1) general purpose, (2) constitutional, (3) administrative, and (4) fiscal. Among the *general* reasons frequently cited are the responsibility of the state to implement a fair and effective system for the administration of justice and the duty to discharge constitutionally mandated and statutory obligations. Foremost among the *institutional* considerations is a desire for judicial independence from the other sectors of state government. The main *administrative* contentions include a desired overview of the total cost for dispensing justice; a fear of hampering progress toward judicial unification because of the state dependence on local governments to pay for trial-court operations; the need for a unitary budget as an instrument of planning, policy-making, control, and coordination as well as the availability of cost data for such objectives; the attainment of visibility in the flow of money through the judicial establishment; and feared obstruction of the chief justice's assignment power because of variations in local financing patterns for the same kind of work. Finally, the leading *fiscal* considerations are a desire to afford property-tax relief; and opportunity to use the state's broader revenue base; a tendency to relieve local governmental units of a burden that many of them cannot sustain; a desire to end the use of courts as revenue-raising devices; an effort to end the practice in some communities of reducing charges against defendants to avoid prospective costly trials; and an attitude that the disposition of cases should not rest on the ability of a city or county to afford a trial.²³

²¹ See also State of Judiciary Message, *supra* note 1, at 45-41; CALIFORNIA UNIFIED TRIAL COURT FEASIBILITY STUDY, *supra* note 3, at 104; E. FRIESEN, E. GALLAS AND N. GALLAS, MANAGING THE COURTS 68-74, 105 (1971); SELECT COMMITTEE ON TRIAL COURT DELAY, UNIFIED TRIAL COURT SYSTEM, CALENDAR MANAGEMENT REPORT 4, at 23 (1972); TEMPORARY COMMISSION ON THE NEW YORK STATE COURT SYSTEM, . . . AND JUSTICE FOR ALL 54-55 (1973); T. Kaiser, Financing Trial Courts: State or Local Control?, May, 1973 (unpublished thesis in California State University Library, San Diego, California).

²² See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 2, at 46.

²³ See materials cited note 21 *supra*.

One nationally respected state court administrator, Ralph N. Kleps of California, expressed the case for state court financing by pleading:

So far as our state judicial systems are concerned, all we are suggesting is the creation of a beacon light of central responsibility in a sea of localism, and we are light years away from any operating centralized judicial administration. As a matter of fact, I believe that the length to which a centralized judicial authority will be permitted to go in any state depends on two related factors. One is the degree of necessity imposed by the societal pressures of continuing system overloads and the other is the degree of competency with which a central authority actually performs its function. . . .

Throughout the United States the judicial branch of government is the least well-supported and has the most fragmented sources of financial support. In my opinion, no program for the improved operation of state judicial systems can be made upon the premise that money can be saved. You can no more save money in the design and operation of an effective, modern judicial system than you can save money in the construction of a modern highway system.²⁴

Opposition to state court financing, both total and partial, is based almost exclusively on fiscal determinations. Total opposition rests on four factors: the belief that the state should not decree expenditures by local governments unless it is willing to pay for a substantial part of them; the fear of a reduced tendency of trial courts to bend toward local needs; the threat of lost pecuniary advantages from fines and fees (principally for traffic violations); and an alleged undesirability for the state to take on an additional fiscal burden. Partial opponents of state court financing agree with its basic principles but argue that local governmental units should continue to pay for capital costs—especially court facilities—because such buildings are typically multi-purpose. They house most local operations—such as the sheriff's office, the district attorney, the probation department, and the public defender.²⁵ However, the Advisory Commission on Intergovernmental Relations count-

²⁴ Kleps, *State Court Modernization in the 1970's*, 55 JUDICATURE 294-95 (1972).

²⁵ See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 2 at 45-46; CALIFORNIA UNIFIED TRIAL COURT FEASIBILITY STUDY, *supra* note 3, at 106.

ered both forms of resistance by remarking: "We are not prepared to accept a high degree of responsiveness to local needs, if it means uneven and inequitable application of the law between jurisdictions."²⁶

Finally, the arguments over the desirability of state court financing have gradually lost their saliency as some states have moved in this direction. The most powerful impetus for such reform may come from an inclination of states to emulate the successful experiences of other jurisdictions. So far, twelve states have adopted this kind of financing: Alaska (1959), Maine (1961), Vermont (1961), North Carolina (1962), Connecticut (1965), Hawaii (1965), Rhode Island (1965), Oklahoma (1967), New Mexico (1968), Colorado (1970), Maryland (1970), and South Dakota (1972).²⁷ Moreover, at least twenty-one states (42%) have recently considered paying for the expenses of all courts. In eight of these states, the matter recently has been or currently is under study: Arizona,²⁸ Delaware,²⁹ Mississippi,³⁰ New Hampshire,³¹ New Jersey,³² Oregon,³³ South Carolina,³⁴ and Tennessee.³⁵ In one state, North Dakota, this financing method was embodied in a proposed constitution which the

²⁶ See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 2, at 45.

²⁷ ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 2, at 108, 110, 206-07; CALIFORNIA UNIFIED TRIAL COURT FEASIBILITY STUDY, *supra* note 3, at 45; CALIFORNIA LOWER COURT STUDY appendix F, at 2-17 (1971); FOR A MORE PERFECT UNION, *supra* note 15, at 2, STATE AND LOCAL FINANCING OF THE COURTS, *supra* note 10, at 27-28; FROM THE STATE CAPITALS May 20, 1974, at 1-2.

²⁸ Letter received from George Stragalas III, Judicial Administrator, Supreme Court of Arizona, Nov. 21, 1973.

²⁹ FROM THE STATE CAPITALS, July 1, 1974, at 2-3.

³⁰ MISSISSIPPI JUDICIARY COMMISSION, REPORT OF THE MISSISSIPPI JUDICIARY COMMISSION TO THE 1970 REGULAR SESSION OF THE LEGISLATURE OF THE STATE OF MISSISSIPPI 10-11, 58-59 (1970).

³¹ INSTITUTE OF JUDICIAL ADMINISTRATION, A DISTRICT COURT FOR NEW HAMPSHIRE 37 (1973), INSTITUTE OF JUDICIAL ADMINISTRATION, REPORT 5 No. 2, at 3 (1973); FROM THE STATE CAPITALS, July 22, 1973, at 1-2.

³² FROM THE STATE CAPITALS, August 26, 1974, at 2-3.

³³ Letter received from Douglas A. Haldane, Research Attorney and Acting Executive Secretary, Governor's Commission on Judicial Reform, Nov. 20, 1973; SURVEY OF THE 1972-73 COUNTY COURT SYSTEM OPERATING COSTS IN OREGON 3-4 (1972).

³⁴ INSTITUTE OF JUDICIAL ADMINISTRATION, THE JUDICIAL SYSTEM OF SOUTH CAROLINA 106-07 (1971).

³⁵ INSTITUTE OF JUDICIAL ADMINISTRATION, THE JUDICIAL SYSTEM OF TENNESSEE 82-83 (1971).

voters rejected in November, 1972.³⁶ In the remaining twelve of these twenty-one states, state court financing is being sought actively by legislation or constitutional amendment:

1. *California*: During the last two years, three organizations—the nationally prominent consulting firm of Booz, Allen, and Hamilton, the Select Committee on Trial Court Delay, and the Institute for Court Management—have conducted studies that advocated total state court financing except for parking fines and forfeitures, which would be retained by localities.³⁷ In 1972 and 1973, bills featuring this change were introduced by Assemblyman James A. Hayes (now a member of the Los Angeles County Board of Supervisors)³⁸ and state senator Jack Fenton.³⁹ In 1974 measures to apply such financing at most of the trial-court level tribunals (the superior and municipal courts) were proposed.⁴⁰ Although none of the above proposals has cleared either house of the legislature, a modest bill did surmount these barriers and became law on July 8, 1974. This measure, sponsored by state senator Fred W. Marler, Jr. (soon to become a superior court judge in Sacramento County), authorized the state to pay the costs of a new superior court in Shasta County, located in northern California. Marler is reported to believe that this law constitutes a precedent for requiring this state to assume the expenses of other superior courts that may be established.⁴¹

2. *Florida*: A new state constitution was approved by the

³⁶ Letter received from Calvin N. Rolfson, State Court Administrator, State of North Dakota, Nov. 19, 1973; CONSTITUTIONAL CONVENTION, PROPOSED 1972 CONSTITUTION 529 (1972).

³⁷ CALIFORNIA LOWER COURT STUDY 96-98 (1971) (partial state financing urged); CALIFORNIA UNIFIED TRIAL COURT FEASIBILITY STUDY, *supra* note 3, at 107; SELECT COMMITTEE ON TRIAL COURT DELAY, UNIFIED TRIAL COURT SYSTEM, CALENDAR MANAGEMENT REPORT 4, *supra* note 21, at 23; E. FRIESEN, M. GEIGER, and P. LOPEZ, *supra* note 16, at 55, 60, 65, 66.

³⁸ Gillam, *Bills on Court Reform Introduced in Assembly*, Los Angeles Times, Jan. 21, 1972, §1, at 27; Gillam, *Amendment to Revised Court System Killed*, Los Angeles Times, June 21, 1972, §1, at 22.

³⁹ California Assembly Bill No. 1900, at 7-8 (introduced on April 30, 1973).

⁴⁰ Letter received from Hon. James R. Mills, President Pro Tempore, California Legislature, August 20, 1974; California Senate Bill No. 876 (introduced June 28, 1974) (municipal courts); California Senate Bill No. 531 (introduced June 28, 1974) (superior courts).

⁴¹ California Senate Bill No. 1496, ch. 406, § 1-2 (approved by the governor, July 8, 1974); FROM THE STATE CAPITALS, July 29, 1974, at 1.

voters on March 14, 1972, and took effect on January 2, 1973. Although it provided for virtual state court financing, legislation has been proposed to require the state to pay the salaries of all trial-court-related personnel—3,324 employees. The foremost advocate of this added change has been the Chief Justice of the Florida Supreme Court, Vassar B. Carlton.⁴²

3. *Kansas*: A new judicial article permitting full state court financing was ratified by the voters of this jurisdiction in November, 1972.⁴³ During 1973 the legislature authorized the state supreme court to create a nineteen-member Judicial Advisory Study Committee to recommend laws implementing this article. This committee in turn hired the Institute of Judicial Administration to study, among other topics, the feasibility of total court financing. The Institute's report became public on May 11, 1974, and endorsed such a concept with exceptions as to the following items: courtrooms and other space for district courts (the general trial courts in this state); municipal court expenses if such lower tribunals are continued; and fines and forfeitures arising from violations of municipal ordinances. These judicial expenses and revenues, including service charges for processing municipal court cases in the district courts, would be city responsibilities.⁴⁴

4. *Kentucky*: In late 1973 a proposed constitutional amendment which included a state assumption of all judicial costs was submitted to the Joint Legislative Interim Committee on Elections and Constitutional Amendments. It has been prepared by representatives from the Court of Appeals (the highest tribunal in this state), the Kentucky Bar Association, the Governor's Judicial Council, and the Kentucky Crime Commission.⁴⁵ Another influential group—Kentucky Citizens for Judicial Improvement Inc. (K.C.J.I.)—has proposed a new judicial article with the same feature. A constitutional amend-

⁴² Letter received from James B. Ueberhorst, State Court Administrator, Florida Supreme Court, December 4, 1973; JUDICIAL COUNCIL OF FLORIDA, EIGHTEENTH ANNUAL REPORT 3 (1973); FROM THE STATE CAPITALS, May 7, 1973, at 1-2.

⁴³ Kansas House Concurrent Resolution No. 1018, §1, at 1 (revision of article 3 of the state constitution proposed).

⁴⁴ H. FATZER, THE STATE OF THE KANSAS JUDICIARY 6, (1974); KANSAS JUDICIAL STUDY ADVISORY COMMITTEE, RECOMMENDATIONS FOR IMPROVING THE KANSAS JUDICIAL SYSTEM 12, 202-05 (1974); KANSAS SUPREME COURT, BIENNIAL REPORT 6 (1974).

⁴⁵ FROM THE STATE CAPITALS, Sept. 10, 1973, at 11.

ment which would make such financing possible (among other far-reaching changes to unify the state judicial system) was passed by the legislature in mid-1974 and will be submitted to the voters in November, 1975.⁴⁶ The K.C.J.I. has begun an extensive effort to inform the public about the contents and probable consequences of the proposed amendment. If ratified, the constitutional change would become fully operational by 1978, probably the earliest date for a state assumption of all judicial expenses.⁴⁷

5. *Louisiana*: Recently the court system of this jurisdiction was examined by the Institute of Judicial Administration⁴⁸ and the American Judicature Society,⁴⁹ both of which urged the state takeover of all court expenses. In 1973 the state constitutional convention approved a new judicial article which permits the legislature to make this change if it desires. This proposal was ratified by the voters of this state on April 20, 1974,⁵⁰ and will take effect on January 1, 1975. The Louisiana Law Institute and the Legislative Council have been considering implementing legislation, which may embrace state judicial financing measures.⁵¹

6. *Massachusetts*: In recent years bills for the partial and full state assumption of judicial costs have been introduced in the legislature. One proposal encompassed the operating and personnel expenses of the general trial courts (the superior courts) in fourteen counties of this state.⁵² The other measure was a five-year plan for a gradual state takeover of this responsibility for all tribunals. Both proposals were sponsored by state representative Charles P. Flaherty of Cambridge, the

⁴⁶ FROM THE STATE CAPITALS, July 29, 1974, at 3-4; FROM THE STATE CAPITALS, April 8, 1974, at 1; FROM THE STATE CAPITALS, Dec. 24, 1973, at 1; Letter received from Mrs. Nancy S. Lancaster, Executive Secretary to President Amos H. Eblen, Kentucky Citizens for Judicial Improvement, Dec. 6, 1973.

⁴⁷ FROM THE STATE CAPITALS, April 8, 1974, at 1.

⁴⁸ A STUDY OF THE LOUISIANA COURT SYSTEM, *supra* note 4, at 28-31.

⁴⁹ MODERNIZING LOUISIANA'S COURTS OF LIMITED JURISDICTION, *supra* note 19, at 113.

⁵⁰ Memorandum received from Eugene J. Murret, Judicial Administrator, to All Louisiana Judges, Sept. 7, 1973; INSTITUTE OF JUDICIAL ADMINISTRATION REPORT 6, No. 1, at 3-4 (1973); *Orleans Area Carries Vote*, Baton Rouge Morning Advocate, April 22, 1974, at 4-A.

⁵¹ Letter received from William V. Courtney, Deputy Judicial Administrator, State of Louisiana, Aug. 16, 1974.

⁵² FROM THE STATE CAPITALS, March 12, 1973, at 2.

House Chairman of the Joint State Legislative Committee of Counties. His latter bill was developed from a recent study of the funding and budgeting practices of the Massachusetts court system by the American Judicature Society.⁵³

7. *Michigan*: During the last several years William R. Hart (former state court administrator),⁵⁴ a Special Commission to Review Article VI (the judicial article of the state constitution),⁵⁵ Ernst and Ernst (a nationally respected consulting firm),⁵⁶ and Governor William Milliken⁵⁷ have advocated the complete state assumption of all court expenses. In 1973, and again in 1974, a bill was introduced to apply such a change to the district courts in the state (tribunals of limited original jurisdiction) as a first step toward this goal. If passed, the measure will become effective on January 1, 1975. It has cleared the state house of representatives but is still pending in the state senate.⁵⁸

8. *New York*: Among the strongest recent advocates of state court financing in this state have been Nelson A. Rockefeller while Governor, the New York Committee on Modern Courts, the Institute of Judicial Administration, the American Judicature Society, and the Temporary Commission on the

⁵³ AMERICAN JUDICATURE SOCIETY, FINANCING MASSACHUSETTS COURTS 7-31 (1974); *AJS Study Spurs Revision of Massachusetts Court Financing*, 57 JUDICATURE 267-68 (1974); FROM THE STATE CAPITALS, Dec. 31, 1973, at 2.

⁵⁴ Hart, *A Modern Plan for Wayne County Reorganization*, 49 MICH. STATE B.J. 22 (1970).

⁵⁵ SPECIAL COMMISSION TO REVIEW ARTICLE IV, REPORT TO THE MICHIGAN LEGISLATURE 9 (1972).

⁵⁶ ERNST AND ERNST, PROPOSAL TO PROVIDE MANAGEMENT CONSULTING SERVICES TO THE MICHIGAN SUPREME COURT SYSTEMS DEPARTMENT, 10-11 (1973); ERNST AND ERNST, DISTRICT COURT PERSONNEL TO BE TRANSFERRED TO STATE PAYROLLS 1-10 (1973); ERNST AND ERNST, REPORT OF EMPLOYEE FRINGE BENEFITS FOR DISTRICT COURT IN THE STATE OF MICHIGAN 1-23 (1973); ERNST AND ERNST, CIVIL SERVICE COMMISSION SYSTEM VS. PERSONNEL DEPARTMENT SYSTEM FOR THE JUDICIAL BRANCH OF THE STATE OF MICHIGAN 1 (1973); ERNST AND ERNST, ORGANIZATIONAL CONCEPTS FOR A UNIFIED COURT SYSTEM IN THE STATE OF MICHIGAN 14 (1973).

⁵⁷ FROM THE STATE CAPITALS, Nov. 19, 1973, at 1.

⁵⁸ Michigan House of Representatives Bill No. 4589 §§8104a, 8379a-c at 3 (introduced April 12, 1973); letter received from Doris Jarrell of the Michigan Supreme Court, Dec. 21, 1973. See also ADMINISTRATIVE OFFICE OF THE COURTS, LEGISLATION AND SCHEDULING REQUIREMENTS FOR STATE ASSUMPTION OF COURT FINANCING AND COURT REORGANIZATION 1, 2, 4-6 (1973); *Michigan Shows Progress In Judicial Reform Efforts*, Detroit Free Press, Jan. 22, 1974, §A, at 6; *Legislators Will Return to Demanding Agenda . . .*, Detroit Free Press, April 22, 1974, §A, at 8; Lane, *House OK's State Takeover of District Court Financing*, Detroit Free Press, May 24, 1974, §B, at 1; FROM THE STATE CAPITALS, June 17, 1974, at 1-3.

New York State Court System.⁵⁹ In 1973, three bills were introduced to gradually accomplish this purpose over different periods of time (five years, ten years, and one year, respectively).⁶⁰ In 1974, a pair of proposed constitutional amendments that would have achieved such financing within ten months after popular ratification received legislative consideration.⁶¹ One of the proposals passed both houses of the legislature but must do so again during the next session before it can be submitted to the voters.⁶² However, as in California, the measures would reduce state aid to localities as the cost takeover proceeded. Such aid now consists of revenues from motor-vehicle registration fees and taxes as well as motor-fuel taxes. The proposed end of these subventions implies that the state favors a disguised continuation of judicial funding as a local responsibility by giving municipalities and counties free judicial services with one hand while taking away their ability to defray non-judicial expenses with the other hand.⁶³

9. *Pennsylvania*: In 1973 two bills were introduced in the legislature of this jurisdiction to attain a higher degree of state court financing. Neither measure, however, provided measures for a full takeover. One proposal failed to encompass judicial operating expenses and capital outlays in the trial courts. The other proposal included the former but not the latter.⁶⁴ Both measures are still pending.⁶⁵

⁵⁹ INSTITUTE OF JUDICIAL ADMINISTRATION REPORT 5, No. 3, at 5 (1973); . . . AND JUSTICE FOR ALL, *supra* note 21, at 57, 59; Narvaez, *Governor in Court Plan Asks to Appoint Judge*, The New York Times, April 23, 1973, at 1, 25.

⁶⁰ New York Senate Bill No. 1475, art. 7c, §§249a-b, at 1-3 (introduced Jan. 22, 1973); New York Senate Bill No. 6468, art. 78, §§236a-b, at 3-7 (introduced March 1, 1973); New York Senate Bill No. 6235, art. 78, §236b, at 3-4 (introduced April 25, 1973). See also FROM THE STATE CAPITALS, May 14, 1973, at 3-4 and June 18, 1973, at 2.

⁶¹ New York Assembly Bill No. 7926, art. 6, §§ 29a-(c), 36 5-8 (introduced May 23, 1973); New York State Assembly Bill No. 31020, art. 6, §§29(a)-(c), 36(b) at 6-9 (introduced April 29, 1974); letter received from Michael F. McEneney, Deputy Counsel, State of New York, Office of Court Administration, Aug. 19, 1974.

⁶² New York Assembly Bill No. 7926, art. 6, §§29(a)-(c), 36b, at 5-8 (introduced May 23, 1973).

⁶³ Narvaez, *supra* note 59, at 1, 25.

⁶⁴ Letter received from A. Evans Kephart, Court Administrator of Pennsylvania, Dec. 13, 1973; THE GENERAL ASSEMBLY OF PENNSYLVANIA, REPORT OF THE COMMITTEE OF CONFERENCE ON HOUSE BILL No. 850, at 57-60 (1973).

⁶⁵ Pennsylvania Senate Bill No. 282, art. 56, 1501 (introduced July 26, 1973).

10. *Texas*: Several influential voices have been urging the partial or full adoption of state court financing in Texas. L. DeWitt Hale, Chairman of the Texas House of Representatives Judiciary Committee, has urged the state payment of all judicial salaries as well as payment of all court revenues to the state treasury.⁶⁶ However, the Chief Justice's Task Force for Court Improvement has recommended the passage of a new judicial article that would authorize full state court financing.⁶⁷ In 1973 a proposal incorporating this concept was introduced in both houses but is still pending.⁶⁸ Furthermore, there is much evidence that such funding was seriously considered by the Texas Constitutional Convention, which, although favoring a proposed judicial article to effect partial court unification, narrowly failed to submit a new document to the voters.⁶⁹

11. *Washington*: The most active group seeking a total assumption of judicial costs has been the Citizens Conference on Washington Courts. A bill introduced last year to achieve this goal is still pending but the legislature may yet pass it since there is reported to be considerable interest in such a change.⁷⁰

12. *Wisconsin*: Among the leading proponents of state court financing have been Governor Patrick J. Lucey and the Citizens Study Committee for Judicial Organization. In 1973, a bill was introduced to accomplish this objective but has not been passed. Under this legislation the state court administrator would be entrusted with devising a biennial judicial budget.⁷¹ No new proposals on this subject have been made

⁶⁶ TEXAS HOUSE OF REPRESENTATIVES COMMITTEE ON THE JUDICIARY, STREAMLINING THE TEXAS JUDICIARY 85-87 (1972).

⁶⁷ Letter from Jim Hutcheson, Chief Counsel, Texas Civil Judicial Council, Nov. 26, 1973; CHIEF JUSTICE'S TASK FORCE FOR COURT IMPROVEMENT, PROPOSED JUDICIARY ARTICLE OF THE TEXAS CONSTITUTION 4 (1972); CHIEF JUSTICE'S TASK FORCE FOR COURT IMPROVEMENT, PROPOSED ARTICLE V OF THE TEXAS CONSTITUTION 5-6 (1972).

⁶⁸ TEXAS RESEARCH LEAGUE, MEASURING COURT COSTS 27 (1973).

⁶⁹ Letter received from Jim Hutcheson, Chief Counsel, Texas Civil Judicial Council, Aug. 13, 1974.

⁷⁰ Letter received from Galen N. Willis, Deputy Administrator of the Courts, State of Washington, Nov. 26, 1974; State of Washington, S.J.R. No. 113, §1(7), at 2 (introduced Feb. 1, 1973).

⁷¹ 1973 Assembly Bill 899, § §250.044(g-1) (introduced April 26, 1973); REPORT OF CITIZENS STUDY COMMITTEE ON JUDICIAL ORGANIZATION 103-03 (1973); Letter received from William G. Lunnay, Assistant Administrative Director of Courts, Supreme Court of Wisconsin; *News—Wisconsin Citizens Mobilize for Better Court Organization*, 57 JUDICATURE 122 (1973).

since fall, 1973.⁷²

As can be seen, the concept of state court financing has generated wide support and enthusiasm. Nonetheless, the prevailing scheme of court financing in the states is still a sharing of expenses between the state and local units of governments.

Fig. 1

CATEGORIES AND SOURCES OF JUDICIAL FUNDING
AT THE STATE LEVEL: 1973

Categories of Judicial Funding	Sources of Judicial Funding				
	State	State/ Local	Local	Miscel- laneous	Total
1. Highest Court Costs	49	1	0	0	50
2. Intermediate Appellate Court Cost	20	3	0	0	23
3. Judicial Salaries	22	17	1	0	40
4. Non-Judicial Salaries	22	14	5	0	41
5. Travel Expenses	23	13	5	0	41
6. Other Expenses	20	12	8	0	40
7. Lower Court Expenses	13	8	20	0	41
8. Judicial Retirement	27	7	1	0	35
9. Judicial Council	22	0	0	1	23
10. Judicial Conference Expenses	26	0	0	1	27
11. State Court Administrator's Cost	42	0	0	0	42
12. Local Trial Court Administrators	7	0	7	0	14
13. Construction of Court Buildings	22	0	16	0	38
14. Maintenance of Court Buildings	22	0	16	0	38

Source: An updated version derived from the ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM 110 (1971) and the items in Appendix 1.

⁷² Letter received from Donald DeWitt, Director of Planning, Administrator of Courts, Supreme Court of Wisconsin, Aug. 16, 1974.

Fig. 2

STATE SHARE OF TOTAL JUDICIAL EXPENDITURES: 1973

<u>0-20%</u>	<u>21-40%</u>	<u>41-60%</u>
1. New York (20%)	1. Nebraska (40%)	1. Idaho (57%)
2. Indiana (19%)	2. Wyoming (36%)	2. Utah (57%)
3. Texas (19%)	3. Louisiana (35%)	3. New Hampshire (51%)
4. Florida (18%)	4. Missouri (34%)	4. Arkansas (47%)
5. South Carolina (18%)	5. New Jersey (34%)	5. Virginia (47%)
6. Georgia (17%)	6. Illinois (33%)	6. West Virginia (42%)
7. Michigan (17%)	7. Wisconsin (31%)	
8. Nevada (17%)	8. Kansas (29%)	
9. Washington (17%)	9. Montana (29%)	
10. Pennsylvania (16%)	10. Mississippi (27%)	
11. California (13%)	11. Oregon (27%)	
12. Ohio (13%)	12. Tennessee (26%)	
13. Arizona (12%)	13. North Dakota (25%)	
	14. Iowa (24%)	
	15. Alabama (23%)	
	16. Massachusetts (22%)	
	17. Minnesota (21%)	
<hr/>		
Total: 13 States (26%)	17 States (34%)	6 States (12%)
<hr/>		
<u>61-80%</u>	<u>81-100%</u>	
1. Kentucky (72%)	1. Alaska (100%)	
2. Delaware (68%)	2. Colorado (100%)	
	3. Connecticut (100%)	
	4. Hawaii (100%)	
	5. Maine (100%)	
	6. Maryland (100%)	
	7. New Mexico (100%)	
	8. North Carolina (100%)	
	9. Oklahoma (100%)	
	10. Rhode Island (100%)	
	11. South Dakota (100%)	
	12. Vermont (100%)	
<hr/>		
Total: 2 States (4%)	12 States (24%)	
<hr/>		

Source: An updated version derived from the ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, STATE-LOCAL RELATIONS IN THE CRIMINAL JUSTICE SYSTEM 108 (1971) and the items in Appendix 1.

IV. PROVISIONS: CATEGORIES OF JUDICIAL EXPENSE

The sharing of court expenses by the state and the localities pervades fourteen categories. Figures 1 and 2 provide the latest available overall depiction of the state and local funding arrangements. This information was gathered by the Institute of Judicial Administration in the late 1960's, revised by the Advisory Commission on Inter-governmental Relations in 1971 and updated by the writer through 1973. Let us now turn to a detailed exposition of the sharing arrangements under each rubric:⁷³

1. *Highest Court Costs*: Forty-nine states (98%) pay for the costs of their highest court. The one exception is Virginia, where the state and the local governmental units share the financial burden.

2. *Intermediate Appellate Court Costs*: Twenty states (40%) underwrite the costs of this judicial tier: Alabama, Arizona, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Louisiana, Maryland, Michigan, Missouri, New Jersey, New Mexico, North Carolina, Oklahoma, Pennsylvania, Tennessee, and Texas. Only two states (4%)—New York, and Ohio—have state-local sharing arrangements. The remaining twenty-eight states (56%) lack such a tribunal.

3. *Judicial Salaries*: Twenty-three (46%) pay all judicial salaries regardless of court level: Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Kentucky, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, and Wyoming. However, almost as many states—seventeen (34%)—divide the costs between the state and local governments: California, Delaware, Kansas, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Mexico, New York, Ohio, Washington, West Virginia, and Wisconsin. Only one state—Georgia (2%)—permits local governments to defray judicial salaries at all levels of the state court system. The remaining nine states (18%) did not furnish the data requested by the Institute of Judicial Administration.

⁷³ See ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS, *supra* note 2, at 110; STATE AND LOCAL FINANCING OF THE COURTS, *supra* note 10, at 26-36.

4. *Non-Judicial Salaries*: Twenty-two states (44%) pay the non-judicial salaries for all tiers within the state court system: Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Maryland, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, and Wyoming. Fourteen states (28%) divide salary costs with local governments: Delaware, Kansas, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Mexico, New York, Ohio, West Virginia, and Wisconsin. In six states (12%) local governments pay such salaries: California, Georgia, Kentucky, Maryland, Oregon, and Washington. The remaining eight states (16%) provided no data for this item.

5. *Travel Expenses*: Twenty-four states (48%) pay for all judicial travel expenses. These states include Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida, Hawaii, Idaho, Kansas, Kentucky, Maryland, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, and Wyoming. Thirteen states (26%) share these costs with local governmental units: Delaware, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nebraska, New Mexico, New York, Ohio, West Virginia, and Wisconsin. Five states (10%) allow local government to defray this expense: California, Georgia, Maryland, Oregon, and Washington. Again, eight states (16%) were silent on this score.

6. *Other Expenses* (Apart from judicial salaries, non-judicial salaries, and travel expenses): Twenty states (40%) defray miscellaneous expenses: Alabama, Alaska, Arkansas, Colorado, Connecticut, Florida, Hawaii, Missouri, Montana, New Hampshire, North Carolina, North Dakota, Oklahoma, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, and Wyoming. Twelve states (24%) share such costs with local governmental units: Delaware, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, New Mexico, New York, Ohio, West Virginia, and Wisconsin. Nine states (18%) require local governments to pay for these costs: California, Georgia, Idaho, Kansas, Kentucky, Maryland, Nebraska, Oregon, and Washington. No compiled data are available for nine states.

7. *Lower Court Expenses:* At least thirteen states (26%) defray the costs of their lower courts (tribunals of limited or special jurisdiction): Alaska, Colorado, Connecticut, Florida, Hawaii, Maine, Maryland, New Mexico, North Carolina, Oklahoma, Rhode Island, South Dakota, and Vermont. Eight states (16%) split the expenses for these courts: California, Louisiana, Mississippi, New Jersey, New Mexico, New York, Oregon, and Virginia. Twenty states (40%) make local governments pay these expenses: Arkansas, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, Montana, Nebraska, New Hampshire, Ohio, South Carolina, South Dakota, Tennessee, Utah, Washington, West Virginia, and Wisconsin. The remaining nine states (18%) did not supply information on this point.

8. *Judicial Retirement:* Twenty-seven states (54%) cover the retirement benefits paid to all judges: Alaska, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Indiana, Kansas, Kentucky, Maryland, Michigan, Montana, Nebraska, Nevada, New Hampshire, North Carolina, Oklahoma, Oregon, South Dakota, Tennessee, Vermont, Washington, Wisconsin, and Wyoming. Seven states (14%) divide such costs with local governments: Iowa, Louisiana, Massachusetts, New Jersey, New York, Ohio, and West Virginia. One state—North Dakota (2%)—entrusts this entire burden to local agencies. No compiled data for the remaining fifteen states (30%) are available.

9. *Judicial Council:* The state defrays this expense in twenty-three states. Twenty-two pay this cost directly: Alaska, California, Connecticut, Delaware, Florida, Georgia, Idaho, Iowa, Kansas, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Missouri, New Hampshire, North Carolina, Oregon, Rhode Island, Tennessee, Vermont, and Virginia. Only one state—Nebraska—delegates this expense to the state bar association.

10. *Judicial Conference Expenses:* The twenty-six states that have a judicial conference pay for the costs thereof: Alaska, Colorado, Delaware, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Mississippi, Montana, New Jersey, New York, Oklahoma, Oregon, Rhode Island, South Dakota, Tennessee,

Virginia, Washington, Wisconsin, and Wyoming. Again, Nebraska is the lone state whose bar association pays this cost.

11. *State Court Administrators' Costs*: The forty-one states (82%) that have an operative administrative office of the courts defray this expense. Only eight states (16%)—Georgia, Mississippi, Montana, New Hampshire, South Carolina, Texas, West Virginia, and Wyoming—lack this position. Nevada (2%) established this position in 1971 but has refused to continue funding it.⁷⁴

12. *Local Trial Court Administrators*: So far seven states (14%) pay the expenses of employing such officials: Alaska, Colorado, Hawaii, Iowa, Maryland, Massachusetts, and Pennsylvania. An equal number of states entrusts this responsibility to the relevant locality: California, Delaware, Michigan, Minnesota, Ohio, Oregon, and Washington. The remaining thirty-six states (72%) do not have such offices.

13. *Construction of Court Buildings*: This expense rests exclusively with the state government in nine states (18%): Alaska, Colorado, Connecticut, Florida, Hawaii, Missouri, Nevada, Rhode Island, and South Carolina. Ten states (20%) share this cost with local governments: California, Delaware, Idaho, Michigan, New Hampshire, Ohio, Oregon, Tennessee, Vermont, and Wyoming. However, eighteen states (36%) force this entire expense upon the localities, regardless of the court level: Arkansas, Indiana, Iowa, Kansas, Kentucky, Maine, Massachusetts, Minnesota, Nebraska, New Jersey, New York (except for its highest tribunal, the Court of Appeals, which has its housing paid for by state), North Carolina, North Dakota, Oklahoma, South Dakota, Virginia, Washington, and West Virginia. No compiled data are available for the remaining thirteen states (26%).

14. *Maintenance of Court Buildings*: Twenty-two states (44%) defray this expense: California, Colorado, Connecticut, Delaware, Florida, Georgia, Hawaii, Idaho, Indiana, Kentucky, Michigan, Montana, New Hampshire, New Jersey, New Mexico, Ohio, Oregon, Rhode Island, South Dakota, Tennessee, Vermont, and Wyoming. Nonetheless, sixteen states (32%) charge the various localities with this cost: Arkansas, Iowa,

⁷⁴ Letter received from Jean Stabenow, former Secretary to State Court Administrator of Nevada, Nov. 19, 1973.

Kansas, Louisiana, Maine, Maryland, Massachusetts, Minnesota, Nebraska, New York (with the same exception as above), North Carolina, North Dakota, Oklahoma, Virginia, Washington, and West Virginia. Again, twelve states (24%) did not respond.

A review of these categories of judicial expenses invites two closing remarks. One is that the first dozen items enumerate judicial *operating expenses* whereas the last two embrace *capital expenditures*.⁷⁵ The second, and by far the more important observation for purposes of the present discussion, is that the sharing of such costs between state and local components operates so that the latter pay an average of two-thirds of all judicial costs. It is this situation at which state court financing is directly aimed and which the wider acceptance of that concept should drastically reverse.

V. A PROGNOSIS

This study has centered so far on three salient aspects of state judicial financing: (1) preliminary considerations (such as its definition, significance, position among fiscal alternatives), (2) progress, and (3) specific financing provisions. It remains but to offer a brief prognosis of future developments. At least three are likely. One is that, among the fourteen categories of judicial expenses, a gradual state assumption of responsibility will continue to occur and to shorten the leap toward full state control. Secondly, the attainment of this goal in the states will probably occur in phases stretched over several years, although such a change could technically, if not politically, be effected within six months.⁷⁶ In California the recommended time period is two or three years at the end of which this mode of financing would become operational in one giant step.⁷⁷ By contrast, in New York the generally suggested span varies from five to ten years during which time state court financing would be adopted in phases.⁷⁸ A third likely development is the application of state judicial financing to the lower courts; this is

⁷⁵ See FOR A MORE PERFECT UNION, *supra* note 15, at 20-21.

⁷⁶ See Michigan House of Representatives Bill No. 4589, §§8104a, 8379a-c, at 3 (introduced April 12, 1973).

⁷⁷ See CALIFORNIA UNIFIED TRIAL COURT STUDY, *supra* note 3, at 72.

⁷⁸ See materials cited in notes 59 and 60 *supra*.

undoubtedly the most important feature of judicial financing reform, just as the unification of such courts is the most critical aspect of the judicial consolidation movement. After all, such tribunals handle at least ninety percent of all civil and criminal actions and have a greater impact on the public than do any other courts. Indeed, the significance of these courts demands that financial responsibility for their operation be assumed by the states.

The achievement of such funding in all the states will probably take place between 2007 and 2027—the distant future. (See Appendix 3A.) The specific prediction depends on the selection of a base year for calculation and the tendency of the change process to move at a fairly uniform rate. However, if this trend continues in the twelve states previously examined and if it spreads to other jurisdictions, state court financing may be a reality as early as 1978. (See Appendix 3B).

Finally, the advocacy of state judicial financing is approaching urgency in its rhetoric. In the previously quoted message to the Michigan legislators, Chief Justice Kavanagh told them:

We say to you that prolonging the status quo is intolerable. And, we must stress that until such time as the people of Michigan can count on essential and adequate financing of the entire state-wide court system, improvements in our courts will be limited to makeshift changes, or those generated by crisis.⁷⁹

Although his remarks applied only to one state, they increasingly reflect the views of court executives and scholars throughout the nation.

⁷⁹ See State of the Judiciary Message, *supra* note 1, at 5.

APPENDIX I

November 13, 1973

Dear Sir:

Since I have a professional interest in judicial administration and am conducting research on court unification throughout the nation, I would be most appreciative if you would please mail me the following items:

- 1) Recently completed studies of court unification in your state—if any.
- 2) Recent legislation introduced in your state to accomplish court unification or move toward it.
- 3) Information on state court financing in your state—if not contained in the court unification report.
- 4) Information on state court personnel—selection, promotions, discipline, fringe benefits, and the like.
- 5) A copy of your state constitution.
- 6) A copy of your annual report of the administrative office of the courts.

Please also put my name on your mailing list so that I may receive judicial administrative materials from your office as they become publicly available.

Thank you so much for your attention and help.

Sincerely,

James A. Gazell, Ph.D
Associate Professor of Public
Administration and Urban Studies
San Diego State University
San Diego, California 92115

APPENDIX 2

Because of a widespread and growing interest in judicial administration at the state level, numerous repositories of data have come into existence. This appendix provides as comprehensive a list of these sources as is reasonably possible. The italicized states responded to the author's survey.

A. *State Sources:*

1. *Alabama:* Hon. Charles Y. Cameron
Court Administrator, State of Alabama
Department of Court Management
513 Madison Avenue
Montgomery, Alabama 36104
2. *Alaska:* Director
Administrative Office of the Courts
Supreme Court of Alaska
Juneau, Alaska
3. *Arizona:* Hon. Marvin Linner
Administrative Director of the Courts
Supreme Court of Arizona
Phoenix, Arizona 85007
4. *Arkansas:* Mr. C. R. Huie
Secretary to the Chief Justice
State of Arkansas Judicial Department
Justice Building
Little Rock, Arkansas 82201
5. *California:*
 - a) Hon. Ralph N. Kleps
Director
Administrative Office of the Courts (California)
4200 State Building
San Francisco, California 94102
 - b) Hon. James R. Mills
State Senator
4098 State Capitol
Sacramento, California 95814
6. *Colorado:* Hon. Harry O. Lawson
State Court Administrator
Judicial Department
Supreme Court of Colorado
State Capitol Building, Room 323
Denver, Colorado 80203
7. *Connecticut:* Mr. Joseph J. Keefe
Executive Secretary
State of Connecticut, Judicial Department
P.O. Address, Box 1350
Hartford, Connecticut 06101

8. Delaware: Hon. John R. Fisher, Director
Administrative Office of the Courts
Supreme Court of Delaware
Dover, Delaware
9. Florida: a) Hon. James B. Ueberhorst
State Court Administrator
Supreme Court Building
Tallahassee, Florida 32304
b) League of Women Voters
1310 West Colonial Drive
Orlando, Florida 32804
10. Georgia: Hon. James C. Dunlap, Director
Administrative Office of the Courts
Supreme Court of Georgia
Atlanta, Georgia
11. Hawaii: Hon. Lester Cingcade, Director
Administrative Office of the Courts
Supreme Court of Hawaii
P.O. Box 2560
Honolulu, Hawaii 96804
12. Idaho: Hon. Dick Hammond
Deputy Court Administrator
Administrative Office of the Courts
Boise, Idaho
13. Illinois: Hon. Roy O. Gulley, Director
Administrative Office of the Illinois Courts
Supreme Court Building
Springfield, Illinois 62706
- or
- 30 North Michigan Avenue, Suite 2010
Chicago, Illinois 60602
14. Indiana: a) Mr. Stephen C. Daniel, Research Analyst
State of Indiana, Judicial Study Commission
State House, Room 403
Indianapolis, Indiana 46204
b) Indiana Legislative Council
State House, Room 301
Indianapolis, Indiana 46204
15. Iowa: Hon. William J. O'Brien
Court Administrator
State House
Des Moines, Iowa 50319
16. Kansas: Hon. James R. James
Judicial Administrator
The Supreme Court of Kansas
State House
Topeka, Kansas 66612

17. *Kentucky:*
- a) Hon. Howard E. Trent, Jr., Director
Administrative Office of the Courts
Commonwealth of Kentucky
State Capitol, Chambers
Frankfort, Kentucky 40601
 - b) President Amos H. Eblen
Kentucky Citizens for Judicial Improvement, Inc.
101 St. Clair Street
Frankfort, Kentucky 40601
18. *Louisiana:*
- Hon. Eugene J. Murret
Judicial Administrator
Supreme Court of Louisiana
301 Loyola Avenue
New Orleans, Louisiana 70012
19. *Maine:*
- Hon. Charles Rodway
Administrative Assistant to the Chief Justice
Supreme Court of Maine
Augusta, Maine
20. *Maryland:*
- Hon. William H. Adkins, II, Director
Administrative Office of the Courts
Courts of Appeal Building
Annapolis, Maryland 21401
21. *Massachusetts:*
- Executive Secretary
Supreme Judicial Court of Massachusetts
Boston, Massachusetts
22. *Michigan:*
- Hon. Einar Bolin
Administrative Director of the Courts
Supreme Court of Michigan
Supreme Court Building
144 West Lafayette Boulevard, #1325
Detroit, Michigan 48226
23. *Minnesota:*
- Hon. Richard Klein
Court Administrator
Supreme Court of Minnesota
St. Paul, Minnesota
24. *Mississippi:*
- Mr. George Woodliff, III
Research Assistant to the Chief Justice
Supreme Court of Mississippi
P.O. Box 117
Jackson, Mississippi 39205
25. *Missouri:*
- Director
Office of the State Court Administrator
Supreme Court of Missouri
Jefferson City, Missouri
26. *Montana:*
- Chief Justice
Supreme Court of Montana
Helena, Montana

27. *Nebraska:* Hon. James E. Dunlevey
State Court Administrator
Supreme Court of Nebraska
State Capitol
Lincoln, Nebraska 68509
28. *Nevada:* Mrs. Jean Stabenow
Former Secretary, Office of the State Court
Administrator
Office of the Nevada Court Administrator
Supreme Court Building
Carson City, Nevada 89701
29. *New Hampshire:* Mrs. Lois P. Taylor
Secretary to the Chief Justice
Supreme Court of New Hampshire
Supreme Court Building
Concord, New Hampshire 03301
30. *New Jersey:* Hon. Robert J. Hueston
Chief of Court Planning
Administrative Office of the Courts
State House Annex
Trenton, New Jersey 08625
31. *New Mexico:* Hon. Larry Anaya
Deputy Chief of Administrative Services and
Court Administrator
Supreme Court of New Mexico
Santa Fe, New Mexico
32. *New York:* Hon. Thomas F. McCoy
State Administrator of the Courts
The Judicial Conference of the State of
New York
270 Broadway
New York, New York 10007
33. *North Carolina:* Director
Administrative Office of the Courts
Supreme Court of North Carolina
Raleigh, North Carolina
34. *North Dakota:* Hon. Calvin N. Rolfson
State Court Administrator
Supreme Court of North Dakota
State Capitol
Bismarck, North Dakota 58501
35. *Ohio:* Hon. Coit H. Gilbert
Assistant Administrative Director
Administrative Office of the Courts
The Supreme Court of Ohio
Columbus, Ohio 43215

36. *Oklahoma:* Hon. Marian P. Opala
Administrative Office of the Judiciary
Supreme Court of Oklahoma, 305 State Capitol
Oklahoma City, Oklahoma 73105
37. *Oregon:* Mr. Douglas A. Haldane, Research Attorney
Governor's Commission on Judicial Reform
502 Executive House
325 13th Street, N.E.
Salem, Oregon 97310
38. *Pennsylvania:* Hon. A. Evans Kephart
Court Administrator
Administrative Office of the Pennsylvania Courts
Supreme Court of Pennsylvania
317 Three Penn Center Plaza
Philadelphia, Pennsylvania 19102
39. *Rhode Island:* Hon. Walter Kane
Court Administrator
Supreme Court of Rhode Island
Providence, Rhode Island 02903
40. *South Carolina:* Hon. William A. Dallis, Director
South Carolina Court Administration
South Carolina Supreme Court
P.O. Box 11788
Columbia, South Carolina 29211
41. *South Dakota:* Hon. Frank Biegelmeier
Chief Justice
Supreme Court of South Dakota
Pierre, South Dakota 57501
42. *Tennessee:* Executive Secretary
Supreme Court of Tennessee
Nashville, Tennessee
43. *Texas:* a) Hon. Jim Hutcheson, Director
Texas Civil Judicial Council
P.O. Box 12066
Austin, Texas 78711
or
Bolm Building—312
308 West 15th Street
Austin, Texas 78711
b) Mr. John R. Kennedy
Project Director
Texas Research League
P.O. Box 12456
Austin, Texas 78711
44. *Utah:* Hon. Ronald W. Gibson
Assistant Court Administrator
Office of the Court Administrator
State of Utah
250 East Broadway, Suite 240
Salt Lake City, Utah 84111

45. *Vermont:* Hon. Lawrence Turgeon
Court Administrator and Clerk
Office of the Court Administrator
Vermont Supreme Court
Montpelier, Vermont 05612
46. *Virginia:* Executive Secretary
Supreme Court of Virginia
Richmond, Virginia
47. *Washington:* Hon. Phillip B. Winberry
Court Administrator (Washington)
Office of the Court Administrator
Temple of Justice
Olympia, Washington 98504
48. *West Virginia:* Hon. J. F. Bedell
Research Assistant
Joint Committee on Government and Finance
West Virginia Legislature
Charleston, West Virginia 25305
49. *Wisconsin:* Hon. William G. Lunney
Assistant Administrative Director of the Courts
Supreme Court of Wisconsin
State Capitol Building
Madison, Wisconsin 53702
- Director
Wisconsin Legislative Council
147 North Capital
Madison, Wisconsin 53702
50. *Wyoming:* Hon. Glenn Parker, Chief Justice
Supreme Court of Wyoming
Cheyenne, Wyoming 82001

B. Miscellaneous Repositories:

1. Mrs. Katherine Parkes, Librarian, or
Mrs. Fannie Klein, Associate Director
The Institute of Judicial Administration, Inc.
40 Washington Square South
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 7. Mr. Robert L. Nay, Assistant Chief
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 8. Hon. Alan Cranston
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 9. Hon. John V. Tunney
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 10. United States Department of Justice
Law Enforcement Assistance Administration
National Criminal Justice Reference Service
Washington, D.C. 20530
 11. Committee for Economic Development
477 Madison Avenue
New York, New York 10022

12. The New York City Rand Institute
545 Madison Avenue
New York, New York 10022
13. Economic Development Council of New York City
230 Park Avenue
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14. Publications Department
1700 Main Street
The Rand Corporation
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15. Vera Institute of Justice
30 East 39th Street
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16. Hon. Rowland F. Kirks, Director
Administrative Office of the United States Courts
Supreme Court Building
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17. Judicial Administration Department
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321 Sunset Avenue
Asbury Park, New Jersey 07712
18. National Civil Service League
1825 "K" Street, N.W.
Washington, D.C. 20006
19. *State Government News*
The Council of State Governments
Iron Works Pike
Lexington, Kentucky 40511
20. The Council on Municipal Performance
84 Fifth Avenue, Room 905
New York, New York 10011

APPENDIX 3
STATE COURT FINANCING PROGNoses

A. *Actual Change:*

<i>Year Span</i>	<i>States</i>
1955-1959:	1
1960-1964:	2
1965-1969:	6
1970-1973:	3
	<hr style="width: 100%; border: 0.5px solid black;"/>
	12

1. 1956 rate:	<u>12 states</u> 17 years (1956-1973)	=	<u>38 remaining states</u> X
		X =	53.8 years 1973 + 54 = 2027
2. 1961 rate:	<u>11 states</u> 12 years (1961-1973)	=	<u>38 remaining states</u> X
		X =	41.5 years 1973 + 42 = 2015
3. 1965 rate:	<u>9 states</u> 8 years (1965-1973)	=	<u>38 remaining states</u> X
		X =	33.8 years 1973 + 34 = 2007
4. 1970 rate:	<u>3 states</u> 3 years (1970-1973)	=	<u>38 remaining states</u> X
		X =	38 years 1973 + 38 = 2011

B. *Proposed Change:*

1972-1973 rate:	<u>12 states*</u> 2 years	=	<u>12 states (state court financing)</u> <u>27 remaining states</u> X
		X =	4.6 years 1973 + 5 = 1978

*Where state court financing has been proposed.

