

NOW OR NEVER: REFORMING INDIANA’S COURT SYSTEM

JOHN G. BAKER*

INTRODUCTION

The whole is greater than the sum of its parts. Many states have capitalized on the essence of this well-known aphorism by structurally unifying their courts to provide state-funded systems that are more streamlined and efficient. Although both structural unification and state funding are well-studied topics and a proven way to improve a state’s court system, Indiana has not adopted either of these reforms. Instead, Indiana has one of the most complicated trial court systems in the United States, which leads to inefficiencies and inflates the total amount of court expenditures—the majority of which are currently funded on a local level. However, the recent property tax crisis has provided an impetus for change in our State. Taking advantage of the public discord, we can create a more streamlined court system that is funded by the State, reducing the amount of trial court expenditures and providing Indiana residents with the financial relief they demand.

Part I of this Article describes Indiana’s current court system, including its complex structural organization and primarily local method of funding. Part II details the national push toward structural unification and the almost immediate benefits states experience as a result of such reform. Part III analyzes the link between structural unification and state funding and details the extensive benefits other states have experienced after switching from local to state funding. Part IV summarizes previous proposals other groups have made toward structural unification and state funding in Indiana—specifically, the 1966 Judicial Study Commission report; the 1988 Commission on Trial Courts report; legislation proposed in 1975, 1989, and 2002; and the piecemeal reforms various counties have made. Part V details the renewed push for reform in 2007, including the Special Courts Committee findings and the Indiana Commission on Local Government Reform proposals. Finally, Part VI calls for action, advocating for structural unification and state funding of the Indiana court system by detailing the substantial benefits that would result from these reforms.

I. INDIANA’S CURRENT COURT SYSTEM

A. Structural Organization

Indiana Governor Mitch Daniels recently opined, that “[w]hen it comes to the

* Chief Judge of the Indiana Court of Appeals. A.B., 1968, Indiana University; J.D., 1971, Indiana University School of Law—Bloomington; L.L.M., 1995, University of Virginia. Monroe County Court, 1976-77; Monroe Superior Court, 1977-89; Indiana Court of Appeals, 1989-present. I would like to thank my judicial law clerk, Kellie M. Johnson, a 2006 graduate of Indiana University School of Law—Bloomington, for her help in researching and drafting this Article. I emphasize that the opinions contained in this Article are my own and do not reflect the official stance of the Indiana Court of Appeals.

structure of local government, Indiana skipped the twentieth century.”¹ It is in need of modernization.² “We have too many . . . of everything, and they all cost money.”³ The Indiana court system is no exception:

Indiana’s current judicial system is comprised of three tiers: 1) various trial courts—including small claims, town, city, county, probate, superior, and circuit—all with varying jurisdictions, 2) an intermediate court of appeals and a tax court, and 3) a supreme court. The problems of Indiana’s multi-tiered trial court system include the local financing of courts, which results in inadequate funding for some courts. These courts must then depend upon judicial mandates in order to function. In addition, some courts suffer from overcrowded dockets, while other courts function only part-time due to their lighter caseload. The best-qualified judges do not always remain in office because an uninformed electorate can vote to remove them. Although Indiana is afflicted with a multiplicity of courts at the trial court level, the national trend has been to unify the courts by moving to a single-tier system.⁴

Trial court jurisdiction in Indiana has been described as “confusing and overlapping”⁵ because various trial courts of general jurisdiction have the authority to hear the same types of cases. For example, several trial courts of limited jurisdiction “hear small claims cases involving the same minimum but slightly different maximum amounts of money, and all but probate court[s] hear minor criminal and traffic cases.”⁶

A unified court system breaks away from the antiquated concept of autonomous courts by having more than one judge assigned to each court.⁷ Indiana’s court system is not unified, as recognized by the Judicial Study Commission (“JSC”), headed by the late Dr. Herman B Wells:⁸

1. Mitch Daniels, Governor of Indiana, 2008 State of the State Address 4 (Jan. 15, 2008), <http://www.in.gov/gov/files/2008stateofstate.pdf>.

2. *See id.*

3. *Id.*; *see also* Audio recording: Mitch Daniels, Governor of Indiana, Remarks at Press Conference Releasing the Indiana Commission on Local Government Reform Report (Dec. 11, 2007), <http://indianalocalgovreform.iu.edu/> [hereinafter ICLGR Report Press Conference].

4. John G. Baker, *The History of the Indiana Trial Court System and Attempts at Renovation*, 30 IND. L. REV. 233, 234-35 (1997) (footnotes omitted).

5. HENRY R. GLICK, *COURTS, POLITICS, & JUSTICE* 42 (3d ed. 1993).

6. *Id.* Glick notes that the Indiana probate and tax courts are the only trial courts that have clearly defined, exclusive jurisdiction over their cases. *Id.*

7. JUDICIAL STUDY COMMISSION, REPORT OF THE JUDICIAL STUDY COMMISSION 86 (1966) [hereinafter REPORT].

8. Herman B Wells—History of Indiana University, <http://www.indiana.edu/~libweb/info/history/docs/wells.html> (last visited Mar. 20, 2008). Dr. Wells was born on June 7, 1902. *Id.* He served as President of Indiana University from 1938 to 1962 and is credited with transforming the University “from a good state school with a solid Midwestern reputation to an internationally recognized center of research and scholarship.” *Id.* Upon his retirement, Dr. Wells accepted a

The present [Indiana] system creates an entirely new court every time an additional judge is needed. Under the unified court approach only new judges are created. Thus if a county needs three judges, the present system supplies three separate courts; a unified court system would given them one court with three judges. If the population increased and more judicial manpower was needed, rather than creating an entirely new court the General Assembly would merely add another judge to the existing court.⁹

While the JSC noted that specialized courts might be useful in metropolitan areas that are large enough to support them, it emphasized that “[t]he creation of . . . specialized court[s] presupposes a sufficient caseload to make the court economically feasible.”¹⁰

B. Funding

Indiana’s trial court system is predominately funded by county property taxes.¹¹ Additionally, trial courts generate revenue for court services through filing fees, court costs, fines, and user fees assessed to litigants.¹² These revenues are collected by the local clerk and disbursed pursuant to various statutory provisions to the state, county, general local fund, or to a list of specific funds established by the Indiana General Assembly for specific programs and services.¹³ Municipalities fund city and town courts, but, in many instances, the local government does not maintain a distinct city or town court budget. Instead, expenses are paid directly from the local general fund, making it difficult to track court expenditure information.¹⁴ While the State pays the salaries of trial court judges,¹⁵ counties are still responsible for the salaries of court personnel.¹⁶ Counties may receive state funds for approved pauper defense services and for

lifetime appointment as Chancellor of the University—a position created for him by the University’s Board of Trustees—and served in that capacity until his death on March 18, 2000. *Id.*

9. REPORT, *supra* note 7, at 86.

10. *Id.*

11. IND. COMM’N ON LOCAL GOV’T REFORM, STREAMLINING LOCAL GOVERNMENT: WE’VE GOT TO STOP GOVERNING LIKE THIS 23 (2007), available at http://indianalocalgovreform.iu.edu/assets/docs/Report_12-10-07.pdf [hereinafter ICLGR REPORT].

12. SUPREME COURT OF IND., 2006 INDIANA JUDICIAL SERVICE REPORT: HONORED TO SERVE, VOLUME I: EXECUTIVE SUMMARY 176 (2006), available at <http://www.in.gov/judiciary/admin/reports/ijs/2006report.pdf> [hereinafter IJSR REPORT, VOL. I]; see also *id.* at 177-82 (providing a more thorough description of court fees).

13. *Id.* at 176.

14. *Id.*

15. As of June 2007, the State paid the salaries of 309 trial judges, fifty magistrates, twenty-six juvenile magistrates, and four small claims referees. *Id.* at 204.

16. ICLGR REPORT, *supra* note 11, at 23; see IND. CODE § 33-30-7-3 (2004) (providing that the county shall pay the salary of the deputy clerk, county police officer, bailiff, and reporter assigned to the county court as prescribed by law).

GAL/CASA services for abused and neglected children.¹⁷

A financial comparison of Indiana trial court funding shows a remarkable increase in the amount of expenditures from 1997 to 2006. Adjusted for inflation,¹⁸ state and local government expended \$237,855,033 on the trial court system in 1997 and \$345,817,786 in 2006—an increase of \$107,962,753 over ten years.¹⁹ In other words, the total amount of money spent on local courts increased by 45% between 1997 and 2006.²⁰ During that time, the number of cases filed in the Indiana trial courts increased by 23%.²¹ This Article examines these statistics further when it proposes shifting the burden of trial court funding to the State.²²

II. THE NATIONAL PUSH TOWARD STRUCTURAL UNIFICATION

While some Indiana counties have taken the initiative to structurally unify their trial court systems,²³ there has been little progress in the statewide battle toward unification. On the national scene, however, many states have unified aspects²⁴ of their court systems. This push toward unification began after Roscoe

17. ICLGR REPORT, *supra* note 11, at 176.

18. An inflation calculator is available from the United States Department of Labor. Consumer Price Index Homepage, <http://www.bls.gov/CPI> (follow “Inflation Calculator” hyperlink) (last visited June 8, 2008).

19. IJSR REPORT, VOL. I, *supra* note 12, at 183.

20. *Id.* Some of the expenditure increases during this time period can be attributed to the much-needed increase in judicial salaries. In 1999, the Public Officers Compensation Study Committee released a report recommending, in part, that the General Assembly enact a bill increasing the annual salary for trial court judges from \$90,000 to \$97,000. PUB. OFFICERS COMP. STUDY COMM., IND. GEN. ASSEMBLY, FINAL REPORT OF THE PUBLIC OFFICERS COMPENSATION STUDY COMMITTEE 6 (1999), available at <http://www.state.in.us/legislative/interim/committee/1999/committees/reports/POCS2B1.pdf>. In 2005, the General Assembly passed legislation requiring that each full-time judge of a circuit, superior, municipal, county, or probate court receive an annual salary of \$110,500. IND. CODE § 33-38-5-6 (Supp. 2007). This pay increase was necessary to minimize tensions between the legislative and judicial branches, increase compensation to keep up with cost of living increases, and attract scholars to the bench.

21. IJSR REPORT, VOL. I, *supra* note 12, at 81. Specifically, there were 1,125,438 cases filed with trial courts in 1997 and 1,383,547 cases filed in 2006—an increase of 258,109 cases over ten years. *Id.*

22. See *infra* notes 112-16 and accompanying text.

23. See *infra* notes 77-79 and accompanying text.

24. The National Center for State Courts (“NCSC”) provides useful information regarding the topic of trial court unification. Nat’l Ctr. for State Courts, CourTopics Index, <http://www.ncsconline.org/WC/CourTopics/topiclisting.asp> (last visited June 8, 2008). The NCSC believes that total unification consists of five characteristics: centralization of administrative authority, centralization of rulemaking powers, unitary budgeting, state funding of trial courts, and trial court consolidation. Nat’l Ctr. for State Courts, Court Unification FAQs, <http://www.ncsconline.org/wc/CourTopics/FAQs.asp?topic=CtUnif> (last visited July 24, 2008).

Pound's famous address to the American Bar Association,²⁵ which served as "[t]he spark that kindled the white flame of progress."²⁶ Pound opined that the U.S. court system was "archaic in three respects: (1) in its multiplicity of courts, (2) in preserving concurrent jurisdictions, (3) in the waste of judicial power which it involves."²⁷ Ultimately, Pound's speech encouraged "the proliferation of specialized courts," served as an "impetus" for the establishment of the American Judicature Society, began the movement toward "alternative dispute resolution techniques," "fueled the drive for uniform rules of practice and procedure," and "called for structural reforms [culminating] in the establishment of judicial councils, judicial conferences, and administrative offices of courts."²⁸

Court unification generally consists of five basic elements: "(1) consolidation and simplification of court structure, (2) centralized management, (3) centralized rule making, (4) centralized budgeting, and (5) state financing."²⁹ Adopting a unified court system eliminates the multiplicity of courts at the trial level, and, more specifically,

[t]he characteristics of a unified court system are a single structured court divided into two or three levels or branches, one to handle the appellate business and one or two for trial work. The business and personnel affairs of the system are usually managed by a chief justice assisted by an administrative director and staff. The power to make procedural and administrative rules is vested in the supreme court. Tribunals which hear limited jurisdiction cases are a part of the whole working scheme and enjoy a dignified status.³⁰

In a unified system, a new court is *not* created in response to an increased need for judicial resources. "Instead, a new judge is added to the existing court to help relieve an overcrowded docket."³¹ This increases the court's flexibility to adjust to varying demands and shift resources to wherever they are needed most.

There are many benefits of structural unification, including

a reduction of overlapping and fragmented jurisdiction among the trial

[hereinafter NCSC FAQs]. While the NCSC recognizes that no state has a completely unified system pursuant to its criteria, it advises each state to analyze its system and adopt the unification characteristics it deems appropriate. *Id.*

25. Roscoe Pound, *The Causes of Popular Dissatisfaction with the Administration of Justice*, 29 A.B.A. REP. 395 (1906).

26. John H. Wigmore, *The Spark that Kindled the White Flame of Progress—Pound's St. Paul Address of 1906*, 46 J. AM. JUDICATURE SOC'Y 50, 50 (1962).

27. Pound, *supra* note 25, at 402.

28. Charles Gardner Geyh, *Roscoe Pound and the Future of the Good Government Movement*, 48 S. TEX. L. REV. 871, 876-77 (2007).

29. James D. Gingerich, *Out of the Morass: The Move to State Funding of the Arkansas Court System*, 17 U. ARK. LITTLE ROCK L. REV. 249, 251 (1995).

30. R. Stanley Lowe, *Unified Courts in America: The Legacy of Roscoe Pound*, 56 JUDICATURE 316, 318 (1973).

31. Baker, *supra* note 4, at 251.

courts, better deployment and use of judges and support staff, elimination of conflicting local court rules and establishment of uniformity of process, more expeditious trial and appellate processes, . . . and better access to records and equipment to facilitate case management and reduce costs.³²

Although various local state courts initially resisted court unification and state funding,³³ the ever-increasing caseloads of the 1980s required additional judges and court staff and “fostered a new motivation [for reform]—fiscal relief for local governments.”³⁴ Thus, “faced with a decreasing revenue base,” local governments “became the primary proponents of state funding” and court reformation.³⁵

Sue Dosal, the State Court Administrator for the Minnesota Judicial Branch, recently proffered Minnesota’s court system as a paradigm for other states considering court unification:³⁶

I think Minnesota is the poster child for [Pound’s] argument for unified courts. We have a single trial court. That’s it. There are no municipal courts; there are no other kinds of courts, only a single trial court, and an intermediate court of appeals and a supreme court.

. . . .

In the 1970s, we had a plethora of different kinds of lower courts. We merged them into a single county court. And then a dozen years later we moved to merge them into the general jurisdiction court. We’ve had a single court since that time.

Minnesota is one of only a handful of states that have a pure single-level trial court. . . .

We in Minnesota believe our experience shows that Pound’s call for unification—at least as applied to the trial courts—has stood the test of

32. *Id.* at 235.

33. Critics of court unification and state funding argue that unification’s reliance on central management principles removes control from local officials, who they believed are better equipped to handle local problems. Gingerich, *supra* note 29, at 251-52.

34. *Id.* at 252.

35. *Id.* (citing ROBERT TOBIN & JOHN HUDZIK, NAT’L CTR. FOR STATE COURTS, THE STATUS AND FUTURE OF STATE FINANCING OF COURTS 6 (1989)). Currently, nine states finance 90-100% of their court systems at the state level—Alaska, Connecticut, Hawaii, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. NCSC FAQs, *supra* note 24.

36. For diagrams illustrating Indiana’s complex court structure and Minnesota’s unified court structure, see Nat’l Ctr. for State Courts, NCSC: Research, Court Statistics Project, http://www.ncsconline.org/D_Research/Ct_Struct/Index.html (last visited Mar. 20, 2008). These diagrams are attached as an Appendix to illustrate the stark contrast between the systems.

time. There have been many benefits from this unification. Clearly there's no confusion over where to file a case. We have increased the flexibility in the allocation of judicial resources and the assignment of judges to cases. Judge time can more easily be allocated where the need is.

In the last ten to fifteen years, our caseload has changed dramatically. We've had an enormous increase, perhaps sixty percent in the last decade, in serious criminal and juvenile cases, while our civil cases have remained flat, and our minor cases have actually declined. Unification has allowed us, in a world of scarce resources, to decide which kind of cases are going to have priority and then to make that happen by how we assign our judges.

We have experienced cost efficiencies in both time and travel reduction. We are a rural state. Seventy-seven counties, roughly speaking, out of our eighty-seven counties are rural. Before unification, judges were literally passing each other on the roads as they went from one court to the other to hear the particular kind of case that they could hear. And, of course, we've also seen a reduction in delay as a result of the judges being able to hear the cases promptly.

As envisioned by Pound, Minnesota has, within the unified court, created what he called "specialist" judges in our larger jurisdictions. Judges rotate through divisions on two- or three-year terms. While they are not permanent, they're there long enough to gain expertise in some of the complicated areas. It also avoids the burnout of judges who are permanently assigned to particular kinds of case types. In recent years, we have seen the rise of problem-solving courts as well, which are actually special calendars with a kind of a specialist judge. All of this is quite easily accomplished within a unified court.³⁷

Perhaps the most compelling argument in favor of unification is that users of unified court systems are statistically more satisfied than users of court systems that are not unified. The NCSC conducted an empirical study in 1996 and found "that the court systems in [the] study that 'consistently received above average satisfaction ratings . . . also have the most unified [trial] court systems.'"³⁸ Thus, the study concluded that "unification remains an essential tool for court

37. Sue K. Dosai et al., "Administration of Justice is Archaic"—*The Rise of Modern Court Administration: Assessing Roscoe Pound's Court Administration Prescriptions*, 82 IND. L.J. 1293, 1297-98 (2007). Iowa, Kentucky, and California have also recently unified their court systems. Randall T. Shepard, *The New Role of State Supreme Courts as Engines of Court Reform*, 81 N.Y.U. L. REV. 1535, 1539 (2006).

38. Dosai et al., *supra* note 37, at 1299 (quoting DAVID B. ROTTMAN & WILLIAM E. HEWITT, TRIAL COURT STRUCTURE AND PERFORMANCE: A CONTEMPORARY REAPPRAISAL 63 (1996)) (alteration in original).

reform.”³⁹

III. THE LINK BETWEEN STRUCTURAL UNIFICATION AND STATE FUNDING

Although structural court reform and state funding are distinct topics, they are often part and parcel in any discussion concerning meaningful change. In fact, state funding is commonly considered to be an element of structural unification because of its emphasis on centralized administration.⁴⁰ While the national trend toward structural unification began early in the twentieth century, by the late 1970s, fiscal relief for local governments had become the dominant factor motivating the state funding of trial court operating costs:

Why did this occur? Obviously, local fiscal problems were one cause, but it is also clear that the nature of court operations changed dramatically in the 1970s. The number of judges jumped, as did the level of judicial compensation. Local governments, even if they were not responsible for judicial salaries, were responsible for providing facilities, staff, and equipment for each new judge, not to mention absorbing additional jury costs.

. . . Constitutional requirements regarding indigent defense, treatment of juveniles, and protection of the mentally incompetent created a set of large and volatile expenditures that could be imposed by judicial mandate. The demands of modernized court administration introduced a cadre of trained managers into the court system and created demands for various new technologies: record automation, recording devices, computer-aided transcription, and word processing equipment. Breakdown in family structure caused large expenditures for social support services, counseling, juvenile detention facilities, foster care, and child support enforcement. A collateral effect of social disintegration was the need for more juvenile and adult probation officers. No longer did a court consist of a judge, a reporter, and some clerks. Courts were becoming complex administrative entities.⁴¹

Proponents of state funding believe that it “allows for a more equitable distribution of resources” among local courts and relieves the pressure for local courts to generate their own revenue.⁴² Additionally, state funding supports elements of structural unification, including centralized management and budgeting, which is why the topics are often discussed concurrently.⁴³ As of 2003, the nation has more state-funded trial court systems than locally-funded

39. *Id.* (quoting ROTTMAN & HEWITT, *supra* note 38, at 5).

40. *See supra* notes 24, 29 and accompanying text.

41. ROBERT W. TOBIN, NAT’L CTR. FOR STATE COURTS, FUNDING THE STATE COURTS: ISSUES AND APPROACHES 36-37 (1996), available at http://www.ncsconline.org/WC/Publications/KIS_FundCtFundingtheStCts.pdf.

42. NCSC FAQs, *supra* note 24.

43. *Id.*

ones, with thirty-three states funding a majority of their state's system.⁴⁴

To be fair, not all states that have structurally unified their court systems have also adopted state financing.⁴⁵ However, many states that have switched to state funding report positive results. In Massachusetts, proponents of unification recognize that there were

a number of advantages to the shift to state financing. . . . Steady gains have been made in personnel administration, with standardized procedures and a higher level of accountability Programs to reduce delay and improve facilities could have been accomplished in a county-funded system only piecemeal; state funding allowed more comprehensive efforts.⁴⁶

In Oregon, enthusiasts point to the strengthened role of the Chief Justice of the Oregon Supreme Court, the stability of funding, and the improvement in accountability as positive effects of state funding.⁴⁷

In sum, structural unification and state funding are distinct topics that can be independently adopted. However, a state can also adopt these interrelated reforms simultaneously to resolve organizational problems and increase the state's economic power. With this in mind, I turn to previous proposals for structural unification and state funding in Indiana.

IV. PREVIOUS EFFORTS TOWARD STRUCTURAL UNIFICATION AND STATE FUNDING IN INDIANA

By the last quarter of the twentieth century, Indiana had a multiplicity of courts, including the Indiana Supreme Court; the Indiana Court of Appeals; and circuit, superior, criminal, juvenile, probate, municipal, justice of the peace, city, town, and magistrate courts.⁴⁸ Whenever a need for additional judicial resources arose, the Indiana General Assembly's response was to create an autonomous court to handle the county's demand.⁴⁹

In 1965, the Indiana General Assembly authorized the first truly unified court in Indiana, the St. Joseph Superior Court.⁵⁰ Before unification, St. Joseph County

44. SUSAN M. BYRNES, COURT EXECUTIVE DEV. PROGRAM, STATE FUNDING OF TRAIL COURTS: MINNESOTA'S TRANSITION EXPERIENCE 54 (2004), *available at* http://www.ncsconline.org/D_ICM/programs/cedp/papers/ResearchPapers2004/Byrnes,Susan.pdf.

45. TOBIN, *supra* note 41, at 38 (citing Illinois, Idaho, Minnesota, and Wisconsin as examples of states that, at that time, had not implemented state funding despite implementing elements of structural unification).

46. JOHN K. HUDZIK, NAT'L CTR. FOR STATE COURTS, THE EFFECTS OF STATE FINANCING: SUMMARY FINDINGS FROM THE FOUR-STATE STUDY 15 (1990), *available at* http://www.ncsconline.org/WC/Publications/KIS_FundCtEffStFinSumm.pdf.

47. *Id.* at 17.

48. Baker, *supra* note 4, at 250.

49. *Id.*

50. Act of Mar. 11, 1965, ch. 266, 1965 Ind. Acts 727 (codified as amended at IND. CODE §§

had two superior courts; however, in 1965, these courts merged, and an additional judge was added.⁵¹ Thus, after unification, the St. Joseph Superior Court consisted of three judges who worked together and shared the responsibility of managing the cases entrusted to that court.⁵²

In 1966, the JSC released a report recognizing that Indiana's court structure was fragmented, disorganized, and inefficient.⁵³ After describing the differences between autonomous and unified courts, the JSC observed that while on the surface the systems "may seem to be the difference between Tweedledum and Tweedledee[,] a closer examination revealed startling differences."⁵⁴ After only one year of unification in the St. Joseph Superior Court, the JSC observed:

The results of this experiment have been remarkable. Docket sheets that were backlogged are now completely up to date, and cases set for trial in June of 1966 have already been tried by the end of September, 1966, even though no trials are held during the summer months.

The key to this system has been the opportunity to divide the duties of the court among the three judges. No longer is each judge responsible for the entire business and administration of the court. The administrative duties of the court have been apportioned so that no one judge is over-burdened. Judge Dempsey assumes responsibility for juries, Judge Walton prepares the Court's budget and handles its financial affairs, and Judge Kopec maintains the assignment list. The Court itself has been broken down into three divisions and the judges rotate from one division to another every five weeks. . . .

. . . [T]he bar is extremely pleased with the new Superior Court.⁵⁵

Based on St. Joseph County's positive experience, the JSC proposed a system that would function as "one great court in which there are three divisions: a Supreme Court, a Court of Appeals, and a Circuit Court."⁵⁶ While the JSC maintained that consolidating the courts would be more efficient, "those resisting change in the current system argued that municipal courts, city courts, and county courts were essential cogs in the judicial machinery."⁵⁷

33-33-71-5 to -13 (2004)).

51. Baker, *supra* note 4, at 250.

52. *Id.*

53. REPORT, *supra* note 7, at 86.

54. *Id.*

55. *Id.* at 86-87.

56. *Id.* at 88.

57. Baker, *supra* note 4, at 251. To counter this argument, advocates for unification contend that "creating courts to handle inferior matters is equivalent to creating inferior courts," placing the judges in these courts in an inferior status. *Id.* Allowing these courts to have inferior status reduces public expectation, makes it difficult to recruit good judges, and places these courts outside the interest of the more influential members of the bar. *Id.* at 251-52 (citing Lyle H. Truax, *Courts of*

Despite the national trend toward unification, the Indiana General Assembly was unwilling to make such sweeping changes and, ultimately, thwarted its own attempt to adopt the JSC's proposal.⁵⁸ In 1975, the General Assembly enacted the County Court Law, "which revamped the organization of the Indiana trial courts of limited jurisdiction by replacing them with county courts,"⁵⁹ eliminating justice of the peace courts and providing for the elimination of city and town courts at a later date.⁶⁰ Had this legislation been followed, Indiana would have had a simplified four-tier court system—the Indiana Supreme Court, the Indiana Court of Appeals, trial courts of general jurisdiction, and trial courts of limited jurisdiction. However, before the date on which the city and town courts were to be eliminated, the Indiana General Assembly enacted a statute granting cities and towns the authority to independently decide whether to create or abolish their courts, eradicating the previously enacted legislation.⁶¹

Reform attempts resumed in 1986 when the Indiana Judges Association persuaded the Indiana General Assembly to create a commission to address the lack of uniformity in the Indiana court system.⁶² The Commission on Trial Courts ("CTC") consisted of the Chief Justice of the Indiana Supreme Court, eight legislators, a trial judge, a member of the county council, a member of the county commissioners, and a county clerk.⁶³

After conducting field hearings, meetings, and opinion surveys, the CTC released a final report in 1988.⁶⁴ The CTC found that the trial court system had evolved into a series of circuit and superior courts, with each county funding the majority of trial court operating expenses.⁶⁵ While counties historically provided 78% of trial court funding, recent increases had significantly enlarged their financial burden—counties expended \$12 million more in 1987 than they had in 1982, an *annual increase* of nearly 6%.⁶⁶

Although most county councils were charged with authorizing a trial court budget, the CTC found that county council members were often unfamiliar with problems and issues affecting court operation, which resulted in a disconnect that

Limited Jurisdiction are Passé, 53 JUDICATURE 326, 327-28 (1970)).

58. *Id.* at 252.

59. *Id.*

60. 1975 Ind. Acts 1667, 1683-1701 (codified as amended at IND. CODE §§ 33-30-1-2 to -7-4 (2004 & Supp. 2007)).

61. Baker, *supra* note 4, at 252 (citing IND. CODE § 33-10.1-1-3 (1993)).

62. IND. CODE §§ 33-1-15-1 to -8 (1986). Although the legislation expired in 2003, it was recodified as IND. CODE §§ 33-23-10-1 to -8 (2004 & Supp. 2007).

63. IND. JUDGES ASS'N, A PROPOSAL FOR REFORM OF THE INDIANA TRIAL COURT SYSTEM, at iii (1986).

64. COMM'N ON TRIAL COURTS, IND. GEN. ASSEMBLY, FINAL REPORT OF THE COMMISSION ON TRIAL COURTS 1 (1988).

65. *Id.*

66. Specifically, counties expended \$43,000,000 on the trial court system in 1982 and \$55,000,000 in 1987. *Id.* These statistics are taken directly from the CTC report, and it is unclear whether the CTC adjusted the numbers for inflation.

led to conflict between trial court judges and county council members.⁶⁷ Additionally, the CTC found that Indiana's trial court system results in disparate funding between counties because "not all counties have stable economies" supporting their systems.⁶⁸

Based on these findings, the CTC recommended that Indiana trial courts merge into a single court to "be administered at the state level by the Indiana Supreme Court."⁶⁹ The Indiana Supreme Court would have the authority to "adopt rules concerning [t]he employment and management of court personnel," the "administration of the court system," and the "requirements for submission and approval . . . of an annual budget prepared by the circuit courts."⁷⁰ Pursuant to the CTC's recommendations, trial court judges would "be assigned to specific dockets—such as small claims, minor offenses and violations, criminal, juvenile, civil and probate matters—based on local rule-making authority."⁷¹ Additionally, the CTC recommended that the State be the sole funding source for the trial court system because "trial courts enforce and uphold *state* legislative policy."⁷² To help fund the system, revenues collected from court fees would be deposited into a general state fund.⁷³

As a result of the CTC's recommendations, Senate Bill 12 was introduced to the General Assembly in 1989.⁷⁴ However, the proposed legislation ultimately failed, primarily because it sought to transfer court funding from the counties to the State.⁷⁵ Former Governor Frank O'Bannon introduced similar legislation in 2002 as part of a proposed tax relief plan, but the proposed legislation did not make it out of the House Ways and Means Committee.⁷⁶

While no further attempts have been made to unify the structure or funding of the courts on a statewide basis, some counties have structurally unified their trial courts on a piecemeal basis. For example, Monroe County merged the Monroe Superior Court with the Monroe Circuit Court to create the Monroe Unified Circuit Court in 1993.⁷⁷ Additionally, the Marion County Municipal

67. *Id.* at 17.

68. *Id.*

69. *Id.* at 2, 17.

70. *Id.* at 17.

71. *Id.* at 20.

72. *Id.* at 16 (emphasis added).

73. *Id.*

74. *See Baker, supra* note 4, at 254.

75. *Id.*

76. Peggy Quint Lohorn, Chair of the Special Courts Comm., Presentation: Indiana's Court Structure (Mar. 2007).

77. IND. CODE §§ 33-4-10-1 to -8 (1993) (current version at IND. CODE 33-33-53-2 to -8 (2004 & Supp. 2007)). As a member of the Monroe Superior Court at the relevant time, I believe that the county's courts were actually unified *de facto* on January 1, 1981, when James M. Dixon, who had served as judge for Monroe Court Division I, was elected to the Monroe Circuit Court. The courts merged their budgets, personnel, and probation departments at that time.

Courts were merged into the Marion Superior Courts in 1995.⁷⁸ More recently, Delaware County unified its courts into one court of general jurisdiction, the Delaware Circuit Court.⁷⁹ While these counties' courts have a unified structure, they are still largely funded by the counties over which they preside.

V. RENEWED PUSH FOR REFORM

In 2007, at the request of Indiana Supreme Court Chief Justice Randall T. Shepard, the Special Courts Committee ("SCC") reviewed the structure of Indiana's court system.⁸⁰ The SCC, chaired by Montgomery County Superior Court #2 Judge Peggy L. Quint Lohorn, observed that because Indiana does not have an overall goal for a structured trial court system,

the Commission on Courts and the General Assembly continue to address individual local requests for amendments to the trial court structure on an ad hoc basis in order to meet the growing local needs. As a result, the state's current trial court structure is among the most complex in the United States, varies among the counties, and hinders judicial attempts for efficient administration and case processing.⁸¹

The SCC identified six benefits that would result from unifying Indiana's courts, including (1) an easier system for residents to use and understand, (2) improved public perception of the system, (3) a more efficient and economic use of judicial resources, (4) increased local cooperation, (5) combined resources to achieve economies of scale, and (6) the elimination of jurisdictional gaps.⁸² Ultimately, the SCC concluded that "any proposal should continue to give local courts autonomy in designing the local organization to meet local needs (i.e. case allocation), and oversight of administrative issues, such as court employee matters."⁸³

The 2007 property tax crisis also renewed calls for reform.⁸⁴ In July 2007,

78. IND. CODE § 33-6-1-1 (repealed 1995). The Marion County courts are now governed by IND. CODE §§ 33-33-49-1 to -34 (2004 & Supp. 2007).

79. IND. CODE § 33-33-18-2 (2004).

80. Lohorn, *supra* note 76.

81. *Id.*

82. *Id.*

83. *Id.*

84. The Legislative Services Agency estimates that net property taxes in Indiana rose by approximately \$800 million between 2006 and 2007—an increase of more than 14% and approximately six times the current inflation rate of 2.36%. Brian Howey, *Solutions are Pending on the Property Tax Crisis*, MUNCIE FREE PRESS, Oct. 4, 2007, available at <http://www.munciefreepress.com/node/17438>. As a result of this steep increase, lawmakers have provided \$550 million in relief through rebates and homestead credits for homeowners over the next two years. Associated Press, *Property Tax Hikes Hot Topic Nationally*, J. & COURIER (Lafayette, Ind.), Dec. 26, 2007, at A1. Additionally, on October 23, 2007, Governor Daniels "proposed a sweeping plan that would cap tax bills for homeowners, landlords and businesses." *Id.* The proposed plan "would

Chief Justice Shepard and former Governor Joe Kernan were appointed to chair the bipartisan Indiana Commission on Local Government Reform (“ICLGR”).⁸⁵ The ICLGR was charged with recommending ways to restructure local government to increase efficiency and reduce the financial burden on Indiana taxpayers.⁸⁶ Specifically, the ICLGR was entrusted with “reviewing previous studies and analyses of local government reform and restructuring in Indiana,” “gathering additional information it deems necessary,” and “develop[ing] recommendations that, if adopted, would make a real difference in the operation and cost of local government.”⁸⁷

On December 11, 2007, the ICLGR released a report containing twenty-seven recommendations for streamlining Indiana’s local government.⁸⁸ The proposed changes recommend, in part, abolishing township government,⁸⁹ eliminating county commissions,⁹⁰ electing a single county executive,⁹¹ and consolidating more than half of Indiana’s school districts.⁹² “If enacted, the recommendations would reduce the number of local government units from 3086 to 1931” and lower the number of elected officials by more than half, from 11,012 to 5171.⁹³

While the ICLGR did not specifically recommend structurally unifying Indiana’s court system, Recommendation #7 proposes shifting trial court funding from local government to the State:⁹⁴

By state law, Indiana trial courts have responsibility for criminal, civil and juvenile cases and for providing probation officers and public defenders. But most funding for these courts and court personnel is provided by county [property] taxes. This system of county funding for personnel and programs, required by state law, has created inherent tensions between county governments and the judiciary. In addition, inequities exist among counties’ caseloads, personnel and probation and public defender programs. This means that some Hoosiers are denied

be funded in part by raising the state sales tax” to seven percent. A summary of the Governor’s proposed property tax relief plan is available at http://www.in.gov/gov/files/Tax_Plan_Summary.pdf (last visited Jan. 16, 2008).

85. Indiana Commission on Government Reform, <http://indianalocalgovreform.iu.edu/> (last visited June 9, 2008).

86. MITCHELL E. DANIELS, JR., IND. OFFICE OF THE GOVERNOR, BLUE-RIBBON COMMISSION ON LOCAL GOVERNMENT REFORM: GOVERNOR’S CHARGE TO THE COMMISSION, http://indianalocalgovreform.iu.edu/assets/docs/Charge_Complete_Text_final_7-25-07.doc.

87. *Id.*

88. *See generally* ICLGR REPORT, *supra* note 11.

89. *Id.* at 17.

90. *Id.* at 16.

91. *Id.*

92. *Id.* at 27.

93. Mary Beth Schneider, *Reform Proposal Slices Indiana Government*, INDIANAPOLIS STAR, Dec. 11, 2007 (on file with author).

94. ICLGR REPORT, *supra* note 11, at 23.

prompt access to courts and court services simply because they live in a county unable to support its local courts at the same level as others.

While trial court judges would continue to be responsible for local court personnel and administration, state funding would improve the judiciary's ability to allocate resources where they are needed most. This would help assure equal access to courts, probation, services and public defenders. In addition, state funding would reduce costs by allowing purchasing to be done on a larger scale.

We recommend that the state assume funding for the state's trial court system, including probation officers and public defenders, so that the Indiana courts can meet the needs of the people they serve; conflicts with county government be eliminated; equal access can be assured; and economies of scale can be achieved.

Because state money, court costs and user fees already finance so much of court expenses, and because implementation should be a multi-year project, the fiscal impact should be manageable.⁹⁵

VI. NOW OR NEVER

At the press conference releasing the ICLGR report, Governor Daniels opined that the structure of Indiana government "is in need of modernization."⁹⁶ When pressed about the likelihood that the ICLGR's proposals would be adopted, Governor Daniels and former Governor Kernan both responded, "If not now, when?"⁹⁷ The tremendous public outcry about the 2007 property tax crisis makes the upcoming legislative sessions ripe for action.⁹⁸ Scholars have previously predicted that it would take the efforts of organizations beyond the legal community to bring about reform in our court system,⁹⁹ and these recent events could be the impetus needed to bring about substantive change in our State's system.

The SCC's findings and the ICLGR report propose structural court unification and a shift to state funding. These proposals are based on substantive data and principles that have been advanced, but not implemented, in Indiana for

95. *Id.* Additionally, Recommendation #3 advocates that the county clerk's duties be transferred to the courts. *Id.* at 17.

96. ICLGR Report Press Conference, *supra* note 3.

97. *Id.*

98. Numerous protests were held in response to the increased property taxes and some residents "dunked their [property tax] bills in rivers and lakes to mimic the Boston Tea Party." Mike Smith, *Property Taxes to Dominate 2008 Session in Indiana*, ASSOCIATED PRESS, Jan. 2, 2008, available at http://biz.yahoo.com/ap/080102/in_xgr_legislative_preview.html?v=1&printer=1.

99. See, e.g., Robert A. Leflar, *The Quality of Judges*, 35 IND. L.J. 289, 292-93 (1960).

decades.¹⁰⁰ Specifically, court unification and the shift to state funding would lead to a more efficient judicial system that provides taxpayers with the financial relief they demand. However, proponents of reform will likely meet resistance, and as others have suggested,¹⁰¹ a legislative study committee may be the best method to study the specifics of implementation.

While it will take years to implement these monumental reforms and transition local government, the positive effects of these changes will be worth the growing pains. We must act now to improve our court system's efficiency, reduce spending, and modernize Indiana. Therefore, I ask Indiana citizens and public officials to support structural unification and state funding, and I submit the following general framework for implementation—which presents only some of the countless benefits this reform will bring—for your consideration.¹⁰²

A. Structural Unification

Shifting to a unified system would have the greatest impact on Indiana's trial courts. Structural unification would reduce the number of trial courts in our State by consolidating each county's courts into one court of general jurisdiction. Each court would be comprised of the number of judges deemed necessary to handle that county's expected caseload. While the court would be staffed with the necessary personnel, positions that overlap in our current system would be eliminated. Each court would be overseen by an administrator who would be responsible for managing the cases entrusted to that court.

Structural unification and centralized administration would increase flexibility and result in greater efficiency for each county's system.¹⁰³ For example, under our current system, every county has a number of autonomous trial courts, each comprised of a judge and the necessary support staff. Each judge receives cases within his court's jurisdiction, but there can be a wide disparity between the caseloads of various courts within the county.¹⁰⁴ However, after unification, all of the judges in the county would be members of one court of general jurisdiction. In that system, the court's central administrator could assign cases based on each judge's docket, and these cases could easily be transferred between judges. This would increase the overall efficiency of the

100. I do not mean to downplay significant advances that have been made in the administration of our judicial system. For example, implementing the weighted caseload measurement system, adopting Administrative Rule 1, which allows for county caseload allocation, IND. R. CT. ADMIN. R. 1(E) (effective Jan. 1, 2006), and increasing judicial compensation demonstrate considerable progress. However, there has been little movement toward statewide structural unification, which the JSC proposed in 1966, or state funding, which the CTC proposed in 1988.

101. During the 2008 legislative session, Indiana House Representative Dave Crooks plans to introduce a bill assigning the Kernan-Shepard recommendations to a 2008 summer study committee. Bryan Corbin, *Lawmakers Push Reform*, EVANSVILLE COURIER & PRESS, Dec. 27, 2007, at 1, available at <http://courierpress.com/news/2007/dec/27/lawmakers-push-reform>.

102. I do not address the selection of trial court judges for the unified system in this Article.

103. See Baker, *supra* note 4, at 235; Dosai et al., *supra* note 37, at 1297-98.

104. See Baker, *supra* note 4, at 234-35.

system, as shown by the remarkable results reported by the St. Joseph Superior Court only one year after unification.¹⁰⁵

Reports on the Minnesota court system indicate that structural unification would not preclude a county from specializing its courts or rotating judges.¹⁰⁶ For example, if a county is aware that it has a high number of rental properties that result in frequent landlord-tenant disputes, the county could allocate resources to those cases by assigning one judge to deal exclusively with landlord-tenant matters.¹⁰⁷ Alternatively, the judges could rotate to that subject matter.¹⁰⁸ Court specialization and judge rotation do not defeat the purpose of structural unification because all of the judges are still members of the same court. This flexibility makes it easier for the county administrator to allocate cases between the judges and shift resources where they are needed to increase efficiency. As emphasized by the SCC, each county will have the responsibility to determine exactly how its unified system operates, and the local judges, county administrator, and members of the bar should work together to structure a system based on their county's specific needs.¹⁰⁹

Unifying the state court system would also include unifying county probation departments. Currently, probation officers are trial court employees who are subject to the appointment and supervisory powers of the courts they serve.¹¹⁰ Although some counties have already unified their probation services, a number of counties still have multiple probation departments with each working for a different court.¹¹¹ For a more effective system, each county's probation department should be unified with the county's court of general jurisdiction. Thus, although the same number of probation officers would be needed, only one paymaster would be necessary to administer the system.

On a statewide level, the unified courts would be administered by the Indiana Supreme Court, which would have the authority to adopt rules concerning the employment and management of court personnel. The Indiana Supreme Court's Division of State Court Administration would have additional responsibilities and would be responsible for overseeing each county's court administrator. The Division of State Court Administration would work with local court administrators to collectively address problems that affect counties throughout Indiana. This collaboration would improve the state's entire judicial system by combining the minds and resources of Indiana's public officials statewide.

105. *See supra* note 55 and accompanying text.

106. *See supra* note 37 and accompanying text.

107. *See* Dosal et al., *supra* note 37, at 1298.

108. *Id.*

109. *See supra* Part V.

110. SUPREME COURT OF IND., 2006 INDIANA JUDICIAL SERVICE REPORT: HONORED TO SERVE, VOLUME III: FINANCIAL REPORT 5, available at <http://www.in.gov/judiciary/admin/courtmgmt/stats/2006/v3/intro.pdf>.

111. *Id.*

B. State Funding

Shifting primary responsibility for funding Indiana's trial court system from the counties to the State would improve the judiciary's ability to allocate resources where they are needed most. Centralized funding would provide local courts with reliable resources to meet the needs of the people they serve. While urban counties will undoubtedly receive more money than their rural counterparts because of higher populations and caseloads, the State would need to develop a system to allocate resources proportionately, for example, based on the number of judges and cases per county. Equalized distribution would guarantee that money is apportioned consistently, based on each county's demand, instead of on a county's ability to generate revenue.

Statistical data show that the State has increased its share of the total amount of trial court expenditures over the past ten years.¹¹² In 1997, local governments financed 70% of the trial courts' operating expenses, and the State financed the remaining 30%.¹¹³ In 2006, local governments financed 64% of the trial courts' operating expenses, and the State financed the remaining 36%.¹¹⁴ Although this 6% increase¹¹⁵ over ten years may not initially appear significant, counties likely raised property taxes and court costs to cover the expenditure boom. However, those means of generating capital have likely hit a ceiling, as demonstrated by the substantial public outcry about recent property tax increases.¹¹⁶ Consequently, the State will likely be expected to carry an even larger percentage of the bill when local governments are no longer able to generate enough revenue to subsidize the ever-increasing expenditures.

Because the State will be called on to fund a larger percentage of the trial court system's expenditures, it logically follows that the State should have control over the administration and distribution of the funds. By shifting the entire burden to the State, a centralized entity would administer the funds and guarantee a more equal distribution, as detailed above.¹¹⁷ Additionally, centralized administration would provide more transparency to track court spending, increasing accountability and raising confidence in the judicial system.

In a centralized system, the State would fund the salaries of court staff, thus eliminating contentious salary disputes between trial courts and county commissioners. While there would be a base salary for each court position, salaries would be adjusted for cost of living differences between counties. For example, the Division of State Court Administration would calculate a general base salary for court reporters. That salary would be adjusted upward or downward based on the cost of living in the county where the employee works. Because structural unification would eliminate overlapping jobs, theoretically,

112. See IJSR REPORT, VOL. I, *supra* note 12, at 183.

113. *Id.*

114. *Id.*

115. Adjusted for inflation, in 2006, the State spent \$52,952,343 more on the trial court system than it did in 1997. *Id.*

116. See *supra* notes 84, 96 and accompanying text.

117. See *supra* Part II; *supra* notes 42-44 and accompanying text.

this method of compensating local employees would result in equal pay for equal work throughout Indiana.

Finally, state funding would increase the collective amount of money available for major capital expenditures and programming initiatives that would typically be beyond the reach of individual counties. For example, state funding could provide all local courts with access to a statewide computer system that would centralize case information and eliminate information gaps by storing data in one database.¹¹⁸ This would make it easier for courts to determine if parties have related cases pending in other jurisdictions. Additionally, state funding would increase the trial courts' collective purchasing power and save money. For example, items all trial courts need—office supplies, forms, books, recording devices, office furnishings, computers, printers, fax machines, etc.—could be purchased in mass quantities, lowering the cost per unit and resulting in substantial savings.

CONCLUSION

After conducting extensive research on structural unification and state funding, one theme resonates with both topics—the proverbial whole is greater than the sum of its parts. Indiana's disjointed court system would operate more efficiently if it were structurally unified and administered at the local level by a central administrator and on the state level by a central agency. State funding would equalize resources by allocating money proportionately throughout the state while combining resources to collectively address initiatives that would otherwise be beyond the reach of individual counties.

As Chief Justice Shepard recently proclaimed, we are “a judiciary with reform in its heart.”¹¹⁹ Structural unification and state funding are the tools Indiana needs to modernize its court system and join the twenty-first century. Now is the time to implement the reforms that Indiana's scholars and public officials have been advocating for decades.

118. I applaud the success of the Judicial Technology and Automation Committee's ("JTAC") Odyssey Case Management System, which recently linked court and clerk officials in participating Monroe County and Marion County courts. JTAC plans “a statewide rollout occurring over the next several years.” Press Release, Judicial Tech. and Automation Comm., December “Go Live” Set For First Odyssey CMS Sites: Statewide System to Launch in Monroe County and Washington Township, Marion County (Dec. 19, 2007), *available at* <http://www.in.gov/judiciary/jtac/news/cms-golive2007.html>.

119. Randall T. Shepard, Chief Justice, Ind. Supreme Court, 2008 State of the Judiciary Address: “A Court with Reform in Its Heart” (Jan. 16, 2008), *available at* <http://www.in.gov/judiciary/supreme/stjud/2008.html>.

2008]

NOW OR NEVER

837