

# **PROGRAM AUDIT REPORT**

## **Court Unification in Kansas**

**A Report to the Legislative Post Audit Committee  
By the Legislative Division of Post Audit  
State of Kansas  
September 1979**

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1. By law, the Division reviews the financial affairs and operations of each State agency at least once every two years, including appropriate agency controls, receipts, expenditures, and other records and systems. The Division also reviews other aspects of an agency's operations to determine whether the State's laws, policies, and programs are being carried out effectively, efficiently, and economically.
2. At the direction of the Legislative Post Audit Committee, the Division reviews and assesses particular State programs to determine how effectively and efficiently a program is meeting its goals and whether legislative intent is being fulfilled.
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COURT UNIFICATION IN KANSAS

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## FOREWORD

Since 1965, the Legislature has passed a series of laws creating a Unified Judicial Department and a new Court of Appeals, reapportioning the judicial districts, consolidating the lower courts into the district courts, and assuming the salaries of non-judicial employees in the district courts. This audit was requested by the Legislative Post Audit Committee to see how effective the State's efforts have been so far in creating a unified court system and placing that system under the central management of the Supreme Court.

Unification officially got underway on January 10, 1977. One may argue--as the Judicial Department has--that an audit so soon after unification is premature. Legislative Post Audit would be the first to acknowledge that the findings in this report may not be a prediction of what changes or improvements may occur in the court system over time as a result of unification. However, they do indicate that little change has occurred, and that the Supreme Court is not using the authority given to it by unification to actively manage the judicial system and implement the Legislature's intent that the court system ensure "just, speedy, and inexpensive litigation" is provided to citizens throughout the State. In line with that intent, the audit addresses three areas of the court system affected by unification: financing of the system, processing times for district court and appellate court cases, and management of judicial system resources, such as judges, non-judicial employees, and court facilities.

The primary financial effect of unification has been a major shift in funding the court system from the counties to the State. In fiscal year 1976, the State's share of the system cost was about one-third of the total, or \$6.8 million. By fiscal year 1979, the State's share had grown to \$18.3 million, or just over half the total, and by fiscal year 1982, the auditors projected the State's share would grow to at least \$32.8 million, or nearly three-fourths of the total system cost. Their projection did not assume any growth in judicial programs or personnel, so the costs in 1982 could be considerably greater. The audit shows that the net cost to the State of unification was an increase of \$4.5 million in 1979, and will be at least \$14.7 million in 1982. At the time the Legislature was deciding to proceed with unification of the court system, the best cost data it had indicated that the total cost would be much lower.

In reviewing the effect of unification on the speedy handling of court cases, Legislative Post Audit was faced with a number of constraints. The auditors' selection of cases had to be limited to keep the audit to manageable proportions--excluding traffic cases, there were more than

200,000 active cases in fiscal year 1978. Moreover, the data available presented great difficulties--specifically, it was inconsistent and incomplete, and much of it was not comparable between fiscal year 1976, before unification, and fiscal year 1978, after unification had gotten underway. The auditors could compare the processing times for three types of cases--criminal, civil over \$3,000, and domestic relations--with statutory time processing standards for criminal cases and with recommended standards of the American Bar Association for civil cases.

The audit found that unification of the court system appears to have had little effect at the district court level on reducing the time needed to process cases. The number of cases exceeding the six-month standard dropped only slightly, from 3,712 to 3,285, and the average time needed to process district court cases in all 29 judicial districts was 6.8 months, ranging from 5 months to a little more than 9 months.

The auditors were hampered in determining why cases took so long to process by a lack of documentation in the court records. Only by tracing selected case histories, interviewing attorneys and court personnel, and surveying Kansas judges and attorneys did they find that most trial delays in Kansas are caused by attorneys, indicating that the attorneys and not the courts were controlling the pace of litigation. Both the lack of documentation and the courts' failure to actively control and monitor the status of court cases in comparison with the speedy trial standard have resulted in instances where criminal defendants have been released without determination of guilt or innocence.

Appeals cases have fared much better under unification. Since the creation of the Court of Appeals, the appellate process has become more accessible to litigants throughout the State, and total processing times for appealed cases have declined. The appellate courts have also begun to reduce the backlog of cases that plagued the Supreme Court before unification and immediately afterwards when the number of appealed cases increased substantially. Despite the improvements, however, the appeals cases in Kansas do not meet the six-month processing standard recommended by the American Bar Association. The audit recommends steps the Supreme Court can take to improve the management and processing time of both district court and appellate court cases.

The audit also found the management of the judicial system's resources has not significantly changed or improved since unification. Legislative Post Audit found that judges' caseloads varied from 360 to 1,688 cases per judge, clearly out of line with the intent of unification that caseloads be as nearly equal as possible. Three primary reasons emerged in determining why caseloads are not more equal. First, by law one judge is located in each county. Thus, more judges are assigned to the rural districts, which have the fewest number of cases. Second, district magistrate judges, who make up nearly half the judicial workforce, are not

being used to handle many of the cases they could hear. In fiscal year 1978, they handled only 13 percent of the State's active cases, compared with the 60 percent that were within their jurisdictions. Finally, few reassignments are being made within and across judicial districts to help equalize caseloads, even though most judges surveyed by Legislative Post Audit thought such reassignments were an effective solution to case delays. The report makes recommendations in each of these areas.

With unification of the court system, the Supreme Court became responsible for ensuring the system's non-judicial personnel were used as efficiently as possible. The audit found, however, that wide variations existed in the number of cases per employee and in the number of employees per judge, even among similar types of districts. For example, in the rural districts, the number of non-judicial employees per judge ranged from 2.3 to 9.0, while the average number of cases per employee ranged from 125 to 260. The audit report recommends that the Supreme Court begin collecting information on its non-judicial employees so that it can determine whether future personnel requests are justified and whether some reassignments may be necessary.

Finally, the audit reviewed the adequacy of court facilities in eight sample judicial districts visited by the auditors. With few exceptions, the number of courtrooms available were sufficient and appeared to have little adverse effect on the time needed to process cases. Some courts did have problems with inadequate or insufficient support space. The auditors also interviewed court personnel, the majority of which expressed a similar concern over the lack of or the condition of support space facilities. Many also pointed out the lack of support by county governments for improving these conditions. The audit recommends that the Supreme Court address these problems. Although the Court is not responsible for providing court facilities, it is responsible for ensuring that adequate space and local financial support is provided.

In its response to a draft copy of the audit report, the Judicial Department did not specifically address any of the recommendations, although it had been asked to do so. It did point out what it termed a number of "material" and "technical" errors in the report. Legislative Post Audit carefully scrutinized each point. The majority were immaterial and did not relate to the substance of the audit. In a few instances, minor changes or clarifications were made.

The audit manager of this audit was Theresia Sculley. She was assisted at various stages in the audit by team members Bruce Roberts, Donna Mikols, Vicky West, and Robert Clawson. Legislative Post Audit appreciates the cooperation extended to the auditors by officials of the Judicial Department.

  
RICHARD E. BROWN  
Legislative Post Auditor



# **Summary of Matters for Legislative Attention**

## **Audit Findings and Conclusions**

January 1977 marked the start of a unified court system in Kansas and a culmination of legislative efforts to address the need for reorganization of the Kansas court system. This need stemmed from problems that were noted as early as 1965, including delays in processing cases, inefficient use of personnel and facilities, and inequitable distribution of cases among judges. The State has made a sizable financial commitment to unification and to an effective and efficient court system. State support of the court system totaled about \$18 million in fiscal year 1979 and is estimated to rise to at least \$33 million by fiscal year 1982. Because little information has been available on how effective the State's efforts to reorganize the court system have been so far, the Legislative Post Audit Committee requested a program audit of the unified judicial system. To determine how successful those efforts have been, the audit addressed the following questions:

1. What was the intent of the Legislature regarding the creation of the Kansas unified judicial system?
2. To what extent has the judicial system been unified, and what effect has unification had on the processing of cases?
3. Are the resources available to the court system, specifically personnel and facilities, being managed as intended by unification?

### **Development and Legislative Intent of the Judicial System**

The auditors found that developments in the judicial system over the years have followed a consistent path toward a unified and centrally-administered court system. The legislative intent of the court system, as stated by law, is to ensure that "just, speedy, and inexpensive litigation" is provided to litigants throughout the State. Both constitutional and legislative changes have been made to achieve that end. Acting on the recommendations of the Citizens' Conference on Modernization of the Kansas Courts, the 1965 Legislature passed the Judicial Reform Act, creating a Unified Judicial Department and placing the district courts for the first time under the central administration of the Supreme Court. The

Act was followed by a 1968 reapportionment of the judicial districts to help equalize judges' caseloads, and a 1972 revision of the Kansas Constitution giving the Supreme Court administrative authority over all courts in Kansas.

The constitutional amendment also mandated the development of a unified judicial system. In 1973, the Legislature appointed the Judicial Study Advisory Committee to study the court system and recommend changes. Its recommendations became the basis for statutory changes to bring about court unification, including the creation of a Court of Appeals to expedite the appeal process and the consolidation of all lower courts into the district courts. Both changes became effective January 10, 1977, and marked the start of unification. Thus, the court structure under unification comprises three courts--the Supreme Court, the Court of Appeals, and 105 district courts--all under the central administration of the Supreme Court. The State's role in bringing about unification was further expanded after a 1976 Attorney General Opinion stating that non-judicial district court personnel were State employees led the 1978 Legislature to require the State to begin paying those employees' salaries. The salary takeover began on January 1, 1979, and will be totally phased-in by fiscal year 1982.

#### Financing the Judicial System

The primary effect of unification--brought on by legislative actions that unified the court system and made the State responsible for salaries of all judicial and non-judicial personnel--has been a major shift in funding the court system from the counties to the State. In fact, the State's and counties' funding responsibilities have been reversed. In fiscal year 1976, the State's share of the \$21.5 million judicial bill was only \$6.8 million, or about one-third of the total. But by fiscal year 1979, the State's share had grown to \$18.3 million, or just over half the total system cost of \$35.2 million. And by fiscal year 1982, the auditors projected the State's costs would rise to at least \$32.8 million, nearly three-fourths of a projected \$45.5 million system cost. Their projection is probably conservative--it assumes no growth in judicial personnel or programs, even though for fiscal year 1980 the Legislature allocated 16.4 of the 44.5 positions requested by the Judicial Department. As such additions occur, the State will absorb even larger costs than projected.

The auditors found that, excluding revenues transferred from the counties to the State to offset growing State costs, the net impact of unification on Kansas was an increase of \$4.5 million in fiscal year 1979, and will be at least \$14.7 million by fiscal year 1982. In 1973, the Judicial Study Advisory Committee, appointed by the Legislature, projected the total net cost increase to the State because of unification. Even after the auditors adjusted the Committee's projection to make it comparable to

Legislative Post Audit's estimate for 1982, they found the Committee's projection was \$5.7 million (285 percent) too low. The Committee's projection was essentially the best estimate the Legislature had at the time it decided to proceed with unification of the court system. Because the Committee's estimate was so low, the Legislature could not then realize how costly unification might prove to the State. In 1976, the Legislature commissioned the Resource Planning Corporation to study the Kansas court system and the cost of assuming non-judicial salaries. That study, dated October 1977, was too late to alter the course of unification in Kansas, but its projected costs for fiscal year 1979 came much closer to actual 1979 costs. Nonetheless, the State's court system costs continue to accelerate rapidly.

### Effects of Unification on Processing Court Cases

The auditors found they could not compare case processing times for all district court cases before and after unification because of severe limitations in the Judicial Department's case statistics, including unreported, inconsistent, and incomparable data. Nevertheless, they could make "before-and-after" comparisons for three types of contested terminated cases: criminal cases, civil cases over \$3,000, and domestic relations cases. The cases selected were compared to processing time standards that have been established for both criminal and civil cases. By law, a defendant in a criminal case must be brought to trial within three months after arraignment if held in jail and within six months if released on bond. For civil cases, the American Bar Association recommends a standard of six months.

The auditors found that, to date, unification of the court system appears to have had little effect at the district court level on reducing the time needed to process cases. Since unification, the number of cases exceeding the six-month time processing standard has dropped only slightly--from 3,712 in fiscal year 1976 to 3,285 in fiscal year 1978. In comparing case processing times within the 29 judicial districts, the auditors found it took an average of 6.8 months to process or terminate district court cases in 1978, ranging from an average of five months to a little over nine months. Altogether, 18 of the 29 judicial districts exceeded the six-month standard, including all four of the predominantly urban districts, which processed about half the State's caseload in 1978.

The auditors discovered a pervasive lack of documentation in court files for the reasons for case delays. Only by tracing selected case histories and by interviewing attorneys and court personnel involved in those cases could they determine that most trial delays in Kansas were caused by attorneys. This indicates that attorneys, and not the courts, control the pace of litigation. The National Center for State Courts has indicated that when this occurs, processing times are generally slower than

when judges control the courts through active management of their cases. Both the lack of documentation and the lack of court control over the speed with which cases proceed to trial have led to the release of a criminal defendant without determination of guilt or innocence because the trial exceeded the speedy trial standard.

Finally, a vast majority of both judges and attorneys surveyed by Legislative Post Audit listed benign delays--where both attorneys agree to postpone the case--and attorneys' delays as the most important causes of delay. In both types, the attorneys play the major role in dictating court practices. The auditors found that the Supreme Court, which is ultimately responsible for management of the court system, has not taken an active role in setting record-keeping standards and in requiring the courts to accept responsibility for case management.

The court reform that led to unification also resulted in significant changes to the appellate structure of the judicial system. Specifically, the Court of Appeals was created, and many cases formerly appealed from the lower courts to the district courts began to be appealed from the consolidated district courts to the Court of Appeals. The auditors found that the addition of the seven-member Court of Appeals, which could divide into three-judge panels to hear cases in any county in the State, plus the lifting of monetary restrictions on appealed cases, had made the appellate process more accessible to litigants across the State. They also found that the total processing time for appealed cases has improved. In fiscal year 1978, civil cases took between 10 and 14 months to process compared with 17 months in 1976. Criminal cases took 10 to 11 months to process compared with approximately 17 months in 1976. Even with the overall improvement, however, appealed cases in Kansas do not yet meet the six-month appeal case processing standards recommended by the American Bar Association.

Changes in the appellate structure resulted in a tremendous influx of new cases into the appellate process at the Supreme Court and Court of Appeal level. Appeal cases filed with these two courts increased about 46 percent in just two years, from 438 in fiscal year 1976 to 944 in fiscal year 1978. Although this influx initially overwhelmed the courts' capacity to hear and resolve cases, the auditors found that the number of new appeals was increasing at a slower rate by 1979 while the Court of Appeals had substantially increased the number of cases it was resolving. Thus, both courts were substantially reducing their backlog of cases. The intent to reduce the time needed to process cases still appears to be a problem, however.

#### Resource Management Within the Judicial System

The auditors looked at the Supreme Court's management of three resources--judges, non-judicial employees, and court facilities--to see what

effect the implementation of unification has had on each. In general, they found that management of judges' caseloads would appear to have a greater impact on the efficient and timely processing of cases than non-judicial personnel or court facilities.

The auditors first examined judges' caseloads for fiscal years 1976 and 1978. Although a judge's caseload does not reflect his full workload because of differences in the types of cases he may handle, it does provide a relative measure of judicial activity. The auditors found a wide variation in caseloads per judge continued to exist after unification, ranging from an average of 360 cases per judge to 1,688 cases per judge. They discovered three primary reasons why the effective use of judges was being hindered and why caseloads were not being equalized as intended by unification. First, because by law one judge is located in every county in the State, more judges are assigned to the rural districts, which have the fewest number of cases. In fact, judges in rural districts handle less than half as many cases as judges in the predominantly urban districts.

Secondly, the auditors found that district magistrate judges, who make up nearly half the judicial workforce, were not being used to hear many of the cases within their jurisdictions to help relieve the heavy caseloads of associate district judges. District magistrate judges had an average caseload of only 291 cases in fiscal year 1978, compared with an average of 1,088 cases for associate district judges and 623 for district court judges. They handled only 13 percent of the active caseload in fiscal year 1978 compared with the 60 percent they could have handled. The auditors suggested that steps could be taken to help equalize caseloads by requiring administrative judges within each district to more equitably assign cases to district magistrate judges whenever feasible.

Finally, the auditors found the Supreme Court had not effectively used the tool of reassigning judges within and across judicial districts to help equalize caseloads, even though most of the judges surveyed by Legislative Post Audit thought such reassignments were an effective solution to case delays. The number of general reassignments dropped from 48 in fiscal year 1976 to 44 in fiscal year 1978, all of which were initiated by the district courts or the administrative judges. Assignments made to reduce heavy caseloads dropped from 36 to 15. Overall, the variation in judges' caseloads signals the need for the Supreme Court to use its authority to monitor caseloads, improve the use of judges, and initiate reassignment where needed.

During their review of the use and management of non-judicial personnel, the auditors found that wide variations existed among the number of cases per employee and the number of employees per judge. Some variations will naturally exist because of differences in rural and urban caseloads and in the types of cases, but the auditors found that variations existed even within similar types of districts. For example, in

the rural districts, the number of non-judicial employees per judge ranged from 2.3 to 9.0, while the average number of cases per employee ranged from 125 to 260. The auditors found that the Supreme Court does not collect information on non-judicial employees in the district courts on an on-going basis. Without such information, the Supreme Court cannot know whether future requests by the district courts for additional personnel are justified, whether non-judicial employees are being used as efficiently as possible, and whether changes need to be made in the assignment of non-judicial employees to various districts.

Finally, the auditors reviewed the adequacy of court facilities in eight sample judicial districts. They found the Supreme Court does not have an inventory of court facilities, nor does it have information on the adequacy of court facilities and the impact on processing cases. With few exceptions, the auditors found that the number of courtrooms available in the eight districts were sufficient and appeared to have little adverse effect on the time needed to process cases. They did find, however, that some courts were experiencing problems with inadequate support staff space. For example, Wyandotte County support space was 42 percent below the standard recommended in a 1978 North Carolina State University study of court facilities.

The auditors also interviewed court personnel about the adequacy of their courtroom and support space facilities. Although most felt their courtroom space was adequate, a majority expressed concern over the lack of or the condition of support space facilities. For example, some probation and parole officers in Wyandotte County were forced to conduct interviews in open areas because there was not enough space for private offices. In addition, many personnel pointed out a lack of support by county governments for improving these conditions. Although the Supreme Court is not responsible for providing court facilities, it is responsible for ensuring that adequate space is available to process cases and for addressing the problems noted with lack of local support.

### **Audit Recommendations and Agency Responses**

The draft audit report was sent to the Judicial Department for its review. This procedure is followed in the preparation of all audit reports and offers the agency an opportunity to point out any errors of fact, provide additional information to the audit's findings, and indicate its agreement or disagreement with the recommendations. The full text of the response can be found in Appendix D. The following is a list of the audit's recommendations, a summary of the Department's comments, and Legislative Post Audit's replies.

### Scrutinizing Requests for Additional Court Personnel

Because the State's costs for the court system, particularly those costs associated with personnel, will be so much higher than anticipated by fiscal year 1982, the Legislature and its committees should continue to carefully scrutinize requests for additional court personnel.

### Managing the Processing of Cases

The Supreme Court should begin to manage the processing of cases in the following ways:

1. Establishing time processing standards for all cases processed at the district court level. Variations from the standards should be documented on a case-by-case basis by the district courts and forwarded to the Supreme Court for evaluation and possible action.

These standards should be implemented by July 1, 1980.

2. Improving the collection and reporting of case processing information at the district court level to assure that the time processing standards are being met and that court records adequately reflect the actions of the court to protect both litigants and the public. This information should be forwarded to the Supreme Court and incorporated into the Unified Judicial Department's comprehensive plan for data processing. The Supreme Court should also ensure that the information on active case records, once it is collected and analyzed, is transmitted back to the district courts to allow a better management of those cases.

### Improving the Timeliness of the Appellate Process

To better allow the appellate process to meet time processing standards and to ensure that the appellate process continues to be accessible to litigants, the Supreme Court should:

1. Develop time processing standards for appellate cases. These standards should be used in evaluating the performance of the appellate courts. Variations

from the standards should be documented and evaluated by the Supreme Court for possible action.

These standards should be implemented by July 1, 1980.

2. As part of the annual budget request, the Supreme Court should develop and report to the Legislature the following information:
  - a. Number of cases disposed of by the Supreme Court and the Court of Appeals in the last fiscal year and a three-year projection of case filings and terminations.
  - b. Number of cases and length of time cases have been pending in the Supreme Court and Court of Appeals.
  - c. Proposed actions to resolve the remaining backlog of cases and to deal with cases which exceed the adopted time processing standards. This should include an evaluation of how effective the performance of the appellate courts has been, whether changes are needed in the number of judicial and non-judicial staff, and whether further revisions need to be made in the appellate procedure.

This recommendation should be implemented as a part of the fiscal year 1982 budget request.

#### Managing the Court System's Judicial Resources

The Supreme Court should take the following steps to more actively manage the judicial resources of the court system:

1. Assignment of Judges--By July 1, 1980, the Supreme Court should prepare a State plan for the judicial staffing of the district courts. The staffing plan should be based on the type of district and the overall caseloads of each county, and should ensure that all judges have approximately equal workloads. The Court should also ensure that reassignments are made within and across judicial districts to help reduce heavy caseloads and to improve the use of magistrate judges whenever necessary and feasible.

2. Management Information--By January 1, 1981, the Supreme Court should implement a management information system which collects accurate information on caseloads by district, workload by type of judge, and use of judges. The management system should conform to the criteria established by Supreme Court Rules to ensure that the workload of judicial districts is uniformly distributed.

#### Studying the Use of Non-Judicial Employees

1. Because there are large differences in the workloads of non-judicial employees in the judicial districts, the Supreme Court should carefully study the use of non-judicial employees in the court system. In doing so, the Supreme Court should collect workload information for the district courts on an on-going basis so that determinations can be made as to whether any changes are needed in the assignment of non-judicial personnel among the districts.

2. Based on its study, the Supreme Court should develop guidelines for the number of non-judicial employees per judge and the number of cases per non-judicial employee. These guidelines should take into consideration any differences in caseloads and types of cases in the rural, intermediate, and urban districts.

#### Assessing the Adequacy of Court Facilities

To ensure that court facilities do not hamper the processing of cases and other needed court services, the Supreme Court should do the following:

1. Develop an inventory of all existing court facilities to include the following:
  - a. Number and size of courtrooms.
  - b. Number and size of support facilities such as public and private offices, detention rooms, jury deliberation rooms, law libraries, and conference rooms.
  - c. Location, organization, and approximate age of court facilities.
  - d. Specific identification by the district courts of problems resulting from inadequate facilities.

2. Develop minimum space standards for courtrooms and court support facilities to be used as guidelines in determining whether facilities are inadequate. To allow for differences in the use of court facilities, the standards should take into account such factors as geographic location, county and district population, and the size of the caseload. These guidelines should be distributed to the 29 judicial districts and to the 105 county commissions to help them more effectively plan for and develop adequate court facilities.
3. Upon completion of the inventory and development of the standards, the Supreme Court should assess the adequacy of the facilities for the State's court system. Those facilities presenting the most serious problems to providing court services should be evaluated on site. In cooperation with the district courts, the Supreme Court should develop possible solutions to the space problems. In addition to considering securing more space for the courts, the solutions should include such considerations as reorganization of existing facilities and more efficient caseload management.
4. Finally, the Supreme Court should work with county governments to help resolve identified space problems. At a minimum, this coordination should include notification by the Supreme Court of problem areas in the counties' court facilities, and its assessment of the problem areas and possible solutions.

The inventory and the Supreme Court's assessment of the adequacy of present court facilities should be made available to the 1981 Legislature.

#### Agency Response

The agency response was in three parts: a cover letter by the Chief Justice of the Supreme Court, a response by the Acting Judicial Administrator, and a list of "material errors" the Department said it found in the report. Although Legislative Post Audit requested the Judicial Department to respond directly to each of the report's recommendations, the Department did not respond specifically to any of them. In his cover letter to the response, the Chief Justice said that "certain of the report's recommendations parallel plans of the Court." He did not elaborate, nor did the Acting

Judicial Administrator in his response. The Chief Justice's comment is a vague reference to the report's recommendations at best; however, it would appear from his comment that the Chief Justice seemed to agree with the general thrust of the recommendations.

In the response, the Acting Judicial Administrator focused his comments on three areas not related to the recommendations. First, he said "an evaluation of the effectiveness of the Kansas unified judicial system is premature at this time." Legislative Post Audit agrees that relatively little time has lapsed since unification began in January 1977. However, unification called for a centrally-managed court system, and sufficient time has lapsed to get an indication of whether the Supreme Court is actively managing the unified court system. The findings in the report indicate the Court has not yet done so.

Secondly, the response says the audit concludes that the Legislature was misled as to the net costs of unification to the State. Nowhere in the report does Legislative Post Audit say the Legislature had been "misled." Rather, Legislative Post Audit merely pointed out that at the time it was deciding to proceed with unification of the court system, the Legislature had a cost estimate that was considerably lower than the amount unification has actually cost the State. With that estimate, the Legislature could not realize the full cost impact of unification.

Finally, the response claims that "the caseload statistics used confine the judicial system of Kansas to an oversimplified, quantitative analysis" that "completely ignores the qualitative approach." Legislative Post Audit agrees that the quality of justice in Kansas is primary, but contends that some measurements can and must be made to determine how effectively and efficiently the court system is being managed. Good management can also have an effect on the quality of justice in Kansas' court system.

The auditors carefully considered each point in the response and in the list of "material errors" the Department said it had found. Most of these were in fact not "material errors." Some were areas that needed minimal clarification, others were so slight or were so unrelated to the substance of the audit as to be immaterial. Nonetheless, each point was scrutinized and in a few instances corrections or clarifications were made in the report.

### **Matters Remaining for Legislative Attention**

The Judicial Department's response did not specifically address any of the recommendations presented in the report. Therefore, the Legislative Post Audit Committee should proceed with consideration of all recommendations.

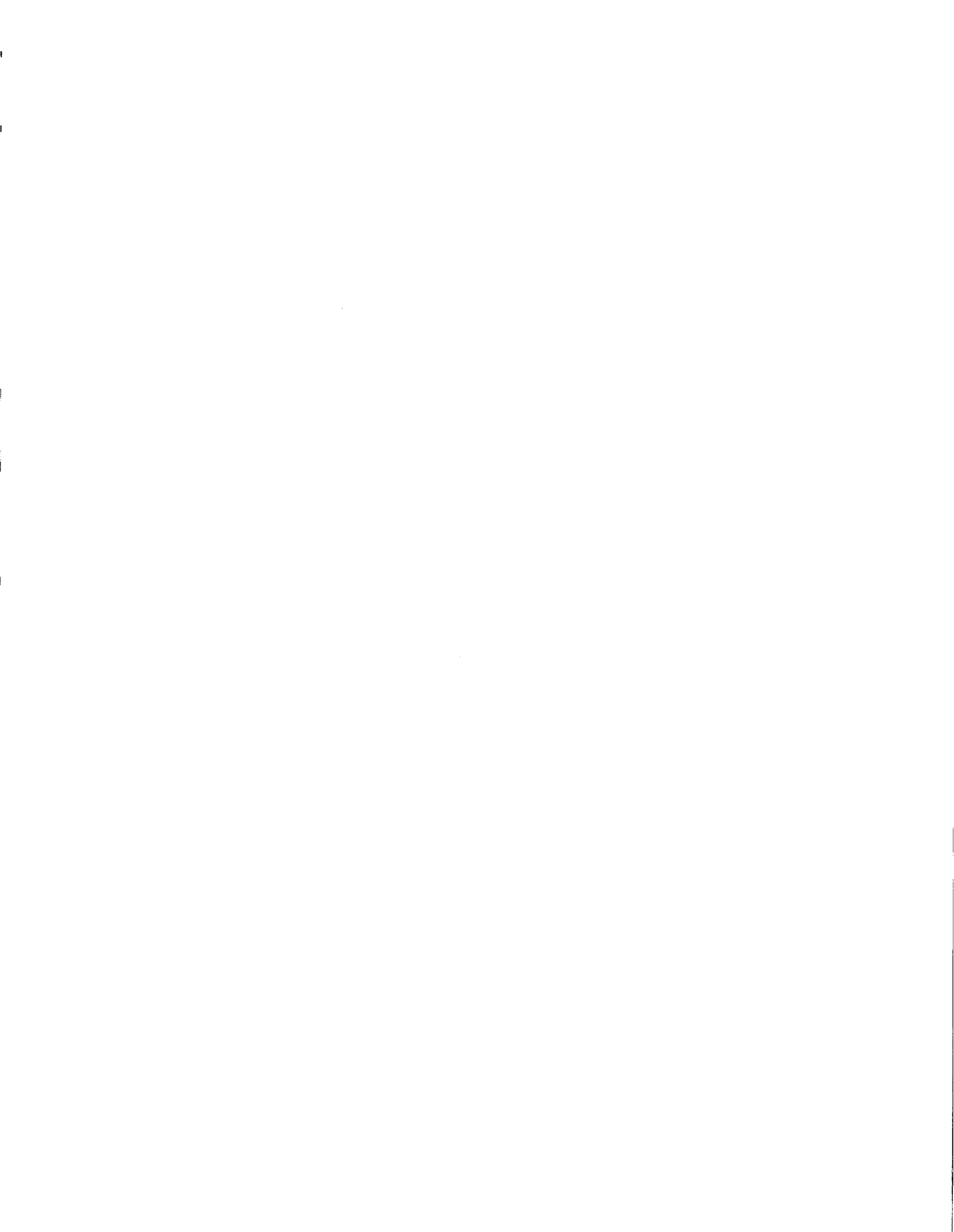


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## CHAPTER I

### INTRODUCTION

In 1965 the Legislature began a reorganization of the State's court system that is still continuing. In the last 13 years, eight major pieces of reform legislation have been passed, and the Judicial Article of the State's Constitution has been amended. Most recently, legislation passed in 1975 created a Court of Appeals and legislation passed in 1976 consolidated courts in the State. Both pieces of legislation became effective on January 10, 1977, and marked the start of a unified judicial system for the State. The State's role in bringing about unification was further expanded when the 1978 Legislature authorized the State to begin taking over the salaries of most of the personnel in the consolidated courts.

Some of the problems that led to the need for court reform included unnecessary delays in processing cases, inefficient use of personnel and facilities, and inequitable distribution of cases among judges. The need to know whether such problems are being addressed and minimized becomes particularly important when considering the State's strong financial commitment to ensure that unification meets the intended goal of providing its citizens with an effective and efficient court system. In the next three years, State support of the court system is estimated to increase from about \$18 million in fiscal year 1979 to an estimated \$33 million in fiscal year 1982, an 83 percent increase. The State will pay for and control most of the resources needed to operate a unified judicial system except for local court facilities and operating expenses.

Because of the sizable financial commitment by the State and because little information has been available on how effective the State's efforts to reform the court system have been so far, the Legislative Post Audit Committee requested a program audit of the unified judicial system. While this audit was being conducted, the Committee requested the Division to do another program audit, Analyzing the State Takeover of Salaries for District Court Personnel, to determine whether the State was assuming only those salaries it was legally required to pay. That audit, released in February 1979, pointed out problems in the Supreme Court's management of the personnel aspects of the court system. This audit looks at the Court's management of other areas in the court system.

## Audit Objectives and Methods

To determine how successful the State's efforts to create an effective and efficient unified judicial system have been so far, the audit addressed the following questions:

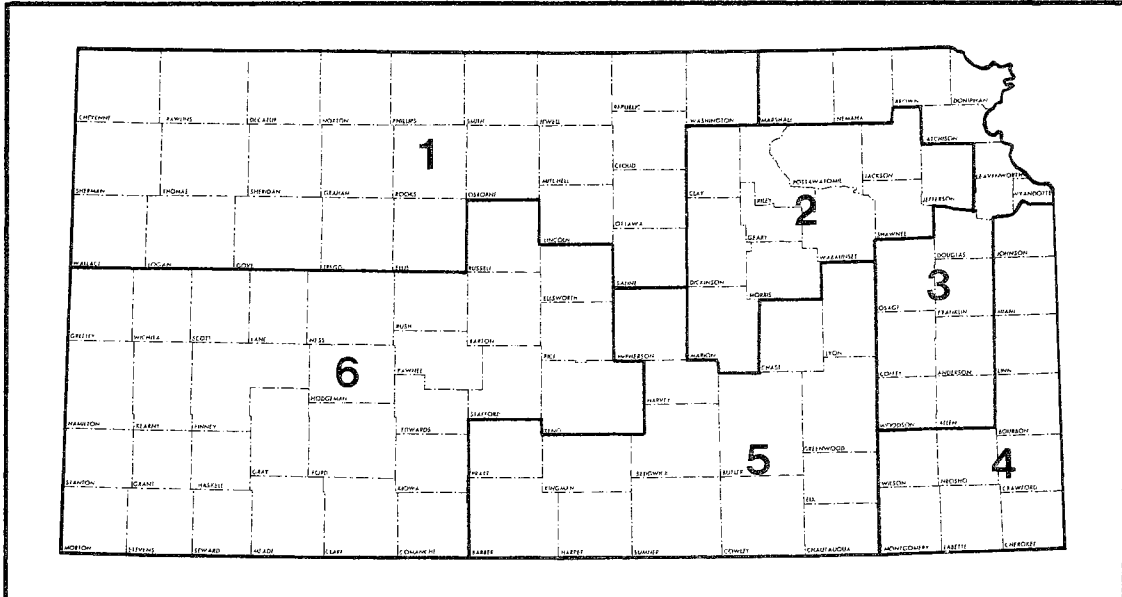
1. What was the intent of the Legislature regarding the creation of the Kansas unified judicial system?
2. To what extent has the judicial system been unified, and what effect has unification had on the processing of cases?
3. Are the resources available to the court system, specifically personnel and facilities, being managed as intended by unification?

To determine the legislative intent behind unification, the auditors reviewed statutes, legislative committee minutes, various studies of the Kansas court system, budget documents, and historical information on the development of the present court system. They also reviewed standards on court organization and the processing of cases published by such organizations as the American Bar Association.

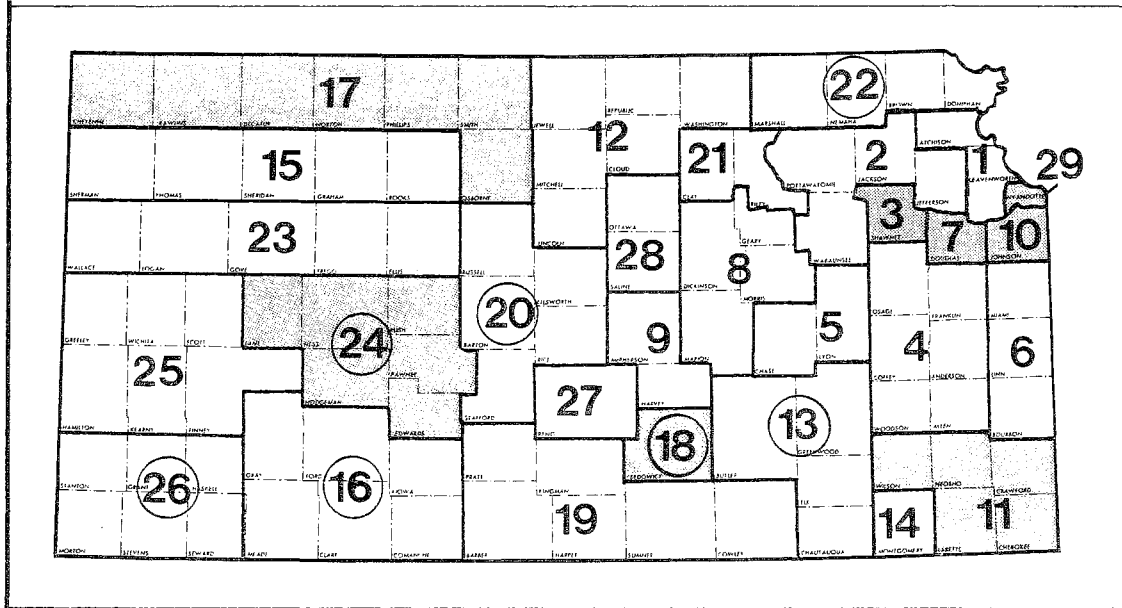
To answer the question regarding the extent of unification and its effect on the processing of district court cases, the auditors made field visits to eight of the 29 judicial districts in the State. Excluding traffic cases, 56 percent of all court cases filed in Kansas were filed in these eight districts. During visits to the eight districts, auditors examined district court records of randomly sampled cases for fiscal year 1976, before unification, and for fiscal year 1978, after unification had begun. To determine the effect of the newly-created Court of Appeals on the processing of appealed cases, they reviewed case statistics of both the Supreme Court and the Court of Appeals.

Other data collected during the field visits included county and federal expenditures for the courts and the amount of fees collected by the courts. Auditors also examined court facilities and interviewed court administrators, administrative judges, and other court personnel in the eight districts to determine how well the court system's resources were being managed under the unified judicial system.

The auditors also analyzed the effects of unification by conducting a State-wide mail survey of judges and attorneys. The survey included questions pertaining to the effect of the changes that have occurred in the administration of the courts. Finally, the auditors surveyed neighboring states concerning the organization and financing of their court systems.



The State's court system is divided into the six judicial departments shown above. Within those departments, the system is further divided into 29 judicial districts. Auditors visited the eight districts shaded-in below to collect information about the impact of unification on the district courts. These eight districts were selected to represent a State-wide mix of urban and rural districts, caseload sizes, geographic locations, and multi-county and single-county districts. The Governor appoints most judges but in the circled districts they are elected by the voters.



## Organization of the Audit Report

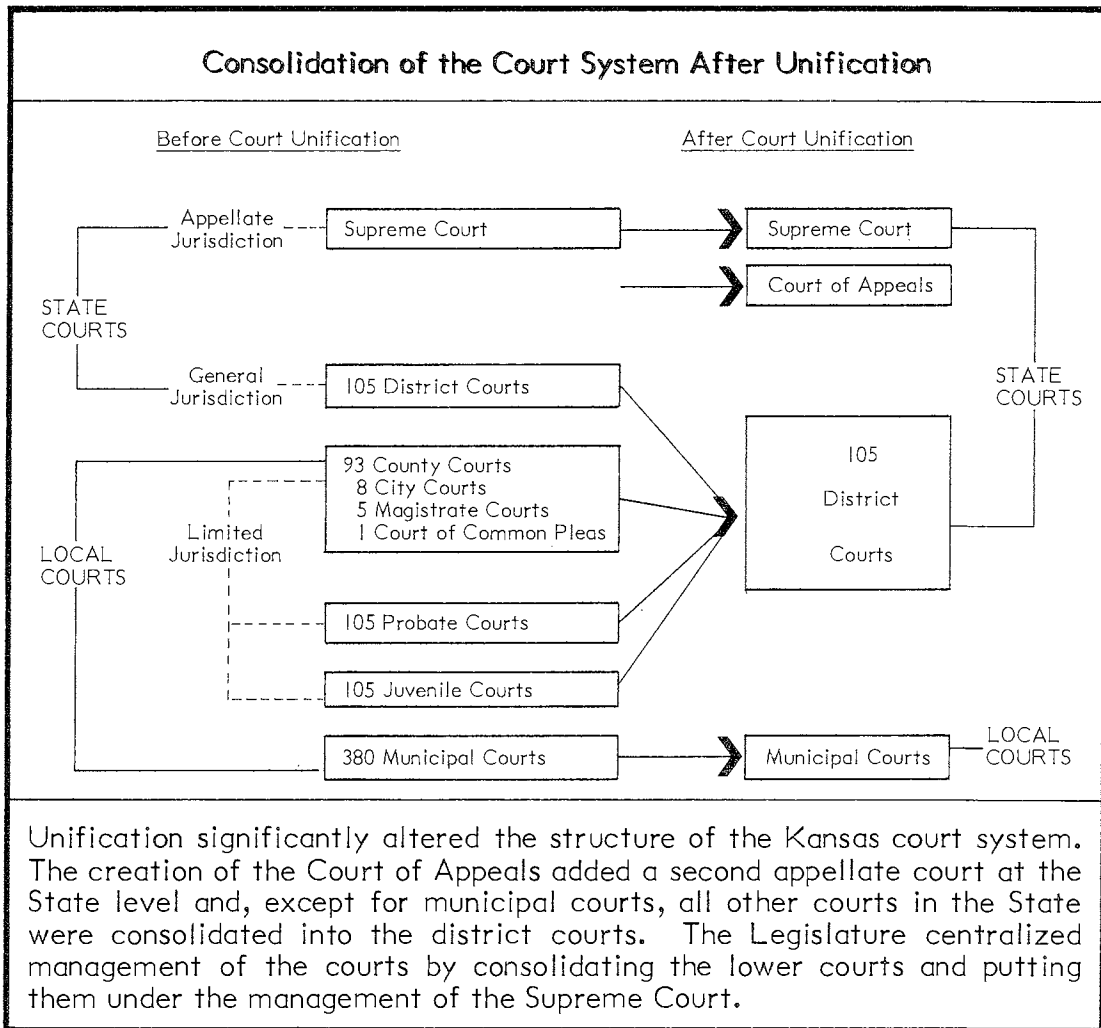
Chapter II of the audit report discusses the history and legislative intent in the development of the unified judicial system. It also provides a brief overview of the organization of the State court system. Chapter III examines the financing of the court system. Chapter IV reviews the effects of unification on the processing of both district court and appellate court cases and Chapter V reviews the management of resources within the unified court system.

## CHAPTER II

### DEVELOPMENT OF THE KANSAS UNIFIED JUDICIAL SYSTEM

#### History of Court System Development

Unification of the Kansas judicial system in 1977 incorporated seven types of courts into the present district court system and added a second appellate court at the State level. All courts of limited jurisdiction were



abolished. Their jurisdiction included civil cases involving controversies in amounts of \$3,000 or less, criminal misdemeanors, the first stages of criminal felony cases, and probate and juvenile cases. (The 1979 Legislature amended the jurisdictional limit to \$5,000 effective July 1, 1979.) The courts' functions and personnel were transferred to the district court in each county. The appellate structure of the judicial system, which before unification included only the Supreme Court, was expanded with the addition of the Court of Appeals. The only courts not directly affected by unification were the approximately 380 municipal courts throughout the State, whose jurisdiction to hear and determine cases involving violations of city ordinances remained the same.

### Early Reorganization of the Judicial System

The judicial system was created in 1859 with the adoption of the Kansas Constitution. Since then, it has evolved in piecemeal fashion. Numerous courts with different and often overlapping jurisdictions were created. Unique variations in the practices and procedures of these individual courts also developed. As the court system grew in size, concern over this uneven development increased. As early as 1927, the Judicial Council raised questions about the qualifications of judges, the lack of central administration and control, and the inefficient processing of court cases.

In 1964, the Citizens' Conference on Modernization of the Kansas Courts was formed to study the problems within the court system. This was the first time a group of "non-lawyers" had been assembled to study the problems of the Kansas courts. The Conference dealt with problems in the area of judicial qualifications. It reported that more than 1,000 district judges and judges of the lower courts were being selected on a purely partisan basis rather than on their degree of competence. The uncertain tenure of an elected position often kept qualified lawyers from seeking judgeships. Furthermore, the compensation for judges was exceptionally low; Kansas ranked 40th among the states. Finally, there was no method of disciplining judges, and they were seldom removed from office.

The Conference also sought to resolve the lack of central administration that was evident in the court system. It found that each judicial district was administratively independent of the other districts. The jurisdictions of the lower courts overlapped, often causing confusion as to the correct court in which to file a case. Multiple case appeals could also be made, increasing the cost of litigation and the caseload of the courts. The lack of central administration also contributed to the fact that judges' caseloads varied widely, even though the Supreme Court had the authority to reassign district judges to equalize caseloads. Finally, the lack of central administration meant that statistical information systems, personnel systems, and budget systems were not consistent.

The Conference made recommendations to the Legislature to resolve problems it found. Specifically, it recommended the following:

1. Improved procedures for the selection, tenure, discipline, and removal of district judges.
2. A unified court system to obtain unified organization, adequate supervision, and effective administration.
3. Simplification of the structure of the courts of limited jurisdiction and combination of their functions.

Acting on the Conference's recommendations, the 1965 Legislature passed the Judicial Reform Act, which created a judicial department and which, for the first time, placed the district courts under the central administration of the Supreme Court. The position of Judicial Administrator was also created to assist in the supervision of the district courts. The intent of these reform efforts, as stated in the legislation, was to ensure "just, speedy, and inexpensive" litigation. This Act was followed in 1968 by the Judicial Reapportionment Act, which reduced the number of judicial districts from 38 to 29. The goal of changing the district boundaries was to equalize the caseloads of judges.

#### Revision of the Kansas Constitution

Because some of the recommendations of the Citizens' Conference could not be implemented without constitutional revision, the 1968 Legislature created the Citizens' Committee on Constitutional Revision. The major task of this Committee was to draft a new judicial article for the Kansas Constitution.

The original version of Article Three of the Kansas Constitution provided for a system of separate courts and separate administration of the courts. The new judicial article, as submitted by the Legislature to the State's voters for approval, called for the judicial power of the State to be vested "exclusively in one court of justice, which shall be divided into one supreme court, district courts, and such other courts as are provided by law . . . ." The constitutional revision also gave the Supreme Court "general administrative authority over all courts in this State." The constitutional amendment was overwhelmingly adopted by the electorate in 1972.

#### Unification of the Kansas Courts

The 1972 constitutional amendment mandated the development of a unified judicial system. During the four years after the amendment was

**Major Actions Taken to  
Reorganize and Unify the  
Court System in Kansas**

**Administration of the Courts  
Centralized Within the  
Supreme Court**

1965 Legislature passes the Judicial Reform Act creating a Unified Judicial Department and placing district courts under the administration of the Supreme Court.

**Judicial Districts Reapportioned**

1968 Legislature reduces the number of judicial districts from 38 to 29 to help equalize judges' case-loads.

**1972 Revision of the Kansas Constitution Mandates Development of a Unified Judicial System**

**Court of Appeals Created**

1975 Legislature creates a new appellate court to expedite the appeal process. The change is effective January 10, 1977.

**Courts in Kansas Consolidated**

1976 Legislature abolishes all lower courts except for municipal courts and consolidates them into the district courts effective January 10, 1977.

**State Begins Assuming Salaries for Court Personnel**

1978 Legislature authorizes the State to pay the salaries of county personnel in the consolidated district courts. The State's takeover of these salaries is to be completely phased-in by fiscal year 1982.

adopted, the necessary legislation was passed and unification began in January 1977.

To bring about unification, the 1973 Legislature passed Senate Joint Resolution No. 2, authorizing the appointment of a Judicial Study Advisory Committee. The Committee received the task of studying the Kansas court system and making recommendations to the judiciary and the Legislature that would meet the voter mandate of 1972 to modernize the courts. Many of the Committee's recommendations were modeled after standards for court organization developed by the American Bar Association. The recommendations became the basis for the statutory changes necessary to bring about court unification.

A major change in the structure of the courts was made in 1975 when legislation was passed authorizing the creation of the Court of Appeals effective January 1977. Because cases on appeal were backlogged in the Supreme Court, some taking as long as 19 months to be processed, the Court of Appeals was created to expedite the appeal process. It was expected that the Court of Appeals, which could hold court in any county in the State, would reduce the Supreme Court's case-load and make the appeal process more efficient and more accessible to the State's citizens.

In 1976, the Legislature took another major step to bring about unification by abolishing all the lower courts, with the exception

of the municipal courts, and by consolidating their responsibilities into the district courts. The Legislature also attempted to strengthen the central administration of the State's courts by designating a judge in each judicial district as administrative judge to help supervise the operation of the court and by making the Supreme Court responsible for the preparation of the budget for the judicial branch.

Also in 1976, the Attorney General issued an opinion stating that non-judicial district court personnel were State employees. A State-financed court system had been recommended by the Judicial Study Advisory Committee in 1974 as an integral part of centralized budgeting and supervision of State courts. Since then, the Legislature had also commissioned two studies that developed information on the personnel and financial aspects of the courts. The Attorney General's Opinion led to the passage of K.S.A. 1978 Supp. 20-361 (Senate Bill 966) and 75-3120i (Senate Bill 965) by the 1978 Legislature, which required the State to pay the salaries of non-judicial district court personnel and of district magistrate judges. The counties will remain responsible for all operating costs, including facilities, and for the salaries of personnel not covered by the State system.

#### Organization and Administration of the Unified Judicial System

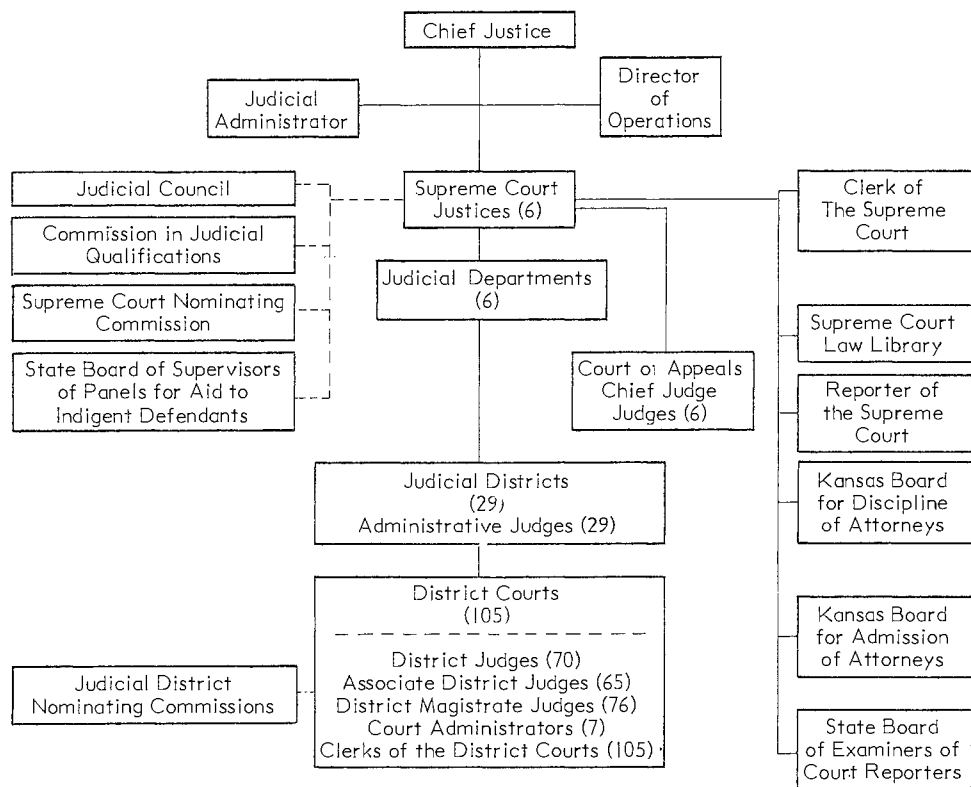
Because of changes that have brought about unification of the judicial system, the Unified Judicial Department now consists of three courts--the Supreme Court, the Court of Appeals, and the district courts.

#### The Supreme Court

The Supreme Court comprises the Chief Justice and six justices appointed by the Governor. At the end of each justice's first term, the voters determine whether the justice should be retained for another six-year term. Should voters decide not to retain the justice, or should a justice vacate his appointment, the Governor is authorized to make new appointments from a list of nominees submitted by the Supreme Court Nominating Commission.

The Supreme Court has original jurisdiction as conferred by the Constitution. It has final appellate jurisdiction for constitutional issues, for serious criminal cases, and for decisions made by the Court of Appeals. The Supreme Court also has general administrative authority over the Unified Judicial Department. The Chief Justice is responsible for developing and implementing administrative rules and policies for the management of the judicial system, including the supervision of personnel and financial affairs.

## Unified Judicial Department's Organizational Structure



The Unified Judicial Department consists of three courts--the Supreme Court, the Court of Appeals, and district courts located in each county in the State. The Supreme Court is administratively responsible for the Department with the assistance of numerous agencies and individuals.

To assist in implementing the administrative policies of the Supreme Court, the Chief Justice has statutory authority to appoint a Judicial Administrator. (Prior to passage of House Bill 2676 in the 1979 Legislative Session, the Judicial Administrator was appointed by the justices of the Supreme Court.) The duties of the Judicial Administrator include collecting and reporting statistics on the operations of the district courts, making recommendations to the Supreme Court concerning the assignment of judges and the improvement of the administration of the district courts, and assisting the Supreme Court in the management of its fiscal affairs.

The 1979 Kansas Legislature also created a new administrative position, Director of Operations, to be appointed by the Chief Justice. The

duties of the Director of Operations include having final responsibility for preparing the Judicial Department budget, acting as legislative liaison for the Court, and assisting the Chief Justice both in overseeing the operations of the various departments and in developing and implementing administrative policy decisions.

The budgeting process for the judicial branch has been revised considerably because of court unification. To plan and control expenditures for the judicial system, the Legislature has required that the Chief Justice prepare a comprehensive annual budget for all State-funded court activities. The Chief Judge of the Court of Appeals and the Administrative Judge of each judicial district assist the Chief Justice in preparing the budgets for these subordinate courts. When all subordinate budgets have been consolidated, the Chief Justice submits the budget to the Director of the Budget. The 1979 Legislature passed House Bill 2665, which now requires the Budget Director to review the annual budget of the Judicial Department and to recommend changes. In the past, the Budget Director, by law, could not recommend changes in the Judicial Department's budget.

The State has been divided by law into six judicial departments with one Supreme Court justice responsible for each department. Departmental justices are responsible for the supervision of all administrative matters within their departments and have the authority to make case assignments to district judges within their departments. They may also request the assistance of district judges from other departments. Within these six departments, the system is divided into 29 judicial districts.

Another administrative position within the Supreme Court is the Clerk of the Supreme Court, who is appointed by the Supreme Court justices and who oversees the clerical and record-keeping activities of the appellate courts. The Clerk of the Supreme Court assists the Boards for Admission of Attorneys and Discipline of Attorneys in activities relating to admission to the bar, annual registration, and discipline of attorneys. The Clerk also serves as Secretary for the Judicial Qualifications Commission and the Supreme Court Nominating Commission. The Supreme Court also appoints the Reporter of the Supreme Court, who serves as the Reporter of the Court of Appeals as well. The responsibilities of the Reporter include publishing the opinions of the Supreme Court.

### Court of Appeals

The Court of Appeals comprises seven judges, one of whom is appointed Chief Judge. The Governor appoints the judges from nominations made by the Supreme Court Nominating Commission. Like the Supreme Court justices, Court of Appeals judges can be retained in office by vote of the electorate, with an indefinite number of four-year terms possible. The Court of Appeals has jurisdiction over appeals from civil and criminal cases heard in the district courts and from administrative bodies

and officers of the State. All cases it hears may also be reviewed by the Supreme Court. The Court of Appeals may sit in panels of three judges and may hold court in any county of the State. The Court of Appeals has no administrative authority over other courts in the State.

### District Courts

Within the unified judicial system, there is one district court for each of the State's 105 counties. These courts are now staffed by 211 district court judges. As a result of unification, there are three classes of district court judges--district, associate district, and district magistrate. The 70 district judges have original jurisdiction for most civil and criminal cases and can hear cases appealed from the municipal courts or from district magistrate judges. The 65 associate district judges have the same authority as the district judges with the exception of such types of cases as class action suits. The 76 district magistrate judges have jurisdiction only for probate and juvenile cases, criminal misdemeanors, felony preliminary hearings, and civil actions of \$3,000 or less. In twenty-two of the districts, the judges are appointed by the Governor after nomination by the district judicial nominating commissions. The judges are elected in the remaining seven districts. Voters in the judicial districts decide by ballot whether they will have elected or appointed judges. In the 1978 general election, voters in District 22 decided to return from the appointed method to the elected method for selecting judges.

The administrative policies developed by the Supreme Court are implemented in the district courts by an Administrative Judge, who is appointed by the Supreme Court to oversee the operations of each judicial district. The Administrative Judge must consult with the other judges in the district before acting on most administrative matters. The duties of the administrative judges include assigning cases to judges within the district, supervising clerical personnel, and preparing an annual budget with the assistance of the district fiscal officer. In addition to the court budget submitted to the Chief Justice, the Administrative Judge prepares the budgets for the courts' operating costs, which are funded by the counties in each Administrative Judge's district. The budgets are submitted to each Board of County Commissioners for approval. By statute, each county is responsible for funding those operations of the district courts not otherwise assumed by the State. These costs include providing court facilities, supplies, equipment, and personnel not covered under the Supreme Court's Personnel Classification Plan--county coroners, trustees, auditors, marshals, and juvenile detention employees.

Seven judicial districts have court administrators who assist the Administrative Judge. Each county has a Clerk of the District Court who is appointed by the Administrative Judge and whose duties and responsibilities are established by statute. Administrative judges also appoint other non-judicial personnel, including court reporters.

### Conclusion

Developments in the judicial system over the years have followed a consistent pattern in one direction--toward unification. Within that pattern, legislative intent has also been consistently directed toward unification and a centralized administration of the court system. That intent, as stated by law, is to ensure that "just, speedy, and inexpensive litigation" is provided to litigants throughout the State. Both constitutional and legislative changes have been made to achieve that end.



### CHAPTER III

#### FINANCING THE KANSAS JUDICIAL SYSTEM

Changes mandated by unification resulted in direct new costs to the judicial system as a whole. For example, creation of the Court of Appeals added seven new judges and their support staff to the system's payroll. But the primary effect of unification--brought on by legislation that required the State to begin phasing-in the takeover of salaries for non-judicial district court personnel in January 1979--has been a major shift in funding the court system from the counties to the State. Although some of the counties' revenues are also being shifted to the State to help pay the non-judicial personnel salaries, those revenues will offset only part of the State's added costs. This chapter looks at the financing of the judicial system for fiscal years 1976, 1979, and 1982--in essence "before, during, and after" unification. By doing so, it shows the extent to which total system costs have been and will be picked up by the State because of the shift in financial responsibility for the court system. Because the State's takeover of salaries for non-judicial personnel will not be complete until fiscal year 1982, the concept of "during" unification was adopted for the discussion of fiscal year 1979.

#### Financing of the Judicial System Before Unification

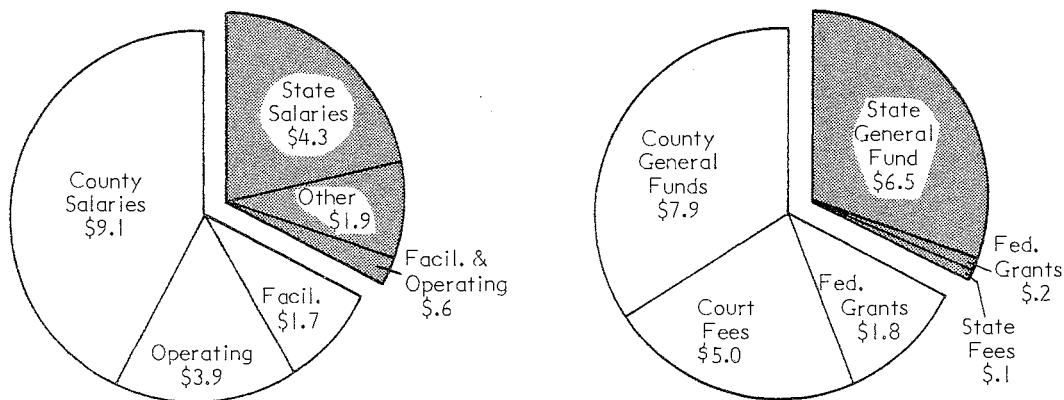
By 1976, just prior to unification, court reform efforts initiated by the Legislature as early as 1965 had already been incorporated into the judicial system--the Unified Judicial Department had been created, the district courts had been placed under the central administration of the Supreme Court, and the judicial districts had been reapportioned. But the lower courts, such as probate, juvenile, and county, were still under the counties' local control and the counties were paying for their own facilities and court personnel.

In fiscal year 1976, the Kansas court system cost a total of \$21.5 million. The State's share was \$6.8 million, or about one-third of the total. The counties paid about \$14.7 million, or two-thirds of the total system's cost. As the chart on the next page shows, the State's personnel salaries in fiscal year 1976, which were for 202.2 full-time equivalent State judicial

Fiscal Year 1976 Judicial System Costs and Revenues

State Costs = \$ 6.8 million  
 County Costs = \$14.7 million  
 Total Costs = \$21.5 million

State Revenues = \$ 6.8 million  
 County Revenues = \$14.7 million  
 Total Revenues = \$21.5 million



Before unification and consolidation of the lower courts into the State's court system, both the State and the counties were paying for their own court personnel and facilities. The State's share of the system's cost was only \$6.8 million, or about one-third of the total.

and non-judicial employees, accounted for 63 percent of its total costs. The category of other costs to the State were those costs associated with the Aid to Indigent Defendants' program, the Judicial Council, and the Judicial Nominating Commission. The State's operating and facilities costs amounted to about \$0.6 million. The counties' personnel salaries, amounting to \$9.1 million, or 62 percent of their total costs, were for their 1,079.5 full-time equivalent local judicial and non-judicial employees. Their operating and facilities costs totaled \$5.6 million.

Most of the funds for the judicial system in fiscal year 1976 came from State and county general funds. General Fund appropriations accounted for more than 95 percent (\$6.5 million) of the State's total sources of funds. Offsetting the State's 1976 appropriation was \$4.7 million in court and traffic fines. These fines were earmarked for the School Equalization Fund until fiscal year 1977, but an equal amount was appropriated from the General Fund to help finance the court system's

operations. State fees, which included such revenues as library charges and bar admission fees, totaled \$.1 million, and federal grants totaled about \$.2 million. Nearly half the counties' funds (\$7.9 million) came from local general funds. Court fees accounted for about 20 percent of their total sources (\$5.0 million), and federal grants for about 12 percent (\$1.8 million).

Financing of the Judicial System  
During Unification

By 1979, unification had been underway about two and one-half years. Beginning January 10, 1977, the Court of Appeals was created and the lower courts were consolidated into the district courts under the Supreme Court's central administration. With that consolidation, the State began paying the salaries for the associate district judges who were formerly paid by the counties. In addition, beginning January 1, 1979, halfway into the fiscal year, the State began paying the salaries of non-judicial district court employees and district magistrate judges. Only the cost of facilities; salaries of personnel who were not covered under the State's system but who are adjunct to it (county coroners, trustees, auditors, marshals, and juvenile detention employees); and other operating costs--such as commodities and juror and witness fees--remained the counties' responsibility.

Other states have also acted in recent years to unify their court systems and, to varying degrees, to assume from partial to full control of the funding for those systems. Legislative Post Audit surveyed the surrounding states (Colorado, Nebraska, Iowa, Missouri, and Oklahoma) and found that only one state--Colorado--completely finances its court system, with all fees going to the State's treasury. As Table III-1 shows,

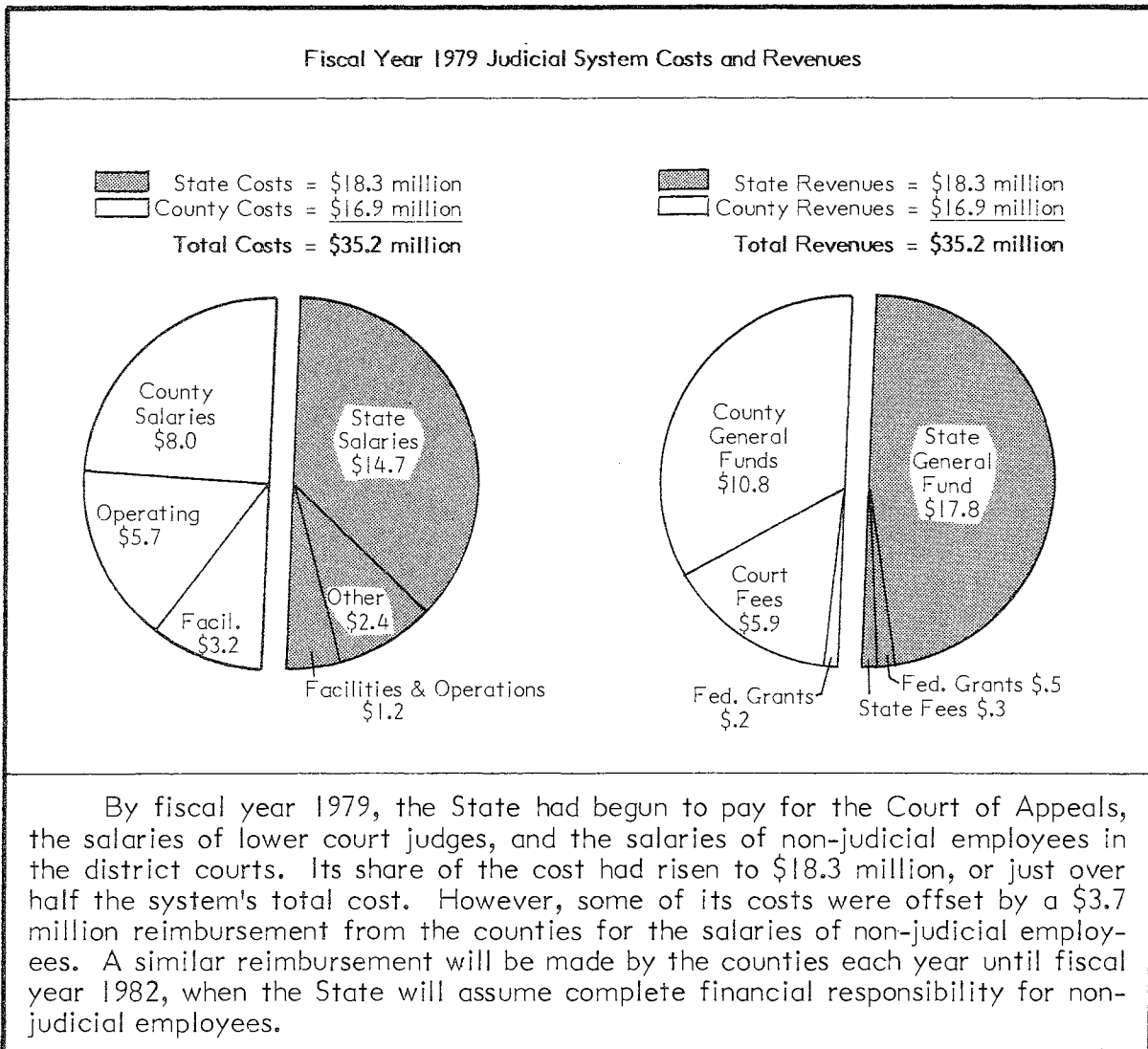
Table III-1  
Comparison of Financing Sources in Kansas  
with Surrounding States

ACTIVITY	FINANCING SOURCES					
	KANSAS	COLORADO	NEBRASKA	IOWA	MISSOURI	OKLAHOMA
Date of Unification	1977	1970	1973	1973	1979	1969
Costs of Appellate Courts	State	State	State	State	State	State
Trial Court Judges' Sal.	State	State	State	State	State	State
Court Reporters' Sal.	State	State	State	Local	Local	State
Non-Judicial Employees of Trial Courts	State	State	Both	Local	Both	Local
Operating Costs of Trial Courts	Local	State	Local	Local	Local	Local
Fees and Fines Paid to State	State	State	Both	Local	Both	Both

Developed by Legislative Post Audit from State Court Organization Profiles, published by the National Center for State Courts and Survey of Surrounding States.

Kansas is the only other of these states that will be completely supporting the cost of its non-judicial employees. For states that have unified their court systems, the decision to finance non-judicial personnel with State funds generally has the greatest financial impact. In Kansas, the recent takeover has nearly tripled the State's court personnel costs since 1976.

The cost of the judicial system as a whole has grown from \$21.5 million in 1976 to \$35.2 million in fiscal year 1979, an increase of about 64 percent. The State's share of the total grew from \$6.8 million to \$18.3 million, or to just over half the system's cost. The counties' share of the total decreased from about 68 percent to 48 percent of the total, but its expenditures increased from \$14.7 million to \$16.9 million. The overall



increase in the amount the counties spent reflects the growth in their personnel and operating expenses, plus the fact that the counties paid salaries for their non-judicial employees for half the fiscal year.

More than 80 percent of the State's share for fiscal year 1979 (\$14.7 million) went to pay the salaries of State judicial and non-judicial employees and, for half the year, the salaries of the 1,232 full-time equivalent county non-judicial employees and the 76 district magistrate judges. The remaining 20 percent of the State's expenditures (\$3.6 million) was for operating, facilities, and other costs. The counties spent about half their budgets (\$8.0 million) on personnel salaries. Operating costs and facilities accounted for the remaining \$8.9 million.

General Fund appropriations in fiscal year 1979 accounted for more than 97 percent (\$17.8 million) of the State's total sources of funds. The appropriation was again offset by \$5.7 million in court and traffic fines, plus a \$3.7 million reimbursement from the counties to help offset the non-judicial salaries picked up by the State. By statute, that reimbursement had been set at 65 percent of one-half of the budgeted salaries for calendar year 1979. In fiscal year 1980, the counties' reimbursement will drop to 50 percent of the actual salaries; by fiscal year 1981, to 25 percent. By 1982, the phase-in of the State's takeover of salaries will be completed; the State will be paying 100 percent of the non-judicial salaries.

About 64 percent (\$10.8 million) of the counties' sources of funds in fiscal year 1979 came from their general funds, 1 percent (\$.2 million) from federal grants, and 35 percent (\$5.9 million) from court fees. By statute, these court fees will be shifted to the State beginning in fiscal year 1980. That year, 25 percent of the court fees will be transferred to the State General Fund. In fiscal year 1981, 50 percent of the actual fees will be transferred, and in 1982, all court fees will be transferred to the State from the counties.

Most of the total growth in the judicial system between fiscal years 1976 and 1979 can be attributed to inflation and a natural growth in the system caused by increased caseloads. The total number of cases grew from about 190,000 cases in 1976 to about 205,000 cases in 1978 (caseload data for 1979 was not available at the time of this audit). In three years, 14 new judges and 245.5 full-time equivalent support personnel were added to the court system. Legislative Post Audit was unable to determine how many of these new positions were added to the system as a whole because of unification. It was possible, however, to isolate the new costs added to the State in 1979 as a result of unification and to show the shift in funding responsibilities from the counties to the State.

#### Net Costs Assumed by the State in 1979 Because of Unification

The new costs picked up by the State in 1979 as a result of unification were for the newly-created Court of Appeals. Other costs

for associate district judges and salaries for non-judicial district court personnel and district magistrate judges for half of fiscal year 1979. Because lower court judges were converted to either associate district or magistrate judges when the lower courts were consolidated in January 1977, their salaries were adjusted at that time to the statutory levels established for each type of judge. Only the total amount paid by the State for the judges salaries is shown for 1979.

To get an accurate picture of the new and shifted costs picked up by the State, it is necessary to deduct the reimbursement from the counties that helped offset non-judicial salaries. That reimbursement was less than the actual amount paid by the State, but it was never intended to fully offset the State's cost of assuming non-judicial salaries. Thus, the State's additional costs were as follows:

<u>New Costs</u>	
Court of Appeals	\$ 716,065
<u>Shifted Costs</u>	
Associate District Judges	2,034,375
District Magistrate Judges	678,125
Non-Judicial District Court Personnel	4,735,062
Less County Reimbursement to help offset non-judicial salaries	<u>(3,696,279)</u>
Total Net Costs Picked Up by the State	<u>\$ 4,467,348</u>

Growth in the Cost-per-Case for the State and the Counties

Another way of looking at the cost increases in the court system is to compare the average cost of processing each case before and after unification. During field visits to the eight judicial districts in August of 1978, the auditors examined the cost-per-terminated case (those cases that had gone through the whole court system from filing to disposition) for district court cases in fiscal years 1976 and 1978. These cases included criminal felonies, misdemeanors, and appeals; civil divorce cases and other domestic relations cases; probate and juvenile cases; and civil and criminal cases from the courts of limited jurisdiction. Excluding traffic cases, the total number of cases terminated in the eight districts was 80,654 in fiscal year 1976 and 75,653 in fiscal year 1978. Traffic cases were excluded because they are generally terminated by someone paying a fine to a court clerk; moreover, they vary greatly between districts and are more an administrative action than a judicial action. The county costs included in

the analysis were for salaries, contractual services, commodities, equipment, and space. State costs were for salaries and fringe benefits for State-paid district court employees, judges, court reporters, and court administrators.

Table III-2 shows the results of that comparison. As the table shows, the average total cost-per-case (adjusted to account for inflation through 1978) rose from \$133 to \$173 in the eight districts, a 30 percent increase. The State's total share of the cost of terminating a case rose from 20 percent in 1976 to 22 percent in 1978, and the counties' share decreased correspondingly. State costs increased most dramatically in the four urban districts (Shawnee, Johnson, Sedgwick, and Wyandotte) because the State began paying the salaries of associate district judges in January 1977, and these judges are located mostly in urban counties. There was little change in the State's share of the cost in some of the other districts because in 1978 the State had not yet assumed the county non-judicial salaries. This salary takeover should result in an increasing share of the cost of terminating a case being picked up by the State in all districts.

The auditors identified two factors that contributed most to the overall increased cost of terminating a case and the increase in the State's share of that cost. First, even though the total number of cases in the

Table III-2  
Comparison of Costs Per Terminated Case  
Before and After Unification  
Eight Sample Judicial Districts

Judicial District	Fiscal Year 1976 Before Unification			Fiscal Year 1978 After Unification (a)			Percent Change in Total Cost Per Case
	State Cost Per Case	Local Cost Per Case	Total Cost Per Case	State Cost Per Case	Local Cost Per Case	Total Cost Per Case	
3 (Shawnee)	\$18	\$ 71	\$ 89	\$38	\$118	\$156	75%
7 (Douglas)	32	88	120	41	103	144	10
10 (Johnson)	29	117	146	37	143	180	23
11 (Southeast)	37	103	140	52	115	167	19
17 (Northwest)	25	125	150	28	147	175	17
18 (Sedgwick)	19	116	135	39	159	198	47
24 (Southwest)	27	146	173	28	175	203	17
29 (Wyandotte)	21	92	113	39	117	156	38
Average	\$26	\$107	\$133	\$38	\$135	\$173	30%

(a) The costs-per-case in fiscal year 1978 were adjusted to account for inflation.

Developed by Legislative Post Audit from agency records and sample of eight judicial districts.

system had increased between fiscal years 1976 and 1978, the number of cases terminated had dropped approximately four percent, from 143,000 to 138,000. Most of the costs used in the analysis increased because of the addition of new judges and support personnel. Thus, the costs were distributed over a smaller number of cases.

Secondly, salaries and fringe benefits for district court personnel had increased since fiscal year 1976. Between 1976 and 1978, the average State salary paid to district court personnel (mostly judges) increased by 12 percent for the sample judicial districts, from \$23,970 to \$26,866. The average increase for county-paid personnel (mostly support personnel) was 11 percent, from \$7,876 to \$8,685. Neither increase kept pace with inflation. However, in fiscal year 1979, just before the State takeover of salaries for non-judicial personnel, average county salaries went up 15.1 percent to \$9,992, while State salaries for judges went up 9.5 percent to \$29,414. For fiscal year 1980, with full State control and adjustment to State pay grades for non-judicial personnel, their salaries and fringe benefits will increase another 25.7 percent to an average of \$12,560, while judges salaries will increase 6.3 percent to \$31,291.

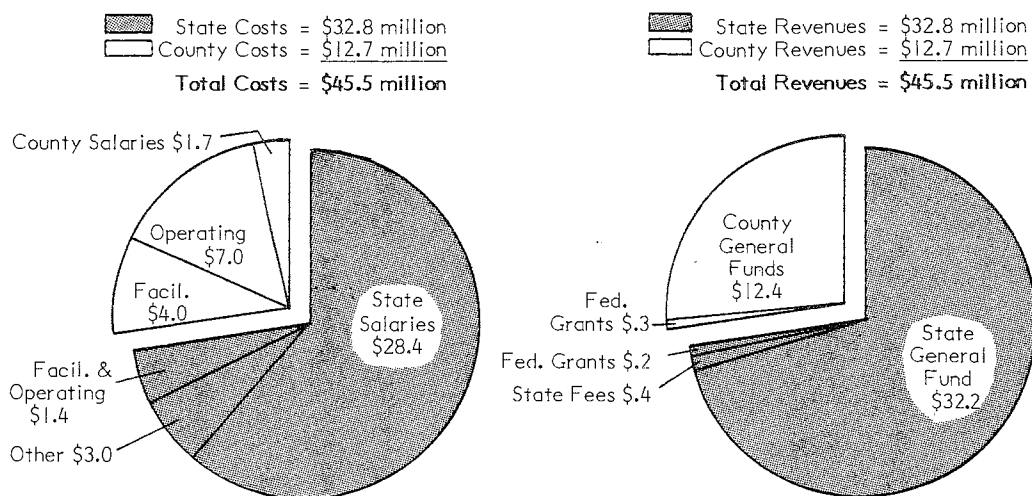
#### Financing of the Judicial System After Unification

By 1982, the State will have completed its takeover of non-judicial personnel salaries, which represent the greatest expense to the State associated with unification of the court system. To project fiscal year 1982 costs, Legislative Post Audit inflated the fiscal year 1980 appropriations by a conservative inflation rate of seven percent per year. The projections did not consider any expansion of the system that may occur with the addition of new personnel or changes in judicial programs. It is likely that some expansion will occur, however. For instance, for fiscal year 1980 the counties requested 72 new full-time equivalent non-judicial positions. The Judicial Department cut that request to 44.5 positions, and the Legislature allocated 16.4 full-time equivalent positions. Any other increases in the number of non-judicial personnel over the next few years will increase the State's costs in 1982 by more than is shown in the projections that follow.

Legislative Post Audit's projections showed that the court system's total bill in fiscal year 1982 would increase from \$35.2 million to \$45.5 million. The State's share will have jumped from about one-half to nearly three-fourths of the total costs, or from \$18.3 million to \$32.8 million. The counties' share will have shrunk to 28 percent of the total, or from \$16.9 million to \$12.7 million.

By far the majority of the State's costs by 1982 (87 percent or \$28.4 million) will be for salaries. Much of the increase in personnel costs will

Fiscal Year 1982 Judicial System Costs and Revenues



In 1982, the State will be paying the salaries of all non-judicial employees. Its costs are conservatively estimated to rise to \$32.8 million, or nearly three-fourths of the total court system's cost. Court fees that formerly helped support the counties' local court operations--an estimated \$7.1 million in 1982--will be transferred to the State from that year on to help offset the State's increased costs. By 1982, the counties' total costs will have begun to decline in line with the intent of unification to reduce the counties' local tax burdens.

reflect the State's reclassification and pay grade adjustment for non-judicial personnel in fiscal year 1980. The counties' personnel costs will have been reduced from \$8.0 million to only \$1.7 million; the net effect on the counties will be an estimated 16 percent decrease in the local tax money used to finance the judicial system. This reduction should be in line with the intent of unification to decrease the counties' local tax burden.

The system's funding sources will change slightly as well. Although in 1982 the counties will no longer be reimbursing the State for a percentage of actual non-judicial personnel costs, court fees that once went to support the counties' court operations will all be transferred to the State General Fund. By 1982, those fees are projected to be about \$7.1 million. The State General Fund appropriation of \$32.2 million will also be offset by about \$7.0 million in court and traffic fines.

### Net Costs Assumed by the State in 1982 Because of Unification

Using the same seven percent per year inflation factor, Legislative Post Audit was able to project the major costs that will be paid by the State in fiscal year 1982 because of unification:

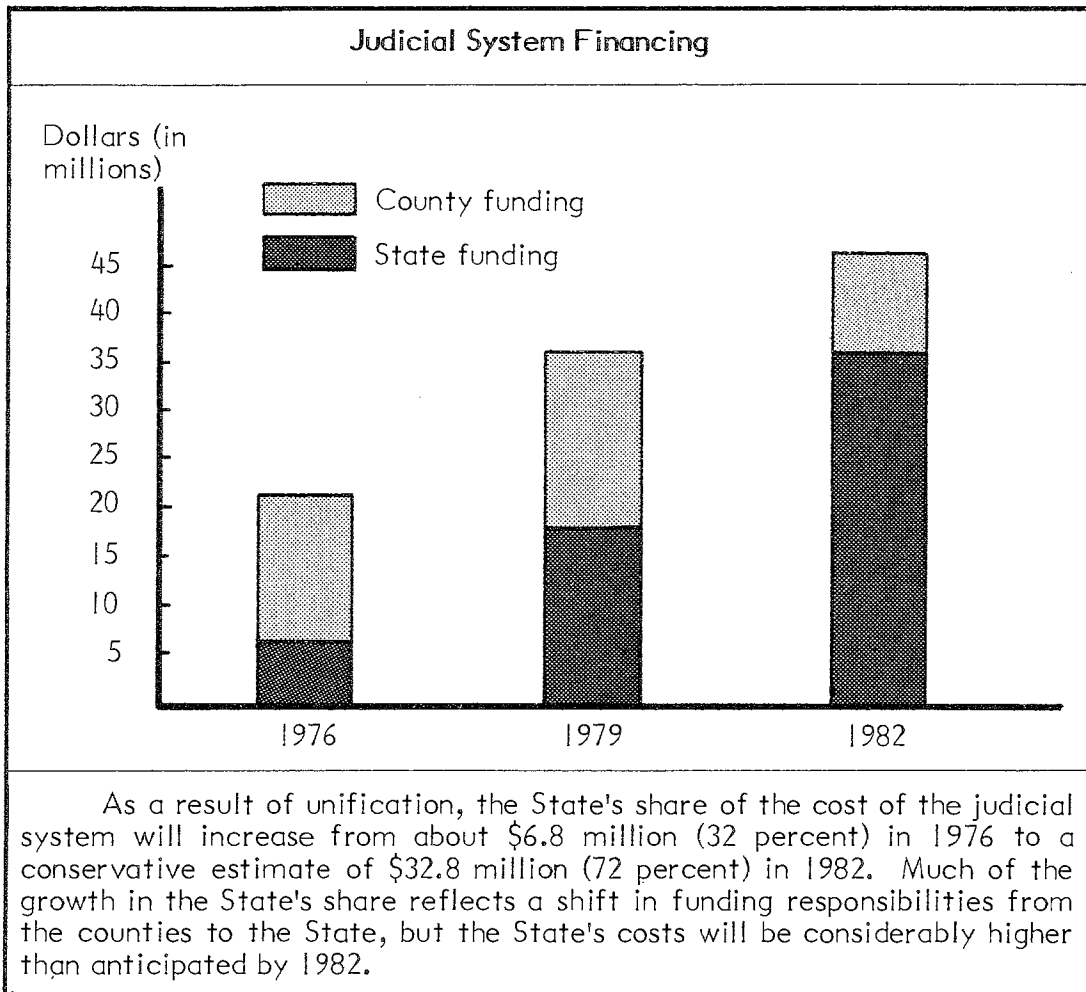
Court of Appeals	\$ 800,777
Associate District Judges	3,008,049
Magistrate Judges	1,499,002
Non-Judicial District Court Personnel	16,532,891
Less County Court Fees Transferred to the State	<u>(7,100,000)</u>
Total	<u>\$14,740,719</u>

Again, subtracting the projected \$7.1 million in court fees that will be transferred from the counties to the State in 1982 will give the more accurate estimate of the amount the State will have absorbed. Thus, by fiscal year 1982, the State's total bill for the court system will have increased by at least \$14.7 million as a direct result of unification.

### Comparison With Judicial Study Advisory Committee Projections

Legislative Post Audit then compared its projections of the net cost to the State with similar projections made by the Judicial Study Advisory Committee in 1973, when unification was being considered by the Legislature. The Committee had recommended that the State finance all expenses of the unified court system except for municipal courts and the cost of district court facilities. Its projection did not include the cost of financing the Court of Appeals.

With those exceptions, however, the two projections could be made comparable. That comparison showed that the Committee's estimate of the net cost to the State for court unification was considerably lower than Legislative Post Audit's estimate. The Committee's 1973 estimate of the total cost to the State for unification was \$1 million. Adjusted for inflation to a 1982 figure, that amount would have been \$2 million. For the sake of this comparison, one adjustment needed to be made to Legislative Post Audit's estimate of \$14.7 million. In its projection, the Committee had subtracted court and traffic fines that are deposited in the State General Fund as offsetting revenues. Deducting those fines--which are estimated to be \$7 million in 1982--from Legislative Post Audit's estimate leaves a total of \$7.7 million and makes both projections comparable. After making all adjustments, Legislative Post Audit found that the net



cost to the State in 1982 for unifying the court system will be at least \$5.7 million (285 percent) more than the Committee projected.

After the Legislature had acted to unify the court system, it commissioned two studies to develop financial information on the personnel and financial aspects of the Kansas courts. The first, a 1975 report by Public Administration Services, expanded on the work done by the Judicial Study Advisory Committee. The second, a 1977 report by the Resources Planning Corporation, developed information on the financial impact of State financing of district court personnel. The Corporation's report estimated the salaries of district court employees to be \$14.3 million in fiscal year 1979, and the total system cost to be \$34 million. Both estimates were relatively accurate. They provided the 1978 Legislature with the financial basis for its decision to enact State financing of non-judicial employees.

### Conclusion

The burden of financing the State's judicial system has been shifted from the counties to the State as a result of legislative actions that unified the court system and made the State responsible for the salaries of all judicial and non-judicial employees. Excluding revenues transferred from the counties to the State, the net impact of unification on the State was an increase of \$4.5 million in fiscal year 1979 and will be at least \$14.7 million by fiscal year 1982. Unification should cause the anticipated decrease in county expenditures. The Judicial Study Advisory Committee's projection of the net increase to the State was essentially the best estimate the Legislature had at the time it decided to proceed with unification of the court system. Because that projection was so much lower than Legislative Post Audit's estimates indicate it will be (285 percent lower), the Legislature could not realize at that time the full cost impact of unification, even though a later cost study provided it with a more accurate estimate for fiscal year 1979. It is important to keep in mind that Legislative Post Audit's estimate for 1982 assumes no growth in the number of personnel in the system nor any program changes. For fiscal year 1980 alone, the Judicial Department requested an additional 44.5 new positions, 16.4 of which the Legislature allocated. As such additions occur, the State will absorb even larger net costs than are anticipated or shown here.

### Recommendation

Because the State's costs for the court system, particularly those costs associated with personnel, will be higher than anticipated by fiscal year 1982, the Legislature and its committees should continue to carefully scrutinize requests for additional court personnel.

## CHAPTER IV

### EFFECTS OF UNIFICATION ON PROCESSING COURT CASES

Before the 1965 reorganization of the courts, problems had been noted with cases that were taking too long to process. Chapter II showed that the legislative intent behind unification was for speedy justice. The Chief Justice of the Supreme Court echoed that intent in his 1978 annual report to the Governor and the judiciary committees of both houses of the Legislature on the state of the court system. The report stated that unification and other court reform was meant to provide justice to litigants with the least possible delay. The State has unified the court system by consolidating the lower courts into district courts, by creating new judgeships and new administrative positions, by creating the Court of Appeals, and by placing the responsibility for the management and control of the court system under the authority of the Supreme Court. These changes were made to reduce the processing time of cases, to provide uniformity which previously did not exist in the court system, and to provide justice without unnecessary delays. To determine the degree to which these aims have been met, Legislative Post Audit analyzed the time needed to process court cases before and after unification for both the district courts and the appellate courts.

#### Processing Time for District Court Cases

Each year, many thousands of cases are filed in Kansas' district courts. Some, like traffic cases, can be handled quickly by paying a fine, while others may take months to process. Some may be settled out of court, while others are contested--they actually go to trial. Because this chapter will be discussing and comparing the effect unification has had so far on reducing the processing times for various types of cases for fiscal year 1976 (before unification) and fiscal year 1978 (after unification), it may be helpful to consider the total number and major types of cases in the court system.

For fiscal years 1976 and 1978, the caseload in the court system was as follows:

<u>Caseloads</u>	<u>Fiscal Year 1976</u>	<u>Fiscal Year 1978</u>
Active Cases (cases filed plus cases pending at the start of the year; excludes traffic cases)	191,129	205,004

<u>Caseloads</u>	<u>Fiscal Year 1976</u>	<u>Fiscal Year 1978</u>
Terminated Cases (cases resolved by the end of the year)	143,112	137,690
Appealed Cases (includes cases appealed to the Supreme Court as well as the district courts)	2,191 (filed)	2,097 (filed)
Traffic Cases	256,968	264,024

Although a great many types of cases are filed each year, the six major types of cases can be grouped as follows:

Civil Cases Over \$3,000--such as auto negligence, foreclosure, real property, and contractual cases involving more than \$3,000

Domestic Relations Cases--such as divorce, annulment, custody, and separate maintenance cases

Criminal Felony Cases--such as crimes against persons (murder, kidnapping), and crimes against property (theft)

Criminal Misdemeanor Cases--such as driving while intoxicated (DWI), theft under \$100, and simple battery (without a weapon)

Civil Cases Under \$3,000--the same types of cases as civil cases over \$3,000; only the monetary involvement is different

Probate Cases--such as estates, guardianship, juvenile, and trust cases

Case statistics of the Judicial Department for five of the six major types of cases--criminal felony and misdemeanor cases, domestic relations cases, and civil cases over and under \$3,000--were stored on computer. Excluding traffic cases, these five case types represented 62 percent of the cases filed in fiscal year 1978. In trying to examine these statistics so that comparisons could be made for before and after unification, however, the auditors encountered a number of problems in the way those statistics had been compiled and reported. Specifically, they found the following:

1. Most of the case statistics published by the Judicial Department and the Judicial Council did not include the length of time taken to process different types of cases.

2. The Judicial Administrator, who collected case information for the district courts, changed the definition of contested civil cases between fiscal years 1976 and 1978. In 1976, the cases reported as contested included cases in which an "answer" was filed to a petition as well as cases that went on to trial. For example, if one person sued another person for property damage in 1976, and the person being sued filed a reply (answered) stating that he was not at fault, that case was reported as contested even though the two persons may have agreed to an out-of-court settlement. In 1978, that case was reported as contested only if it actually went to trial. This change in the definition and reporting of contested cases had the effect of reducing the total number of contested cases reported for 1978.
3. While in the field, the auditors noted discrepancies among the districts in the way case information was being reported to the Department.

Despite these problems, the auditors were able to identify three types of terminated cases that had information for before and after unification which was comparable enough to allow a measurement of change. These three types of cases were criminal cases, civil cases over \$3,000, and domestic relations cases. Contested cases for each type were selected because they actually go to trial and, as such, make use of the entire case processing system.

Although determining whether a case is processed "on time" is extremely difficult because of the unique circumstances of each case, certain time limits have been established for two of the case types examined--criminal and civil. For the disposition of criminal cases, the American Bar Association standard requires that an individual be brought to trial within two months, and K.S.A. 1978 Supp. 22-3402 requires that an individual must be brought to trial within three months after arraignment if held in jail and within six months if released on bond. If the statutory time limits for criminal cases are exceeded, a defendant could be released without determination of guilt or innocence. For the disposition of civil cases, the American Bar Association recommends a standard of six months.

Because the six-month time processing standard can be so important in providing justice, especially for criminal cases, Legislative Post Audit chose to look at the number of cases which exceeded that standard as the basis for measuring any change or improvement in case processing times since unification of the court system.

#### Comparison of Case Processing Times With Processing Standards

For the three types of cases they could compare, the auditors compiled information available from the Judicial Department on the

number of contested cases terminated in fiscal years 1976 and 1978 and the number of cases which exceeded the six-month standard. The results of their comparison are presented in Table IV-1.

Before discussing the auditors' findings, though, it is necessary to provide some explanation for certain discrepancies in the data. First, because of the way the civil case statistics were reported, the number of contested cases terminated in 1978 shows only those contested cases that actually went to trial, while the number of contested cases terminated in 1976 also includes cases in which an answer had been filed to a charge. Legislative Post Audit had to assume, however, that the number of contested cases which exceeded the six-month standard for both years was roughly comparable, because it is unlikely that contested cases which did not go to trial in 1976 took longer than six months. Secondly, civil and domestic relations cases were combined for the two fiscal years because the Department's time processing statistics for those two types of cases were combined for 1976. Finally, the criminal cases reported for 1978 which exceeded the six-month standard could be understated because no arraignment dates were reported for 402 of the 1,428 cases (28 percent). However, if the same percentage of cases exceeding the standard holds true for those with and without arraignment dates, the total number of cases exceeding the standard would be only 25 or two percent of all felony cases.

Table IV-1  
Contested Cases Exceeding  
Six-Month Time Processing Standards  
Fiscal Years 1976 and 1978

Case Type	Fiscal Year 1976			Fiscal Year 1978		
	Number of Cases	Cases Exceeding Standard	Percent of Total	Number of Cases	Cases Exceeding Standard	Percent of Total
Criminal	1,431	153	11%	1,428	18	1%
Civil Over \$3,000/ Domestic Relations	<u>9,330</u>	<u>3,559</u>	38%	<u>7,782</u>	<u>3,259</u>	42%
Total/Percent of Total	<u>10,761</u>	<u>3,712</u>	34%	<u>9,210</u>	<u>3,285</u>	36%

Developed by Legislative Post Audit from the Statistical Report on the District Courts of Kansas, July 1, 1976 and from Judicial Department computer records for fiscal year 1978.

Despite the limitations imposed by the available data, the table does tell an interesting story. Since unification, the number of cases exceeding the six-month time processing standard has dropped only slightly--from

3,712 in 1976 to 3,285 in 1978. It would seem, therefore, that unification has had little effect to date on reducing the time needed to process certain district court cases.

#### Variation of Case Processing Times Among Judicial Districts

Legislative Post Audit also looked at case processing times within the judicial districts, where the aim of unification was to have a relatively uniform State-wide court system in which cases were processed speedily regardless of the district in which they were handled. Some variation will exist, of course, because of variance in the number and types of cases filed in those districts. For this comparison, the auditors were able to use the Judicial Department's 1978 statistics for the five types of cases on computer: criminal felony and misdemeanor, domestic relations cases, and civil cases over and under \$3,000. Much of the information on the districts' processing times for these cases in fiscal year 1976 was not on computer.

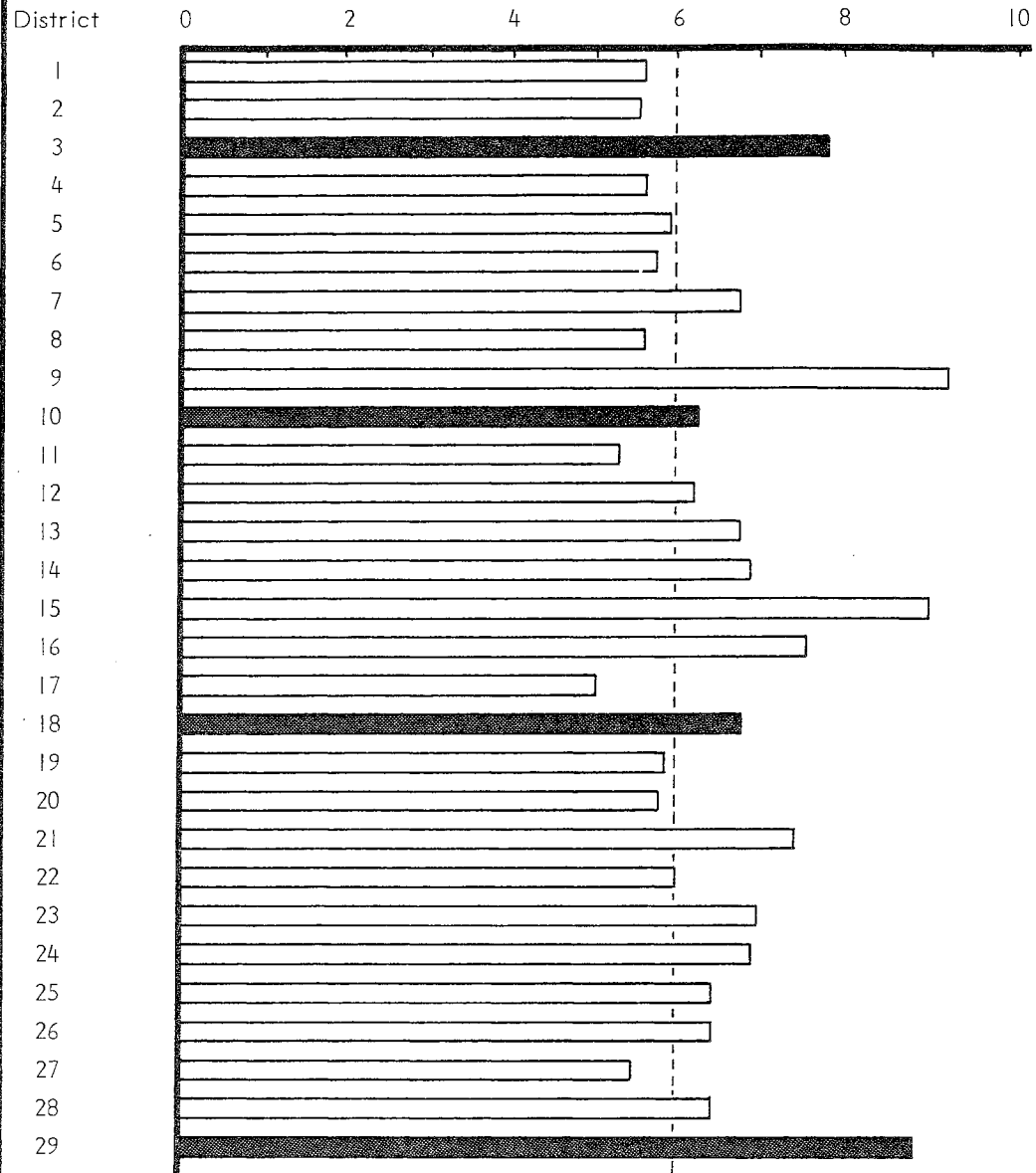
The auditors' comparison and analysis showed that it took an average of 6.8 months in fiscal year 1978 to terminate these cases, ranging from an average of five months in District 17 to 9.2 months in District 9. Their findings are presented graphically on the following page. The auditors also found that 18 of the 29 judicial districts exceeded the six-month time processing standard, including all four of the State's predominantly urban districts--Shawnee (3), Johnson (10), Sedgwick (18), and Wyandotte (29). These four districts processed approximately half the caseload of the State in fiscal year 1978.

Although unification has only been in effect since January 1977, the delays in processing contested cases in comparison to the six-month standard and the variations among the districts provide an early indication that unification has as yet had little effect at the district court level and that the Supreme Court is not actively managing the cases in the court system. The American Bar Association standards on case management in trial courts suggest that "the cornerstone of improvements in case processing is a commitment to court control of caseflow." The auditors' review of court records to determine why cases were being delayed showed that neither the courts nor the Judicial Department have exhibited that kind of commitment.

#### Reasons for Delays in Processing District Court Cases

The auditors examined court records of about 500 cases in a sample of judicial districts and attempted to determine the reasons for any case delays. Because of differences in civil and criminal proceedings and because the consequence of delay can be much more severe in criminal

### Number of Months Needed to Resolve Selected Cases



The auditors found that there was a wide variation among the judicial districts in 1978 in the time needed to terminate five types of contested cases: criminal felony and misdemeanor cases, domestic relations cases, and civil cases over and under \$3,000. Eighteen of the 29 districts--including the four urban districts shaded in, which processed about half the State's caseload in 1978--exceeded the six-month standard for processing cases. The average for all 29 districts was 6.8 months.

cases where statutory time limits prevail, it is helpful to review the findings for the two types of cases separately. In both types of cases, the major reason for delay appeared to be attorney's requests to postpone or delay trial dates.

The general procedures for processing civil cases are relatively simple. The plaintiff's petition is filed with the clerk of the court and a copy is served on the defendant, who has 20 days in which to respond. The case is then assigned to a judge's docket. Cases are set for trial only after the attorneys involved inform the judge they are ready to proceed. The auditors found that the courts generally become actively involved in moving cases through the system only when attorneys have taken no action on a case for several months. At that time, the courts compile listings of inactive cases and request attorneys either to let the judge know where the case stands and whether it is ready for trial, or to take action within a certain time period, after which time the case is dismissed. In short, progress toward moving the case through the court system depends more on action by the attorneys rather than the court, and any delays tend to occur before the trial date is set.

In the civil cases examined by the auditors, delays of up to three months occurred at the stage before trial dates were set. Once trial dates were set, few requests for continuances (continuing the trial date beyond the originally scheduled date) were reported. Although no reasons for these pre-trial delays are generally recorded in the court records, the auditors interviewed attorneys for several of the cases examined and were told the usual reasons for delay were that an attorney needed more time to prepare the case or to negotiate an out-of-court settlement. The Judicial Department has not provided direction to the courts on limiting or reducing such delays.

Procedures for processing criminal felony cases are more complex than for civil cases. The defendant is usually brought before a judge within 48 hours after being arrested. The judge advises the defendant of the charges filed, of the right to counsel, and of any bond requirements. A preliminary hearing is usually held within 10 days, although by law each side may request that this hearing be continued for 15 days. Within 10 days of the preliminary hearing, the defendant is arraigned: formal charges are read, the defendant enters a plea, and a date is set either for the trial or for sentencing. It is not until after the arraignment date that statutory time limits for criminal cases begin to take effect. If in custody, the defendant must be brought to trial within 90 days of the date of arraignment; if the defendant is released on bond, he must be brought to trial within 180 days. In either case, the defendant may waive or extend the time limit.

A continuance will extend the time allowed for bringing a defendant to a speedy trial if it is granted for any of the following statutory reasons:

- the defendant requests a continuance
- the State prosecutor requests a continuance because material evidence is not available
- the court continues a case because its caseload is backlogged and the case cannot be heard (such continuances extend the statutory time limit by only 30 days and may only be granted once for any one case)

Continuances granted for any other reason may not by law push the defendant's trial date beyond the statutory limits. The only policy of the Supreme Court regarding continuances is that they must be granted for "good cause." Unless a criminal trial is delayed for a statutory reason, the sanction for failure to bring the defendant to trial on time is dismissal of the charges. The need to record the reasons why continuances are granted, especially to the State or on the court's motion, therefore becomes of great importance.

During their field visits, the auditors attempted to document the reasons why criminal cases were being delayed and whether any problems had resulted from not meeting the time standards. They discovered two major problems: a lack of record-keeping that virtually prevented them from determining more than a few of the actual reasons for the delays, and a failure by the courts to monitor the status of cases in relation to the speedy trial standard.

Lack of record-keeping for continuances granted in criminal cases. In general, the auditors found that the procedures for granting and documenting continuances varied from district to district, even though a standard continuance form is available. Continuances were sometimes noted on the trial docket, sometimes in the case files, and sometimes in other court records. The fact that continuances were granted was generally recorded, but in most cases the reasons for them were not.

Because the reasons for continuances generally were not recorded, the auditors went back to three districts after their initial fieldwork to specifically trace court records for nine criminal cases through the court system--from the date of filing to the the date of termination. In those nine cases, they discovered that 15 continuances of preliminary hearings had been granted and five continuances of trial dates. Each side in a case may by law request a continuance of a preliminary hearing, but in only five of these continuances were reasons documented, making it difficult to determine who requested them and why they were granted. Of the five continuances granted for trial times, only two were documented by formal motions in the files--they were both granted because the attorneys were going to be out of town at the scheduled trial dates, which were rescheduled for about one month later. The reasons for three others were not documented, although interviews with attorneys and court personnel showed that one was by mutual agreement of both attorneys and two were requested by the defendants.

The Supreme Court has stressed the importance of documenting court records. In 1972 in State v. Higby, the Supreme Court stated "...the obligation to bring a defendant to trial within the time provided...is on the state and the defendant is not required to take any affirmative action." The Court went on to say:

...District courts are courts of record. Their proceedings of significance such as events touching upon the right to speedy trial are to be recorded. The only safe practice if the interests of the accused, the prosecution and the public are to be effectively protected is that those records shall control.

The need for an accurate record of a continuance cannot be overstated, especially in a criminal trial, because without one it is often impossible to determine who requested the delay and whether it was granted for a sufficient reason. This need was clearly illustrated by a case in Harvey County, in which the defendant was arraigned in August 1976 but not brought to trial until July 1977. The defendant, who had been charged with rape, was released because he was not brought to trial within 180 days and because there was no formal record of the continuances granted during the case.

Failure by the courts to monitor the status of criminal cases in relation to the speedy trial standard. A 1978 study on state court delay by the National Center for State Courts found that many of the traditional explanations for case delay--such as judicial caseload, size of the court, and seriousness of the cases--are less of a factor on the processing of cases than the management or control exercised by the court. The study reported that those courts which allowed attorneys to control the pace of litigation were generally slower than courts which actively managed their caseload.

#### **Dismissing a Criminal Case Because of Poor Record-Keeping in the Court System: An Example**

A defendant in Harvey County was arraigned on August 26, 1976, on a charge of rape. He requested several delays of his trial date--delays which extended the six-month statutory time limit for bringing him to trial. His trial was finally set for July 12, 1977, nearly 11 months after his arraignment.

On July 5, the defendant's attorney moved that the case be dismissed because it exceeded the speedy-trial standard. The judge refused, claiming that the defendant was responsible for the delay and that, by requesting the delay, had waived his right to a speedy trial. The defendant was found guilty, but on appeal of his conviction it was ruled that in order to attribute the delay to the defendant and exceed the speedy trial standard the State had to be able to show in the court records that he had in fact requested the delays. No such record existed, and the defendant was released.

The American Bar Association has accepted the concept that courts must actively manage caseflow, saying that "...assuring adequate consideration of cases without undue delay requires the court to exercise active supervision of its caseflow. The alternative to management by the court is management by the bar, or in criminal cases, by the prosecutor."

During their review of continuances granted for criminal cases, the auditors found that the courts have in some instances let the attorneys dictate court practices for granting continuances. For cases in which the reasons for continuances were recorded, the auditors noted continuances were generally granted because of attorneys' scheduling conflicts, their need for additional time to prepare the case, their requests for discovery (reviewing records and testimony collected by the State), and their requests for competency hearings for the defendant.

The American Bar Association criticizes such systems because attorneys cannot provide the centralized control needed to coordinate the processing of all criminal cases within the court system. The danger in allowing caseflow to be controlled by attorneys was shown quite recently in

**Dismissing a Criminal Case Because of a Judge's Failure to Actively Manage and Evaluate Continuances: An Example**

On July 27, 1979, a Rice County judge granted a prosecuting attorney's request to continue or delay a defendant's trial for 30 days because the attorney was working on another case. The defendant had been charged with aggravated battery (he allegedly shot another person). Because he was unable to post bond, the defendant was held in jail until his trial could be heard. Under the State's statutory speedy trial standard, the court had to try the defendant within 90 days of his arraignment. In this case, the 90 days was up July 30, just three days after the 30-day continuance was granted.

On August 6, the defendant's attorney requested that the charges against his client be dropped--the defendant had not been brought to trial within 90 days. Because of his failure to determine the effect of the attorney's request, the judge had to dismiss the case and the defendant was set free.

a case in Rice County. In that case, the prosecuting attorney had two cases of aggravated battery pending simultaneously, so he requested and the judge granted a 30-day continuance. The continuance extended the trial date beyond the 90-day time limit (the defendant was being held in custody). The defendant's attorney asked that the case be dismissed because the State had failed to provide a speedy trial; his motion was granted and the defendant was set free.

In criminal cases, defendants have a right to a speedy trial and the State's citizens have a right to have persons tried within the bounds of State laws. The Supreme Court has not taken an active role in setting record-keeping

standards and requiring the courts to accept responsibility for case management to accommodate these competing ends and to avoid the problems cited earlier. Only after it does so can the Supreme Court collect accurate information to find out whether criminal cases are being processed in compliance with the law, whether specific court action will be required to process cases which are approaching the time limit, and whether records are being kept in compliance with the Court's rulings.

### Survey of Kansas Judges and Attorneys

In addition to examining court records, the auditors surveyed 186 Kansas judges and 138 attorneys asking them to rank in order of importance the reasons why they thought cases were being delayed. Because the auditors could find little documentation of the actual reasons for delays in court records, the surveys provided an important assessment of the generally pervading attitude in the courts. The types of delays the judges and attorneys were asked to rank were identified by the auditors early in the audit from their readings on judicial practices and policies. Their responses are summarized in Table IV-2.

As the table shows, a vast majority of both judges and attorneys listed benign delays--where both attorneys agree to postpone the case--and attorneys' delays as the most important cause of delay. In both types of delays, the attorneys play the major role in dictating court practices on continuances. Overloaded dockets (too many cases to handle) were also viewed as having some impact on case delays. Such things as court facilities, the number of support staff, and caseload management by the courts were considered to be of little importance.

The survey also showed that most judges and attorneys did not consider delays to be an issue in Kansas. Legislative Post Audits' findings in this area, plus the stand taken by the American Bar Association, would seem to indicate that on the contrary case delays do pose a serious problem in the administration of justice. Before case delays can be reduced, the courts must consider them to be a problem and must actively manage their caseloads.

Finally, both judges and attorneys recommended ways to speed-up the processing of court cases. Two of their major recommendations--use of docket calls and limits on the number of continuances allowed--are integral parts of a caseload management system.

Table IV-2  
Kansas Judges' and Attorneys' Opinions  
on Major Causes of Case Delays

Type of Delay	Judges' Ranking of Major Causes of Delay		Attorneys' Ranking of Major Causes of Delay	
	Most Important	Second Most Important	Most Important	Second Most Important
<b>Benign Delay</b> (both the defendant's and the plaintiff's attorneys agree to postpone the case)	53%	32%	51%	21%
<b>Attorneys Delay</b> (insufficient number of experienced attorneys, unnecessary prolonging of cases, lack of court preparation, incomplete investigation, conflicts in case schedules)	32	44	22	33
<b>Overloaded Docket</b> (too many cases to handle)	11	9	16	20
<b>Other Administration</b> (witnesses or defendants fail to appear, jurors cannot serve)	2	8	2	10
<b>Lack of Facilities</b> (insufficient courtrooms, conference rooms, or support offices)	1	4	1	2
<b>Court Administration</b> (insufficient clerical staff, inadequate caseload management, incomplete preparation by judges, non-availability of judges)	1	3	8	14

Developed by Legislative Post Audit from a survey of Kansas judges and attorneys.

### Conclusion

To date, unification of the court system appears to have had little significant effect on reducing the time needed to process district court cases. Processing time standards have been established for criminal and civil cases, either by law or by the American Bar Association, yet many cases in Kansas have in fact exceeded those standards. In criminal cases, these delays have sometimes resulted in the release of a defendant without determination of his guilt or innocence. Legislative Post Audit found that many of those delays occur because the pace of litigation is controlled more by attorneys than by the courts. The National Center for State Courts has indicated that when this is the case, processing times are generally slower than when judges control the courts through active

management of their cases. With unification, the Supreme Court became responsible for managing the consolidated district court system. It appears that the Supreme Court is not actively managing the court system and that it will not be able to achieve its goals of providing justice with the least possible delays without developing an effective system for managing cases at the court level.

### Recommendations

The Supreme Court should begin to manage the processing of cases in the following ways:

1. Establishing time processing standards for all cases processed at the district court level. Variations from the standards should be documented on a case-by-case basis by the district courts and forwarded to the Supreme Court for evaluation and possible action.

These standards should be implemented by July 1, 1980.

2. Improving the collection and reporting of case processing information at the district court level to assure that the time processing standards are being met and that court records adequately reflect the actions of the court to protect both litigants and the public. This information should be forwarded to the Supreme Court and incorporated into the Unified Judicial Department's comprehensive plan for data processing. The Supreme Court should also ensure that the information on active case records, once it is collected and analyzed, is transmitted back to the district courts to allow a better management of those cases.

### Processing Time for Appellate Cases

The court reform that led to unification also resulted in a significant change in the appellate structure of the judicial system. Before unification, cases were handled by both the district courts and the Supreme Court. Nearly all cases appealed from the lower courts--such as probate, juvenile, magistrate, city, and county--were appealed to the district courts. All

appeals from the district courts went to the Supreme Court. Judicial Department and Judicial Council reports show that approximately 1,753 cases were appealed to the district courts in fiscal year 1976 and that 438 cases were appealed to the Supreme Court. That same year, the Supreme Court also had 239 cases pending on its docket. Of its total of 677 cases, the Court was able to resolve only about half; it had 337 cases pending by the end of the year.

In an effort to make the appellate process more readily accessible to the public, to reduce the time needed to hear and resolve appeal cases, and to alleviate the Supreme Court's backlog, the 1975 Legislature established a seven-member intermediate appellate court, the Court of Appeals, to begin operating in January 1977. This appellate court was allowed to divide into three-judge panels to hear cases in any county in the State. Occasionally, all seven judges will meet together (en banc) to hear a case.

After unification, many cases formerly appealed to the district courts and some of those appealed to the Supreme Court were placed within the jurisdiction of the Court of Appeals. In January 1977, all lower courts but the municipal courts were consolidated into the district courts, and many of the county judges became associate district judges in the district courts. Thus, appeals on their rulings, which before unification were heard by the district courts, are now appealed to the Court of Appeals. The district courts continue to hear appeals from the municipal courts and from district magistrate judges. In fiscal year 1978, judicial records show that 1,153 cases were appealed to the district courts and 944 to the Supreme Court and the Court of Appeals combined.

The auditors reviewed case statistics for the Supreme Court for fiscal year 1976 and for the Court of Appeals and the Supreme Court for fiscal year 1978. During their review, the auditors attempted to answer the following questions:

1. Has the appeals process become easier and more readily accessible?
2. What effect has unification had on the time needed to process appealed cases?
3. Has unification helped reduce the backlog of cases in the appellate process?

Because of time constraints and the lack of collected data for appeals processed in the district courts, the auditors answered the latter two questions only for the Court of Appeals and the Supreme Court.

## Making the Appeals Process More Accessible

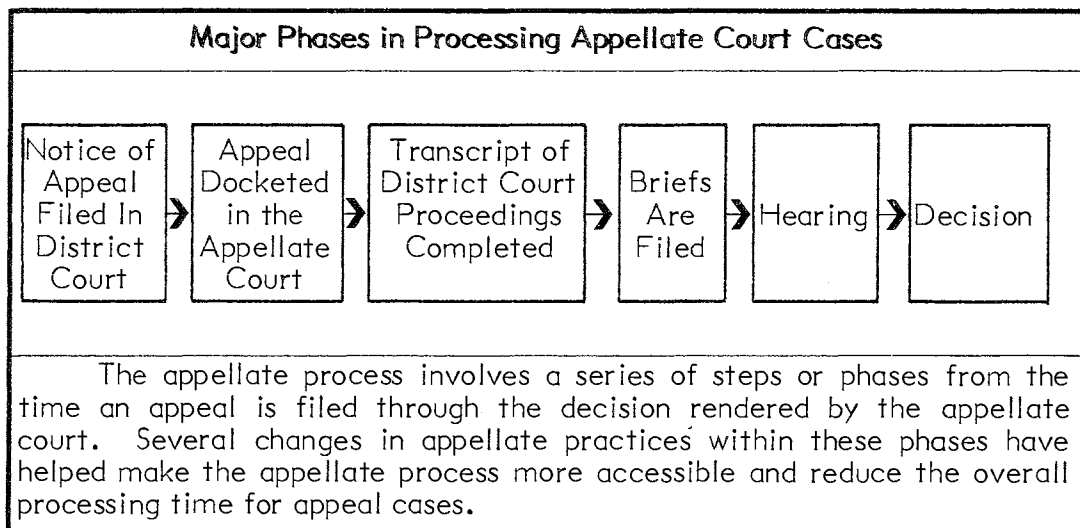
Before unification, a litigant who chose to appeal a criminal misdemeanor or a civil action decision from a limited jurisdiction court (such as probate, juvenile, or county) would appeal the case to a district court for a new trial. Now, with few exceptions all such appeals are made directly to the Court of Appeals. Also, a former restriction that civil cases involving less than \$500 would not be heard by the appellate courts was dropped. Thus, the appellate courts now hear civil cases without regard to the monetary value of the action. Adding those changes to the use of traveling, three-judge panels, unification has made the appellate process more accessible to litigants throughout the State.

Other changes made within the appellate process of the Court of Appeals have also helped make that process less complex and more accessible. Before discussing those changes, however, it may be useful to describe in general terms how the appellate process works. It involves, in essence, a series of steps or phases.

Appeals are initiated with the filing of a notice of appeal in the district court where the case was originally heard. (A person generally has 30 days from the date the case is ruled on to appeal to a higher court.) The case is subsequently filed, or docketed, in the appropriate appellate court. During this second phase, the Clerk of the Appellate Courts begins to monitor the progress of the case. Although the third phase may not be required, in most appellate cases a transcript of the district court proceedings is requested. In the next phase, the case is prepared for hearing. Each party in the appeal submits a written brief covering the issues and presenting their arguments. When all briefs are filed, the case is ready to be presented orally to the court. Following the hearing, the court reaches a decision and prepares an opinion. The opinion represents the final decision of the court, unless a rehearing is granted. The Supreme Court may also grant a review of Court of Appeals' decisions.

When the court system was unified, the Supreme Court also streamlined and simplified its rules concerning appellate practices. Briefly, the most significant changes included the following:

1. Cases that are appealed must be filed, or docketed, in the appropriate appellate court within 10 days after the notice of appeal is filed. Previously, no time limit was set for a case to be docketed, and that phase took an average of six months.
2. Court reporters' time for preparing transcripts is limited to 40 days. Previously, no time limit was set.
3. The entire record of a case is now provided to the appellate court. Previously, attorneys could delay the case by arguing about what parts of a record should or should not be provided.



One could expect that such revisions also reduced the costs of appealing cases. Decreasing the time during which a case must be docketed from an average of six months to 10 days could, for instance, reduce attorneys' fees paid by the litigants. In addition, by allowing the Court of Appeals to sit in any county of the State, the appeal process is taken to the litigants rather than requiring them to travel to Topeka, where the Supreme Court is located.

#### Average Time Needed to Process an Appeal

To determine the effect of unification and the creation of the Court of Appeals on the processing of appellate cases, the auditors reviewed the amount of time needed to process cases appealed to the Supreme Court and the Court of Appeals before and after unification. They compared cases appealed to the Supreme Court in fiscal year 1976 with cases appealed to both the Supreme Court and the Court of Appeals in fiscal year 1978. They were unable to document the processing times for cases appealed to the district courts in 1976 because that information was not compiled.

Table IV-3 shows the results of their comparison. As the table shows, the auditors found that the total processing time for appealed cases has improved. In fiscal year 1978, civil cases took between 10 and 14 months to process compared with 17 months in 1976. Criminal cases took 10 to 11 months to process compared with approximately 17 months in 1976.

The table also shows that the greatest improvement occurred in the phase from "notice of appeal to docketing" in the appropriate appellate

Table IV-3  
Months to Process Appellate Cases  
Before and After Unification

Phase	Before Unification (Fiscal Year 1976)		After Unification (Fiscal Year 1978)			
	Civil	Criminal	Civil		Criminal	
	Supreme Court	Supreme Court	Court of Appeals	Supreme Court	Court of Appeals	Supreme Court
Notice of Appeal to Docketing (a)	5.6	7.7	.3	.3	.3	.3
Docketing to Readiness	4.4	4.1	4.2	4.6	5.0	6.0
Readiness to Decision	<u>7.1</u>	<u>4.8</u>	<u>5.7</u>	<u>9.1</u>	<u>4.3</u>	<u>5.2</u>
Total Months	<u>17.1</u>	<u>16.6</u>	<u>10.2</u>	<u>14.0</u>	<u>9.6</u>	<u>11.5</u>

(a) Time for this phase in 1978 is estimated based on the Supreme Court Rule which requires cases to be docketed within 10 days after filing the notice of appeal.

Developed by Legislative Post Audit from Kansas Judicial Council Bulletins and statistics compiled by the Office of the Judicial Administrator.

court. This change reflects the Supreme Court's revised 10-day docketing rule, which was initiated with the creation of the Court of Appeals. The processing time for this phase was reduced from an average of six months in 1976.

The other phases of the process showed no improvement by the Supreme Court; in fact, they showed a worsening of the situation. For example, in fiscal year 1976, the "readiness-to-decision" phase took the Supreme Court an average of seven months to process; in fiscal year 1978, it took nine months. Increases in the two latter phases were caused, it appears, by the fact that cases had to be docketed within 10 days after they were filed regardless of whether the court was ready to hear them. In effect, delays which previously occurred while a litigant waited for his case to be docketed have been shifted to the other phases of the appellate process. In any event, there was a significant overall improvement after unification and simplification of the appellate procedures in the time needed to process an appealed case. Even with the overall improvement, however, appealed cases in Kansas did not meet appeal case processing standards of the American Bar Association.

Comparison to time processing standards. The American Bar Association sets a standard of six months for processing appeals. In addition, the

1973 Judicial Study Advisory Committee, when making recommendations for establishing the Kansas Court of Appeals, indicated that Court of Appeals cases should be terminated within three months. Neither standard is currently being met. The current processing of civil cases in the Supreme Court exceeds the American Bar Association standard by eight months; for criminal cases that standard is exceeded by 5.5 months. In the Court of Appeals, this six-month standard is exceeded by 4.2 months for civil cases and by 3.6 months for criminal cases. The three-month standard recommended by the Committee for the Court of Appeals is exceeded by approximately seven months for both civil and criminal cases.

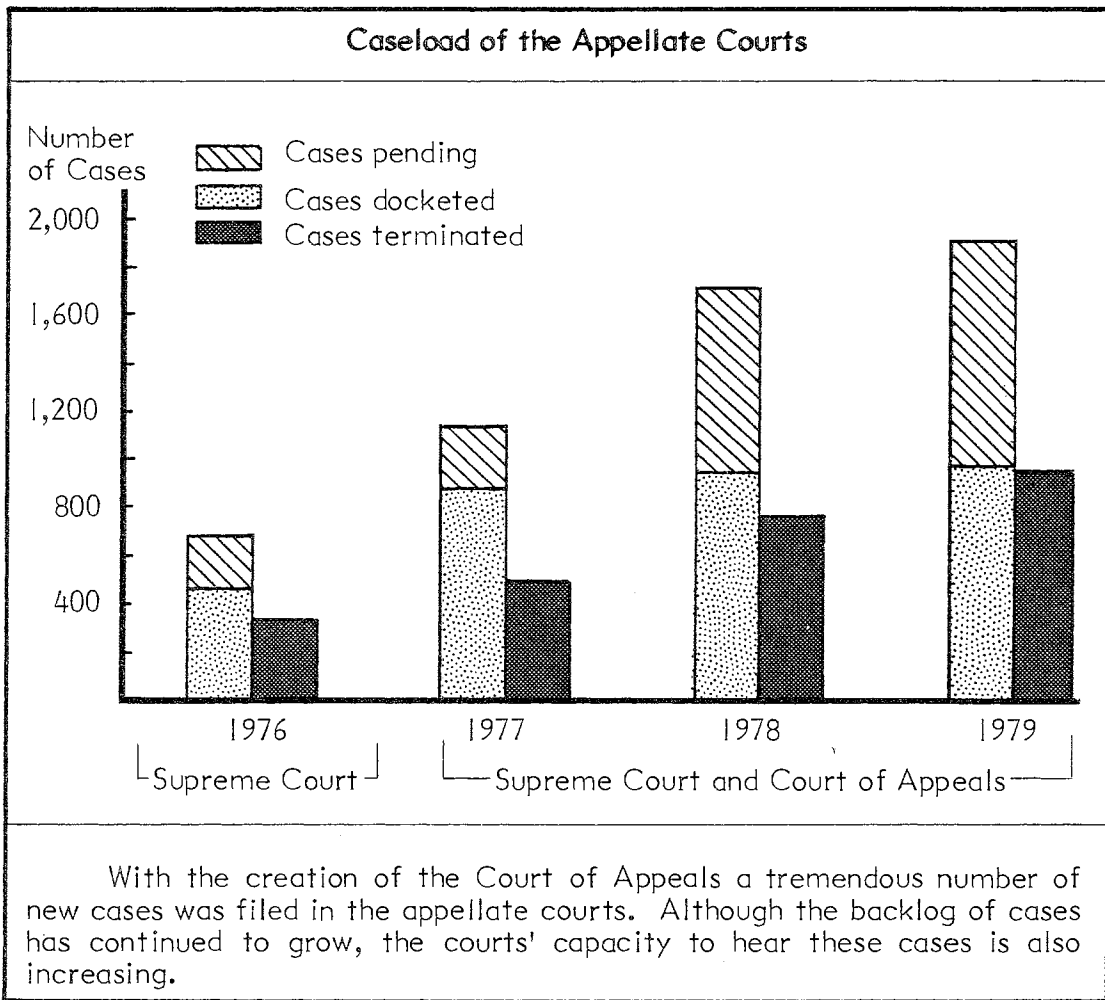
#### Effect of Unification on Reducing the Backlog of Appealed Cases

Creation of the Court of Appeals and other changes in the appellate process which accompanied it worked together to make the appeals process easier. These changes also resulted in a tremendous influx of new cases into the appellate process at the Supreme Court and Court of Appeals level. Appeal cases filed with these two courts increased about 46 percent in just two years, from 438 in fiscal year 1976 to 944 in fiscal year 1978.

The auditors examined the caseload of the appellate courts for fiscal years 1975 through 1979 and found that the number of cases appealed since unification initially exceeded the courts' capacity for hearing them and that the backlog of cases grew substantially through 1978. However, 1979 caseload data indicates the appellate courts have begun to reverse this trend.

In fiscal year 1975, the Supreme Court resolved 354 cases, or 60 percent of the cases on its docket. In fiscal year 1976, the number of cases resolved remained approximately the same, but the number of cases docketed increased so that the Supreme Court resolved only 50 percent of its cases. In the middle of fiscal year 1977, the appeals process was made easier and the Court of Appeals was created. The influx of cases flowing into the Court of Appeals overwhelmed it, and the new court resolved only 26 percent of the 505 cases docketed in the six months in which it operated. In the same year, the Supreme Court resolved 46 percent of its cases. It was not until 1978 that a reversal began to occur.

In 1978, both courts were able to resolve more of their cases--the Court of Appeals resolved 38 percent of its cases and the Supreme Court resolved 61 percent. In 1979, they increased their rates of resolving cases even further--the Court of Appeals resolved 42 percent of its cases and the Supreme Court resolved 87 percent. By July 1, 1979, the Supreme Court had reduced its backlog of cases to only 172 cases, while the Court of Appeals' backlog was 757 cases. If the Supreme Court continues to receive



new cases at its 1978 and 1979 rates (about 150 cases a year) while resolving them at its present rate (about 300 cases a year), it will soon be able to begin hearing cases normally first going to the Court of Appeals. Doing so should allow the Court of Appeals to begin reducing its large backlog of cases.

#### Conclusion

Legislative Post Audit examined the effect of the changes in the appellate process brought about by unification and found that the intent to make the appellate process more readily available has been met. However, the initial increase in case filings with the Supreme Court and the Court of Appeals was so dramatic that the appellate courts were not able to keep up with their workload. It appears that the appellate courts have

begun to solve that problem. The number of new appeals is increasing at a slower rate while the Court of Appeals has substantially increased the number of cases it is resolving. The intent to reduce the time it takes to process appeal cases still appears to be a problem, however. The appeals process, which was not meeting time processing standards before unification, will continue to exceed these standards.

### Recommendations

To better allow the appellate process to meet time processing standards and to ensure that the appellate process continues to be accessible to litigants, the Supreme Court should:

1. Develop time processing standards for appellate cases. These standards should be used in evaluating the performance of the appellate courts. Variations from the standards should be documented and evaluated by the Supreme Court for possible action.

These standards should be implemented by July 1, 1980.

2. As part of the annual budget request, the Supreme Court should develop and report to the Legislature the following information:
  - a. Number of cases disposed of by the Supreme Court and the Court of Appeals in the last fiscal year and a three-year projection of case filings and terminations.
  - b. Number of cases and length of time cases have been pending in the Supreme Court and Court of Appeals.
  - c. Proposed actions to resolve the remaining backlog of cases and to deal with cases which exceed the adopted time processing standards. This should include an evaluation of how effective the performance of the appellate courts has been, whether changes are needed in the number of judicial and non-judicial staff, and whether further revisions need to be made in the appellate procedure.

This recommendation should be implemented as a part of the fiscal year 1982 budget request.

## CHAPTER V

### RESOURCE MANAGEMENT WITHIN THE KANSAS UNIFIED JUDICIAL SYSTEM

In his 1978 annual report to the Kansas Legislature, the Chief Justice of the Supreme Court said that unification of the courts was also intended to permit effective and efficient use of judges and court facilities. Although the major changes associated with the unification of Kansas courts took place in January 1977, the Legislature's concern for the management and control of the business of the district courts was demonstrated as early as 1965 with the passage of the Judicial Department Reform Act. The role of the Unified Judicial Department in monitoring and reporting on the conditions of the dockets and business of the district courts was expanded in 1977 by the incorporation of the courts of limited jurisdiction into the district courts. This chapter examines the management of judges' caseloads to determine if the Legislature's continuing commitment to effective management of the court system's resources is being met. In addition, the chapter examines the use of non-judicial court personnel and court facilities.

#### Management of Judges' Caseloads

To determine how the Judicial Department's implementation of unification has affected the use of judges and the management of their caseloads, Legislative Post Audit first examined the caseloads in the judicial districts for fiscal years 1976 and 1978 and the number of judges available to hear them. Although a judge's caseload does not reflect his full workload because of differences in the types of cases he may be handling, it does provide a relative measure of judicial activity. One intent of unification was to equalize judicial workloads. Supreme Court Rule 107 requires that the administrative judge in each district distribute as equally as possible the judicial workload of the district. The Supreme Court is responsible for the overall equalization of workloads among districts.

From Judicial Department statistics, the auditors were able to develop judicial caseloads by district for all active cases in the court system. Active cases are defined as the number of cases filed plus the number of cases pending at the start of the year. In fiscal year 1976, there were approximately 191,000 active cases (excluding traffic) in the court system and 196 judges. The average active caseload per judge was 975

cases. By fiscal year 1978, the number of cases had increased seven percent to 205,000, and the number of judges also increased seven percent to 210. The 210 judges in fiscal year 1978 had an average caseload of 976 cases; no change from 1976.

These are general statistics, though, and they reflect neither variations in judges' caseloads among judicial departments nor variations among individual judges. Table V-1 shows both variations. As the table shows, the judicial caseload in 1976 ranged from 351 cases to 2,221 cases per judge; by 1978, the caseload ranged from 360 cases to 1,688 cases per judge. There has been some equalization of caseload averages and ranges between 1976 and 1978, but that equalization occurred almost exclusively in Departments II, III, IV, V, in which the urban districts are located. These four departments received all of the new judges. Adding new judges helped distribute the caseload among more judges, thus equalizing caseloads somewhat in the four departments.

Table V-1  
Judicial Workload in the Judicial Districts  
Before and After Unification

Judicial Department	Fiscal Year 1976 Before Unification		Fiscal Year 1978 After Unification	
	Average Caseload	District Caseload Range	Average Caseload	District Caseload Range
I (Northwest Kansas)	507	351-979	598	360-1226
II (Eastern Kansas)	1,362	608-2221	1,213	711-1614
III (Northeast Kansas)	1,136	501-1756	1,036	583-1382
IV (Southeast Kansas)	985	653-1444	1,116	852-1442
V (Southcentral Kansas)	1,324	631-2077	1,177	801-1580
VI (Southwest Kansas)	645	374-1231	728	464-1688
State Overall	975	351-2221	976	360-1688

Developed by Legislative Post Audit from Kansas Statutes Annotated, statistical reports of the Office of Judicial Administrator, and Judicial Council bulletins.

Even with the addition of new judges, overall caseloads have not been reduced, a wide variation of caseloads still exists, and the intent of unification to equalize judicial workloads has not been accomplished. The

auditors discovered three primary reasons why the effective use of judges is being hindered and why caseloads are not being equalized: the location of the judges, the use of different types of judges, and the lack of reassignment of judges across district and department lines to alleviate backlogs of cases and reduce heavy caseloads.

Location of Judges

With the unification of the court system, the Judicial Department became responsible for trying to reduce case processing times by equalizing judges' caseloads within and among judicial districts. Basically, the broad range of caseloads before unification mostly reflected differences between urban and rural districts. In 1976, the caseload per judge was much smaller in the State's 17 rural districts than in the four major urban districts. Judicial caseloads across the State could only truly be equalized if judges were assigned to the areas with the highest number of cases. Yet after unification, when the city and county judges in the local courts became associate district and magistrate judges, they were assigned to the same judicial districts. Thus, the number of judges assigned to the rural areas remained the same, as shown in Table V-2.

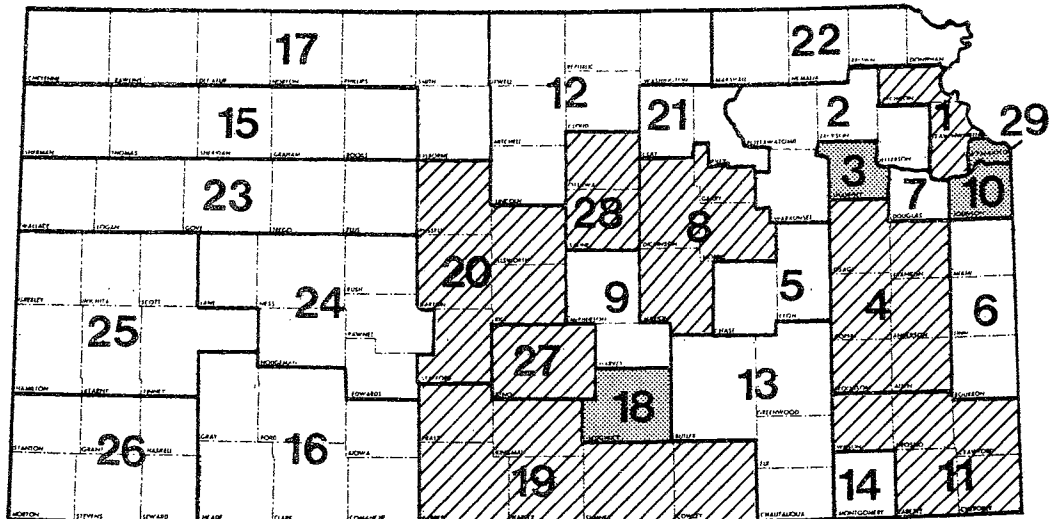
As the table shows, since unification the judges in the rural districts are still handling less than half as many cases as judges in the urban districts, even though new judges were added to the larger districts. The

Table V-2  
Comparison of the Number of Judges and  
Judges' Caseloads in the Three Types of Districts  
Fiscal Years 1976 and 1978

	Fiscal Year 1976		Fiscal Year 1978	
	No. of Judges	Caseload/Judge	No. of Judges	Caseload/Judge
Rural (2,000-5,000 cases)	91	611	91	671
Intermediate (5,000-10,000 cases)	57	798	58	894
Urban (10,000-35,000 cases)	48	1,876	61	1,509

Developed by Legislative Post Audit from agency records.

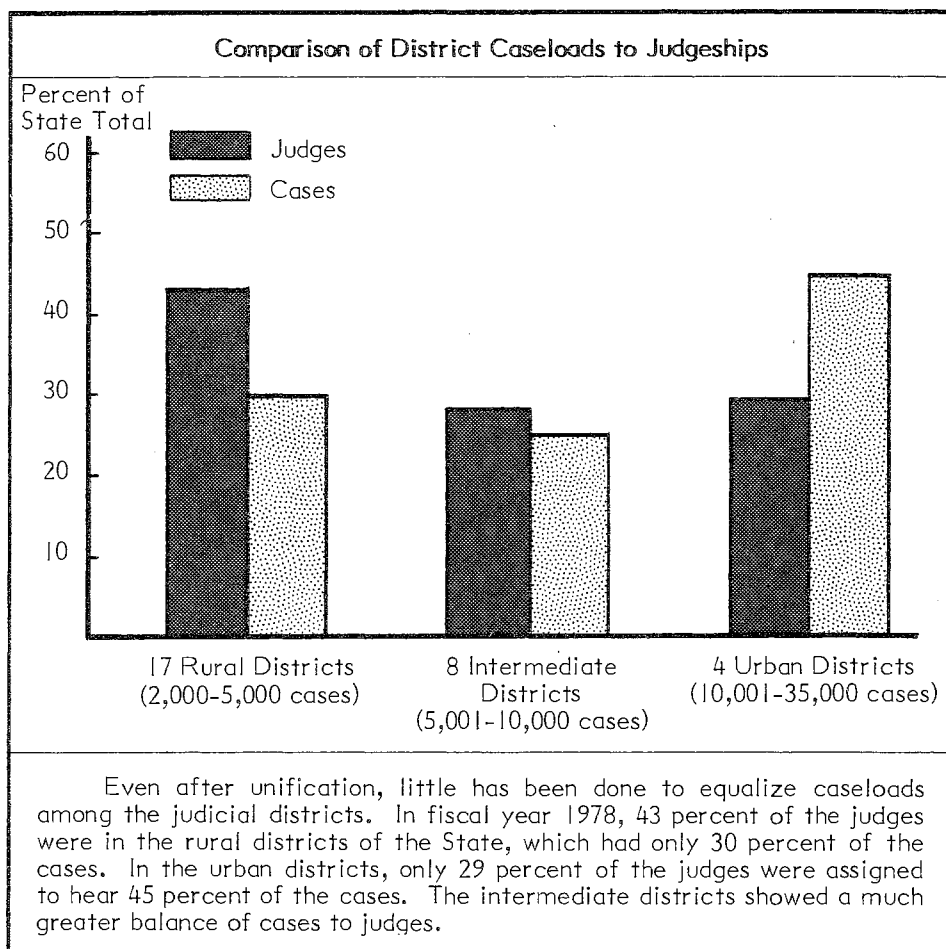
### Range of Caseloads in the Judicial Districts



The number of cases filed within a judicial district varies considerably throughout the State. Caseloads in the four urban districts (solid) ranged from 10,000 to 35,000 cases in 1978. Caseloads in the eight "intermediate" districts (slanted) ranged from 5,000 to 10,000 cases. In the remaining 17 rural districts, caseloads ranged from 2,000 to 5,000 cases.

situation in these three types of districts is now as follows: 43 percent of the judges are in the rural districts, yet they handle only 30 percent of the cases; 28 percent of the judges are in the intermediate districts, and they handle 25 percent of the cases; and only 29 percent of the judges are in the urban districts handling more than 45 percent of the cases. Urban judges have the highest workload, yet they handle more of the cases that take longer to process, such as criminal felony, domestic relations, and civil cases over \$3,000. Not surprisingly, more than 40 percent of the pending cases (those which have not been heard by the end of a year) were in the urban areas, where the average time to process cases examined by the auditors in Chapter IV was 7.4 months in fiscal year 1978. The average time needed to process those cases was 6.7 months in the rural areas of the State, and 5.7 months in the intermediate areas, where the ratio of judges to cases is much more balanced.

Currently by statute (K.S.A. 1978 Supp. 20-338), at least one judge is located in each county of the State, whether the number of cases filed in that county can support one or not. So long as this is the case, the wide variation in caseloads between the rural and urban districts in the State can never be fully equalized.



### Use of Judges

When the Judicial Study Advisory Committee studied the need for a uniform court system, it recommended that judges of the courts of limited jurisdiction who were also lawyers should become associate district judges. The 1976 Legislature implemented the Committee's recommendations, giving associate district judges nearly the same jurisdiction as district judges. Giving them this jurisdiction was intended to improve the availability of judges to hear district court cases. It added flexibility--if a district judge was on vacation or otherwise unable to handle one of the major types of cases, such as criminal felony, domestic relations, and major civil (over \$3,000), the associate district judge could hear it. These major types of cases represent about 60 percent of the State's total active caseload.

Judges in the rural and intermediate districts who were not lawyers became magistrate judges after unification. No judges in the urban

districts became magistrate judges because most of them were lawyers before unification. Magistrate judges cannot by law hear the three major types of cases. Their jurisdiction is limited to hearing such cases as limited civil (under \$3,000), misdemeanor, estates, guardianship, juvenile, small claims, and other probate. In fiscal year 1978, these kinds of cases represented about 60 percent of all active cases and about 60 percent of the cases terminated in the State. Thus, although magistrate judges represent 38 percent of the total judicial workforce, they could have heard up to 60 percent of the total cases terminated in 1978.

The auditors reviewed the terminated caseload for the three classes of judges to first determine how much variation in caseloads existed for each. Because some cases were not on computer, those cases were allocated to the type of judge in the district that would normally hear them. The auditors found an extremely wide variation. As Table V-3 shows, magistrate judges terminated between 63 and 1,176 cases in fiscal year 1978, or an average of 291 cases, and had a caseload almost three times smaller than the average caseload of district and associate district judges. Associate district judges heard by far the largest number of cases per judge, ranging from 254 cases to 5,240 cases, or an average of 1,088. District judges, who primarily hear the major types of cases, terminated between 73 and 1,063 cases, with an average caseload of 623. Thus, workloads for judges who receive equal salaries are far from equal.

Table V-3  
Terminated Caseload by Type of Judge (a)  
Fiscal Year 1978

<u>Type of Judge</u>	<u>Number of Judges</u>	<u>Range</u>	<u>Average Caseload</u>
District Judges	69	73-1063	623
Associate District Judges	62	254-5240	1,088
District Magistrate Judges	79	63-1176	291

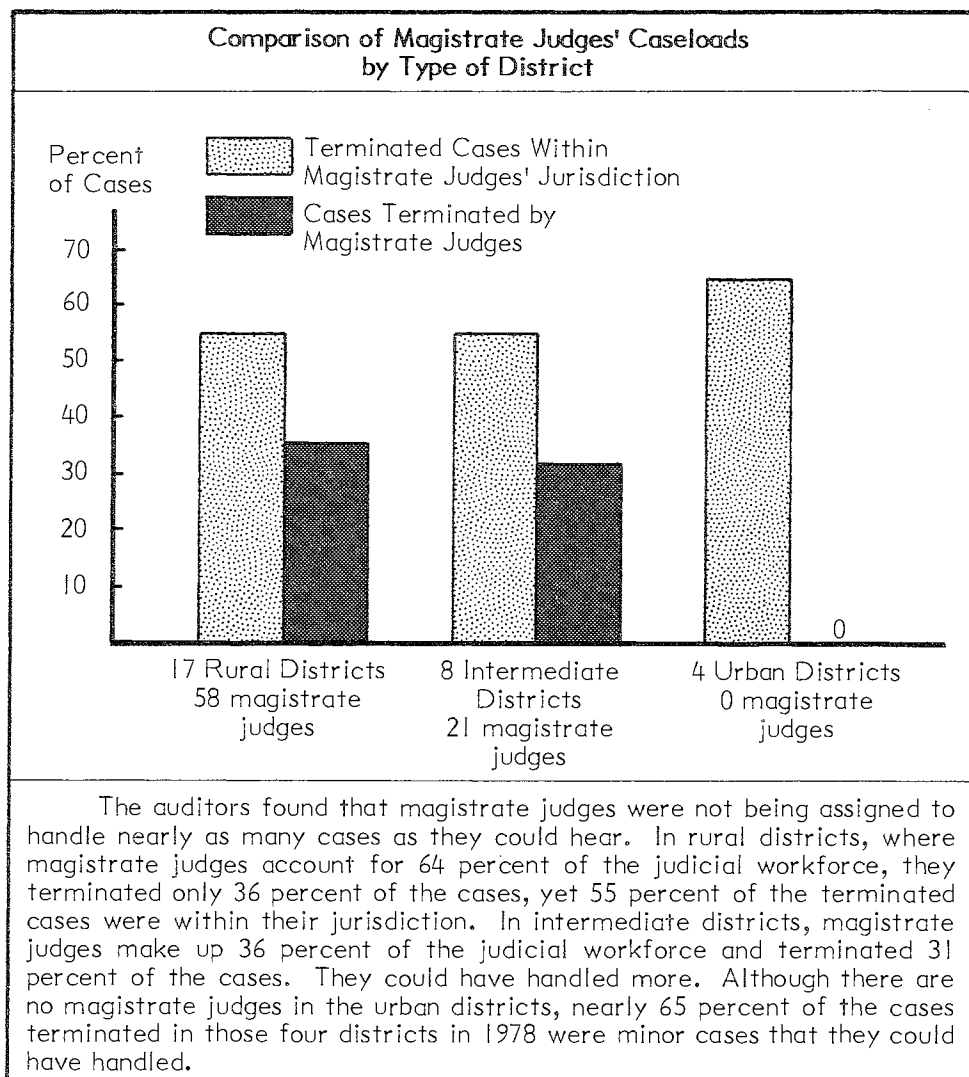
(a) Average caseload data in this table does not coincide with that in Tables V-1 and V-2. The data in those tables is for active caseloads while the data in this table is terminated caseload data because the computer data for judges' identification numbers was most reliable for terminated cases.

Developed by Legislative Post Audit from agency records.

Because magistrate judges terminated so few cases compared with associate district judges, the auditors then analyzed the types of cases each class of judge terminated in 1978 to determine whether magistrate

judges were being fully utilized; that is, whether they were handling as many cases as they could. The auditors had determined that magistrate judges' jurisdiction would have allowed them to hear about 60 percent of the State's active caseload. They found, however, that magistrate judges handled only 13 percent of the active caseload in fiscal year 1978. Much of this difference can be explained by the fact that there are no magistrate judges in the State's four urban districts, even though up to 65 percent of the total cases terminated there in fiscal year 1978 were within their jurisdiction. These cases were heard by district and associate district judges.

In just the rural and the intermediate districts, where magistrate judges are located, the auditors determined that approximately 55 percent of the cases terminated in each were within the magistrate judges'



jurisdiction. They discovered, however, that magistrate judges terminated only 36 percent of the cases in the rural districts in fiscal year 1978 and only 31 percent of the cases in the intermediate districts. When considering these percentages, however, the clustering of magistrate judges in rural districts should also be discussed. Nearly three-fourths of all magistrate judges in Kansas (58 of 79) reside and work in the State's 17 rural districts, where caseloads range from 2,000 to 5,000 cases per district. Thus, the following breakdown for magistrate judges is also important:

	<u>17 Rural Districts</u> <u>(2,000-5,000 cases)</u>	<u>8 Intermediate Districts</u> <u>(5,000-10,000 cases)</u>
Percent of judges	64%	36%
Percent of terminated cases within magistrate judges' jurisdiction	55	55
Percent of cases terminated by magistrate judges	36	31

This breakdown shows there are more magistrate judges in the rural areas than their caseload can support, even if they were hearing all cases within their jurisdiction. The caseload in the intermediate districts suggests they could support more magistrate judges. Again, the current assignment of judges to these districts reflects the fact that by law at least one judge is located in each of the State's 105 counties.

The auditors also found that associate district judges in particular, who after unification began hearing about 24 percent of the major types of cases formerly heard only by the district court judges, were continuing to handle many of the less serious cases they had handled before unification. These cases are within the magistrate judges' jurisdiction. Consider some examples:

--In District 16, a six-county rural district, five magistrate judges terminated an average of 128 cases, while the one associate district judge terminated 1,191 cases and the one district judge terminated 947 cases. Of the 2,138 cases terminated by the district and associate district judges, 1,169 were within the jurisdiction of the magistrate judges.

--In District 5, a two-county rural district, the one magistrate judge terminated only 193 cases in fiscal year 1978. The one district judge terminated 517 cases and the one associate judge terminated 1,433 cases. Of the 1,950 cases terminated by the other two judges, 1,324 were within the jurisdiction of the magistrate judge.

--In District 20, a five-county intermediate district, the four magistrate judges terminated an average of 360 cases. The two district judges terminated an average of 453 cases and the one associate district judge terminated 1,214 cases. In that district, 831 of the 2,120 cases handled by the district and associate district judges were within the magistrate judges' jurisdictions.

Altogether, the auditors found that magistrate judges could have handled between 7,000 and 8,000 more of the cases terminated in the rural and intermediate districts. Had they handled all cases within their jurisdiction in the rural districts, for instance, their average terminated caseloads could have increased from 251 cases to 515 cases, and the average terminated caseloads for both district and associate district judges could have decreased from 855 cases to about 505 cases.

It becomes apparent, therefore, that magistrate judges are not being fully utilized to handle the kinds of cases within their jurisdiction.

There are means available for better equalizing judges' caseloads in the judicial districts as called for by unification, particularly between magistrate and associate district judges where the variation is greatest. Administrative judges in each district, who are responsible for ensuring a relatively uniform caseload among the judges in the district, could begin to reassign magistrate judges within their districts to hear cases that are now being heard by associate district judges.

#### **Reassigning Magistrate Judges to Relieve Heavy Caseloads: District 25**

The administrative judge in District 25, a six-county district in southwest Kansas, reported on Legislative Post Audit's survey that he periodically reassigned one of the five magistrate judges within his district to Finney County, in which Garden City is located, to help relieve the heavy caseload of the associate district judge there. According to the Judicial Department's records, in fiscal year 1978 the magistrate judges in District 25 each terminated an average of 221 cases. The associate district judge terminated 1,316 cases, and the district judge in Finney County terminated 663 cases.

When he responded to the survey last fall, the administrative judge reported those reassignments were being made on a rotating basis about two-to-three times a month. Although caseload data by type of judge is not yet available for 1979, in a follow-up interview conducted in August 1979, the administrative judge indicated that the reassignments had proved very successful and that he was now reassigning magistrate judges even more frequently to relieve the associate judge's heavy caseload or to replace him while he is in another county hearing cases. The administrative judge also said that magistrate judges in the neighboring counties were able to cover for the magistrate judge who was temporarily reassigned to Finney County.

Nearly two-thirds of the administrative judges who responded to Legislative Post Audit's survey of judges reported that the authority to reassign all judges within their districts gave them the flexibility they needed to assign judges to hear cases. Many of these assignments are done to relieve other judges during their vacations or illness. In addition, some administrative judges have reassigned magistrate judges within their districts to help reduce the heavy caseloads of associate district judges. To make these intra-district reassignments efficiently, administrative judges would have to collect and analyze information concerning caseloads and cases being assigned to the three different types of judges. They currently do not have this kind of information.

Reassignments of magistrate judges could be made where feasible and where they would help equalize caseloads and alleviate the heavy burden of cases on the associate district judges. By doing so, processing times may be reduced. In some districts such reassignments could not be used to a large extent because magistrate judges are already hearing a large number of cases. For example, in District 1, a two-county intermediate district, the two magistrate judges terminated an average of 887 cases each in 1978 compared with an average terminated caseload of 398 cases for the two associate district judges and 478 cases for the two district judges. Similar examples exist for both rural and intermediate districts. Other districts are spread out over five or six counties rather than being grouped, and travel times may not make reassignments feasible. The number of support staff and the facilities available in some counties may also affect the feasibility of reassignments.

In some districts, particularly the rural ones, there do not appear to be enough cases to reassign to the magistrate judges. For example, in District 24, a six-county rural district, the six magistrate judges terminated only 190 cases each in fiscal year 1978. The one district judge terminated only 394 cases. Similar examples exist for other districts as well. If judges were assigned to judicial districts based on caseloads, it could be possible to put fewer judges with broader jurisdictions in the rural districts, allowing them to hear all types of cases that may be filed there, and to put more judges, whether magistrate, district, or associate district judges, in the urban areas where the caseload is so much greater.

#### Reassignment of Judges Across District and Department Boundaries

Another important tool available for equalizing caseloads under a unified court system is the increased flexibility of reassigning judges across district boundaries. The Supreme Court's authority to reassign district judges from one judicial district to another was not new with unification. The Judicial Reform Act of 1965 established the authority for departmental justices to assign district judges to hear cases anywhere in the State. Under the unified court system, administrative judges were given

the authority to assign to any judge in his district cases that fall within the judge's jurisdiction. The previous section showed how reassignments within districts might be used to help equalize judges' caseloads within those districts. The increased judicial flexibility associated with assigning judges to hear cases anywhere they are needed has also allowed districts to handle their workloads with their permanent judicial staff rather than appointing temporary judges from local bar associations.

To determine the extent to which reassignments are being made to help equalize caseloads, Legislative Post Audit reviewed the reassignment of judges before and after unification. The auditors could find no documentation for the number of reassignments made within districts, only for the reassignment of judges across district and department lines. The two criteria for such reassignments are the need for judges to hear cases for which the original judge has disqualified himself, called special assignments, and the need for judges to alleviate case backlogs or to temporarily fill vacant judgeships, called general assignments. The auditors focused their review on general assignments because these assignments best reflect the courts' management of caseloads and judicial resources. Table V-4 shows the number of general assignments made in fiscal years 1976 and 1978 and the reasons for them. Appendix C shows those reassignments by district.

Table V-4  
General Reassignment of Judges  
Before and After Unification

	Fiscal Year <u>1976</u>	Fiscal Year <u>1978</u>
Reason for Reassignment:		
Heavy Caseloads	36	15
Absence or Vacancy	4	14
Scheduling Conflict	4	5
Other	<u>4</u>	<u>10</u>
Total Reassignments	<u>48</u>	<u>44</u>

Developed by Legislative Post Audit from agency records.

As the table shows, the number of general assignments dropped from 48 in fiscal year 1976 to 44 in fiscal year 1978. Assignments made to reduce heavy caseloads dropped from 36 to 15. In addition, 18 of the 48 reassignments were made across department lines in fiscal year 1976, but

by 1978 only 6 of the 44 assignments were across department lines. The remainder were made within departments (across district boundaries).

It would appear that unification has had no impact on the total number of general reassignments across district and department boundaries and that these reassignments are being used even less frequently to equalize or reduce caseloads. Yet, Legislative Post Audit's survey showed that nearly three-fourths of the judges who responded thought the reassignment of judges was an effective solution to case delays. The Judicial Administrator explained to the auditors that the major impact of unification was an increased flexibility for reassigning judges within districts, which was made possible with the upgrading of lower court judges to magistrate and associate district judges. This flexibility may also account for the decrease in the number of assignments made across department lines--more judges who can hear the cases can be assigned from within the departments.

Legislative Post Audit attempted to determine why the Supreme Court has done little to reassign judges to equalize caseloads. It found that reassignments are initiated by the district courts or by administrative judges, not the Judicial Department. The Supreme Court does not collect and analyze the data needed to regularly initiate the reassignment of judges to equalize caseloads. With the information the Supreme Court currently has, it cannot tell which judges have high caseloads, which have low caseloads, and how the differences affect the judges' ability to process cases in a timely manner. Another major reason identified was that many of the judges who were free to be reassigned (in terms of caseload) were magistrate judges, whose jurisdiction to hear cases is limited.

#### Conclusion

The Supreme Court's management of the judicial resources of the court system is not achieving the intent of unification that all judges have approximately equal caseloads. Some judges have more than four times the workload of other judges. Magistrate judges, who are located primarily in rural areas, are underutilized when compared to associate and district judges. And the Supreme Court has not initiated the reassignment of judges within and across judicial districts to help equalize caseloads, even though most of the judges surveyed by Legislative Post Audit thought such reassignments were an effective solution to case delays. The variation in caseloads among judges signals the need for the Supreme Court to use its authority to monitor the caseloads of judges and to improve their use.

### Recommendations

The Supreme Court should take the following steps to more actively manage the judicial resources of the court system:

1. Assignment of Judges--By July 1, 1980, the Supreme Court should prepare a State plan for the judicial staffing of the district courts. The staffing plan should be based on the type of district and the overall caseloads of each county, and should ensure that all judges have approximately equal workloads. The Court should also ensure that reassignments are made within and across judicial districts to help reduce heavy caseloads and to improve the use of magistrate judges whenever necessary and feasible.
2. Management Information--By January 1, 1981, the Supreme Court should implement a management information system which collects accurate information on caseloads by district, workload by type of judge, and use of judges. The management system should conform to the criteria established by Supreme Court Rules to ensure that the workload of judicial districts is uniformly distributed.

### Use of Non-Judicial Personnel

Another important objective of unification was to ensure that the support staff in the district courts are used efficiently. These non-judicial personnel include court administrators, court reporters, clerks, bailiffs, probation officers, and clerical personnel. Before unification, judges hired these personnel subject to the approval of county commissioners. Such decentralized management of personnel often created inequities in staffing and compensation throughout the State.

In an attempt to resolve these problems, the Judicial Study Advisory Committee recommended that non-judicial personnel come under one centrally managed, unified system. The Attorney General also ruled that, once the lower courts were consolidated into the district courts under the State's control, the non-judicial employees in those courts would become State employees. Thus, the State took over the payroll for non-judicial employees of the district courts beginning January 1979.

The findings in Legislative Post Audit's earlier program audit, Analyzing the State Takeover of Salaries for District Court Personnel, showed that poor management and administrative decisions and practices had been made regarding the takeover of salaries on the part of several of the district courts and the Supreme Court. Legislative Post Audit found that the State took over a system that in many respects was not in compliance with the law. Court budgets had been improperly submitted or had not been approved, unauthorized positions were on the payroll, and unauthorized salary increases had been given despite a salary freeze 18 months earlier. It became clear in that audit that the management of the personnel aspects of the court system needed to be improved.

In this audit, Legislative Post Audit reviewed how the non-judicial staffing of the district courts has changed since unification and how the Supreme Court has begun to manage these resources. Between fiscal years 1976 and 1979, the number of support personnel in the judicial system increased by 214 positions, an increase of 21 percent. Three court administrators, 33 court reporters, and 178 general support staff have been added since unification.

During their review of staffing by district, the auditors found a wide variation in the average number of cases handled by each non-judicial employee. In fiscal year 1978, the average number of cases per full-time equivalent employee was 170, ranging from 125 cases in District 9 to 294 cases in District 27. The variation between the number of non-judicial employees and their average caseload is particularly noticeable between the State's 17 rural districts and its four major urban districts. Table V-5 shows a comparison of the average caseloads for support employees and for judges in the three types of districts: rural, intermediate, and urban.

As the table shows, there are more non-judicial employees in the urban districts where the number of cases and the caseload per judge is highest. Their average caseload was 155 cases. In intermediate districts, there were 268.4 support employees with an average caseload of 193 cases each. In the rural areas, where the caseload per judge was only 671 cases, there were 344.7 support employees with an average caseload of 177 cases. If traffic cases were to be included, this variation becomes more pronounced--urban support employees have an average caseload of 244, intermediate district employees have an average caseload of 511, and rural district employees have an average caseload of 542.

The primary reason for the low number of non-judicial employees in the rural districts in comparison to the urban districts appears to be that while there are more judges in those districts they handle fewer and generally less serious cases. Thus, judges in the rural districts would appear to need and actually do have fewer support employees. The table shows that judges in urban districts have an average of 9.8 support staff each while those in rural districts have an average of 3.8 support staff

Table V-5  
Comparison of Average Caseloads for Support Staff and Judges  
Fiscal Year 1978

	Number of F.T.E. Non-Judicial Employees (Per District)	Average Caseload/ Employee	Number of Judges (Per District)	Average Caseload/ Judge	Average F.T.E. Non-Judicial Employees Per Judge
Rural (2,000-5,000 cases)	344.7 (20)	177	91 (15.3)	671	3.8
Intermediate (5,000-10,000 cases)	268.4 (34)	193	58 (6.5)	894	4.7
Urban (10,000-35,000 cases)	595.5 (149)	155	61 (5.4)	1,509	9.8

Developed by Legislative Post Audit from agency records.

each. In Sedgwick County, for example, each judge has personally assigned staff including a court reporter, a secretary, and a probation officer. In addition, he has access to a centrally located pool of other non-judicial employees. Most magistrate judges, however, have only a clerk who is sometimes a part-time employee.

This does not mean, however, that the staffing ratios within the urban, intermediate, and rural districts are appropriate. In the urban districts, for example, the number of support employees per judge ranges from 8.6 to 11.7 while the average number of cases per support employee ranges from 204 to 262. Also, in the rural districts the number of support employees per judge ranges from 2.3 to 9.0 while the average number of cases per support employee ranges from 125 to 260. Thus, there are still large variations in non-judicial staff, even with differences in district size and caseload taken into account.

The Supreme Court is responsible for ensuring that the district court personnel are being used as efficiently as possible. Yet the Court does not collect workload information for non-judicial employees on an on-going basis and cannot, therefore, determine whether any changes need to be made in the assignment of non-judicial personnel to the various districts. Such determinations could be particularly important if the Supreme Court and the administrative judges in the various districts more vigorously pursue the reassignment of judges within and across district lines to help equalize caseloads and help reduce case backlogs.

The new role of the Supreme Court in managing all non-judicial personnel in the court system will become even more crucial over the next three years as the State completes its takeover of the funding for those employees. By 1982, the State's costs for non-judicial employees' salaries is conservatively estimated to be \$16.5 million. This estimate assumes no

natural growth in the system, although it seems likely that the number of cases filed could increase. The Supreme Court may then be faced with the decision of requesting more positions or using its existing staff resources more efficiently. The Legislature has begun to take a harder look at budget and personnel requests by the Judicial Department. In fiscal year 1980, the Legislature allocated 16.4 positions to the Department, but in doing so it essentially only restored to the court system all the positions that were found in the judicial personnel program audit to have been unauthorized. The Legislature also reduced the Department's budget request for fiscal year 1980 by more than \$2 million, the bulk of which was cut from requests for funding the district courts and the Supreme Court.

#### Conclusion

With unification, the Supreme Court became responsible for ensuring that non-judicial employees in the district courts were used efficiently. Yet, Legislative Post Audit found that wide variations exist among the number of employees per judge and the number of cases per employee. Some variation will naturally exist because of differences in rural and urban case-loads and types of cases, but even within similar types of districts these kinds of variations occur. The Supreme Court currently does not collect workload information for non-judicial employees in the district courts on an on-going basis. Without such information, the Supreme Court cannot know whether future requests for additional personnel by the district courts are justified, whether non-judicial employees are being used as efficiently as possible, and whether changes need to be made in the assignment of non-judicial employees to various districts.

#### Recommendations

1. Because there are large differences in the workloads of non-judicial employees in the judicial districts, the Supreme Court should carefully study the use of non-judicial employees in the court system. In doing so, the Supreme Court should collect workload information for the district courts on an on-going basis so that determinations can be made as to whether any changes are needed in the assignment of non-judicial personnel among the districts.

2. Based on its study, the Supreme Court should develop guidelines for the number of non-judicial employees per judge and the number of cases per non-judicial employee. These

guidelines should take into consideration any differences in caseloads and types of cases in the rural, intermediate, and urban districts.

### Adequacy of Court Facilities

Although the counties' responsibility for providing and maintaining court facilities did not change with court unification, Legislative Post Audit examined facilities because they can have an effect on the quality of court services afforded to litigants. The Chief Justice also acknowledged the need for efficient use of court facilities in his address to the 1978 Kansas Legislature.

The adequacy of court facilities is one of several factors in providing speedy litigation and public convenience to the citizens of the State. The availability of a courtroom serves not only as a motivating factor to attorneys to prepare their cases in a timely manner, but it is also essential for the speedy disposition of cases once the participants are ready for trial. However, idle courtrooms and excess space unnecessarily contribute to the increasing operating costs of the courts and monopolize space which could be used for other purposes.

### Availability of Court Facilities

In Kansas, the responsibility for providing local court facilities rests with the counties. Some states, however, have recognized a need to ensure that adequate court facilities are provided and have taken steps to gain varying amounts of authority for financing, planning, and controlling facilities. In 1975, the New York State Office of Court Administration surveyed all states to obtain an overview of their responsibilities for providing court facilities. The survey revealed that ten state court administrators have responsibility for the planning, procurement, financing, and day-to-day control of all the facilities used by all levels of courts in their states. Oklahoma is one of these ten states. In addition, two states, Maryland and New Hampshire, have courthouse accreditation commissions established by legislative acts. New Hampshire and Hawaii have also developed space and facility standards for their courts, and five other states, including Nebraska, were developing standards at the time the survey was conducted. State-wide inventories of court facilities have been completed in twenty-two states and plans have been made to undertake inventories in three others. Colorado, Missouri, Nebraska, and Oklahoma are among the states with state-wide inventories of court facilities.

Legislative Post Audit found that the Supreme Court does not have information on court facilities in the State. It does not have an inventory of court facilities at the present time and does not have any plans for conducting one.

With the help of district court personnel, the auditors conducted an inventory of courtroom and support space in the eight sample districts they visited. In each of the 23 counties in these districts, the availability of courtrooms and support facilities--such as public and private offices, jury deliberation rooms, and witness and conference rooms--was measured. The total square feet for the various court facilities was compared to space standards developed by the state of New York in 1973 and, more recently, by North Carolina State University in 1978. The studies also used research on court facilities conducted by the United States Department of Justice and the American Bar Association.

For courtroom availability, the recommended standard is one courtroom for each judge. Overall, the sample districts have 95 courtrooms and 89 judges. In total, the eight districts have six courtrooms above the standard. As Table V-6 shows, three districts had fewer courtrooms than judges. Wyandotte County has one less courtroom than recommended and Shawnee County uses a conference room for a courtroom because it has one judge who does not have a courtroom. District 11 (southeast Kansas) has one county with one courtroom and two judges. With few exceptions, the number of available courtrooms does not appear to be a major problem. Apparently, this view is shared by those who use the facilities; most judges and attorneys who responded to Legislative Post Audit's survey considered courtroom facilities to have little adverse effect on the time needed to process cases. Two exceptions, judges in Shawnee and Wyandotte Counties, will be discussed later.

Table V-6  
Availability of Courtrooms  
Eight Sample Districts  
Fall 1978

	<u>Number of Courtrooms</u>	<u>Standard</u>	<u>Difference</u>
3 (Shawnee)	10	11	-1
7 (Douglas)	5	3	+2
10 (Johnson)	14	14	0
11 (Southeast)	14	10	+4
17 (Northwest)	8	8	0
18 (Sedgwick)	23	22	+1
24 (Southwest)	8	7	+1
29 (Wyandotte)	<u>13</u>	<u>14</u>	<u>-1</u>
Total	<u>95</u>	<u>89</u>	<u>+6</u>

Developed by Legislative Post Audit from a survey of the eight sample districts.

The amount of support space does, however, appear to present a problem. As Table V-7 shows, support facilities space in the eight sample districts totaled 210,106 square feet. Four districts have more space than recommended in the North Carolina study, while four districts have less space. Sedgwick County has the greatest surplus of space with 29 percent more space than recommended, while Wyandotte County has the greatest need for space. In Wyandotte County, support space is 42 percent below the recommended standard. Shawnee County is also significantly below the standard with a space deficit of 16.5 percent.

Table V-7  
Support Facilities Space  
Eight Sample Districts  
Fall 1978

District	Present Square Footage	Recommended Square Footage	Percent Above or Below Standard
3 (Shawnee)	29,406	35,228	-16.53%
7 (Douglas)	9,704	8,660	+12.06
10 (Johnson)	32,179	35,745	-9.98
11 (Southeast)	16,217	21,674	-25.18
17 (Northwest)	10,704	10,900	-1.80
18 (Sedgwick)	79,601	61,669	+29.08
24 (Southwest)	14,200	11,070	+28.27
29 (Wyandotte)	18,095	31,264	-42.12
Total	<u>210,106</u>	<u>216,210</u>	<u>-2.82%</u>

Developed by Legislative Post Audit based on its survey of eight sample districts.

#### Use of Court Facilities

To determine how often courtrooms are in use, Legislative Post Audit, with the assistance of district court personnel, monitored the use of each courtroom in the eight judicial districts. For a two-week period, a court employee recorded the amount of time each of the courtrooms was used. The employee was asked to record what type of activity was held (such as trials, conferences, and meetings), how long it lasted, and how many people attended. The auditors relied on the court employees' records to determine the actual use of courtrooms, but they adjusted the results to account for judges who were either ill or on vacation at the time the survey was conducted. In addition, because some magistrate judges in the

counties surveyed used their offices as more or less "informal" courtrooms, the auditors permitted the court employees to record the use of offices for courtroom-related activities.

Table V-8 shows the amount of time the courtrooms in each district were in use over the two-week period. No records of courtroom use were submitted by court employees for seven courtrooms--four in District 11 (southeast Kansas), and one each in Districts 18 (Sedgwick), 24 (southeast Kansas), and 29 (Wyandotte). The records that were submitted showed the average courtroom in the sample districts was used about three-and-one-half hours a day. Courtrooms were in use most often in Shawnee and Johnson Counties, where the rooms were in use about five hours a day. Both of these counties have high caseloads--about 20,000 active cases each in fiscal year 1978. The lowest use of courtroom space was reported for northwest and southeast Kansas, where the rooms were used less than two hours per day and where the number of active cases was about 3,000 and 8,000, respectively, in fiscal year 1978.

Table V-8  
Courtroom Use Rates  
Eight Sample Districts  
Fall 1978

District	Number of Courtrooms Surveyed(a)	Adjusted Daily Use Per Courtroom (in hours)	Percent of Time Used (Adjusted for Availability of Judges)(b)
3 (Shawnee)	11	5.84	83%
7 (Douglas)	5	3.05	44
10 (Johnson)	14	4.46	64
11 (Southeast)	11	1.9	27
17 (Northwest)	14	1.61	23
18 (Sedgwick)	22	3.59	51
24 (Southwest)	9	2.18	31
29 (Wyandotte)	12	3.53	55

(a) Information was not submitted for four courtrooms in District 11 and for one each in Districts 18, 24, and 29. The number of courtrooms also includes 10 offices used as courtrooms--one each in Districts 3 and 11, six in District 17, and two in District 24.

(b) Usage rate is based on a seven-hour workday and is adjusted to allow for the absence of judges during the survey period.

Developed by Legislative Post Audit from a survey of courtroom use in eight sample judicial districts.

The majority of the courtrooms are generally located in one courthouse. However, in six of the twenty-three counties--Wyandotte, Johnson, Sedgwick, Neosho, Crawford, and Labette--the court occupies space in more than one building; in Crawford, Neosho, and Labette counties in District 11, the district court is located in two cities. Also, in the larger districts courtrooms are generally designated by the type of case heard in them, such as juvenile, domestic relations, or criminal courts.

#### Court Personnel Opinions on Adequacy and Use of Facilities

Through the Legislative Post Audit survey and interviews with court personnel, additional information was provided concerning the adequacy of space for the efficient operation of the district courts and the effect of unification on the courts' facilities.

In the survey of judges conducted by Legislative Post Audit, a majority of the judges in both Shawnee County and Wyandotte County felt additional space would reduce the amount of time needed to process cases. Both Wyandotte and Shawnee Counties were below the space standards for court facilities.

In each of the eight judicial districts, court personnel were asked to evaluate the adequacy of their court facilities and to describe any changes that have recently been completed or are anticipated in their facilities. In most districts, the amount of space was considered adequate. But in District 29 (Wyandotte County), court personnel indicated to the auditors that there were problems with the number and size of offices for parole and probation officers. Their offices were 800 square feet below the standard for such facilities, and some parole officers were forced to conduct interviews in open areas because there was not enough space for private offices. In addition, court employees in District 11 (southeast Kansas) identified problems with the organization and location of the facilities. In that district, the fragmentation of the courts into separate cities was seen as resulting in confusion as to where a certain type of case should be handled.

Court employees indicated too that a number of changes have been or will be made in their facilities. District 29 (Wyandotte County) and Crawford County in District 11 have recently completed minor renovations. Districts 7 (Douglas) and 18 (Sedgwick) have completed major construction projects; a new county judicial building was constructed in District 7, and six courtrooms and support facilities (judges' chambers, jury rooms, offices and other rooms) were built in District 18. District 18 has also renovated some of its remaining facilities. At the present time, Labette County in District 11 has plans for the construction of a new county judicial building.

**Court Personnel Opinions on the  
Adequacy of Courtroom and Support Space Facilities**

<u>District</u>	<u>Courtrooms</u>		<u>Support Space</u>	
	<u>Adequate</u>	<u>Inadequate</u>	<u>Adequate</u>	<u>Inadequate</u>
3 (Shawnee)		X		X
7 (Douglas)	X		X	
10 (Johnson)	X			X
11 (Southeast)		X		X
17 (Northwest)	X			X
18 (Sedgwick)	X		X	
24 (Southwest)	X			X
29 (Wyandotte)		X		X

During field work in eight sample districts, the auditors interviewed court personnel about the adequacy of their courtroom and support space facilities. Although most court personnel felt their courtroom space was adequate, a majority expressed concern over the lack of or the condition of support space facilities. Many pointed out a lack of support by county governments for improving these conditions.

Court administrators did not attribute the need for these improvements to unification of the court system. The construction and renovation projects were attributed to the age of the buildings many of the courts occupy or to an increase in the demand for court services as the county population increased. Any improvements in the facilities are dependent upon the approval of local county officials to authorize the funding for renovation and construction projects. However, court personnel indicated to the auditors that necessary renovations and improvements of some facilities have not been made because of a lack of financial and political support by county governments.

Conclusion

The Supreme Court does not have an inventory of court facilities, nor does it have information on the adequacy of court facilities and its impact on processing cases. Some courts in the eight judicial districts sampled were experiencing problems because of inadequate space. Although the Supreme Court is not responsible for providing court facilities, it does have the responsibility for ensuring that adequate space is available to

process cases and provide other court services. Also, the employees it now supervises should have suitable working conditions. With information on the adequacy and use of court facilities, the Supreme Court can identify or assist in developing solutions for space problems. The Supreme Court must also begin to address any problems arising from the lack of financial or political support at the county level if court facilities are to be improved so that the processing of cases and the providing of other court services will not be hindered.

### Recommendations

To ensure that court facilities do not hamper the processing of cases and other needed court services, the Supreme Court should do the following:

1. Develop an inventory of all existing court facilities to include the following:
  - a. Number and size of courtrooms.
  - b. Number and size of support facilities such as public and private offices, detention rooms, jury deliberation rooms, law libraries, and conference rooms.
  - c. Location, organization, and approximate age of court facilities.
  - d. Specific identification by the district courts of problems resulting from inadequate facilities.
2. Develop minimum space standards for courtrooms and court support facilities to be used as guidelines in determining whether facilities are inadequate. To allow for differences in the use of court facilities, the standards should take into account such factors as geographic location, county and district population, and the size of the caseload. These guidelines should be distributed to the 29 judicial districts and to the 105 county commissions to help them more effectively plan for and develop adequate court facilities.
3. Upon completion of the inventory and development of the standards, the Supreme Court should assess the adequacy of the facilities for the State's court

system. Those facilities presenting the most serious problems to providing court services should be evaluated on site. In cooperation with the district courts, the Supreme Court should develop possible solutions to the space problems. In addition to considering securing more space for the courts, the solutions should include such considerations as reorganization of existing facilities and more efficient caseflow management.

4. Finally, the Supreme Court should work with county governments to help resolve identified space problems. At a minimum, this coordination should include notification by the Supreme Court of problem areas in the counties' court facilities, and its assessment of the problem areas and possible solutions.

The inventory and the Supreme Court's assessment of the adequacy of present court facilities should be made available to the 1981 Legislature.

## APPENDIX A

### Expenditures for the Kansas Judicial System Fiscal Years 1976 and 1979

<u>Expenditures</u>	<u>Fiscal Year 1976</u>	<u>Fiscal Year 1979</u>	<u>Fiscal Year 1982 Estimated Expenditures(d)</u>
<u>State</u>			
District Courts	\$ 3,304,737	\$12,907,943 (c)	\$26,125,721
Aid to Indigent Defendants	1,762,534	2,251,342	2,804,076
Supreme Court	1,092,769	1,327,105	1,853,622
Court of Appeals	-0-	716,065	800,777
Supreme Court Law Library	198,208	280,932	336,939
Criminal Justice Projects	178,323	166,524	187,679
Judicial Council	125,174	136,851	173,297
Bar Discipline	65,084	106,398	(e)
Commission on Judicial Qualifications	22,103	15,472	43,997
Board of Law Examiners	13,517	18,493	21,687
Judicial Nominating Commissions	8,964	5,891	10,760
Court Reporters	493	696	1,267
Estimated Facilities Costs(a)	<u>68,572</u>	<u>372,358</u>	<u>469,064</u>
Total State Expenditures	<u>\$ 6,840,478</u>	<u>\$18,306,070</u>	<u>\$32,828,886</u>
<u>County</u>			
Operating Costs	\$13,010,110	\$13,680,768	\$ 8,657,471
Estimated Facilities Costs	<u>1,640,000</u>	<u>3,240,000</u>	<u>4,000,000</u>
Total County Expenditures (b)	<u>\$14,650,110</u>	<u>\$16,920,768</u>	<u>\$12,657,471</u>
Total System Expenditures	<u>\$21,490,588</u>	<u>\$35,226,838</u>	<u>\$45,486,357</u>

- (a) Does not include space costs for the district courts, which are paid by the counties, or costs for the Judicial Council, which are included in its total expenditures.
- (b) County expenditures for 1976 are by calendar year; county expenditures for 1979 are appropriations.
- (c) Includes the \$3,696,279 reimbursement by the counties for non-judicial salaries paid by the State.
- (d) Based on fiscal year 1980 appropriations.
- (e) The Bar Discipline Fee Fund is a non-appropriated fund.

Developed by Legislative Post Audit from the Governor's Budget Report 1979, Kansas Judicial System Financial Report, 1977, agency records, and financial reports of the Division of Accounts and Reports.



## APPENDIX B

### Judicial Workload by District Fiscal Year 1978

District	Total and Terminated Caseload			Workload		Average Months to Process Selected Cases(a)
	Total Cases	Terminated Cases	Percent of Total Cases Terminated	Number of Judges	Cases Per Judge	
1	5,543	3,625	65%	6	924	5.6
2	3,554	2,432	68	5	711	5.5
3	17,759	11,907	67	11	1,614	7.8
4	5,221	3,692	71	8	653	5.6
5	3,316	2,220	67	3	1,105	5.9
6	3,408	2,308	68	4	852	5.7
7	4,262	2,971	70	3	1,421	6.7
8	5,588	3,928	70	6	931	5.6
9	3,365	2,007	60	3	1,122	9.2
10	20,192	14,074	70	14	1,442	6.3
11	8,612	5,650	66	10	861	5.3
12	3,281	2,091	64	7	469	6.2
13	4,805	3,340	70	6	801	6.8
14	3,504	2,507	72	4	876	6.9
15	3,534	2,162	61	6	589	9.0
16	4,207	2,916	69	7	601	7.6
17	2,877	1,738	60	8	360	5.0
18	34,759	23,561	68	22	1,580	6.8
19	7,903	5,444	69	12	659	5.9
20	6,099	2,932	48	7	871	5.8
21	3,422	2,249	66	3	1,141	7.4
22	2,917	1,814	62	5	583	6.0
23	3,324	2,329	70	6	554	7.0
24	3,250	1,712	53	7	464	6.9
25	4,373	3,213	73	7	625	6.4
26	3,701	2,554	69	7	529	6.4
27	6,753	4,609	68	4	1,688	5.4
28	6,129	3,666	60	5	1,226	6.4
29	19,346	14,040	73	14	1,382	8.8
Total						
Average	<u>205,004</u>	<u>137,690</u>	<u>67%</u>	<u>210</u>	<u>976</u>	<u>6.8</u>

(a) Contested cases for five major case types were used to compute the average processing time for each district--criminal felony cases, criminal misdemeanor, civil cases over \$3,000, civil cases under \$3,000, and domestic relations cases.

Developed by Legislative Post Audit from agency records.



APPENDIX C

Reassignment of Judges by District  
Fiscal Years 1976 and 1978

Judicial District	Fiscal Year 1976		Fiscal Year 1978	
	Average Caseload/Judge	Number of General Reassignments	Average Caseload/Judge	Number of General Reassignments
1	814		924	
2	608	1	711	
3	2,221		1,614	
4	684		653	
5	749		1,105	
6	845	1	852	
7	1,564		1,421	
8	982		931	4
9	1,221	2	1,122	
10	1,444	6	1,442	15
11	653		861	
12	397		469	
13	631		801	
14	770	2	876	
15	478	1	589	
16	677	1	601	1
17	351		360	14
18	2,077	24	1,580	
19	661		659	
20	802	1	871	
21	1,090		1,141	
22	501		583	3
23	479	2	554	
24	374	3	464	
25	531	2	625	2
26	505	2	529	2
27	1,231		1,688	3
28	979		1,226	
29	1,756		1,382	
Total General Reassignments		<u>48</u>		<u>44</u>



APPENDIX D

Agency Responses



# Supreme Court of Kansas

Kansas Judicial Center  
Topeka, Kansas 66612

ALFRED G. SCHROEDER,  
Chief Justice

(913) 296-3807

September 17, 1979

RECEIVED

SEP 17 1979

DIVISION OF POST AUDIT

Dr. Richard E. Brown  
Legislative Post Auditor  
Room 310, Mills Building  
Topeka, Kansas 66612

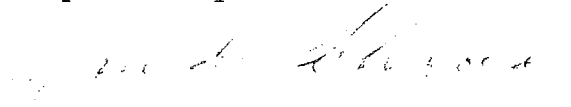
Dear Dr. Brown:

The Supreme Court has reviewed the draft audit report, "Court Unification in Kansas," with interest and notes that even though any present attempt to appraise the effectiveness of unification is premature, certain of the report's recommendations parallel plans of the Court.

In Vol. 51 (1968) of Judicature, the Journal of the American Judicature Society, appears the credo of the Joint Committee for Effective Administration of Justice. It states: "Justice is effective when it is operating in a modern court system, simple in structure, without overlapping jurisdiction or multiple appeals, businesslike in management with nonjudicial duties performed by a competent administrative staff, and with practical methods for equalizing the judicial work load...." The present members of the Kansas Supreme Court to whom the people of Kansas have committed the responsibility for administering the Judicial Branch of Kansas government are committed to the accomplishment of this goal.

As resources become available in both personnel and financing through the state's budgeting and legislative process, the Court will implement its plan for improvement of judicial administration throughout the Kansas unified court system.

Respectfully,

  
Alfred G. Schroeder  
Chief Justice

Office of Judicial Administrator  
Unified Judicial Department  
State of Kansas

JAMES R. JAMES  
Judicial Administrator



Kansas Judicial Center  
301 West 10th  
Topeka, Kansas 66612  
913 296-2256

September 17, 1979

Dr. Richard E. Brown  
Legislative Post Auditor  
Room 310, Mills Building  
Topeka, Kansas 66612

RECEIVED  
SEP 17 1979  
DIVISION OF POST AUDIT

Dear Dr. Brown:

I am taking this opportunity to comment on the draft audit report, "Court Unification in Kansas," dated August 29, 1979. My comments will focus on three areas. I hope that these comments will assist the legislature in its appraisal of the report.

First, an evaluation of the effectiveness of the Kansas unified judicial system is premature at this time. In the introduction to the report, January 10, 1977, is said to mark the start of the unified judicial system for the state. Later in the report the year 1976 is labeled as a year prior to unification, and 1978 is labeled a year after unification, by comparison of which the effectiveness of unification can be measured. All three of these labels are in error, but most significantly the last one. In no way can 1978 be considered a post-unification year, since the legislature's implementation of unification has continued into FY 1980.

Unification became the law of Kansas by the vote of the people of Kansas at the general election in November, 1972. Article 3, Section 1, of the Kansas Constitution was then adopted and became the fundamental law by which the members of the Supreme Court are required to administer the Judicial Branch of Kansas government. Orderly procedure for this change led the Court to request implementation of the Judicial Article through the legislative process immediately following the constitutional amendment. Four years later came the first legislation implementing the change mandated by the people in November, 1972. The Judicial

Dr. Richard E. Brown  
Page 2  
September 17, 1979

Study Advisory Committee appointed by the Chief Justice on May 3, 1973, submitted its report on May 13, 1974. The legislature did not act on the report in 1975, except for establishment of the Court of Appeals, to become operational in January, 1977. In 1976, when it did act on unification, a primary ingredient for effective unification of the court system was omitted--that of state financing.

The unworkable situation created in the district courts by the state's failure to assume the financial responsibility to pay its own state employees (the nonjudicial employees of the district courts) was emphatically called to the attention of the legislature by the Resource Planning Corporation report late in 1977.

The State-of-the-Judiciary message delivered by the Chief Justice to the Governor and the legislature on January 23, 1978, quoted from the findings of the RPC in emphasizing the importance of state financing. Thereafter, legislation enacted during the 1978 session of the legislature in the form of Senate Bills 965 and 966 became law. Under this legislation nonjudicial personnel of the district courts were taken onto the state payroll on January 1, 1979, with a uniform classification and pay plan ultimately becoming effective July 1, 1979.

It is interesting to note that many of the court management recommendations throughout the audit report require computerized data processing for implementation. Yet funding requests for data processing in fiscal year 1980 were denied by the legislature. (Budgetary requests to fund data processing are repeated in our 1981 fiscal year budgetary submission to the legislature.)

Until state funding of the Kansas unified court system is an accomplished fact, and the needed data processing capability is established, we cannot say that court unification has an effective beginning point from which to determine substantial improvement in judicial administration.

The second general area of response focuses upon the conclusion in the audit report that the legislature was misled as to the net costs to the state in the financing of the unified court

system. It is said the Judicial Study Advisory Committee's estimate of the net cost to the state was considerably lower than the Legislative Post Auditor's estimate.

The legislature did not adopt the Judicial Study Advisory Committee's recommendation on state financing in the 1976 legislation implementing the amended Judicial Article in the Kansas Constitution, and it did not rely on the Judicial Study Advisory Committee's projection of net costs to the state. After the 1976 session, the legislature employed its own agency, the Resource Planning Corporation, to do a study of the court system in Kansas and ascertain the costs of state financing.

The Kansas Judicial System Financial Report by the Resource Planning Corporation, dated October 28, 1977, filed with the legislature, estimated the Judicial System costs for FY 1979 to be \$34,046,895 (p. 4-17, Exhibit 4-5, Financial Report). The Post Audit report (assuming it to be correct) states the total costs for FY 1979 were \$35.2 million.

The budget for the unified judicial system for FY 1979 included the funding of the salary expenses for the nonjudicial personnel of the district courts for the first six months of 1979. Since the Court was able in its expenditures for FY 1979 to stay narrowly within the funds appropriated, the funding of the Court budget based on the RPC financial report proved the RPC financial study to be accurate for all practical purposes.

It must be concluded the legislature was not misled in any particular regarding the financial burden cast upon the state by the people of Kansas in voting unification of the Judicial Branch of Kansas government and its requirement for state funding. (See Audit Report, p. 9, re Attorney General's Opinion in 1976.)

*Legislative Post Audit response.* Nowhere in the report does Legislative Post Audit say the Legislature had been "misled" regarding the net cost of unification to the State. Rather, the report pointed out that the Judicial Study Advisory Committee's cost data for unification was the best estimate the Legislature had at the time it was deciding to proceed with unification of the court system. The auditors did not ignore the Resource

*Planning Corporation's 1977 financial report. In fact, the report was used in Chapter III to develop some of the financial information. The Corporation's report was one of two cost studies commissioned by the Legislature to determine unification costs, but not until after it had already reorganized the court system. To avoid any misunderstanding, mention of the study is included in the report.*

The third area of response pertains to the arbitrary nature of the use of statistics and to errors in fact and assumption in the report. Basically, the use of statistics by the Audit staff indicates a failure to understand the primary purpose of a state court system to serve the needs of the people of the state. The caseload statistics used confine the judicial system of Kansas to an oversimplified, quantitative analysis. For example, the caseload analysis by district and the caseload handled by a judge in the district is reduced to a simple mathematical calculation in the Audit Report. This approach completely ignores the qualitative approach. It is primarily the quality of justice that our court system administers which is important to the people of Kansas.

The simple mathematical approach by the Audit team also ignores the distances judges are required to travel in rural districts. For example, in the 15th, 17th, and 23rd judicial districts the distance to be covered in making one visit to each of the county seats in the district varies from 200 to 260 miles, covering five counties each in the 15th and 23rd judicial districts and seven counties in the 17th Judicial District. Variations in travel time and distance apply to all other districts except districts consisting of one county. These factors must necessarily be taken into consideration in the administration of the workload of the various judges in the district courts.

*Legislative Post Audit response. Legislative Post Audit agrees that travel time can be a factor in judges' workloads, particularly in Districts 15, 17, and 23, in which the counties are spread out rather than grouped. However, in those three districts only three district judges out of a total of 22 judges reported on Legislative Post Audit's survey that they travel regularly, and these three judges responded they spent an average of only 17 percent of their time travelling.*

Also absent is consideration of the variation in court time required by different cases. The report appears to assume that because Judge A handles 10 cases and Judge B handles one case, Judge A is ten times busier than Judge B, and Judge B should be assigned to help Judge A in order to equalize the caseload. However, if Judge A's cases were uncontested or default matters, they could well be handled in a day or less; if Judge B's case were a criminal jury trial, it might take several days or several weeks. Simply stated, "caseload" cannot be equated with "workload."

*Legislative Post Audit response.* Because data concerning actual judicial workload was not available from the Unified Judicial Department, the auditors used judicial caseload as the next best available measure of judicial activity. For comparisons of judicial workload between districts or between judges of the same type, differences among the types of cases handled were assumed to be similar. Recommendations in the report address the need for improvements in the measurement of judicial workload.

Another major source of error in the conclusions drawn by the Audit staff is the omission of traffic cases from its statistics. There are hundreds of thousands of traffic cases handled in our judicial system. Many of these cases are substantial in terms of hearings and court time consumed, and since the traffic caseload varies markedly from district to district, it cannot simply be ignored.

*Legislative Post Audit response.* Traffic cases were excluded because the largest portion of these are clerical workload, not judicial workload. Only 3,000 of 264,000 traffic cases (1 percent) went to trial, and traffic trials are generally of short duration, requiring few judicial resources. Excluding traffic cases thus presents a more realistic picture of judges' caseloads.

Another erroneous conclusion results from a mistaken citation of the American Bar Association Standards. The Audit Report tends

to focus upon delay in civil cases, citing 6.8 months for the average time to dispose of all civil cases in Kansas. Six months is erroneously cited as the ABA Standards' maximum average time for the trial courts to dispose of civil cases. Actually, the American Bar Association Standard is from six to twelve months. Thus, Kansas is well within the Standard; however, administratively the Court is committed to improvement.

*Legislative Post Audit response. The American Bar Association standard cited by the Judicial Department was developed in 1973 in a supporting study, which appears to have later been partly incorporated into the final adopted version of Standards Relating to Trial Courts approved by the Association in 1976. The 1976 document was the source of the standard used by Legislative Post Audit.*

I must also comment on some of the other erroneous assumptions made by the Audit team. For example, assignments of trial judges made by the various members of the Supreme Court (who are the departmental justices) are identified in the Audit Report as general assignments across district boundary lines and across departmental boundary lines. While the assignments are assailed as relatively few, many of these general assignments, statistically reported as one assignment, actually involve the disposition of many cases, even exceeding 100. General assignments are made in various ways: (1) An entire docket in another district is assigned to a given judge; (2) an assignment is made for a period of one week, one month, or three months in another district to a given judge; and (3) an assignment is given to all district judges and associate district judges in one judicial department of the state for a period of six months, delegating to them the burden to equalize and administratively regulate the efficient use of all judges in the department.

The cases heard and terminated by these assigned judges under general assignments are all reported as cases terminated in the district in which they arose. Hence, the assigned judge from the other district who heard and terminated these cases received no credit under the Audit Report for these cases. The Audit Report therefore reaches the conclusion that a great disparity exists in caseload dispositions per judge. In fact, the figures used merely reflect the number of cases filed and terminated in a given district.

Legislative Post Audit response. It is our understanding from a telephone conversation (later confirmed in writing) with the fiscal officer of the Judicial Department that there are no sources available from which to determine the number of cases heard by a given judge under general reassignment. He explained that the Department's estimate that "over 100 cases" might be heard by a judge during one general reassignment is based on familiarity with the situation, not on any existing data source. Better record-keeping by the Judicial Department would allow it to provide solid evidence of its contention and to better manage the reassignment of judges.

Efficiency in the judicial system is an important goal to effective judicial administration. On this, I believe we are agreed. However, the report's assumption that increased use of district magistrate judges is the way to achieve efficiency is highly questionable. Far from making more use of district magistrate judges, the ideal unified state court structure contemplates that all judges will be trained in the law. To accommodate the judges without law training in our Kansas judicial system, the legislature in 1976 provided a de novo hearing on appeal to the litigant whose case was originally tried by a district magistrate judge. Therefore, a case heard by these judges, even though they have jurisdiction to hear the case, is subject to a second trial from the beginning, including a jury trial the second time if demanded, all at state and county expense. Assignment of cases to district magistrate judges to equalize caseloads is therefore used only as a last resort to avoid this inefficiency, even though they have jurisdiction under present statutory law.

Legislative Post Audit response. It was not the report's intent to evaluate the quality of the judge types, but to show that district magistrate judges are not being used to their full potential.

This inefficiency stems from the requirement by the legislature that there be a judge as well as a clerk of the district court at the county seat of each and every county. If the criticism in the Audit report of this inefficiency is directed to the Supreme Court in its efforts to administer the Unified Judicial Branch of government in Kansas, it is misdirected.

Legislative Post Audit response. The audit report has been modified to reflect the fact that K.S.A. 1978 Supp. 20-338 shows at least one judge located in each county of the State.

In addition to the areas on which I have commented, our staff has discovered nearly 100 technical errors which you may wish to correct before releasing the report. Should you desire our notations on these, please feel free to contact me. Other material errors in the report are appended hereto as Exhibit A.

*Legislative Post Audit response. Legislative Post Audit obtained the listing of "technical errors" the Department said it found in the report. The auditors scrutinized each point carefully, and found that only a few minor corrections or clarifications needed to be made. None of these affected the substance of the audit.*

Yours very truly,



Howard Schwartz  
Acting Judicial Administrator

HS:dm

Enc. - Exhibit A

MATERIAL ERRORS

<u>Page</u>	<u>Error</u>	<u>Comment</u>
18, 19, & 71	Double counting and overstatement	Appendix A sets forth the items on which the chart on page 18 is based. Footnote (c) says that the state salary amount includes the amount reimbursed by counties in FY 1979. However, the county operating costs are said to be \$13,680,768, further noted as appropriations for calendar year 1979. But the total sum of 1979 district court county operating budgets on file with the office of the Judicial Administrator is \$8,167,465. These budgets do not reflect county reimbursements to the state, so that it may be that \$5,513,303 has been set aside for the purpose of reimbursement by the counties. The point is that the report assigns this salary cost to both the state and county thus overstating 1979 judicial system cost in a material amount.

87.

*Legislative Post Audit response. The audit report does not assign the county salary reimbursement to both the State and the county. It is shown only once as part of the State's district court costs. The difference between the Judicial Department's \$8.2 million for county operating costs and Legislative Post Audit's \$13.7 million for county operating costs is due to the Department's use of calendar 1979 information and Legislative Post Audit's use of fiscal year 1979 information.*

Page

Error

Comment

A second material error evident is that county estimated facilities cost for FY 1976 is \$1,640,000. For FY 1979, it is shown as \$3,240,000, an increase of approximately 98%. The amount shown for FY 1982 is \$4,000,000, a 7% compounded increase from FY 1979. Since inflation from FY 1976 to FY 1979 was approximately 27%, either FY 1979 facilities cost is overstated by 71% or FY 1976 is understated by 71%. Either error is a material one when comparing costs between the two years.

*Legislative Post Audit response. The estimated facilities costs are based on operating cost data collected in 23 counties for fiscal years 1976 and 1978. The fiscal year 1979 costs are based on an eight percent increase in 1978 costs, and the 1982 costs were projected using a compound growth rate for inflation of eight percent (rounded down to the nearest million). The 1976 facilities cost estimate was based on the average increase in costs between 1976 and 1978 for the eight sample judicial districts.*

88.

24 Omission of signifi-  
& 26 cant data

On these pages, the report projects costs to the state from the findings of a 1974 Judicial Study Advisory Committee report and concludes that the Legislature was led to believe that "cost impact of unification" would be about \$2 million in 1982. In order to do this, the report completely ignores a significant finding of the Committee; that is, that under 1973 state government apportionment of functions (as prescribed by the state Legislature) the cost of unification would increase the judicial branch share of State General Fund expenditures to 2.4%. Had the court system received 2.4% of the State General Fund appropriation for FY 1980, it would have received in excess of \$26.8 million dollars rather than the \$24.6 million appropriated. The RPC Report of 1977 is ignored.

Page

Error

Comment

Legislative Post Audit response. This section of the report was intended to contrast the net costs of unification suggested by the Judicial Study Advisory Committee based on 1973 financial data with the net costs following final implementation in 1982. The conclusion of this comparison does not suggest that the Legislature was misled as to the costs of unification, but rather that because of the considerable growth in the judicial system during this nine-year period, the State has assumed larger costs than it might have expected. The Department's suggestion that 1980 appropriations were less than they should be, using 2.4% of general fund expenditures, fails to recognize adjustments that would have to be made for costs of the Court of Appeals not included in JSAC and for local operating costs that were not assumed by the State.

The auditors used the financial data in the RPC report to project certain system costs for 1982.

22,            Significant omission  
26,  
.68 & 62

On each of these pages, the report mentions that 16.4 FTE positions were authorized for the judicial system for FY 1980. The report fails to consider 35 court services officers authorized for the system for FY 1980 as a result of a legislative transfer of the function of adult probation and misdemeanor parole from the executive branch to the judicial branch (Ch. 120, L. 1978). In projecting "unification cost" to FY 1982, the report uses the FY 1980 district court nonjudicial employees appropriation which includes at least \$447,440 to cover the cost of the 35 court services officers. The fact that at least \$512,273 of the FY 1982 "unification cost" is attributable to a legislatively enacted transfer of function is omitted from the report.

Legislative Post Audit response. The discussions in the report dealt strictly with newly created positions, not the transfers of previously created positions from other State agencies. The transferred positions would bring the total additional positions authorized by the 1979 Legislature to 51.4.

Page

Error

Comment

Other significant omissions include the enactments since FY 1973 which increased the clerical workload of the court, but which are not "unification costs" (for instance, the added duties of taxing litigants for the wherewithal to support executive and legislative projects; e.g., Ch. 145, L. 1977, Prosecutor's Training Fund; Ch. 323, L. 1978, Law Enforcement Training Center Fund, etc.). These are material omissions whenever the report projects "unification cost" since these extrajudicial requirements did not burden the court in FY 1973.

22            Overstatement  
& 71

On page 22, the report says that 1982 cost estimates are based on a 7% increase per year from a base of FY 1980 appropriations. Given this formula, the district court 1982 cost should be no more than \$25,638,158. It is given as \$26,125,721, an overstatement of \$487,563 which would appear to be a material amount.

*Legislative Post Audit response. The 1982 amount shown for the district courts on page 71 of the report is overstated by \$448,401 due to double counting of appropriations for the 35 court services officers transferred to the Unified Judicial Department. However, in light of the conservative inflation rate used for the projections and the fact that Legislative Post Audit assumed no growth in the judicial system, this amount is not considered to be a material error. Thus, the numbers have not been changed in the report.*

Stripping out the cost of court services officers (see previous comment) would reduce the 1982 projected cost of the district courts to \$25,125,885, or about \$1 million less than the report postulates.

*Legislative Post Audit response. Legislative Post Audit considers the transfer of the 35 court services officers to result in a new cost for the judicial system.*

<u>Page</u>	<u>Error</u>	<u>Comment</u>
73	Understatement	<p>There are 5.5 judges in Judicial District One; therefore, Appendix B understates cases per judge in this district by 24, and the statewide total by 3. This material error appears throughout the report.</p> <p><i>Legislative Post Audit response. Legislative Post Audit used headcount rather than a full-time equivalent count in computing judges' caseload; therefore, Judicial District 1 caseload is based on six judges.</i></p>
27	Overbroad assumption	<p>Caseload analyses routinely exclude traffic filings because they "can be handled quickly by paying a fine." The district court had 264,000 traffic filings in FY 78, 3,000 of which resulted in trials to court or jury trials. Such volume cannot be ignored.</p>
91.		<p><i>Legislative Post Audit response. Legislative Post Audit addressed this same issue in an earlier comment to the acting Judicial Administrator's response.</i></p>
29	Factual error	<p>Time limits have not been imposed on civil cases. Standards for case processing <u>recommended</u> by the ABA are not imposed time limits.</p>
30 & 31	Factual error, unsupported and overbroad assumption, misinterpretation, unverifiable data, inappropriate comparison	<p>It is not true that the "contested" dispositional category in FY 78 contained only those cases that went to trial. The footnote on page 37 clearly states that the total also includes contested cases as defined under the previous system. Lacking more detailed research, it cannot be assumed that contested cases which were not tried formally took 6 months or less. In fact, it logically could be argued that cases which ultimately "settle" take longer due to a protracted negotiation process. Exclusion from data of cases without arraignment dates should not understate the number exceeding standard since such cases are likely to be dismissals or plea bargaining. No understanding is demonstrated</p>

that omission of arraignment date is appropriate in some cases. Combining civil and criminal cases to get the demonstrated total percentages shows no understanding of the priority accorded to criminal cases.

*Legislative Post Audit response. The auditors were aware of contamination of 1978 civil case processing statistics but were unable to exclude cases reported under the previous definition. (This problem was addressed in the report.) Comparisons were made, therefore, based on the best available data.*

*Those criminal cases with missing arraignment dates were assumed to be in error because the disposition shown in the computer records indicated that the defendant had a trial. Therefore, these cases should not have been dismissals or cases of plea bargaining. The priority accorded to criminal cases is shown in Table IV-1 by the fact that a lower percentage of these cases exceed the standard. The total percentages shown in Table IV-1 reflect the fact that the percentage of civil cases exceeding the time standards increased between 1976 and 1978.*

Comparability of the criminal data has not been achieved. For FY 76 data, commencement date was used; for FY 78, arraignment date was used; they are not the same.

*Legislative Post Audit response. The comparability of criminal data is the best available data. The date a case was commenced in the district courts before unification was assumed to be reasonably close (within 15 days) to the date of arraignment for case terminations after unification.*

The assessment of processing time change ignores the probability that older cases (those pending at implementation of unification) were given first priority for handling and a heavy backlog of such cases would slow newer case processing considerably. Furthermore, the focus on processing

Page

Error

Comment

time of Chapter 60 cases ignores the fact that unification brought to the district court a large backlog of Chapter 61 cases from the lower courts.

*Legislative Post Audit response. The auditors assumed for comparison purposes that the district courts generally process the oldest cases first for any given stream of cases. Focusing on Chapter 60 cases was necessary because time processing statistics were available for 1976 and 1978. Such statistics were not available for Chapter 61 cases for 1976, nor are these cases generally terminated by the same type of judge. Based on these observations, the backlog of Chapter 61 cases was not interpreted to have a severe impact on the processing of Chapter 60 cases.*

31 Factual error

In FY 76, no lower court misdemeanor cases and no limited action civil cases were on computer. Therefore, the information could not have been purged from the computer.

93.

*Legislative Post Audit response. This statement was not meant to imply that the Department had computer records for limited jurisdiction cases, but that for the cases tracked by computer most case inventory data had been purged from computer.*

31 Unexplained or inappropriate sampling

There is provided no explanation of how the 500 cases were selected. If they were not selected randomly, then the derived data may be tainted by any number of factors: normal seasonal fluctuations; multiple, consecutive filings by a single party; overrepresentation of complex (or simple) cases; etc.

*Legislative Post Audit response. Legislative Post Audit used a random sample. The sample was stratified by year and case type so that comparisons between 1976 and 1978 could be done for criminal felony, criminal misdemeanor, Civil Chapter 60, and Civil Chapter 61 cases.*

<u>Page</u>	<u>Error</u>	<u>Comment</u>
33	Factual error	<p>The Judicial Branch does provide direction on reducing delay. Canon 3-A(5) of the Code of Judicial Conduct specifies that "a judge should dispose promptly of the business of the court." This canon is discussed and reemphasized at various judicial meetings. Periodic departmental meetings are held to discuss such problems. Seminars frequently include segments on dealing with delay. Judges are sent regularly to the National Judicial College for schooling on the subject.</p> <p><i>Legislative Post Audit response. The statement in the report was that there was no guidance on the granting of continuances and the resulting delay. "Prompt disposal of the business of the court" provides little guidance as to when continuances should be granted, for how long, and for what reasons.</i></p>
• 46 34	Inappropriate sampling	<p>With approximately 25,000 criminal filings in fiscal 78, only nine cases were examined in detail for this portion of the report.</p> <p><i>Legislative Post Audit response. These nine cases were not intended to be and were not used as a statistical sample--only as profiles of the existing case management in criminal cases.</i></p>
36	Misinterpretation	<p>The report repeatedly cites the ABA standards to demonstrate that the Supreme Court is remiss in managing district court caseload. In fact, the standards place principal responsibility for case management at the trial court level; so does the Supreme Court.</p> <p><i>Legislative Post Audit response. The Kansas Constitution vests in the Supreme Court "general administrative authority over all courts" in the State (Article III§1). K.S.A. 1978 Supp. 20-101 and 20-319 further spell out this authority by giving the departmental justices the responsi-</i></p>

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*bility to examine dockets, records and proceedings of any courts under their supervision and assign administrative judges such duties as are necessary to carry out the intent of just, speedy, and inexpensive litigation.*

38 Factual error

Civil case processing time standards have not been set by law.

*Legislative Post Audit response. The wording in the report has been clarified to reflect that the American Bar Association's standard is for civil cases and the statutory standard is for criminal cases.*

40 Overbroad assumption

Questions 2 and 3 are based on an erroneous premise. Unification was not intended to affect materially appellate case processing time. The establishment of the Court of Appeals was not part of unification.

95

*Legislative Post Audit response. The 1974 Report of the Judicial Study Advisory Committee shows that appellate reform was an integral part of the judicial reform leading to a unified judicial system. For this reason, establishing the Court of Appeals is considered an important part of court unification and the overall goal of making litigation speedier in Kansas.*

43 Overbroad assumption,  
insufficient explication

It is not valid to isolate Supreme Court caseload for comparison without giving major consideration to two factors: the Supreme Court now receives only the more difficult or more significant cases and its emphasis immediately after the advent of the Court of Appeals was on disposing of its oldest cases.

*Legislative Post Audit response. The Court of Appeals and the Supreme Court processing times were presented separately to show the improvement in the Supreme Court's processing times which resulted from the creation of the Court of Appeals. The two courts' processing times are reported separately in the Department's Statistical Report as well.*

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43 Insufficient explication

The ABA Standards Relating to Appellate Courts give no "six month" figure. The individual time frames they recommend add to 190 days but they include no accounting for the period from readiness to submission. The Standards also provide for substantial exceptions.

*Legislative Post Audit response. Legislative Post Audit was aware that the standard was about 190 days, not including the readiness to submission phase. Legislative Post Audit considered the requirement for promptness for that phase to mean immediately, therefore not adding significantly to the length of the standard. The standard was then rounded to six months. Even if a liberal interpretation were given for the readiness to submission phase (for example, three months), the timeliness standards are still being exceeded.*

44 Incorrect numerical data

Appellate court pending caseload figures developed by the Clerk differ significantly from those in the report. For the Supreme Court the report shows 46 cases pending; the Clerk's figure is 177. The numbers for the Court of Appeals are: report--904; Clerk--646.

*Legislative Post Audit response. Legislative Post Audit developed its pending caseload numbers from information provided by the Judicial Department. The Judicial Department confirmed after their response, that the numbers Legislative Post Audit used were correct except for cases transferred from the Court of Appeals to the Supreme Court. When the caseload figures are adjusted to include these cases, 757 cases were pending in the Court of Appeals and 172 cases were pending in the Supreme Court. The 757 figure for the Court of Appeals still differs significantly from that provided in the response--646 cases--and cannot be explained by the Judicial Department at this time. However, the Judicial Department indicated that, as in previous years, these numbers would be verified and adjusted before they are published in the annual report.*

<u>Page</u>	<u>Error</u>	<u>Comment</u>
48 - 50	Overbroad assumption, insufficient explanation, inappropriate comparison	<p>The report's analysis of caseload per judge and the changes in it from FY 76 to FY 78 omits consideration of district magistrate judges. Thus, none of the "total active" caseload for FY 78 is ascribed to district magistrates. To do so would be appropriate and it would lower the caseload-per-judge figures.</p> <p><i>Legislative Post Audit response. Magistrate judges were included in all caseload analysis.</i></p> <p>Traffic caseload has been excluded from the analysis again.</p> <p>Caseload, moreover, is considered in the aggregate with no allowance made for differing case types.</p>
97. 53	Incorrect numerical data	<p>On this page, the report states that district magistrate judge jurisdiction allows them to hear 50% of the state's active caseload. On the previous page, it said they could hear 60% of the terminated cases.</p> <p><i>Legislative Post Audit response. The 50 percent of active caseload figure is an error in the report and has been corrected to reflect the correct 60 percent figure.</i></p>
54	Inappropriate comparison	<p>The report's conclusion from the table with regard to magistrate caseload is not supported by the table. To draw such a conclusion, one would have to examine the percentage of district magistrates among all judges in rural districts, not merely the relative distribution of magistrates (rural or intermediate).</p> <p><i>Legislative Post Audit response. The percentage figures shown in the table on the line "percent of judges" represent the percentage of judges in rural districts who are magistrates (58 out of 91) and the</i></p>

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*percentage of judges in intermediate districts who are magistrates (21 out of 58). This is exactly the analysis that the Department's response suggests is necessary to support Legislative Post Audit's conclusion.*

55      Unsupportable  
         assumption

Conclusions with regard to cases which could be handled by district magistrates and their use in the system cannot be derived without both a detailed examination, including sampling, of district magistrate caseloads and also some standard for determining whether they are working to capacity. (Magistrates cannot "handle" additional caseload, if their dockets are full.)

56,  
58      Factual error

The Supreme Court, with quarterly outputs from its caseload information system, does collect and provide data which allow judgments with regard to individual judge caseload and the need for reassignment.

*Legislative Post Audit response. The Division of Computer Services recently (May 1979) developed a program to provide reports on request for such information. However, the quarterly reports routinely provided by the Judicial Department to each judicial district are inventories of cases and do not summarize caseload data by individual judge. Although the Judicial Department's caseload information system collects this information, it is not mandatory and is not edited before being placed on computer. For fiscal year 1978, judge identification data were missing for 18.5 percent of the terminated cases.*

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