Policy-Making and State Supreme Courts

The Judiciary as an Interest Group

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The most frequent and visible sources of judicial policy are decisions in court cases in which judges create new solutions to problems and conflicts presented to them. Sometimes important policies are established in a single case or policy may develop gradually in a series of cases dealing with similar situations. This form of policy-making frequently occurs without much direct interaction between courts, legislatures, and executive agencies. Though the implementation of court policies may depend on the cooperation of other officials, the initiation and early shaping of a particular policy may be done almost exclusively by the courts.[1]

There are other policy-making situations, however, in which courts do interact in important ways with other political agencies. One which has received the greatest amount of attention in judicial politics research concerns the reactions of other political actors to decisions of the United States Supreme Court and the tactics adopted by various groups to restrict or enhance the power of the Court. Much research, for example, has described the negative reactions which members of Congress have had to court decisions affecting a variety of highly salient and controversial

AUTHOR'S NOTE: *The author wishes to thank Professors Thomas R. Dye and Herbert Jacob who made helpful comments on an earlier draft. He also acknowledges the support given the research by the Center for the Study of Federalism, Temple University.*

political issues. Legislative debate, strategy, and specific proposals intended to limit the Court's jurisdiction and legislation designed to reverse Court decisions have been described.[2]

This aspect of judicial-legislative interactions in policy-making probably has received much emphasis because the interactions involve intense political conflict and concern highly controversial governmental policies which are generally important to many groups. However, another form of interaction which is important in judicial policy-making, but which has received little attention, is judicial policy-making, but which has received little attention, is the effort by judges to influence governmental policy outside the regular channels of judicial decision-making. A familiar limitation imposed on the courts, of course, is the requirement that judges must wait until an appropriate case is brought before them before they make decisions which establish judicial policies. However, if relevant cases do not come before the court, or if judges are restricted in their decisions by existing statutes or jurisdiction, they may still attempt to affect governmental policy by influencing the decisions of legislative or executive officials. This may be intended to achieve several objectives: (1) to establish a policy which cannot be implemented by the courts due to limitations on the scope of judicial power (for example, the court's inability to appropriate money), (2) to alter existing statutes to increase the flexibility which judges will have in making decisions in the future, and (3) to pass new laws which enhance the breadth of the courts' current decisions. In attempting to influence the decisions of other officials, courts can be viewed as interest groups which, like private organizations or other governmental agencies, seek favorable policies which they cannot implement themselves.

Most information about the ways in which judges seek to influence legislative and executive policy in order to achieve their own policy goals is found in research on the United States Supreme Court. The most systematic discussion is Walter Murphy's (1964: 123-155) description of the techniques which judges use to limit the effects of various political checks on their own policy-making power. Specifically, to influence members of Congress, a judge's strategy may include:

(1) presenting judicial views in court opinions which hopefully will be seen and considered by the legislators;

(2) interpreting current statutes so restrictively that they become essentially ineffective with the intent of forcing Congress to revise the law;

(3) presenting policy preferences in dicta;

(4) using informal personal contacts between judges and legislators for the exchange of views; and

(5) lobbying in a systematic and well-organized fashion in order to influence the votes of Congressmen on bills important to the court.

Parallel political interests may motivate the President to support the court and judges may attempt to persuade him or other executive officials and advisors to adopt certain policies or programs.

Another way in which the United States Supreme Court influences Congressional policy is through the Judicial Conference of the United States. The Judicial Conference, headed by the Chief Justice and including the chief judges and certain other members of the federal courts, meets once each year to discuss policy matters relevant to the federal judiciary. It also makes recommendations to Congress concerning needed legislation or expresses its views toward pending legislative policy (Schubert, 1965: 43-44). A portion of the Conference's recommendations concern primarily routine administrative matters such as the appointment of court clerks and court reporters, fees charged by the courts, the assignment of judges, and court expenses. Other recommendations, however, have concerned important changes in existing statutes in areas such as bankruptcy and the special treatment of youthful criminals in the federal courts. The Conference also was active in securing legislation making picketing of a federal court illegal, and at one time it opposed the creation of a new administrative court which would have been added to the federal court system.[3]

Recent research on the role of state supreme court judges also shows that state courts may seek positive legislative action in order to maximize their own influence in state policy-making.[4] This may be accomplished in several ways. Courts may discuss policy alternatives in written opinions and indicate their own preferences with the expectation that state legislatures will adopt certain programs. If this is ineffective, however, a copy of the opinion may be sent directly to legislative leaders. Certain state courts may go even further in influencing policy. The New Jersey Supreme

Court, for example, has established a system of regular interactions with legislative leaders in order to discuss the court's various policy proposals. Recently it made important recommendations in a variety of policy areas which included arrests, mortgages, law practice, unemployment and workmen's compensation, public employees, voting, paroles, contracts, and zoning. The court also submitted a list of twenty items to the state assembly which included its own recommendations concerning the administration of the state court system. While several of these administrative proposals appeared to be routine, others such as one to increase the salaries of certain officials and another designed to change the jurisdiction of several local courts are potentially important politically. Members of the legislature and the chief justice also agreed that the administrative director of the courts would provide the legislature with all future supreme court opinions which contained recommendations for legislative action (New Jersey Assembly, 1964).

To investigate this feature of court involvement in state policy-making more completely, a mail survey was conducted of all fifty state supreme court chief justices, leaders of state senates and houses, and presidents of state bar associations. Requests for information also were directed to all court administrative officers and state judicial councils.

The rate of response to the mail questionnaire varied considerably: questionnaires were returned from 42 of the chief justices (84%, a high return for a mail questionnaire),[5] 20 state senators (40%) and 26 house leaders and 26 bar association presidents (52%). The higher response rate from the chief justices probably reflects the greater salience which the focus of the research had for them. State legislative leaders probably view contacts between legislatures and courts as only a small aspect of legislative behavior and, therefore, they probably were less interested in the research. In addition, eight legislators and ten bar association presidents said they would not return their questionnaires because they first contacted the state supreme court before deciding whether or not to respond. When they learned that the chief justice was cooperating with the research, they chose to defer to his response. Most of them believed that his answers would be more accurate and include information with which they were not familiar.

The smaller number of responses from three of the four groups places some restrictions on the analysis which can be conducted. First, intrastate comparisons cannot be made because there were few states in which all questionnaires were returned. In addition, some useful information probably was lost because fewer legislators and bar association presidents returned questionnaires. This also makes it difficult to make comparisons among groups of respondents.

The judges' responses constitute the most important and most complete set of data. The questions did not deal with *attitudes* toward supreme court-legislative interactions in policy-making, which would require an adequate representation of all relevant views, but focused entirely on gathering factual information about court efforts to influence policy. The judges' questionnaires indicate that they are more knowledgeable about these interactions, for they frequently provided highly detailed descriptions of their relations with other political actors.

CHANNELS OF COMMUNICATION

It is clear that state supreme courts do attempt to influence policy in ways outside the regular channels of judicial decision-making. All but one chief justice and all but three of each of the other groups of respondents agreed that state supreme courts make recommendations to the legislature concerning state law. A few officials raised questions about the propriety of making recommendations, believing this violated the principle of the separation of powers, but this formal doctrine contributes little to an accurate description of interactions which actually occur among these governmental institutions. The separation of powers argument may have been raised in this context, however, because interactions between courts, legislatures, and other agencies often are informal and occur on an irregular basis. Unlike the power of judicial review, which also establishes a direct policy-making link between courts and other officials, informal interactions between courts and other agencies are not very visable and have no legal traditions or philosophies to legitimize them. Since they are not well-established in the formal legal system, they may appear improper and a violation of the scope of judicial power.

There is a variety of ways in which supreme courts convey their policy proposals to other officials (Table 1). Usually the proposals are directed to the state legislature, which has the most direct power to alter existing statutes and pass new laws. However, as Table 1 shows, about one-fourth of the chief justices stated that they also met with the governor, members of his staff or other officials in the executive branch in order to contribute policy proposals which might become part of the governor's legislative program.

The most frequent way in which supreme courts make policy proposals is through comments in written opinions. In this way the judges may suggest the need for legislative action in a particular area dealt with in a case. Occasionally, as Table 1 shows, supreme courts send copies of the opinions to legislative leaders, but this evidently occurs only in a few courts. It is possible that members of the legislature, especially those who are lawyers, will notice the recommendations contained in court opinions, but this is not the most efficient form of communication. Unless the opinions are followed with other contacts, it seems likely that recommendations found in court opinions easily could be forgotten or overlooked. However, two judges added that in their states all court opinions are read by a legislative council or revisor of statutes in order to check for court recommendations. Nevertheless, we should add that only five state courts rely on opinions as their sole channel of communication.[6]

TABLE 1

PERCENTAGE OF SUPREME COURTS USING CHANNELS OF COMMUNICATION BETWEEN COURTS AND OTHER INSTITUTIONS (judges' responses, n=41)

Court opinions	69.0%[a]
Conferences with legislators	59.5
Conferences with governor, staff or other executive officials	21.4
Judicial Council makes recommendations to governor and/or legislature	21.4
Legislative hearings; formal reports to legislature	16.7
Advisory opinions	9.5
Court opinions sent to legislature	9.5
Allied interest groups make demands	2.4

a. Percentages will not total 100 because some judges mentioned more than one channel of communication.

The remaining state supreme courts utilize a variety of additional techniques to make policy proposals, but the most widely used is the personal conference between judges and legislators. The frequency and character of these meetings vary. Most judges indicated that meetings occur generally from one to four times a year, but in three states the judges said that they meet with legislators ten or more times annually. The meetings may be highly informal and take place generally between judges and legislators who are friends; other formal meetings, however, are specially arranged between judges and leaders of legislative committees in order to discuss various problems. The state courts also use other methods of communication, but there seem to be no clear patterns in the sets of communication channels chosen by the judges. For example, courts which use personal conferences with legislators also have contacts with executive officials to the same extent as those courts which do not use legislative meetings. Similarly, the presence of a judicial council which makes recommendations does not necessarily preclude the court from maintaining its own contacts with other officials.

It would seem that the presence of certain channels of communication between supreme courts and legislatures may depend upon differences in the political backgrounds of state officials and the characteristics of state institutions. For example, Murphy (1964: 132) suggests that personal contacts between justices of the United States Supreme Court and members of Congress may occur more frequently and easily when the judges themselves are former senators. Personal friendships, political debts, and past political influence all may help a justice obtain congressional action which favors his policy goals. In order to test this and other hypotheses for the state courts, background information for each of the state supreme court judges and additional information relating to state courts and legislatures was obtained.

We found, first of all, that the effect of judges' legislative experience on court-legislative interactions is mixed. There is no relationship between the proportion of judges on a particular court who have been state legislators and the probability that their court will use informal meetings with state legislators to transmit their policy proposals. However, a slight relationship was found to

exist between the legislative experience of *chief justices* and the existence of court contacts with legislatures (Q = .33).[7] This indicates that chief justices, who act as the major spokesmen for the courts in making policy suggestions, are somewhat more likely to meet with legislators if they themselves have been members of the legislature than if they have not had experience in the other branch of government.

Additional variables also were examined concerning the existence of court contacts with state legislatures. It was hypothesized that differences in recruitment systems might explain some variation: specifically, that judges elected to the court by the legislature or recruited in partisan elections would be more likely to be linked to legislative and/or state party politics and, therefore, might have closer ties to legislatures. No significant differences among the states emerged, however.

In addition, the effect of party dominance on state courts and state legislatures was examined. It was anticipated that courts and legislatures which were controlled by the same political party would be more likely to have contacts than those courts and legislatures dominated by opposite parties. Again, no differences emerged. Recruitment systems and links to political parties have been shown to be important in judicial recruitment and various features of decision-making, but they apparently do not operate in the establishment of links between courts and legislatures in state policy-making.

One final hypothesis concerning structural variations among state legislatures was investigated. We hypothesized that courts would be more likely to initiate contacts with state legislatures if either the senate or the house or both have a judiciary committee established to deal specifically with problems relating to the courts. This organizational feature of state legislatures would seem to facilitate initiation and maintenance of interactions between the two institutions. A slight relationship does exist between these two variables (Q = .34).

THE SCOPE OF JUDICIAL POLICY RECOMMENDATIONS

Like other interest groups, the courts most frequently make recommendations which involve the benefits and well-being of the

judiciary, concerning things such as court administration, organization, judicial salaries, regulation of law practice, and court procedure (Table 2). However, the supreme courts propose policies in other areas as well. Highest on the list are criminal law and procedure and counsel to indigents, but other recommendations affecting various economic relationships are also made.

It is important to add that only five of the courts limit themselves to offering recommendations which they made originally in court opinions. All of the remaining chief justices stated that court proposals may deal with issues and problems which have not been the subject of litigation. This does not mean that judges make proposals involving matters which do not relate to the courts; however, court recommendations may have important implications for other governmental policies, other political institutions, and the goals of other groups. As stated before, under these circumstances, the separation of powers becomes a very fuzzy and generally irrelevant concept.

Although the political implications of judicial policy proposals are most apparent when the courts deal with issues such as economic relations or criminal law and procedure, court proposals

TABLE 2
PERCENTAGE OF STATE SUPREME COURTS WHICH MAKE POLICY PROPOSALS IN SELECTED AREAS
(judges' responses, n=41)

State judiciary[a]	59.5%[b]
Criminal law and procedure	16.7
Counsel to indigents	11.9
Workmen's compensation	7.1
Property and mortgages	7.1
Taxation	7.1
Governmental liability	4.8
Governmental regulation of business	4.8
Other	16.7

a. This is a broad category which includes matters directly affecting the courts: court administration, organization, judicial salaries, regulation of law practice and court procedure.

b. Percentages will not total 100 because some judges mentioned more than one type of recommendation.

calling for changes in the judicial system may also affect other interests. Some of these proposals are routine and rarely involve political controversy, but it is incorrect to assume that all of them are unimportant. For example, one chief justice reported that the state supreme court recently was consulted by the legislature concerning whether a new court, an administrative agency, or the existing court structure should be used to deal with a new problem involving conflicts over the ownership of certain property. At another time, the judges had been asked their views on eliminating certain procedures in settling workmen's compensation claims in order to make judicial operations more efficient.

These and similar actions involving the creation of new judgeships or the consolidation of certain courts are likely to be extremely important to various groups, such as political parties concerned with the availability of patronage positions, the incumbents of court positions who want to retain their jobs, and lawyers and judges who are accustomed to working under the existing judicial system.[8] In addition, many proposed changes in court rules may seem innocuous, but if, for example, they should call for limiting the political participation permitted lower court officials, the rules affect local political party organizations, in which judges and others may be active, and the ability of lower court personnel to campaign for reelection. It also is useful to add that several judges suggested in their responses that modest changes in statutes which deal with matters such as workmen's compensation or taxation sometimes are easier to implement than proposed changes in court procedures and salaries which may require fundamental changes in judicial institutions.

As stated earlier, the courts make proposals concerning other matters as well which also have the potential to affect groups interested in certain policy areas. An example of the courts' potential impact on important public policy may be found in a recent New Jersey case (State v. Rush, 1966) concerning public compensation for lawyers assigned to defend indigents. Current state law provided for payment only in murder cases, and a lawyer brought a suit against the state to contest this limitation. The supreme court decided that it could not decree that lawyers be paid in all cases in which they represented the poor, but in its opinion it referred the matter to the legislature. Moreover, the

supreme court clearly indicated the policy alternatives it believed were available to the state and the kinds of research which the legislature needed to do to determine the best policy. The court explicitly discussed the fees lawyers should receive, the procedures used to select attorneys for the poor, and whether the program should be combined with a public defender system. In terms of impact on public policy, the case can be viewed from several perspectives. First, it was a matter which directly affected the operation of the courts and the relationship between lawyers and court bureaucracies. Second, the court's suggested policy innovations would have required additional public expenditures, to be determined by the legislature. Finally, the case raised the important question of the right of the poor to have free legal counsel in criminal cases and the adequacy of unpaid counsel. These concerns involve political issues relating to constitutional rights which are highly salient to many different political groups.

It is difficult to determine precisely how forcefully the courts press for the adoption of their policy recommendations. The five courts which rely exclusively on written opinions to express their views would not appear to be very active in making demands; however, other state courts which have established personal contacts with legislators and executive personnel would seem to have a greater opportunity to see that their proposals are implemented. One chief justice stated, for example, that in proposals which call for alterations in court structures or procedures, the supreme court frequently drafts the necessary legislation itself and forwards it to the governor and to legislative leaders. This strongly suggests that this court in particular is confident of its ability to persuade others to accept its views. Other chief justices, who said that battles sometimes occur between the court and the legislature, provide further evidence that certain courts are prepared and willing to press hard for their demands.

OTHER PARTICIPANTS IN POLICY-MAKING

Supreme courts, legislatures and governors are not the only participants concerned with policy affecting the judiciary. In some instances, supreme courts cooperate with and rely on others in

making demands; at other times, however, differences may occur between the supreme court and other groups, indicating the existence of group conflict in policy-making.

State trial courts sometimes act as competing interest groups in the policy-making process. Several states have court rules which require lower-court judges to send their own policy recommendations to the supreme court which, in turn, will direct them to the legislature or the governor. This process does not always work smoothly, however, for few state supreme courts exercise very tight control over the lower courts. Although about one-third of the state supreme courts have formal rule-making powers which enable them to control court rules and procedures (American Judicature Society, 1967; Institute of Judicial Administration, 1962), this does not prevent lower-court judges from having their own policy goals and using their own political resources to have them implemented. One chief justice indicated, for example, that there are instances in which trial court judges contact legislators and make suggestions on their own concerning changes in statutes and court organization. The supreme court may, at the same time, make its own recommendations. This sometimes results in having conflicting proposals before the legislature. Since the supreme court has the primary responsibility for the operation of the entire state court system, the presence of opposing recommendations causes confusion, dilutes the supreme court's influence, and delays the adoption of its own recommendations.

State judicial councils also make policy proposals. These organizations, which usually are closely linked to the supreme court, study the operation of the state judiciary, court rules and procedures, and other related matters in order to make recommendations concerning necessary changes in judicial structure. About one-half of the states have judicial councils composed entirely of judges and headed usually by the chief justice. Some states have councils consisting of judges and legislators, and still other councils include judges, legislators, and various other state officials. (American Judicature Society, 1968; Institute of Judicial Administration, 1961). The composition of the state judicial council does not correlate, however, with the manner in which judges choose to transmit their policy proposals. A supreme court whose state has a judicial council composed only of judges is just

as likely to have contacts with legislative leaders as a court in a state where the judicial council includes judges as well as legislators.

One explanation for the lack of relationship between the type of judicial council in the states and channels of communication used by the courts is that the activity of state judicial councils varies greatly. In an effort to learn more about the functions of these organizations, I requested each council to send me the most recent available report of their activities and policy recommendations. I received reports from only twenty-six councils. (Three states do not have judicial councils, eleven did not issue reports, and ten were inactive.) Although the absence of reports or council statements indicating inactivity do not mean by themselves that the organizations perform no functions, it strongly suggests that they play little or no active role in judicial policy-making.

Most of the 26 functioning councils do appear to take part in policy-making, and they have made a variety of recommendations (Table 3). Most of their attention was directed to problems relating to the organization and functioning of the state judicial system, but a fairly large number of judicial councils also made recommendations in the fields of criminal law and public defender programs. However, 6 of the 26 judicial councils made no recommendations. It also is important to note that judicial councils frequently make numerous recommendations in a particular policy area, and many also write the proposed legislation themselves. This would seem to indicate that many councils do not simply perform a passive role in presenting general ideas for policy changes, but that they take the initiative in proposing recommendations that they have planned and outlined in proposed legislation.[9]

Some of the proposals put forth by the councils request very specific, technical changes in court rules and procedures. Most of these probably do not cause much controversy and are adopted without difficulty. However, like some of the proposals made by the state supreme courts, other judicial council proposals suggest extensive changes in court structures and other areas of law. Judging from the scope of their recommendations, 16 of the 26 judicial councils could be viewed as being very active in making policy proposals.[10] For example, the Kansas and Pennsylvania

TABLE 3
RECOMMENDATIONS OF STATE JUDICIAL COUNCILS[a]

State judiciary[b] (states, n=18)		Criminal law (states, n=11)		Public defender, counsel to indigents (states, n=8)		Willis, trusts, estates (states, n=3)		Property, mortgages (states, n=4)		Other (states, n=2)		None (states, n=6)
State	Number of Proposals	State	Number of Proposals	State	Number of Proposals	State	Number of Proposals	State	Number of Proposals	State	Number of Proposals	State
Alaska	2	Calif.	1[c]	Alaska	1	Conn.	3[c]	Conn.	2[c]	Mass.	6[e]	Ark.
Calif.	3[c]	Conn.	10[c]	Conn.	1	Mass.	4	Mass.	3	Wash.	1[f]	Ill.
Conn.	7[c]	Kan.	1[c,d]	Minn.	1	Wash.	1[c]	N.H.	3[c]			Ky.
Fla.	3[c]	Mass.	9	N.H.	1[c]			Wash.	1	Total	7	Mo.
La.	1	Minn.	1[c]	Ore.	1	Total	8					N.J.
Mass.	9	N.H.	4[c]	R.I.	1			Total	9			Tex.
Minn.	2	N.C.	8[c]	Vt.	1							
N.H.	4[c]	Penn.	1[d]	Wis.	1							
N.Y.	3	Va.	1									
N.C.	5[c]	Wash.	2[c]	Total	8							
Ohio	4	Wis.	1									
Ore.	3											
Penn.	1	Total	39									
R.I.	4											
Vt.	5											
Va.	4											
Wash.	12[c]											
Wis.	6											
Total	78											

a. The data is derived from the latest judicial council report available in each state. Reports include those from 1966 to 1969.
b. This category includes court administration, organization, judicial salaries, regulation of law practice and court procedure.
c. The judicial council drafted the legislation for its policy proposals.
d. This proposal includes a detailed plan for an entirely revised criminal code.
e. Recommendations in the areas of liability law, zoning and regulation of cable television.
f. Recommendation concerning the conduct of elections.

https://doi.org/10.2307/3053038 Published online by Cambridge University Press

judicial councils recently proposed important changes in the entire state criminal code, and other judicial councils have suggested changes in the imposition of the death penalty for certain types of crimes. In the general area of court organization, several councils have called for the addition of new judges, changes in the procedures for selecting jurors, creation of new courts, consolidation of various lower courts, and even changes in the method of judicial selection. As indicated before, these kinds of proposals have implications not only for the operation of the courts, but also for the goals and interests of other political groups.

It is not possible to determine from the reports precisely how effective the judicial councils have been in having their proposals adopted. Furthermore, research on the amount of legislation which has been revised or new laws which have been passed in each state in response to demands of the judicial council could not be undertaken by this study. Several reports do suggest, however, that proposals calling for new judges, changes in court organization and procedure, or changes in the methods of judicial recruitment—all of which are important in political terms—meet with some opposition from both the legislature and certain state judges. A case in point can be found in the 1968 report of the judicial council of Connecticut. Of all the proposals contained in the report, two-thirds were repeated from an earlier report, indicating that they had not been adopted as requested. A similar situation occurred in New York where, in 1968, the judicial council recommended the addition of 125 new judges. In making its request, the council summarized the history of the legislature's poor response to the needs of the courts: from 1961 to 1967 the requests for new judges were met by only very small additions to the courts, and the largest number ever allocated by the legislature still was at least one-third below the number requested. In 1966 and 1967, no judges were added even though approximately 100 were requested in each of the two years.

Opposition to proposed changes offered by the judicial council also may come from various state judges. In 1966, for example, the Pennsylvania judicial council debated the merits of three different plans of judicial selection and other court reforms. Some judges spoke in favor of changing the selection system from partisan election to a nonpartisan plan, and they also favored

certain alterations in the structure of various courts. Others defended the current system, however, because it had always worked well in the past and because they did not believe the proposed changes would remedy any existing defects.

In addition to judicial councils and state trial courts, bar associations may participate in the policy-making process. The involvement of the bar is fairly widespread, for all but seven of the chief justices indicated that their court seeks the aid of the bar in pressing for legislative action. However, the frequency of cooperation between supreme courts and bar associations varies widely. Of those judges who noted bar involvement in policy-making, only 13.3% of the judges said that the court "almost always" looks to the bar for help; 30% said the aid of the bar was sought "often"; and 56.7% of the judges indicated that the bar was asked to participate "only occasionally."

It is clear that most supreme courts do not rely routinely on the bar for help in working for policy changes. These findings are interesting in view of relationships which might be expected to exist between bar associations and the courts. Lawyers and judges are closely linked in the judiciary, and it would seem that both groups have much to gain through mutual cooperation and support. This is useful in personal relationships in certain courts and contributes to the formation of informal rules of the game which make each court system function more smoothly (see Jahnige, 1968: 95-96). We might expect, then, that supreme courts and bar associations would cooperate closely.

This does not always occur, however, and it may be that cooperation operates differently at various levels of the judicial system. Certain lawyers and trial court judges probably have interests in common concerning the functioning of their own particular court. These may conflict, however, with the goals of state supreme courts which may ignore the special problems of some courts or seek to change informal procedures and traditions which exist in various counties or districts. Under these conditions, lawyers and judges throughout the state may oppose certain supreme court proposals. Several responses to the questionnaires suggest that such conflict between supreme courts and bar associations sometimes does exist. In addition, the bar may be

internally divided and unable to cooperate with the supreme court in lobbying for legislative action.

It is important to add that when the bar is requested to help in influencing legislative policy, it becomes involved almost exclusively in the area of court organization, administration, and law practice. In a few states, the bar has participated in requesting legislative action in other areas such as counsel to indigents and tax policy, but this is very insignificant in comparison with its role in influencing legislation which directly concerns the courts and the legal profession.

This nearly exclusive involvement of the bar in such issues very likely reflects, in part, the perceptions of judges who consider the expertise of the bar applicable primarily to this policy area. It also may reflect the issues which lawyers consider most important to them. Individual attorneys may be concerned with other policies, but as an organization the bar probably is concerned most often with policies directly affecting the courts and the legal profession.

THE SUCCESS OF JUDICIAL POLICY RECOMMENDATIONS

All but a few chief justices and senate and house leaders agreed that state legislatures do adopt some of the recommendations of state supreme courts. It is difficult, however, to assess the levels of success which courts achieve because many of the respondents were unwilling or unable to estimate the percentage and types of court recommendations which were adopted. Nevertheless, some conclusions can be drawn. First, the success achieved by the state supreme courts varies. Of the judges who rated their success, forty percent indicated that the legislature adopts fifty percent or less of the court's recommendations; twenty percent of the judges said the legislature implements between one-half and three-fourths of its recommendations and the remaining forty percent of the judges said the legislature enacts between seventy-five and one hundred percent of the court's proposals. The senate and house leaders generally believed the courts were more successful than this, but since so few of them indicated a percentage level of court success, these findings are inconclusive.

As shown in Table 2, state supreme courts make policy recommendations most frequently in the "state judiciary" policy

area. Compared with the number of courts making proposals in the other areas, this category clearly was the most important one. Achievements made by the courts also follow this pattern. Of those officials responding to the questions dealing with the adoption of judicial policy recommendations, chief justices and senate and house leaders all agreed that the "state judiciary" category was the one in which the courts were most successful. In contrast, only a few listed successes in other policy areas.

From one point of view, these findings are not surprising since the courts concentrate most of their energies on making proposals in areas which most directly concern the courts. If more officials had responded to the questions, we would still expect reports of court success to follow that pattern. While the order of success is as anticipated, it is striking that so few recommendations made in other policy areas seem to be adopted. This suggests that court recommendations are received more favorably by state legislatures when they are confined to matters which primarily, and perhaps exclusively, affect the courts. Frequently the successful proposals also appear to be uncontroversial and have little impact on other groups. Most judges, for example, reported that proposals concerning court budgets, salaries, and facilities received the most favorable action.

While these kinds of proposals seem to constitute the bulk of successful court recommendations, some state supreme courts have been able to achieve their policy objectives in other more important areas. In particular, several judges reported success in having additional personnel allocated to the courts and were influential in the revision of the criminal code, court procedure, creation of a juvenile court, mental health legislation, provision of counsel to indigents, and other specific statutory clarifications. However, while they sometimes are adopted, these kinds of proposals probably are implemented infrequently, because they vitally affect other interest groups and because they require state expenditures not contained in routine appropriations. Thus these proposals may become the subject of heated political conflict and state supreme courts are more likely to lose some of the battles which take place.

CONCLUSION

This research has considered state supreme courts as interest groups which seek access to other political decision makers in order to urge the adoption of policies which they cannot implement themselves. In this way, the courts can be viewed as attempting to increase their influence in state policy-making beyond the limitations imposed by the formal structure of the judiciary.

There are several important parallels between behavior of the courts and the actions of other interest groups. First, there is a variety of channels of communication which judges use to convey their policy proposals. Some of these channels, such as testimony before legislative committees and personal meetings with legislators, are similar to those used by other groups, but most of them are different and are designed to meet the special institutional characteristics of courts and legislatures and the distinctive political and legal relationships which exist between judges and legislators. Second, as with other organized groups, judges are concerned most frequently with policies directly affecting them and the operation of the judiciary; however, some of their proposals also have potential impact on other governmental policies and the political demands of others.

The courts also sometimes become involved in conflicts with other interest groups having their own policy goals and interests to advance. Like other groups, the courts also may align themselves with sympathetic organizations such as judicial councils and state bar associations. The level of success achieved by the courts also may depend in part on the amount of conflict and controversy which exists over their policy proposals. The courts seem to be most successful when their proposals involve requests for maintaining the routine functioning of the courts and it may be that other groups do not seriously contest these requests. Proposals calling for policy changes, however, vitally affect others, and the courts more frequently may be prevented from achieving their political goals.

NOTES

1. For a discussion of various approaches to judicial policy-making, see Wells and Grossman (1968).

2. See, for example, Murphy (1962) and Prichett (1961).

3. For a listing of conference recommendations, see the annual reports of the Judicial Conference of the United States.

4. See Glick and Vines (1968). A somewhat different version appeared in 1969.

5. I would like to acknowledge the help which I received from Chief Justice Robert B. Williamson of Maine, Chairman of the Conference of Chief Justices. Chief Justice Williamson furnished a letter urging cooperation with the research which was enclosed with each questionnaire. His help was very important in obtaining the high rate of response from the chief justices.

6. In order to protect respondents' anonymity, the names of individual states will not be given when the data involved is drawn from questionnaire responses. It is possible to say, however, that the five states which use court opinions as their only channel of communication are found in all sections of the country; no regional concentration exists.

7. Q is a measure of association used in relating nominal scales in a 2 x 2 table.

8. For one discussion of reactions to changes in judicial structures, see Pelekoudas (1963).

9. One exception is the Judicial Council of Massachusetts which makes recommendations only on pending legislation which has been sent to the council by the legislature.

10. The system for placing judicial councils into more and less active categories distinguishes between councils which make recommendations for only minor changes in existing statutes, rules of procedure, or court organization (less active in policy-making) and those councils which recommend fundamental and frequently major revisions in statutory law and court organization (more active in policy-making).

CASE

STATE v. RUSH (1966) 217 A.2d 441.

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