

## *Examining the Role of Professional Associations in Policy Diffusion: The Case of Intermediate Appellate Courts*

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While research exists that explains how institutions impact judicial decision-making at the state level, less is known about what affects the creation and reform of institutions at the state level. This paper provides an exploratory investigation into why states choose to create Intermediate Appellate Courts (IAC). This paper finds that organized legal interests have a significant impact on policy adoption and the explanation that IACs are created to relieve the workload of the state's highest appellate court finds no support. The findings refute some previously held assumptions about state judicial reform and in doing so provide insight for policy scholars interested in the role organized interests play in institutional reform.

Although written nearly a quarter of a century ago, few have taken seriously Henry Glick who wrote, "most of the issues included in innovation in judicial administration . . . are politically significant and are not mere technical changes in judicial organization . . . [we need] . . . a sensitive political analysis of how and why change occurs" (Glick 1981, 56-58). Beyond assumptions, little is known about the creation of Intermediate Appellate Courts (IAC), which is shocking given the impact they have on judicial decision-making (Bierman 2005, 91)<sup>1</sup> and the increased prominence of institutionalists in the judicial politics subfield (Clayton and Gillman 1999; Brace and Hall 1995, 2001; Hall and Brace 1989; Langer 2002). But, the reality is few political scientists have taken an interest in understanding why states have created IACs, making this the first quantitative study of IAC creation.<sup>2</sup> This study challenges the conventional wisdom that IACs are created to help reduce the workload of state courts of last resort (CLR). In this article I suggest that the common sense explanation associated with IAC creation is at best incomplete. This study shows that the involvement of legal interests<sup>3</sup> in the policy process impacts the decision to create an IAC, whereas workload reduction seems to play no role.

Why study IACs? IACs handle most of the appellate workload at the state level. IACs allow CLRs to have discretionary dockets. With a discre-

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tionary docket a CLR can exercise increased discretion over case selection which then means the preferences of CLR judges can play a role in deciding which cases are selected. The presence of an IAC creates a greater opportunity for the policy preferences of a CLR judge to enter into the process. The practices and outcomes in a judicial system with an IAC compared to one without are substantially different. Increasing our knowledge about IACs will lead to more knowledge of the state appellate process and judicial decision-making.

This study goes beyond the subfield of judicial politics and speaks to issues in policy diffusion research by showing that IAC creation does not result from need, but rather from action taken by interstate professional associations. Previous diffusion studies demonstrate that interstate professional associations are responsible for the increased speed at which innovations spread across states and help explain why regional diffusion patterns are no longer as prominent as they once were (Balla 2001, 222; McNeal, Tolbert, Mossberg, and Dotterweich 2003, 59; Daley and Garrand 2005, 626). Additionally, studies of both legal reform (Glick 1992; Canon and Baum 1981; Sapat 2004) and in the general policy diffusion literature (Balla 2001; Berry and Berry 1990; Sapat 2004) tend to focus more on policy adoption than institutional reform. While some studies have added to our knowledge of state judicial reform they have all focused on the reform of selection method (Puro, Bergeson, and Puro 1985; Dubois 1990; Hanssen 2004). But even in general terms, much less is known about institutional reform in the states than is known about other types of policy adoption. This study adds to the existing literature by drawing on the policy diffusion literature and the historical accounts of judicial reform in order to develop an accurate account of state judicial reform that challenges previous assumptions.

### **Historical Overview**

Intermediate Appellate Courts are appellate courts situated between trial courts and state courts of last resort. Their expressed purpose is to help relieve some of the caseload congestion in the CLR. An IAC allows the CLR to spend more time on cases and have discretion over its docket. In this sense states treat the courts as any other organization. As the volume of business increases, more staff and infrastructure is needed to handle the increased volume (Kagan et al. 1978, 972; Fair 1971; Neubauer 2005). The American Bar Association supports the creation of IACs on the grounds that they will effectively handle the problem.

When improvements in efficiency of operation in the highest court cannot be achieved without dilution of the appellate function, the appropriate solution is the creation of an intermediate appellate court. Since there seems little

prospect for a long run decline in the volume of appellate litigation, once the surge of appellate cases has been felt in a state having only one appellate court, steps should be taken forthwith to establish and intermediate appellate court rather than temporizing with substitute arrangements (American Bar Association 1974, 35).

Despite the increase in states with IACs from 1961 to 2002, no study has set out to systematically test the hypothesis that IAC creation is positively correlated with caseload.<sup>4</sup>

The lack of convincing evidence that IACs effectively relieve caseload—and in fact tends to increase the total number of appeals—raises an interesting question as to why states continue to adopt such measures if they have not proven effective (Flango and Blair 1980, 77 and 80). The creation of IACs receives unwavering support from national legal organizations, and the position is adopted by their state and local affiliates (Dubois 1990, 24; Kagan et al. 1978, 973). Because an IAC is expected to reduce the caseload of the CLR the American Judicature Society (AJS) and the American Bar Association (ABA) recommend that states adopt an IAC. A reduced caseload means the CLR judges have greater independence and increased professionalism (Brace and Hall 2001).<sup>5</sup> Therefore, I hypothesize that the more active state legal organizations are in state politics the more quickly a state will move to create an IAC. The discussion that follows provides support for the model specification discussed in the next section.

“For many reasons, too, legislators and political leaders were uninterested in reform, or opposed to it outright. Politicians certainly did not see backlogs and overloads in the [state] supreme court as the most pressing problem of the day. Spending money on salaries for new intermediate appellate court judges was never politically inviting” (Kagan et al. 1978, 978). Overworked courts are not a new problem and IACs are not a new solution, but the creation of IACs did not become common until legal organizations got involved. The history of IAC creation in New York, Alabama, and Georgia supports this hypothesis. New York experienced a debate on how to handle the backlog of cases in its constitutional convention of 1890. The issue became a central debate of the convention. In 1891 a recommendation for an IAC was put forth at the convention by the state’s bar association with Walter S. Logan as its leading proponent. In reference to the judiciary article, Logan wrote, “The judiciary article is the most important part of the Constitution” (“There Shall be A Court of Appeals,” 1997). The measure in this instance was successful when in the 1860s it had failed. In the 1860s there is no evidence that the state bar association took an active role in the creation of an IAC, but in 1891 their influence is documented. Similar situations are reported in Alabama and Georgia. In Alabama, “the Legislature of 1911, acting largely upon the suggestion of the Bar Association” created an

IAC (Livingston 1955, 10). Also in Georgia the central concern at the Bar Association Annual Meeting of 1895 in Atlanta was establishing an IAC. While the first proposed measure did not lead to an IAC, seven years later at the annual meeting in Warm Springs the issue was presented again and this time the Bar Association was successful and Georgia got an IAC in 1906 (Georgia Bar Association Reports 1895 and 1902).<sup>6</sup> Therefore, we know that IACs have been around for at least one hundred years before their adoption became common place. Caseload has been a problem for at least this long. It was only when state legal organizations began to take an active role in promoting the creation of IACs that states took action.

Bar associations did not act alone. Roscoe Pound and other reform minded jurists pushed for state level reform as early as 1908. In 1917 the AJS began publishing a journal on judicial reform directed at the state level. Around the same time state judicial councils began to form in an effort to collect information on the functioning of the court (Kagan et al. 1978, 980). Although there were reform efforts in the early part of the century, the movement quietly receded. It was not until the 1960s that the reform movement began to pick up steam. Kagan et al. (1978) recognize that reform accelerated in the 1960s, but only hypothesized as to why.<sup>7</sup> And while an IAC as a solution to this problem was not new in 1960, legal interests may still be properly categorized as policy advocates (Roberts 1992, 57).<sup>8</sup> In the statewide Judicature Act of the American Judicature Society, the AJS drew up a model system which included an IAC (Kagan et al. 1978, 980). In 1962 the ABA endorsed the recommended model of the AJS. Such reform movements are consistent with the time period. “The work of the Warren Court, and the ferment of the 1960s, may have helped build the reform minded climate of opinion. Organized litigants . . . urged the courts to engage in social and legal reform” (Kagan et al. 1978, 981). Table 1 shows the pattern of state adoption by decade.

What this study suggests—building on historical evidence and the policy diffusion literature that highlights the role of interstate professional associations in policy diffusion—is that state and local bar associations, and other organized legal interests, lobby for the reforms created by their national counterparts. As Andrew Karch explains, “[I]t is important to note that various national organizations view the dissemination of policy-relevant information as a key component of their organizational missions. . . . Interest groups also disseminate policy-relevant information . . . in addition to taking strong stands in favor of specific policies, which promotes their diffusion” (Karch 2007, 65). National organizations and lobbying groups are increasing their ties with their state affiliates, and legal organizations are no different (Thomas and Hrebenar 1992). I suggest that state and local legal organizations—which promote the policy preferences of their national counterparts at the state level—are the impetus for judicial reform.

**Table 1. State IAC Creation by Decade**

<i>Prior to 1960</i>	<i>1960-1969</i>	<i>1970-1979</i>	<i>1980-1989</i>
Alabama	Arizona	Colorado	Alaska
California	Maryland	Iowa	Arkansas
Florida	Michigan	Kansas	Connecticut
Georgia	New Mexico	Kentucky	Hawaii
Indiana	North Carolina	Massachusetts	Idaho
Illinois	Oklahoma	Minnesota	
Louisiana	Washington	South Carolina	
Missouri	Utah		
New Jersey	Virginia		
New York	Wisconsin		
Ohio	Oregon		
Pennsylvania			
Tennessee			
Texas			
<i>1990-1999</i>	<i>2000-2002</i>	<i>States still without an IAC</i>	
Mississippi	None	Delaware	New Hampshire
Nebraska		Maine	North Dakota
		Montana	Rhode Island
		Nevada	South Dakota
			Vermont
			West Virginia
			Wyoming

## Data and Methods

### Explanation of Dependent Variable and EHA

The analysis will be carried out using event-history analysis (EHA).<sup>9</sup> There is one primary advantage in this study for using EHA over ordinary least squares (OLS). EHA allows the researcher to deal with censored and truncated data. These are data in which the event does not occur within the specified time frame either because the event occurred before the study began or the study ends before the event occurred in a particular entity (Bennett and Stam 1996).<sup>10</sup> With OLS, states that adopted after 2002 would be treated as if they adopted in 2002, EHA results are not biased when this occurs. Furthermore, no bias is introduced, as it would be in OLS, by beginning my data collection at 1960 when some states had modified their judicial structure prior to 1960.<sup>11</sup>

For this study time begins in 1960 and continues through 2002. Due to some time-lagged variables, only IAC creation from 1961-2002 is examined. Time is measured in years. I code a state as having adopted a policy, which is failure in EHA terms, when the legislature adopts the reform since states have varying rules about when or how a reform gets implemented. In this study I am only concerned with the creation of the initial IAC.

## Explanation of Independent Variables

Reform since 1960 has remained steady due to the consistent presence of legal interests at the state level. The policy initiatives of the AJS and the ABA are not pushed on the states from the national offices. The state and local affiliates of these national organizations adopt the policy positions of the national organization and push for reforms in their home state. I hypothesize that the more active state legal organizations are in state politics, the more likely they are to get what they want. *Legal interest* is measured as the proportion of the state's lobbying organizations that are legal interests.<sup>12</sup> This measure was developed by Gray and Lowery (1998) to measure a similar effect as the one proposed here.<sup>13</sup>

In order to test the assertion that a state creates an IAC in order to help relieve caseload pressure, I employ the variable *number of cases*.<sup>14</sup> This variable takes the number of cases appealed in each year of the study to each state's CLR, then divides that number by the number of judges that sit on the state's CLR. This is a more accurate measure of caseload than taking the number of opinions issued by the CLR since not all cases appealed to the CLR are given full treatment by the CLR. However, the number of cases appealed does add to the caseload even if full treatment is not granted.<sup>15</sup> Moreover, since the number of judges on a CLR varies from state-to-state, and the number of judges deciding on a case also varies, it is necessary to look at the workload of the judge, not the court as a whole. That is, 100 cases a year will have a different impact on a five judge panel than on a nine judge panel, *ceteris paribus*. Caseload is positively correlated with population; so in order to isolate the effect of caseload it is also necessary to standardize the measure which helps ensure that it is caseload being measured and not size of the population. Therefore the variable is number of cases per judge per 1,000 people. The data for this variable are entirely original and were collected by the author who contacted each state CLR to get the needed information.<sup>16</sup>

Past research suggests that measures for *unified government*, *state revenue*, *contiguous*, *difficulty of amendment*, *bills passed* and *selection method* be included in the model. The inclusion of *unified government* is based on the reasoning that the creation of a new level of the judiciary will be made easier if the governor and legislative majority are of the same party (De Figueiredo and Tiller 1996). Also, there is a large expense incurred by the state that chooses to set up an IAC, therefore, that state must have large amounts of revenue to cover the costs. *State revenue* is expected to increase the rate of adoption.<sup>17</sup> *Contiguous* is also expected to increase the rate of adoption as the more neighbors a state has that have created IACs the more likely that state will be to adopt. When states are confronted with a problem

they are unable to solve on their own they will look to other states, presumably their neighbors, for direction. Contiguity is one of the earliest variables included in the policy diffusion literature (McVoy 1940 and Berry & Berry 1990, 1992) and has continued to be used in a number of other avenues, including hate crime research (Grattet, Jenness, and Curry 1998). *Contiguous* is simply a percentage of the neighboring states that have an IAC in each year of the study.<sup>18</sup>

It is hypothesized that the more work required for a state to adopt a change the less likely it is that state will make the change. F. Andrew Hanssen uses *difficulty of amendment* in his analysis of judicial selection reform to test this hypothesis (Hanssen 2004). But rather than leaving the variable dichotomous as Hanssen has, it is modified in this study to take into account the varying levels of amendment difficulty.<sup>19</sup> Since the variable is not interval it is necessary to create dummies for each of the categories: no constitutional convention, states that require only a constitutional convention and a vote in each house, and states that require constitutional convention, a vote in each house and vote by electorate. These variables are collectively referred to as *difficulty of amendment*.<sup>20</sup> The hypothesis is that the more difficult it is to get an amendment added to the constitution the less quickly that state will create an IAC. Similarly, states with a legislature that passes a lower percentage of all proposed bills—measured by *bills passed*—will also take longer to create an IAC than a state that passes a greater percentage of its proposed bills.

*Selection method* is a set of dummy variables for each method of judicial selection. For *selection method*, there are three dummy variables: *appointed* for states that appoint their judges, *elected* for states that elect their judges, and *merit* for states that select their judges through merit selection. I categorize these states following the categorization of Laura Langer (2002).<sup>21</sup> For *appointed* systems it is assumed that the hazard rate will be increasing since the elected officials in those states, particularly when the legislature and governor are of the same party, will look to increase the number of judgeships so that they might pack the courts with judges of their own choosing. This hypothesis is derived from the literature on federal judicial expansion. Since Congress controls the number of federal judgeships, John De Figueiredo and Emerson Tiller (1996) find that party alignment between Congress and the President determines the timing of judicial expansion as often as caseload pressure. “The net effect of expanding during political alignment is to speed up changes in the political balance of the judiciary in favor of the current Congress” (De Figueiredo and Tiller 1996, 435). To adequately test this hypothesis an interaction term with *unified government* is included.<sup>22</sup> Those states that have a *unified government* and *appointed* systems should adopt an IAC more quickly.

Conversely, states with *elected* systems are expected to have a decreasing hazard rate for two reasons. Judges in *elected* systems do not serve for as lengthy terms as they do in appointed systems, thus the legislators and governors in these states may be hesitant to create more judgeships for fear that when their party is out of power the voters will pack the courts with judges from the opposing party.<sup>23</sup> The second reason that *elected* systems are expected to have a decreasing hazard rate is because *elected* systems are opposed by the same legal interests who are in support of IAC creation. Because elected judges must court public opinion and raise money for elections in order to become judges and maintain their position, advocates of the merit process oppose election systems on the grounds that the election process unnecessarily biases judges (Institute for the Advancement of the American Legal System 2007).<sup>24</sup>

The very opposite is expected of *merit* states. Merit selection is the method of selection most strongly pushed for by the ABA and AJS, and for the same reasons they support IAC creation: judicial independence and increased professionalism (Institute for the Advancement of the American Legal System 2007; Brace and Hall 2001). Because of this, “The merit plan continues to be the centerpiece for judicial reform movements” (Alfini and Gable 2002, 691). Bar associations began to spring up wherever there was corruption or the perception of an unfit judiciary and began to push for judicial reform in the form of merit selection. This was particularly true in New York whose infamous Tammany Hall machine would commonly place party loyalists in judge seats. In fact the involvement of the St. Louis Bar Association, the Missouri State Bar Association, and the Lawyer’s Association of Kansas City that led to Missouri adopting the merit plan was in response to what they felt was a corrupt judicial selection process (Alfini and Gable 2002, 691). This story is replicated across the country (Alfini and Gable 2002 and Becker and Reddick 2003). The state and local bar associations play a large role in reforming the method of judicial selection “[T]o understand the Merit Plan as a judicial innovation, one cannot ignore the political mobilization campaign sponsored by the American Judicature Society (AJS) and a coalition of judicial reform groups” (Dubois 1990, 40; see also Scott 2008). Therefore, the hypothesis is that if a state has already passed one reform that legal interests are in favor of, they are likely to pass another.<sup>25</sup>

Lastly, following Mintrom (1997), I include a dummy variable for each year of the study while using 1961 as my baseline category. Including dummy variables for year is a way of controlling for maturation effects without interfering with other time-varying independent variables (Mintrom 1997, 754).<sup>26</sup>



## Findings<sup>27</sup>

The findings reported in Table 2 force one to question the impact caseload has on the creation of an IAC, and the explanation that caseload is the primary reason for IAC creation. Table 2 contains three models: Model I does not have the interaction terms, Model II contains the interaction terms, and Model III replaces appointed with merit in the model without interaction terms.<sup>28</sup> The number of cases appealed to the CLR does not play a statistically significant role in affecting the rate at which a state moves towards the adoption of an IAC. Therefore, this analysis cannot confirm the most common explanation associated with IAC creation. However, four other variables reach statistical significance in this analysis: *legal interests*, *bills passed*, *state revenue*, and *elected*.

As anticipated, the more legal interests there are the more quickly that state will adopt an IAC.<sup>29</sup> If the number of legal interests in a state increase one standard deviation above the mean, the rate of adoption increases by nearly 1 percent, or 0.20 years. This is true for all models in Table 2.

*Bills passed* also acts in the anticipated direction. The more active a state legislature the more quickly that state will create an IAC. A move of one standard deviation above the mean increases the rate of adoption by more than 30 percent, or nearly six years. And while the effect is small, the models show that a state's revenue impacts its decision to reform its institutional structure. But, as expected, the effect is modest since the percentage of the state's budget that is designated for the judiciary is generally only a small percentage of the total budget. This variable adds to the story by confirming what was learned from *bills passed*. The capacity to reform is an important factor in determining if a state will reform.

In the model without the interaction terms (Model I), states that elect their judges show greater resistance to IAC creation whereas appointed systems demonstrate no statistically significant effect.<sup>30</sup> *Elected* has the greatest substantive impact of any variable in Model I. If a state has an elected system it will take nearly twelve additional years for a state to adopt an IAC when compared to a state with some other system. In the three models this is the only statistically significant variable that acts as a deterrent for adoption. These results support the hypothesis that legal interests are influential in promoting reforms because states with elected systems seem to be resistant to pressure from legal interests to reform their selection system since legal interests urge states to move away from elected systems. This indicates they will also be resistant to pressures from legal interests when it comes to other types of reform. *Elected* does not reach statistical significance in the model with the interaction terms. This is not surprising given that the linear relationship between *unified\*elected* and *elected* is high.

**Table 2. Rate of IAC Creation†**

Variables	Model I	Hazard Rate	Model II	Hazard Rate	Model III	Hazard Rate
Legal Interests $t-1$	1.011*** (0.002)	1.1 (0.001)	1.008*** (0.002)	0.8	1.008***	0.8
Bills Passed $t-1$	1.313* (0.208)	31.3 (0.202)	1.248* (0.207)	24.8	1.322*	32.2
State Revenue $t-1$	1.001*** (1.0e-5)	0.1 (1.0e-5)	1.001** (1.0e-5)	0.1	1.001**	0.1
Elected	0.187*** (0.092)	-81.3 (0.224)	0.364 (0.090)	—	0.180***	-82.0
Merit					4.674** (2.301)	367.3
Number of Cases $t-1$	1.000 (0.904)	— (0.701)	0.998 (0.916)	—	1.001	—
Contiguous $t-1$	1.689 (0.898)	— (0.911)	1.809 (0.981)	—	1.618	—
Log-Likelihood	-119.298	-120.271	-121.634			

†In the interest of space, because none of the dummy variables for *year* reached statistical significance, I did not report the results.

\*\*\*Significant with Two-Tailed Z-Test at <0.01, \*\*Significant at <0.05, \*Significant at <0.10

N=1437; those who are unfamiliar with EHA might expect the N to equal Number of Years x 50. Once a state has reached failure it is no longer included in the data set since it can no longer be 'at risk' (Mintrom and Vergari [1998 138 n. 14] and Box-Steffensmeier and Jones [2004]).

Given the unanticipated results for *number of cases*, some readers may think that the results from Table 2 are unreliable due to the presence of multicollinearity in the model. The one likely culprit for inducing multicollinearity is *legal interests*. It makes sense to think that the more legal interests there are in a state the more cases will be appealed to the CLR. But this is not the case. When *legal interests* is regressed on *number of cases* the auxiliary  $R^2$  is so low (0.011) that multicollinearity can be put aside for the reason *number of cases* does not reach statistical significance.<sup>31</sup> Perhaps multicollinearity would be present if *legal interests* was measured as the total number of attorneys in the state, but the measure for *legal interests* in this study is the proportion of state lobbying organizations that are legal interests.

Also likely to raise concern among policy researchers is the lack of statistical significance achieved by *contiguous*. However, recent studies suggest that this should not be unexpected because of the effect interstate professional associations have on policy diffusion. “More recently, scholars have argued that national forces, like the media and professional networks that operate through conference and associations, might have supplanted the exclusive role of neighboring and regional states as policy models. As a result, the diffusion of political forms and public policies might be better characterized as a national process than a process that is driven by geographic proximity” (Karch 2007, 58; see also Mooney 2001). Understanding that the AJS and ABA are national organizations that set the agenda for their state and local affiliates, having *contiguous* not reach statistical significance reinforces the conclusion that legal interests have a positive impact on IAC creation. The inference is that while the ABA and AJS are national organizations, their state and local affiliates act within states to promote state level reform. The national branches of the ABA and AJS have little direct role in state politics, but instead focus their efforts on supporting their state and local affiliates.

The results in the last two columns of Table 2 are the results from Model III in which *merit selection* is included as the method of selection and *appointed* is dropped.<sup>32</sup> While the effects of *merit selection* can be calculated from Model I since it is the baseline category, for purposes of presentation, interpretation, and clarity I provide Model III in which *appointed* is the baseline category. The variables *legal interests*, *bills passed*, *state revenue*, and *elected* reach statistical significance, act in the anticipated direction, and have nearly the same substantive impact as they did in the other two models.

*Merit selection* increases the hazard rate by 367 percent. While remarkable, the finding is not unexpected. The merit system is the method of selection supported by legal interests, just as legal interests support the IAC. Therefore, if a state has already adopted one measure pushed for by legal

interests then the likelihood of that state adopting another is expected to be, and proves to be, quite high.

At this point, the story about how IACs are created is quite clear. *Legal interests* positively affect the rate of IAC creation, and those states that are open to the influence of legal interests—as evidenced by *merit selection*—will more quickly create an IAC. States that have proven resistant to change in the direction pushed for by legal interests—which are states with *elected* systems—will be more resistant to IAC creation.

Overall the findings suggest that those who are most involved with the legal system—legal interests—impact its reform the most. In addition to what does impact judicial reform, it is what does not impact judicial reform which is particularly interesting. *Number of cases*, the purported reason for adopting an IAC, has no discernible impact on the rapidity with which a state adopts an IAC. The results from this study should be enough to encourage more quantitative research in this area.

### Conclusion

It should be concluded from these findings that the number of legal interests in a state is an important factor in determining the length of time before a state creates an IAC. The findings suggest that the creation of an IAC is not a matter of need but a matter of politics. If the creation of an IAC was based upon need, then caseload would have been an important factor in determining the rate of creation, but it is not.

These results reinforce my original point that ignoring judicial reform in the way political science has, has had deleterious effects on our understanding of the judiciary and state adoption patterns of institutional development. These results should announce to other researchers that further investigation is needed. For instance, judicial independence is a valid reason for pushing for an IAC, but perhaps there are other reasons legal interests push for IAC creation, such as pushing for a system with greater opportunities for judicial policy-making. Research suggests that in considering judicial reform, legal organizations will take an active role in seeking a reform that plays to their advantage (Champagne and Haydel 1993). There are other questions relating to judicial reform that have gone unexamined in this study but deserve attention: What is the correlation between a unified court structure and IACs? Or, are states that have only recently created IACs evidence of isomorphism? Also, because IACs vary across states in terms of resources, structure, and number of judges it would be worthwhile to examine why these variations exist. Are states that are structured according to the recommendations of legal interests more susceptible to informal lobbying pressures by these same groups within the judiciary? Lastly, this paper

should spur on greater efforts in the diffusion literature to look at interstate professional associations as the impetus for diffusion, particularly as it relates to institutional reform.

This study does not purport to be the final word on the subject, quite the contrary in fact. The purpose of this study is to offer an initial quantitative analysis of the claims made by those who have studied IAC creation in single states and to draw the discipline's attention, through an exploratory analysis, to an understudied topic.

## NOTES

<sup>1</sup>Consider for example, the attention that would be generated if a state created an intermediate governor or a third legislative house. The attention would be tremendous, particularly compared to the attention given to IAC creation.

<sup>2</sup>This exploration into IAC creation will hopefully encourage others to engage the topic.

<sup>3</sup>For matters of style I sometimes refer to legal interests as legal organizations. The change in terminology does not denote any change in meaning.

<sup>4</sup>As mentioned by Daryl R. Fair, "A total of fifteen states [as of 1971] indicated that this [caseload] was a principal reason for the creation of an intermediate appellate court" (Fair 1971, 415). However, there were other states that did not claim caseload to be the motivating factor behind IAC creation.

<sup>5</sup>In addition to these factors, an IAC creates more opportunities for litigation and appeals. However, this may not have any effect on the decision of the ABA and AJS to support IAC creation. In this study I do not seek to test the veracity of the claims made by legal interests, that is the subject of another study.

<sup>6</sup>These are not atypical states either; many others document the same circumstances. While the data set does not extend back to the first IAC creation, these three accounts should let the reader know that bar associations' interest in creating IACs, and impacting their creation, was not new to the period under consideration in this study. This historical overview is intended to provide a relevant context for the following discussion of model construction as well.

<sup>7</sup>The 1980s saw the largest creation of IACs.

<sup>8</sup>Following Roberts (1992) I use the term policy advocates for legal interests. They are deemed advocates because they partake in the creation and design of the IAC but not the implementation (Roberts 1992, 58 and 60).

<sup>9</sup>A comprehensive explanation for the reasoning behind using EHA over OLS can be found in Bennet and Stam (1996) and Box-Steffensmeier and Jones (2004).

<sup>10</sup>I leave the baseline unparameterized as I do not have a strong enough theory to determine whether the baseline should be constant, increasing or decreasing. I use a Cox model (Box-Steffensmeier and Jones 2004).

<sup>11</sup>The data were collected from 1960-2002 for reasons of practicality; the variables I employ are either unreliable or unavailable prior to this year. For instance, in order to get an accurate count of the number of cases appealed to the CLR on a yearly basis I had to contact the CLR in each state—by phone—due to the fact that this information is generally not published in either a hardcopy or electronic format. Only twelve states that I called could give me reliable caseload information for years prior to 1960. Also,

collecting data on legal interests is nearly impossible to do before 1960 at the state level. This type of data limitation is systematic in state politics research. However, this study adds to the existing data available for state court researchers, if only by a single variable, by adding *number of cases* to our existing archive.

<sup>12</sup>Quite simply, the number of legal interests is divided by total lobbying interests.

<sup>13</sup>Since the Gray and Lowery measure does not extend to all the years I require I adopt their method of data collection and extend it from 1960-2002 to accommodate the time frame of this study.

<sup>14</sup>In order to accurately test that number of cases leads IAC creation, and not the other way around, *number of cases* is lagged one year behind IAC creation. This is also done with *bills passed*, *legal interests*, and *state revenue*. I follow Berry and Berry (1990) on this point.

<sup>15</sup>Some cases are simply placed aside and not considered, others are given summary decisions, while others are granted full hearing where opinions are issued. Thus, only looking at the number of full decisions issued severely underestimates the CLR caseload. While some contend that dismissing a case without an opinion on a discretionary docket does not add substantively to the workload of the court, I propose that any work is more work and should therefore be accounted for in this measure.

<sup>16</sup>It might be suggested that perhaps trial court caseload should be used, but this is incorrect for two reasons: (1) The proposed reasons for creating an IAC has nothing to do with trial court caseloads and (2) not all trial decisions are appealed, which means the demand for a new appellate level has more to do with appealed trial decisions than cases heard at the trial level.

<sup>17</sup>While judicial systems do not generally take up a large portion of a state's budget, an added expenditure is still a relevant deterrent to adopting a new system.

<sup>18</sup>Some now use a dummy variable to indicate if a neighbor has adopted a policy because states do not have the same number of neighbors, or use a dyad approach (Volden 2006). I choose to use proportion as it follows the leading literature in the field such as Berry and Berry (1990) and more recent studies—Chamberlain and Haider-Markel (2005)—continue to employ this method.

<sup>19</sup>This variable is adopted because of Hanssen (2004) but I employ the typology of Langer (2002).

<sup>20</sup>Even if initially created through statute, a change to the state's constitution had to be made to make the creation of an IAC permanent since the creation of the IAC alters the institutional structure of the court.

<sup>21</sup>However, I collapse the legislative and gubernatorial appointment into a single appointed variable and likewise collapse the nonpartisan and partisan elections into a single variable.

<sup>22</sup>While I am concerned with more than just the effects of judicial expansion, IAC creation does create more judgeships and therefore "packing the court" is a potential motivation that must be considered.

<sup>23</sup>Even in states that select their judges through nonpartisan elections partisan affiliations are often known by other government officials and the voters.

<sup>24</sup>The Institute for the Advancement of the American Legal System is closely affiliated with the AJS; and the AJS sponsored the program at which this report was drafted.

<sup>25</sup>For those more accustomed to the terminology of OLS regression it might be said that merit selection and IAC are positively correlated and elected and IAC are negatively correlated.

<sup>26</sup>It would be of some use to understand how the debate over selection reform influenced the decision to adopt an IAC in that the debate over what method an IAC judge

would be selected might play into the decision whether to adopt. The historical records do not indicate that such a debate had an impact on the decision of whether the state should create an IAC. Moreover, an investigation into this matter would be better suited for a paper on selection reform rather than IAC creation.

<sup>27</sup>With the exception of *number of cases* and *contiguous*, I have included only those variables that reach statistical significance in at least one of the models.

<sup>28</sup>Due to the multicollinearity present in the interaction term model, results are presented for both models. This was not done for Model III for reasons explained later. One way to treat multicollinearity is to drop one of the variables, though this may induce bias into the model. For this reason I report the results from both models in order to demonstrate that by dropping the interaction terms no bias is induced. The auxiliary  $R^2$  between the interaction terms and the dummy variables was beyond 0.90.

<sup>29</sup>Any coefficient above 1.000 means the hazard rate is increasing, meaning the variable leads to quicker adoption. Any coefficient below 1.000 means the hazard rate is decreasing. Since the value is not directly interpretable, it is necessary to calculate the hazard rate. The hazard rate is the percent change associated with the coefficient. This number is calculated by subtracting 1 from the coefficient and multiplying by 100.

<sup>30</sup>In this model, *merit selection* is used as the reference category and is therefore not included in the model.

<sup>31</sup>Some conservatively suggest that an auxiliary  $R^2$  of 0.4 is enough to induce unreliable results (Keith 2006, 200). When number of cases is regressed on the entire model the auxiliary  $R^2$  is a mere 0.117.

<sup>32</sup>I do not report the model with interaction terms since the same multicollinearity seen in Model II would also be seen in Model III had interaction terms been included. So I adopt the standard strategy when more data cannot be collected and drop one of the variables. Certainly there is a concern for biased results with the method, but the substantive impact of the variables was unchanged when the variables were dropped.

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